

TITLE IV

CHAPTER 2

CIVIL REMEDIES

Part 1

Traditional Remedies

4-2-101. When available. Where the relief requested by a party includes a traditional remedy or penalty and

(1) all parties are Tribal members and all partake of the cultural heritage of the same tribe or band forming a part of the Confederated Tribes, or

(2) all parties consent to the award of traditional remedies to the prevailing party, the court may grant the relief requested or any traditional remedy, statutory remedy, or combination of traditional and statutory remedies that it finds to be in the interests of justice.

4-2-102. Objection to traditional relief. If a complaint or counterclaim prays for the award of a traditional remedy or penalty, an opposing party may move in the first responsive pleading to strike or amend the prayer on grounds that the relief requested is not, in fact, traditional, or, if traditional, inappropriate to relieve the injury complained of. Such motion shall be treated in the same manner as other pretrial motions and may be the subject of an evidentiary hearing if requested by a party or deemed advisable by the court.

Part 2

Damages

4-2-201. Detriment defined. Detriment is a loss or harm suffered to person or property.

4-2-202. Right to compensatory damages. Every person who suffers detriment from the unlawful act or omission of another may recover from the person at fault a compensation in money, which is called damages. Damages must, in all cases, be reasonable.

4-2-203. Right to damages for future detriment. Damages may be awarded in a judicial proceeding for detriment resulting after the commencement of the action and certain to result in the future.

4-2-204. Limitation on tort recovery from Tribes and Tribally owned corporations.

(1) General provisions.

(a) In all instances, damages must be reasonable.

(b) Damages which are not specifically quantifiable cannot be recovered.

(c) Recovery is prohibited for emotional or mental distress.

(d) Recovery under any implied covenants is prohibited.

(e) Monetary judgments against officers, agents or employees of the Tribal government acting within the scope of their authority shall be treated as a judgment against the Tribes and shall be satisfied by the Tribal government, subject to the availability of funds in the Tribal treasury.

(2) Limitation on tort recovery. Except as may otherwise provided by law, when the government of the Confederated Salish and Kootenai Tribes has consented that it or its officials, agents, or employees may be named a party defendant in a lawsuit sounding in tort, or when a corporation in which the tribes are a owner is found liable under the terms of this ordinance, the damages available to a prevailing claimant are limited as follows:

(a) No punitive or exemplary damages may be recovered, except as provided by the Tribes' Wrongful Discharge law.

(b) For claims arising from a single transaction or occurrence, a plaintiff may not recover a total compensatory sum greater than Two Hundred and Fifty Thousand Dollars (\$250,000) or the maximum sum payable by an insurer under any policy required by federal law, whichever is less.

(c) Multiple plaintiffs whose claims arise from one transaction or occurrence may not recover a compensatory sum greater than Seven Hundred and Fifty Thousand Dollars (\$750,000) or the maximum sum payable by an insurer under an policy required by federal law, whichever is less.

(3) Interest on Judgments. In an action for damages not arising in contract, the award of interest on a judgment may be given at the discretion of the Court, but in no case shall interest exceed ten percent (10%) per annum on any unpaid balance. Interest shall commence accruing upon the date of final judgment.

(4) Severability. If any provision of this Ordinance, or the applicability thereof, is found to be ineffective by a court of final recourse of a competent jurisdiction after all parties have been heard, the remainder of this Ordinance shall not be affected thereby. (Rev. 4-15-03)

4-2-205. Nominal damages when no appreciable detriment. When a breach of duty has caused no appreciable detriment to the party affected, the party may yet recover nominal damages.

4-2-206. Measures of particular damages. (1) no person can recover a greater amount in damages for the breach of an obligation that he could have gained by the full performance thereof on both sides unless a greater recovery is specified by law.

(2) The value of an instrument in writing is presumed to be equal to that of the property to which it entitles the owner.

(3) Where the cost of repairing a motor vehicle exceeds its value, the measure of damages is the actual replacement value of the vehicle. Actual replacement value is the actual cash value of the vehicle immediately prior to the damage.

(4) For breach of contract, the measure of damages, except when otherwise provided by law, is the amount which will compensate the party aggrieved for all the detriment which was proximately caused thereby or in the ordinary course of things would be likely to result therefrom. Damages which are not clearly ascertainable in their nature and origin cannot be recovered for a breach of contract. Recovery is prohibited for emotional or mental distress alleged to be caused by a breach of contract.

(5) The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation with interest thereon.

(6) For the breach of an obligation not arising from contract, the measure of damages, except as otherwise expressly provided by statute, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

(7) The detriment caused by the wrongful occupation of real property is deemed to be the value of the use of the property for the time of the occupation, not exceeding the 5 years next preceding the commencement of the action, and the costs of recovering possession.

(8) The detriment caused by the wrongful conversion of personal property is presumed to be the value of the property at the time of its conversion with the interest from that time and a fair compensation for the time and money properly expended in pursuit of the property.

4-2-207. Collateral source reductions in actions arising from bodily injury or death. (1) As used in this Section, the following definitions apply:

(a) "Collateral source" means a payment for something that is later included in a tort award and which is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(i) for medical expenses, hospitalization, home care, or disability payments under the federal Social Security Act, the Indian Health Care Act, or other federal, state, or Tribal law or program to implement such law;

(ii) under any health or disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(iii) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions of assistance;

(iv) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(v) any other source, except the assets of the plaintiff or his or her immediate family.

(b) "Person" includes individuals, corporations, government entities, associations, firms, partnerships, and any other entity or aggregate of individuals.

(c) "Plaintiff" means a person who alleges that he or she sustained bodily injury, or on whose behalf recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a recovery. The term includes a legal representative, a person with a wrongful death or surviving cause of action, a person seeking recovery on a claim for loss of consortium, society, assistance, companionship, or services, and any other person whose right of recovery or whose claim or status is derivative of one who has sustained bodily injury or death.

(2) In an action arising from bodily injury or death, when the total award against all defendants is in excess of \$10,000 and the plaintiff will be fully compensated for his damages, exclusive of court costs and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source.

(3) The jury shall determine its award without consideration of any collateral sources. After the jury determines its award, reduction of the award must be made by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and amount of collateral sources. Evidence is admissible at the hearing to show that compensable damages awarded to the plaintiff have been paid from a collateral source or that the plaintiff has been or may be reimbursed from a collateral source.

4-2-208. Right to interest. Every person who is entitled to recover damages is entitled also to recover interest thereon, except that no interest may be had in actions for recovery of damages arising from injury to person or property brought against a governmental entity. Interest accrues from the date that the right to recovery vests except during such time as the debtor is prevented by law or by the act of the creditor from paying the debt.

4-2-209. Interest on torts. (1) Subject to subsection (2) of this section, in an action for recovery on an injury, a prevailing claimant is entitled to interest at a rate of 10% on a recovery of damages in a sum certain.

(2) Interest may not be had on damages not capable of being made certain by calculation, including but not limited to future damages, until such damages are incurred and damages for

(a) pain and suffering

(b) injury to credit, reputation, or financial standing;

(c) mental anguish or suffering;

(d) punitive damages;

(e) loss of established way of life;

(f) loss of consortium; and

(g) attorney fees.

(3) If a jury is the trier of fact, it is to be advised by the court that the court will determine the amount of prejudgment interest due, if any, on a judgment.

4-2-210. Interest on contracts. A rate of interest, not to exceed 21%, agreed to by contract remains chargeable after a breach until the contract is superseded by a judgment or other new obligation. If no rate is stipulated, the trier of fact may award post judgment interest to the prevailing party at a rate of 10%.

4-2-211. When award of interest discretionary. In an action for the breach of an obligation not arising from contract and in every case of oppression, fraud, or malice, interest may be given in the discretion of the trier of fact.

4-2-212. Waiver of interest by accepting principal. Accepting payment of the whole principal waives all claim to interest.

4-2-213. Punitive damages. A trier of fact may award, in addition to compensatory damages, reasonable punitive damages for the sake of example and for the purpose of punishing a defendant, subject to the following exclusions and conditions:

- (1) Punitive damages may be expressly prohibited or limited by statute;
- (2) Punitive damages may not be recovered in any action arising from a contract, except that they are not prohibited in a products liability action;
- (3) Punitive damages may not be recovered, except as otherwise provided by statute, in any action against a governmental entity;
- (4) Punitive damages may not be recovered in any action unless the trier of fact has found that the defendant committed actual fraud or acted with actual malice.
 - (a) A defendant acts with actual malice if he or she has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and deliberately proceeds to act in conscious or intentional disregard of, or indifference to, the high probability of injury to the plaintiff.
 - (b) A defendant commits actual fraud for purposes of this section when the plaintiff has a right to rely on the representation of the defendant and suffers injury as a result of that reliance and if the defendant:
 - (i) makes a representation with knowledge of its falsity; or
 - (ii) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.
- (5) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of the evidence, but less than beyond a reasonable doubt.
- (6) After liability for punitive damages is determined by the trier of fact,
 - (a) if by a jury, the amount of damages must be determined by the jury in an immediate, separate proceeding, at which evidence of a defendant's financial affairs, financial condition, and net worth is admissible and must be considered,
 - (b) if by a judge, the judge shall clearly state his reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:
 - (i) the nature and reprehensibility of the defendant's wrongdoing;
 - (ii) the extent of the defendant's wrongdoing;
 - (iii) the intent of the defendant in committing the wrong;

- (iv) the profitability of the defendant's wrongdoing, if applicable;
 - (v) the amount of actual damages awarded by the jury;
 - (vi) the defendant's net worth;
 - (vii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and
 - (viii) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.
- (c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (6)(b) of this Section. If, after review, the judge determines that the jury award of punitive damages should be increased or decreased, he may do so. The judge shall clearly state his reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (6)(b) of this Section.

Part 3

Specific Performance of Obligations

4-2-301. When specific performance may be required. Specific relief may be given

- (1) when such relief could also be granted as a traditional remedy as provided in Sections 4-2-101 and 4-2-102, and
- (2) as provided in this Part.

4-2-302. When specific performance of an obligation may be compelled. The specific performance of an obligation may be compelled when:

- (1) the act to be done is in the performance, wholly or partly, of an express trust;
- (2) the act to be done is such that pecuniary compensation for its nonperformance would not afford adequate relief;
- (3) it would be extremely difficult to ascertain the actual damage caused by the nonperformance of the act to be done; or
- (4) it has been expressly agreed in writing by the parties to the contract that specific performance may be required by either party or that damages shall not be considered adequate relief.

4-2-303. Obligations which cannot be specifically enforced. The following obligations cannot be specifically enforced:

- (1) an obligation to render personal service or to employ another in the rendering of personal service;
- (2) an agreement to marry or live with another;
- (3) an agreement to perform an act which the party has no power to perform lawfully when required to do so;
- (4) an agreement to procure the act or consent of any third person; or
- (5) an agreement the terms of which are too ambiguous to ascertain the precise act which is to be done.

4-2-304. Right to specific performance mutual. When either of the parties to an obligation is entitled to a specific performance thereof, the other party is also entitled to it, together with full compensation for any want of entire performance by the other party.

4-2-305. Parties who cannot be compelled to perform. Specific performance cannot be enforced against a party to a contract in any of the following cases:

- (1) if he or she has not received adequate consideration for the contract;
- (2) if it is not, as to him or her, just and reasonable; or
- (3) if the party's assent was
 - (a) obtained by the misrepresentations, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract or by any promise of such party which has not been substantially fulfilled, or

(b) given under the influence of mistake, misapprehension, or surprise.

4-2-306. Parties who cannot obtain specific performance. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his or her part to the obligation of the other party except where his or her failure to perform is only partial and either entirely immaterial or capable of being fully compensated, in which case specific performance may be compelled upon full compensation being made for the default.

Part 4

Prejudgment Attachment

4-2-401. Cases in which property may be attached. (1) Property may be attached in an action upon a contract, express or implied for the direct payment of money where the contract

(a) is not secured; or

(b) was originally secured and the security has, without any act of the plaintiff or the person to whom the security was given, become valueless.

4-2-402. Property subject to attachment. All property within the Flathead Reservation of the defendant not exempt from execution may be attached and, if judgment is recovered, sold to satisfy the judgment and execution. Property exempt from execution is exempt from attachment.

4-2-403. Court record not public until writ returned. In cases involving attachment, the Clerk of Court must not make public the fact of the filing of the complaint or the issuing of a writ of attachment until after the filing of return of service of attachment.

4-2-404. Attachment book to be kept by Clerk of Court. There must be kept by the Clerk of Court a book called the "attachment book", in which must be entered, in alphabetical order, the names of all persons against whom any writ or notice of attachment has been filed. There must also be entered in said book the time such writ or notice was filed.

4-2-405. Time for issuance of writ--notice. A writ to attach the property of the defendant may be issued by the judge assigned to the case at the time of or after issuing summons and before answer, on approving an affidavit by or on behalf of the plaintiff showing the facts required in section 4-2-401, 4-2-406, and, if applicable, 4-2-407, and an undertaking as provided in section 4-2-408; and when the party seeking attachment has made a prima facie showing

(1) in the case of real property, of his or her right to attachment and the necessity for seizure;

(2) in the case of personal property,

(a) of his or her right to attachment and the necessity for seizure at a show cause hearing with at least 3 days' notice to the defendant; if the defendant cannot be found for personal service, notice shall be posted on the property and in three public places within the Reservation and within 10 miles of the location of the property; or

(b) of his or her right to attachment and the necessity for seizure and that the delay caused by notice and hearing would seriously impair the remedy sought by the party seeking possession. Evidence of such impairment must be presented in open court, and the court must set forth with specificity the reasons why such delay would seriously impair the remedy sought by the person seeking attachment.

4-2-406. Plaintiff's affidavit. When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or his authorized agent stating:

(1) facts which show the defendant is indebted to the plaintiff in the manner specified in Section 4-2-401.

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant

(a) is leaving or about to leave the Reservation taking with him or her property, money, or other effects which might be subjected to payment of the debt;

(b) is disposing or about to dispose of his or her property which would be subject to execution; or

(c) is likely to suffer liens or encumbrances on his or her property which would be subject to execution; and

(4) a particular description and the actual value of the property to be attached.

4-2-407. Affidavit requirements when debt not yet due. An action may be commenced and writ of attachment issued upon any debt for the payment of money before the same shall have become due when it shall appear by the affidavit, in addition to what is required in sections 4-2-401, 4-2-405, and 4-2-406,

(1) that the defendant is leaving or is about to leave the Reservation, taking with him property, moneys, or other effects which might be subjected to the payment of the debt, for the purpose of defrauding his or her creditors, or

(2) that the defendant is disposing of his or her property or is about to dispose of his or her property, subject to execution, for the purpose of defrauding his or her creditors.

4-2-408. Plaintiff's undertaking. Before issuing the writ, the court must require a written undertaking by the plaintiff, with two or more sufficient sureties to be approved by the court, in a sum not less than double the amount claimed by the plaintiff if such amount be \$1,000 or under or, in case the amount claimed by the plaintiff exceeds \$1,000, then in a sum equal to such amount. In no case shall an undertaking be required exceeding the sum of \$20,000. The condition of such undertaking shall be to the effect that if the defendant recovers judgment or if the court finally decides that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant and all damages he may sustain by reason of issuing the attachment, not exceeding the sum specified in the undertaking.

4-2-409. Form and content of writ -- defendant's undertaking to prevent levy. (1) The writ must be directed to the Chief of the Tribal Police and must require him to:

(a) attach and safely keep all the property of the defendant within the Reservation not exempt from attachment, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; or

(b) if the defendant gives to the police security by the undertaking of two sufficient sureties in an amount sufficient to satisfy the demand, without costs, take such undertaking.

(2) A defendant's undertaking accepted by the police must be to the plaintiff and must be approved in writing on the back thereof by the plaintiff or his or her attorney or, upon their refusal, by the judge issuing the writ.

4-2-410. Custody of books and evidences of title. The police must take into their custody all books of account, vouchers, and other papers relating to the personal property attached and all evidence of defendant's title to real property held in fee attached, which they must safely keep.

4-2-411. Attachment of non-trust real property. Real property or any interest therein belonging to the defendant, to which legal title is not held by the United States, and recorded on the books of a county in the name of the defendant or of any other person is attached by filing with the county clerk a copy of the writ, together with the description of the property attached and a notice that it is attached.

4-2-412. Personal property capable of manual delivery. Personal property capable of manual delivery must be attached by taking it into custody unless it is in the possession of a third person, in which case it may be attached as provided in Section 4-2-411.

4-2-413. Debts, credits, and personal property in control of third person or not capable of manual delivery.

Upon receiving information in writing from the plaintiff or his or her attorney that any person has in his possession or under his control any credits or other personal property belonging to the defendant or is owing any debt to the defendant, the sheriff must serve upon such person a copy of the writ and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of the writ. Debts and credits attached may be collected by the police if the same can be done without suit. A police receipt is a sufficient discharge for the amount paid.

4-2-414. Duty to execute and security for police costs. The Chief of Police must execute any writ of attachment directed to him without delay. The police may not attach more property than appears necessary to satisfy the plaintiff's demand. If the police will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

4-2-415. Personal property subject to a security interest.

(1) Personal property subject to a security interest may be taken on attachment, provided that, prior to the taking, the officer levying the writ pays or tenders to the secured party the amount of the security agreement debt and interest or deposits the same with the Clerk of the Court.

(2) Upon 15 days' written notice served upon a secured creditor by any creditor seeking a writ of attachment, a secured creditor shall file with the Clerk of Court an affidavit showing

(a) the amount of indebtedness then actually due and owing to the secured creditor,

(b) the amount of the original obligation,

(c) all additional advancement of money or property made by the creditor to the debtor on the principal obligation since the date of execution of the security agreement,

(d) all payments of principal or interest made by the debtor since the date of execution of the security agreement, and

(e) the balance then remaining due and unpaid to the secured party.

(3) If the secured creditor fails or refuses to file such an affidavit with the Clerk of the Court, the security agreement is of no force or effect as against an attaching creditor.

4-2-416. Examination of defendant or person controlling property or debts -- order that property be delivered. Any person owing debts to the defendant or having in his possession or under his control any credits or other personal property belonging to the defendant may be required to appear before the court and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of being examined on oath respecting his property. After such examination, the court may order

(1) personal property capable of manual delivery in the hands or under the control of the defendant or a third person to be delivered to the Chief of Police on such terms as may be just in consideration of any liens thereon or claims against the property, and

(2) a memorandum to be given by the defendant quantifying and describing all other personal property.

4-2-417. Sheriff to retain nonperishable attached property and proceeds of sales--claim by third person. (1)

The proceeds and other property attached by the police must be retained by the Chief of Police to answer any judgment that may be recovered in the action unless earlier subjected to execution upon another judgment issued prior to the issuing of the attachment.

(2) If personal property attached is claimed by a third person, the claimant shall deliver to the Chief of Police an affidavit stating his claim, ownership, and a description of the property. Unless the plaintiff, within 10 days of receiving notice of the filing of the affidavit with the Chief of Police, gives to the police a good and sufficient bond indemnifying the Chief against loss or damage by reason of retaining said property, the Chief shall deliver the property to the claimant.

4-2-418. Inventory of attached property -- cooperation of persons controlling credits or debts. (1) The Chief of Police must make a full inventory of the property attached and return the same with the writ.

(2) To enable the Chief of Police to make a return of debts and credits attached, he must request, at the time of service of the writ, that the person owing the debt or having the credit give him a statement of the amount of the debt or credit. If such a statement is refused, the Chief of Police may apply upon one days' notice to the court for an order to compel the statement to be provided. If the order is granted, it shall also direct the payment of costs of the motion by the person refusing to supply the statement.

4-2-419. Return of the writ. The Chief of Police must return the writ of attachment with the summons if issued at the same time, otherwise, within 20 calendar days after its receipt, with a certificate of his proceedings endorsed thereon or attached thereto.

4-2-420. Notice of right to post seizure hearing--quashing a writ. (1) When a writ has been issued upon real property or upon a showing specified in Section 4-2-407, notice of the right to challenge the seizure of the property at a post seizure hearing shall be served personally on the defendant, or if the defendant cannot be found for personal service, notice shall be posted on the property and in three public places within the Reservation and within 10 miles of the property. Defendant must exercise the right to a post seizure hearing within 3 days after the seizure or 3 days after personal service or the posting of constructive notice, whichever is later.

(2) At such hearing the defendant may challenge the merit of the underlying action, the need for the prejudgment seizure of property, or both. The writ shall be quashed if the court makes a preliminary finding that:

(a) the plaintiff cannot establish the prima facie validity of his claim; or

(b) the plaintiff cannot establish by a preponderance of the evidence the need for the continued attachment of the defendant's property.

4-2-421. Discharge of writ improperly issued. (1) The defendant may also, at any time either before or after the release of the attached property or before an attachment shall have been actually levied, move, with reasonable notice to the plaintiff, to discharge the writ of attachment on the ground that the writ was improperly or irregularly issued.

(2) If it appears that the writ was improperly or irregularly issued, it must be discharged, but the court may allow the plaintiff to amend his or her affidavit or undertaking.

(3) Before issuing an order of discharge which releases from the operation of the attachment any or all of the property attached, the court shall require an undertaking by at least two sureties on behalf of the defendant to the effect that in case the plaintiff recovers judgment in the action, the defendant and the sureties will, on demand, pay to the plaintiff the full value of the property released.

(4) An order discharging or releasing attachment of real property by a defendant shall be filed in the office of the county clerk in which the notice of attachment was filed.

4-2-422. Sale of attached property. (1) If any of the property attached is perishable, the Chief of Police must sell it as property is sold on execution on a judgment.

(2) When property has been taken by an officer under a writ of attachment, a plaintiff On reasonable notice to the defendant or his attorney, may apply to the court for an order of sale. If it appears to the court that the interest of the parties will be best served by a sale, it may order that the property be sold in the same manner as an execution on a judgment and that the proceeds be deposited in the court to await judgment in the action.

(3) When the property sold under a writ of attachment is subject to a security agreement, the officer levying the writ must apply the proceeds of the sale as follows:

(a) to the repayment of the sum paid to the secured party, with interest to the date of payment; and

(b) the balance, if any, applied as proceeds of sales are applied in execution on a judgment.

(4) An attaching creditor is required to deliver to the debtor the security agreement and any note or other evidence of indebtedness secured thereby obtained from the secured party when the property is sold for the amount of the indebtedness under the security agreement or an amount in excess thereof.

4-2-423. Judgment when debt not due. (1) On trial of any cause brought under the provisions of 4-2-407, judgment may be rendered on a debt not due upon satisfactory proof to the court of the facts alleged in the affidavit for attachment. Such judgment shall include a rebate of interest from the date of the judgment until the date when the date would have become due.

(2) The defendant may object to the allegations of the affidavit required in 4-2-407, and if the plaintiff fails to substantiate any cause required to be alleged in the affidavit, the suit for debt or debts not due shall be dismissed.

4-2-424. Disposition of attached property and proceeds of sales. (1) If the defendant has judgment against the plaintiff, any undertaking received in the action, all of the proceeds of sales and money collected by the Chief of Police, and all property attached remaining with the police must be delivered to the defendant or his agent. The order of attachment shall be discharged and the property released.

(2) If the plaintiff has judgment against the defendant, the Chief of Police must satisfy it out of the property attached which has not been delivered to a party or a claimant, as herein before provided, or subjected to execution on another judgment recovered prior to the issuing of the attachment, if it be sufficient for that purpose:

(a) by paying to the plaintiff the proceeds of all sales of perishable property or property order by the court to be sold, or of any debts or credits collected by the police, or so much thereof as is necessary to satisfy the judgment;

(b) if any balance remain due and an execution shall have been issued on the judgment, by selling under the execution a sufficient amount of attached property to satisfy the balance, if enough of such property remains in the hands of the police. Notices of the sales must be given and sales conducted as in other cases of sales on execution.

(3) When the judgment is paid, the Chief of Police must deliver to the defendant the attached property remaining under police control and any proceeds of sales not applied to the judgment.

(4) If, after selling the attached property and applying the proceeds, together with the proceeds of any debt or credit collected by the Chief of Police, and deducting the police fee, any balance remains due on the judgment, the Chief of Police must collect the balance as upon executions in other cases.

Part 5

Declaratory Judgments and Injunctions

4-2-501. Declaratory judgment -- creation of remedy. In a case of actual controversy within its jurisdiction, the Tribal court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

4-2-502. Procedure for obtaining a declaratory judgment. The procedure for obtaining a declaratory judgment pursuant to Section 4-2-501 shall be in accordance with the Federal Rules of Civil Procedure, and a trial by jury may be demanded. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

4-2-503. Interpretation. Except as may be otherwise provided by statute, sections 4-2-501, 4-2-502, and 4-2-504 shall be interpreted and construed to harmonize, as far as possible, with federal laws and interpretations of declaratory judgments.

4-2-504. Further relief. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

4-2-505. Definition of injunction. An injunction is a court order requiring a person to refrain from a particular act.

4-2-506. When injunction may not be granted. An injunction cannot be granted:

- (1) to stay a judicial proceeding pending at the commencement of an action in which the injunction is demanded;
- (2) to prevent the lawful exercise of a Tribal office by the appropriate officer or officers;
- (3) to prevent a legislative act; or
- (4) to stay execution upon a valid and subsisting judgment after expiration of one year from the rendition of the judgment.

4-2-507. Form and scope of injunction or restraining order. An order granting an injunction or a restraining order shall:

- (1) set forth the reasons for its issuance;
- (2) be specific in its terms;
- (3) describe in reasonable detail, and not by reference to the complaint or any other document, the act or acts sought to be restrained; and
- (4) be binding only upon the parties to the action; their officers, agents, employees, and attorneys; and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

4-2-508. Temporary restraining order. When an application for an injunction is made upon adequate notice or an order to show cause, as provided in Section 4-2-511, the Tribal Court may enjoin the adverse party, until the hearing and decision of the application, by an order which is called a temporary restraining order.

4-2-509. Grant of restraining order without notice. (1) A temporary restraining order may be granted without written or oral notice to the adverse party or opposing attorney only if:

(a) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or the opposing attorney could be heard in opposition; and

(b) the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his or her claim that notice should not be required.

(2) Each temporary restraining order granted without notice must:

(a) be endorsed with the date and hour of its issuance;

(b) be filed immediately in the Clerk's office and entered in the record;

(c) define the injury and state why such injury is irreparable and why the order was granted without notice; and

(d) expire by its terms within such time after entry, not to exceed 10 calendar days, as the court fixes.

4-2-510. Application for injunction to be heard without delay. Whenever a temporary restraining order is granted without notice, the application for an injunction must be set for hearing at the earliest possible time and takes precedence over all matters. At the hearing the party who obtained the temporary restraining order shall proceed with the application for the injunction, or if he or she does not do so, the court or judge shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion expeditiously.

4-2-511. Notice of application for preliminary injunction. (1) No preliminary injunction may be issued without reasonable notice to the adverse party of the time and place of the making of the application.

(2) Before granting an injunction order, the court shall make an order requiring cause to be shown, at a specified time and place, why the injunction should not be granted, and the adverse party may in the meantime be restrained as provided in Sections 4-2-507 through 4-2-509.

4-2-512. Evidence required for issuance of preliminary injunction. (1) Upon the hearing each party may present affidavits or oral testimony. An injunction order may not be granted on affidavits unless

(a) they are duly verified, and

(b) the material allegations of the affidavits setting forth the grounds for the order are made positively and not upon information and belief.

4-2-513. Application to dissolve or modify an injunction -- hearing. The party enjoined may apply to the court to dissolve or modify an injunction. The application may be made upon reasonable notice or upon an order to show cause returnable at a specified time or immediately after service thereof. The application must be supported by an affidavit showing that there is not sufficient ground for the injunction to continue or that the scope of the injunction is too broad. If, upon the hearing, it satisfactorily appears that there are not sufficient grounds for the injunction order, the order must be dissolved; or if it satisfactorily appears that the extent of the injunction order is too great, the order must be modified.

Part 6

Repossession

4-2-601. Jurisdiction over Indian property. Personal property owned by an Indian subject to the Tribal Court's jurisdiction may not be repossessed from within the exterior boundaries of the Flathead Reservation except pursuant to the provisions of this Part.

4-2-602. Jurisdiction over parties seeking repossession. By either attempting to repossess personal property owned by an Indian subject to the Tribal Court's jurisdiction from the exterior boundaries of the Flathead Reservation, or by pursuing remedies under the provisions of this Part, a person or business entity becomes subject to the Tribal Court's jurisdiction for the purposes of asserting defenses or counterclaims.

4-2-603. Consent to repossession. (1) Personal property may be repossessed without an Order of the Tribal Court if, at the time repossession is sought, the defendant voluntarily consents to the repossession in writing by signing a waiver that meets the following requirements:

(a) It must be in a readable type style of at least 14 point type; and

(b) It must contain this language:

CONSENT TO REPOSSESSION

You may voluntarily consent to the repossession of this property if you believe that the repossession is lawful. If you have any questions about whether this action is lawful, you have the right to a hearing in the Tribal Court before the property can be repossessed. Please sign below to indicate your choice:

I, _____, waive my right to a hearing in the Tribal Court on the issue of whether repossession is lawful at this time. I voluntarily agree to the repossession of the following property:

(insert description of property to be repossessed)

I, _____, do not agree to the repossession of my property at this time. I request a hearing in the Tribal Court.

Signed this ____ day of _____, _____.

(Signature of Debtor)

I, _____, representing the Creditor, _____, have read and explained this form to the Debtor before allowing the Debtor to sign above.

Signed this ____ day of _____, _____.

(Signature of Creditor's agent)

(c) It must be filed with a Civil Complaint pursuant to Rule 8 of the Rules of Practice if a deficiency judgment is sought.

(2) If consent is not obtained in accordance with this section, a person or business entity seeking repossession of personal property must first obtain an Order of the Tribal Court under the provisions of this Part. This Part shall control the manner of repossession of personal property, notwithstanding contractual provisions between the parties to the contrary. Any contractual provisions that allow advance consent to repossession of personal property are void and of no effect. *(Rev. 4-15-03)*

4-2-604. Repossession with foreign judgment. If repossession of personal property is sought pursuant to a judgment of another jurisdiction, the Tribal Court retains the authority to inquire into the jurisdiction of the foreign Court to enter the judgment, pursuant to Section 4-3-205. *(Rev. 1-27-00)*

4-2-605. Action for repossession commenced by filing complaint. (1) An action to foreclose on personal property is commenced by filing a complaint in the Tribal Court. On verified allegations of the following elements, the Court shall issue an Order requiring the defendant to preserve the property at issue and not to remove it from the Flathead Reservation:

(a) The location of the property sought to be repossessed, if known.

(b) A description of the property in sufficient detail to identify it for the Court and those enforcing a repossession order.

(c) A description of the agreement which gives rise to the right to repossess the property. A copy of the agreement shall be attached to the complaint.

(d) Facts showing that the plaintiff is entitled to repossess the property, and that the matter is within the jurisdiction of the Tribal Court.

(e) Where applicable, the total amounts due and owing to the Plaintiff.

(f) Any claim for a deficiency judgment, if one exists after repossession of the subject property.

(g) The names of any other persons or business entities, if known, making a claim to an interest in the same property.

(2) The Order and the complaint for repossession shall be personally served on the defendant. If the plaintiff can show by verified affidavit to the Court's satisfaction that the subject personal property is in immediate danger of being concealed, damaged, destroyed, or removed from the Flathead Reservation, the Court may also order that the property be immediately surrendered to the Plaintiff to be stored on the Reservation pending a hearing.

(Rev. 1-27-00) (Rev. 4-15-03)

4-2-606. Answer to complaint and hearing. An answer to the Complaint must be filed within 10 days of service of the Complaint. If no answer is filed within this period of time, the plaintiff shall be entitled to an Order for immediate repossession of the property. If an answer is timely filed, a hearing shall be held within 10 days of the filing of the answer. At the hearing, the Court shall take evidence and determine if the plaintiff has made a prima facie case entitling it to relief, and that there do not appear to be any meritorious defenses or counterclaims. On making these findings, plaintiff shall be entitled to an order of repossession. *(Rev. 1-27-00)*

4-2-607. Interlocutory relief. If the defendant files an Answer raising defenses or counterclaims that appear to the Court to be meritorious, or presents evidence of the same at the hearing, then the Court may enter an order for any of the following relief:

(1) Impounding the property in the custody of the Plaintiff to be stored on the Reservation pending a final resolution of the case; or

(2) Requiring a bond to be posted by the plaintiff in an amount sufficient to cover the defendant's claims as a condition to issuing an order of repossession.

(3) Requiring a commercially reasonable disposition of the property under supervision of the Court, and payment of the proceeds into Court, pending final resolution of the case. *(Rev. 1-27-00)*

4-2-608. Procedure after repossession. (1) In all cases where repossession of property is permitted, a return shall be filed with the Court showing what action was taken on the repossession order, and how the property was disposed of by the plaintiff. The plaintiff shall fully account to the Court for the proceeds from the property.

(2) All repossessed property shall be disposed of in a commercially reasonable manner and the proceeds applied to the claims of the plaintiff. Any surplus shall be returned to the defendant, unless claims to the proceeds are made by others with security interests in the property or proceeds thereof, in which case the surplus shall be paid into the Tribal Court pending resolution of those claims. *(Rev. 1-27-00)*

4-2-609. Relief for improper repossession. (1) If personal property owned by an Indian subject to the Tribal Court's jurisdiction is repossessed from within the exterior boundaries of the Flathead Reservation in violation of the provisions of this Part, the affected person may bring an action to have the Court order the return of the property and to reinstate the underlying agreement. In addition, the affected person may seek actual damages caused by the unlawful repossession, or he may elect to bring an action for damages in an amount equal to twice the amount of the alleged underlying debt. In either event, the affected person shall also be entitled to costs and reasonable attorney fees if he prevails in the action.

(2) If suit is filed concerning the underlying debt in a jurisdiction other than the Tribal Court, then a violation of the procedures set forth in this part shall act as a complete defense to any claim for a deficiency judgment. *(Rev. 1-27-00)*