

---

## **Blackfeet Tribal Law and Order Code**

Circa 1999

---

### **Title III. BLACKFEET COMMERCIAL CODE - SECURED TRANSACTIONS**

#### **PART 2**

#### **VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES**

##### **Section 9-201. General Validity of Security Agreement**

Except as otherwise provided by this Title, a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this Title validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, consumer protection, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

##### **Comment**

This section states the effect of a security agreement, and indicates that other laws which may be applicable to the transaction are not affected by this Title.

##### **Section 9-202. Title to Collateral Immaterial**

Each provision of this Title with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

##### **Comment**

This section makes clear that the various provisions of this Title apply without regard to ownership of the collateral.

##### **Section 9-203. Attachment and Enforceability of Security Interest; Proceeds; Formal Requisites**

1. Subject to other applicable law governing the security interest of a collecting bank, security interests in securities, and security interests arising in the context of a sale, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:
  - a. the collateral is in the possession of the secured party pursuant to an agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land

concerned;

- b. value has been given; and
  - c. the debtor has rights in the collateral, enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in Subsection (1) have taken place, unless explicit agreement postpones the time of attaching.
2. [Reserved]
  3. Unless otherwise agreed, a security interest gives the secured party the rights to proceeds provided by Section 9-306.
  4. A transaction, although subject to this division, may be subject to Title \_\_\_\_ (Consumer Protection), and other applicable laws which may be enacted by the Blackfeet Tribe. In areas where the Blackfeet Tribe has not yet legislated, the law of the State in which a natural person resides, or in the case of all other entities, the State in which the entity has its principal place of business, shall be the applicable law. In the case of conflict between the provisions of this Title and any such laws, the provisions of such laws control. Failure to comply with any applicable law has only the effect which is specified therein.

#### **Comment**

This Section specifies the requirements for a binding security agreement. This Section also provides that local laws shall apply to a transaction, and that such local laws prevail in the case of conflict.

#### **Section 9-204. After-Acquired Property; Future Advances**

1. A security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.
2. Omitted.
3. Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (Subsection (1) of Section 9-105).

#### **Comment**

This Section provides that a security agreement may grant a security interest in collateral existing at the time or acquired afterward to secure an obligation then-existing or arising in the future.

#### **Section 9-205. Use or Disposition of Collateral Without Accounting Permissible**

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or

replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

### Comment

This section provides that the debtor may maintain full dominion and control over the use and disposition of the collateral and the rights of the secured party are not thereby impaired. However, the parties may impose conditions on the use and accounting of the collateral in the security agreement.

### **Section 9-206. Agreement Not to Assert Defenses Against Assignee; Warranties**

1. Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument and except as to defenses based on implied warranty of merchantability. A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.
2. Express Warranties by Affirmation, Promise, Description, Sample
  - a. Express warranties by the seller are created as follows:
    - i. Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
    - ii. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.
    - iii. Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or the model.
  - b. It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.
3. Implied Warranty: Merchantability; Usage of Trade
  - a. Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.
  - b. Goods to be merchantable must be at least such as:

- i. pass without objection in the trade under the contract description; and
  - ii. in the case of fungible goods, are of fair average quality within the description; and
  - iii. are fit for the ordinary purposes for which such goods are used; and
  - iv. run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
  - v. are adequately contained, packaged, and labeled as the agreement may require; and
  - vi. conform to the promises or affirmations of fact made on the container or label if any.
- c. Unless excluded or modified other implied warranties may arise from course of dealing or usage of trade.

#### 4. Implied Warranty: Fitness for Particular Purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

#### 5. Exclusion or Modification of Warranties

- a. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit the warranty shall be construed wherever reasonable as consist with each other; but negation or limitation is inoperative to the extent that such construction is unreasonable.
- b. Subject to subsection (c), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example that "There are no warranties which extend beyond the description of the face hereof."
- c. Notwithstanding subsection (b)
  - i. unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and
  - ii. when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

- iii. an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

#### 6. Cumulation and Conflict of Warranties Express or Implied

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

- a. Exact or technical specifications displace an inconsistent sample or model or general language of description.
- b. A sample from an existing bulk displaces inconsistent general language of description.
- c. Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

#### **Comment**

This section clarifies the extent to which a debtor may agree not to assert defenses against an assignee of the secured party. This section has been modified to make clear that defenses based on implied warranty of merchantability may be enforced against a holder in due course. The section has also been modified to incorporate sections 2-313 to 2-317 which set out how express and implied warranties are created and how such warranties can be excluded or modified. Incorporation of these sections was necessary because the Blackfoot Tribe has not adopted Article 2 on Sales of the Uniform Commercial Code.

#### **Section 9-207. Rights and Duties When Collateral is in Secured Party's Possession**

1. A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument of chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed in writing.
2. Unless otherwise agreed in writing, when collateral is in the secured party's possession:
  - a. reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;
  - b. the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;
  - c. the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;
  - d. the secured party must keep the collateral identifiable but fungible collateral may be commingled; and
  - e. the secured party may repledge the collateral upon terms which do not impair

the debtor's right to redeem it.

3. A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections, but does not lose his security interest.
4. A secured party may use or operate the collateral for the purpose of preserving the collateral or its value pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

#### **Comment**

This section declares the rights and duties of the secured party when the collateral remains in his possession. These rights and duties may be modified to some extent by agreement of the parties in the security agreement.

#### **Section 9-208. Request for Statement of Account or List of Collateral**

1. A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may 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. The secured party must comply with such a request within two weeks 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 his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply, he is liable for any loss caused to the debtor thereby; and, if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both, the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If the secured party no longer has an interest in the obligation or collateral at the time the request is received, he must disclose the name and address of any successor in interest known to him, and he is liable for any loss caused to the debtor as a result of any failure to so disclose. A successor in interest is not subject to this Section until a request is received by him.
3. A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding \$10 for each additional statement furnished.

#### **Comment**

This section establishes a procedure by which the debtor may keep himself informed of the status of his account.

[Back to Top](#)