
Blackfeet Tribal Law and Order Code

Circa 1999

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

Chapter 3

PROCEDURES FOR GARNISHMENT OF PROPERTY

Section 1. Jurisdiction

The Blackfeet Tribal Court shall have jurisdiction over the garnishment of any personal property or money which is located within the exterior boundaries of the Blackfeet Reservation and belongs to a Reservation resident. Money or personal property owned by or due a Reservation resident is subject to garnishment only in strict compliance with this Chapter.

Section 2. Pre-Judgment Garnishment Prohibited

Garnishment is not available to, seize money or property prior to judgment.

Section 3. Payment of Judgments from Individual Indian Money Accounts

Trust property is not subject to garnishment, except in accordance with 25 C.F.R. 115.10.

Section 4. Procedure for Garnishing Property

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 the judgment is stayed or enjoined, to a garnishment judgment to enforce the original judgment from the personal property or money of the judgment debtor which is held by third parties.

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; the amount of the judgment or the terms of the judgment; a statement that the judgment remains unpaid or unsatisfied; a statement identifying the property or

money sought to be garnished and its 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 and the third party holding the property of the judgment debtor (garnishee) 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 to or denial of any of the facts in the petition; an explanation of the facts denied; a statement of exempt property or money under the terms of Section 6 of this Chapter and any defenses to the garnishment.

D. Hearing on Petition

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

E. Issuance of a Garnishment Judgment

If the Tribal Court determines that the garnishee holds property or money which can be used to satisfy the original judgment, a garnishment judgment shall be entered directing the garnishee to deliver immediately to the Court Clerk the money or property. The judgment creditor may then obtain the money or property after Court costs are paid. After turning over the property, the garnishee shall no longer be liable to the judgment debtor for the amount of the property.

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 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. If either party fails to select an appraiser, the Clerk shall make the selection. However, the parties may agree on one appraiser, and may agree to allow the Clerk to select the one appraiser. 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

The Clerk shall, within five (5) days after appraisal, 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 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 the purchaser a certificate of sale which shall describe the property, the amount paid, and the judgment debtor's redemption rights. 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 he shall sell it to the first person offering him the appraised value in cash. If the Clerk is unable to sell the property privately, 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 the sale and any outstanding Court costs. The remainder of the proceeds up to the amount of the judgment shall be paid to the judgment creditor. If any amount remains, the 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 continues to be liable for any deficiency. The judgment creditor may use any methods provided in this 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 garnishment 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 Garnishment

Trust property shall not be subject to garnishment, except judgments may be satisfied from

Individual Indian Money Accounts in accordance with 25 C.F.R. 115.10. All other personal property and money shall be exempt from garnishment, except the following. Exemption of automatic and need not be claimed.

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 to keep, except no item of Blackfeet cultural tradition given by an ancestor or through ceremony shall be subject to garnishment;
2. any personal property to which the judgment creditor holds legal title or upon which the creditor holds a lawful lien;
3. livestock in excess of ten (10) units, and the debtor may select which units to keep.
4. wages or earnings from personal services in excess of forty percent (40%) of the debtor's take home pay, except that orders of the Court for child support, bankruptcy or State and Federal taxes shall have precedence over a garnishment judgment.
 - a. the debtor may defeat a garnishment of wages by showing that the wages, if lost, will impose a substantial hardship on the debtor or his family;
 - b. by salary, wages, credits, or other property in the possession of the Blackfeet Tribe, Bureau of Indian Affairs, Indian Health Service, State, county, city, town or school districts, are subject to garnishment under the terms of this Chapter;
 - c. no employer may discharge an employee by reason of the fact that his earnings have been subject to garnishment. If an employer violates this provision, the employee may, within ninety (90) days, bring a civil action against the employer for the recovery of wages lost, not to exceed wages for six (6) weeks, and reinstatement.

Section 8. State Court Judgments

A. Indian Defendants

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

B. Non-Indian Defendants

State court judgments involving non-Indian defendants are entitled to full faith and credit by the Tribal Court and may be enforced through garnishment in accordance with this Title, except that where the property is located on Indian land, a Tribal Court garnishment judgment is required. Judgment creditors are encouraged to use this method, rather than obtaining State court writs of garnishment. Where a State court writ of garnishment is obtained, the BIA or Tribal Police shall be notified by the Sheriff before coming onto the Reservation and the BIA or Tribal Police may elect to be present when any property is seized under the writ.

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