
Blackfeet Tribal Law and Order Code

Circa 1999

Title III. BLACKFEET COMMERCIAL CODE - SECURED TRANSACTIONS

Section 1. Purpose

This Title sets out a comprehensive scheme for the regulation of security interests in personal property and fixtures. It applies only to commercial transactions and does not apply to transactions involving consumer goods. This Title is based upon Article 9 of the Uniform Commercial Code with the exception of changes where noted.

Section 2. Jurisdiction

The Blackfeet Tribe of Indians shall have jurisdiction over any commercial transaction subject to this Title or with respect to any claim arising from a transaction subject to this Title and where not prohibited by federal law.

Section 3. Interpretation

In addition to the Comments contained herein, in interpreting this Title, the Tribal Court may consult where necessary the Official Comments to Article 9 of the Uniform Commercial Code. The terms of this Title shall apply where changes are noted, and in the case of any conflict. The Comments herein and the Official Comments to Article 9 are intended to aid in the use of the Code, and are not the law. Where this Code does not address a particular issue or right, the Tribal Court may apply customs and usages of the Tribe, or federal laws and regulations, or State law in that order.

Section 4. Uniform Commercial Code - Citation

The following Sections correspond in number with Article 9 of the Uniform Commercial Code. Citations should refer only to the UCC Section, e.g., Section 9-101.

PART 1

SHORT TITLE, APPLICABILITY, DEFINITIONS

Section 9-101. Short Title

This Title shall be known and may be cited as the Blackfeet Commercial Code - Secured Transactions.

Section 9-102. Policy and Subject Matter of Title

1. Except as otherwise provided in Section 9-104 on excluded transactions, this Article applies:
 - a. to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures, including goods, documents, instruments, general intangibles, chattel paper or accounts; and also
 - b. to any sale of accounts or chattel paper.
2. This Title applies to security interests created by contract, including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Title does not apply to statutory liens except as provided in Section 9-310.
3. The application of this Title 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 Article does not apply.

Comment

Generally a secured transaction exists when a debt exists between two persons and those parties agree that the property owned or held by the debtor can be used by the creditor to satisfy the debt if the debtor fails to perform as agreed. This section sets out the kinds of property to which this Title applies, and the various ways in which a secured transaction can be created.

Section 9-103. Perfection of Security Interest in Multiple State Transactions

1. Documents, Instruments and Ordinary Goods.
 - a. This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).
 - b. Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.
 - c. If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time it attaches until thirty days after the debtor received possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.
 - d. When collateral is brought into and kept on the Blackfeet Reservation, while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Title to perfect the security interest,
 - i. if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is

brought onto the Blackfeet Reservation, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

- ii. if the action is taken before the expiration of the period specified in subparagraph (d) (i), the security interest continues perfected thereafter;
- iii. for the purpose of priority over a buyer of consumer goods (subsection (2) of Section 9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (d) (i) and (ii).

2. Certificate of Title

- a. This subsection applies to goods covered by a certificate of title issued under any Blackfeet law or under a statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.
- b. Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.
- c. Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought onto the Blackfeet Reservation and thereafter covered by a certificate of title issued under Blackfeet law is subject to the rules stated in paragraph (d) of subsection (1).
- d. If goods are brought onto the Blackfeet Reservation while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued under Blackfeet law and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.
- e. For purposes of this Title, perfection of security interests in vehicles and other goods registered under certificate of title laws of a state or other jurisdiction shall be governed by such laws until such time as the Blackfeet Tribe adopts laws creating a system for the issuance of certificates of title.

3. Accounts, General Intangibles, and Mobile Goods.

- a. This subsection (3) applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock,

airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

- b. The law (including the conflict of laws rule) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of the security interest.
- c. If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has his major executive office in the United States governs the perfection and the effect of perfection or non-perfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions, and the Commonwealth of Puerto Rico, and the Blackfeet Reservation.
- d. A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Code of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

4. Chattel Paper.

The rules stated for goods in subsection (a) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a non-possessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

5. Minerals.

Perfection and the effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

6. Uncertificated Securities.

The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or non-perfection of a security interest in uncertificated securities.

7. Deposit Accounts.

This Title applies to the perfection of security interests in deposit accounts of any person or entity which are maintained at any office located on the Blackfeet Reservation of any depository institution or other business authorized to accept deposits located on the Blackfeet Reservation.

Comment

This section states the rules for determining where and under what law a security interest should be perfected, and the effect of perfection or non-perfection. The section takes into account that the Blackfeet Tribe does not have a system for issuing certificates of title. Deposit accounts are also added as an additional area governed by the section.

Section 9-104. Transactions Excluded From Title

This Title does not apply:

- a. to a security interest subject to any statute of the United States, to the extent that such statute governs the rights of parties to, and third parties affected by, transactions in particular types of property;
- b. to a landlord's lien; or
- c. to a lien given by statute or other rule of law for services or materials except as provided in Section 9-310 on priority of such liens; or
- d. to a transfer of a claim for wages, salary or other compensation of an employee; or
- e. to a transfer by a government or government subdivision, official or agency except to the extent that such entity has made an effective waiver of its sovereign immunity; or
- f. to a sale of accounts or chattel paper as apart of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or
- g. to a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (Section 9-306) and priorities in proceeds (Section 9-312) ; or
- h. to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or
- i. to any right of set-off; or
- j. except to the extent that provision is made for fixtures in Section 9-393, to the creation or transfer of an interest in or lien on real estate or a mobile home used as the primary place of a lease or rent thereunder; or
- k. to a transfer in whole or in part of any claim arising out of tort; or
- l. to a transfer of an interest in any deposit account (subsection (1) of Section 9-105), except as provided with respect to proceeds (Section 9-306) and priorities in proceeds (Section 9-312), and except for deposit accounts maintained on the Blackfeet Reservation by offices of depository institutions and other businesses authorized to accept deposits on the Blackfeet Reservation; or
- m. to any transaction involving consumer goods.

Comments

This section lists a number of secured transactions which are not subject to this Title. Fixtures are governed by this section except to the extent that they are trust property. Section 9-104(e) is modified to allow governmental units to choose to be bound by this Title through a waiver of immunity. Section 9-104(j) is modified to make clear that mobile homes used as a primary residence are to be treated like real property. Section 9-104(1) is modified to reflect that deposit accounts can be used as collateral under this Title. Section 9-104(m) is added to reflect that this Title does not apply to transactions involving consumer goods because they are regulated elsewhere.

Section 9-105. Definitions and Index of Definitions

1. In this Article unless the context otherwise requires:
 - a. "account debtor" means the person who is obligated on an account, deposit account, chattel paper or general intangible;
 - b. "chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a charter or other contract involving the use of hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;
 - c. "collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;
 - d. "debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of this Title dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both the owner and the obligor where the context so requires;
 - e. "deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union, or like organization or a similar account maintained with any other type of business which is or becomes authorized to accept such deposits by the law applicable thereto. An account evidenced by a negotiable certificate of deposit is an "instrument", but a nonnegotiable certificate of deposit is a deposit account, if such account is maintained on the Blackfeet Reservation, or a general intangible, if such account is maintained in any other jurisdiction;
 - f. "document" means document of title which includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to cover goods issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass;
 - g. "encumbrance" includes real estate leases, mortgages and other liens on real

estate and all other rights and interests in real estate that are not ownership interests;

- h. "goods" includes all things which are movable at the time the security interest attaches or which are fixtures (Section 9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;
- i. "instrument" means a negotiable instrument, or a certificated security (as defined in this Section), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment. "Negotiable instrument" means any writing signed by the maker or drawer, and which contains an unconditional promise or order to pay a sum certain in money, and is payable on demand or at a definite time, and is payable to order or to bearer. A writing which complies with the requirements of a negotiable instrument is a "check" if it is a draft drawn on a bank and payable on demand. A writing which complies with the requirements of a negotiable instrument is a "note" if it is a promise other than a certificate of deposit;
- j. "mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;
- k. an advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;
- l. "security agreement" means an agreement which creates or provides for a security interest;
- m. "secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders or owners of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;
- n. "transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer services;
- o. "sale" means, the passing of title from the seller to the buyer for a price, "contract for sale" includes both a present sale of goods and a contract to sell goods at a future time;
- p. "holder in due course" means a holder who takes the instrument for value, and in good faith, and without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person. A payee may be a holder in due course. A holder does not become a holder in due course of an instrument by purchase of it at judicial sale, or by taking it under legal process, or by acquiring it in taking over an estate, or by purchasing it as part of a bulk transaction not in regular course of business of the transferor. A purchaser of a limited interest can be a holder in due course only to the extent of the interest

purchased;

- q. "certificated security" means a share, participation or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is (i) represented by an instrument issued in bearer or registered form, (ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment, and (iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations. An "uncertificated security" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is (i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer, (ii) of a type commonly dealt in on securities exchanges or markets, and (iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

2. Other definitions applying to this Title sections and the sections in which they appear are:

"Account"	Section 9-106
"Attach"	Section 9-203
"Construction mortgage"	Section 9-313 (1)
"Consumer goods"	Section 9-109 (1)
"Equipment"	Section 9-109 (2)
"Farm products"	Section 9-109 (3)
"Fixture"	Section 9-313 (1)
Fixture filing"	Section 9-313 (1)
"General intangibles"	Section 9-106
"Inventory"	Section 9-109 (4)
"Lien creditor"	Section 9-301 (3)
"Proceeds"	Section 9-306(1)
"Purchase money security interest"	Section 9-107
United States	Section 9-103

3.

Comment

This section defines a number of terms used in Article 9. Section 9-105(1)(a) and (e) have been modified to include deposit accounts. Section 9-105(1)(f) has been modified to include a definition from Article 1 which has not been adopted by the Blackfeet Tribe. Sections 9-105(1)(o), (p) and (q) have been added to include definitions from Article 2, 3 and 8 which have not been adopted by the Blackfeet Tribe, and thus section 9-105(3) has been omitted. Section 9-105(4) has also been omitted because the Tribe has not adopted Article 1.

Section 9-106. Definitions: "Account"; "General Intangibles"

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, deposit accounts, chattel paper, documents, instruments, and

money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

Comment

The definitions in this section complete the classification of the kinds of intangibles which are permitted collateral under this Title and which are not already defined.

Section 9-107. Definitions: "Purchase Money Security Interest"

A security interest is a "purchase money security interest" to the extent that it is:

- a. taken or retained by the seller of the collateral to secure all or part of its price; or
- b. taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

Comment

This section defines purchase money security interests as opposed to other types of security interests. Generally a purchase money security interest is created when the seller retains a security interest in the goods being sold rather than in goods or property not connected with the transactions.

Section 9-108. When After-Acquired Collateral Not Security for Antecedent Debt.

Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property, his security interest in the after-acquired collateral shall be deemed to be taken for new value (and not as security for an antecedent debt) if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

Comment

This section specifies when after-acquired property is not to be regarded as security for an antecedent debt. After-acquired property is not to be deemed taken as security for an antecedent debts when (1) the secured party has given new value, and (2) the debtor has acquired the after-acquired property either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement and within a reasonable time after new value is given. Whether security is given for new value or for a pre-existing claim may be important in bankruptcy or insolvency proceedings.

Section 9-109. Classification of Goods: "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory"

1. "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;
2. "equipment" if they are used or bought for use primarily in business (including farming or

a profession) or by a debtor who is a non-profit organization or a governmental sub-division or agency or if the goods are not included in the definitions of inventory , farm products or consumer goods;

3. "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops of livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk or eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory; or
4. "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service (or if he has so furnished them), or if they are raw materials, work in process of materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

Comment

This section classifies goods into four mutually exclusive categories. The same item can be classified differently depending on how it is being used.

Section 9-110. Sufficiency of Description

For the purposes of this Title any description of personal property or real estate is sufficient, whether or not it is specific, if it reasonably identifies what is described.

Comment

This section sets the standard for the description of the collateral which must be included in the security agreement. A description is sufficient for the purpose of the secured transaction if it reasonably identifies the collateral. If the description of the collateral is inadequate, the security agreement may be ineffective.

Section 9-111. Omitted

Section 9-112. Where Collateral Is Not Owned by Debtor

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral (i) is entitled to receive from the secured party any surplus under Section 9-502(2) or under Section 9 504(1), and (ii) is not liable for the debt or for any deficiency after resale, and (iii) has the same right as the debtor:

- a. to receive statements under Section 9-208;
- b. to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under Section 9-505;
- c. to redeem the collateral under Section 9-506;
- d. to obtain injunctive or other relief under Section 9- 507(1); and
- e. to recover losses caused to him under Section 9-208(2).

Comment

This section describes the rights and protections of a third party who allows his property to be used to secure the obligations of another person. The owner of the properties not personally liable for the debt or for any deficiency after resale. He is also entitled to receive from the secured party any surplus under this Title. The owner of the property also has the same rights of the debtor to: receipt of the financing statements; notice of and objection to retention of collateral in satisfaction of the obligation; redemption of collateral; obtaining injunctive or other relief; and recovery of loss.

Section 9-113. Omitted

Section 9-114. Omitted

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