
Blackfeet Tribal Law and Order Code

Circa 1999

ORDINANCE # 81. BLACKFEET COMMERCIAL CODE

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REMEDIES AND ENFORCEMENT OF JUDGMENTS

Chapter 1

PROCEDURES FOR ATTACHMENT OF PROPERTY

Section 1. Jurisdiction

The Blackfeet Tribal Court shall have jurisdiction over the attachment of any property located within the exterior boundaries of the Blackfeet Reservation. Such property shall not be attached except in accordance with this Chapter. Indian trust property is not subject to attachment.

Section 2. Types of Cases in Which Attachment is Allowed

In civil actions for recovery of money, a plaintiff may petition for attachment of a defendant's property in order to assure payment of any judgment which may be later recovered against the defendant in the Tribal Court where:

1. the defendant is a foreign corporation or a nonresident of the Reservation; or
2. there is a reasonable belief that the property sought to be attached may be lost, damaged, disposed of or removed from the Reservation prior to payment of any final judgment and the plaintiff's ability to collect on the judgment is jeopardized; or
3. the action is upon a contract for the direct payment of money and the contract is not secured by any mortgage, lien, or other security interest; or
4. the action is upon a secured contract where the security has, without any act of the creditor or the person to whom the security was given, become valueless.

Section 3. Procedure for Obtaining a Writ of Attachment

- A. Written Petition and Affidavit

A plaintiff may petition for a writ of attachment at the time of the filing and service of the complaint or any time prior to judgment. The petition shall contain: a statement that the plaintiff is seeking a writ of attachment for the reasons stated in the plaintiff's affidavit; and a specific description of the property to be attached and the specific location of the property to the best knowledge, information and belief of the plaintiff. The petition must be accompanied by an affidavit by the plaintiff stating:

1. facts showing that the matter comes within one of the requirements of Sec. 2; and
2. that the property sought to be attached is not trust property to the best of the plaintiff's knowledge, information and belief.

The petition and affidavit shall be served on the defendant in accordance with the Rules of Civil Procedure.

B. Order Setting Hearing

The Court shall immediately examine the petition, and if satisfied that it meets the requirements of Section 2 of this Chapter, the Court shall by order set a hearing on the petition, giving the defendant at least three (3) days notice of the hearing. The order shall also inform the defendant of the right to present evidence and testimony opposing the affidavit, and that failure to appear may result in the issuance of a writ of attachment by default without further notice to the defendant. The order, petition and affidavit shall be served on the defendant personally, or if the defendant cannot be found for personal service, notice shall be posted on the property and in three (3) places on the Reservation. No writ of attachment shall issue without notice to the defendant and a hearing, although a writ of attachment may be issued even though the defendant does not appear at the hearing.

C. Written Response

Within twenty (20) days after service on him, the defendant may file with the Clerk a written response containing: a denial or admission of the facts stated in the plaintiff's petition or affidavit; an explanation of the facts denied; any other defenses to the attachment; and a statement of exempt property under this Chapter in the event the writ of attachment is issued.

D. Hearing on Petition

At the hearing, the Court shall determine:

1. whether the matter comes within one of the requirements of Sec. 2;
2. that the property sought to be attached is not trust property and is otherwise available for attachment under Sec. 6 of this Chapter;
3. if applicable, whether the plaintiff has made a prima facie showing that it is necessary to seize the property because it may be lost, damaged, disposed of or removed from the Reservation if it is not seized, and that the plaintiff's ability, to collect on the debt will be jeopardized if the property is not seized.

If the Court finds in favor of the plaintiff on the applicable elements above, the Court shall grant the plaintiff's petition and issue a writ of attachment authorizing the seizure of only that amount of property necessary to insure that the plaintiff will be able to collect on any judgment in his favor. The Court may condition the issuance of a writ on the filing of an

appropriate bond by the plaintiff.

E. Issuance of Writ of Attachment

The writ of attachment shall be directed to the BIA or Tribal Police, shall specify the particular property of the defendant to be seized, and shall authorize the Tribal Police to seize the property and deliver it to the Court Clerk for safekeeping until further order of the Court.

F. Service of Writ

Immediately upon issuance of the writ of attachment, a copy of the writ shall be served personally upon the defendant. If the defendant cannot be found, a copy of the writ shall be mailed to the defendant at his last known address.

G. Execution and Return of the Writ

Within thirty (30) days of the issuance of the writ, the BIA or Tribal Police shall seize or take into its possession the specified property and deliver it to the Court Clerk along with the writ. Property incapable of manual delivery shall be seized by taking custody of all books of account, vouchers or other papers relating to the property, and delivering the same to the Clerk. A receipt shall be issued to the holder of the property seized. If the BIA or Tribal Police have been unable to seize the property, the writ shall be returned within thirty (30) days with a written explanation of why the property cannot be delivered.

Section 4. Proceedings to Release or Prevent Attachment

A. Bond or Undertaking

At any time prior to or after issuance of a writ of attachment or seizure of property, the defendant may retain or require the return of all or any portion of the property by filing a money bond executed by two (2) or more sureties to the effect that the defendant will on demand deliver the subject property to the Court Clerk or pay an amount sufficient to satisfy the creditor's claim plus costs, or pay an amount equal to the value of the property sought to be returned or retained. The bond shall be filed with the Clerk and served on the plaintiff.

B. Termination of Attachment

If the defendant files a bond under Section 4A of this Chapter, all attachment proceedings shall terminate unless the creditor challenges the defendant's sureties. Any challenge shall be filed with the Clerk and a hearing shall be scheduled immediately by the Court. If no challenge is filed, the property shall be returned to the debtor within five (5) days of the filing of the bond or surety.

Section 5. Record of Attachment

The Court Clerk shall keep a book in which the Clerk shall record: the date of issuance of the writ of attachment; the parties to the action; a specific description of the property attached; the date of the return of the writ; the date of any release of the attachment; and any other information pertinent to the proceedings.

Section 6. Property Subject to Attachment

Trust property shall not be subject to attachment. All other property subject to execution under

Chapter 2 is subject to attachment, except that property in which the plaintiff has a security interest as the result of a consumer credit transaction is not subject to attachment.

Section 7. Public and Private Sale of Property After Final Judgment

The property attached under this Chapter may be sold under the procedures set out in Chapter 2, Execution of Judgments, in order to satisfy any final judgment which may be obtained by the creditor.

Section 8. Civil Damages and Penalty

If a debtor takes any deliberate action to reduce the value of the property subject to attachment after an attachment petition has been filed, or takes any steps to dispose of, conceal or remove the property from the Reservation after the attachment petition has been filed, the plaintiff has a cause of action to recover actual damages, and a right to recover from the person violating this Chapter a civil penalty in an amount determined by the Court.

Section 9. State Court Writs of Attachment

A. Indian Defendants

State court writs of attachment may not be enforced against Indian property on the Reservation. State court final judgments may be given full faith and credit if the standards of Chapter 5 are satisfied, and may thereafter be enforced through any methods provided in this Code.

B. Non-Indian Defendants

Plaintiffs are encouraged to file civil actions against non-Indian debtors in Tribal Court and follow the attachment procedures set out in this Chapter. However, a plaintiff who has properly filed a civil action in State court may attach the property on non-Indian defendants provided that State law is followed, and provided the BIA or Tribal Police are notified by the Sheriff before coming onto the Reservation to execute the writ, and the BIA or Tribal Police may elect to accompany the Sheriff, except that property located on Indian land can only be attached through the procedures in this Chapter.

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