

NORTHERN ARAPAHO CODE

TITLE 18. UNIFORM COMMERCIAL CODE ¹

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¹ Upon the creation of "Title 18 - Uniform Commercial Code" with the adoption of "Article 9 - Secured Transactions Code," Articles 1 through 8 and several sections within Article 9 itself have been designated "[Reserved]" to allow the Tribe to expand the scope of these provisions in the future, as well as facilitate use of "Article 9 - Secured Transactions Code" by potential lenders and other parties by having the Code's numbering system more closely resemble that of the UCC as practiced in the states and within the exterior boundaries of other Indian reservations.

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ARTICLE IX
SECURED TRANSACTIONS CODE ²

CHAPTER 1: GENERAL PROVISIONS

Section 9-101 - Short Title. This Title 18, Article 9, may be cited as the Northern Arapaho Tribal Secured Transactions Code (hereafter "Code").

COMMENT

Source: MTSTA §9-101 together with modifications indicated below. (See also UCC §9-101.)

Changes: "Act" is replaced first by the phrase "Title 18, Article 9" and thereafter in this Article by the term "Code."

Citation: The correct citation for other Codes of the Northern Arapaho Tribe is by [Title] N.A.C. [Section]. For consistency with the MTSTA and UCC, citations to this Title include the Article (for example, 18 N.A.C. 9-101).

² As a general rule, "Comment" following each section includes: (1) the "Source" of that section's language or legal concepts; and (2) a description of the "Changes" made to those source materials when drafting that particular Section of this Code. Source materials are from either or both the "Model Tribal Secured Transactions Act" (MTSTA) as drafted by the Committee on Liaison with Native American Tribes of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and published in 2005 (May 2005 Official Text), together with August 2005 Technical Amendments (collectively referred to hereafter as "NCCUSL 2005") and/or the "Uniform Commercial Code, Revised Article 9. Secured Transactions" (UCC) as drafted by the National Conference of Commissioners of Uniform State Laws and published in 1998.

Exceptions to the general rule of describing all changes are numerous, however, and include the following: (1) reference to those instances where the term "Code" (Northern Arapaho Code, Title 9, Section 18-9-101 et seq.) replaces the term "Act" as used in the Model Tribal Secured Transactions Act (hereafter "MTSTA"); (2) reference to changes in the MTSTA's or the UCC's system of numbering sections, subsections, or sub-subsections; and (3) replacement of the MTSTA's reference to "this [Tribe] [Nation]" by the phrase "the Northern Arapaho Tribe" or language similar thereto.

Finally, for additional explanations of and comments on MTSTA and/or UCC provisions as incorporated herein, see Implementation Guide and Commentary to the Model Tribal Secured Transactions Act" (MTSTA's Implementation Guide), a companion document to the MTSTA, and/or the NCCUSL's Official Comments accompanying UCC Revised Article 9 - Secured Transactions.

Section 9-102 - Waiver of Sovereign Immunity; Presumption as to Limitation of Waiver.

(1) The sovereign immunity of the Northern Arapaho Tribe (Tribe) and/or any of its respective agencies or instrumentalities is not waived with respect to any provision or any transaction subject to this Code, absent a recorded, properly ratified, express waiver of sovereign immunity by resolution or ordinance of the Tribe specifically stating its intention to waive such sovereign immunity.

(2) Any waiver of sovereign immunity meeting the requirements of subsection (1) shall be presumed, except to the extent the written waiver expressly provides otherwise, to be:

(a) Granted only to the Northern Arapaho Tribal Court or other Tribal Court duly authorized by the Tribe;

(b) Limited in scope to monetary relief, not to exceed the amount of the contract regarding which performance is secured; and

(c) Authorization of foreclosure only upon collateral expressly pledged as security.

COMMENT

Source: MTSTA §9-102 together with modifications indicated below.

Changes: The stated presumption of sovereign immunity in the MTSTA has been rephrased for purposes of clarification and consistency with other Titles of the Tribe of the Wind River Reservation. The language in subsection (2) is unique to this Northern Arapaho Tribal Secured Transaction Code.

Section 9-103 - Purposes; Policies; Construction.

(1) The underlying purposes and policies of this Code are:

(a) To improve access to reasonably priced capital by tribal entities, businesses, and members subject to tribal jurisdiction;

(b) To promote economic development and continue

expansion of commercial practices within the exterior boundaries of the Wind River Reservation; and

(c) To make the law among the various jurisdictions more uniform, while ensuring notice and fair business dealings between the parties to secured transactions.

(2) This Code shall be liberally construed and applied to promote its underlying purposes and policies.

COMMENT

Source: MTSTA §9-103 together with modifications indicated below. (Variation of UCC Revised Art. 1 (2001) §1-102.)

Changes: To aid the reader, the title of MTSTA §9-628 was changed from "Purposes." Subsection (1) articulates all of the purposes and policies of this Code by adding those found in sub-subsections (a) and (c) to those excerpted from MTSTA §9-103 and presented as sub-subsection (b). Subsection (2) separately sets forth the general rule of construction and reflects the opening phrase of MTSTA §9-103.

Section 9-104 - [RESERVED]

COMMENT

Source: None.

Changes: For purposes of clarification and simplification, MTSTA §9-104 ("No Application to Property Not Alienable"), as modified, has been renumbered and incorporated within §18-9-111 ("Excluded Transactions").

Section 9-105 - [Reserved]

COMMENT

Source: MTSTA §9-105.

Changes: None.

Section 9-106 - General Definitions

(1) Subject to Section 18-9-114 (course of performance, course of dealing, and usage of trade), the meaning of a term not defined by this Code is to be derived from the context involved, with due consideration for consistency in meaning with uniform principles of commercial and contract law operative in the United States.

(2) In this Tribal Secured Transaction Code, the terms set forth below have the meanings thereafter provided.

(a) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(b) "Account" except as used in "account for" means:

(i) A right to payment of a monetary obligation, whether or not earned by performance:

(A) For property that has been or is to be sold, leased, licensed, assigned or otherwise disposed of;

(B) For services rendered or to be rendered;

(C) For a policy of insurance issued or to be issued;

(D) For a secondary obligation incurred or to be incurred;

(E) For energy provided or to be provided;

(F) For the use or hire of a vessel under a charter or other contract;

(G) Arising out of the use of a credit or charge card or information contained on or for use with the card; or

(H) As winnings in a lottery or other game of chance operated or sponsored by a tribe, governmental unit of a tribe, a person licensed or

authorized by a tribe or governmental unit of a tribe to operate the game, a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state;

(ii) Includes health care insurance receivables;
and

(iii) Does not include:

(A) Rights to payment evidenced by chattel paper or an instrument;

(B) Commercial tort claims;

(C) Deposit accounts;

(D) Securities or investment accounts, including assets held in investment accounts; or

(E) Rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(c) "Account debtor" means a person obligated on an account, chattel paper or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(d) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances including, but not limited to, course of performance, course of dealing, or usage of trade as provided in Section 18-9-114.

(e) "Agricultural lien" means an interest, other than a security interest, in farm products:

(i) Which secures payment or performance of an obligation for:

(A) Goods or services furnished in

connection with a debtor's farming operation; or

(B) Rent on real property leased by a debtor in connection with its farming operation;

(ii) Which is created by statute in favor of a person that:

(A) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(B) Leased real property to a debtor in connection with the debtor's farming operation; and

(iii) The effectiveness of which does not depend on the person's possession of the personal property.

(f) "As-extracted collateral" means:

(i) Oil, gas or other minerals subject to a security interest that:

(A) Is created by a debtor having an interest in the minerals before extraction; and

(B) Attaches to the minerals as extracted; or

(ii) Accounts arising out of the sale at the wellhead or minehead of oil, gas or other minerals in which the debtor had an interest before extraction.

(g) "Buyer in ordinary course of business" means a person that buys goods in good faith without knowledge that the sale violates the rights of another person in the goods and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of

that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under other applicable law may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(h) "Cash proceeds" means money, checks, deposit accounts, or the like.

(i) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate (constituting a "certificated security") as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(j) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. "Monetary obligation" means an obligation secured by the goods or owed under a lease of the goods and includes such an obligation with respect to software used in the goods. The term does not include:

(i) Charters or contracts involving the use or hire of a vessel; or

(ii) Records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(k) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(i) Proceeds to which a security interest attaches;

(ii) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(iii) Goods that are the subject of a consignment.

(l) "Commercial tort claim" means a claim arising in tort regarding which:

(i) The claimant is an organization; or

(ii) The claimant is an individual and the claim:

(A) Arose in the course of the claimant's business or profession; and

(B) Does not include damages arising out of personal injury to or the death of an individual.

(m) "Consignee" and "consignor" mean, in the case of the former, a merchant to which goods are delivered in a consignment, while in the case of the latter, a person that delivers goods to a consignee in a consignment.

(n) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(i) The merchant:

(A) Deals in goods of that kind under a name other than the name of the person making delivery;

(B) Is not an auctioneer; and

(C) Is not generally known by its creditors to be substantially engaged in selling the goods of others.

(ii) With respect to each delivery, the aggregate value of the goods is Three Thousand Dollars (\$3,000) or more at the time of delivery;

(iii) The goods are not consumer goods immediately before delivery; and

(iv) The transaction does not create a security interest that secures an obligation.

(o) "Consumer" means an individual who enters into a transaction primarily for personal, family or household purposes.

(p) "Consumer goods" means goods that are used or bought for use primarily for personal, family or household purposes.

(q) "Consumer transaction" means a transaction in which:

(i) An individual incurs an obligation primarily for personal, family or household purposes; and

(ii) A security interest secures the obligation.

(r) "Continuation statement" means an amendment of a financing statement which:

(i) Identifies, by its file number, the initial financing statement to which it relates; and

(ii) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(s) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by this Code as supplemented by any other applicable laws.

(t) "Control" means:

(i) With respect to a certificated security in registered form, that the certificate is delivered to the purchaser and is either endorsed to the secured party or in blank by an effective endorsement or else registered in the name of the secured party, upon

original issue or registration of transfer by the issuer;

(ii) With respect to an investment account, that:

(A) The secured party has become the holder of the investment account;

(B) The investment intermediary has agreed that it will comply with orders relating to the investment account originated by the secured party without further consent by the holder of the investment account;

(C) Another person has control of the investment account on behalf of the secured party or, having previously acquired control of the investment account, acknowledges that it has control on behalf of the secured party; or

(D) A security interest has been granted by the holder of the investment account to the holder's own investment intermediary; or

(iii) With respect to mutual fund shares that are not in an investment account, that:

(A) The mutual fund shares have been delivered to the secured party under applicable law; or

(B) The issuer of the mutual fund shares has agreed that it will comply with instructions originated by the secured party without further consent by the debtor.

(u) "Debtor" means:

(i) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor on the debt secured;

(ii) A seller of accounts, chattel paper, payment intangibles or promissory notes; or

(iii) A consignee.

(v) "Document" means a record that:

(i) In the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers;

(ii) Purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass; and

(iii) Includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods.

(w) "Equipment" means goods other than inventory, farm products or consumer goods.

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

(i) Crops grown, growing, or to be grown, including:

(A) Crops produced on trees, vines and bushes; and

(B) Aquatic goods produced in aquacultural operations;

(ii) Livestock, born or unborn;

(iii) Supplies used or produced in a farming operation; or

(iv) Products of crops or livestock in their unmanufactured states.

(y) "Financing statement" means a record or records composed of an initial financing statement and any filed

record relating to the initial financing statement.

(z) "Fixture filing" means the filing of a financing statement covering goods that are, or are to become, fixtures and satisfying the requirements of this Code relating to contents of financing statements. The term includes the filing of a financing statement covering goods of a transmitting utility which are, or are to become, fixture.

(aa) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(bb) "General intangible" means any personal property, including things in action other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, and oil, gas or other minerals before extraction. The term includes payment intangibles and software.

(cc) "Goods" means all things that are movable when a security interest attaches. The term:

(i) Includes fixtures;

(ii) Includes standing timber that is to be cut and removed under a conveyance or contract for sale;

(iii) Includes the unborn young of animals;

(iv) Includes crops grown, growing, or to be grown, even if the crops are produced on trees, vines or bushes;

(v) Includes manufactured homes; and

(vi) Includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:

(A) The program is associated with the goods in such a manner that it customarily is considered part of the goods; or

(B) By becoming the owner of the goods, a person acquires a right to use the program in connection with the goods; but

(vii) Does not include:

(A) A computer program embedded in goods that consists solely of the medium in which the program is embedded; or

(B) Accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, money, or oil, gas or other minerals before extraction.

(dd) "Health care insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided or to be provided.

(ee) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include:

(i) A security or an investment account;

(ii) A letter of credit; or

(iii) A writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(ff) "Inventory" means goods, other than farm products, which:

(i) Are leased by a person as lessor;

(ii) Are held by a person for sale or lease or to be furnished under a contract of service;

(iii) Are furnished by a person under a contract of service; or

(iv) Consist of raw materials, work in process, or materials used or consumed in a business.

(gg) "Lien creditor" means:

(i) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(ii) An assignee for benefit of creditors from the time of assignment;

(iii) A trustee in bankruptcy from the date of the filing of the petition; or

(iv) A receiver in equity from the time of appointment.

(hh) "Manufactured home" means any structure meeting the definitional requirements found under 42 U.S.C. Section 5402(6) (2004), as the same may be amended from time to time.

(ii) "Manufactured-home transaction" means a secured transaction:

(i) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(ii) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(jj) "Obligor" means:

(i) A person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

(A) Owes payment or other performance of the obligation;

(B) Has provided property other than the collateral to secure payment or other performance of the obligation; or

(C) Is otherwise accountable in whole or in part for payment or other performance of the obligation; but

(ii) The term does not include issuers or nominated persons under a letter of credit.

(kk) "Organization" means a person other than an individual.

(ll) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(mm) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(nn) "Personal property" includes, but is not limited to, the following except to the extent regulation of said property under this Code is precluded by federal law:

(i) Dwellings, manufactured homes, and trailers on leased trust land;

(ii) Leasehold or possessory interests in trust property; and

(iii) Income from the lease of trust property.

(oo) "Proceeds" means the following property:

(i) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(ii) Whatever is collected on, or distributed on account of, collateral;

(iii) Rights arising out of collateral;

(iv) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(v) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(pp) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(qq) "Public-finance transaction" means a secured transaction in connection with which:

(i) Debt securities are issued;

(ii) All or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(iii) The debtor, obligor, secured party, account debtor, or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is, or is a governmental unit of, the Tribe, another federally recognized Indian tribe or nation, or a state.

(rr) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(ss) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(tt) "Secondary obligor" means an obligor to the extent that:

(i) The obligor's obligation is secondary; or

(ii) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(uu) "Secured party" means:

(i) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(ii) A person that holds an agricultural lien;

(iii) A consignor;

(iv) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(v) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(vi) A person that holds a security interest arising under other applicable law.

(vv) "Security agreement" means an agreement that creates or provides for a security interest.

(ww) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to this Code. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to the provisions of Section 18-9-109 (lease distinguished from security interests).

(xx) "Send," in connection with a record or notification, means:

(i) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission prepaid and addressed to any address reasonable under the circumstances; or

(ii) To cause the record or notification to be received within the time it would have been received if properly sent under (i) of this sub-subsection.

(yy) "Sign" or "signed" means, with present intent to authenticate any record:

(i) To execute or adopt a signature or a tangible symbol; or

(ii) To attach or logically associate an electronic symbol, sound or process to or with a record.

(zz) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, including any political subdivision, department, agency or instrumentality thereof.

(aaa) "Termination statement" means an amendment of a financing statement which:

(i) Identifies, by its file number, the initial financing statement to which it relates; and

(ii) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(bbb) "Tribal business day" means a day on which the offices of the government of the Tribe are open for purposes of conducting their ordinary business.

COMMENT

Source: MTSTA §9-106 together with modifications indicated below. (Variation of UCC Revised Art. 1 (2001) §1-201(3), (9), (11), (15), (29), (32), (33) and (36) and UCC §9-102.)

Changes: Subsection (1) both repositions MTSTA §9-106(b) to the beginning of the Section, due to the introductory nature of its content, and substitutes "Section 18-9-114 (course of performance, course of dealing, and usage of trade)..." for MTSTA §9-106(b)'s phrase "(s)subject to the provisions of this Code dealing with course of performance, course of dealing, and usage of trade (9-114)... ." Sub-subsection (2)(d) adds the phrase "...but not limited to..." for purposes of clarifying that the "circumstances" may include matters other than those referenced in §18-9-114. Sub-subsection (2)(e)'s definition of "agricultural lien" is based on that found in UCC §9-102(a)(5). Sub-subsection (2)(i)'s definition of "certificate of title" incorporates, in principal, the meaning of "certificated security" found in MTSTA §9-106(a)(10). Sub-subsections (2)(k), (2)(jj) and (2)(uu) reinsert the type of encumbrance known as an "agricultural lien" within the definitions of "collateral," "obligor," and "secured party" as these are defined in UCC §9-102(a)(12), (a)(59) and (a)(72), respectively. Sub-subsection (2)(m) combines the meaning of "consignee" and "consignor" as otherwise defined in MTSTA §9-106(a)(16) and (18). Sub-subsection (2)(t) defines "control" to combine and simplify the three definitions otherwise found in MTSTA §9-106(a)(22A), (22B) and (22C). Sub-subsection (2)(v)'s definition of "document" rephrases the language in MTSTA §9-106(a)(24) for purposes of clarification and consistency. Sub-subsection (2)(x)'s definition of "farm products" intentionally omits reference to "wild game." Sub-subsection (nn)'s definition of "personal property" was added to clarify that the Tribe asserts jurisdiction over regulation of trust property under this Code except to the extent prohibited by federal law. Sub-sub-subsection (2)(qq)(iii) adds "...another Indian tribe or nation" as possible types of governmental entities that, when party to a secured transaction, may qualify it as a "public-finance transaction." Sub-subsection (2)(ww) substitutes "...Section 18-9-109 (distinguishing leases from security interest)..." for MTSTA's phrase "...the provisions of this Code distinguishing leases from security interests (Section 9-109)." Sub-subsection (2)(yy) makes the definition of "sign" or else the added term, "signed," interchangeable. Sub-subsection (2)(bbb), and this Code generally, refers to "a state" without using capitalization, similar to this Code's treatment of the phrase "a tribe," also without capitalization. Sub-subsection (2)(zz) has been reworded for purposes of clarification. Finally, subsection (2) omits the following denoted MTSTA §9-106 sub-subsections after considering the limited value of these definitions and the desire for brevity, when possible: (a)(27) "farming operation;" (a)(36) "investment account;" (a)(36A) "investment intermediary;" (a)(47) "purchaser;" (a)(52) "security;" and (a)(57) "software."

Section 9-107 - Definition of Notice, Knowledge, Discovery and Receipt.

(1) "Notice."

(a) Subject to sub-subsection (4)(b), below, a person has "notice" of a fact if the person:

(i) Has actual knowledge of it;

(ii) Has received a notice or notification of it;
or

(iii) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(2) "Knowledge" or "knows" means actual knowledge.

(3) "Discover," "learn," or words of similar import refer to knowledge rather than to reason to know.

(4) "Receipt."

(a) Subject to sub-subsection (b) of this subsection (4), a person "receives" a notice or notification when:

(i) It comes to that person's attention; or

(ii) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(b) Terms of notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the

attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence;

(i) An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines;

(ii) Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

COMMENT

Source: MTSTA §9-107 together with modifications indicated below. (Variation of UCC Revised Art. 1 (2001) §1-202.)

Changes: For purposes of clarification, the title of MTSTA §9-107 was changed from "Notice; Knowledge." Various subsections and sub-subsections of MTSTA §9-107 have been rearranged, combined and/or reformatted for purposes of simplification and clarification; however, sub-subsection (4)(b) is equivalent to MTSTA §9-107(f) for purposes reference to "...subsection f..." in MTSTA §9-107(a) and (e).

Section 9-108 - Definition of Value. Except as otherwise provided under applicable laws dealing with negotiable instruments, bank deposits, letters of credit, and bulk transfers and sales, a person gives "value" for rights if the person acquires them:

(1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) As security for, or in total or partial satisfaction of, a pre-existing claim;

(3) By accepting delivery under a pre-existing contract for

purchase; or

(4) In return for any consideration sufficient to support a simple contract.

COMMENT

Source: MTSTA §9-108 together with variations referenced below. (Variation of UCC Revised Art. 1 (2001) §1-204.)

Changes: For purposes of clarification, the title of MTSTA §9-108 was changed from "Value."

Section 9-109 - Definition of Lease vs. Security Interest.

(1) Whether a transaction in the form of a lease creates a "lease interest" or "security interest" is determined by the facts of each case.

(2) A transaction in the form of a lease creates a security interest if the lessee's consideration, to be paid to the lessor for the right to possession and use of the goods, is both an obligation for the term of the lease which is not subject to termination by the lessee and:

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(d) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(3) A transaction in the form of a lease does not create a security interest merely because:

(a) The present value of the lessee's consideration, to be paid to the lessor for the right to possession and use of the goods, is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) The lessee assumes risk of loss of the goods;

(c) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees or service or maintenance costs;

(d) The lessee has an option to renew the lease or to become the owner of the goods;

(e) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(f) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

COMMENT

Source: MTSTA §9-109 together with modifications indicated below. (Variation of UCC Revised Art. 1 (2001) §1-203.)

Changes: For purposes of clarification, the title to MTSTA §9-109 was changed from "Lease Distinguished from Security Interest." The phrase "...to be paid the lessor for the right to possession and use of the goods..." (subsection (2) and sub-subsection (3)(a)) has been set off by commas to clarify the meaning of MTSTA §§9-109(b) and (c)(1).

Section 9-110 - General Scope; Condition for Encumbering Per Capita Property.

(1) Except as otherwise provided in Section 18-9-111 (excluded transactions), this Code applies to the following transactions within the jurisdiction of the Tribe:

(a) Any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) An agricultural lien;

(c) A sale of accounts, chattel paper, payment intangibles or promissory notes;

(d) A consignment;

(e) Any other commercial activities, including sales of goods, leases of goods, other transactions in goods, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, documents of title, and investment securities, to the extent those commercial activities are implicated in sub-subsections (a), (b), (c) or (d); and

(f) Transactions secured by the pledge or assignment of a tribal member's per capita funds to the extent that any such transaction is pre-approved in writing by the tribal member's respective tribal business council (Eastern Shoshone Business Council or Northern Arapaho Business Council, as the case may be). 6 N.A.C. 106 governs the method of approval by or on behalf of the Northern Arapaho Business Council ("NABC").

(2) Subject to Section 18-9-114 (course of performance, course of dealing, and usage of trade), the application of this Code to a type of transaction enumerated in sub-subsection (1)(e) is to be derived from the context involved, with due consideration for consistency in application with uniform principles of commercial and contract law operative in the United States.

(3) The application of this Code to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Code does not apply.

COMMENT

Source: MTSTA §§9-104, 9-110, UCC §9-109, and 25 U.S.C. §613 together with modifications indicated below.

Changes: For purposes of simplification, MTSTA §9-110(a) has been reworded in subsection (1). Sub-subsection (1)(b) reinserts "agricultural liens," in accordance with UCC Article 9 §9-109(a)(2), as being within the scope of this Code. Sub-subsection (1)(f) contains new language meant to compliment §18-9-111(15) which, when read together, alert the reader to 25 U.S.C. §613's authorization of an encumbrance of a tribal member's future per capita funds provided the tribal member's respective business council first authorizes that encumbrance. Subsection 2 replaces MTSTA §9-110(b)'s phrase "(s)ubject to the provisions of this [act] dealing with course of performance, course of dealing, and usage of trade (§9-114)..." with the words "(s)ubject to Section 18-9-114 (dealing with course of performance, course of dealing, and usage of trade)..."

Section 9-111 - Excluded Transactions; Federally Restricted and Per Capita Property. This Code does not apply to:

- (1) A landlord's lien, other than an agricultural lien;
- (2) A lien, other than an agricultural lien or tribal lien, given by statute or other rule of law for services or materials, but Section 18-9-318(11) (possessory liens) applies with respect to priority of the lien;
- (3) An assignment of a claim for wages, salary or other compensation of an employee;
- (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- (5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
- (6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- (7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a pre-existing indebtedness;
- (8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health care insurance receivable and any subsequent assignment of the right to payment, but Sections 18-9-315 and 18-9-317 apply with respect to proceeds and

priorities in proceeds;

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) A right of recoupment or set-off, but the section on agreements not to assert defenses against assignees (Section 18-9-403) applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(a) Liens on real property in Sections 18-9-202(4) and 18-9-308(3);

(b) Fixtures in Section 18-9-319;

(c) Fixture filings in Sections 18-9-501 and 18-9-502;
and

(d) Security agreements covering personal and real property in Section 18-9-604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, except as provided with respect to proceeds (Section 18-9-315) and priorities in proceeds (Section 18-9-317(3));

(13) An assignment of a deposit account, except as provided with respect to proceeds and priorities in proceeds; or

(14) Transactions secured by any property interest the sale, transfer, or encumbrance of which is otherwise restricted by federal law including, but not limited to, 25 U.S.C. Section 613, as the same may be amended from time to time, prohibiting encumbrance of a tribal member's per capita funds except to the extent the member's governing tribal council (Eastern Shoshone Business Council or NABC, as the case may be) has pre-approved the same in accordance with Section 18-9-110(1)(e) (transactions involving per capita property within the scope of this Code). 6 N.A.C. 106 governs the method of approval by or on behalf of the NABC.

COMMENT

Source: MTSTA §§9-104 and 9-111 and UCC §9-109 together with modifications indicated below.

Changes: For purposes of clarification, the title and contents of MTSTA §§9-104 (as modified) and 9-111 were combined. The title of MTSTA §9-104 was first modified from "No Application to Property Not Alienable" to "Federally Restricted & Per Capita Property" and then appended to MTSTA §9-111's title, "Excluded Transactions." Consistent with the purpose of this Code, generally, subsections (1) and (2) reinsert reference to "agricultural liens" in accordance with UCC §9-109(d)(1). For purposes of clarity, subsection (2) was changed to include reference to "tribal liens" as merely one type of "lien... given by statute or other rule of law for services or materials" (rather than listing "tribal liens" separately as in MTSTA §9-111(c)) and to parenthetically describe the subject of Section 18-9-318(k) which this subsection cross-references. Sub-subsections (11)(a) and (b) were added, consistent with UCC §9-109(d)(11)(A) and (B), to more accurately cross-reference this Code's (and the MTSTA's) assertion of jurisdiction over matters directly or indirectly related to real property. Sub-subsection (11)(c) and subsection (12) add numbered cross-references to those Code provisions which they otherwise generally describe. The content of MTSTA §9-104 was incorporated into MTSTA §9-111 as subsection (14) after first modifying MTSTA §9-104's language to emphasize the Tribe's right to legislate regarding inalienable property, provided tribal law does not conflict with federal law on the subject. Subsection (14) also modifies MTSTA §9-104 by its cross-reference to 25 U.S.C. §613 (current citation to federal law governing encumbrance of a Eastern Shoshone or Northern Arapaho tribal member's future per capita payments) and to Section 18-9-110 (this Code's governance of secured transactions involving a Eastern Shoshone or Northern Arapaho tribal member's future per capita funds).

Section 9-112 - Administration of Code; Authority to Promulgate Regulations.

(1) The NABC of the Wind River Reservation is empowered to administer this Secured Transaction Code and to adopt regulations, substantive and procedural, as may be necessary for the proper and efficient administration, implementation, and enforcement of this Code's provisions. By resolution of the Council, the Council may delegate only its administrative authority to a designated tribal department, agency or instrumentality.

(2) Following formal adoption of proposed regulations by the NABC:

(a) Regulations will be effective only upon the

publication of a notice;

(b) Publication of a notice requires publication in the legal section of a newspaper of general circulation throughout the Wind River Reservation at least once a week for three (3) consecutive weeks and further requires a mailing of the notice to designated individuals or entities. The notice shall identify or otherwise describe the terms and conditions of the regulations;

(c) A regulation will become effective thirty (30) days after the first publication of notices or on the date otherwise specified therein;

(d) A copy of the regulations will be filed and made available for public inspection at the Office of the NABC; and

(e) The NABC may, but is not required to, publish proposed regulations in order to provide interested parties an opportunity to comment. Notice of a proposal to comment will be published and the text made available as described in sub-subsection (2)(b). The notice will invite written comments and give a deadline for their submission not less than thirty (30) days after the first publication of notice. The NABC may, but is not obligated to, hold a public hearing, in which case it will announce the time and place at which oral testimony will be heard.

COMMENT

Source: MTSTA §9-112, L&OC §11-8-2(A) together with modifications indicated below.

Change: Subsection (1) modifies language in MTSTA §9-112 in order that its language properly reflects the governmental structure of the Tribe having jurisdiction within the exterior boundaries of the Wind River Reservation. Unlike MTSTA §9-112, which grants tribal administrative departments or divisions the authority to promulgate regulations, Subsection (1) restricts authority for promulgation of regulations to the NABC. Subsection (2) sets forth the procedure by which the NABC may adopt those regulations, which procedure is intended to be consistent with other tribal law.

Section 9-113 - Obligation of Good Faith. Every contract or duty within this Code imposes, with respect to its performance or

enforcement, an obligation of good faith that each party be honest in fact and act in a manner that is consistent with reasonable commercial standards of fair dealing.

COMMENT

Source: MTSTA §9-113 together with modification indicated below. (Variation of UCC Revised Art. 1 (2001) §§1-201(b)(20) and 1-304.)

Changes: For purposes of clarity and consistency with UCC §§1-201(b)(20) and 1-304, MTSTA §9-113 was changed to include the prepositional phrases "of good faith" to describe the obligation imposed by this Section and "in fact" to describe the degree of honesty required.

Section 9-114 - Course of Performance; Course of Dealing; Usage of Trade.

(1) "Course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(a) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(b) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(2) "Course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(3) "Usage of trade" is any practice or method of dealing, having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(4) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which

they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(5) Except as otherwise provided in subsection (6), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(a) Express terms prevail over course of performance, course of dealing, and usage of trade;

(b) Course of performance prevails over course of dealing and usage of trade; and

(c) Course of dealing prevails over usage of trade.

(6) Subject to other applicable law, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(7) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

COMMENT

Source: MTSTA §9-114. (Variation of UCC Revised Art. 1 (2001) §1-303.)

Changes: None; however, note that subsection (6)'s reference to "other applicable law" as this phrase appears in MTSTA §9-114(f) is a substitution for UCC §1-303's cross-reference to "§2-209" (UCC Art. 2, 2002 proposed amendments).

Section 9-115 Purchase-Money Security Interest.

(1) In this Section:

(a) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(b) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(2) "Purchase-money security interest in goods" is a purchase-money security interest:

(a) To the extent that the goods are purchase-money collateral with respect to that security interest;

(b) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(c) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(3) "Purchase-money security interest in software" is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(a) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(b) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(4) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(5) In a transaction other than a consumer transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(a) In accordance with any reasonable method of application to which the parties agree;

(b) If sub-subsection (a) does not apply, in accordance with the intention of the obligor manifested at or before the time of payment; or

(c) If neither sub-subsection (a) nor sub-subsection (b) applies, in the following order:

(i) To obligations that are not secured; and

(ii) If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(6) In a transaction other than a consumer transaction, a purchase-money security interest does not lose its status as such, even if:

(a) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(b) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(c) The purchase-money obligation has been renewed, refinanced, consolidated or restructured.

(7) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

COMMENT

Source: MTSTA §9-115 together with modification indicated below. (Variation of UCC §9-103.)

Changes: None.

Section 9-116 - Sufficiency of Property Description.

(1) Except as otherwise provided in subsections (2) and (3), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(2) In a security agreement, a description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(3) A description only by type of collateral defined in this Code is an insufficient description of:

- (a) A commercial tort claim; or
- (b) Any collateral in a consumer transaction.

COMMENT

Source: MTSTA §9-116 together with modification indicated below. (Variation of UCC §9-108).

Changes: For purposes of clarification, the title to MTSTA §9-116 was changed from "Sufficiency of Description." For purposes of simplification, subsection (3)(b) was rephrased.

Section 9-117 - Parties' Power to Choose Applicable Law.

(1) Generally, except as provided in subsection (2) and unless preempted by federal law, if a transaction bears a reasonable relation to Tribe and also to another Indian tribe or nation, state or country, the parties may agree that the law either of the Tribe or of such other Indian tribe or nation, state or country governs their rights and duties. In the absence of an effective agreement, this Code applies to all transactions bearing an appropriate relation to the Tribe. The fact that the law of another Indian tribe, nation, state or country is applicable as provided in this Section does not affect the jurisdiction or venue of the Tribe, nor does it waive the

sovereign immunity of the Tribe or of any agency or instrumentality thereof.

(2) An agreement otherwise effective under subsection (1) is ineffective in any of the following cases:

(a) In a consumer transaction;

(b) To the extent the agreement purports to vary the provisions of this Code concerning the law governing perfection and priority (Sections 18-9-301 to 18-9-307, Subchapter 1. "Law Governing Perfection and Priority," Chapter 3. "Perfection and Priority"); or

(c) To the extent that application of the law of the Indian tribe or nation, state or country designated in the agreement would be contrary to a fundamental policy of the Tribe.

COMMENT

Source: MTSTA §9-117. (Variation of UCC Revised Art. 1 (2001) §1-105).

Changes: MTSTA §9-117(b)(2)'s phrase "Subpart 1. of Part 3 of this [act]..." is replaced by the phrase "Sections 18-9-301 to 18-9-307, Subchapter 1. "Law Governing Perfection & Priority," Chapter 3. "Perfection and Priority."

**CHAPTER 2: EFFECTIVENESS,
ATTACHMENT AND RIGHTS OF PARTIES**

Section 9-201 - Effectiveness of Security Agreement; Commercially Unreasonable Terms.

(1) Except as otherwise provided in subsections (2), (3) and (4), other Sections of this Code, or other applicable law, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(2) Any terms of an agreement contrary to one or more of the following provisions shall be unenforceable as commercially unreasonable, and, except regarding those in which the Tribe as debtor or obligor waives the protections of this Section by express reference hereto, a party who asserts or seeks to enforce

said commercially unreasonable terms shall be subject to those penalties set forth in sub-subsection (d) below:

(a) No agreement between the parties shall limit the amount, type, nature, measure, or scope of damages resulting from breach of the agreement;

(b) No agreement between the parties shall require that mandatory arbitration or any other exclusive form of dispute resolution be held outside the exterior boundaries of the Wind River Reservation;

(c) No agreement between the parties shall permit arbitration of disputes involving tribal secured transactions except by persons:

(i) Licenced by the American Arbitration Association;

(ii) Licensed as a Tribal Advocate by the Northern Arapaho Tribal Court or other Tribal court duly authorized by the Tribe; or

(iii) Agreed upon in writing by all the parties subsequent to when the dispute giving rise to the arbitration arises;

(d) In addition to the remedies provided in Sections 18-9-625 through 18-9-629 (Chapter 6 "Default," Subchapter 2. "Noncompliance with Code"), if compliance with this Section by a secured party or assignee, the court:

(i) May deny a deficiency judgment to a secured party;

(ii) May award punitive, as well as actual, damages against the secured party and/or person actually repossessing the collateral if different from the secured party in an amount equal to the greater of:

(A) Twice the amount of interest the obligor was to have paid over the life of the security agreement; or

(B) The sum of One Thousand Five Hundred

Dollars (\$1,500); and

(iii) Shall award to a prevailing obligor and/or debtor the obligor's and/or debtor's reasonable attorneys' fees and costs to obtain and collect the judgment.

(3) A transaction subject to this Code is subject to any applicable rule of law which establishes a different rule for consumers and:

(a) Any other statute or regulation that regulates the rates, charges, agreements and practices for loans, credit sales or other extensions of credit; and

(b) Any consumer-protection statute or regulation.

(4) In case of conflict between this Code and a rule of law, statute, or regulation described in subsection (2), those in subsection (2) shall prevail.

COMMENT

Source: MTSTA §9-201 together with modifications indicated below. (Variation of UCC §9-201(a), (b) and (c).)

Changes: The title of MTSTA §9-201 was changed from "General Effectiveness of Security Agreement" to reflect the additional provisions found in Subsection (2) regarding "commercially unreasonable" contract terms. Subsections (1) and (4) rephrase the contents of MTSTA §9-201(a) and (c) for purposes of simplification and clarification. Subsection (2) expresses the Tribe's considered policy regarding certain contract terms deemed per se "commercially unreasonable" and perhaps more typically found in versions of the Uniform Commercial Code's Article 2 "Sales." To avoid confusion regarding choice-of-law and possible misunderstanding about the applicability of federal and/or state law within the exterior boundaries of the Wind River Reservation, subsection (3) omits MTSTA §9-201(b)'s reference to "applicable tribal, federal or State" when describing any other statute or regulation regulating rates, charges, etc.

Section 9-202 - Attachment/Enforceability of Security Interest; Formal Requisites; Miscellaneous.

(1) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the

collateral, unless an agreement expressly postpones the time of attachment.

(2) Except as otherwise provided in subsections (3) through (5), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(a) Value has been given;

(b) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(c) One of the following conditions is met:

(i) The debtor has signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(ii) The collateral is in the possession of the secured party pursuant to the debtor's security agreement and this Code; or

(iii) The collateral is a security or an investment account and the secured party has control pursuant to the debtor's security agreement.

(3) Subsection (2) is subject to a collecting bank's interest in items under applicable law or agreement, any recognized security interest of a letter-of-credit issuer or nominated person under applicable law or agreement, a security interest arising under recognized sales and leases law, and a security interest in a security or in an investment account arising due to the purchase or delivery of the financial asset.

(4) The attachment of a security interest:

(a) In collateral gives the secured party the rights to proceeds provided by this Code;

(b) In a right to payment or performance secured by a security interest, mortgage or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien;

(c) In an investment account is also attachment of a security interest in any securities or commodity contracts credited to the investment account.

(5) Law other than this Code determines when and if another person becomes bound by a security agreement entered into by a debtor.

COMMENT

Source: MTSTA §9-202 together with modifications indicated below. (Variation of UCC §§9-203 and 9-315(a)(2).)

Changes: For purposes of simplification, the title of MTSTA §9-202 was changed from "Attachment and Enforceability of Security Interest; Proceeds; Support Obligations; Formal Requisites." The phrase "Formal Requisites" in MTSTA §9-202's title to this Section has been replaced by the term "Miscellaneous" to describe those topics covered by MTSTA §9-202(e), (f), (g) and (h). MTSTA §9-202's sub-subsections (d), (e) and (f) have been combined in subsection (4) for the purpose of simplification.

Section 9-203 - After-Acquired Collateral; Future Advances.

(1) Except as otherwise provided in subsection (2), a security agreement may create or provide for a security interest in after-acquired collateral.

(2) A security interest does not attach under a term constituting an after-acquired property clause to:

(a) Consumer goods, other than an accession when given as additional security, unless the debtor acquired rights in them within ten (10) days after the secured party gives value; or

(b) A commercial tort claim.

(3) A security agreement may provide that collateral secures, or that accounts, chattel paper, or payment intangibles are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

COMMENT

Source: MTSTA §9-203 and UCC §9-204 together with modifications indicated below.

Changes: Subsection (3), for purposes of clarification and consistent with

punctuation used in UCC §9-204(c), inserts commas after the phrases "...that collateral secures..." and "...in connection with... ."

Section 9-204 - Rights/Duties When Collateral in Secured Party's Possession/Control.

(1) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession.

(2) A secured party having possession or control of securities or control of an investment account may create a security interest in the collateral.

(3) If the secured party is a consignor or a buyer of accounts, chattel paper, payment intangibles or promissory notes, subsection (1) does not apply unless the secured party is entitled under an agreement:

(a) To charge back uncollected collateral; or

(b) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral.

COMMENT

Source: MTSTA §9-204 together with modifications indicated below. (Variation of UCC §9-207.)

Changes: Subsection (3) repositions the phrase "...a consignor..." for purposes of clarification.

Section 9-205 - Additional Duties of Certain Secured Parties.

(1) This Section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(2) Within ten (10) tribal business days after receiving a signed demand by the debtor, a secured party:

(a) Having control of an investment account shall send to the investment intermediary with which the investment account is maintained a signed statement that releases the investment intermediary from any further obligation to comply with instructions originated by the secured party; and

(b) Shall send to an account debtor that has received notification of an assignment to the secured party as assignee under Section 18-9-403 (rights of assignees, discharge of account debtors, and notification of assignments) a signed record that releases the account debtor from any further obligation to the secured party. However, this sub-subsection does not apply to an assignment constituting the sale of an account, chattel paper or payment intangible.

COMMENT

Source: MTSTA §9-205 together with modifications indicated below. (Variation of UCC §§9-208 and 9-209.)

Changes: MTSTA §9-205(b) and (c) were combined in subsection (2) for the purpose of simplification, and sub-subsection (2)(b) reworded for purposes of clarification.

Section 9-206 - [Reserved]

COMMENT

Source: MTSTA §9-206.

Changes: None.

Section 9-207 - Request for Accounting, List of Collateral, or Statement of Account.

(1) A debtor may sign a record indicating what the debtor believes to be the aggregate amount of unpaid indebtedness as of a specified date and send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral, a debtor may

similarly request the secured party to approve or correct a list of the collateral.

(2) A secured party, other than a consignor or a buyer of accounts, chattel paper, payment intangibles, or promissory notes, must comply with such a request within ten (10) tribal business days after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor, the secured party may indicate that fact in the reply and need not approve or correct an itemized list of such collateral. If the secured party no longer has an interest in the obligation or collateral at the time the request is received, the secured party must disclose the name and address of any known successor in interest. A successor in interest is not subject to this Section until a request is received by the successor.

(3) A debtor is entitled to such statement once every six (6) months without charge. The secured party may require payment of a charge not exceeding Twenty-Four Dollars (\$24) for each additional statement furnished.

COMMENT

Source: MTSTA §9-207 together with modifications indicated below. (Variation of UCC §9-210.)

Changes: For the purpose of simplification, the title of MTSTA §9-207 was changed from "Request for Accounting; Request Regarding List of Collateral or Statement of Account." Subsection (2) repositions the phrase "a consignor" and adds a comma after the phrase "owned by the debtor" in its second sentence for the purpose of clarification.

CHAPTER 3: PERFECTION AND PRIORITY

SUBCHAPTER 1: LAW GOVERNING PERFECTION AND PRIORITY

Section 9-301 - Choice-of-Law re Perfection/Priority.

(1) Except as otherwise provided in Section 18-9-303 (goods covered by a certificate of title) or in subsections (2) or (3) of this Section, this Code governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in collateral:

(a) If the security interest is created pursuant to

this Code;

(b) From the time the debtor becomes subject to the jurisdiction of the Tribe pursuant to Section 18-9-316(4) and when such jurisdiction continues despite the debtor's changed status as discussed in Section 18-9-316(5); or

(c) From the time the collateral is transferred to a person that thereby becomes a debtor and is subject to the jurisdiction of the Tribe.

(2) Except as provided in subsection (3), the law of the jurisdiction where goods are then located governs:

(a) Perfection of a security interest in the goods by filing a fixture filing; and

(b) Perfection of a security interest in timber to be cut.

(3) The law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in as-extracted collateral.

(4) This Section does not determine the law governing matters not expressly referred to herein, including attachment, validity, characterization and enforcement.

COMMENT

Source: MTSTA §9-301 together with modifications indicated below. (Variation of UCC §9-301.)

Changes: For purposes of clarification, the title of MTSTA §9-301 was changed from "Law Governing Perfection and Priority of Security Interest." Subsection (1) substitutes "Section 18-9-303 (goods covered by a certificate of title)..." for MTSTA §9-301's phrase "with respect to goods covered by a certificate of title (Section 9-303)..." Sub-subsection (1)(b) adds language meant to assist the reader's understanding of §17-9-316(4) and (5) referenced therein. MTSTA §9-301's introductory paragraph has been combined with subsection (1), and subsections (2) and (3) have been reworded for purposes of clarification and simplification. All changes are intended as substantively consistent with §9-303 as explained in the Implementation Guide and Commentary to the Model Tribal Secured Transactions Act" (NCCUSL 2005). Finally, subsections (1), (2) and (3) omit the word "local" as unnecessary when describing the jurisdiction's law to be applied.

Section 9-302 - [Reserved]

COMMENT

Source: MTSTA §9-302.

Changes: None.

Section 9-303 - Choice-of-Law When Goods Covered By a Certificate of Title.

(1) This Section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(2) Goods:

(a) Become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority; and

(b) Cease to be covered by a certificate of title at the earlier of:

(i) The time the certificate of title ceases to be effective under the law of the issuing jurisdiction; or

(ii) The time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(3) The law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

COMMENT

Source: MTSTA §9-303 together with modifications indicated below. (See also UCC §9-303.)

Changes: For purposes of clarification and simplification, the title of MTSTA §9-303 was changed from "Law Governing Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title." MTSTA subsection §9-303(b) (subsection (2), above) has been reformatted to improve comprehension. Subsection (3) omits the word "local" as unnecessary when describing the jurisdiction's law to be applied.

Section 9-304 - [Reserved]

COMMENT

Source: MTSTA §9-304.

Changes: None.

Section 9-305 - [Reserved]

COMMENT

Source: MTSTA §9-305.

Changes: None.

Section 9-306 - [Reserved]

COMMENT

Source: MTSTA §9-306.

Changes: None.

Section 9-307 - [Reserved]

COMMENT

Source: MTSTA §9-307.

Changes: None.

SUBCHAPTER 2: PERFECTION

Section 9-308 - Perfection of Security Interest/Agricultural Lien; Continuity of Perfection.

(1) Except as otherwise provided in this Section and Section 18-9-309 (security interests perfected upon attachment), a security interest is perfected if it has attached and all of the applicable requirements for perfection set forth in this Code (Sections 18-9-310 through 18-9-314) have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before that attachment.

(2) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 18-9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(3) A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Code and is later perfected by another method under this Code, without an intermediate period when it was unperfected.

(4) Perfection of a security interest in:

(a) A right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right; and

(b) An investment account also perfects a security interest in any securities or commodity contracts credited to the investment account.

COMMENT

Source: MTSTA §9-308 and Revised UCC §9-308 together with modifications indicated below.

Changes: The title of MTSTA §9-308 was modified from "When Security Interest is Perfected; Continuity of Perfection" to reflect its inclusion of agricultural liens, along with security interests, when discussing rules of law governing perfection. To assist in use of this Code, Subsection (1) adds

cross-references to Section 18-9-309 and Sections 187-9-310 through 18-9-314..." (otherwise referenced in the Implementation Guide and Commentary to the Model Tribal Secured Transactions Act" (NCCUSL 2005). Subsection (2) incorporates UCC §9-308(b) governing agricultural liens, regarding which MTSTA §9-308 is otherwise silent. Similarly, MTSTA §9-308(b), presented above as subsection (3), has been modified to include agricultural liens in the same manner as UCC §9-308(c). Finally, subsection (4) combines and reformats MTSTA §9-308 subsection's (c) and (d) for purposes of clarification.

Section 9-309 - Security Interest Perfected Upon Attachment. The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in Section 18-9-311(2) (goods subject to certain statutes, regulations, or treaties);

(2) A security interest created by an assignment of accounts which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts;

(3) A sale of a payment intangible or a promissory note;

(4) A security interest created by an assignment of a health care insurance receivable to the provider of the health care goods or services;

(5) A security interest created by an assignment of a beneficial interest in a decedent's estate; and

(6) A security interest created by an assignment by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

COMMENT

Source: MTSTA §9-309 together with modifications indicated below. (Variation of UCC §9-309.)

Changes: A description of the section cross-referenced in subsection (1) was placed in parenthesis consistent with treatment of such matters throughout this Code.

Section 9-310 - When Filing Required to Perfect; When Filing Provisions Do Not Apply.

(1) Except as otherwise provided in subsection (2) and Section 18-9-312(2) (perfection of a security interest in money), a financing statement must be filed to perfect all security interests and agricultural liens.

(2) The filing of a financing statement is not necessary to perfect a security interest:

(a) That is perfected under:

(i) Section 18-9-308(4) (liens securing a right to payment or performance or an investment account);

(ii) Section 18-9-309 (security interests perfected upon attachment);

(iii) Section 18-9-312(4)(a) or (b) (goods in possession of a bailee);

(iv) Section 18-9-312(5), (6) or (7) (certified securities, negotiable documents, goods, or instruments) without filing or possession;

(v) Section 18-9-313 (collateral in the secured party's possession);

(vi) Section 18-9-314 (a security or an investment account) by control;

(vii) Section 18-9-315 (proceeds); or

(viii) Section 18-9-316 (continued perfection of security interests perfected under the law of another jurisdiction); or

(b) In property subject to a statute, regulation, or treaty described in Section 18-9-311(1).

(2) If a secured party assigns a perfected security interest or agricultural lien, a filing under this Code is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

COMMENT

Source: MTSTA §9-310 and UCC §9-310 together with modifications indicated below.

Changes: For the purpose of simplification, MTSTA §9-310's title was changed from "When Filing Required to Perfect Security Interest; Security Interests to which Filing Provisions do not Apply." MTSTA §9-310(a)'s language, "the section of this [act] dealing with..." is replaced by "Section18-9-312(2)." Additionally, and in accordance with UCC §9-310(a), subsections (1) and (2) of this Section modify MTSTA §9-309(a) and (c) by adding "...agricultural liens" to matters covered therein. In accordance with UCC §9-308(b)(1) and a belief that MTSTA's omission was inadvertent, Section 18-9-310(2)(a)(i) reinserts the phrase "...or performance or an investment account" to the language found there. Otherwise, Sections 18-9-310(1) and (2)(a)(i) - (ix) reformat MTSTA §9-308(b)(1) - (9) for purposes of clarification and simplification, but make no other substantive change to MTSTA §9-308(b)'s content.

Section 9-311 - Perfection of Property Subject to Certain Statutes/Regulations/Treaties.

(1) Except as otherwise provided in subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(a) Any law of the United States that preempts the provisions of this Code requiring security interests be perfected by filing;

(b) The following statutes of this jurisdiction regarding:

(i) Certificate-of-title -- there are no statutes; and/or

(ii) Central filing, other than that provided by this Code -- there are no statutes; and

(c) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(2) Compliance with the requirements of a statute, regulation or treaty described in subsection (1) for obtaining

priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Code. Except as otherwise provided in subsection (4) and Sections 18-9-313 (perfection by possession without filing) and 18-9-316(c) (continued perfection when goods covered by a certificate of title issued by one jurisdiction become covered by a certificate of title issued by another jurisdiction), a security interest in property subject to a statute, regulation or treaty described in subsection (1) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(3) Except as otherwise provided in subsection (4) and Sections 18-9-313 (providing for perfection by possession without filing) and 18-9-316(3) (providing for continued perfection when goods covered by a certificate of title issued by one jurisdiction become covered by a certificate of title issued by another jurisdiction), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation or treaty described in subsection (1) are governed by the statute, regulation or treaty. In other respects, the security interest is subject to this Code.

(4) During any period in which collateral subject to a statute specified in sub-subsection (1)(b) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this Section does not apply to a security interest in that collateral created by that person.

COMMENT

Source: MTSTA §9-311 and UCC §9-311 together with modifications indicated below.

Changes: For purposes of simplification, the title of MTSTA §9-322 was changed to "Perfection of Security Interests in Property Subject to Certain Statutes, Regulations and Treaties." Sub-subsections (1)(a) and (1)(b) have been reworded and reformatted for purposes of simplification and clarification. In accordance with UCC §9-311, subsections (2) and (3) have been modified to include reference to other sections of this Code as these correspond to the citations referenced in UCC §9-311(b) and (c), and general descriptions of said citations have been added within parenthesis to aid in the reader's comprehension of the subject matter.

Section 9-312 - Perfection of Interests Temporarily/in Intangibles; Permissive Filing.

(1) A security interest in chattel paper, negotiable documents, instruments, securities, or investment accounts may be perfected by filing.

(2) Except as otherwise provided in Section 18-9-315(3) and (4) (perfection with respect to proceeds), a security interest in money may be perfected only by the secured party taking possession in accordance with Section 18-9-313 (perfection by possession).

(3) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(a) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(b) A security interest perfected in the document has priority over any security interest in the goods that becomes perfected by another method during that time.

(4) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(a) Issuance of a document in the name of the secured party;

(b) The bailee's receipt of notification of the secured party's interest; or

(c) Filing as to the goods.

(5) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under a signed security agreement.

(6) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(a) Ultimate sale or exchange; or

(b) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(7) A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(a) Ultimate sale or exchange; or

(b) Presentation, collection, enforcement, renewal or registration of transfer.

(8) After the 20-day period specified in subsections (5), (6) or (7) expires, perfection depends upon compliance with this Code.

COMMENT

Source: MTSTA §9-312 together with modifications indicated below. (Variation of UCC §9-312.)

Changes: For purposes of simplification, the title of MTSTA §9-312 was changed from "Perfection of Security Interests in Chattel paper Documents, Goods Covered by Documents, Instruments, and Money; Perfection by Permissive Filing; Temporary Perfection without Filing or Transfer of Possession." Subsection (2) has been modified to include reference to another section of this Code as it corresponds to the citation referenced in UCC §9-312(b), and a general description of said citation has been added within parenthesis to aid in the reader's comprehension of the subject matter.

Section 9-313 - When Possession Perfects Security Interest Without Filing.

(1) Except as otherwise provided in subsection (2), a secured party may perfect a security interest in certificated securities, negotiable documents, goods, instruments, money, or chattel paper by taking possession of the collateral.

(2) With respect to goods covered by a certificate of title issued by the Tribe, another Indian tribe or nation, or a state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Section 18-9-316(3) (continued perfection of goods

covered by a certificate of title).

(3) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(a) The person in possession signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(b) The person takes possession of the collateral after having signed a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(4) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(5) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(6) If a person acknowledges that it holds possession for the secured party's benefit:

(a) The acknowledgment is effective under subsection (3), even if the acknowledgment violates the rights of a debtor; and

(b) Unless the person otherwise agrees or law other than this Code otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

COMMENT

Source: MTSTA §9-313, as amended August 2005, together with modifications indicated below. (Variation of UCC §9-313.)

Changes: For purposes of simplification, the title to MTSTA §9-313 was changed from "When Possession by Secured Party Perfects Security Interest without Filing." Subsection (2) adds "another Indian tribe or nation" as a

type of government that could possibly issue certificates of title to goods governed by this Code's provisions.

Section 9-314 - Perfection by Control. A security interest in a security or an investment account may be perfected by control.

COMMENT

Source: MTSTA §9-314. (Variation of UCC §9-314.)

Changes: None.

Section 9-315 - Secured Party's Rights on Disposition of Collateral/in Proceeds.

(1) Except as otherwise provided in this Code and in any applicable law dealing with entrustment of goods:

(a) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(b) A security interest attaches to any identifiable proceeds of collateral.

(2) Proceeds that are commingled with other property are identifiable proceeds:

(a) If the proceeds are goods, to the extent provided by Section 18-9-321 (commingled goods); and

(b) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Code with respect to commingled property of the type involved.

(3) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(4) A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

(a) The following conditions are satisfied:

(i) A filed financing statement covers the original collateral;

(ii) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(iii) The proceeds are not acquired with cash proceeds;

(b) The proceeds are identifiable cash proceeds; or

(c) The security interest in the proceeds is perfected other than under subsection (3) when the security interest attaches to the proceeds or within twenty (20) days thereafter.

(5) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under sub-subsection (4)(a) becomes unperfected at the later of:

(a) Lapse or termination of the filed financing statement under Section 18-9-502; or

(b) The twenty-first (21st) day after the security interest attaches to the proceeds.

COMMENT

Source: MTSTA §9-315 and UCC §§9-315, 9-513 and 9-515 together with modifications indicated below.

Changes: Sub-subsection (1)(a) amends MTSTA §9-315 to include an "agricultural lien" as well as a security interest in the same manner as UCC §9-315. Sub-subsection (2)(a) has been modified to include reference to another section of this Code as it corresponds to the citation referenced in UCC §9-315(b), and a general description of said citation has been added within parenthesis to aid in the reader's comprehension of the subject matter. Sub-subsection (5)(a) has been reworded for purposes of simplification and includes a cross-reference to Section 18-9-502 (MTSTA's §9-502 which

incorporates relevant portions of UCC §§9-513 and 9-515) to aid in use of this Code.

Section 9-316 - Continued Perfection Following Change in Governing Law.

(1) A security interest to which this Code becomes applicable that is perfected pursuant to the law of another jurisdiction remains perfected until the earliest of:

(a) The time perfection would have ceased under the law of that jurisdiction;

(b) The expiration of four (4) months after the debtor becomes subject to the jurisdiction of the Tribe (subsections (4) and (5)); or

(c) The expiration of one (1) year after a transfer of collateral to a person that thereby becomes a debtor and is subject to the jurisdiction of the Tribe.

(2) If a security interest described in subsection (1) becomes perfected under the law of the Tribe before the end of the applicable period described in that subsection, it remains perfected thereafter until perfection lapses in accordance with this Code. Otherwise, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(3) A security interest to which this Code becomes applicable which is perfected by any method under the law of another jurisdiction, if and when the goods become covered by a certificate of title from the Tribe, remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered. However, the security interest becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value, if the applicable requirements for perfection under Section 18-9-311(2) (perfection by compliance with other law) or 18-9-313 (perfection by possession) are not satisfied before the earlier of:

(a) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from the Tribe; or

(b) The expiration of four (4) months after the goods had become so covered.

(4) For purposes of this Section only:

(a) The term "registered organization" means an organization formed under the laws of a governmental entity which entity must then maintain a public record showing the organization to have been so formed;

(b) The term "place of business" means a place where a debtor conducts its affairs; and

(c) A debtor becomes subject to the jurisdiction of the Tribe if:

(i) The debtor is an individual whose principal residence comes to be within this jurisdiction or who becomes a member of the Tribe;

(ii) The debtor is an organization other than a registered organization and its sole place of business or, if it has more than one place of business its chief executive office, comes to be within this jurisdiction; or

(iii) The debtor comes to be:

(A) A registered organization that is organized solely under the law of the Tribe; or

(B) Incorporated under a charter issued to a tribe by the United States Secretary of the Interior pursuant to 25 U.S.C. Section 477, as the same may be amended from time to time.

(5) For purposes of subsection (4):

(a) A person other than a registered organization continues to be subject to the jurisdiction of the Tribe notwithstanding the fact that it ceases to exist, have a residence, or have a place of business; and

(b) A registered organization continues to be subject to the jurisdiction of the Tribe notwithstanding:

(i) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such; or

(ii) The dissolution, winding up, or cancellation of the existence of the registered organization.

COMMENT

Source: MTSTA §9-316 together with modifications indicated below. (Variation of UCC §9-316.)

Changes: For purposes of simplification, the title to MTSTA §9-316 was changed from "Continued Perfection of Security Interest following Change in Governing Law." Subsection (4) has been significantly reworded and reorganized for purposes of clarification and simplification, and the phrase "governmental entity" is meant to include other Indian tribes or nations as well as those entities otherwise listed in MTSTA §9-316(d).

SUBCHAPTER 3: PRIORITY

Section 9-317 - Interests that Take Priority Over Security Interest or Agricultural Lien.

(1) A security interest or agricultural lien is subordinate to the rights of:

(a) A person that becomes a lien creditor before the security interest or agricultural lien is perfected;

(b) A buyer of tangible personal property (including instruments and tangible documents or chattel paper), a lessee of goods, a licensee of a general intangible, or a buyer of accounts or general intangibles or securities that:

(i) Gives value;

(ii) In the case of a buyer of tangible personal property, a lessee of goods, or a buyer of a security certificate, acquires possession; and

(iii) Takes without knowledge of the security interest and before it is perfected; or

(c) A secured party entitled to priority under subsection (3).

(2) Notwithstanding subsection (1), a purchase money secured party that files a financing statement before or within twenty (20) days after the debtor acquires possession of the

collateral has priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.

(3) Priority among conflicting security interests in, and agricultural liens on, the same collateral is determined as follows:

(a) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest is first perfected, if there is no period thereafter when there is neither filing nor perfection;

(b) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien; or

(c) The first security interest or agricultural lien to attach has priority if conflicting security interests and agricultural liens are unperfected.

(4) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds, except as provided in Section 18-9-318 (particular priority rules).

(5) Except as otherwise provided in this "Chapter 3. Perfection and Priority" (Sections 18-9-301 through 18-9-323), a security interest that has priority under subsections 18-9-318(5) (purchaser of chattel paper or instrument), 18-9-318(6) (holder in due course and others protected), or 18-9-318(10) (priority of interest perfected by control and possession of certificated security in registered form) also has priority over a conflicting security interest in proceeds if:

(a) The security interest in proceeds is perfected;

(b) The proceeds are cash proceeds or of the same type as the collateral; and

(c) In the case of proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(6) If a security interest in chattel paper, negotiable

documents, instruments, securities or investment accounts is perfected by a method other than filing, and if the proceeds are not cash proceeds, chattel paper, negotiable documents, instruments, securities, investment accounts, or letter of credit rights, then priority in the proceeds is determined by the order of any filing.

(7) If applicable law other than this Code gives a security interest or right of set-off to a collecting bank, an issuer or nominated person with respect to a letter of credit, a buyer or lessee of goods, or in personal property that is not subject to this Code, that law governs in the event of conflict with the provisions of this Code.

COMMENT

Source: MTSTA §9-317 and UCC §§9-317 and 9-322, together with modifications indicated below.

Changes: In accordance with UCC §9-317, both the title and contents of this section cover interests in "agricultural liens" as well as security interests. Sub-sub-subsection (1)(b)(iii) amends MTSTA §9-317(a)(2)(C) by deleting the phrase "in all cases to which this sub-subsection (a)(2) applies" as unnecessary and by adding the verb "takes" to correct an otherwise grammatically incorrect phrase. Sub-subsections (1)(a), (b) and (c) have been separated by the word "or" (added after (1)(b)(iii)) to clarify MTSTA §9-317(a)'s evident intent to present these three sub-subsections in the alternative. Subsections (4) and (5) have been modified to include reference to other sections of this Code as these correspond to the citations referenced in UCC §9-322(b) and (c), and general descriptions of said citations have been added within parenthesis to aid in the reader's comprehension of the subject matter. Subsection (5) substitutes the phrase "this 'Chapter 3. Perfection and Priority' (Sections 18-9-301 through 18-9-323)" for MTSTA §9-317(e)'s phrase "this part" assuming the word "part," though not capitalized, refers to MTSTA's "Part 3 Perfection and Priority" (MTSTA §§9-301 through 9-323). Consistent with UCC §9-317(e), subsection (7) omit's MTSTA §9-317(g)'s reference to "[seller]" after the term "buyer" in the phrase, "buyer... or lessee of goods... ."

Section 9-318 - Particular Priority Rules.

(1) This Section creates exceptions to the general priority rules of Section 18-9-317.

(2) For the purpose of this Code, while goods are in the possession of a consignee, the consignee is deemed to have rights

and title to the goods identical to those the consignor had or had power to transfer. If "Chapter 3. Perfection and Priority" (Sections 18-9-301 through 18-9-323) of this Code results in the consignor having priority over a creditor of the consignee, law other than this Code determines the rights and title of the consignee with regard to that creditor.

(3) Except as otherwise provided in this subsection, a buyer in ordinary course of business, a person that takes a non-exclusive license of a general intangible in ordinary course of business, or a person that takes a lease of goods in ordinary course of business, takes its interest in the collateral free of a security interest in the collateral created by the seller, licensor, or lessor, even if the security interest is perfected and the buyer, licensee, or lessee knows of its existence. Whether a licensee or lessee takes its interest in ordinary course of business is to be determined by criteria parallel to those for a buyer in ordinary course of business (Section 18-9-106(2)(g)). This subsection does not apply to:

(a) A buyer of farm products from a person engaged in farming operations unless the buyer:

(i) Obtains from the seller a notarized statement setting forth the name and address of any person that has a security interest in the farm products; and

(ii) Either:

(A) Obtains a consent to the sale free of the security interest from the secured party; or

(B) Makes payment for the farm products jointly to the seller and the secured party; or

(b) A buyer of goods in the possession of the secured party (Section 18-9-313).

(4) A buyer of goods from a person who used or bought the goods for use primarily for personal, family or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(a) Without knowledge of the security interest;

(b) For value;

(c) Primarily for the buyer's personal, family or household purposes; and

(d) In the case of goods having a value of Five Thousand Dollars (\$5,000) or more, before the filing of a financing statement covering such goods provided those goods are not in the possession of the secured party under Section 18-9-313.

(5) A purchaser:

(a) Of chattel paper or an instrument has priority over a security interest if:

(i) The purchaser, in good faith and in the ordinary course of the purchaser's business, gives new value and takes possession of the collateral;

(ii) The collateral does not indicate that it has been previously assigned to an identified person other than the purchaser; and

(iii) The purchaser is otherwise without knowledge that the purchase violates the rights of the secured party; and

(b) With priority in chattel paper under subsection (5)(a) also has priority in proceeds of the chattel paper to the extent that:

(i) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the security interest in the proceeds is unperfected; or

(ii) Subsections 18-9-317(3) (priority among conflicting secured parties), 18-9-317(4) (time of perfection for proceeds), or 18-9-317(5) (priority in proceeds) so provides.

(6) This Code does not limit the rights of, or impose liability on, a holder in due course of a negotiable instrument, a holder to which a negotiable document has been duly negotiated, or a person protected against the assertion of a claim to investment property under other applicable law. Filing under this Code is not notice of a claim or defense to the holder or protected person.

(7) Advances:

(a) With respect to a conflicting security interest, the priority of an advance under a security agreement is

determined under Section 18-9-317(2), except that perfection dates from the time the advance is made if the security interest securing it is perfected only by attachment (Section 18-9-309) or temporarily by law (Section 18-9-312(5), (6) or (7)) and is not made pursuant to a commitment entered into before or while the security interest is perfected by another means;

(b) With respect to a lien creditor, the security interest securing an advance is subordinate if the advance is made more than forty-five (45) days after the person becomes a lien creditor, unless the advance is made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien;

(c) With respect to a buyer of goods other than a buyer in ordinary course of business (Section 18-9-106(2)(g)) and with respect to a lessee of goods that does not take its lease in ordinary course of business (subsection (3)) of this Section), the security interest securing an advance is subordinate if the advance is made after the earlier of the time the secured party acquires knowledge of the purchase or forty-five (45) days after the purchase, unless the advance is made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45-day period; and

(d) Sub-subsections (a) and (b) of this subsection (7) do not apply to a security interest held by a person that is a consignor or a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(8) The following rules govern the priority of a purchase money security interest and a conflicting security interest in collateral and its proceeds:

(a) A perfected purchase-money security interest in goods, other than inventory or livestock that are farm products, has priority over a conflicting security interest, and a perfected security interest in identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty (20) days thereafter;

(b) A perfected purchase-money security interest in inventory or livestock that are farm product has priority over a conflicting security interest if the purchase-money security interest is perfected when the debtor acquires possession of the goods and the purchase-money secured party

sends timely and appropriate notice to the holder of the conflicting security interest, provided that no such notice is required unless the holder of the conflicting security interest has filed a financing statement covering the same types of goods:

(i) Before the purchase-money security interest is perfected by filing; or

(ii) If the purchase-money security interest is temporarily perfected under Section 18-9-312(6), before the beginning of the applicable 20-day period;

If a purchase-money secured party has priority in inventory under this sub-subsection (b), it also has priority in chattel paper or an instrument constituting proceeds, in proceeds of the chattel paper except as otherwise provided in this Section, and in identifiable cash proceeds received on or before delivery of the goods to a buyer. If a purchase-money secured party has priority in livestock that are farm product under this sub-subsection (b), it also has priority in their identifiable proceeds and products in their unmanufactured states;

(c) A perfected purchase-money security interest in software has priority over a conflicting security interest, and a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods;

(d) Notwithstanding the rest of this subsection (6), if two or more purchase-money security interests are perfected in the same collateral, the security interest securing an obligation for the price has priority, and otherwise priority is determined by the rule of Section 18-9-317(2).

(9) A transferee of money or of funds from a deposit account takes the money or funds free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(10) A security interest in a security or an investment account perfected by control (Section 18-9-314) has priority over a security interest perfected in another way. Multiple security interests perfected by control rank according to time of acquiring control; however, a security interest held by an

investment intermediary in the investment account that it maintains has priority regardless of time of acquiring control. A security interest in a certificated security in registered form that is perfected by possession (Section 18-9-313) and not by control has priority over a conflicting security interest perfected by a method other than control.

(11) A lien created by statute or rule of law which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business and whose effectiveness depends on the person's possession of the goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

COMMENT

Source: MTSTA §9-318 together with modifications indicated below. (Variation of UCC §§9-318, 9-319, 9-320, 9-321, 9-323, 9-324, 9-328, 9-330, 9-331, 9-332, and 9-333.)

Changes: Subsection (2) substitutes the phrase "this Chapter 3. Perfection and Priority" (Sections 18-9-301 through 18-9-323)" for MTSTA §9-318(b)'s phrase "Part 3" (referring to MTSTA's "Part 3 Perfection and Priority," §§9-301 through 9-323). MTSTA §9-318(c)'s erroneous reference to "Section 9-102(a)(7)" is presumed to mean "Section 9-106(a)(7)" which equates to Section 18-9-106(2)(f) under this Code and referenced accordingly in Section 18-9-318(3) and (7), above. Sub-subsection (4)(d) has been reworded for purposes of simplification. To aid in the reader's understanding, subsection (5) has been modified to include general descriptions of Section 18-9-317(3), (4) and (5) referenced therein.

Section 9-319 - Priority of Security Interest in Fixtures/Crops.

(1) A security interest under this Code may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Code in ordinary building materials incorporated into an improvement on land.

(2) This Code does not prevent creation of an encumbrance upon fixtures under real property law.

(3) In cases not governed by subsections (4) through (8), a security interest in fixtures is subordinate to a conflicting

interest of an encumbrancer or owner of the related real property other than the debtor.

(4) Except as otherwise provided in subsection (8), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in, or is in possession of, the real property and:

(a) The security interest is a purchase-money security interest;

(b) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(c) The security interest is perfected by an appropriate filing before the goods become fixtures or within twenty (20) days thereafter.

(5) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(a) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(i) Is perfected by an appropriate filing before the interest of the encumbrancer or owner is of record; and

(ii) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(b) Before the goods become fixtures, the security interest is perfected by any method permitted by this Code and the fixtures are readily removable:

(i) Factory or office machines;

(ii) Equipment that is not primarily used or leased for use in the operation of the real property; or

(iii) Replacements of domestic appliances that are consumer goods;

(c) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after

the security interest was perfected by any method permitted by this Code; or

(d) The security interest is:

(i) Created in a manufactured home in a manufactured home transaction; and

(ii) Perfected pursuant to a statute described in Section 18-9-311(1)(b).

(6) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(a) The encumbrancer or owner has, in a signed record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(b) The debtor has a right to remove the goods as against the encumbrancer or owner.

(7) The priority of the security interest under subsection (6)(b) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(8) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (5) and (6), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(9) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(10) Subsection (9) prevails over any inconsistent provisions of the following statutes: none.

COMMENT

Source: MTSTA §9-319 together with modifications indicated below. (Variation of UCC §9-334.)

Changes: The word "debtor" was made possessory in subsection (7) to correct a grammatical error in MTSTA §9-318(g) and to make it consistent with UCC §9-334(g). In response to the MTSTA §9-319(j)'s instruction, "List here any statutes containing provisions inconsistent with subsection (i)", subsection (10) references the fact that the tribal law contains no other statutory provision inconsistent with subsection (9).

Section 9-320 - Accessions.

(1) A security interest may be created in an accession and continues in collateral that becomes an accession.

(2) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(3) Except as otherwise provided in subsection (4), the other provisions of this "Chapter 3. Perfection and Priority" (Sections 18-9-301 through 18-9-323) determine the priority of a security interest in an accession.

(4) A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under Section 18-9-311.

(5) After default, subject to "Chapter 6. Default" (Sections 18-9-601 through 18-6-629) of this Code, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(6) A secured party that removes an accession from other goods under subsection (5) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse

permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

COMMENT

Source: MTSTA §9-320 together with modifications indicated below. (See also UCC §9-335.)

Changes: Subsection (3) substitutes the phrase "this 'Chapter 3. Perfection and Priority' (Sections 18-9-301 through 18-9-323)" for MTSTA §9-320(c)'s phrase "this part" assuming the word "part," though not capitalized, refers to MTSTA's "Part 3 Perfection and Priority" (MTSTA §§9-301 through 9-323). With greater certainty, subsection (5) substitutes "'Chapter 6. Default' (Sections 18-9-601 to 18-9-629) of this Code" for MTSTA §9-320(e)'s term "Part 6." Subsection (4) cross-references §18-9-311(4) assuming MTSTA §9-320(d)'s cross-reference to §9-311(b) is a typographical error and should have read "§9-311(d)" in conformance with UCC §9-335 (upon which MTSTA §9-320 is otherwise based) which subsection (d) cross-references to UCC §9-311(d).

Section 9-321 - Commingled Goods.

(1) In this Section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(2) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(3) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(4) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (3) is perfected.

(5) Except as otherwise provided in subsection (6), the other provisions of this "Chapter 3. Perfection and Priority" (Sections 18-9-301 through 18-9-323) determine the priority of a security interest that attaches to the product or mass under subsection (3).

(6) If more than one security interest attaches to the product or mass under subsection (3), the following rules determine priority:

(a) A security interest that is perfected under subsection (4) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods;

(b) If more than one security interest is perfected under subsection (4), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

COMMENT

Source: MTSTA §9-321 together with modifications indicated below. (See also UCC §9-336.)

Changes: Subsection (5) substitutes the phrase "this 'Chapter 3. Perfection and Priority' (Sections 18-9-301 through 18-9-323)" for MTSTA §9-321(e)'s phrase "this part" assuming the word "part," though not capitalized, refers to MTSTA's "Part 3 Perfection and Priority" (MTSTA §§9-301 through 9-323).

Section 9-322 - Priority of Security Interests in Goods Covered by Certificate of Title. If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this jurisdiction issues a certificate of title (Section 18-9-106(2)(i)) that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 18-9-311, after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

COMMENT

Source: MTSTA §9-322 together with modifications indicated below. (Variation of UCC §9-337.)

Changes: Subsection (2) cross-references §18-9-311(4) assuming MTSTA §9-322(2)'s cross-reference to §9-311(b) is a typographical error and should have read "§9-311(d)" in conformance with UCC §9-337 (upon which MTSTA §9-322 is otherwise based) which subsection (2) cross-references UCC §9-311(d).

Section 9-323 - Priority Subject to Subordination. This Code does not preclude subordination by agreement by a person entitled to priority.

COMMENT

Source: MTSTA §9-323. (See also UCC §9-339.)

Changes: None.

CHAPTER 4: RIGHTS OF THIRD PARTIES

Section 9-401 - Debtor's Right to Transfer.

(1) Except as otherwise provided in subsection (2) and in Section 18-9-404 (restrictions on a secured party's right to assign secured interests), whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Code.

(2) An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

COMMENT

Source: MTSTA §9-401 and UCC §9-401 together with modifications indicated below.

Changes: For the sake of simplicity and clarity, the title of MTSTA §9-401 was changed from "Alienability of Debtor's Rights" to "Debtor's Right to Transfer" and the format and content of UCC §9-401, rather than MTSTA §9-401, was followed except that sub-section (1)'s cross-reference to Section 18-9-404 reflects the substance of the MTSTA's, rather than the UCC's, provision.

Section 9-402 - Secured Party Not Obligated re Debtor's Contract/Tort. The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

COMMENT

Source: MTSTA §9-402 together with modifications indicated below. (See also UCC §9-402.)

Changes: For purposes of simplicity, the title of MTSTA §9-402 was changed from "Secured Party not Obligated on Contract of Debtor or in Tort."

Section 9-403 - Rights of Assignee.

(1) An agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that is a purchaser for value in good faith, except as to claims or defenses that may be asserted against a holder in due course of a negotiable instrument; however, such an agreement is not enforceable if:

(a) The agreement relates to an obligation incurred on account of a sale or lease of goods or services;

(b) The account debtor seeks or acquires the goods or services primarily for personal, family, or household use; and

(c) The assignor, in the ordinary course of its business, sells or leases goods or services to consumers.

(2) If a negotiable promissory note represents an obligation incurred on account of a sale or lease of goods or services, and the issuer seeks or acquires the goods or services primarily for personal, family, or household use, and the payee, in the ordinary course of its business, sells or leases goods or services to consumers, then the issuer may assert any claims and defenses against a person entitled to enforce the note, including a holder in due course.

(3) Except with regard to assignees of health care insurance receivables or to agreements enforceable under

subsection (1), the rights of an assignee are subject to:

(a) Reduction of the amount owed by reason of all terms of the contract between the account debtor and assignor;

(b) Any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(c) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives adequate notification of the assignment signed by the assignor or the assignee.

(4) An account debtor or party to a negotiable promissory note may discharge its obligation by paying the assignor or person formerly entitled to enforce the note until, but not after, such account debtor or party receives:

(a) Adequate notification that performance is to be rendered to the assignee or transferee, signed:

(i) In the case of an account debtor, by the assignor or assignee; and

(ii) In the case of a negotiable promissory note, by the transferor or transferee; and

(b) If requested by such account debtor or party, reasonable proof of the assignment or transfer.

In the case of an account debtor, discharge under this subsection is effective notwithstanding an otherwise enforceable agreement not to assert claims or defenses. In the case of a party to a negotiable promissory note, discharge under this subsection is effective against a holder in due course.

(5) A modification or substitution of an assigned contract is effective against an assignee to the extent provided by law other than this Code.

COMMENT

Source: MTSTA §9-403, as amended August 2005, together with modifications indicated below. (Significant variation of UCC §§9-403, 9-404, 9-405 and portions of 9-406.)

Changes: For purposes of clarification, MTSTA §9-403(c) has been changed in

subsection (3) to include sub-subsections.

Section 9-404 - Restrictions on Assignment.

(1) Except as provided in subsection (5) of this Section, a commercially harmful restriction on alienation of property (subsections (2), (3) and (4)) is invalid.

(2) In an assignment of accounts other than health care insurance receivables, an assignment of chattel paper, an assignment of payment intangibles that is not a sale, or a transfer of promissory notes that is not a sale, the term "commercially harmful restriction on alienation" means a term in an agreement between an account debtor and an assignor, or in a promissory note, to the extent that it:

(a) Prohibits, restricts or requires the consent of the account debtor or person obligated on the promissory note, to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, the affected property; or

(b) Provides that such an assignment, transfer, creation, attachment, perfection or enforcement may give rise to a default or remedy.

(3) In an assignment of a health care insurance receivable, a sale of promissory notes, a sale of payment intangibles, or a security interest in other general intangibles (including a contract, permit, license, or franchise) that is not a sale:

(a) The term "commercially harmful restriction on alienation" has the same meaning as in subsection (2) except that the references to enforcement of a security interest appearing in sub-subsections (2)(a) and (b) are excluded; and

(b) To the extent a commercially harmful restriction on alienation under sub-subsection (3)(a) would otherwise be effective under law other than this Code, the creation, attachment or perfection of the security interest:

(i) Does not impose a duty or obligation on the account debtor or person obligated on the promissory note;

(ii) Is not enforceable against the account debtor

or person obligated on the promissory note; and

(iii) Does not entitle the secured party to:

(A) Use the debtor's rights in or to the property;

(B) Have access to trade secrets or confidential information of the account debtor or person obligated on the promissory note; or

(C) Enforce the security interest.

(4) In addition to the meanings set forth in subsections (2) and (3), the term "commercially harmful restriction on alienation" includes a rule of law to the extent that it:

(a) Requires the consent of a governmental body or official to the assignment or transfer of, or an action described in subsection (2) or (3) regarding a security interest in, the property; or

(b) Has any of the effects of a commercially harmful restriction on alienation as defined in subsection (2) or (3), as applicable.

(5) This Section does not apply to assignments involving:

(a) A tribal member's per capita payment(s) as described in 25 U.S.C. Section 117b. and 25 U.S.C. Section 613, as the same may be amended from time to time (requiring written consent of the tribal member's governing business council for an assignment to be effective);

(b) A secured party's re-assignment of a claim or right to receive a tribal member's per capita payment(s);

(c) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. sub-subsections 104(a)(1) or 104(a)(2), as the same may be amended from time to time;

(d) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. sub-subsection 1396p.(d)(4), as the same may be amended from time to time;

(e) A structured settlement payment right; or

(f) A right to payment of winnings in a lottery or

other game of chance regulated by law other than this Code.

COMMENT

Source: MTSTA §9-404 together with modifications indicated below. (Variation of portions of UCC §§9-406(d) - (j) and 9-408.

Changes: In subsection (1), the term "property," found in MTSTA's §9-404(a) after the parenthetical reference to other subsections, has been changed to before the parenthesis. To aid the reader's understanding, sub-subsection (4)(a) repositions the phrase "regarding a security interest in" to immediately after the word "actions" which it modifies. For consistency, the period after MTSTA §9-404(e)(2) has been changed to a semi-colon after sub-subsection (5)(b).

As suggested in the MTSTA's Implementation Guide discussion of §9-404(e), the Tribes have chosen to create additional exceptions to the general rules found in sub-sections (1) through (4). These are located in (5)(a) and (5)(b), and have been added to reflect federal and tribal law other than this Tribal Secured Transaction Code. The MTA Guide cautions that MTA §9-404 will override or "void" all other tribal laws which restrict assignment of per capita payments except those explicitly referenced and exempted in subsection (5). However, Shoshone and Arapaho tribal members' right to assign per capita payments is governed by federal, rather than tribal, law; thus MTA §9-404, as incorporated in this Tribal Code, will not act to "void" the "other law" on the subject. Nevertheless, to alert non-Reservation creditors and their legal counsel on what is in fact the policy and procedure governing encumbrance of per capita payments on the Wind River Reservation, the Tribes expressly make reference in sub-subsection (5)(a) to that governing federal law which in fact requires pre-assignment approval by the appropriate governing business council in cases where the collateral is comprised of a tribal member's per capita payment. Similarly, though in this instance based on tribal rather than federal law, sub-subsection (5)(b) exempts transactions involving the re-assignment of security interests in per capita payments from any sort of scrutiny regarding "commercially harmful restrictions" otherwise prohibited by this Section.

CHAPTER 5: FILING

Section 9-501 - Filing Administration; Effectiveness of Financing Statements.

(1) Except as otherwise provided under subsection (7) of this Section 18-9-501, the place to file a financing statement to perfect a security interest governed by this Tribal Secured Transactions Code or another record relating to a security

interest is the office(s) designated by resolution of the NABC of the Wind River Reservation. The NABC may delegate the administration responsibilities of the filing office(s) referenced in sub-subsection (1)(a) and/or (1)(b) to a third party, including the filing office or offices of another jurisdiction.

COMMENT - On the effective date of this Code, the NABC designated the Wyoming Secretary of State or other office provided by Wyoming statutes as the office(s) to administer the filing responsibilities. See NABC Resolution No. NABC-2014-399.

(2) A financing statement may be filed before a security agreement is made or a security interest attaches. Receipt by the filing office of a financing statement or other record, in appropriate form by an appropriate method, and tender of the filing fee, constitutes filing, and in those cases the filing office must accept the record. If the filing office refuses the record, it must communicate that fact to the person that presented the record, as well as the reason for refusal and the date and time that the record would have otherwise been filed.

(3) A record in appropriate form and communicated to the filing office by an appropriate method is effective even if:

(a) It is improperly refused by the filing office, except as against a purchaser of the collateral for value in reasonable reliance on the absence of the record from the files;

(b) It is incorrectly indexed by the filing office; or

(c) It has minor errors or omissions in information required to perfect a security interest, unless the errors or omissions make the record seriously misleading.

(i) If a financing statement fails sufficiently to provide the name of the debtor, the name provided does not make the financing statement seriously misleading if a search of the filing office's records under the debtor's correct name using the filing office's standard search logic, if any, would disclose the financing statement.

(4) If information that the filing office's regulations require to be included in a record, but that Section 18-9-502(1)

does not require for perfection of a security interest, is incorrect at the time the record is filed, the security interest is subordinate to a conflicting perfected security interest or the interest of a purchaser other than a secured party, to the extent that:

(a) The holder of the conflicting security interest gives value in reasonable reliance on the incorrect information; or

(b) The purchaser gives value and, in the case of a buyer or lessee of property capable of being possessed, takes possession, all in reasonable reliance on the incorrect information.

(5) Fees for filing and indexing a record under subsection (1) shall be set by the office(s) designated by the NABC or by resolution of the NABC.

(6) To the extent thought necessary for the effective implementation and enforcement of Chapter 5 of this Code, the NABC may adopt:

(a) Regulations consistent with this Code and with tribal and commercial policy; and

(b) An implementation manual providing guidance to persons entering into transactions governed by this Code.

COMMENT

Source: MTSTA §9-501, as amended August 2005, together with modifications indicated below. (Signification variation of UCC §§9-338, 501(a) and (b), 502(d), 506, 516(a) and (d), 517, 520(a) and (b), 523(f), 525 and 526.

Changes: MTSTA §9-501's title "Acceptance, Refusal, and Effectiveness of Financing Statements; Administration" was changed to more clearly summarize the nature of its many subsections. Subsection (1) adds the phrase, "Except as otherwise provided in subsection (7) of this Section 18-9-501," in order to enable the Tribe's enactment of this Code prior to possible delegation of the administrative responsibilities of the filing office to a third party of another jurisdiction pending the Code's effective date. Punctuation in subsection (4) has been corrected by adding a semi-colon after the word "that." In sub-section (5), the Tribe has indicated its choice to allow the office(s) designated by resolution to set filing fees or to set them by tribal resolution rather than by statute as set forth in MTSTA §9-502(e)'s alternative language ("The fee for filing and indexing a record under subsection (a) is \$_____"), and all reference to a "filing office" setting

those fees was eliminated as contradicting adoption of regulations by the Tribe. To avoid an apparent conflict in MTSTA §9-501(f)'s first sentence ("The filing office is charged with administration of Part 5...") and MTSTA §9-501(g)'s language ("The tribal legislative body may delegate the administration of Part 5 to the filing office of a third party..."), subsection (6) omits the first sentence of MTSTA §9-501(f) in its entirety. For purposes of clarification and simplification, subsection (6) also omits the introductory phrase, "In accordance with applicable administrative and interpretive rules..." found in the second sentence of MTSTA §9-501(f). In sub-sections (6) and (7), MTSTA §9-501(f) and (g)'s phrase "tribal legislative office" has been changed to "Northern Arapaho Business Council." Subsection (7) was rewritten to clarify that the Tribe may choose to retain the administrative services of another jurisdiction's filing office(s) rather than use tribal filing office(s), and its last sentence, "No delegation of performance relieves the filing office of any duty imposed on it by this Code," was deleted due to the possibility that the only filing office could be that of another jurisdiction's.

Section 9-502 - Contents of Records; Authorization; Lapse; Continuation; Termination.

(1) A financing statement is sufficient to perfect a security interest only if it provides the name of the debtor, the name of the secured party or a representative of the secured party, and indicates the collateral covered by the financing statement with a description, whether or not specific, that reasonably identifies the collateral or states that it covers all assets or all personal property. A financing statement or a record of a mortgage that covers as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, is sufficient only if in addition it includes such further information as required by filing regulations. A record that constitutes a termination statement, assigns a record, continues a record, or otherwise amends a record must comply with the filing regulations regarding such records.

(2) A record may include information other than that required by subsection (1), such as addresses for the debtor and secured party, the characterization of a party as an individual or an organization and, if an organization, the type of organization, the jurisdiction of organization of the debtor, or a trade name for the debtor, and:

(a) May use other terms such as "consignor," "lessor," or "licensor," to the extent permitted by and in compliance with the filing regulations; and

(b) Shall include such other information to the extent required by such regulations.

(3) A validly filed financing statement is effective for five (5) years after the date of filing unless sooner terminated, except as follows:

(a) If the financing statement correctly indicates that it is filed in connection with a manufactured-home transaction or a public-finance transaction, it is effective for thirty (30) years after the date of filing unless sooner terminated;

(b) If the debtor is a transmitting utility and the financing statement so indicates, the financing statement is effective until terminated; and

(c) A mortgage that is effective as a financing statement is effective until the mortgage is satisfied of record.

(4) A financing statement lapses at the end of the period specified in subsection (3) unless a continuation statement is filed within six (6) months before the expiration of the period. A lapsed financing statement ceases to perfect the security interest unless it is perfected otherwise before lapse, and the security interest is deemed to never have been perfected against a purchaser of the collateral for value.

(5) Upon proper continuation, the effectiveness of a filed financing statement continues for an additional period commencing on the date on which it otherwise would have become ineffective, and again may lapse unless further continued. An amendment to a financing statement other than a continuation statement does not extend the effectiveness of a financing statement, is effective only from its date of filing, and may be effective as a termination statement as prescribed in the filing regulations.

(6) Upon the filing of a termination statement, the financing statement to which the termination statement relates ceases to be effective. A secured party or secured party of record shall file, cause to be filed, or send a termination statement in accordance with the regulations promulgated under this Code.

(7) Only a person authorized by the debtor in compliance with this subsection or with filing regulations, or a person otherwise designated by those regulations, may file a record that is effective. By signing a security agreement, the debtor

authorizes the filing of a financing statement and amendments covering:

(a) The collateral described in the security agreement; and

(b) Property that becomes collateral under Section 18-9-315(1)(b), relating to identifiable proceeds.

(8) If a debtor so changes its name, or an organization its identity or corporate structure, that a filed financing statement becomes seriously misleading, the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the change, unless an appropriate filing is made before the expiration of that time. If a security interest continues in collateral transferred by the debtor (Section 18-9-315(1)), a filed financing statement with respect to collateral remains effective, even if the secured party knows of or consents to the transfer.

COMMENT

Source: MTSTA §9-502. (Significant variation of UCC §§9-502(a)-(c), 503-505, 507-510 and 512-515.

Changes: For purposes of clarification, subsection (2) was reformatted to aid the reader's understanding.

All references in subsection (1), (2), (6) and (7) to "filing office regulation" and "regulations of the filing office" were changed to "filing regulations" due to Section 18-9-501's making the NABC, rather than a filing office, responsible for promulgating regulations to implement this Code.

CHAPTER 6: DEFAULT

SUBCHAPTER 1: DEFAULT/ENFORCEMENT OF SECURITY INTERESTS

Section 9-601 - Parties' Rights/Duties after Default.

(1) After default, a secured party has the rights provided in this "Chapter 6. Default," the rights and duties related to possession or control of collateral (Section 18-9-204) and, except as otherwise provided in the provisions of this Code dealing with waivers and variances of rights and duties (Section 18-9-602), those provided by agreement of the parties. A secured party:

(a) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(b) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(2) The rights under subsection (1) are cumulative and may be exercised simultaneously.

(3) Except as otherwise provided in subsection (6) and under the provisions of this Code dealing with an unknown debtor or a secondary obligor (Section 18-9-605), after default, a debtor and an obligor have the rights provided in this "Chapter 6. Default" and by agreement of the parties.

(4) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(a) The date of perfection of the security interest or agricultural lien in the collateral;

(b) The date of filing a financing statement covering the collateral; or

(c) Any date specified in a statute under which the agricultural lien was created.

(5) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this Section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Code.

(6) Except as otherwise provided in the provisions of this Code dealing with commercially reasonable collection and enforcement (Section 18-9-607(2)), this "Chapter 6. Default" imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

COMMENT

Source: MTSTA §9-601 together with modifications indicated below. (Variation of UCC §9-601.)

Changes: For purposes of simplification, the title to MTSTA §9-601 was changed from "Rights after Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes." Subsections (1), (4) and (5) reinsert "agricultural liens," so as to expand the scope of the MTSTA in accordance with the scope of UCC Article 9 as set forth in UCC §9-601(a), (e) and (f). MTSTA §9-601(g)'s (subsection (6)'s) cross-reference to "Section 9-606(b)" is believed to be a typographical error, corrected to refer instead to "Section 18-9-607(2)." For purposes of clarification, MTSTA §§9-601(a), (c) and (g)'s reference to "this part" was changed in subsections (1), (3) and (6) to "this 'Chapter 6. Default.'"

Section 9-602 - Waiver/Variance of Rights/Duties. Except as otherwise provided in the provisions of this Code dealing with waivers (Section 18-9-624), to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following Sections of this Code:

(1) Section 18-9-201(2) (terms in an agreement deemed unenforceable as commercially unreasonable and subject to penalty if the secured party seeks enforcement, except those in which the Tribes' or either of them as debtor or obligor waive the protections of Section 18-9-201(2) by express reference hereto);

(2) Section 18-9-204 (rights and duties when collateral is in a secured party's possession);

(3) Section 18-9-207 (requests for an accounting, a list of collateral, or a statement of account);

(4) Section 18-9-607(2) (commercially reasonable collection and enforcement of collateral);

(5) Section 18-9-608(1) and 18-9-615(3) (application of proceeds, deficiency, and surplus) to the extent that these require application or payment of noncash proceeds of collection, enforcement, or disposition;

(6) Sections 18-9-608 and 18-9-615(4) (application of proceeds, liability for deficiency, and right to surplus) to the extent that these require an accounting for or payment of surplus proceeds of collateral;

(7) Section 18-9-609 (a secured party's right to take possession after default and limitations thereon) to the extent that it imposes upon the secured party taking possession of collateral without judicial process the duty to do so without

breach of the peace and with consent of the debtor as provided therein;

(8) Section 18-9-610(2), Section 18-9-611, and Section 18-9-613 (commercially reasonable disposition, notification before disposition of collateral, and contents and form of notification before disposition of collateral, respectively);

(9) Section 18-9-615(5) (calculation of a deficiency or surplus when disposition is to a secured party or one related thereto);

(10) Section 18-9-616 (duty to explain the calculation of a surplus or deficiency to consumers);

(11) Section 18-9-620 (acceptance of collateral in satisfaction of obligation);

(12) Section 18-9-623 (right to redeem collateral);

(13) Section 18-9-624 (waivers);

(14) Sections 18-9-625 and 18-9-626 (a secured party's liability for failure to comply with this Code); and

(15) Section 18-9-629 (attorneys' fees).

COMMENT

Source: MTSTA §9-602, as amended March 2006, together with modifications indicated below. (Variation of UCC §9-602.)

Changes: To grammatically correct MTSTA §9-602(a), the section's introductory paragraph omits the phrase "dealing with" before the semicolon; subsections (1) through (14) each begin with the cross-referenced section number(s) followed by a description of the referenced section(s) in parenthesis; and subsections (4) through (10) have been reworded to more accurately summarize the sections referenced therein. Subsection (1) regarding terms of an agreement deemed "commercially unreasonable" and subsection (15) regarding attorneys' fees were added to include cross-references to those provisions reflecting tribal policy on matters newly incorporated within this Code.

Section 9-603 - Agreement on Standards Concerning Rights/Duties.

Except regarding this Code's rules prohibiting the waiver or variation of certain rights and duties concerning secured transactions (Section 18-9-602), the parties may determine by

agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party if the standards are not manifestly unreasonable.

COMMENT

Source: MTSTA §9-603 together with modifications indicated below. (Variation of UCC §9-603.)

Changes: The section was significantly reworded to clarify that the parties cannot alter by agreement those rules set forth in Section 18-9-602, assuming the reference in MTSTA §9-603 to that same section is a typographical error and, instead, should be a cross-reference to MTSTA §9-602.

Section 9-604 - Procedure if Security Agreement Covers Real Property/Fixtures.

(1) If a security agreement covers both personal and real property, a secured party may proceed:

(a) Under this Chapter 6. "Default" as to the personal property without prejudicing any rights with respect to the real property; or

(b) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this Chapter 6. "Default" do not apply.

(2) Subject to subsection (3), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(a) Under this Chapter 6. "Default;" or

(b) In accordance with the rights with respect to real property, in which case the other provisions of this Chapter 6. "Default" do not apply.

(3) Subject to the other provisions of this Chapter 6. "Default," if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(4) A secured party that removes collateral shall promptly

reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

COMMENT

Source: MTSTA §9-604 together with modifications indicated below. (UCC §9-604.)

Changes: Reference in MTSTA §9-604 to "this part" was changed to "this Chapter 6. 'Default'" throughout this Section.

Section 9-605 - Unknown Debtor/Secondary Obligor. A secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

- (a) That the person is a debtor or obligor;
- (b) The identity of the person; and
- (c) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- (a) That the person is a debtor; and
- (b) The identity of the person.

COMMENT

Source: MTSTA §9-605 together with modifications indicated below. (UCC §9-605.)

Changes: None.

Section 9-606 - Time of Default for Agricultural Lien. For purposes of this Chapter 6. "Default," a default occurs with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

COMMENT

Source: UCC §9-605 together with modifications indicated below.

Changes: Since the Tribe's Code, like the UCC, includes agricultural liens within its scope, this Section is based on UCC §9-605 rather than MTSTA §9-605 (which is simply a "reserved" section). For purposes of clarification, UCC §9-605's reference to "this part" was changed to "this Chapter 6. 'Default.'"

Section 9-607 - Collection/Enforcement by Secured Party.

(1) If so agreed, and in any event after default, a secured party may:

(a) Notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(b) Take any proceeds to which the secured party is entitled under Section 18-9-315 (secured party's rights on disposition of collateral and in proceeds); or

(c) Enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral.

(2) A secured party shall proceed in a commercially reasonable manner if the secured party:

(a) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(b) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor

or a secondary obligor.

(3) A secured party may deduct from the collections made pursuant to subsection (2) reasonable expenses of collection and enforcement, including reasonable attorneys' fees and legal expenses incurred by the secured party.

(4) This Section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

COMMENT

Source: MTSTA §9-607 together with modifications indicated below. (Variation of UCC §9-607.)

Changes: Upon close scrutiny of MTSTA §§9-611 and 615 and UCC §§9-611 and 9-615, subsection (1)'s cross-reference is to "Section 18-9-315" rather than "Section 18-9-311" based on the belief that MTSTA §9-607(a)'s reference to "9-311" is a typographical error and should be "§9-315." In addition, subsection (1) places the verb "may" before the colon preceding sub-subsections (a), (b) and (c). Like UCC §9-607(a), sub-subsection (1)(4) adds the word "and" to connect its sub-subsections, despite there being no conjunction of any type between MTSTA §9-607(a)(2) and (3). MTSTA §9-607(c)'s cross-reference to "subsection (c)" is believed to be a typographical error, corrected to refer instead to the previous sub-section (b) (reformatted as Section 18-9-607(2)).

Section 9-608 - Rules for Applying Cash/Non-Cash Proceeds. If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 18-9-607 in the following order to:

(a) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(c) The satisfaction of obligations secured by any

subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives a signed demand for proceeds before distribution of the proceeds is completed;

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time, and, unless the holder complies, the secured party need not comply with the holder's demand under sub-subsection (1)(c) of this Code;

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 18-9-607 unless the failure to do so would be commercially unreasonable, and a secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner; and

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

COMMENT

Source: MTSTA §9-608 together with modifications indicated below. (Variation of UCC §9-608.)

Changes: For purposes of simplification, the title of MTSTA §9-608 was changed from "Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus." MTSTA §9-608 was modified, in accordance with UCC Article 9 §9-608, to include "agricultural liens," within the scope of this Code.

Section 9-609 - Secured Party's Limited Right to Take Possession after Default.

(1) Provided the person retained to actually repossess collateral is duly licensed under tribal law to conduct business within the exterior boundaries of the Wind River Reservation and except as provided in subsection (2) regarding consumer transactions, a secured party may, at the time of or after default:

(a) Take possession of collateral:

(i) Pursuant to judicial process in accordance with 17 N.A.C. 412 (Rules of Civil Procedure); or

(ii) Without judicial process provided:

(A) Possession is accomplished without breach of the peace; and

(B) The person actually repossessing collateral is duly licensed under other tribal law to conduct business within the exterior boundaries of the Wind River Reservation;

(b) Require a debtor to assemble the collateral and make it available to the secured party at a place reasonably convenient to both parties provided such arrangement is permitted by the parties' security agreement; and

(c) Without removal or breach of the peace, render equipment unusable and/or dispose of collateral on a debtor's premises under Section 18-9-610.

(2) In consumer transactions, the secured party may exercise those powers set forth in subsection (1) under the terms and conditions set forth therein provided that the person actually repossessing collateral is duly licensed under tribal law to conduct business within the exterior boundaries of the Wind River Reservation, that said possession has the effect of fully discharging any and all obligations associated with the collateral, and that, in writing and after default, as evidenced by records of the secured party:

(a) Every debtor having an ownership interest in the collateral is informed after default of his or her right to keep possession of the collateral unless and until the Northern Arapaho Tribal Court or other Tribal Court duly authorized by the Northern Arapaho Tribe orders otherwise;

(b) Every debtor having an ownership interest in the collateral waives his or her right to a hearing on whether or not the debtor(s) must give up possession of the collateral;

(c) Every debtor having an ownership interest in the collateral is informed that, if the debtor(s) give up possession of the collateral, the secured party simultaneously waives all claims and/or right to any deficiency judgment against the debtor(s);

(d) Prior to actual relinquishment of possession, every debtor having an ownership interest in the collateral is given a copy of a document:

(i) Plainly and boldly setting forth the disclosures set forth in sub-subsections (a) through (c);

(ii) Setting forth names of the debtor, secured party, and a description of collateral sufficient under Sections 18-9-502(a) and 18-9-116; and

(iii) Bearing both parties' signatures;

(e) The document described in sub-subsection (d) bears the signatures of both the secured party and the person actually repossessing the collateral, if different from the secured party, which signatures verify that:

(i) The secured party and person actually repossessing the collateral, if different from the secured party, both consent to tribal jurisdiction;

(ii) A copy of the completely signed and dated document was given to every debtor known to have an ownership interest in the collateral before repossession of the collateral actually occurred; and

(iii) The secured party and person actually repossessing the collateral, if different from the secured party, have each read and performed in accordance with the requirements in Section 18-9-609 of this Code; and

(f) Within ten (10) business days of the debtor(s) relinquishing possession of collateral, the secured party records a copy of the document required under sub-subsection (e) of this Section in the office for filing financing statements under Section 18-9-501 of this Code.

(3) In addition to the remedies provided in Subchapter 2. "Noncompliance with Code" (Sections 18-9-625 through 18-9-629), if compliance with this Section by a secured party or person actually repossessing the collateral if different from the secured party is an issue in an action, the court:

(a) May deny a deficiency judgment to a secured party in a non-consumer transaction;

(b) May award punitive damages (as well as actual damages) against the secured party and/or person actually repossessing the collateral if different from the secured party in an amount equal to the greater of:

(i) Twice the amount of interest the obligor was to have paid over the life of the loan secured by the subject collateral; or

(ii) The sum of One Thousand Five Hundred Dollars (\$1,500); and

(c) Shall award to a prevailing obligor and/or debtor the obligor's and/or debtor's reasonable attorneys' fees and costs to obtain and collect the judgment.

COMMENT

Source: MTSTA §9-609 and UCC §9-609 together with modifications indicated below.

Changes: MTSTA §9-609(a) significantly changed UCC §9-609 by including stringent written requirements for evidencing a debtor's voluntary consent to repossession of collateral by a secured party. While subsection (1) regarding non-consumer transactions, then, is modeled on the less stringent UCC §9-609, subsection (2) regarding consumer transactions more closely reflects the approach taken in MTSTA §9-609(a). Subsection (2), however, is a significant variation of even MTSTA §9-609 and reflects the Tribes considered public policy on the subject of repossession of consumer collateral. Subsection (3) is new language and emphasizes the importance placed by the Tribe on secured parties' compliance with tribal law in the event of repossession of collateral after default and the joint and severable liability secured parties' assume when third parties are retained to repossess collateral on their behalf.

Section 9-610 - Non-Judicial Disposition of Collateral after Default.

(1) After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral, without judicial process, in its present condition or following any commercially reasonable preparation or processing.

(2) Every aspect of a disposition of collateral without judicial process, including the method, manner, time, place and other terms, must be commercially reasonable. If commercially

reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms. In order to protect the debtor's right to redeem collateral (Section 18-9-623), a disposition of collateral shall take place only on a tribal business day.

(3) A secured party may purchase collateral without judicial process:

(a) At a public disposition; or

(b) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(4) A contract for sale, lease, license or other disposition without judicial process includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(5) A secured party may disclaim or modify warranties under subsection (4):

(a) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(b) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(6) A record is sufficient to disclaim warranties under subsection (5) if it indicates, "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition," or uses words of similar import.

(7) In addition to the remedies provided in Subchapter 2. "Noncompliance with Code" (Sections 18-9-625 through 18-9-629), if compliance with this Section by a secured party is an issue in an action, the court:

(a) May deny a deficiency judgment to a secured party in a non-consumer transaction;

(b) May award punitive, as well as actual, damages against the secured party and/or person actually repossessing the collateral if different from the secured

party in an amount equal to the greater of:

(i) Twice the amount of interest the obligor was to have paid over the life of the loan secured by the subject collateral; or

(ii) The sum of One Thousand Five Hundred Dollars (\$1,500); and

(c) Shall award to a prevailing obligor and/or debtor the obligor's and/or debtor's attorneys' fees and costs to obtain and collect the judgment.

COMMENT

Source: MTSTA §9-610 together with modifications indicated below. (Variation of UCC §9-610.)

Changes: Title to MTSTA §9-610 and the contents of subsections (1), (2), (3) and (4) were modified to include reference to the fact that this Section pertains to non-judicial disposition of collateral, in contrast to the requirements of judicial disposition of collateral governed by the provisions of §14-15-1 "Foreclosure of Secured Obligations," Chapter 15 "Creditor's Rights and Responsibilities," Title XVII "Code of Civil Procedure" of the Shoshone and Arapaho Law & Order Code. Subsection (2) adds a parenthetical cross-reference to Section 18-9-623 to clarify the meaning of this Code's provision regarding "a debtor's right to redeem." Subsection (7) is new language and emphasizes the importance placed by the Tribes' on secured parties' compliance with tribal law in the event of disposition of repossessed collateral.

Section 9-611 - Notification before Disposition of Collateral.

(1) In this Code, "notification date" means the earlier of the date on which:

(a) A secured party sends to the debtor and any secondary obligor a signed notification of disposition; or

(b) The debtor and any secondary obligor waive the right to notification.

(2) Except as otherwise provided in subsection (4), a secured party that disposes of collateral under Section 18-9-610 shall send to the persons specified in subsection (3) a reasonable signed notification of disposition.

(3) To comply with subsection (2), the secured party shall send a signed notification of disposition to:

(a) The debtor;

(b) Any secondary obligor; and

(c) If the collateral is other than consumer goods:

(i) Any other person from which the secured party has received, before the notification date, a signed notification of a claim of an interest in the collateral;

(ii) Any other secured party or lienholder that, fourteen (14) calendar days before the notification date, held a security interest in or an agricultural lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(iii) Any other secured party that, fourteen (14) calendar days before the notification date, held a security interest in the collateral perfected by compliance with other applicable law (Section 18-9-311).

(4) Subsection (2) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(5) A secured party complies with the requirement for notification prescribed by sub-sub-subsection (3)(c)(ii) if:

(a) Not later than twenty (20) calendar days nor earlier than thirty (30) calendar days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in sub-sub-subsection (3)(c)(ii); and

(b) Before the notification date, the secured party:

(i) Did not receive a response to the request for information; or

(ii) Received a response to the request for information and sent a signed notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

COMMENT

Source: MTSTA §9-611 together with modifications indicated below. (Variation of UCC §9-611.)

Changes: MTSTA §9-611(c)(3)(B) was changed in Section 18-9-611(3)(c)(ii) to expressly include "agricultural lien" as within the scope of this Code.

Section 9-612 - Timeliness of Notification before Disposition of Collateral.

(1) Except as otherwise provided in subsection (2), whether a notification under Section 18-9-611 is sent within a reasonable time is a question of fact.

(2) Unless a specific time for sending a notification of disposition is established by the court, a notification of disposition is sent within a reasonable time before the disposition when it is sent after default and:

(a) In a consumer transaction, twenty (20) calendar days or more before the earliest time of disposition set forth in the notification; or

(b) In all other transactions, ten (10) calendar days or more before the earliest time of disposition set forth in the notification.

COMMENT

Source: MTSTA §9-612 together with modifications indicated below. (Variation of UCC §9-612.)

Changes: Subsection (1) was modified by adding the phrase "under Section

18-9-611" for purposes of clarification.

Section 9-613 - Contents/Form of Notification before Disposition of Collateral. The following rules apply to notification before disposition of collateral under Section 18-9-611:

(1) The contents of a notification of disposition are sufficient if the notification:

(a) Describes the debtor and the secured party;

(b) Describes the collateral that is the subject of the intended disposition;

(c) States the method of intended disposition;

(d) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting;

(e) States the time and place of a public disposition or the time after which any other disposition is to be made;

(f) Describes any liability for a deficiency by the person receiving the notice; and

(g) States a telephone number or mailing address from which additional information concerning redemption, disposition, and the obligation secured is available;

(2) Whether the contents of a notification that lacks any of the information specified in subsection (1) are nevertheless sufficient is a question of fact;

(3) The contents of a notification providing substantially the information specified in subsection (1) are sufficient, even if the notification includes:

(a) Information not specified by that subsection; or

(b) Minor errors that are not seriously misleading;
and

(4) A particular phrasing of the notification is not required.

COMMENT

Source: MTSTA §9-613 together with modifications indicated below. (Variation of UCC §9-613.)

Changes: The section's introductory statement was modified by adding the phrase "under Section 18-9-611" for purposes of clarification. The term "paragraph" was changed to "subsection" in Section 18-9-613(2) and (3) to conform with other references made in other Codes of the Tribe.

Section 9-614 - [Reserved]

COMMENT

Source: MTSTA §9-614.

Changes: None.

Section 9-615 - Application of Proceeds, Liability for Deficiency, and Right to Surplus.

(1) A secured party shall apply or pay over for application the cash proceeds of disposition under Section 18-9-610 in the following order to:

(a) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of obligations secured by the security interest under which the disposition is made;

(c) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(i) The secured party receives from the holder of the subordinate security interest or other lien a signed demand for proceeds before distribution of the proceeds is completed; and

(ii) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(d) A secured party that is a consignor of the collateral if the secured party receives from the consignor a signed demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under sub-subsection (1)(c).

(3) A secured party need not apply or pay over for application noncash proceeds of disposition under Section 18-9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (1) and permitted by subsection (3):

(a) Unless sub-subsection (1)(d) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(b) The obligor is liable for any deficiency unless the obligation arises from a consumer transaction regarding which the secured party has waived right to a deficiency pursuant to Section 18-9-609(2).

(5) Following a disposition to the secured party, a person related thereto, or a secondary obligor, the surplus or deficiency is calculated based on the amount of proceeds that would have been realized in a hypothetical disposition complying with this Chapter 6. "Default" to a person other than the secured party, a person related thereto, or a secondary obligor if the debtor establishes that the amount of proceeds of the actual disposition is significantly below the range of proceeds that would have been brought by the hypothetical disposition.

(6) A secured party that receives cash proceeds of a

disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest under which the disposition is made:

(a) Takes the cash proceeds free of the security interest or other lien;

(b) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(c) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

COMMENT

Source: MTSTA §9-615, as amended March 2006, and UCC §9-615 together with modifications indicated below.

Changes: The title to MTSTA §9-615 was changed from "Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus" for purposes of simplification. Subsection (4)(b) adds the phrase "unless the obligation arises from a consumer transaction regarding which the secured party has waived right to a deficiency pursuant to Section 18-9-609(2)" in order to reflect that subsection's significant policy change made to MTSTA §9-609. Subsection (5) is based on UCC §9-615 as modified for purposes of clarification and simplification.

Section 9-616 - Duty to Explain Calculation of Surplus/Deficiency to Consumers.

(1) In a consumer transaction, a secured party must provide the debtor or consumer obligor a reasonably detailed explanation in a record of the manner in which any surplus or deficiency was calculated if the debtor or consumer obligor demands such an explanation or, in any event, ten (10) tribal business days before commencing an action for a deficiency.

(2) Each debtor or consumer obligor is entitled without charge to one response to a request under this Section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (1). The secured party may require payment of a charge not exceeding Twenty-Five Dollars (\$25) for each additional response.

COMMENT

Source: MTSTA §9-616 together with modifications indicated below. (Variation of UCC §9-616.)

Changes: For purposes of clarification, the title of MTSTA §9-616 was changed from "Explanation of Calculation of Surplus or Deficiency."

Section 9-617 - Rights of Transferee of Collateral.

(1) A secured party's disposition of collateral after default under Section 18-9-610:

(a) Transfers to a transferee for value all of the debtor's rights in the collateral;

(b) Discharges the security interest under which the disposition is made; and

(c) Discharges any subordinate security interest or other subordinate lien, other than liens created under other Sections of the Shoshone and Arapaho Law & Order Code or Northern Arapaho Code.

(2) A transferee that acts in good faith takes free of the rights and interests described in subsection (1), even if the secured party fails to comply with this Code or the requirements of any judicial proceeding.

(3) If a transferee does not take free of the rights and interests described in subsection (1), the transferee takes the collateral subject to:

(a) The debtor's rights in the collateral;

(b) The security interest or agricultural lien under which the disposition is made; and

(c) Any other security interest or other lien.

COMMENT

Source: MTSTA §9-617 together with modifications indicated below. (Variation of UCC §9-617.)

Changes: MTSTA §9-617(c)(2) was changed in sub-subsection (3)(b) to include "agricultural lien" as within the scope of this Code. Subsection (1) was modified by adding the phrase "under Section 18-9-610" for purposes of clarification.

Section 9-618 - Rights and Duties of Certain Secondary Obligors.

(1) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(a) Receives an assignment of a secured obligation from the secured party;

(b) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(c) Is subrogated to the rights of a secured party with respect to collateral.

(2) An assignment, transfer, or subrogation described in subsection (1):

(a) Is not a disposition of collateral under Section 18-9-610; and

(b) Relieves the secured party of further duties under this Code.

COMMENT

Source: MTSTA §9-618. (UCC §9-618.)

Changes: None.

Section 9-619 - Transfer of Record or Legal Title.

(1) In this Section, "transfer statement" means a record authenticated by a secured party stating:

(a) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(b) That the secured party has exercised its post-default remedies with respect to the collateral;

(c) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(d) The name and mailing address of the secured party, debtor, and transferee.

(2) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(a) Accept the transfer statement;

(b) Promptly amend its records to reflect the transfer; and

(c) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(3) A transfer of the record or legal title to collateral to a secured party under subsection (2) or otherwise is not of itself a disposition of collateral under this Code and does not of itself relieve the secured party of its duties under this Code.

COMMENT

Source: MTSTA §9-619. (UCC §9-619.)

Changes: None.

Section 9-620 - Rules for Accepting Collateral in Full/Partial Satisfaction of Debt.

(1) In instances of enforcement of security interests without judicial process, and except as provided in subsection (5), a secured party may, after default, propose to retain the collateral in full satisfaction of the obligation it secures or, in a transaction other than a consumer transaction, in partial

satisfaction of such obligation.

(2) The secured party shall send notice of such proposal to:

(a) The debtor;

(b) Any person from whom the secured party has received, before the debtor consented to the acceptance, a signed notification of a claim of an interest in the collateral;

(c) Any person that, fourteen (14) calendar days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by means of a financing statement or compliance with other law preempting this Code's requirements for perfection (Section 18-9-311(1)) that makes such interest reasonably discoverable; and

(d) If the proposal is for partial satisfaction of the obligation, any secondary obligor.

(3) The proposal is not effective unless it is covered by subsection (1) and:

(a) The debtor consents to the acceptance in a record signed after default;

(b) No other person specified in subsection (2), and no other person holding an interest in the collateral subject to the secured party's interest, objects to the acceptance within fourteen (14) tribal business days after notification was sent; and

(c) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance.

(4) A secured party's acceptance of collateral pursuant to this Section:

(a) Discharges the obligation to the extent consented to by the debtor;

(b) Transfers to the secured party all of the debtor's rights in the collateral; and

(c) Discharges the security interest or agricultural

lien that is the subject of the debtor's consent, and any security interest or other lien or interest that is subordinate thereto, even if the secured party accepting the collateral fails to comply with this Code.

(5) Within the time specified in subsection (6), a secured party that has taken possession of collateral shall dispose of the collateral pursuant to Sections 18-9-610 through 18-9-616 if:

(a) Sixty percent (60%) of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(b) Sixty percent (60%) of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(6) To comply with subsection (5), the secured party shall dispose of the collateral:

(a) Within ninety (90) calendar days after taking possession; or

(b) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and signed after default.

COMMENT

Source: MTSTA §9-620 together with modifications indicated below. (Variation of UCC §§9-620, 621 and 622.)

Changes: For purposes of clarification and simplification, the title to MTSTA §9-620 was changed from "Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Notification of Proposal; Effect of Acceptance; Compulsory Disposition of Collateral." The introductory phrase, "In instances of enforcement of security interests without judicial process," was added to Subsection (1) for purposes of clarification. Sub-subsection (2)(c) includes the description "preempting this Code's requirements for perfection" to aid the reader in understanding its reference to "other law" found at Section 18-9-311(1). For purposes of consistency, MTSTA §9-620(d)(3)'s reference to "article" was changed in sub-subsection (4)(c), like other MTSTA's references to "act," to the word "Code." Sub-subsection (4)(c) refers to discharges of both a security interest and an "agricultural lien" in order to include such liens within the scope of this Section. Finally, the time frames specified in subsection (6) were reformatted and separated from subsection (5) for purposes

of clarification and in a manner consistent with UCC §9-620(e) and (f).

Section 9-621 - [Reserved]

COMMENT

Source: MTSTA §9-621.

Changes: None.

Section 9-622 - [Reserved]

COMMENT

Source: MTSTA §9-622.

Changes: None.

Section 9-623 - Right to Redeem Collateral.

(1) Whenever a secured party enforces its security interest in collateral without judicial process, a debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(2) To redeem collateral under subsection (1), a person shall tender:

(a) Fulfillment of all obligations secured by the collateral; and

(b) Reasonable expenses and attorneys' fees to the extent allowed in Section 18-9-615(1)(a) (application of cash proceeds from disposition of collateral).

(3) A redemption may occur at any time before a secured party has:

(a) Collected collateral under Section 18-9-607 (collection/enforcement by secured party);

(b) Disposed of collateral or entered into a contract for its disposition under Section 18-9-610 (non-judicial disposition of collateral after default); or

(c) Accepted collateral in full or partial satisfaction of the obligation it secures under Section 18-9-620 (rules for accepting collateral in full/partial satisfaction of debt).

COMMENT

Source: MTSTA §9-623 together with modifications indicated below. (Variation of UCC §9-623.)

Changes: MTSTA §9-623(a)(2) was rewritten as set forth in Section 18-9-623(2)(b) to better alert the reader of Section 18-9-615's limited permission for recoupment of reasonable attorneys' fees and to more accurately describe the section being cross-referenced by use of parenthesis, a format used throughout this Code. Subsection (1) was modified by adding the phrase "without judicial process" and Subsection (2) was modified by adding the phrase "under subsection (1)" in order to clarify that the requirements regarding redemption under this Section are separate from those requirements of redemption associated with the judicial process of foreclosure under §14-15-1 "Foreclosure of Secured Obligations," Chapter 15 "Creditor's Rights and Responsibilities," Title XIV "Code of Civil Procedure" of the Shoshone and Arapaho Law & Order Code.

Section 9-624 - Waiver.

(1) A debtor or secondary obligor may waive the right to notification prior to disposition of collateral (Section 18-9-611) only by an agreement to that effect entered into and signed after default.

(2) A debtor may waive the right to require disposition of collateral comprised of consumer goods where sixty percent (60%) of the purchase price or principal amount secured has been paid (Section 18-9-620(5)) only by an agreement to that effect entered into and signed after default.

(3) Except in a consumer transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 18-9-623 only by an agreement to that effect entered into and signed after default.

COMMENT

Source: MTSTA §9-624 together with modifications indicated below. (Variation of UCC §9-624.)

Changes: Subsections (1), (2) and (3) have been rewritten for purposes of clarification. The last sentence in MTSTA §9-614(c), "In a consumer transaction, a debtor or secondary obligor may not waive such right..." has been deleted as unnecessary once the exception regarding consumer transactions was added to subsection (3) in a manner identical to that found in UCC §9-624.

SUBCHAPTER 2: NONCOMPLIANCE WITH CODE

Section 9-625 - Remedies for Secured Party's Failure to Comply with Code. Subject to more particular remedies for violations of Sections 18-9-609 (repossession) and 18-9-610 (disposition of collateral after repossession), remedies for a secured party's failure to comply with this Code are as follows:

(1) If it is established that a secured party is not proceeding in accordance with this Code, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(2) Subject to subsections (3), (4) and (5), a secured party is liable for damages in the amount of any loss caused by a failure to comply with this Code. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(3) Except as otherwise provided in Section 18-9-628 (nonliability and limitations on liability of a secured party and the liability of a secondary obligor):

(a) A person who, at the time of the failure to comply with this Code, was a debtor or obligor or held a security interest in or other lien on the collateral may recover damages under subsection (2) for its loss; and

(b) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this Chapter 6. "Default" may recover for that failure in any event an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price.

(4) A debtor whose deficiency is eliminated under Section 18-9-626 (actions in which a deficiency or surplus is in issue) may recover damages for the loss of any surplus.

(5) In addition to any damages recoverable under subsection (2), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover Five Hundred Dollars (\$500) in each case from a person that fails to comply with:

(a) Section 18-9-205(2) (additional duties of a secured party having control of an investment account);

(b) Section 18-9-205(2)(b) (duties of a secured party if an account debtor has been notified of assignment);

(c) Section 18-9-502(6) (duties of a secured party to file or send a termination statement in accordance with regulations promulgated under this Code);

(d) Section 18-9-502(7) (prohibitions against the filing of records by unauthorized persons); or

(e) Section 18-9-616(1) (duties of a secured party to explain calculations of any surplus or deficiency) and whose failure is part of a pattern, or consistent with a practice, of noncompliance.

(6) A debtor or consumer obligor may recover damages under subsection (2) and, in addition, Five Hundred Dollars (\$500) in each case from a person that, without reasonable cause, fails to comply with a request for an accounting (Section 18-9-207). If a recipient of a request under Section 18-9-207 never claimed an interest in the collateral or obligations that are the subject of a request under that Section, said recipient has reasonable cause, within the meaning of this subsection, for failing to comply with the request within the meaning of this subsection.

(7) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 18-9-207, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

COMMENT

Source: MTSTA §9-625 together with modifications indicated below. (Variation of UCC §9-625.)

Changes: For purposes of consistency with new language in Sections 18-9-609 and 18-9-610, the introductory clause was added to MTSTA §9-625 to clarify that the extraordinary remedies available in those two earlier sections supercede the general remedies set forth here in the event of a conflict. MTSTA §9-625(b)'s reference to "a person" was changed in subsection (2) to "a secured party" so as to be consistent with both the title of this Section and UCC §9-625(b). Subsection (3) was reworded for purposes of clarification. "Who" replaces the word "that" in sub-subsection (3)(a) to describe "person." MTSTA §9-625(c)(2) was changed in sub-subsection (3)(b) to describe the type of "failure" to which it refers -- that is, a "failure to comply with this Code" and to change the phrase "this part" to "this Chapter 6. 'Default'" for purposes of clarification. For purposes of simplification and clarification, the format of subsection (4) and all sub-subsections within subsection (5) was changed to list the cross-referenced section, followed by a summary description of such section in parenthesis. The contents of (5)(c) and (5)(d) were reversed in order to preserve the numerical order of the sections listed in subsection (5). For purposes of clarification, the second sentence of subsection (6) was reworded.

Section 9-626 - Action in Which Deficiency/Surplus is in Issue.

(1) In a non-consumer transaction in which the amount of a deficiency or surplus is in issue, the following rules apply:

(a) A secured party need not prove compliance with the provisions of this Chapter 6. "Default" relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue;

(b) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this Chapter 6. "Default;"

(c) Except as otherwise provided in the provisions of this Code dealing with nonliability and limitations on liability of a secured party or secondary obligor (Section 18-9-628), if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this Chapter 6. "Default" relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is subject to setoff for an amount as stated in the provision of this Code dealing with damages for noncompliance (Section 18-9-625(2)), which

may be measured by the amount recovered for conversion of collateral; and

(d) For purposes of sub-subsection (c), the liability of the debtor or a secondary obligor is calculated on the presumption that the proceeds of disposition equal the sum of the secured obligation, expenses, and allowable attorneys' fees, but the secured party may rebut the presumption.

(2) The limitation of the rules in subsection (1) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

COMMENT

Source: MTSTA §9-626 together with modifications indicated below. (Variation of UCC §9-626.)

Changes: For purposes of clarification, MTSTA §9-626(a)(1)'s reference to "this part" was changed in sub-subsections (1)(a), (1)(b) and (1)(c) to "this Chapter 6. 'Default.'"

Section 9-627 - Determination of Whether Conduct was Commercially Reasonable.

(1) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(2) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(a) In the usual manner on any recognized market;

(b) At the price current in any recognized market at the time of the disposition; or

(c) Otherwise in conformity with reasonable commercial

practices among dealers in the type of property that was the subject of the disposition.

(3) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

- (a) In a judicial proceeding;
- (b) By a bona fide creditors' committee;
- (c) By a representative of creditors; or
- (d) By an assignee for the benefit of creditors.

(4) Approval under subsection (3) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

COMMENT

Source: MTSTA §9-627 together with modifications indicated below. (Variation of UCC §9-627.)

Changes: To be consistent with the format followed in this Code and UCC §9-627(d), Subsection (4) was created from MTSTA §9-627(c)'s last sentence.

Section 9-628 - Nonliability/Liability of Secured Party/Secondary Obligor.

(1) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(a) The secured party is not liable to the person or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Code; and

(b) The secured party's failure to comply with this Code does not affect the liability of the person for a deficiency.

(2) A secured party is not liable because of its status as secured party:

(a) To a person that is a debtor or obligor, unless

the secured party knows:

- (i) That the person is a debtor or obligor,
- (ii) The identity of the person; and
- (iii) How to communicate with the person; or

(b) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- (i) That the person is a debtor; and
- (ii) The identity of the person.

(3) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(a) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(b) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(4) A secured party is not liable to any person under Section 18-9-625(3)(b) (statutory damages where the collateral is consumer goods) for its failure to comply with Section 18-9-616 (explanations of calculations of surplus or deficiency) except in those instances where such failure is a part of a pattern, or consistent with a practice, of noncompliance.

(5) A secured party is not liable under Section 18-9-623(3)(b) (statutory damages where the collateral is consumer goods) more than once with respect to any one secured obligation.

COMMENT

Source: MTSTA §9-628 together with modifications indicated below. (Variation of UCC §9-628.)

Changes: For purposes of simplification, the title of MTSTA §9-628 was changed from "Nonliability and Limitation on Liability of Secured Party;

Liability of Secondary Obligor." For purposes of consistency with new language in Sections 18-9-609 and 18-9-610, the introductory clause was added to MTSTA §9-626 in order to clarify that the extraordinary remedies available in those two earlier sections supercede the general rules set forth in this Section should there be any conflict between them. For purposes of clarification and consistency with MTSTA §9-628(d) and (e), sub-subsection (1)(a) has been slightly reworded and, in subsections (4) and (5), descriptions of the cross-referenced sections and subsections were placed in parenthesis rather than made part of the subsection's primary text. In order to be consistent with Section 18-9-625(5)(e), subsection (4) changes MTSTA §9-628(d) by adding an exception to a secured party's nonliability in those instances "where such failure is a part of a pattern, or consistent with a practice, of noncompliance."

Section 9-629 - Attorneys' Fees in Certain Transactions. Subject to the provisions regarding violations of Sections 18-9-609 (repossession) and 18-9-610 (disposition of collateral after default), the following rules apply if the secured party's compliance with this Code is an issue in an action:

(1) If the secured party would have been entitled by agreement to attorneys' fees as the prevailing party and the original principal amount of the indebtedness secured does not exceed Twenty-Five Thousand Dollars (\$25,000), a debtor or obligor prevailing on the issue of the secured party's noncompliance with this Code is entitled to the costs of the action and reasonable attorneys' fees;

(2) In other cases, the court may award the costs of the action and reasonable attorneys' fees to a consumer debtor or consumer obligor prevailing on the issue of the secured party's noncompliance with this Code; and

(3) In determining the attorneys' fees, the amount of the recovery on behalf of the prevailing debtor or obligor is not a controlling factor.

COMMENT

Source: MTSTA §9-629, as amended March 2006, together with modifications indicated below. (No comparable UCC Article 9 section or provisions.)

Changes: To broaden the scope of this provision, title to MTSTA §9-629 was changed from "Attorney's Fees in Consumer Transactions." The phrase "subject to the provisions regarding violations of Sections 18-9-609... and 18-9-610..." was added to the Section's introductory language in order to

clarify that the particular remedies provided in these two earlier sections supercede the general rules set forth in this Section should there be any conflict between them. In order to assist the reader in distinguishing the differences between the rules set forth in subsection (1) and (2), the sentence structure and language in subsection (1) was changed to replicate that found in subsection (2). Section (1) changes the scope of MTSTA §9-629(a) from "consumer" debtors or obligors to any and all debtors or obligors provided the original indebtedness was \$25,000 or less. In subsection (2), a description of "that issue" has been inserted for purposes of clarification.

CHAPTER 7: MISCELLANEOUS PROVISIONS

Section 9-701 - Effective Date. The effective date of this code shall be December 1, 2014.

COMMENT

Source: MTSTA §9-701. (No comparable UCC Article 9 section or provisions.)

Changes: None. In accordance with the MTSTA Guide's recommendation of an effective date of approximately six (6) months after enactment in order to prepare for compliance, an effective date of December 1, 2014, was selected based upon this Code's anticipated date of enactment.

Section 9-702 - Severability. If any provision of this Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

COMMENT

Source: MTSTA §9-702. (No comparable UCC Article 9 section or provisions.)

Changes: None.

History: Title 18. The Northern Arapaho Uniform Commercial Code, Article 9, was enacted by the Northern Arapaho Tribe by resolution of the Northern

Arapaho Business Council dated July 1, 2014, Resolution No. NABC-2014-399, with an effective date specified of December 1, 2014. Technical amendments for the purpose of clarifying references to tribal courts were enacted on August 17, 2016, by Resolution No. NABC-2016-702, and additional technical amendments were enacted on August 31, 2016, by Resolution No. NABC-2016-713. A technical amendment to correct a citation to Title 17 in Section 9-609 was enacted on August 17, 2018, by Resolution No. NABC-2018-1014.