
Blackfeet Tribal Law and Order Code

Circa 1999

Title III. BLACKFEET COMMERCIAL CODE - SECURED TRANSACTIONS

PART 5

DEFAULT

Section 9-501. Default; Procedure When Security Agreement Covers Both Real and Personal Property

1. When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part and, except as limited by subsection (3), those provided in the security agreement. He may reduce his claim to judgment, fore close or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in Section 9-207. The rights and remedies referred to in this subsection are cumulative.
2. After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in Section 9-207.
3. To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the sub sections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (3) of Section 9-504 and Section 9-505) and with respect to redemption of collateral. (Section 9-506), but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured, if such standards are not manifestly unreasonable:
 - a. subsection (2) of Section 9-502 and subsection (2) of Section 9-504 insofar as they require accounting for surplus proceeds of collateral;
 - b. subsection (3) of Section 9-504 and subsection (1) of Section 9-505 which deal with disposition of collateral;
 - c. subsection (2) of Section 9-505 which deals with acceptance of collateral as discharge of obligation; collateral;
 - d. section 9-506 which deals with redemption of collateral;
 - e. subsection (1) of Section 9-507 which deals with the secured party's liability

for failure to comply with this Part.

4. If the security agreement covers both real and personal property or fixtures, the secured party may proceed under this Part as to the personal property or fixtures, or he may proceed as to both the real and the personal property or fixtures in accordance with his rights and remedies in respect of the real property, in which case the provisions of this Part do not apply.
5. When a secured party has reduced his claim to judgment the lien or any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this Section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirement of this Title.

Comment

This section defines the general scheme of the remedies available and the rights of the parties upon default by the debtor. The section makes specific provision for a security interest covering both personal and real property.

Section 9-502. Collection Rights of Secured Party

1. When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under Section 9-306.
2. A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

Comment

Collateral may consist of claims held by the debtor against third persons. This section declares when debts due the secured party's debtor may be collected from such third persons.

Section 9-503. Secured Party's Rights to Take Possession After Default

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or he may proceed by appropriate judicial action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's

premises under Section 9-504.

Comment

This section declares the right of the secured party to possession upon the debtor's default when the collateral is in the debtor's possession. As with all provisions of this Title, this section does not apply to security interests in consumer goods, the repossession of which is governed by another Title.

Section 9-504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition

1. A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to applicable law concerning sales. Unless otherwise provided in the security agreement, the proceeds of disposition shall be applied in the order following to:
 - a. the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party; and
 - b. the satisfaction of indebtedness secured by the security interest under which the disposition is made; and
 - c. the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.
2. If the security interest secures any indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.
3. Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale. Notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he

may buy a private sale.

4. When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings:
 - . in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or faith.
 - a. in any other case, if the purchaser acts in good faith.
5. A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Title.

Comment

This section regulates the right of the secured party to dispose of the collateral upon the default of the debtor. It regulates the conduct of the sale or other disposition, the notice of sale, and declares the duty of the secured party to account to the debtor for the proceeds of the sale. It also provides for the distribution of the proceeds of the sale. The section is modified to reflect that the Blackfeet has not adopted Article 2 of the Uniform Commercial Code, and deletes references to consumer goods which are governed by another part of this Code.

Section 9-505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation

A secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection. Notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under Section 9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

Comment

This section provides as an alternative a procedure where the secured party keeps the collateral in satisfaction of the secured obligation unless the debtor objects in writing. The section is modified to delete references to consumer goods which are regulated by another part of this Code.

Section 9-506. Debtor's Right to Redeem Collateral

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Section 9-504 or before the obligation has been discharged under Section 9-502 (2), the debtor or any other secured party may (unless otherwise agreed in writing after default) redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and, to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and expenses.

Comment

The section provides to the debtor a right of redemption of the collateral.

Section 9-507. Secured Party's Liability for Failure to Comply With This Part

1. If it is established that the secured party is not proceeding in accordance with the provisions of this Part, disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred, the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part.
2. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold, he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

Comment

This section declares the remedies available against a secured party who fails to observe the provisions of this Part. The section also provides standards for determining whether the secured party has acted in a commercially reasonable manner.

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