
Blackfeet Tribal Law and Order Code

Circa 1999

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

Chapter 4

REPOSSESSION

Section 1. Jurisdiction

The Blackfeet Tribal Court shall have jurisdiction over all claims by creditors for the return of personal property located within the Reservation in which the creditor has a security interest as a result of a consumer credit transaction and where the debtor has defaulted. Such property shall not be returned except in accordance with this Chapter. This Chapter applies to repossession of consumer goods in which the creditor has a security interest. It is limited to consumer credit transactions and does not apply to commercial transactions.

Section 2. Self-Help Repossession Prohibited; Pre-Judgment Repossession Prohibited

Self-help repossession to obtain personal property, of residents of the Blackfeet Reservation is prohibited. Repossession prior to judgment is also prohibited. To obtain personal property in which the creditor has a valid security interest, the creditor must comply with the procedures for repossession in this chapter. A waiver of the right to bring an action for wrongful repossession is prohibited and shall have no effect.

Section 3. Consent of the Debtor

A creditor may obtain without Court proceedings the return of personal property in which the creditor possesses a valid security interest where the debtor has defaulted if the creditor obtains the written consent of the debtor. The debtor must consent freely and knowingly. Consent obtained by fraud, force, harassment, or intimidation, have no effect. If no consent is given, the creditor may obtain the property only through the procedures in this Chapter. Violations of this provision are subject to the civil penalties set forth in Section 10 of this Chapter.

Section 4. Types of Cases in Which Repossession is Allowed

Repossession may be sought only by a creditor who retains a valid security interest in the personal property at issue as a result of a consumer credit transaction.. An unsecured creditor has no right to the property.

Section 5. Election of Remedies

A creditor may elect to seek the return of the property or the money due on such property, but

both remedies may not be pursued at the same time. Where the debtor has paid sixty percent (60%) or more of the cash price or loan, a creditor may not seek return of the property. Where money due on the property is sought, the parties shall comply with the Rules of Civil Procedure in maintaining the action. In the event of a money judgment, the creditor may enforce such judgment through any method provided in this Code.

Section 6. Procedure for Repossessing Property

A. Commencing an Action

A creditor shall file a written complaint with the Clerk of Court containing a concise statement of the creditor's claim against the debtor; a statement of the "creditor's interpretation of the contract, agreement, or other document entitling the creditor to possession of the property; a specific description of the property and a specific description of its location to the best knowledge, information and belief of the creditor; a statement of the value of the property, the amount paid by the debtor and the amount due; and such additional information necessary to state a claim and the relief sought. A verified copy of the contract, agreement, or other document entitling the creditor to possession shall be attached to the complaint. The complaint shall be served on the debtor in accordance with the Rules of Civil Procedure.

B. Written Response

Within twenty (20) days of receipt of the complaint, the debtor may file a written response containing: a denial or admission of the facts in the petition; an explanation of the facts denied and a concise statement of the debtor's version of the dispute; such other defenses as the debtor may have; and any counterclaims or cross-claims. The response shall be served on the creditor in accordance with the Rules of Civil Procedure.

C. Temporary Restraining order

At any time prior to a hearing on the complaint, the creditor may seek a temporary restraining order enjoining the debtor from damaging, removing or disposing of the property in order to preserve the rights of the parties and the status of the property. Such a request must be accompanied by an affidavit containing specific facts showing there is reasonable cause to believe the property may be lost, damaged, or moved off the Reservation prior to a regularly scheduled hearing. The Court shall immediately review such a request and may order the property to be picked up and held pending a hearing in the matter. In such a case, the Court shall expedite the hearing, provided at least three (3) days notice is given the debtor. The creditor shall pay all costs incurred in picking up and holding the property.

D. Notice and Hearing

After reasonable notice to the debtor, the Tribal Court shall hold a hearing in the matter. The notice of hearing shall inform the debtor of the right to present evidence and testimony opposing the complaint, and that failure to appear may result in a judgment by default. At the hearing, both the creditor and debtor may present evidence, witnesses, and legal argument relevant to the dispute.

E. Repossession Judgment

If the Court is satisfied that the creditor is entitled to repossess the property a repossession judgment shall be entered. Both the creditor and debtor have the right to appeal the decision of the Tribal Court in accordance with the Appeals Procedure. Pending appeal, the

debtor may seek a stay of the repossession judgment and order. As a condition of such stay, the debtor must deposit with the Court an amount of money equal to the present value of the property or must file with the Court a bond or undertaking in an amount equal to the present value of the property plus Court costs. In the event a judgment in favor of the creditor is affirmed or the debtor's appeal is dismissed, the creditor may proceed against the sureties or apply to the Court to receive the deposit if he is unable to repossess the property after diligent effort.

F. Deficiency Judgment

Where a repossession judgment is entered and the value of the property at sale is less than the debt due, the creditor thereafter may seek a deficiency judgment, provided that he has indicated in his complaint that a deficiency judgment will be sought, and provided that the creditor provides evidence of the value of the property through an appraisal or other means and the Court makes a determination of value. The amount of the deficiency judgment shall not exceed the amount of the debt less the value of the property, regardless of the amount obtained for the property at sale.

Section 7. State Court Repossession

A. Indian Defendants

State court repossession orders involving Indian defendants may not be enforced 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 repossession in accordance with this Chapter.

B. Non-Indian Defendants

Creditors are encouraged to file civil actions for the return of non-Indian property in Tribal Court and follow the procedure for repossession set out in this Chapter. However, State court repossession judgments involving non-Indian defendants may be given full faith and credit if the standards of Chapter 5 are satisfied. In granting full faith and credit, the Court shall require the creditor to notify the BIA or Tribal Police before coming onto the Reservation to repossess property, and may require the BIA or Tribal Police to accompany the creditor. Self-help repossession of non-Indian personal property is prohibited. Pre-judgment repossession is also prohibited. Where the property sought to be repossessed is located on Indian land, a Tribal Court repossession judgment is required.

Section 8. Mobile Homes

Mobile homes are not subject to repossession under this Chapter. Mobile homes shall be treated as real property in which the creditor has a security interest.

Section 9. Civil Penalties for Violation

A. Civil Damages and Penalty - Creditor

If a creditor violates any provisions of this Chapter, the debtor has a cause of action to recover actual damages and a right to recover from the person violating this Chapter a civil penalty in an amount determined by the Court. No action may be brought more than two (2) years after the violation.

B. Civil Damages and Penalty - Debtor

If a debtor takes any deliberate action to reduce the value of the property subject to repossession after a repossession complaint has been filed, the creditor has a cause of action to recover the amount by which the property has been reduced in value and a right to recover from the person violating this Chapter a civil penalty in an amount determined by the Court.

C. Action by the Tribe

Any creditor who violates this Chapter is subject to exclusion from the Reservation and/or denial of business privileges by the Blackfeet Tribe. No action shall be taken by the Tribe without notice and hearing.

[Back to Top](#)