

ORDINANCE #81

BLACKFEET COMMERCIAL CODE

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# REMEDIES AND ENFORCEMENT OF JUDGMENTS

## Chapter 1

### PROCEDURES FOR ATTACHMENT OF PROPERTY

#### Sec. 1 Jurisdiction

The Blackfeet Tribal Court shall have jurisdiction over the attachment of any property located within the exterior boundaries of the Blackfeet Reservation. Such property shall not be attached except in accordance with this Chapter. Indian trust property is not subject to attachment.

#### Sec. 2 Types of Cases in Which Attachment is Allowed

In civil actions for recovery of money, a plaintiff may petition for attachment of a defendant's property in order to assure payment of any judgment which may be later recovered against the defendant in the Tribal Court where:

- 1) the defendant is a foreign corporation or a nonresident of the Reservation; or
- 2) there is a reasonable belief that the property sought to be attached may be lost, damaged, disposed of or removed from the Reservation prior to payment of any final judgment and the plaintiff's ability to collect on the judgment is jeopardized; or
- 3) the action is upon a contract for the direct payment of money and the contract is not secured by any mortgage, lien, or other security interest; or
- 4) the action is upon a secured contract where the security has, without any act of the creditor or the person to whom the security was given, become valueless.

#### Sec. 3 Procedure for Obtaining a Writ of Attachment

##### A. Written Petition and Affidavit

A plaintiff may petition for a writ of attachment at the time of the filing and service of the complaint or any time prior to judgment. The petition shall contain: a statement that the plaintiff is seeking a writ of attachment for the reasons stated in the plaintiff's affidavit; and a specific description of the

property to be attached and the specific location of the property to the best knowledge, information and belief of the plaintiff. The petition must be accompanied by an affidavit by the plaintiff stating:

1) facts showing that the matter comes within one of the requirements of Sec. 2; and

2) that the property sought to be attached is not trust property to the best of the plaintiff's knowledge, information and belief.

The petition and affidavit shall be served on the defendant in accordance with the Rules of Civil Procedure.

#### B. Order Setting Hearing

The Court shall immediately examine the petition, and if satisfied that it meets the requirements of Sec. 2 of this Chapter, the Court shall by order set a hearing on the petition, giving the defendant at least three (3) days notice of the hearing. The order shall also inform the defendant of the right to present evidence and testimony opposing the affidavit, and that failure to appear may result in the issuance of a writ of attachment by default without further notice to the defendant. The order, petition and affidavit shall be served on the defendant personally, or if the defendant cannot be found for personal service, notice shall be posted on the property and in three (3) places on the Reservation. No writ of attachment shall issue without notice to the defendant and a hearing, although a writ of attachment may be issued even though the defendant does not appear at the hearing.

#### C. Written Response

Within twenty (20) days after service on him, the defendant may file with the Clerk a written response containing: a denial or admission of the facts stated in the plaintiff's petition or affidavit; an explanation of the facts denied; any other defenses to the attachment; and a statement of exempt property under this Chapter in the event the writ of attachment is issued.

#### D. Hearing on Petition

At the hearing, the Court shall determine:

1) whether the matter comes within one of the requirements of Sec. 2;

2) that the property sought to be attached is not trust property and is otherwise available for attachment under Sec. 6 of this Chapter;

3) if applicable, whether the plaintiff has made a prima facie showing that it is necessary to seize the property because it may be lost, damaged, disposed of or removed from the Reservation if it is not seized, and that the plaintiff's ability to collect on the debt will be jeopardized if the property is not seized.

If the Court finds in favor of the plaintiff on the applicable elements above, the Court shall grant the plaintiff's petition and issue a writ of attachment authorizing the seizure of only that amount of property necessary to insure that the plaintiff will be able to collect on any judgment in his favor. The Court may condition the issuance of a writ on the filing of an appropriate bond by the plaintiff.

#### E. Issuance of Writ of Attachment

The writ of attachment shall be directed to the BIA or Tribal Police, shall specify the particular property of the defendant to be seized, and shall authorize the Tribal Police to seize the property and deliver it to the Court Clerk for safekeeping until further order of the Court.

#### F. Service of Writ

Immediately upon issuance of the writ of attachment, a copy of the writ shall be served personally upon the defendant. If the defendant cannot be found, a copy of the writ shall be mailed to the defendant at his last known address.

#### G. 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 it to the Court Clerk along with the writ. Property incapable of manual delivery shall be seized by taking custody of all books of account, vouchers or 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. 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.

### Sec. 4 Proceedings to Release or Prevent Attachment

#### A. Bond or Undertaking

At any time prior to or after issuance of a writ of attachment or seizure of property, the defendant may retain or require the return of all or any portion of the property by filing a money bond executed by two (2) or more sureties to the effect that the



defendant will on demand deliver the subject property to the Court Clerk or pay an amount sufficient to satisfy the creditor's claim plus costs, or pay an amount equal to the value of the property sought to be returned or retained. The bond shall be filed with the Clerk and served on the plaintiff.

#### B. Termination of Attachment

If the defendant files a bond under Sec. 4A of this Chapter, all attachment proceedings shall terminate unless the creditor challenges the defendant's sureties. Any challenge shall be filed with the Clerk and a hearing shall be scheduled immediately by the Court. If no challenge is filed, the property shall be returned to the debtor within five (5) days of the filing of the bond or surety.

#### Sec. 5 Record of Attachment

The Court Clerk shall keep a book in which the Clerk shall record: the date of issuance of the writ of attachment; the parties to the action; a specific description of the property attached; the date of the return of the writ; the date of any release of the attachment; and any other information pertinent to the proceedings.

#### Sec. 6 Property Subject to Attachment

Trust property shall not be subject to attachment. All other property subject to execution under Chapter 2 is subject to attachment, except that property in which the plaintiff has a security interest as the result of a consumer credit transaction is not subject to attachment.

#### Sec. 7 Public and Private Sale of Property After Final Judgment

The property attached under this Chapter may be sold under the procedures set out in Chapter 2, Execution of Judgments, in order to satisfy any final judgment which may be obtained by the creditor.

#### Sec. 8 Civil Damages and Penalty

If a debtor takes any deliberate action to reduce the value of the property subject to attachment after an attachment petition has been filed, or takes any steps to dispose of, conceal or remove the property from the Reservation after the attachment petition has been filed, the plaintiff 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.

**Sec. 9 State Court Writs of Attachment**

**A. Indian Defendants**

State court writs of attachment may not be enforced against Indian property on the Reservation. State court final judgments may be given full faith and credit if the standards of Chapter 5 are satisfied, and may thereafter be enforced through any methods provided in this Code.

**B. Non-Indian Defendants**

Plaintiffs are encouraged to file civil actions against non-Indian debtors in Tribal Court and follow the attachment procedures set out in this Chapter. However, a plaintiff who has properly filed a civil action in State court may attach the property on non-Indian defendants provided that State law is followed, and provided the BIA or Tribal Police are notified by the Sheriff before coming onto the Reservation to execute the writ, and the BIA or Tribal Police may elect to accompany the Sheriff, except that property located on Indian land can only be attached through the procedures in this Chapter.

## Chapter 2

### PROCEDURES FOR EXECUTION OF JUDGMENTS

#### Sec. 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.

#### Sec. 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.

#### Sec. 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.

## Sec. 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.

## Sec. 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.

#### Sec. 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.

#### Sec. 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.

## Sec. 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 \$500.00 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.

## Sec. 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 may be 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.



## Chapter 3

### PROCEDURES FOR GARNISHMENT OF PROPERTY

#### Sec. 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.

#### Sec. 2 Pre-Judgment Garnishment Prohibited

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

#### Sec. 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.

#### Sec. 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 Sec. 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.

**Sec. 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.

### Sec. 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.

### Sec. 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) 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.

## **Sec. 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.

## Chapter 4

### REPOSSESSION

#### Sec. 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.

#### Sec. 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.

#### Sec. 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 Sec. 10 of this Chapter.

#### Sec. 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.

## **Sec. 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.

## **Sec. 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.

### Sec. 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.

#### Sec. 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.

#### Sec. 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.

## Chapter 5

### FULL FAITH AND CREDIT

#### Sec. 1 Full Faith and Credit

Full faith and credit shall be given by the Blackfeet Tribal Court to the judgments of every State and Tribal court in conformity with the provisions of this Title. Notwithstanding any of the provisions in this Chapter, the Blackfeet Tribal Court shall refuse to recognize the judgments of any State or Tribal court which has refused or has clearly indicated it will refuse to honor valid final judgments of the Blackfeet Tribal Court.

#### Sec. 2 Procedure for Enforcing State and Tribal Court Judgments

Any person in whose favor a judgment has been entered by a State or Tribal court may seek enforcement of the judgment in accordance with the following procedures:

##### A. Written Petition

The judgment creditor shall file a petition, accompanied by a verified copy of the State or Tribal court judgment, and ask the Tribal Court to grant full faith and credit to the judgment. The petition shall contain: a concise statement of the nature of the claim and what action the court took on it; a statement indicating the jurisdictional basis, both personal and subject matter, of the judgment; and a statement showing that the defendant received reasonable notice and had a fair opportunity to be heard before entry of judgment. The Court may require additional information, particularly where consumer transactions are involved or where a default judgment was entered. The petition shall be served in accordance with the Rules of Civil Procedure on the person against whom the judgment was entered.

##### B. Written Response

Within twenty (20) days of receipt of the petition, the person against whom the judgment was entered may file a response to the petition containing: any correction of significant facts in the petition; an admission or denial of the specific facts in the petition; an explanation of the facts denied; any other matters which show why the judgment should not be enforced.

##### C. Hearing on the Petition

After reasonable notice to the defendant, the Court shall hold a hearing on the petition. The defendant shall have the burden of

showing why the judgment should not be enforced. The Court shall also inquire into the following matters:

1) whether the State or Tribal court had proper subject matter jurisdiction and personal jurisdiction to render the judgment;

2) whether the defendant had fair notice and an opportunity for a hearing; and

3) in the case of consumer transactions, whether any unconscionable acts or practices under Title 2, Chapter 2, were engaged in by the creditor.

### Sec. 3 Entry of Judgment

If the Tribal Court has satisfied itself that the State or Tribal court judgment is entitled to full faith and credit, the Court shall enter a judgment in favor of the petitioner. The judgment may then be enforced through any of the methods allowed by this Code.