

THE FLORIDA-UCC FILING SYSTEM DISASTER

*Lynn M. LoPucki**

Abstract

Since the widespread adoption of the Uniform Commercial Code (UCC) in the 1960s, the UCC's name-based filing system has been a constant embarrassment to its drafters. System overhauls in 1998 and 2010 failed to fix it.

In Florida, the problem came to a head in *1944 Beach Boulevard, LLC v. Live Oak Banking*. Based on a widely shared misunderstanding of how Florida's unorthodox, privatized UCC filing system worked, the Florida Supreme Court held that the system had no search logic, so the UCC § 9-506(c) safe harbor from debtor name errors did not apply. Instead, a "zero-tolerance" test applied, with the consequence that any error in a debtor's name on a financing statement "no matter how minor" renders the financing statement ineffective and the secured party unperfected.

This Article presents the first formal empirical study estimating an error rate for UCC filings anywhere in the United States. The study found that under the Florida Supreme Court's zero-tolerance test, 32% of UCC filings in Florida against registered organizations—over 230,000 filings—are ineffective by reason of name errors alone. Even if Florida had adopted the traditional search logic used in other states and qualified for the safe harbor, 5% of the filings—about 11,650 filings—would still have been ineffective for name errors alone.

This Article argues that, with respect to filings against registered organizations, the states should replace the UCC's name-based filing system with a point-and-click filing system. In a point-and-click system, UCC filings against registered organizations would be made, stored, and searched in the state's entity records. Such a system is already operational in the United Kingdom. Instead of filers and searchers trying to reproduce the elusive "public organic record" names of registered organizations in the correct boxes on filing and

* Levin, Mabie & Levin Professor of Law, University of Florida Levin College of Law and Professor Emeritus, UCLA School of Law. I thank Paul Hodnefield, Kenneth Kettering, Robert Lawless, David Peterson, Steve Weise, Mark Wolfson, and members of the Study Group on UCC-9 Financing Statements of the Bankruptcy/UCC Committee of the Business Law Section of the Florida Bar for comments on earlier drafts or other assistance. I thank Hope Bodin, Rikki Blake Brookes, Kevin Kapral, Victoria Redd, and Natalie Rickards for assistance with research.

search requests, filers and searchers would need only to navigate to the debtor's entity record on the state's website. There, lenders could click on their debtors' correct names to file financing statements, and searchers could see all UCC filings against their debtors in one place. All information a filer or searcher would need to determine whether it was filing or searching against the correct entity would be visible to it on the same page. That would include addresses, public organic records, and annual reports. Point-and-click would eliminate debtor name errors in filing and searching, eliminate the need for debtor name amendments and debtor name monitoring, greatly simplify the processes of filing and searching, and dramatically reduce wrong-entity and wrong-state filing errors. It would increase the accuracy of the UCC filing system while cutting its costs to filers, searchers, and the state to a fraction of their current levels.

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INTRODUCTION

Promoters of the Uniform Commercial Code (UCC) consider it “the most successful commercial statute ever.”¹ No one, however, would make such a claim for the UCC’s filing system provisions. Since the widespread adoption of the UCC in the 1960s, the UCC’s name-based filing system provisions have been a constant embarrassment.² The drafters overhauled the filing system provisions in 1998 and again in 2010, but the problems have persisted.³

1. Steven L. Harris & Charles W. Mooney, Jr., *A Property Based Theory of Security Interests: Taking Debtor’s Choices Seriously*, 80 VA. L. REV. 2021, 2021 (1994).

2. Margit Livingston, *Bewitched, Bothered and Bewildered: The Courts and Revised Article 9 of the Uniform Commercial Code Ten Years Later*, 9 DEPAUL BUS. & COM. L.J. 169, 183 (2011) (referring to “the apparently never ending stream of cases litigating the sufficiency of the debtor’s name on a financing statement”); Linda J. Rusch, *The Article 9 Filing System: Why a Race-Recording Model Is Unworkable*, 79 MINN. L. REV. 565, 570 (1995) (referring to the Article 9 filing system as “an already failing system”); *Coca-Cola Bottling Plants, Inc. v. Tabenken (In re Brawn)*, No. 69-238-ND, 1970 WL 12591, at *575 (Bankr. D. Me. Jan. 22, 1970) (“It is most improbable that [Article 9’s] sponsors anticipated the extent to which secured credit under the . . . Code would be jeopardized by the errors and omissions of secured parties in satisfying the simple requirements of a sufficient financing statement.”).

3. Kris Fredrickson, *Amending UCC Article 9 to Fix the Name-Error Problem*, 40 U.C.C. L.J. 43, 44 (2007) (“Despite a major overhaul of the law in 1998, the Article 9 filing system is still failing.”); Louis F. Del Duca, *An Updated Summary of the 2010 Amendments to Article 9 of the Uniform Commercial Code*, 45 U.C.C. L.J. 1, 1 (stating

The filing system's purpose is to facilitate secured lending.⁴ Generally speaking, the trillions of dollars in secured loans outstanding are entitled to priority in the order of their filing.⁵ That is, a debtor's prior secured loans must be paid or provided for in full before later secured lenders, buyers, or unsecured creditors are entitled to anything from the collateral.⁶ Those parties need to know their priorities.

The filing system's function is to communicate the existence of prior security interests in property to the later buyers of, and lenders against, that property.⁷ To accomplish that function, each secured lender must file a financing statement that includes the debtor's correct name.⁸ Lenders who fail to file, or who file and state the debtor's name incorrectly, do not get the priority for which they bargained.⁹

The filing system operator indexes the filed financing statements by debtor name (the UCC index).¹⁰ Before transacting, prospective buyers and lenders search the UCC index to find financing statements filed against their prospective sellers or borrowers.¹¹ The UCC filing system is "name-based" in that the filing system operator matches search requests to financing statements solely by the debtor's name.¹² Searchers who find their seller's or borrower's name on the list

that states threatening nonuniform amendments regarding debtors' names forced the UCC's sponsoring organizations to consider the 2010 amendments); Carla L. Reyes, *Creating Cryptolaw for the Uniform Commercial Code*, 78 WASH. & LEE L. REV. 1521, 1532 (2021) ("The Article 9 Filing System is a Notice System that Fails to Actually Give Notice.").

4. *UCC Filings*, NAT'L ASS'N SECRETARIES OF STATE, <https://www.nass.org/business-services/ucc-filings> [<https://perma.cc/S4K2-ZGYA>] ("Uniform Commercial Code (UCC) filings allow creditors to notify other creditors about a debtor's assets used as collateral for a secured transaction.").

5. Fredrickson, *supra* note 3, at 44.

6. LYNN M. LOPUCKI ET AL., *SECURED TRANSACTIONS: A SYSTEMS APPROACH* xxxiv (10th ed. 2024).

7. *Id.* ("A filing system is a means for communicating the existence of a lien from the holder to a person who is considering becoming a creditor of or buyer from the same debtor.").

8. U.C.C. § 9-502(a) (AM. L. INST. & UNIF. L. COMM'N 2022).

9. U.C.C. § 9-322(a)(1) (AM. L. INST. & UNIF. L. COMM'N 2022) ("Conflicting perfected security interests . . . rank according to priority in time of filing or perfection.").

10. *Id.* § 9-519(c) ("[T]he filing office shall . . . index an initial financing statement according to the name of the debtor.").

11. LOPUCKI ET AL., *supra* note 6, at 292.

12. *Id.* at 294.

of matches can download the financing statements and discover the prior lenders.¹³

The UCC filing system has not only failed to achieve the desired communication but has also provided the legal basis for deprioritizing millions of secured loans over several decades. The seemingly simple task of discovering a debtor's correct name and typing it correctly in the correct box on a financing statement is more difficult than it may at first appear, and the 2010 UCC amendments made it more difficult.

This Article reports an empirical study of events that recently rendered over 230,000 Florida UCC filings against registered entities—32% of filings against registered entities in Florida—ineffective.¹⁴ Registered entities are corporations, limited liability companies (LLCs), limited partnerships, and other entities created by registration with the state.¹⁵

This is the first formal study of UCC filing error rates. Filing system expert Carl Ernst conducted an informal study in which he found that 50% of the California, Florida, and Vermont filings he studied were not “exact character-by-character match[es]” with the registered organization's name.¹⁶ Additionally, 25% of the filings he studied would have been ineffective under International Association of Commercial Administrators (IACA) search logic.¹⁷ Because Ernst did not formally report his study, it is not possible to know what filings he included in the numerators or denominators of his percentages, how he matched filings, or how he resolved other issues.¹⁸

Florida privatized its UCC filing system in 2001.¹⁹ The contractor, API Imaging, uses a standard search logic to match

13. *Id.* at 292.

14. See *infra* Part III.

15. U.C.C. § 9-102(a)(71).

16. Kenneth C. Kettering, *Standard Search Logic Under Article 9 and the Florida Debacle*, 66 U. MIA. L. REV. 907, 914–15 (2012).

17. *The UCC Filing Flash*, Issue 06-6 (Dec. 2006) (on file with author) (noting if the office is deemed to provide the IACA-promulgated form of “standard search logic,” approximately 25% of these financing statements will not be saved from being seriously misleading under Rev. U.C.C. § 9-506(c)). I thank Kenneth Kettering for furnishing me with a copy of that issue. It is otherwise unavailable.

18. Ernst's report was less than one page in length and addressed filings against individuals and registered organizations.

19. *UCC News*, FLA. SECURED TRANSACTIONS REGISTRY, <https://www.floridaucc.com/uccweb/news.aspx> [<https://perma.cc/KH96-5YSG>] (“The Florida Department of State privatized the process of filing and maintaining the Florida Secured Transaction Registry, effective Oct. 1, 2001.”).

search requests to financing statements.²⁰ The contractor's public, online system, the Florida Secured Transaction Registry (Registry), reports search hits by showing a page of the alphabetical UCC index that contains twenty index entries.²¹ The hits begin at the top of that page and continue on subsequent pages if necessary.²² After the hits, non-hits resume on the same page.²³ Neither the beginning nor the end of the hits is marked, although anyone familiar with the search logic could easily identify them. To make matters worse, the Registry refers to the entire index as "search results."²⁴

The Registry's poor presentation confused courts and legal scholars. They repeatedly missed the fact that the Registry was applying a search logic and reporting hits. Courts and scholars assumed the Registry was doing neither and debated whether the "search results" were the first page displayed, the entire index, or some reasonable number of pages. That misunderstanding ultimately led to Florida's filing system disaster.

Professor Kenneth Kettering shared the misunderstanding. In a 2012 article published in the *University of Miami Law Review*, Kettering argued that Florida had no search logic so any error in a name, however minor, would render Florida financing statements ineffective.²⁵ Professors Steven L. Harris and Charles W. Mooney, Jr.—then the leading secured transactions scholars—agreed.²⁶ In *1944 Beach Boulevard, LLC v. Live Oak Banking*²⁷ (*1944 Beach Boulevard*), the Florida Supreme Court relied on Kettering's article to arrive at his misunderstanding.²⁸ The court ruled that because Florida does

20. *UCC Information*, FLA. DEPT OF STATE: DIV. OF CORPS., <https://dos.fl.gov/sunbiz/other-services/ucc-information/> [<https://perma.cc/VX98-FP2E>].

21. *UCC News*, *supra* note 19.

22. *Id.*

23. *Id.*

24. *Id.*

25. Kettering, *supra* note 16, at 918 ("Courts will in time, no doubt, realize that under post-1998 Article 9, a filing in the Florida central filing office, as in any other filing office that lacks a 'standard search logic,' must set forth the debtor's true name exactly, with no deviation whatever, in order to be effective.").

26. *See, e.g.*, STEVEN L. HARRIS & CHARLES W. MOONEY, JR., *TEACHER'S MANUAL FOR SECURITY INTERESTS IN PERSONAL PROPERTY: CASES, PROBLEMS AND MATERIALS* 51 (6th ed. 2016) (opining that the Registry's search system should not be considered a standard search logic because the system does not yield hits).

27. 346 So. 3d 587 (Fla. 2022).

28. *Id.* at 592 ("We agree with Professor Kettering that a 'search procedure that returns as hits, for any search string, all financing statements in the filing office's

not report “a finite list of hits,” Florida’s filing system has no search logic.²⁹ Because it has no search logic, Florida is a “zero-tolerance” jurisdiction.³⁰ Any error in a name on a financing statement—“no matter how minor”—renders the financing statement ineffective.³¹ That presumably includes errors in spelling, punctuation, spacing, and abbreviation.

A subcommittee of the Business Law Section of the Florida Bar began meeting in June 2023 to address the *1944 Beach Boulevard* problem.³² The subcommittee will make recommendations to the state. As of this writing, the subcommittee has drawn no conclusions.

This Article proposes two temporary solutions that could be implemented in as little as one week. In both, the contractor, with the Florida Secretary of State’s approval, would label and highlight the hits that already appear on the Registry.³³ The search process would otherwise remain the same. Under a literal reading of *1944 Beach Boulevard*, either solution might be sufficient to render the invalidated financing statements effective.

This Article proposes, as the permanent solution, that all states adopt point-and-click filing systems for filings against registered organizations. Point-and-click does not require filers or searchers to enter debtor names.³⁴ Instead, filers and searchers navigate to the registered organization’s entity record on the Secretary of State’s website.³⁵ Filings are made, stored, and searched in that record.³⁶ A point-and-click filing

database cannot rationally be treated as a ‘standard search logic.’”); HARRIS & MOONEY, *supra* note 26.

29. *1944 Beach Boulevard*, 346 So. 3d at 592.

30. *Id.* at 593.

31. *Id.*

32. *Florida Bar Annual Convention 2023*, FLA. BUS. L. SECTION, <https://flabizlaw.org/calendar/#!event/2023/6/21/florida-bar-annual-convention-2023> [<https://perma.cc/K9CF-ZGB8>].

33. The contractor’s contract with the state requires state approval of “changes . . . to the Florida Secured Transaction Registry system.” Contract Between State of Florida, Department of State and Image API, LLC, at 51 (on file with the author) [hereinafter Florida-API Contract] (obtained through a public records request to the State of Florida); Email from Off. of the Gen. Couns., Pub. Recs., Fla. Dep’t of State, to Kevin A. Kapral (July 14, 2023, 12:36 PM) (on file with author).

34. Lynn M. LoPucki, *The Spearheading Tool Filing System Disaster*, 681 OHIO ST. L.J. 281, 286 (2007).

35. *Id.* at 301.

36. *Id.*

system for security interests against registered entities is already operating successfully in the United Kingdom.³⁷

This Article employs a systems approach—systems analysis—to the UCC filing system.³⁸ The systems approach treats law as a third-level tool for the repair of malfunctioning law-related systems.³⁹ The first level is to fix the law-related system physically.⁴⁰ Labeling the hits where they appear on the Registry is one example. Adopting a point-and-click system is another. The second level is to rely on social norms.⁴¹ Because law is expensive, slow, and relatively ineffective, law is used only when solutions at the first two levels are unavailable.⁴²

The systems approach directs the legal reformer to focus on understanding the system in which the reformer proposes to intervene. To achieve that focus, I conducted an empirical study comparing registered organizations' names on randomly selected financing statements to those organizations' names on their organic records on file with the Secretary of State. I found that the names on about 32% of the financing statements filed against registered entities in the Florida system do not satisfy *1944 Beach Boulevard's* zero-tolerance test, rendering those financing statements ineffective.

Section I.A of this Article explains the purpose and function of the UCC filing system in more detail. Section I.B describes Florida's UCC filing system and its unique method for displaying search results. Part II describes the misunderstanding that led to *1944 Beach Boulevard*, the Supreme Court of Florida's reasoning, my analysis of the decision, and the temporary solutions I propose. Part III describes the empirical methods I used, and Part IV presents my empirical findings. Part V explains the permanent, point-and-click solution I propose. This Article concludes that point-and-click would eliminate name errors, name amendments, and

37. *Companies House*, GOV.UK, <https://www.gov.uk/government/organisations/companies-house> [<https://perma.cc/27NU-G3T>]. Not all companies have security interests—referred to as “charges”—against their assets. Admiral Limited is an example of one that does. See, e.g., *Admiral Group PLC*, GOV.UK, <https://find-and-update.company-information.service.gov.uk/company/03849958/charges> [<https://perma.cc/U5W2-YES7>]. Click on “charges” to see a list of the filings against Admiral Limited.

38. See Lynn M. LoPucki, *The Systems Approach to Law*, 82 CORNELL L. REV. 479, 485–87 (1997) (describing the approach).

39. *Id.* at 488–89 (describing the levels).

40. *Id.* at 489–90.

41. *Id.*

42. *Id.* at 491 (“Law’s domain is only what is left over.”).

name monitoring; simplify filing and searching; and reduce wrong-debtor and wrong-state filings.

I. FILING SYSTEM PURPOSE AND FUNCTION

The UCC filing system's purpose is to communicate the possible existence of a security interest in a debtor's personal property to later lenders or takers of interests in that property.⁴³ Personal property is all property other than real property.⁴⁴ For businesses it includes equipment, inventory, accounts receivable, intellectual property, bank accounts, stocks, bonds, fixtures, and many more categories.⁴⁵ The UCC filing system is part of a larger system in which lenders and buyers of both real and personal property investigate the title to that property before buying or taking it as collateral.⁴⁶ That larger system includes the real estate recording systems; certificate of title systems for automobiles, boats, and mobile homes; specialized intellectual property filing systems; tax lien filing systems; judgment lien filing systems; and others.⁴⁷ The UCC filing system performs essentially the same functions with respect to personal property that the real property recording system performs with respect to real property.

A. *The UCC Filing System*

UCC Article 9 (Article 9) provides for the existence of a UCC filing system in each state.⁴⁸ By filing a financing statement with the filing officer, the holder of a security interest (a "secured party") in most kinds of personal property can "perfect" that interest.⁴⁹ Perfection gives the secured party's

43. LOPUCKI ET AL., *supra* note 6, at 279 ("A filing system is a means for communicating the existence of a lien from the holder to a person who is considering becoming a creditor or buyer of the same debtor.").

44. *See, e.g., In re Est. of Hunt*, 597 S.W.3d 912, 917 (Tex. App. 2020) ("Personal property' has a well-established technical legal meaning. It encompasses everything other than real property.").

45. *Id.*

46. LOPUCKI ET AL., *supra* note 6, at 338.

47. *See id.* at 281–82 (describing the multiplicity of filing systems).

48. U.C.C. § 9-501(a) (AM. L. INST. & UNIF. L. COMM'N 2022).

49. U.C.C. § 9-308(a) (AM. L. INST. & UNIF. L. COMM'N 2003) (stating the requirements for perfection); U.C.C. § 9-310(a) (AM. L. INST. & UNIF. L. COMM'N 2022) (stating the filing requirement for perfection).

interest priority over the interests of later filers or buyers.⁵⁰ Secured parties file financing statements to obtain this priority.

Before relying on the debtor's ownership of personal property, sophisticated parties search the Article 9 filing system for previously filed financing statements.⁵¹ In their dealings with the debtor, sophisticated parties take the existence of prior filings into account and sometimes contact the prior filers for additional information.⁵²

In most states, the Article 9 filing system contains millions of financing statements. For example, the Registry contains approximately 6.5 million.⁵³ To find those filed against a particular debtor, the searcher makes a search request to the UCC filing office.⁵⁴ The searcher may make the request by entering the debtor's name on the filing office's website,⁵⁵ filing a search request with the filing office,⁵⁶ or otherwise communicating the debtor's name to the filing officer.⁵⁷ The filing office's software compares the name searched to the names on financing statements and returns a list of matches ("hits").⁵⁸ The searcher then conducts further investigation as it deems appropriate.

A registered organization is "organized solely under the law of a single State or the United States by the filing of a public organic record with, the issuance of a public organic record by,

50. U.C.C. § 9-322(a) (AM. L. INST. & UNIF. L. COMM'N 2022) (granting priority over competing security interests); *id.* § 9-315(a)(1) (providing that security interests continue in collateral notwithstanding sale).

51. Michael A. Stover, *Understanding Article 9 of the UCC – Security Interests*, WRIGHT, CONSTABLE & SKEEN (Nov. 1, 2022), <https://www.wcslaw.com/accolades/understanding-article-nine-of-the-ucc-security-interests/> [<https://perma.cc/BGF4-K7JZ>].

52. *See, e.g., In re Grabowski*, 277 B.R. 388, 391 (Bankr. S.D. Ill. 2002) ("A financing statement need not specify the property encumbered by a secured party's lien, but need merely notify subsequent creditors that a lien may exist and that further inquiry is necessary 'to disclose the complete state of affairs.'").

53. *See, e.g., UCC Secured Transactions Download*, FLA. SECURED TRANSACTION REGISTRY, <https://www.floridaucc.com/uccweb/downloads.aspx> [<https://perma.cc/ECJ8-992A>].

54. *See e.g., Welcome to the Florida Secured Transaction Registry*, FLA. SECURED TRANSACTION REGISTRY, <https://www.floridaucc.com/uccweb/> [<https://perma.cc/H3LR-3HKQ>].

55. *UCC Search*, FLA. SECURED TRANSACTION REGISTRY, <https://www.floridaucc.com/uccweb/search.aspx> [<https://perma.cc/HY8F-WFFP>] (offering search options).

56. *UCC Forms*, TEX. SEC'Y OF STATE, <https://www.sos.state.tx.us/ucc/uccforms.shtml> [<https://perma.cc/384T-H96G>].

57. U.C.C. § 9-523(c) (AM. L. INST. & UNIF. L. COMM'N 2022) (requiring the filing office to communicate information "to any person who requests it").

58. *See, e.g., UCC Search*, *supra* note 55.

or the enactment of legislation by the State or the United States.”⁵⁹ Registered organizations include corporations, LLCs, limited partnerships, and a few other types of organizations.⁶⁰ The “public organic record” is the state’s copy of the document filed to organize—meaning create—the entity.⁶¹ Typically, the record is a certificate of incorporation, articles of incorporation, or articles of organization, and any amendments to those documents, restatements of those documents, or state-issued certificates that create registered organizations or amend the organization’s public organic records.⁶² Because each of those documents contains the authoritative name of the registered organization, both filers and searchers theoretically can discover the correct name of the organization from the public organic records at any given time.⁶³

The system applies the state’s “search logic” to match the names on search requests to the names on financing statements.⁶⁴ The search logic’s function is to treat some minor errors as insignificant and ignore them in determining matches.⁶⁵ They include differences in capitalization, spacing, punctuation, and ending “noise words” such as “corporation,” “corp.,” “incorporated,” “inc.,” “limited liability company,” or “LLC.”⁶⁶ The system returns a match even though the filed and searched names are different in those respects.

UCC § 9-506(c) provides that:

If a search of the records of the filing office under the debtor’s correct name, using the filing office’s standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-

59. U.C.C. § 9-102(a)(71).

60. *Id.* § 9-102 cmt. 11.

61. *Id.* § 9-102(a)(68).

62. *Id.*

63. U.C.C. § 9-503 cmt. 2.a (AM. L. INST. & UNIF. L. COMM’N 2010) (“As a general matter, if the debtor is a ‘registered organization’ . . . then the debtor’s name is the name shown on ‘the public organic record’ of the debtors ‘jurisdiction of organization.’”).

64. Paul Hodnefield, *UCC Financing Statement Debtor Name Fundamentals*, ABA (Jan. 4, 2023), https://www.americanbar.org/groups/business_law/resources/business-law-today/2023-january/ucc-financing-statement-debtor-name-fundamentals/ [<https://perma.cc/M4DN-ZPW7>].

65. *Id.*

66. MODEL ADMIN. RULES: U.C.C., ART. 9 § 503.4 (INT’L ASS’N OF CORP. ADM’RS 2010).

503(a), the name provided does not make the financing statement seriously misleading.⁶⁷

Thus, if a financing statement states the debtor's name incorrectly, but a search in the debtor's correct name would return the financing statement, the financing statement is effective. The reasoning is that if the searcher had conducted a search under the debtor's correct name, the search results would have included the financing statement. The searcher should have been aware of it; and so, the searcher is deemed to be aware of it. Whether the searcher actually searched is considered irrelevant.

UCC § 9-506(c) provides that the search contemplated is “using the filing office’s standard search logic, if any.”⁶⁸ “Search logic” is a term borrowed from computer science. It is “the means of specifying the combination of terms which must be matched for successful retrieval.”⁶⁹ Boolean search logic is an example.⁷⁰

IACA is “a professional association for government administrators of business organization and secured transaction record systems at the state, provincial, territorial, and national level.”⁷¹ IACA publishes Model Administrative Rules that “set the framework for [UCC] standard search logic.”⁷² The Model Rules provide a specific set of search logic rules that IACA calls “standard search logic.”⁷³ A state has a standard search logic if it has rules—whether or not IACA’s—that determine its search results.

67. U.C.C. § 9-506(c) (AM. L. INST. & UNIF L. COMM’N 2022).

68. *Id.*

69. Harun Ar Rashid, *Search Logic, Types of Search Logic*, LIB. & INFO. MGMT. ACAD. BLOG (Mar. 16, 2020), <https://limbd.org/search-logic-types-of-search-logic/> [<https://perma.cc/M79N-MPR>].

70. Suzanne Bartel, *Using Boolean Operators in Academic Searches*, A LEARNING JOURNEY (Feb. 8, 2015), <https://suzannebartel.wordpress.com/2015/02/08/using-boolean-operators-in-academic-searches/> [<https://perma.cc/Z5UM-WH65>] (referring to “Boolean search logic”).

71. *About Us*, IACA, <https://www.iaca.org/about-iaca/> [<https://perma.cc/C49H-FSAU>].

72. *What are “Standard Search Logic” and the Model Administrative Rules?*, FIRST CORP. SOLS., <https://ficoso.com/ucc/what-are-standard-search-logic-and-the-model-administrative-rules/> [<https://perma.cc/UBU2-F9ZZ>].

73. MODEL ADMIN. RULES: U.C.C., ART. 9 § 503.1.3 (INT’L ASS’N OF CORP. ADM’RS 2018) (defining the IACA’s standard search logic).

B. Florida's UCC Filing System

Florida adopted the filing system provisions of Article 9, excluding UCC § 9-523(c).⁷⁴ That section requires filing offices to conduct searches.⁷⁵ Instead, the Registry allows the public to conduct free searches on either of two lists—the “actual debtor name list” or the “compact debtor name list.”⁷⁶

The actual debtor name list is simply an alphabetical list of debtor's names. “Actual name is used to group entries in the same manner as the telephone directory. . . . To access the alphabetic name listing using actual name, the name must be keyed with exact spelling of the debtor name as entered on the original UCC1 filing.”⁷⁷

The actual debtor name list is of limited use to searchers because, in such a long list, seemingly trivial errors—such as punctuation or spacing—can throw an otherwise identical name pages away in either direction.

The compact debtor name list is a list of the debtors' names after application of the Registry's standard search logic.⁷⁸ Although the Florida Supreme Court held in *1944 Beach Boulevard* that the Registry does not have a standard search logic,⁷⁹ it does. The Registry refers to it as “search logic” and it functions almost identically to IACA's standard search logic.⁸⁰ The Registry “removes” punctuation, spacing, and the words “an,” “and,” “of,” and “the”; IACA “disregards” punctuation, spacing, and those same words.⁸¹ IACA search logic directs the state to make a list of “words and abbreviations at the end of an organization name that indicate the existence or nature of the

74. Compare U.C.C. §§ 9-501–26 (AM. L. INST. & UNIF. L. COMM'N 2022), with FLA. STAT. §§ 679.5011–26 (2023). Because Florida privatized the Registry, it did not adopt UCC § 9-527, which requires the Secretary of State to report to the legislature annually.

75. U.C.C. § 9-523(c) (AM. L. INST. & UNIF. L. COMM'N 2022).

76. *UCC Search*, *supra* note 55.

77. *Id.*

78. *Id.* (showing that the name list search program will compact the name entered according to the rules stated above).

79. *1944 Beach Boulevard, LLC v. Live Oak Banking*, 346 So. 3d 587, 593 (Fla. 2022) (“[W]e hold that the Florida Secured Transaction Registry's failure to employ a ‘standard search logic’ precludes the safe harbor from applying . . .”).

80. *UCC Search*, *supra* note 55 (“Click here to see the details of the search logic used on this website.”).

81. FLA. DEPT' OF STATE, UCC DEBTOR NAME COMPACTION AND SEARCH RULES 1–2, https://www.floridaucc.com/uccweb/forms/UCC_Debtor_Name_Compaction_and_Search_Rules.pdf [https://perma.cc/34G9-FQUP] [hereinafter FLORIDA NAME COMPACTION RULES].

organization.”⁸² IACA refers to them as “ending noise words” and its search logic “disregards” them.⁸³ Florida keeps a list of abbreviations of “noise words,” converts the abbreviations to the words spelled out, and then “removes” the words as spelled out.⁸⁴ “Removing” the punctuation, spacing, and words produces the same search results as “disregarding” them.⁸⁵

The Registry refers to its application of search logic as “compaction” of debtor names.⁸⁶ It provides two examples of corporate name compaction. The first is that “THE D-B X-RAY COMPANY is compacted to DBXRAY.”⁸⁷ The second is that:

His And Her Information
 His & Her Information
 His&Her Information
 His/Her Information
 His & Her Information Inc.
 His & Her Information Incorporated
 His & Her Information Co.
 His & Her Information Company
 His & Her Information Limited

would all be read as HISHERINFORMATION.⁸⁸

Thus, a compacted name search in Florida, like an IACA standard search logic search, may retrieve financing statements filed against several variations of a name. All are “hits.” It follows that the Registry’s search by compacted name is the search contemplated by the safe harbor provision of UCC § 9-506(c). It uses “the filing office’s standard search logic” while the actual debtor-name search does not.

Florida has not adopted its search logic by regulation. That is irrelevant, first, because its adoption is implicit in UCC § 9-506(c) and, second, because adoption is unnecessary. That is, under UCC § 9-506(c), a financing statement is effective if a

82. MODEL ADMIN. RULES: U.C.C., ART. 9 § 503.1.3(c) (INT’L ASS’N OF CORP. ADM’RS 2018).

83. *Id.* (“The following words and abbreviations at the end of an organization name that indicate the existence or nature of the organization are ‘disregarded’ to the extent practicable as determined by the filing office’s programming of its UCC information management system: [Insert the filing office’s own ‘Ending Noise Words’ list here.]” (emphasis in original)).

84. In Florida, the words “CO,” “CORP,” “INC,” “and “LTD” are changed to “COMPANY,” “CORPORATION,” “INCORPORATED,” and “LIMITED” respectively.

85. FLORIDA NAME COMPACTION RULES, *supra* note 81, at 1–2.

86. *Id.*

87. *Id.* at 2.

88. *UCC Search*, *supra* note 55.

search in the correct name discloses it, regardless of whether that search was processed in accord with the applicable rules and regulations.⁸⁹ The computer code, not the administrative code, governs. As part of the empirical study reported in Section IV.B, I determined that Florida's computer code operates in accord with the Registry's announced search logic in nearly all respects.

Florida displays its search results in a manner different from that contemplated by IACA. Instead of reporting only the hits, Florida reports the hits in the context of the entire index. That is, the hits—if any—begin at the top of the first-displayed search results page, followed by the non-hits in alphabetical order by compacted debtor names, beginning with the first name after the hits.

Figure 1 shows this method of display as of the time of my study. Regardless of the number of hits, twenty entries appear on each page. Figure 1 is the second page of compact search results for a search of "Clearwater Towing Service." The first page of results listed nineteen filings against "Clearwater Towing Service, Inc." and one filing against that same name but without a period after "Inc." They were all hits because the search logic ignored "Inc" and the periods. The first fifteen entries on Figure 1 are also hits for the same reason. The sixteenth, "Clearwater Town Center LLC," and the subsequent entries are obviously not hits.

89. *See, e.g.*, *Receivables Purchasing Co. v. R & R Directional Drilling, LLC*, 588 S.E.2d 831, 833 (Ga. Ct. App. 2003) (refusing to consider case law and instead holding the financing statement ineffective because a search in the correct name "did not reveal the financing statement").

Figure 1. The Search Results Page

Search Results

Today's Date: 07/20/2023
 UCC Filings Completed Through: 07/18/2023

Result for Filed Compact Debtor Name List Search on Clearwater Towing Service
 Use the Previous and Next buttons to display additional search results

<<PREVIOUS
NEXT>>

Name	UCC Number	Address	City	State	Zip Code	Status
CLEARWATER TOWING SERVICE, INC.	202107166771	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	202108324089	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	202108304507	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	202108396118	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	20210892961X	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	202109005589	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	202202802353	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	202202985865	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	202202981398	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	202203051092	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	202203246312	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	202203402022	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	202203741595	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	202203895762	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWING SERVICE, INC.	202300236573	1955 CARROLL STREET	CLEARWATER	FL	33765	FILED
CLEARWATER TOWN CENTER LLC	202005223105	214 COE ROAD	BELLEAIR	FL	33756	FILED
CLEARWATER VOLUNTEERS OF AMERICA ELDERLY HOUSING, INC.	201003773271	1201 HAYS STREET	TALLAHASSEE	FL	32301-2525	FILED
CLEARWATER WINE COMPANY LLC	202001981455	482 POINSETTIA AVE.	CLEARWATER BEACH	FL	33767	FILED
CLEARWATER YACHT CLUB, INC.	202202349101	830 BAYWAY BOULEVARD	CLEARWATER	FL	33767	FILED
CLEAR WAVE POOL SERVICES	202108726475	4650 SW 12TH CT	DEERFIELD BCH	FL	33442	FILED

The search results are alphabetized by compacted name, but the actual names are displayed. For that reason, the hits do not appear to be in alphabetical order. The “Incs” in Figure 1 that are not followed by periods are scattered among the hits.

I chose “Clearwater Towing Service” as the search to illustrate the possibility that hits would extend beyond the first page of results. That is, however, rare. In the empirical study, I found that of fifty-one searches in names not exactly matching a name on the entity index, none produced more than six hits. Thus, for nearly all searches, the hits will appear in the first few lines at the top of the first page of results displayed.

Inexplicably, that first page of search results contains no text stating or markings showing which index entries are hits. But the end of the hits is usually obvious, and when it is not, the searcher can figure it out by reasoning from the Registry’s announced search logic.

C. *The 1944 Beach Boulevard Misunderstanding*

Although Florida’s system applies search logic to identify a finite number of hits and reports them together at the top of the search results, the system fails to identify them expressly as hits or separate them from the non-hits that appear both above and below them. It could easily have done so by presenting the hits in a different color or adding markers at the top and bottom of the hits.

That design flaw was compounded by the system operator’s failure to explain how the system operated. Before *1944 Beach Boulevard*, other courts and commentators sought to determine how the Florida system operated. They obtained their understandings from the Registry website and sometimes quoted the website.⁹⁰ But none recognized that the compacted name search applied a search logic and that the hits identified by it were presented at the top of the first page of results and continued for as many pages as necessary.

To illustrate the depth of the misunderstanding, the bankruptcy court in *NRP Lease Holdings* said:

As a starting point, it is important to explain how the online database in the Registry works. When a debtor’s name is entered into the search engine, an

90. See, e.g., *In re John’s Bean Farm of Homestead, Inc.*, 378 B.R. 385, 394 (Bankr. S.D. Fla. 2007) (quoting the “Florida Secured Transaction Registry, UCC Frequently Asked Questions”); *In re Summit Staffing Polk Cnty., Inc.*, 305 B.R. 347, 353–54 (Bankr. M.D. Fla. 2003) (quoting from the search results page).

alphabetical list with twenty names is displayed. If the debtor's actual name is found, it will appear at the top of the list. If the search does not produce the debtor's name, the nearest match is at the top of the alphabetical list.⁹¹

The court is describing an actual name search, not a compacted name search. In a compacted name search, the list is not alphabetical in the ordinary sense of the word.⁹² The list shows actual names in alphabetical order by their compacted equivalents. Thus, in a compacted name search, the names shown will not appear in precise alphabetical order. If the debtor's actual name is returned from a compacted search, it will not necessarily "appear at the top of the list." All names that compact to the same letters as the debtor's actual name are equal and might appear in any order.

In an obscurely worded paragraph, the Registry's website states:

The name list search program will compact the name entered according to the rules stated above. The program will then provide a list of names (with additional information) beginning with the name whose compact key is equal to or greater than the compacted version of the search name entered. A list of names (currently 20) is displayed for the user to select to see the detail record.⁹³

The second sentence is the closest the website comes to explaining that the system presents the hits at the top of the first page of search results. The "compact key" is the database field where the compacted debtor name is stored. The compact key is "equal to" the compacted search name entered when those names match—a hit. If hits exist, the search results will list them, beginning at the top of the first page of search results. If no hits exist, the search results will begin with the name "whose compact key is greater than the compacted version of the search name entered," meaning that when the compacted

91. Order Denying Plaintiff's Motion for Summary Judgment and Granting Defendant's Cross-Motion for Summary Judgment, Doc. 17, *In re* NRP Lease Holdings, LLC, No. 20-ap-00071 (Bankr. M.D. Fla. 2020) [hereinafter NRP Lease Holdings Order].

92. *See, e.g., UCC Search, supra* note 55 ("Names stored by the compact name are displayed so that all variations of [compact] names that are alike are grouped together The entries on the name list screen for actual and compact names will look identical, they may just be in a different order.")

93. NRP Lease Holdings Order, *supra* note 91, at 9.

names are alphabetized, the compact key comes after the compacted search name entered. The evidence for this interpretation of the admittedly obscure passage is that the website observably operated in this manner at the time of my study.

The Registry's explanation of its operation is riddled with errors and contradictions. For example, in the FAQs, item 9 tells searchers to “[c]hoose one item in the ‘Select Search Type’ box, enter the appropriate data in the ‘Name/Document Number’ box, and click on ‘Search.’ The exact name or number, or the nearest alphabetic or numeric, will be displayed.”⁹⁴ In other locations, the Registry uses the word “closest” instead of “nearest.”⁹⁵

In fact, no “nearest” or “closest” alphabetic exists. What exists is a *prior* nearest or closest—the name immediately before the subject name—and a *subsequent* nearest or closest—the name immediately after the subject name. Regardless of how one measures nearest or closest, the nearest or closest can appear on the first page of search results only if it is a *subsequent* nearest or closest. If it is a *prior* nearest or closest, it will appear at the bottom of the page prior to the first page of search results.

The courts similarly confuse the *subsequent* nearest or closest names with the nearest or closest names. For example, the Eleventh Circuit said in *In re NRP Lease Holdings* that “the Registry’s search logic takes a user to the point in the alphabetical list of all debtor names contained in the Registry that most closely matches the name input for the search. The search generates a page listing the twenty closest matches to the name in alphabetical order.”⁹⁶ In fact, the page lists the exact compact name matches followed by the *subsequent* closest misses; *prior* closest misses appear on previous pages. One effect of these inaccuracies is to obscure the system’s actual operation.

94. *UCC Frequently Asked Questions*, FLA. SECURED TRANSACTION REGISTRY, <https://www.floridaucc.com/uccweb/faq.aspx#search> [<https://perma.cc/BP7Z-57Z8>].

95. See, e.g., *UCC Search*, *supra* note 55.

96. *1944 Beach Boulevard, LLC v. Live Oak Banking Co.*, 20 F.4th 746, 754 (11th Cir. 2021), *certified question answered and remanded sub nom.* *1944 Beach Boulevard, LLC v. Live Oak Banking*, 346 So. 3d 587 (Fla. 2022).

II. THE FLORIDA FILING SYSTEM DISASTER

A. *The Florida Supreme Court's Decision*

1944 Beach Boulevard, LLC (Beach Boulevard) was a Florida LLC that operated Adventure Landing, a family entertainment center in Jacksonville, Florida.⁹⁷ Beach Boulevard and its affiliates borrowed \$3 million from Live Oak Banking Company (Live Oak) secured by all or substantially all of Beach Boulevard's assets.⁹⁸ The U.S. Small Business Administration (SBA) guaranteed repayment.⁹⁹ On January 5 and January 25, 2016, Live Oak filed financing statements identifying the debtor as "1944 Beach Blvd., LLC," not its correct name "1944 Beach Boulevard, LLC."¹⁰⁰ On December 5, 2019, Beach Boulevard filed a case under chapter 11 of the bankruptcy code in the Middle District of Florida, became a debtor in possession, and, exercising the rights and powers of a trustee,¹⁰¹ filed an adversary proceeding seeking to avoid Live Oak's security interests as unperfected.¹⁰² The bankruptcy court granted summary judgment in favor of Live Oak, and the district court affirmed.¹⁰³

The Eleventh Circuit Court of Appeals certified three questions to the Florida Supreme Court.¹⁰⁴ The Florida Supreme Court did not answer any of them.¹⁰⁵ Instead, it found "dispositive a threshold question that was not expressly addressed or certified by the Eleventh Circuit, namely: 'Is the filing office's use of a 'standard search logic' necessary to trigger the safe harbor protection of [UCC § 9-506(c)]?'"¹⁰⁶

The court reasoned that (1) UCC § 9-506(b) "creates a zero-tolerance rule" and UCC § 9-506(c) "carves out an exception to its zero-tolerance rule—the safe harbor";¹⁰⁷ (2) the safe harbor applied only if "'a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose' the financing statement";¹⁰⁸

97. *1944 Beach Blvd., LLC*, 20 F.4th at 750.

98. *Id.*

99. *Id.*

100. *1944 Beach Boulevard*, 346 So. 3d at 589.

101. *Id.*; 11 U.S.C. § 1107(a).

102. *1944 Beach Boulevard*, 346 So. 3d at 589; 11 U.S.C. § 544(a)(1).

103. *1944 Beach Boulevard*, 346 So. 3d at 589–90.

104. *Id.* at 590.

105. *Id.* at 593.

106. *Id.* at 588.

107. *Id.* at 591.

108. *Id.* at 591–92.

(3) the Florida filing office had no search logic;¹⁰⁹ and (4) the safe harbor could not apply, leaving Florida with the zero-tolerance rule.¹¹⁰ The court concluded that (5) any financing statement that fails to correctly name the debtor as required by UCC § 9-503(1) is ineffective.¹¹¹ Each step in that reasoning is considered separately.

(1) *The zero-tolerance rule.*

UCC § 9-506(b) provides that: “Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) is seriously misleading.”¹¹² UCC § 9-503(a) provides in relevant part that:

A financing statement sufficiently provides the name of the debtor . . . if the debtor is a registered organization . . . only if the financing statement provides the name that is stated to be the registered organization’s name on the public organic record of most recently filed with or issued or enacted by the registered organization’s jurisdiction of organization which purports to state, amend, or restate the registered organization’s name.¹¹³

In essence, UCC § 9-503(a) requires that the name on the financing statement must match the name on the articles of incorporation or organization that are filed with the state.¹¹⁴ UCC § 9-503(a) does not, however, state how closely they must match.

The supreme court’s holding in *1944 Beach Boulevard* makes clear that the letters in the names must match. The court does not specifically address the issues of punctuation, spacing, and capitalization. But the court describes its decision as “interpreting [UCC § 9-506(b)–(c)] as being intolerant of any errors or omissions in naming the debtor—*no matter how minor*—unless and until the Registry implements a ‘standard search logic’ necessary to determine whether the safe harbor applies.”¹¹⁵ Prior authority from other states suggests that, in

109. *Id.* at 593.

110. *Id.*

111. *Id.*

112. U.C.C. § 9-506(b) (AM. L. INST. & UNIF. L. COMM’N 2022).

113. *Id.* § 9-503(a).

114. *See id.* § 9-102(a)(68) (defining “public organic record”).

115. *1944 Beach Boulevard*, 346 So. 3d at 593 (emphasis added).

the absence of applicable search logic, punctuation and spacing must match.¹¹⁶

(2) *The safe harbor.*

The court states that:

The safe harbor exception codified in [UCC § 9-506(c)] provides that a financing statement with errors or omissions in naming the debtor will still be effective to perfect a security interest so long as “a search of the records of the filing office under the debtor’s correct name, using the filing office’s standard search logic, if any, would disclose” the financing statement.¹¹⁷

The court does not elaborate, but it is worth noting that the section is a conditional statement. If the antecedent is not satisfied, the consequence does not follow. The court correctly assumes that the antecedent is not satisfied unless the search uses “the filing office’s standard search logic, if any.”¹¹⁸

(3) *Florida’s lack of search logic.*

Based on the practical construction adopted in “the secured transactions industry,”¹¹⁹ the court defines “standard search logic” to mean “a procedure that ‘identif[ies] the set (which might be empty) of financing statements on file that constitute hits for the search,’ or stated differently, that produces an ‘unambiguous identification of hits.’”¹²⁰ The Florida Registry’s search option was not a “standard search logic” because:

Instead of returning a finite list of hits when a search is conducted, the Registry returns a list of twenty names starting with the name that most closely matches the name entered. That list of names is but a point from which the user can navigate forward and backward through all of the names indexed in the Registry. In other words, “a

116. See *infra* notes 128–35 and accompanying text.

117. *1944 Beach Boulevard*, 346 So. 3d at 591–92.

118. § 9-506(c).

119. *1944 Beach Boulevard*, 346 So. 3d at 593.

120. *Id.* at 592 (alterations in original) (internal citation omitted).

search” of the Registry returns an index of all of the financing statements in the Registry.¹²¹

(4) *The zero-tolerance rule applies.*

The court concludes that “[b]ecause the Registry lacks a ‘standard search logic,’ the search contemplated by [UCC § 9-506(c)] is impossible, which means that filers are left with the zero-tolerance rule of [UCC § 9-506(b)].”¹²²

(5) *Financing statements must correctly name the debtor.*

The court concludes that “any financing statement that fails to correctly name the debtor as required by [UCC § 9-503(a)(1)] is ‘seriously misleading’ and therefore ineffective.”¹²³ The court did not apply that rule to the facts of the case before it, but clearly would have held the financing statements ineffective. The court had already concluded in its statement of facts that “the financing statements . . . *improperly* name[d] the debtor as ‘1944 Beach Blvd., LLC’ instead of ‘1944 Beach Boulevard, LLC.’”¹²⁴ Based on the Florida Supreme Court’s statement of Florida law, the Eleventh Circuit held Live Oaks’ financing statements seriously misleading and therefore ineffective.¹²⁵

B. *The Zero-Tolerance Rule*

A financing statement is effective under *1944 Beach Boulevard* “only if the financing statement provides the name that is stated to be the registered organization’s name on the public organic record.”¹²⁶ Both the Florida Supreme Court and the Eleventh Circuit referred to this as a “zero-tolerance rule,”¹²⁷ suggesting that the name on the public organic record must be reproduced exactly on the financing statement. Neither provided examples.

121. *Id.*

122. *Id.* at 593.

123. *Id.*

124. *Id.* at 589 (first emphasis added).

125. *1944 Beach Boulevard, LLC v. Live Oak Banking Co.*, 50 F.4th 979, 985 (11th Cir. 2022), *certified question answered and remanded sub nom.* *1944 Beach Boulevard, LLC v. Live Oak Banking*, 346 So. 3d 587 (Fla. 2022) (“Because Live Oak’s financing statements are seriously misleading under Florida law, they were not effective to perfect its security interest in all of Beach Boulevard’s assets.”).

126. *1944 Beach Boulevard*, 346 So. 3d at 591.

127. *Id.*; *1944 Beach Boulevard*, 50 F.4th at 983.

In stating its rule, the Florida Supreme Court treated an array of possible interpretations of UCC § 9-503(a)(1) as binary. At one of the array's extremes, one might argue that 1944 Beach Blvd., LLC was the name on the public organic record because "Blvd." is an abbreviation of "Boulevard" making them both the same word. Errors in punctuation and spacing are somewhere in the middle of the array. One might regard Acme, Inc—with a comma—to be the same name as Acme Inc—without a comma—particularly considering that Florida law bars the issuance of a charter for a corporation whose name differs from that of a preexisting corporation only in punctuation.¹²⁸ At the other extreme, changes in capitalization and font could be considered errors "no matter how minor."¹²⁹

UCC §§ 9-503(a)(1) and 9-506 became effective in most states in 2001.¹³⁰ Because several of the adopting states did not yet have applicable search logic, courts faced the issue of whether errors in punctuation and spacing were fatal under UCC § 9-503(a)(1). Most courts held that they were. For example, in *In re C.W. Mining Co.*,¹³¹ the court wrote:

CWM's registered organization name is "C. W. Mining Company," with periods after the letters and spaces between. The financing statements filed by Appellants each provide CWM's organization name as either "CW Mining Company" or "CW Mining Company." [sic] Thus, the financing statements fail to properly list CWM's registered organization name.¹³²

Similarly, in *Host America v. Coastline Finance*,¹³³ the debtor's correct name was K.W.M. Electronics Corporation; the court held a filing against K W M Electronics Corporation ineffective.¹³⁴ Thus it seems likely that Florida's zero-tolerance

128. FLA. STAT. § 607.0401(1)(d) (2023) ("A name that is different from the name of another entity or filing due to any of the following is not considered distinguishable: . . . A punctuation mark or a symbol.").

129. *1944 Beach Boulevard*, 346 So. 3d at 593.

130. *New York Enacts Revisions to the UCC*, CADWALADER, WICKERSHAM & TAFT LLP (Dec. 29, 2014), <https://www.cadwalader.com/resources/clients-friends-memos/new-york-enacts-revisions-to-the-ucc> [<https://perma.cc/2UVT-U3CK>].

131. 488 B.R. 715 (D. Utah 2013).

132. *Id.* at 726.

133. 2006 WL 1579614 (D. Utah May 30, 2006).

134. *Id.* at *4 ("Host America concedes that by failing to indicate the presence of periods, Mr. Sack's financing statement did not comply with the requirements of

test requires that UCC filers reproduce the punctuation and spacing in the debtor's name as shown on the public organic record.

IACA standard search logic provides that “[n]o distinction is made between upper and lower case letters.”¹³⁵ No court has held a financing statement ineffective based on capitalization. Nor am I aware of any state UCC filing system that distinguishes between upper- and lower-case letters.

Both the Registry and Sunbiz, the Florida entity index, allow only uppercase letters in their indexes, making case mismatches between the indexes impossible.¹³⁶ But some filers use upper and lower case on financing statements and public organic records. If the Florida Supreme Court held case mismatches to violate its zero-tolerance rule, another large segment of Florida UCC filings would be ineffective.

Although a debtor might consider the font used on its articles of incorporation or organization to be an essential element of its name, it is impractical for a filing office to distinguish fonts such as Times New Roman or Calibri. I conclude that the zero-tolerance rule applies only to differences in spelling, punctuation, and spacing. I conducted the empirical study based on that assumption.

C. *Evaluation of 1944 Beach Boulevard*

The Florida Supreme Court was correct in concluding that the unambiguous identification of “hits” for a search is an essential filing system function. But the court was wrong to conclude that the failure to unambiguously identify hits meant that the Registry had no standard search logic. Search logic is “[t]he rules that determine what the program will consider a match.”¹³⁷ As explained in Section I.B, the Registry has search

section 70A-9a-503(1) of the Utah Code.”). In *Receivables Purchasing Co. v. R & R Directional Drilling, LLC*, the court held the financing statement ineffective because it identified the debtor as “*Net work Solutions, Inc.*” instead of the correct name “*Network Solutions, Inc.*” 588 S.E.2d 831, 832 (Ga. Ct. App. 2003) (emphasis in original).

135. MODEL ADMIN. RULES: U.C.C., ART. 9 § 503.2 (INT’L ASS’N OF CORP. ADM’RS 2018).

136. FLORIDA NAME COMPACTION RULES, *supra* note 81, at 1 (“No lower case data is allowed.”).

137. LOPUCKI ET AL., *supra* note 6, at 293–94; Patrick J. Burton, Note, *Florida’s UCC Filing System: How a Design Overhaul Could Lead to More Certainty in Filing and Searching for Financing Statements*, 17 BARRY L. REV. 311, 318 (2012) (“When the UCC refers to search logic, it is referring to the set of instructions the state’s

logic rules, applies them in every compact name search, and refers to them as “search logic” on the Registry’s website.¹³⁸ Search logic identifies hits, and the search system displays those hits. That does not mean, however, that a system that determines hits but does a poor job of displaying the hits has no search logic. By referring to the Registry’s failure to clearly identify which entries were matches as an absence of search logic, the court nullified the legislature’s adoption of UCC § 9-506(c):

We hold that section [9-506(c)] provides one way and one way only to search the filing office’s records for purposes of determining whether the safe harbor applies to a financing statement that incorrectly names a debtor—i.e., “using the filing office’s standard search logic, if any.” Because the Registry lacks a “standard search logic,” the search contemplated by section [9-506(c)] is impossible¹³⁹

The court’s nullification of UCC § 9-506(c) prevented the court from reaching what should have been the determinative issue: whether a search in the Florida system under Beach Boulevard’s correct name disclosed Live Oak’s filing.

The answer was that it did not. Florida’s standard search logic did not treat the abbreviation “Blvd.” as equivalent to “Boulevard.”¹⁴⁰ As a result, Live Oak’s financing statements did not appear on the first page of search results.¹⁴¹ The result would have been the same if Florida had adopted IACA search logic. Under Florida’s and IACA’s search logic, the abbreviation of words other than ending noise words is fatal.

On its way to the wrong conclusion, the court asserted that the search *did* disclose Live Oak’s financing statements, saying that “a search’ of the Registry returns an index of all of the financing statements in the Registry.”¹⁴² The obvious problem with the court’s interpretation is that it would have rendered financing statements filed against the debtor effective, even if searchers could not possibly find them. If the court had realized

filing system uses to read the name searched for and to locate equivalent statements in the state’s database.”).

138. *UCC Search*, *supra* note 55 (using the term “search logic”).

139. 1944 *Beach Boulevard, LLC v. Live Oak Banking Co.*, 346 So. 3d 587, 593 (Fla. 2022).

140. *See id.* at 589.

141. *See id.*

142. *Id.* at 592.

that the compact name matches were visible on the search results, although not labeled “hits,” it could have responded to the Eleventh Circuit in a manner that did not render ineffective the thousands of financing statements with errors only in punctuation and spacing.

D. *A Quick Fix for Florida*

Florida’s disaster will manifest in the avoidance or invalidation of some of the financing statements that do not satisfy the zero-tolerance test. If those filings are challenged before the website is repaired, the courts are likely to hold them ineffective and treat the filers’ security interests as unperfected.

The problem can easily be solved. Despite the supreme court’s holding to the contrary, the Registry’s search system does apply a search logic to identify hits. To have a search logic within the meaning of *1944 Beach Boulevard*, the Registry need only make cosmetic changes to the website to clarify how it operates.

First, the Registry should change the appearance of the hits to distinguish them from the entries that precede and follow them. The Registry could accomplish that by (1) presenting the hits in boldface; (2) using a font and background color for the hits that are different from the non-hits; (3) using thicker lines to make a box around the hits; (4) placing markers or text in the margin at the beginning and end of the hits; or (5) using any combination of these methods.

Second, the Registry should rewrite the textual explanations on the website to correctly explain its operation and identify the hits as such. The current text misdescribes the website’s function in numerous respects. For example, the text that appeared immediately above the search results on the Search Results page for a Filed Compact Debtor Name List search provided at the time of my study:

Result for Filed Compact Debtor Name List Search on [name searched]. Use the Previous and Next buttons to display additional search results[.]¹⁴³

In early 2024, it was changed to:

Click here to see the details of the search logic used on this website. Use Previous/Next links to scroll through search results. Opening/Viewing a filing

143. *Id.* To see the search results page, the user must conduct a search.

will position that filing at the top of the search results list.¹⁴⁴

Both versions' use of the term "search results" refer to entries that are not hits. That use is misleading. The Registry should change that text to provide:

Result for Filed Compact Debtor Name List Search on [name searched]. This search applied the filing office's standard search logic. This search discloses only the names contiguously shown on this and subsequent pages that are exact matches after compaction. The disclosed matches begin at the top of this page. The compaction search logic is available [here](#). Use the Previous and Next buttons to view the hits, if any, and to view adjacent pages of the index.

This proposed text would clarify that the search results consist of only the exact matches after compaction. The advantage of changing only the text is ease of implementation. If the text is corrected without changing the appearance of the hits, searchers will continue to have the burden of determining where the hits end. Courts may or may not consider that sufficient to reverse the effects of *1944 Beach Boulevard*. For that reason, merely changing the text should not be regarded as a solution. The appearance of hits should also be changed. Making both changes almost certainly would be sufficient. It would be clear that Florida does have a search logic.

No legislation or regulation is needed to make either change. Florida privatized the Registry in 2001.¹⁴⁵ Under the enabling legislation, the Florida Department of State ceased to function as the UCC filing officer,¹⁴⁶ and FLORIDAUCC, LLC, a Florida Corporation, took on that role. The contract between the Florida Department of State and Image API, LLC, the private contractor, provides:

The Filing Office shall be a single purpose entity which shall engage in no activities other than carrying out the obligations of the Filing Office (in conjunction with the Filing Officer) under the contract with the Department *and the*

144. *UCC Search*, *supra* note 55.

145. *UCC News*, *supra* note 19.

146. FLA. STAT. § 679.527(3) (2023) (stating that as of October 1, 2001 "the department shall cease serving as the designated filing officer and filing office for the registry under this chapter").

*requirements of part 5 of Chapter 679 . . . and activities related or incident thereto.*¹⁴⁷

UCC § 9-506 is contained in Part 5.¹⁴⁸ Thus the “filing office’s standard search logic” referred to in UCC § 9-506 is the search logic adopted by the filing office with the written approval of the Florida Department of State.¹⁴⁹

III. THE EMPIRICAL STUDY

I conducted an empirical study to estimate, with respect to UCC initial financing statements filed in the Registry that purport to be against registered organizations, (1) the fatal name-error rate for those filed during the period from 2019 through early 2023 and (2) the fatal name-error rate for those filed in 2023. The first estimate, 32%, is the proportion of Florida filings against registered organizations that are ineffective by reason of name errors. The second estimate, 14%, is the proportion of filings against registered organizations being added to the Registry that are ineffective by reason of name errors. I expected the second estimate to be lower than the first because many filers would be aware of the *1944 Beach Boulevard* zero-tolerance test and trying to satisfy it.

I define a fatal error as a difference between the debtor’s name on the initial financing statement and the debtor’s name on Florida’s public organic record that, under the Florida Supreme Court’s zero-tolerance test, renders the financing statement ineffective. If a financing statement is ineffective, the secured party is unperfected, except in the unlikely event that the secured party perfected in some other manner. An unperfected security interest confers no priority over perfected security interests or other liens. In the event of the debtor’s bankruptcy, the trustee can avoid an unperfected security interest.¹⁵⁰

A. *The Random Samples*

As the basis for this study, I drew two random samples of financing statements from the Registry.

147. Florida-API Contract, *supra* note 33, at 41.

148. § 679.527(5).

149. Florida-API Contract, *supra* note 33, at 33 (“All design, changes, and upgrades to the Registry software must be approved in writing by the Department.”).

150. 11 U.S.C. § 544(a)(1) (giving trustees the rights of ideal lien creditors).

1. The 2019–2023 Sample

The 2019–2023 Sample consists of 186 financing statements filed from January 1, 2019, through May 26, 2023. I downloaded the UCC index from the Registry’s website on May 26, 2023, using Notepad++, the software recommended to me by the Registry.¹⁵¹ The data contained index entries for the day of the download, which demonstrates that there was little or no delay from the making of a filing to its inclusion in the Registry’s searchable database. Before drawing the sample from the download, I deleted (1) all filings with record numbers indicating they were from years earlier than 2019; (2) all records marked “P” to indicate they were against individuals; (3) forty-two records that contained no debtor’s name or record number; and (4) five apparently frivolous filings against the United States that named no registered organization. That left 727,557 filings for analysis.

I randomized the sample by obtaining 500 random numbers from 1 to 757,557,¹⁵² in random order. The sample included the first 210 numbers, minus several that I removed because the numbers were greater than 727,557, the debtor was a living trust, or the filing was against an individual but misclassified by the filing office as against an organization.

I removed filings from the sample if I could not find an entity record with which to compare them. The removed filings included financing statements filed in the wrong state or with names not sufficiently similar to any name on Florida’s entity index.

2. The 2023 Sample

The 2023 Sample consists of 393 financing statements filed from April 27, 2023, through May 1, 2023 (the “April download”); from May 23, 2023, through May 24, 2023 (the “May download”); and from October 10, 2023, through October 11, 2023 (the “October download”). I downloaded the data from the Registry’s website using Notepad++. On the UCC Secured Transactions Download page, <https://www.floridaucc.com/uccweb/downloads.aspx>, I chose “Regular” and “Debtors” and filled in a single date in the date box.

151. *UCC Secured Transactions Download*, *supra* note 53. I checked the Download Type circle for “Full” and left the File Date box empty.

152. Due to a clerical error, the random numbers were drawn from a set larger than the dataset. The error was harmless because the numbers within the dataset were nevertheless random.

I randomized the April download by including the first filing and every fifth filing thereafter. I randomized the May download by including the fifth filing and every fifth filing thereafter. I randomized the October download using an online random number generator. Ultimately, 110 records were from the April download, 98 from the May download, and 185 from the October download. Those numbers are roughly in proportion to the number of records in each download.

B. *Operationalizing the Zero-Tolerance Test*

Florida's zero-tolerance test applies to all filings in the Registry. Most of those filings are against registered organizations. This study sought to determine the rate of ineffectiveness due to name errors on financing statements filed against registered organizations. The study's strategy was to compare the names of debtor entities on randomly selected financing statements with the names of those same entities on Florida's corporate records. The study did not attempt to determine the ineffectiveness rates resulting from errors other than name errors or for filings against individuals or nonregistered organizations.

To make the comparison, we¹⁵³ searched Florida's entity index for a corporation with a name legally identical to the name on each financing statement. For about 70% of the names on financing statements filed against registered entities, we found such an entity. We assumed that entity was the target of the filing and considered it a match. For the other approximately 30% of the financing statements, we did not find an entity that was an exact match. If we found an entity that was not a match but was so close to a match that the state would not charter two corporations with names so close to matching, we assumed the entity was the target of the financing statement and considered it a name error. Florida's Business Corporation Act states the prohibited level of name similarity:

(1) A corporate name . . .

(d) Must be distinguishable from the names of all other entities or filings that are on file with the department . . . which are organized, registered, or reserved under the laws of this state. A name that is

153. In reporting this study, I have used "I" for actions taken by me personally, and "we" for actions taken by me together with my research assistants. We collected all the source documents, and I have verified nearly all categorizations from them.

different from the name of another entity or filing due to any of the following is not considered distinguishable:

1. A suffix.
2. A definite or indefinite article.
3. The word “and” and the symbol “&.”
4. The singular, plural, or possessive form of a word.
5. A punctuation mark or a symbol.¹⁵⁴

Thus, for example, if Florida has chartered an “Orange & Blue Corporation,” it would not charter an “Orange and Blue Corporation,” “The Orange and Blue Corporation,” or “Orange and Blue’s Corporation.” Although that statute applies only to corporations, other Florida statutes impose the same requirements on other types of entities.¹⁵⁵

Florida, like most states, will charter entities whose names differ by as little as one character, if that difference is not proscribed by statute. Thus, Florida has chartered a “Mapes LLC,” a “Mapeso LLC,” and a “Mapesa, LLC.” This study did not consider a financing statement name that differed from a public organic record name by one character to be the same entity with its name misspelled. It did, however, consider a difference attributable to the apparent misspelling of a common word to be the same entity with its name misspelled. Examples include “Yiyi Construction and procesing Inc” (a misspelling of “processing”), “PNF Gainesville Palm Villas LLC” (a misspelling of “Gainesville”), and “Medical Specialists of Fort Laduerdale, Inc.” (a misspelling of “Fort Lauderdale.” We used addresses as an additional check on corporate identities.

In contracts, entity names are commonly followed by a description that indicates the formation state and entity type. An example would be “Acme, Inc., a Delaware corporation.” “Acme, Inc.” is the entity name; “a Delaware corporation” is the description. Filers sometimes include such descriptions along with the entity name in the debtor-name box on financing statements. Courts hold those financing statements

154. FLA. STAT. § 607.0401 (2023).

155. *See, e.g.*, FLA. STAT. § 605.0112 (2023) (stating five identical requirements for limited liability company names); FLA. STAT. § 620.1108 (2023) (stating the same for limited partnership names).

ineffective.¹⁵⁶ When names differed significantly only by the inclusion of such descriptions—or by the inclusion of a trade name along with the entity name in the debtor-name box on a financing statement—we assumed they were the same entities.

IV. THE EMPIRICAL FINDINGS

A. Name-error Types

Table 1 shows the categories of name differences we assumed not to be differences in entities and the frequency with which the differences in each category occurred.

Table 1. Name-error Types. Percentages are of total errors.

Name-error Types	2019–2023 Sample		2023 Sample	
	Number	Pct.	Number	Pct.
Punctuation or spacing alone	39	68%	36	61%
Difference in noise words only	8	14%	4	7%
Extra descriptive words	1	2%	11	19%
Misspelled but recognizable word	7	12%	2	3%
Different words in the name	1	2%	2	3%
Abbreviated word	0	0%	1	2%
“The” moved to end of name	0	0%	1	2%
“and” for “&”	1	2%	1	2%
Organization name in wrong box	0	0%	1	2%
Total	57	100%	59	100%

The method used tends to both overestimate and underestimate the actual level of financing statement effectiveness. It may tend to overestimate ineffectiveness because defective filers may have perfected their security interests in other ways. For example, they may have listed correct names for the same debtors on the same or different financing statements, or they may have perfected by taking possession or control of the collateral. We mitigated this source of ineffectiveness by examining all names listed on the secured party’s financing statement, not just the name included in the sample.

The method used may tend to underestimate ineffectiveness if the financing statement contains an erroneous name that

156. See *In re EDM Corp.*, 431 B.R. 459, 461, 466 (B.A.P. 8th Cir. 2010) (holding filing against “EDM CORPORATION D/B/A EDM EQUIPMENT” ineffective because the debtor’s name was “EDM CORPORATION”).

coincidentally matches the name of an unrelated entity. For example, a creditor might seek to file against “Acne, Inc” but inadvertently type “Acme, Inc”—a name that coincidentally matches the name of an unrelated entity. Although the filing is ineffective against Acne, Inc, the method would count it as a match, thus underestimating the level of name-error ineffectiveness.

This study estimates only the level of name-error ineffectiveness. Financing statements may be ineffective for other reasons. For example, many of the filings reviewed were in the wrong state, and some probably lacked required information other than the debtor’s name.¹⁵⁷ Thus, the levels of financing statement ineffectiveness may be higher than the levels of name-error ineffectiveness this Article reports.

B. Search Logic Verification

To verify that Florida’s computer code applied its announced search logic, I analyzed the system’s treatment of the fifty-one financing statements in the 2019–2023 sample that were ineffective by reason of name error. For each, I performed a compacted name search under the debtor’s correct name as indicated on the entity index.

Thirty-eight of the fifty-one erroneous names (75%) were returned as hits by Florida’s supposedly nonexistent search logic. All thirty-eight hits appeared on the first page of the search results. Of the thirty-eight, twenty-seven (71%) were the first entry, ten (26%) were the second, and the one remaining (3%) was the fourth. All filings that preceded them in the search results were also hits. The Registry’s search logic overcame all errors in punctuation and spacing except apostrophes in two names.

Ten of the fifty-one (20%) were not hits, but like Live Oak’s financing statements in *1944 Beach Boulevard*, they appeared as the last entry on the previous page.¹⁵⁸ The three names that did not appear at the top of the first page of results or the bottom of the previous page were all misspellings. One of the

157. U.C.C. § 9-502(a) (AM. L. INST. & UNIF. L. COMM’N 2022) (“[A] financing statement is sufficient only if it . . . (1) provides the name of the debtor; (2) provides the name of the secured party . . . and (3) indicates the collateral covered by the financing statement.”).

158. The applied search logic has since been changed so that the Live Oak financing statements are shown as hits, but the announce search logic has not changed.

three was an apparent malfunction of the search logic.¹⁵⁹ I concluded that (1) the Florida search system applied its announced search logic; (2) hits appeared at the top of the first page; and (3) even financing statements with fatal errors could usually be found at the bottom of the previous page.

C. *Error Rates by the Zero-Tolerance Standard*

Under the zero-tolerance test, a debtor’s name is sufficient only if it is the debtor’s name on the public organic record. The public organic record is essentially the debtor’s articles of incorporation or organization, as amended. This study compared the debtors’ names on the financing statements with the debtors’ names on the public organic record. Because the public organic records can be accessed only through the index, we could discover the debtors names on the public organic records only if we first identified the debtors on the entity index. For that reason, we conducted our comparisons in three steps. First, we compared financing statement names—referred to as “UCC-1” on the tables—to the entity index names. Second, we compared the entity index names to the public organic record names. Third, we compared the financing statement names to the public organic record names. The results of these comparisons for the 2019–2023 sample are shown in Table 2.

Table 2. Error Rates in the 2019–2023 Sample by the Zero-Tolerance Standard

	Comparing UCC-1 to entity index		Comparing entity index to public organic record		Comparing UCC-1 to public organic record	
	Number	Pct.	Number	Pct.	Number	Pct.
Errors	51	27%	6	3%	57	32%
Matches	135	73%	172	97%	121	68%
Total	186	100%	178*	100%	178*	100%

* The public organic records for eight of the entities studied were not available for free download because the records were filed prior to 1995. The Florida Department of State said they could produce all the documents, but I declined to purchase them.

159. A financing statement filed against Acorn Wellness Center, LLC misspelled “Acorn” as “Acorns.” That financing statement should have appeared prior to ACORTEZ MANAGEMENT LLC in sixth position on the first page of results. It did not.

On the UCC-1 to Entity Index match, 51 of the 186 financing statements (27%) had fatal errors. On the Entity Index to Public Organic Record match, six of the 178 available financing statements (3%) had fatal errors. All six were punctuation or spacing errors made by the filing office. For all six, the UCC-1 had matched the Entity Index. On the UCC-1 to Public Organic Record match—the legally determinative match—57 of the 178 available financing statements (32%) had fatal errors.

The 2010 amendments required use of the public organic record name instead of the entity index name on financing statements. Table 2 suggests that the 2010 amendments increased the debtor-name error rate. Six additional filings were invalidated by the filer's use of the entity index name on financing statements; no filing was validated by a filer's use of the public organic record name instead of the entity index name.

We searched for amendments to the defective financing statements that would have corrected the erroneous filings. Oddly, we found none.

Table 3 shows the corresponding results from the 2023 sample. On the UCC-1 to Entity Index match, 52 of 393 financing statements (13%) had fatal errors. On the Entity Index to Public Organic Record match, six of the 384 financing statements (2%) had fatal errors. Of the eight, six were punctuation or spacing errors and two were spelling corrections made by the filing office. In six instances, the UCC-1 had matched the entity index; in the remaining two, it had not. On the UCC-1 to Public Organic Record match—the legally determinative match—55 of the 384 available financing statements (14%) had fatal errors. Thus, six filings (1%) were invalidated by the filer's use of the entity index name on financing statements, while only one filing was validated by the filer's use of the public organic record name.

The error rates for the financing statement names, whether compared to the entity index (13%) or the public organic record (14%), are less than half the error rates for the 2019–2023 sample.

Table 3. Error Rates in the 2023 Sample by the Zero-Tolerance Standard

	Comparing UCC-1 to Entity Index		Comparing Entity Index to Public Organic Record		Comparing UCC-1 to Public Organic Record	
	Number	Percent	Number	Percent	Number	Percent
Errors	52	13%	6	2%	55	14%
Matches	341	87%	378	98%	329	86%
Total	393	100%	384*	100%	384*	100%

* The public organic records for nine of the entities studied were not available for free download because the records were filed prior to 1995. The Florida Department of State said they could produce all the documents, but I declined to purchase them.

Two plausible explanations exist for the dramatic difference in error rates. They are probably working in combination. First, we drew the 2023 sample eight to fourteen months after publication of the court's opinion in *1944 Beach Boulevard*. Filers may have been aware of the zero-tolerance test and filed more carefully.

Second, as shown in Table 4, the SBA alone made 30 of the 57 errors (53%) in the 2019–2023 sample.

Table 4. SBA's Contribution to High Error Rates in the 2019–2023 Sample

	Error	Error Percent	No Error	No Error Percent	Total Filings	Error Rate
SBA	30	53%	26	20%	56	54%
Not SBA	27	47%	103	80%	130	21%
Total	57	100%	129	100%	186	31%

The difference between the SBA's error rate and the error rates of other secured parties is statistically significant. Fisher's exact test, two-tailed P value less than 0.0001.

The SBA filed 56 of 186 (31%) financing statements in the 2019–2023 sample but only two of 393 (1%) financing statements in the 2023 sample. Errors may have been lower in the 2023 sample because the system's largest error producer

coincidentally made few filings on the nine days included in the 2023 sample.¹⁶⁰

The reduction in SBA's filing rate from 2019 to 2023 did not result from a reduction in SBA lending. The number of SBA loans made nationally did not change substantially from 2019 through 2023.¹⁶¹ Nor is it likely the reduction resulted from an improvement in the accuracy of the SBA's filings. We conducted a small study of 2023 SBA filings in Arizona. We found that nine of twenty recent SBA filings (45%) contained name errors that would have rendered them ineffective under Florida's zero-tolerance test. The data from these studies provide no reason to believe that SBA has improved its abysmal filing performance.

D. *Error Rates by the IACA Standard*

One proposed solution to the Florida-UCC filing system disaster is for Florida to copy the filing systems adopted in other states. Those filing systems apply IACA standard search logic and return only a list of hits, if any. Tables 5 and 6 show the error rates for the 2019–2023 sample and the 2023 sample, respectively, calculated assuming, contrary to fact, that IACA standard search logic rather than the zero-tolerance test had been in effect.

Table 5. Error Rates in the 2019–2023 Sample by the IACA Standard

	Comparing UCC-1 to Entity Index		Comparing Entity Index to Public Organic Record		Comparing UCC-1 to Public Organic Record	
	Number	Percent	Number	Percent	Number	Percent
Errors	9	5%	0	0%	9	5%
Matches	177	95%	178	100%	169	95%
Total	186	100%	178*	100%	178*	100%

* The public organic records for eight of the entities studied were not available for free download because the records were filed prior to 1995. The Florida Department of State said they could produce all the documents, but I declined to purchase them.

160. The first draw consisted of filings made on April 27, April 28, and May 1, 2023. The second draw consisted of filings made on May 23 and May 24, 2023. The third draw consisted of filings made on October 10 and October 11, 2023.

161. The numbers of SBA loans reported by fiscal year ending September 30 of the calendar year are 52,000 for 2019, 54,000 for 2020, 61,000 for 2021, 62,009 for 2022, and 52,899 for 2023 (projected based on data reported through August 11, 2023).

On the UCC-1 to Entity Index match, nine of the 186 financing statements (5%) had fatal errors. Seven of the nine were misspellings of the root name, one was the addition of a word to the root name, and one was the deletion of a word from the root name. On the Entity Index to Public Organic Record match, none of the 178 financing statements had fatal errors. The Florida Department of State's perfect performance in transcribing names from the public organic records to the entity index casts doubt on claims that the entity indexes cannot be relied on.¹⁶² On the UCC-1 to Public Organic Record match—the legally determinative match—nine of 178 financing statements (5%) had fatal errors.

Search logics like IACA's are in effect in most states. That five percent of Florida's filings against registered entities did not match the public organic record name suggests that at least five percent of UCC filings against registered organizations nationwide are ineffective based on name errors alone.

Table 6. Error Rates in the 2023 Sample by the IACA Standard

	Comparing UCC-1 to Entity Index		Comparing Entity Index to Public Organic Record		Comparing UCC-1 to Public Organic Record	
	Number	Percent	Number	Percent	Number	Percent
Errors	16	4%	2	1%	18	5%
Matches	377	96%	382	99%	366	95%
Total	393	100%	384*	100%	384*	100%

* The public organic records for nine of the entities studied were not available for free download because the records were filed prior to 1995. The Florida Department of State said they could produce all the documents, but I declined to purchase them.

Table 6 shows the error rates in the 2023 sample, measured by the IACA standard. On the UCC-1 to Entity Index match, 16 of the 393 financing statements (4%) had fatal errors. On the Entity Index to Public Organic Record match, two of the 384 available financing statements (1%) had fatal errors. On the UCC-1 to Public Organic Record match—the legally determinative match—18 of 384 financing statements (5%) had fatal errors. Projected nationally, these data suggest that at least five percent of UCC filings currently being made nationwide are ineffective based on name errors alone.

162. See *infra* note 214 and accompanying text.

The error rates in Table 6 were generated in the conditions most favorable to name-based filing. A large majority of UCC filings are made by service companies that make filings nationwide or by law firms. We drew the data eight to fourteen months after *1944 Beach Boulevard*. Filers were then probably as alert to the problem of name errors as they would ever be. Florida's error rates, calculated by IACA standards, show the limits of name-based filing.

E. *Error Rates in Bank-Creditor Filings*

Some commentators attribute name errors in filing to the filers' lack of sophistication. Were that true, banks would have lower name-error rates than nonbanks. But, as shown in Table 7, banks make a slightly higher percentage of name errors than nonbank creditors. The difference is small and not statistically significant. For all practical purposes, the error rate for banks is the same as the error rate for other types of filers.

Table 7. Bank Error Rates in the 2023 Sample by the Zero-Tolerance Standard

	Name Error		No Name Error		Total	
	Number	Pct.	Number	Pct.	Number	Pct.
Bank Filer	14	15%	80	85%	94	100%
Nonbank Filer	42	14%	257	86%	299	100%
Total	56	14%	337	86%	393*	100%

* The public organic records for nine of the entities studied, four banks and five nonbanks, were not available for download because the records were filed prior to 1995. This Table assumes there were no errors in those nine matches.

Five of the ninety-four filings by banks (5%) contained IACA-fatal errors. Four of those errors were inclusion of the words "A Florida Limited Liability Company."

Point-and-click would reduce the name-error rate as defined in this study to zero. Name errors would be impossible. Point-and-click would also reduce filing in the wrong state and make filing and searching less expensive and burdensome. Part V explores the point-and-click alternative to name-based filing.

V. THE POINT-AND-CLICK SOLUTION

"Point-and-click" is an entity-based, as opposed to name-based, system for lien filing and searching. In a point-and-click system, a UCC financing statement naming a registered organization as the debtor would be stored in the state's public

record regarding that registered organization (the “entity record”). Filings and searches would be made through the entity index instead of the UCC index. Each of the fifty states already has an entity index that lists, at minimum, for-profit corporations, LLCs, and limited partnerships.¹⁶³ Filers and searchers already use the entity indexes to discover the public organic record names they need for name-based UCC filing and searching.

Filers and searchers can easily distinguish registered organizations from other debtors. Registered organizations’ names must include entity type designators, such as corp., inc., LLC, or LP.¹⁶⁴ Exceptions from that rule exist, but they are not of practical importance.¹⁶⁵

In a point-and-click system, filers and searchers would use the entity index to find their debtor’s entity record, just as they do under the current name-based system. They could use the entity record information—typically including articles of organization, amendments, annual reports, and the addresses of both the entity and the entity’s registered agent—to confirm the entity’s identity. Within the entity record, filers could initiate the filing of a financing statement, and searchers could examine the financing statements filed against the entity.

In a point-and-click system, neither filers nor searchers would ever have to enter an entity’s name. The state would enter and change the entity’s name as it appears on the entity index, just as the state currently does. If the state made minor errors under point-and-click, it would not matter. Assisted by search logic that ignored punctuation, spacing, and entity type designators, filers and searchers would be able to find the entity record and confirm the entity’s identity. In the rare instance in

163. See *infra* Appendix.

164. See, e.g., MODEL BUS. CORP. ACT § 4.01(a) (AM. BAR ASS’N 2023) (requiring that corporate names contain certain words or abbreviations that identify them as corporate names); DEL. CODE ANN. tit. 8, § 102(a)(1) (2022) (same).

165. The exceptions are Delaware and California corporations. Delaware allows corporations with assets greater than \$10 million to have names that do not include entity type designators. tit. 8, §102(a)(1). California allows a corporation that is not a close corporation to omit the entity type designator from its name. CAL. CORP. CODE § 202(a) (West 2023) (“The articles of incorporation shall set forth . . . the name of the corporation; provided, however, that in order for the corporation to be subject to the provisions of this division applicable to a close corporation (Section 158), the name of the corporation must contain the word ‘corporation,’ ‘incorporated,’ or ‘limited’ or an abbreviation of one of such words.”). Despite their freedom to do so, California for-profit corporations rarely adopt names that do not identify them as corporations.

which the state made a major error, the error would have to be corrected, just as under the current system.¹⁶⁶

A. *Point-and-Click's Advantages*

The change to point-and-click would (1) eliminate debtor-name errors; (2) eliminate the need for debtor name amendments and debtor name monitoring; (3) simplify the processes of filing and searching; and (4) reduce wrong-debtor and wrong-state filing errors.

1. Eliminating Name Errors

UCC filing offices match search requests to financing statements solely by comparing the names on each. The slightest error may render a financing statement ineffective, undiscoverable, or both. To achieve an exact match, both the filer and the search must discover the entity's name and enter it correctly on the financing statement or search request.¹⁶⁷ That may seem like an easy task, but decades of experience has shown that it is not. Under the current system, neither the filing of a financing statement nor the submission of a search request generates feedback to alert filers or searchers to their errors.¹⁶⁸ As reported in Part IV, filers often make errors in debtor names on financing statements. Those errors have generated a steady stream of litigation and often lead to security interest invalidity or avoidance.¹⁶⁹

Point-and-click solves the name-error problem for online filers and searchers by eliminating the necessity for them to enter the debtors' names. Instead, they search the entity index to discover the entity record. If they make an error in that search, they will not find the entity record, realize they made a

166. Under the current UCC filing system, filers and searchers are expected to use the public organic record name of the entity. Filers and searchers usually find that name through the state's entity index.

167. Norman D. Farnam & Krista R. Pleviak, *Revised UCC Article 9: Compliance Tips for Creditors and Debtors*, 86 WIS. LAW. 24, 27 (2013) (“[I]f the debtor is a registered organization, secured parties must inspect the public records of the state in which the entity is organized and use the debtor's name exactly as it appears on the entity's organizational documents.”).

168. See David B. Kurzwil et al., *Pennsylvania Bureau Notifies Filers of the Loss of Attachments Submitted with UCC Records*, GREENBERGTRAUIG (Apr. 29, 2014), <https://www.gtlaw.com/en/insights/2019/4/pennsylvania-bureau-notifies-filers-of-the-loss-of-attachments-submitted-with-ucc-records> [<https://perma.cc/X4K8-SBCC>].

169. Livingston, *supra* note 2, at 183 (referring to “the apparently never ending stream of cases litigating the sufficiency of the debtor's name on a financing statement”).

mistake, and try again. Once they find the entity record, they can use the information it contains to verify that the file is their debtor's. Prior UCC filings against the entity would be visible in the entity record, and new filings would be made in that record.

Filers could initiate new UCC filings from within the entity record. The software would insert the debtor's correct name as it appears on the entity index. Debtor-name errors would be impossible because neither filers nor searchers would enter debtors' names. They would need only to find the debtors' names on the state's entity index, point at them, and click.

2. Eliminating Debtor-Name Amendments

Debtors sometimes change their names through organic record amendments or transactions such as merger or conversion. Under the current, name-based filing system, UCC filers are expected to monitor their debtors' names, discover changes, and amend their UCC filings accordingly within a four-month deadline.¹⁷⁰ Adopting point-and-click would eliminate the need for monitoring and amendment with respect to changes in registered organizations' names. Eliminating the need to amend will also eliminate a source of name error not included in my empirical study—failure to amend within four months after the debtor's name changes.¹⁷¹

Upon the adoption of point-and-click, Article 9 should be amended to provide that if a financing statement is filed in the correct entity record, the name on it is not seriously misleading and will not become seriously misleading if the debtor's name later changes on the entity index through name correction, amendment, merger, conversion, or similar transaction. Amendment of the debtor's name on the financing statement would be unnecessary; the financing statement would remain in the entity record, where searchers under the debtor's amended names would find it.

To illustrate, assume that FirstBank has filed a financing statement against Smith LLC. Smith LLC amends its Certificate of Organization to change its name to Kahn LLC. Smith LLC files the amendment with the Secretary of State.

170. U.C.C. § 9-507(c)(2) (AM. L. INST. & UNIF. L. COMM'N 2022) ("If the name that a filed financing statement provides for a debtor becomes insufficient . . . the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes seriously misleading.").

171. *Id.*

The Secretary of State will retain the old name, Smith LLC, on the entity index and add the new name, Kahn LLC, to the entity index. The state would link both names to the single active entity record. Filers or searchers would discover the name change when they viewed the entity record.¹⁷² The entity record would contain FirstBank's financing statement filed against Smith LLC and the later amendment to its Articles of Organization changing the name from Smith LLC to Kahn LLC. No financing statement amendment would be necessary because such an amendment would merely replicate the entity name change amendment.

3. Simplifying Filing and Searching

Point-and-click would simplify the filing and searching processes. As shown in Figure 2, under the current name-based system, filers and searchers against a registered organization must each conduct four searches. The filer's first search is of the entity index of the formation state to find the file in which the state keeps its copy of the public organic records (search F1). The second is a collection and analysis of the public organic records in that file or elsewhere to determine the debtor's public organic record name (search F2). After filing, and before disbursing on the loan, the filer must conduct a "post-search" to confirm that its filing has the expected priority. The filer searches the UCC index (search F3) in the debtor's public organic record name and then collects and analyzes the financing statements to verify its priority (search F4). The post-searches are necessary for two reasons. First, in a system that permits hard copy filing, there is nearly always a lag between the time filings are made and the time they become visible on a search. The post-search assures that when the filer filed, an invisible but already effective prior filing was not waiting in the "basket" to be added to the visible UCC index. Second, although the filer's financing statement will be effective even if mis-indexed,¹⁷³ filers generally prefer to discover and correct errors before others rely on them.

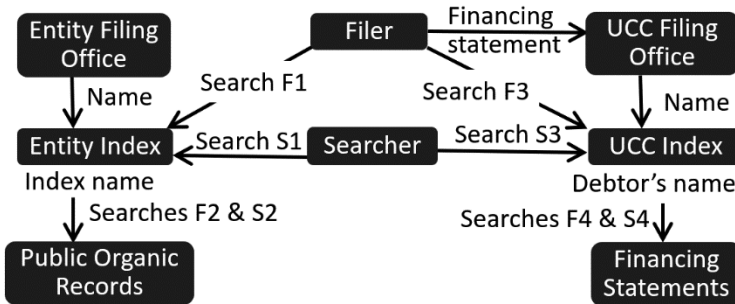
172. To illustrate, 422 SE 8 Street, LLC changed its name to Smith and Arnold Properties, LLC in 2011 and then to 11 Palms, LLC in 2012. All three names remain in the Florida entity index and are linked to the single entity record even though the entity was dissolved administratively in 2015. *Cover Letter: Smith and Arnold Properties, LLC*, FLA. DEP'T OF STATE, <https://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2012%5C0601%5C35563074.Tif&documentNumber=L07000099949> [<https://perma.cc/T9P6-V2R5>].

173. U.C.C. § 9-517 cmt. 2. (AM. L. INST. & UNIF. L. COMM'N 2022).

Only a search conducted in the public organic record name may reveal all effective financing statements.¹⁷⁴ Thus, searchers have the same need as filers to know the debtor's public organic record name. They must search the entity index (search S1) to find the entity record that contains the public organic records. Searchers must analyze those records to determine the public organic record name (search S2). Once the searcher has that name, the searcher must use the name to search the UCC index (search S3) for the records of filings against the debtor. The searcher then collects, analyzes, and supplements the indexed financing statements to determine the searcher's prospective priority (search 4).

Figure 2 shows the relationship among the filers, searchers, and the records searched. Filers and searchers are each searching the entity index, the public organic records, the UCC index, and the UCC financing statements.

Figure 2. Name Searches Currently Necessary for UCC Filing and Searching



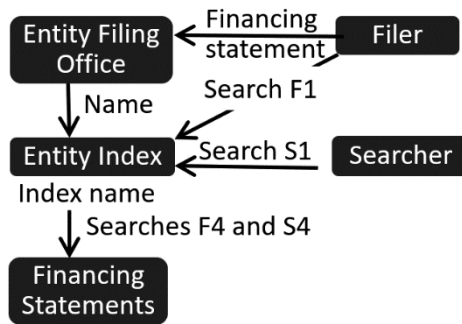
The debtor's entity index name is the debtor's public organic record name as determined by the state. By requiring use of the public organic record name instead of the entity index name on financing statements and search requests, the state requires every filer and searcher to redo the work already done by the state. Ironically, the state does a far better job than private filers and searchers in determining the public organic record name. Tables 2 through 6 show error rates for the state's transcription of the public organic record name to the entity index name, ranging from zero to three percent. Those rates are far lower than name-error rates on financing statements. Yet current law requires filers and searchers to discover and use

174. *Id.* § 9-506(c) (defining the safe harbor by a "search of the records of the filing office under the debtor's correct name").

the public organic record name. Failing to do so may be malpractice.

[S]ecured parties must inspect the public records of the state in which the entity is organized and use the debtor's name exactly as it appears on the entity's organizational documents. The name . . . in the state's business-entity database might not be correct and should not be relied on.¹⁷⁵

Figure 3. Name Searches Necessary in a Point-and-Click System



As shown in Figure 3, point-and-click would dramatically simplify the process of filing and searching. The UCC filing office would no longer be involved. Filers and searchers would each conduct two searches rather than four. Most importantly, neither filers nor searchers would have to determine the debtor's public organic record name.

a. What is an entity's public organic record name?

UCC § 9-503(a)(1) defines the public organic record name of a registered organization as “the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name.”¹⁷⁶ UCC § 9-102(a)(68) defines “public organic record” as

a record that is available to the public for inspection and is . . . a record consisting of the record initially filed with or issued by a State or the United States

175. Farnam & Pleviak, *supra* note 167, at 24, 27.

176. U.C.C. § 9-503(a)(1) (AM. L. INST. & UNIF. L. COMM'N 2022).

to form or organize an organization and any record filed with or issued by the State or the United States which amends or restates the initial record.¹⁷⁷

Those definitions are largely indeterminate for several reasons:

1. Conflict between UCC § 9-102(a)(68) and the comment

On a literal reading of UCC § 9-102(a)(68), an entity's name on the entity index is its public organic record name.¹⁷⁸ The entity index is a "record that is available to the public for inspection" that "amends or restates" the "the initial record."¹⁷⁹ The entity index "restates" a portion of the initial record—the entity's name.¹⁸⁰ Because the state constantly updates the entity index, the index is nearly always "the public organic record most recently filed with or issued by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name."¹⁸¹

Comment 11 to UCC § 9-102 argues to the contrary:

Not every record concerning a registered organization that is filed with, or issued by, a State or the United States is a "public organic record." For example, a certificate of good standing issued with respect to a corporation or a published index of domestic corporations would not be a "public organic record" because its issuance or publication does not form or organize the corporations named.¹⁸²

The comment implicitly assumes that every public organic record must "form or organize" the entity. But the text of UCC § 9-102(a)(68) provides that "any record . . . issued by the State . . . which amends or restates the initial record" is also a public organic record.¹⁸³ In *NRP Lease Holdings*, the Eleventh

177. *Id.* § 9-102(a)(68).

178. *Id.*

179. *Id.*

180. *See id.*

181. *Id.* § 9-503(a)(1).

182. *Id.* § 9-102 cmt. 11.

183. *Id.* § 9-102(a)(68).

Circuit stated that the name on Florida's entity index was the correct name in which to conduct a UCC search.¹⁸⁴

2. Non-name amendments

A non-name amendment is an amendment to the articles of incorporation or organization that does not purport to change the entity's name. The two samples studied contained twenty-six examples of non-name amendments that misstated the entity's name without purporting to change it.¹⁸⁵ Harry Sigman, a leading commentator on Article 9, wrote that such errors do not change the debtor's public organic record name.¹⁸⁶ I accepted that view for the purpose of determining the number of ineffective financing statements in my sample because it constitutes the conventional wisdom and cuts against my thesis that the number of ineffective financing statements is large.

However, Sigman's view is contrary to the language of the statute. A non-name amendment is a public organic record because it is a record filed with the state "which amends or restates the initial record."¹⁸⁷ A non-name amendment does both. A non-name amendment does not restate the entire articles of incorporation, but neither do name change amendments. Amendments that restate the entire articles are referred to as "restated articles," not "amendments."¹⁸⁸

UCC § 9-503(a)(1) requires use of "the name stated to be the registered organization's name on the public organic record most recently filed with . . . the [state] . . . which purports to state, amend, or restate the registered organization's name."¹⁸⁹ The non-name amendments do not purport to *amend* the

184. 1944 Beach Boulevard, LLC v. Live Oak Banking Co., 20 F.4th 746, 752 (11th Cir. 2021), *certified question answered and remanded sub nom.* 1944 Beach Boulevard, LLC v. Live Oak Banking Co., 346 So. 3d 587 (Fla. 2022) ("The Florida Department of State's Division of Corporations maintains an online index of the legal names of all entities authorized to transact business in Florida. Using this index, a creditor need only confirm the correct name on the Sunbiz.org website and copy it into the financing statement.")

185. Fourteen were in the 2023 sample; twelve were in the 2019–2023 sample.

186. Harry C. Sigman, *Improvements (?) to the UCC Article 9 Filing System*, 46 GONZ. L. REV. 457, 483 (2011) ("[T]he amended text would disregard a different version of the name set forth on a charter amendment that didn't purport to be changing the name but was instead filed to change a provision other than the name.")

187. U.C.C. § 9-102(a)(68) (AM. L. INST. & UNIF. L. COMM'N 2022).

188. See, e.g., *Instructions for Restated Articles of Incorporation*, FLA. DEP'T OF STATE, <https://form.sunbiz.org/pdf/cr2e156.pdf> [<https://perma.cc/ET56-5LMK>].

189. U.C.C. § 9-503(a)(1).

registered organization's name, but they do purport to *state* and *restate* the registered organization's name.¹⁹⁰ Had I counted the non-name amendments as errors, the error rate in the 2019–2023 sample would have increased from 32% to 37% and the error rate in the 2023 sample would have increased from 14% to 18%.¹⁹¹

3. Illegible public organic records

Florida uses a fill-in-the-blank form for amendments.¹⁹² Filers commonly fill them in by hand, and the filled-in text is sometimes illegible. Ordinarily, illegibility on one of several documents that state the debtor's public organic record name would not be a problem. The court would look to other documents to determine the name.¹⁹³ But UCC § 9-503(a)(1) requires use of “the name stated to be the registered organization's name on the public organic record *most recently filed*”—even if that name is erroneous.¹⁹⁴

4. The available-for-inspection limitation

To be a public organic record, a record must be available for inspection.¹⁹⁵ However, many public organic records were filed with or issued by the state prior to computerization. Accessing those records may be difficult or impossible within the time constraints of UCC filing and searching.

To illustrate the problem, public organic records filed in Florida prior to 1995 are not available online. That included *all*

190. *Id.* § 9-102(a)(68).

191. Counting the non-name amendments as errors would have increased the number of errors in the 2019–2023 sample from fifty-seven to sixty-nine and the number of errors in the 2023 sample from fifty-five to sixty-nine.

192. See Form for Filing Articles of Amendment to amend the articles of incorporation of a Florida Profit Corporation. FLA. DEP'T OF STATE, <https://form.sunbiz.org/pdf/cr2e011.pdf> [<https://perma.cc/XG6V-FTFC>].

193. For example, in *Hartz v. Sobel*, 136 Ga. 565, 71 S.E. 995, 1003 (1911) the court stated,

If a deed or any other written instrument should, by reason of age or accidental tearing or obliteration, be in such condition that certain words were illegible or entirely missing from it, this would not destroy the whole instrument, but the missing words would be shown by the best evidence obtainable. If the paper were not recorded, they could be proved by parol.

194. U.C.C. § 9-503(a)(1) (emphasis added).

195. *Id.* § 9-102(a)(68).

the public organic records for sixteen of the 579 entities in my samples (3%). The Florida Department of State offers these documents for sale.¹⁹⁶ The prices are \$8.75 per document for corporations, \$30.00 per document for LLCs, and \$52.50 per document for limited partnerships.¹⁹⁷ Because the website does not list the documents that exist, requesters must contact the Department of State to learn what documents exist before ordering. The order must be in writing. The Florida documents are probably “available for inspection,” but in some states it may be so difficult to obtain old public organic records that they no longer qualify as “available for inspection.”

5. Other ambiguities

The public organic record provisions of Article 9 are ambiguous in other respects. Our samples contained at least one public organic record that stated two versions of the debtor’s name.¹⁹⁸ They also contained a reinstatement issued by the state that purported to change the debtor’s name despite Florida’s statement on its website suggesting that a reinstatement cannot contain a change of name.¹⁹⁹

b. The difficulty of public organic record searching

Searching an entity’s public organic records to determine its name is difficult. The statute requires that the searcher determine the name based on the most recent “public organic record.”²⁰⁰ Yet the meaning of that phrase is uncertain. The most recent record may be handwritten and illegible, resulting in indeterminacy. As attorneys James M. Pfau and Thomas O.

196. *Fees*, FLA. DEP’T OF STATE, <https://dos.fl.gov/sunbiz/forms/fees/> [https://perma.cc/N7BH-S9JB].

197. *Id.*

198. For example, one of the entities studied stated its name to be “J & K Mechanical, LLC” in the title of its Limited Liability Amendment, and “J&K Mechanical, LLC” in the attached “Amended and Restated Article of Organization.” For a second example, the official English translation of the legislation that determined the debtor’s name “repeatedly translates the exact same Spanish name in two different ways.” *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 914 F.3d 694, 716 (1st Cir. 2019).

199. *Reinstatement Filing Instructions*, FLA. DEP’T OF STATE, <https://dos.myflorida.com/sunbiz/manage-business/efile/reinstatement/instructions/> [https://perma.cc/73VY-8G77] (“The reinstatement application does not allow you to change the name of your business. To change the name, download and complete the appropriate amendment form.”).

200. U.C.C. § 9-503(a)(1).

Kelly III warned the drafters in opposition to the 2010 amendments, the public organic record test requires document collection and legal expertise to apply:

Allowing the use of the public database name as an alternative to the name in the organic documents will be particularly useful for smaller transactions in which the cost of procuring, examining and interpreting the organic documents may be prohibitive. Entity name searches in smaller transactions are often handled at a clerical level by persons with only limited training. It may not be realistic to expect such persons to accurately interpret organic documents.²⁰¹

The difficulty of public organic record collection differs widely among the states. Each state has a conveniently available, easily searchable list of the names of all registered organizations—an entity index.²⁰² For filings made online, twenty-eight states (56%), including Florida, allow the free and immediate downloading of public organic records from the states' websites. But for records filed prior to about 1995, the number of states allowing free and immediate downloading falls to twenty-one (42%). Even in those states, some older documents may not be digitized.

Nearly all states charge search fees for documents not furnished online. Searchers must set up accounts, enter passwords, and suffer delays that range from a few minutes to weeks. Thus, some public organic records may not be available when needed.

The best strategy for filing in an entity's public organic record name is to obtain all documents that may be considered public organic records, determine from them all names that could possibly be the correct public organic record name, and list all those names on the financing statement.

Few filers do that. Of the twelve instances in our study where the public organic record name differed from the entity index name, filers in eleven (92%) put the entity index name on

201. Memorandum from James M. Pfau, Faegre & Benson LLP, & Thomas O. Kelly III, Dorsey & Whitney LLP, Co-Chairs, U.C.C. & Com. Fin. Comm., Minn. State Bar Ass'n, to Steven L. Harris, Rep., Drafting Comm. on Amends. to Unif. Com. Code Article 9 re: Proposed Amendments to Article 9 (Dec. 18, 2009), at 1, <https://www.uniformlaws.org/viewdocument/committee-archive-16?CommunityKey=16acd023-5df6-4857-be45-46fc988cdb18&tab=librarydocuments> [<https://perma.cc/Q6YD-3XXM>] [hereinafter Pfau & Kelly Memo].

202. See *infra* Appendix.

the financing statement. In only one instance (8%) might use of the public organic record name have prevented an error in UCC filing. These data suggest that most filers and searchers use the entity index name instead of trying to determine the public organic record name.

Point-and-click would eliminate the need for the two most difficult searches shown on Figure 2—those of filers and searchers for public organic records. The remaining searches would be in the entity index to identify the correct entity records and within the entity records for financing statements. The latter searches would be facilitated by the availability of extensive feedback.

4. Reducing Wrong-Debtor and Wrong-State Errors

Since 2001, UCC filings against registered organizations must be made in the registered organization's formation state.²⁰³ For example, the filing of a financing statement against a Delaware corporation must be made in Delaware, even if the collateral and all the corporation's activities are in Florida. Filers and searchers unaware of the requirement or unaware of their debtor's formation state can, and often do, file in the wrong state.²⁰⁴

The current, name-based filing system provides no protection against those errors. Filing offices must accept wrong-debtor and wrong-state filings without investigation.²⁰⁵ Point-and-click systems would provide substantial protection against wrong-state errors. A filer would have to file its financing statement in the state's record of a domestic entity, but only the formation state would have such a record. In the likely circumstance in which the Delaware corporation had registered to do business in Florida, the would-be filer would find the foreign registration record in Florida, but that record would not accept the filing. Thus, the would-be filer would be notified directly of its error.

In the more likely event that no foreign entity had registered to do business in the name, the would-be filer would either have found no entity registered under the name or an entity other

203. See U.C.C. § 9-307(e).

204. In our study of more than 400 financing statements filed against registered organizations, we found dozens that appeared to be filed in the wrong state. Some were clearly errors, but others may have been duplicates of foreign filings intended only to give notice or filings that matched in name only.

205. U.C.C. § 9-520(a) ("A filing office . . . may refuse to accept a record for filing only for a reason set forth in Section 9-516(b).").

than its debtor registered under the name. If no entity was registered under the name, point-and-click would prevent the erroneous filing entirely. One cannot file in a record that does not exist. If some other entity was registered under the name, the would-be filer might file against the wrong entity. But it would have to do so amidst an entity record that, if examined, would reveal the error. Under point-and-click, wrong-debtor and wrong-state filings would be difficult, if not impossible, to make.

B. *Point-and-Click's Legal Conditions*

Two conditions must be satisfied for a state to adopt a point-and-click system for filing against registered organizations. First, the applicable conflict of law rules must require that UCC filings be made in the debtor's incorporation or formation state. Second, UCC filings in the name on the entity index must be effective.

1. Filing in the Formation State

This first condition is already satisfied in all states, but the history is relevant. Before 1998, Article 9 required filing against registered organizations in the state where the collateral or the debtor were located. In a 1995 article, I proposed that Article 9 require filing against registered organizations in the state where the debtor was organized.²⁰⁶ My purpose was to put the UCC filings against a registered organization in the control of the filing officer who held the entity records, so they could be linked electronically. In a footnote, I mentioned the possibility of a point-and-click system.²⁰⁷

In 1998, the drafters agreed. They amended their draft to provide for UCC filing against registered organizations in their states of organization and to make the organizations' names on the state's entity index authoritative.²⁰⁸ All fifty states adopted the changes.²⁰⁹ Thus, when the 1998 revision became effective in 2001, the legal infrastructure for the adoption of point-and-

206. Lynn M. LoPucki, *Why the Debtor's State of Incorporation Should Be the Proper Place for Article 9 Filing: A Systems Analysis*, 79 MINN. L. REV. 577 (1995).

207. *Id.* at 619 n.138 ("The computer program that facilitates electronic filing might offer a 'point and shoot' feature in which the user has access to a list of all entities registered in the state, places the cursor on the one it wishes to file against, and 'clicks' on it.")

208. U.C.C. §§ 9-301(1), 9-307(e) (AM. L. INST. & UNIF. L. COMM'N 2022).

209. *Uniform Commercial Code*, UNIF. L. COMM'N, <https://www.uniformlaws.org/acts/uccws.org> [<https://perma.cc/2VKL-XFYA>].

click filing systems by the states was in place.

In the penultimate draft of the 1998 revision, the comment to UCC § 9-307 cited my 1995 article and referred to point-and-click as a “side benefit” of the change.

Determining the registered entity-debtor’s location by reference to the jurisdiction of organization could provide some important side benefits for the filing systems. A jurisdiction could structure its filing system so that it would be impossible to make a mistake in a registered entity-debtor’s name on a financing statement.²¹⁰

The final draft removed that paragraph and the reference to my article but retained the statutory provisions that required filing in the jurisdiction of organization.

2. Filing in the Entity Index Name

Under the 1998 revision, the name of a registered organization was “the name . . . indicated on the public record of the debtor’s jurisdiction of organization which shows the debtor to have been organized.”²¹¹ That is the name on the state’s entity index, not the name on the public organic records held by the state.

Although the law was in place for states to adopt point-and-click, the drafters made no further efforts to promote it. Maine linked its UCC and entity records electronically but did not eliminate the necessity to type the entity name as part of the filing and search process. Maine’s records are no longer linked. Some other states may have considered point-and-click, but none implemented it.²¹² The failure to do so is easily explained. The benefits of point-and-click are greatest in online filing, which was still in its infancy.

In 2010, a new set of drafters sufficiently muddied the language of UCC § 9-503(a)(1) that comment drafters could opine in comment 11 to UCC § 9-102 that “a published index of domestic corporations would not be a ‘public organic record’

210. U.C.C. § 9-307 cmt. 3 (AM. L. INST. & UNIF. L. COMM’N, Proposed Off. Draft 1997).

211. ELIZABETH WARREN, BANKRUPTCY AND ARTICLE 9: 2007 STATUTORY SUPPLEMENT 170 (2007).

212. *See, e.g.*, Kevin Kapral, Minutes of telephone conference between Kevin Kapral, Lynn M. LoPucki, and Bibi Black, Office of the Minnesota Secretary of State, June 29, 2023 (on file with author) (“[Point-and-click] was never discussed in Minnesota at the time and we would never have been able to do it. We had two systems that could not be joined together. [We’ve had] two systems since the 1970s.”).

because its issuance . . . does not form or organize the corporations named.”²¹³

Opponents of entity index names provided little evidence against them. Darrell W. Pierce, a leading commercial finance lawyer, asserted that in some cases, entity indexes “were truncated due to field size limitations” and “[a]s a result, the ‘database names’ are not identical to the ‘charter names.’”²¹⁴ He provided no evidence as to the scope of the problem. It may have affected only one or two states. To the extent such mismatches exist, the states should adopt an adequate field size and reverse the known truncations.

In our review of 579 financing statements filed in Florida, we found mismatches between the entity index names and public organic record names caused by punctuation, spacing, and misspelling.²¹⁵ In some states, mismatches may be caused by the state moving “The” from the beginning of a name to the end or by moving surnames within entity names to the beginning of the names on the entity index to “improve” alphabetization. For example, a state might change “The John Smith Corporation” to “Smith, John Corporation, The.”

In a name-based system, these kinds of problems would need to be dealt with through compaction or other kinds of search logic. But in a point-and-click system, the entity index can present the names in whatever manner users will find easiest to search. None of these customizations would be a problem because nothing is matched to the entity index names. Filers would search for their debtors on the entity index until they found them.

213. WARREN, *supra* note 211, at 72–73.

214. Darrell W. Pierce, *The Revised Article 9 Filing System: Did It Meet Its Objectives?*, 44 U.C.C. L.J. 1, 5 (2011). *But see* Pfau & Kelly Memo, *supra* note 201, at 1:

Our experience in Minnesota is that the public database of organization names is highly accurate and available at little or no cost. Organic documents, in contrast, are more difficult to obtain, involve higher transaction costs for both procurement and review, and, in some subset of cases, will reveal uncertainty in the organic documents regarding the true name of the entity.

Id.

215. *See supra* Section V.A.3.

IACA argued that some states maintained more than one list of entity names.²¹⁶ If that was a problem in 2009, it has been addressed. As part of our study, we found the entity index for each of the fifty states. These websites are easily found on a Google search for “[state name] business search.” We encountered no competing entity index in any state.

Despite the lack of evidence for the 2010 registered organization name amendments, the drafters promulgated them, and all fifty states adopted them.²¹⁷ To adopt point-and-click, the UCC drafters must clarify that the debtor’s name that should appear on a financing statement is the debtor’s name as it appears on the entity index.

C. *Point-and-Click’s Boundaries*

Point-and-click would apply to all domestic entities listed in the state’s entity index. Ideally, the system would include all entities formed or organized under the law of the state by filing a public organic record with the state. That would include corporations (for-profit and not-for-profit), LLCs, limited partnerships, and a miscellany of other entities. Because the states have entity records for them, the point-and-click system could also, at the state’s option, include LLPs. The types of entities included might differ from state to state. That difference would not impair the system’s operation. Filers or searchers in doubt about whether their debtor is covered could find out by searching in the debtor’s name on the entity index. If the entity did not appear on the index, the correct place to file would be in the UCC filing system of the jurisdiction of organization.

The system could help filers and searchers choose between the UCC and the entity records as the place to file and search. For example, if an online filer in the UCC system enters a name that matches a name on the entity index, the system should alert the filer to the probability it is filing in the wrong system. The system should not, however, prevent the filing because (1) the filing may be intended as precautionary; (2) the entity listed on the index might not be the entity against which the

216. Memorandum from Kelly Kopyt, Int’l Ass’n of Com. Adm’rs, to Joint Rev. Comm. on U.C.C. Article 9, Re: U.C.C. Article 9 Filing Issues (Feb. 2, 2009) (“IACA is concerned that some states maintain more than one database that could be referred to as a ‘public record,’ and there is also a concern as to what part or portion of a database constitutes the ‘public record.’”) (on file with author).

217. NAT’L CONF. OF COMM’RS ON UNIF. STATE L., AMENDS. TO UNIF. COM. CODE ARTICLE 9 (2010).

filer is attempting to file, in which case the UCC filing system might be the correct system in which to file; and (3) completing the filing might be the only way for the filer to preserve a legal right against the filing office or some other entity.

Hard copy filers should also be alerted if they file in the UCC filing system against a name that appears on the entity index. That alert would be triggered automatically by the filing office's entry of that name to the UCC index. The system that triggers those alerts would have to match the names on financing statements to the names on the entity index. But failure to achieve that electronic match would not invalidate filings; it would merely fail to alert a filer of the filer's potential filing error. The current name-based systems provide no alerts at all. The system should consider two names to match if the state would not permit their simultaneous use by different entities. All, or nearly all, states require that an entity name be sufficiently different from other entity names to distinguish them.²¹⁸ Mere differences in punctuation, spacing, and entity type designators are generally not considered sufficient to distinguish them.²¹⁹ When differences are not sufficient to distinguish names, the search logic should treat them as matches.

Point-and-click should apply to filings against transmitting utilities and agricultural liens when filed against domestic registered entities. Because the UCC drafters require these filings to be in the state where the collateral is located, they will not always be in the state of the registered organization's formation. If they are, the state has an entity record and the filing should be in that record. If they are not, the filing should be in the UCC filing records of the formation state. Once point-and-click is established nationally, the drafters should change those rules to require that agricultural liens and filings against transmitting utilities be in the state of the registered organization's formation. The drafters should then also revisit their rules regarding filings against registered organizations formed under federal laws. Conceptual simplicity in system design should be the goal.

218. *E.g.*, DEL. CODE ANN. tit. 8, § 102(a)(1) (2022) (“The name of the corporation . . . shall be such as to distinguish it upon the records in the office of the Division of Corporations in the Department of State from the names that are reserved on such records and from the names on such records of each other [entity of a list of types].”).

219. *See, e.g.*, CAL. CODE REGS. tit. 2, § 21004 (2024).

D. *Point-and-Click's Implementation*

Either the UCC's drafters or states acting independently can implement point-and-click. States acting independently would need to make nonuniform amendments to their versions of UCC and software programming changes for both online and hard copy filing. For those states, transition to the new system can be surprisingly quick and inexpensive.

1. Legislative Authorization

Eight amendments to the UCC would be necessary to implement point-and-click. The first amendment would be to UCC § 9-503(a)(1). It would require the use of the entity index name instead of the public organic record name in filings against registered organizations:

A financing statement sufficiently provides the name of the debtor . . . if the debtor is a registered organization . . . only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record entity index or the financing statement is filed in the debtor's entity record.

The second amendment would define "entity record" to mean the information maintained by the state and accessible to the public by clicking on the debtor's name on the entity index. The third amendment would define "entity index" as "the list of registered organizations designated by the Secretary of State to be the entity index or, if no such designation has been made, such other list as serves that purpose." The Secretary of State's power to designate the authoritative record responds to IACA's objection that some states might have more than one list that might be considered the entity index.

The fourth amendment would be to UCC § 9-516(b)(5)(B). It would require financing statements to indicate which of three entity types the filing is against: (1) an individual; (2) a registered organization; or (3) a nonregistered organization. If a financing statement did not make that distinction, the filing office could refuse to accept it. This amendment should also change the UCC financing statement form in UCC § 9-521(a) to require that the filer indicate whether the debtor is a registered organization. That indication would be necessary for the filing office to determine whether filings should be in the UCC or the entity records.

The fifth amendment would change UCC § 9-516(b)(3) to authorize the filing office to reject a filing that the filing office is unable to index because it did not sufficiently identify the debtor. Hard copy filers cannot point-and-click, so they must identify their debtors in some other manner. That might be by names or entity numbers cut and pasted from the entity index or acquired from some other source. The filing office would enter the debtor's name just as it now does. The software would then match the name to an entity record and place the financing statement in that record. The system could use compaction to overcome minor errors in that matching. That is, the filing office would use compaction search logic to determine whether to accept or reject filings instead of whether to disclose filings. If the name on a financing statement did not match a name on the entity index, the filing office would reject the financing statement and return it to the filer. By doing so, the new system would provide the feedback missing from the current system and ultimately achieve a near-zero rate of name-error ineffectiveness on hard copy filings.

The sixth amendment is to add to UCC §506(b)—the zero tolerance test—“This subsection shall not apply to financing statements filed in the entity records.” The seventh amendment would add this subsection (d) to UCC §507: “A change in the debtor's name shall not render a financing statement filed in the state's record of the debtor entity seriously misleading.” The eighth amendment would add a new UCC §9-519(d) that states: that “A record that appears in the state's record of the debtor entity has been indexed.”

2. Software Programming

The extent of the programming changes necessary to implement point-and-click would differ from state to state, depending on the entity record and UCC search systems in place. Florida's systems for the filing of, and access to, entity and UCC records could continue to function as they do now. Only six programming changes would be necessary.

a. Attach UCC filings to entities' web pages.

Florida uses a single web page to organize the state's information regarding each entity.²²⁰ Links to entity documents

220. *Search for Corporations, Limited Liability Companies, Limited Partnerships, and Trademarks by Name*, FLA. DEPT OF STATE, <https://search.sunbiz.org/Inquiry/CorporationSearch/ByName> [<https://perma.cc/VR8S-KDPX>].

are attached at the bottom of that page.²²¹ Links to UCC financing statements should be added to the page. By clicking on those links, users would open the financing statements.

b. Add a UCC filing link to the entity's web page.

The link would be a new point of entry to the existing system for filing financing statements against registered organizations.

c. Add a "Registered Organization" button.

The button would be added to the online UCC filing system on the "Add Debtor" popup page.²²² It would be a third alternative to filing against individuals and unregistered organizations. Instead of entering the debtor's name in a box, a user who clicked on the new button would choose an entity from the Sunbiz entity index. The Sunbiz entity index would function within the system for filing financing statements until the user pointed to an entity and clicked on it. The system would enter that debtor's name on the financing statement and post the financing statement to the entity's record when complete. The function that searched the entity index and attached a UCC filing to the corresponding entity record would be the same one used to populate the entity records with financing statements in the transition to point-and-click.

d. Add an alert function to the online UCC form.

If a filer chose "Organization" on the online UCC filing form but filled in the name of a registered organization, a popup window would warn the filer that it may be filing in the wrong system. To determine when the alert was appropriate, the program would (1) compare the name entered to all names on the entity index and (2) compare a list of ending noise words to the ending words of the organization name entered.

e. Add an alert function to the Registry's UCC search page.

The alert would prompt searchers to consider that they may need a registered organization search. It would provide a

221. *Id.*

222. See *Dashboard*, FLA. SECURED TRANSACTIONS REGISTRY, <https://online-filing.floridaucc.com/onlinefiling/dashboard> [<https://perma.cc/L5YZ-BXR>]. Initiating the filing of a financing statement on this page and choosing "Add Debtor" will display the current choice between filing against an organization or an individual.

“Search UCC filings against registered entities” link to the entity index.

f. Add a foreign entity alert.

A “foreign entity” is an entity formed under the law of another state or country.²²³ That other state or country is the correct place to file against a foreign entity. Foreign entities appear on Florida’s entity index.²²⁴ They are clearly marked as foreign. The markings notwithstanding, we encountered several UCC filings in Florida against foreign entities. In a point-and-click system, foreign entity records should be programmed not to accept UCC filings and to alert the would-be filer that any financing statement should be filed against the entity in the formation state.

For Florida, adopting point-and-click by making these programming changes would probably be less expensive than adopting a UCC search system based on standard search logic that reported only hits.

3. Transition

From the users’ point of view, Florida’s transition from name-based filing to point-and-click filing could occur on a single day. The state would set a transition date. After that date, filers would have full use of the new system.

On the transition date, the UCC filing office would transfer the existing images of filings against registered organizations from the UCC database to the registered entities’ entity records. The filing office could identify those filings electronically. They would be the filings with (1) debtor names in the “organization” box; (2) noise words specified by any of Florida’s entity laws; and (3) names that, when compacted, matched a compacted name on Florida’s entity index. Filings that did not meet all three requirements would not be transferred. The software necessary to make these transfers is the same software that would transfer hard copy filings to entity records after the transition.²²⁵

Non-transfer would not adversely affect any filer. The filings not transferred would be those against (1) unregistered organizations that should and would remain in the UCC

223. See DEL. CODE ANN. tit. 6, § 18-101(6) (2022).

224. *Search for Corporations, Limited Liability Companies, Limited Partnerships, and Trademarks by Name*, *supra* note 220.

225. *Supra* Section V.D.2.c.

database after transition or (2) registered organizations that were ineffective even after applying Florida's search logic. The number of filings against unregistered organizations would be small.²²⁶ An estimated five percent of filings against registered organizations would not match a name on the entity index.²²⁷

The Secretary of State would not be able to distinguish ineffective filings against registered organizations from effective filings against nonregistered organizations, so the Secretary of State should send the notice to both. The notice should explain that if the filing is against a registered organization, the filing may be ineffective, and the filer should refile.

CONCLUSIONS

Florida is experiencing a UCC filing system disaster. Over 230,000 financing statements—32% of those filed against registered entities—are ineffective, leaving the secured creditors who filed them unperfected. The Florida Supreme Court's 2022 decision in *1944 Beach Boulevard* imposed a zero-tolerance test on errors in debtors' names on financing statements. Despite that decision's notoriety, 14% of new filings in the state are also ineffective, and 5% of new filings would be ineffective even if Florida had adopted IACA search logic.

The immediate disaster results from a misunderstanding by the courts and commentators of how Florida's well-designed but antiquated and badly described search system works. Courts and commentators think the Florida system has no search logic because it identifies no "hits." This Article has demonstrated that Florida does have a search logic and does identify hits. On that basis, this Article has proposed a temporary solution:

226. "Organization" means "a person other than an individual." U.C.C. § 1-201(b)(25) (AM. L. INST. & UNIF. L. COMM'N 2022). That excludes sole proprietorships operating under fictitious names, even if their fictitious names are registered. *Bankston v. Pierce Cnty.*, 301 P.3d 495, 497 (Wash. Ct. App. 2013) ("When an individual does business as a sole proprietorship, the individual and the sole proprietorship are legally indistinguishable. An individual does not create a separate legal entity by doing business as a sole proprietor." (Citation omitted)). The UCC's definition of "person" includes a few categories that are not included in the UCC's definition of "registered organization." Compare U.C.C. §§ 1-201(b)(25) & (27), with U.C.C. § 9-102(a)(71). Those categories are partnerships, joint ventures, associations, trusts, estates, governments, and government instrumentalities. *Id.* Of the 411 financing statements in our two samples, only six (1.5%) were against unregistered organizations. All six were trusts used by individuals for estate planning, and all six had "trust" in the debtor's name.

227. See *supra* Table 5 and accompanying text.

Florida's UCC filing office should modify its website to make clear how the system works.

However, the UCC filing-system problem is deeper and wider than Florida's disaster. Name-based filing does not work. It unreasonably requires filers and searchers to determine independently the "public organic record" names of entities and enter them to financing statements and search requests. Making those determinations is so complex and expensive that a large majority of UCC filers and searchers risk invalidity by using the entity index name instead. The system provides rudimentary feedback and can fail from errors as small as a single character.

The UCC drafters adopted name-based filing in the 1940s. Prior to computerization, name-based filing was probably the best of bad alternatives. Despite computerization and vast increases in filing and searching volumes, the UCC drafters have struggled to make name-based filing and searching work. The system continues to generate unacceptably large numbers of errors. It is time to abandon name-based filing.

Point-and-click is a modern alternative. A point-and-click filing system is operating successfully in the United Kingdom. In a point-and-click system, the filings against a registered organization are stored in the organization's entity record and accessed through the state's entity index. Filers file financing statements in the entity record, where those filings are visible to searchers. In a point-and-click system, name errors are impossible because neither filers nor searchers enter debtors' names. Name amendments and name monitoring are unnecessary, the processes for filing and searching are less burdensome, and feedback from the system reduces non-name errors such as filing against the wrong debtor or filing in the wrong state. Point-and-click is an obviously superior system.

The UCC drafters should adopt a point-and-click system, and IACA should coordinate its implementation. That process, unfortunately, will take years. Because Florida's filing system disaster requires a quicker response, and the state's filing and search systems can be cheaply and easily converted to point-and-click, Florida is uniquely positioned to lead the nation in UCC filing system reform.

APPENDIX: Public Organic Record Availability by State²²⁸

(1) Single index: Does the state have a single index that includes the names of corporations, LLCs, limited partnerships?

(2) Recent articles: Are Articles free online or for purchase? “free,” “purchase,” “unavailable” if only the entity can purchase.

(3) Old articles: Are old Articles free online or for purchase? “Free” if we could download any articles before 1996. Nearly all states probably have undigitized articles for which they charge retrieval fees.

State	(1) Single index	(2) Recent Articles	(3) Old Articles
Alabama	yes	purchase	purchase
Alaska	yes	free	purchase
Arizona	yes	free	purchase
Arkansas	yes	purchase	purchase
California	yes	free	free
Colorado	yes	free	free
Connecticut	yes	free	free
Delaware	yes	purchase	purchase
Florida	yes	free	purchase
Georgia	yes	free	free
Hawaii	yes	purchase	purchase
Idaho	yes	free	free
Illinois	yes	free	purchase
Indiana	yes,	free	free
Iowa	yes	free	free
Kansas	yes	free	free
Kentucky	yes	free	free
Louisiana	yes	purchase	purchase
Maine	yes	purchase	purchase

228. Information for this table was gathered from the Secretary of States websites for the respective states.

Maryland	yes	some free	purchase
Massachusetts	yes	free	free
Michigan	yes	free	free
Minnesota	yes	purchase	purchase
Mississippi	yes	free	free
Missouri	yes	free	free
Montana	yes	purchase	purchase
Nebraska	yes	purchase	purchase
Nevada	yes	unavailable	unavailable
New Hampshire	yes	free	free
New Jersey	yes	purchase	purchase
New Mexico	yes	purchase	purchase
New York	yes	purchase	purchase
North Carolina	yes	free	purchase
North Dakota	yes	purchase	purchase
Ohio	yes	free	free
Oklahoma	yes	purchase	purchase
Oregon	yes	free	free
Pennsylvania	yes	purchase	purchase
Rhode Island	yes	free	free
South Carolina	yes	purchase	purchase
South Dakota	yes	free	purchase
Tennessee	yes	purchase	purchase
Texas	yes	purchase	purchase
Utah	yes	purchase	purchase
Vermont	yes	free	free
Virginia	yes	free	free
Washington	yes	free	free
West Virginia	yes	purchase	purchase
Wisconsin	yes	purchase	purchase
Wyoming	yes	free	free
<hr/>			
Totals	Yes 50	Free 28, purchase 21, unavailable 1	Free 21, purchase 28, unavailable 1
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