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# **Blackfeet Tribal Law and Order Code**

Circa 1999

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## **ORDINANCE # 81. BLACKFEET COMMERCIAL CODE - REMEDIES AND ENFORCEMENT OF JUDGMENTS**

### **Chapter 2**

#### **PROCEDURES FOR EXECUTION OF JUDGMENTS**

##### **Section 1. Jurisdiction**

The Blackfeet Tribal Court shall have jurisdiction over the execution of a judgment on any personal or real property which is located within the exterior boundaries of the Blackfeet Reservation. Such property shall not be subject to execution except in compliance with this Chapter.

##### **Section 2. Procedure for Execution on Individual Trust Property**

Indian trust property shall not be subject to execution, except individual trust property which has been mortgaged pursuant to 25 U. S. C. 483a is subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the State of Montana.

##### **Section 3. Procedures for Obtaining a Writ of Execution**

###### **A. Time Limit**

When a Tribal Court judgment has not been paid or otherwise satisfied, the party in whose favor judgment was entered is entitled at any time within six (6) years after entry of judgment, excluding any period during which execution is stayed or enjoined, to a writ of execution to enforce the judgment.

###### **B. Written Petition**

The judgment creditor shall file a petition with the Clerk of the Tribal Court containing: a concise statement of the facts of the case and what action the Court took; a statement that the judgment remains unsatisfied; the amount of the judgment or the terms of judgment; a statement identifying the property available for execution under this Code; its actual value and location; whether any writs have previously been issued to satisfy the same judgment and whether any writs remain outstanding; and the amount of expenses incurred or expected to be incurred by the judgment creditor to satisfy the judgment and any interest claimed as accruing after entry of judgment. The petition shall be served on the judgment debtor in accordance with the Rules of Civil

Procedure.

C. Written Response

Within twenty (20) days of receipt of the petition, the judgment debtor may file with the Clerk a written response to the petition containing: an admission or denial of any of the facts in the petition; an explanation of the facts denied; a statement of exempt property under the terms of this Chapter in the event the writ of execution is issued; and any defenses to the execution.

D. Hearing on Petition

After notice to the parties, the Tribal Court shall hold a hearing on the petition. At the hearing, the Court shall determine whether a writ of execution should be issued, and if so, what property of the judgment debtor is available for execution in accordance with this Chapter.

E. Issuance of a Writ of Execution

If the Tribal Court determines a writ should issue and the judgment debtor has property available for execution, the Court shall issue the writ of execution. The writ shall be directed to the BIA or Tribal Police, shall specify the particular property of the judgment debtor available to satisfy the judgment, and shall direct the BIA or Tribal Police to seize the specified property and deliver it to the Clerk.

**Section 4. Execution and Return of the Writ**

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

**Section 5. Public and Private Sale of Property**

A. Appraisal of Property

Immediately upon receipt of the property, the Clerk shall cause it to be appraised by three (3) disinterested persons, one selected by the judgment creditor, one by the judgment debtor, and one by the Clerk, and all to be admonished by the Clerk to make an impartial appraisal. However, the parties may agree on one appraiser and may agree to allow the Clerk to select the one appraiser. If either party fails to select an appraiser, the Clerk shall make the selection. If a majority of the appraisers cannot agree on an appraisal within forty-eight (48) hours, the Clerk may appoint new appraisers. Appraisers must be qualified by knowledge or experience.

B. Notice of Sale

Within seven (7) days after the appraisal, the Clerk shall post in three (3) public places on the Reservation and publish in the local paper, a notice of sale containing a full

description of the property to be sold, its appraised value, the names of the parties to the judgment, and the time and place of sale.

#### C. Time and Place of Sale

The sale must be held not less than ten (10) days nor more than thirty (30) days after posting and publication of the notice. The place of sale shall be a convenient public location within the Reservation.

#### D. Procedure of Sale

The Clerk shall sell the property publicly to the highest bidder for cash, but not for an amount less than the appraised value. The high bidder shall pay over the amount of his bid to the Clerk and receive the property. The Clerk shall issue to the purchaser a certificate of sale which shall describe the property, the amount paid, and the judgment debtor's redemption rights, if any. If the high bidder refuses to pay, the Clerk may again sell the property in accordance with this Chapter, and further bids from the bidder refusing to pay shall be rejected.

#### E. Private Sale

If the Clerk is unable to sell the property for its appraised value, the Clerk may hold it for fourteen (14) days after the date of the attempted public sale during which time the Clerk shall sell it to the first person offering him the appraised value in cash. If the Clerk is unable to sell the property, the Clerk shall return it to the creditor, but if the debt is less than the appraised price, the Clerk shall not deliver the property until the creditor pays the debtor the excess in cash. If, at the end of fourteen (14) days after the attempted private sale, the property remains unclaimed by the creditor, the Clerk shall return it to the debtor.

#### F. Proceeds of Sale

The Clerk shall first pay the costs of sale and any outstanding Court costs. The remainder of the proceeds up to the amount of judgment shall be paid to the judgment creditor. Any remaining amount shall be returned to the judgment debtor.

#### G. Deficiency

If the proceeds of the sale are not sufficient to satisfy the judgment, the judgment debtor is liable for any deficiency. The judgment creditor may use any methods provided in the Code to collect the deficiency.

### **Section 6. Redemption of Property**

The judgment debtor shall have the right, any time before the sale of his property, to redeem said property by paying to the clerk the total amount of the judgment plus any outstanding Court costs and costs of execution to date. In the case of real property, the judgment debtor shall also have, within one (1) year of the date of sale, the right to redeem the real property by paying to the purchaser the full purchase price at the sale; plus interest at the rate of ten percent (10%) per annum and costs. The court may restrain the commission of waste or changing the character of the property during the redemption period, but the purchaser may use the property in the manner it has been previously used, make necessary repairs thereon, and make reasonable use of wood, timber or crops thereon.

## **Section 7. Property Subject to Execution**

Trust property shall not be subject to execution, except that trust property mortgaged pursuant to 25 U. S. C. 483a shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the State of Montana. All other real and personal property shall be exempt from execution except:

1. any personal property of the debtor in excess of the value of \$5,000.00, and the debtor shall have the right to select which property the debtor wishes to keep, except no item of Blackfeet cultural tradition given by an ancestor or through ceremony shall be subject to execution;
2. any real or personal property to which the judgment creditor holds legal title or upon which the creditor holds a lawful lien;
3. the homestead of the debtor including the land which it occupies in excess of the value of \$15,000.00. This includes a mobile home which is occupied as a residence;
4. any non-trust property other than the homestead, except a house being purchased under any Blackfeet Housing Authority program cannot be levied upon until the owner receives clear title to the home; and
5. livestock in excess of ten (10) units, and the debtor may select which units to keep.

Exemption is automatic and need not be claimed.

## **Section 8. Unsatisfied Writ**

### A. Order for Appearance of Debtor

Whenever a writ of execution is returned unsatisfied in whole or in part, the judgment creditor is entitled to an order of the Tribal Court requiring the judgment debtor to appear before the Court at a date and time specified in the order, and answer concerning his property. However, the judgment debtor may not be required to appear more frequently than every six (6) months.

### B. Civil Fine

The Tribal Court may impose a civil fine of up to \$50.00 if any judgment debtor fails to appear after being served with an order for appearance of judgment debtor.

### C. Appointment of Receiver

The Tribal Court may, if necessary, appoint a receiver at the close of the examination of the judgment debtor. If the judgment debtor fails to appear, a receiver may be appointed after notice to the judgment debtor. The property of the judgment debtor is vested in a duly qualified receiver when the order appointing the receiver is filed with the Court Clerk.

## **Section 9. State Court Writs of Execution and Judgments**

#### A. Indian Defendants

State court writs of execution may not be enforced against Indian property on the Reservation. State court final judgments involving Indian defendants may be given full faith and credit if the standards of Chapter 5 of this Code are satisfied, and thereafter may be enforced through a writ of execution in accordance with this Code.

#### B. Non-Indian Defendants

State court judgments involving non-Indian defendants are entitled to full faith and credit by the Tribal Court and maybe enforced through a writ of execution in accordance with this Chapter. Judgment creditors are encouraged to use this method, rather than obtaining State court writs of execution. Where a State court writ of execution is obtained, the BIA or Tribal Police shall be notified by the Sheriff before coming onto the Reservation to enforce the writ, and the BIA or Tribal Police may elect to accompany the Sheriff, except that property located on Indian land can only be executed on through the procedures of this Chapter.

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