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## Title III

### BLACKFEET COMMERCIAL CODE - SECURED TRANSACTIONS

#### Sec. 1 Purpose

This Title sets out a comprehensive scheme for the regulation of security interests in personal property and fixtures. It applies only to commercial transactions and does not apply to transactions involving consumer goods. This Title is based upon Article 9 of the Uniform Commercial Code with the exception of changes where noted.

#### Sec. 2 Jurisdiction

The Blackfeet Tribe of Indians shall have jurisdiction over any commercial transaction subject to this Title or with respect to any claim arising from a transaction subject to this Title and where not prohibited by federal law.

#### Sec. 3 Interpretation

In addition to the Comments contained herein, in interpreting this Title, the Tribal Court may consult where necessary the Official Comments to Article 9 of the Uniform Commercial Code. The terms of this Title shall apply where changes are noted, and in the case of any conflict. The Comments herein and the Official Comments to Article 9 are intended to aid in the use of the Code, and are not the law. Where this Code does not address a particular issue or right, the Tribal Court may apply customs and usages of the Tribe, or federal laws and regulations, or State law in that order.

#### Sec. 4 Uniform Commercial Code - Citation

The following Sections correspond in number with Article 9 of the Uniform Commercial Code. Citations should refer only to the UCC Section, e.g., Section 9-101.

### PART 1 SHORT TITLE, APPLICABILITY, DEFINITIONS

#### Sec. 9-101. Short Title

This Title shall be known and may be cited as the Blackfeet Commercial Code - Secured Transactions.

#### Sec. 9-102. Policy and Subject Matter of Title

(1) Except as otherwise provided in Section 9-104 on excluded transactions, this Article applies

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures, including goods, documents, instruments, general intangibles, chattel paper or accounts; and also

(b) to any sale of accounts or chattel paper.

(2) This Title applies to security interests created by contract, including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Title does not apply to statutory liens except as provided in Section 9-310.

(3) The application of this Title to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

#### Comment

Generally a secured transaction exists when a debt exists between two persons and those parties agree that the property owned or held by the debtor can be used by the creditor to satisfy the debt if the debtor fails to perform as agreed. This section sets out the kinds of property to which this Title applies, and the various ways in which a secured transaction can be created.

#### Sec. 9-103 Perfection of Security Interest in Multiple State Transactions

(1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of

the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time it attaches until thirty days after the debtor received possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept on the Blackfeet Reservation, while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Title to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought onto the Blackfeet Reservation, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (d)(i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of Section 9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (d)(i) and (ii).

## (2) Certificate of title

(a) This subsection applies to goods covered by a certificate of title issued under any Blackfeet law or under a statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought onto the Blackfeet Reservation and thereafter covered by a certificate of title issued under Blackfeet law is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought onto the Blackfeet Reservation while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued under Blackfeet law and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(e) For purposes of this Title, perfection of security interests in vehicles and other goods registered under certificate of title laws of a state or other jurisdiction shall be governed by such laws until such time as the Blackfeet Tribe adopts laws creating a system for the issuance of certificates of title.

(3) Accounts, general intangibles, and mobile goods.

(a) This subsection (3) applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rule) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has his major executive office in the United States governs the perfection and the effect of perfection or non-perfection of the security interest through

filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions, and the Commonwealth of Puerto Rico, and the Blackfeet Reservation.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Code of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(4) Chattel Paper.

The rules stated for goods in subsection (a) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a non-possessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Uncertificated securities.

The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or non-perfection of a security interest in uncertificated securities.

(7) Deposit Accounts.

This Title applies to the perfection of security interests in deposit accounts of any person or entity which are maintained at any office located on the Blackfeet Reservation of any depository institution or other business authorized to accept deposits located on the Blackfeet Reservation.

Comment

This section states the rules for determining where and under what law a security interest should be perfected, and the effect of perfection or non-perfection. The section takes into account that the Blackfeet Tribe does not have a system for issuing certificates of title. Deposit accounts are also added as an additional area governed by the section.

Sec. 9-104. Transactions Excluded From Title

This Title does not apply

(a) to a security interest subject to any statute of the United States, to the extent that such statute governs the rights of parties to, and third parties affected by, transactions in particular types of property;

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in Section 9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to a transfer by a government or government subdivision, official or agency except to the extent that such entity has made an effective waiver of its sovereign immunity; or

(f) to a sale of accounts or chattel paper as a part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(g) to a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (Section 9-306) and priorities in proceeds (Section 9-312); or

(h) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(i) to any right of set-off; or

(j) except to the extent that provision is made for fixtures in Section 9-393, to the creation or transfer of an interest in or lien on real estate ~~of~~ a mobile home used as the primary place of residence, including a lease or rents

*Sec. Code / DOES NOT apply to mobile homes*

thereunder; or

(k) to a transfer in whole or in part of any claim arising out of tort; or

(l) to a transfer of an interest in any deposit account (subsection (1) of Section 9-105), except as provided with respect to proceeds (Section 9-306) and priorities in proceeds (Section 9-312), and except for deposit accounts maintained on the Blackfeet Reservation by offices of depository institutions and other businesses authorized to accept deposits on the Blackfeet Reservation; or

(m) to any transaction involving consumer goods.

#### Comments

This section lists a number of secured transactions which are not subject to this Title. Fixtures are governed by this section except to the extent that they are trust property. Section 9-104(e) is modified to allow governmental units to choose to be bound by this Title through a waiver of immunity. Section 9-104(j) is modified to make clear that mobile homes used as a primary residence are to be treated like real property. Section 9-104(l) is modified to reflect that deposit accounts can be used as collateral under this Title. Section 9-104(m) is added to reflect that this Title does not apply to transactions involving consumer goods because they are regulated elsewhere.

#### Sec. 9-105. Definitions and Index of Definitions

(1) In this Article unless the context otherwise requires:

(a) "account debtor" means the person who is obligated on an account, deposit account, chattel paper or general intangible;

(b) "chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a charter or other contract involving the use of hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "debtor" means the person who owes payment or other performance of the obligation secured, whether or not he



owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of this Title dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both the owner and the obligor where the context so requires;

(e) "deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union, or like organization or a similar account maintained with any other type of business which is or becomes authorized to accept such deposits by the law applicable thereto. An account evidenced by a negotiable certificate of deposit is an "instrument", but a nonnegotiable certificate of deposit is a deposit account, if such account is maintained on the Blackfeet Reservation, or a general intangible, if such account is maintained in any other jurisdiction;

(f) "document" means document of title which includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to cover goods issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass;

(g) "encumbrance" includes real estate leases, mortgages and other liens on real estate and all other rights and interests in real estate that are not ownership interests;

(h) "goods" includes all things which are movable at the time the security interest attaches or which are fixtures (Section 9-313, but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(i) "instrument" means a negotiable instrument, or a certificated security (as defined in this Section), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment. "Negotiable instrument" means any writing signed by the maker or drawer, and which contains an unconditional promise or order to pay a sum certain in money, and is payable on demand or at a definite time, and is

payable to order to bearer. A writing which complies with the requirements of a negotiable instrument is a "check" if it is a draft drawn on a bank and payable on demand. A writing which complies with the requirements of a negotiable instrument is a "note" if it is a promise other than a certificate of deposit;

(j) "mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) an advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "security agreement" means an agreement which creates or provides for a security interest;

(m) "secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders or owners of obligations issued under an indenture of trust, equipment trust agreement of the like are represented by a trustee or other person, the representative is the secured party;

(n) "transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer services;

(o) "sale" means, the passing of title from the seller to the buyer for a price, "contract for sale" includes both a present sale of goods and a contract to sell goods at a future time;

(p) "holder in due course" means a holder who take the instrument for value, and in good faith, and without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person. A payee may be a holder in due course. A holder does not become a holder in due course of an instrument by purchase of it at judicial sale, or by taking it under legal process, or by acquiring it in taking over an estate, or by purchasing it as part of a bulk transaction not in regular course of business of the transferor. A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased;

(q) "certificated security" means a share, participation or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is (i) represented by an instrument issued in bearer or registered form,

(ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment, and (iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations. An "uncertificated security" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is (i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer, (ii) of a type commonly dealt in on securities exchanges or markets, and (iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(2) Other definitions applying to this Title and the sections in which they appear are:

"Account"	Section 9-106
"Attach"	Section 9-203
"Construction mortgage"	Section 9-313(1)
"Consumer goods"	Section 9-109(1)
"Equipment"	Section 9-109(2)
"Farm products"	Section 9-109(3)
"Fixture"	Section 9-313(1)
"Fixture filing"	Section 9-313(1)
"General intangibles"	Section 9-106
"Inventory"	Section 9-109(4)
"Lien creditor"	Section 9-301(3)
"Proceeds"	Section 9-306(1)
"Purchase money security interest"	Section 9-107
"United States"	Section 9-103

#### Comment

This section defines a number of terms used in Article 9. Section 9-105(1)(a) and (e) have been modified to include deposit accounts. Section 9-105(1)(f) has been modified to include a definition from Article 1 which has not been adopted by the Blackfeet Tribe. Sections 9-105(1)(o), (p) and (q) have been added to include definitions from Article 2, 3 and 8 which have not been adopted by the Blackfeet Tribe, and thus section 9-105(3) has been omitted. Section 9-105(4) has also been omitted because the Tribe has not adopted Article 1.

#### Sec. 9-106. Definitions: "Account"; "General Intangibles"

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by

performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, deposit accounts, chattel paper, documents, instruments, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

Comment

The definitions in this section complete the classification of the kinds of intangibles which are permitted collateral under this Title and which are not already defined.

Sec. 9-107. Definitions: "Purchase Money Security Interest"

A security interest is a "purchase money security interest" to the extent that it is

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

Comment

This section defines purchase money security interests as opposed to other types of security interests. Generally a purchase money security interest is created when the seller retains a security interest in the goods being sold rather than in goods or property not connected with the transactions.

Sec. 9-108. When After-Acquired Collateral Not Security for Antecedent Debt.

Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property, his security interest in the after-acquired collateral shall be deemed to be taken for new value (and not as security for an antecedent debt) if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

Comment

This section specifies when after-acquired property is not to be regarded as security for an antecedent debt. After-acquired property is not to be deemed taken as security for an

antecedent debts when (1) the secured party has given new value, and (2) the debtor has acquired the after-acquired property either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement and within a reasonable time after new value is given. Whether security is given for new value or for a pre-existing claim may be important in bankruptcy or insolvency proceedings.

Sec. 9-109. Classification of Goods: "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory"

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk or eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory; or

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service (or if he has so furnished them), or if they are raw materials, work in process of materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

Comment

This section classifies goods into four mutually exclusive categories. The same item can be classified differently depending on how it is being used.

Sec. 9-110. Sufficiency of Description

For the purposes of this Title any description of personal property or real estate is sufficient, whether or not it is specific, if it reasonably identifies what is described.

Comment

This section sets the standard for the description of the collateral which must be included in the security agreement. A description is sufficient for the purpose of the secured transaction if it reasonably identifies the collateral. If the

description of the collateral is inadequate, the security agreement may be ineffective.

Sec. 9-111. Omitted

Sec. 9-112. Where Collateral Is Not Owned by Debtor

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral (i) is entitled to receive from the secured party any surplus under Section 9-502(2) or under Section 9-504(1), and (ii) is not liable for the debt or for any deficiency after resale, and (iii) has the same right as the debtor

(a) to receive statements under Section 9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under Section 9-505;

(c) to redeem the collateral under Section 9-506;

(d) to obtain injunctive or other relief under Section 9-507(1); and

(e) to recover losses caused to him under Section 9-208(2).

Comment

This section describes the rights and protections of a third party who allows his property to be used to secure the obligations of another person. The owner of the properties not personally liable for the debt or for any deficiency after resale. He is also entitled to receive from the secured party any surplus under this Title. The owner of the property also has the same rights of the debtor to: receipt of the financing statements; notice of and objection to retention of collateral in satisfaction of the obligation; redemption of collateral; obtaining injunctive or other relief; and recovery of loss.

Sec. 9-113. Omitted

Sec. 9-114. Omitted

## PART 2

### VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

#### Sec. 9-201. General Validity of Security Agreement

Except as otherwise provided by this Title, a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this Title validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, consumer protection, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

#### Comment

This section states the effect of a security agreement, and indicates that other laws which may be applicable to the transaction are not affected by this Title.

#### Sec. 9-202. Title to Collateral Immaterial

Each provision of this Title with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

#### Comment

This section makes clear that the various provisions of this Title apply without regard to ownership of the collateral.

#### Sec. 9-203. Attachment and Enforceability of Security Interest; Proceeds; Formal Requisites

(1) Subject to other applicable law governing the security interest of a collecting bank, security interests in securities, and security interests arising in the context of a sale, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to an agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral, enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in Subsection (1) have taken place, unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed, a security interest gives the secured party the rights to proceeds provided by Section 9-306.

(4) A transaction, although subject to this division, may be subject to Title \_\_\_\_\_ (Consumer Protection), and other applicable laws which may be enacted by the Blackfeet Tribe. In areas where the Blackfeet Tribe has not yet legislated, the law of the State in which a natural person resides, or in the case of all other entities, the State in which the entity has its principal place of business, shall be the applicable law. In the case of conflict between the provisions of this Title and any such laws, the provisions of such laws control. Failure to comply with any applicable law has only the effect which is specified therein.

#### Comment

This Section specifies the requirements for a binding security agreement. This Section also provides that local laws shall apply to a transaction, and that such local laws prevail in the case of conflict.

#### Sec. 9-204. After-Acquired Property; Future Advances

(1) A security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) Omitted.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (Subsection (1) of Section 9-105).

#### Comment

This Section provides that a security agreement may grant a security interest in collateral existing at the time or acquired afterward to secure an obligation then-existing or arising in the future.

#### Sec. 9-205. Use or Disposition of Collateral Without Accounting Permissible

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or



dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

#### Comment

This section provides that the debtor may maintain full dominion and control over the use and disposition of the collateral and the rights of the secured party are not thereby impaired. However, the parties may impose conditions on the use and accounting of the collateral in the security agreement.

#### Sec. 9-206. Agreement Not to Assert Defenses Against Assignee; Warranties

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument and except as to defenses based on implied warranty of merchantability. A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

#### (2) Express Warranties by Affirmation, Promise, Description, Sample

(a) Express warranties by the seller are created as follows:

(i) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(ii) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(iii) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or the model.

(b) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

(3) Implied Warranty: Merchantability; Usage of Trade

(a) Unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

(b) Goods to be merchantable must be at least such as

(i) pass without objection in the trade under the contract description; and

(ii) in the case of fungible goods, are of fair average quality within the description; and

(iii) are fit for the ordinary purposes for which such goods are used; and

(iv) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(v) are adequately contained, packaged, and labeled as the agreement may require; and

(vi) conform to the promises or affirmations of fact made on the container or label if any.

(c) Unless excluded or modified other implied warranties may arise from course of dealing or usage of trade.

(4) Implied Warranty: Fitness for Particular Purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

(5) Exclusion or Modification of Warranties

(a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit

the warranty shall be construed wherever reasonable as consist with each other; but negation or limitation is inoperative to the extent that such construction is unreasonable.

(b) Subject to subsection (c), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example that "There are no warranties which extend beyond the description of the face hereof."

(c) Notwithstanding subsection (b)

(i) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(ii) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(iii) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(6) Cumulation and Conflict of Warranties Express or Implied

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

## Comment

This section clarifies the extent to which a debtor may agree not to assert defenses against an assignee of the secured party. This section has been modified to make clear that defenses based on implied warranty of merchantability may be enforced against a holder in due course. The section has also been modified to incorporate sections 2-313 to 2-317 which set out how express and implied warranties are created and how such warranties can be excluded or modified. Incorporation of these sections was necessary because the Blackfeet Tribe has not adopted Article 2 on Sales of the Uniform Commercial Code.

### Sec. 9-207. Rights and Duties When Collateral is in Secured Party's Possession.

(a) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed in writing.

(2) Unless otherwise agreed in writing, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled; and

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections, but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value pursuant to the order of a court of appropriate jurisdiction or, except in

the case of consumer goods, in the manner and to the extent provided in the security agreement.

Comment

This section declares the rights and duties of the secured party when the collateral remains in his possession. These rights and duties may be modified to some extent by agreement of the parties in the security agreement.

Sec. 9-208. Request for Statement of Account or List of Collateral

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral, a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor, the secured party may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply, he is liable for any loss caused to the debtor thereby; and, if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both, the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If the secured party no longer has an interest in the obligation or collateral at the time the request is received, he must disclose the name and address of any successor in interest known to him, and he is liable for any loss caused to the debtor as a result of any failure to so disclose. A successor in interest is not subject to this Section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding \$10 for each additional statement furnished.

Comment

This section establishes a procedure by which the debtor may keep himself informed of the status of his account.

PART 3

PERFECTED AND UNPERFECTED SECURITY INTERESTS;  
RULES OF PRIORITY

Sec. 9-301. Persons Who Take Priority over Unperfected Security Interests; Rights of "Lien Creditor"

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under Section 9-312;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or other buyer out of the ordinary course of business or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

Comment

This section states the priority of competing interests when one of the interests is an unperfected security interest, that is where the requirements for perfection so as to provide notice to third parties have not been complied with.

Sec. 9-302. When Filing Is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Title Do Not Apply

(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under Section 9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under Section 9-304 or in proceeds for a 10 day period under Section 9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 9-313;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank or in securities covered in subsection (3) of this section;

(g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this title is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this Title is not necessary or effective to perfect a security interest in property subject to

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Title for filing of the security interest; or

(b) any laws of the Blackfeet Tribe which may be enacted in the future governing certificates of title; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Title (Part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of Section 9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Title, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in Section 9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Title.

#### Comment

This section declares when filing of a financing statement is required to perfect a security interest and when no filing is required, or registration or filing under a different statute is required. Section 9-302(1)(f) is modified to take into account that the Blackfeet Tribe has not adopted Articles 2, 4, and 8 of the Uniform Commercial Code.

#### Sec. 9-303. When Security Interest is Perfected; Continuity of Perfection

(1) A security interest is perfected when it has attached and when all of the applicable steps required of perfection have been taken. Such steps are specified in Sections 9-302, 9-304, 9-305 and 9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this Title, and is subsequently perfected in some other way under this Title, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Title.



## Comment

This section states when a security interest is perfected. It is immaterial whether the interest attaches first or the perfecting steps are taken first. In either event the interest is in fact perfected when both have occurred. If a security interest becomes unperfected but is thereafter perfected, it is the date of the later perfection which is controlling. If, however, a security interest is perfected and thereafter, while still perfected, it is perfected again, the perfection dates as of the original perfection.

### Sec. 9-304. Perfection of Security Interest in Instruments, Documents, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this Section and subsections (2) and (3) of Section 9-306.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or

exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of Section 9-312; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Title.

#### Comment

This section describes the manner of perfecting a security interest in instruments, documents, and goods. It covers the perfection of security interests in chattel paper, negotiable documents, instruments, goods in the possession of a third person, and goods in the possession of the issuer of a negotiable document. The section also creates a temporary perfection in the case of instruments or negotiable documents, and permits a temporary release of possession which will not affect the perfection of the interest. The section was modified to reflect the fact that the Blackfeet has not adopted Article 8 of the Uniform Commercial Code regarding certificated securities.

#### Sec. 9-305. When Possession by Secured Party Perfects Security Interest Without Filing

A security interest in letters of credit and advices of credit, goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without a relation back and continues only so long as possession is retained, unless otherwise specified in this Title. The security interest may be otherwise perfected as provided in this Title before or after the period of possession by the secured party.

#### Comment

This section specifies when a security interest may be perfected by taking possession, rather than by filing. The section was modified to reflect the fact that the Blackfeet Tribe has not adopted Article 8 of the Uniform Commercial Code.

Sec. 9-306. "Proceeds"; Secured Party's Rights on Disposition of Collateral

(1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "case proceeds." All other proceeds are "non-case proceeds".

(2) Except where this Title otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof, unless the disposition was authorized by the secured party in the security agreement or otherwise and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;

(b) a filed financing statement covers the original collateral and the proceeds are identifiable case proceeds; or

(c) the security interest in the proceeds is perfected before the expiration of the ten day period.

Except as provided in this Section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this Title for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) subject to any right to set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to ~~the secured party~~ on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of

the returned or repossessed goods.

#### Comment

This section defines "proceeds", and other terms, and declares the rights of the secured creditor with respect to the collateral and proceeds of the sale or other disposition of the collateral, provides for the perfection of the secured party's interest in proceeds, states the effect of insolvency upon the secured party's interest in proceeds, and lists the priorities which exist when goods are returned or repossessed by the seller after a security interest was created in an account or chattel paper.

#### Sec. 9-307. Protection of Buyers of Goods.

(1) A buyer of goods in the ordinary course of business takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes.

(3) A buyer of goods other than a buyer in the ordinary course of business takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than 45 days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45 day period.

#### Comment

This section describes when buyers of goods are protected from outstanding security interests in the goods. The section has been modified to allow the same protections to buyers in the ordinary course of business for farm products and to consumer purchasers of consumer goods without knowledge of the security interest.

#### Sec. 9-308. Purchase of Chattel Paper and Instruments

A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument

(a) which is perfected under Section 9-304 (permissive filing and temporary perfection) or under Section 9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(b) which is claimed merely as proceeds of inventory subject to a security interest (Section 9-306) even though he knows that the specific paper or instrument is subject to the security interest.

#### Comment

This section governs the extent to which a purchaser of chattel paper or a non-negotiable instrument takes clear of outstanding security interests.

#### Sec. 9-309. Protection of Purchasers of Instruments, Documents and Securities

Nothing in this Title limits the rights of a holder in due course of a negotiable instrument or a holder to whom a negotiable document of title has been duly negotiated or a bona fide purchaser of a security interest and the holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Title does not constitute notice of the security interest to such holders or purchasers.

#### Comment

This section declares that the rights of various favored holders of instruments are not altered by the provisions of this Title and that such holders take priority over an earlier security interest. The fact that the security interest was perfected or filed is immaterial; filing does not constitute notice of the secured party's interest. This section is included even though the Blackfeet has not adopted Articles 3, 7 and 8 of the Uniform Commercial Code regarding negotiable instruments, documents and securities.

#### Sec. 9-310. Priority of Certain Liens Arising by Operation of Law.

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

### Comment

This section declares that statutory liens involving the furnishing of services or materials take precedence over a competing security interest unless the statute specifically provides otherwise.

### Sec. 3-111. Alienability of Debtor's Rights

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

### Comment

This section states that the debtor's rights in collateral may be transferred voluntarily or involuntarily by any procedure or process, even though a prior security interest exists in the collateral.

### Sec. 9-312. Priorities Among Conflicting Security Interests in the Same Collateral

(1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: Section 9-103 on security interests related to other jurisdictions; Section 9-114 on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise take priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21 day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of Section 9-304); and

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this Section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection; and

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or other perfection, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the



security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

#### Comment

This section states the rules for priority among competing security interests in various types of collateral and in proceeds from the sale or other disposition of collateral. The section refers to the other sections of the Title which make specific provisions for priorities of conflicting claims, addresses specific types of collateral and proceeds and adds a provision regulating the priority in all cases for which provision is not otherwise made.

#### Sec. 9-313. Priority of Security Interests in Fixtures

(1) In this section and in the provisions of Part 4 of this Title referring to fixture filing, unless the context otherwise requires

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under federal law or applicable real estate law

(b) a "fixture filing" is the filing in the required office of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of subsection (5) of Section 9-402

(c) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition of cost of the land, if the recorded writing so indicates.

(2) A security interest under this Title may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this Title in ordinary building materials incorporated into an improvement on land.

(3) This Title does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by

a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate including possession by assignment of the Blackfeet Tribe; or

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate including possession by assignment of the Blackfeet Tribe; or

(c) the fixtures are readily removable factory, office or business machines and other goods or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this Title.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding paragraph (a) of subsection (4), but otherwise subject to subsections (4), (5) and (9), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) Subject to subsection (9), in cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate, but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any dimin-

ution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

(9) Except as otherwise provided by lease or agreement, the Blackfeet Tribe consents to the creation of a security interest in fixtures owned by persons validly using or possessing tribal property through an assignment or otherwise, unless federal law would prohibit such security interest. Any interest which the Tribe may have in the fixtures shall not have priority over any security interest in the fixtures under this Title.

#### Comment

This section regulates ~~the priority of competing~~ security interests in fixtures. Of particular importance are competing interests claimed by persons having an interest in the land and persons having a security in the goods. This section does not determine whether personal property constitutes a fixture, but refers to federal and local law. Federal law should also be consulted to determine whether fixtures have assumed the characteristics of improvements and taken on trust characteristics if located on trust land so that a security interest may not be allowed. This section has been modified to provide that federal law should also be consulted to determine whether goods are fixtures. It has also been modified to provide that the Blackfeet Tribe consents to the creation of a security interest in fixtures used by persons possessing or using tribal land, and that the Blackfeet Tribe does not claim any priority as a result of any interest it may have in fixtures on tribal land which is possessed or used by others.

#### Sec. 9-314. Accessions

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this Section "accessions") over the claims of all persons to the whole except as stated in subsection (3), and subject to Section 9-315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3), but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for, without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale (other than the holder of a perfected security interest purchasing at his own foreclosure sale) is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default (subject to the provisions of Part 5) remove his collateral from the whole, but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury (but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them). A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

#### Comment

This section states the priority of a secured party in, and a secured party's right of removal of, goods which have, under applicable law regarding accession, become part of other goods.

#### Sec. 9-315. Priority When Goods Are Commingled or Processed

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if,

(a) the goods are so manufactured, processed, assembled, or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which subsection (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

#### Comment

This section declares the extent to which a person having a perfected security interest in goods has an interest in a final commingled, manufactured, or processed mass of which such goods are a part, and states a rule of equality of distribution as to secured parties having interests in goods which have become a part of the same product or mass.

#### Sec. 9-316. Priority Subject to Subordination

Nothing in this Title prevents subordination by agreement by any person entitled to priority.

#### Comment

This section states the general right of a person entitled to priority to agree to surrender such priority in favor of others.

#### Sec. 9-317. Secured Party Not Obligated on Contract

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

#### Comment

This section declares that the secured party is not liable for the conduct or contracts of the debtor as a result of the security interest or the fact that the secured party has consented or agreed to the disposal of the property by the debtor.

Sec. 9-318. Defense Against Assignee: Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 9-206 the rights of an assignee are subject to

(a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee, unless the account debtor has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

Comment

This section states the rights and obligations of an account assignee with respect to a contract between the account assignor and the account debtor. Contract terms which prohibit assignments are declared ineffective.

PART 4

FILING

Sec. 9-401. Place of Filing; Erroneous Filing; Removal of Collateral

(1) The proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103, or when the financing statement is filed as a fixture filing (Section 9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(b) in all other cases, in the office of the Clerk of the Court.

(2) A filing which is made in good faith in an improper place or not in the place required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Title and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financial statement.

(3) A filing which is made in the proper place on the reservation continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in Section 9-103 determine whether filing is necessary on the Reservation.

(5) Notwithstanding the preceding subsections, and subject to subsection (3) of Section 9-302, the proper place to file in order to perfect a security interest in collateral, including fixtures of a transmitting utility is the office of the Clerk of Court. This filing constitutes a fixture filing (Section 9-313) as to the collateral described therein which is or is to become fixtures.

(6) For the purposes of this section, the residence of an organization is its place of business if it has one or its chief executive office if it has more than one place of business.

## Comment

This section designates the place for the filing of financing statements in order to perfect the security interest, states that an incorrect filing made in good faith is effective, and states that a filing continues to be effective when the debtor or the business changes residence or the location of the collateral changes.

### Sec. 9-402. Formal Requisites of Financing Statement; Amendments; Mortgage as Financing Statement

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financial statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103, or when the financing statement is filed as a fixture filing (Section 9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of the security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed on the reservation.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this jurisdiction, or when the debtor's location is changed to this jurisdiction. Such a financing statement must state that the collateral was brought into this jurisdiction or that the debtor's location was changed to this jurisdiction under such circumstances; or

(b) proceeds under Section 9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or



(c) collateral as to which the filing has lapsed; or

(d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) \_\_\_\_\_  
Address \_\_\_\_\_  
Name of secured party (or assignee) \_\_\_\_\_  
Address \_\_\_\_\_

1. This financing statement covers the following types (or items) of property:  
(Describe) \_\_\_\_\_

2. (If the collateral is crops) The above described crops are growing or are to be grown on:  
(Describe real estate) \_\_\_\_\_

3. (If applicable) The above goods are to become fixtures on\*<sup>1</sup> (Describe real estate) \_\_\_\_\_  
and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is \_\_\_\_\_

4. (If the products of collateral are claimed) Products of the collateral are also covered.

\_\_\_\_\_  
Signature of Debtor or Assignor (use whichever

\_\_\_\_\_  
Signature of Secured Party or Assignee is applicable)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this Title, unless the context otherwise requires, the term "financing statement" means the original

<sup>1</sup>\* Where appropriate substitute either "The above timber is standing on ...." or "The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on..."

financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103, or a financing statement filed as a fixture filing (Section 9-313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the laws of the Blackfeet Tribe. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if

(a) the goods are described in the mortgage by item or type; and

(b) the goods are or are to become fixtures related to the real estate described in the mortgage; and

(c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(d) the mortgage is duly recorded.

No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structuring, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

### Comment

This section describes the form of financing statement and fixture filings. The section also provides for the amendment of the statement and the time for filing it.

#### Sec. 9-403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Title.

(2) Except as provided in subsection (6) a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of Section 9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing shall index the statement according to the

name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be \$10.00.

(6) If the debtor is a transmitting utility (subsection (5) of Section 9-401) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under subsection (6) of Section 9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103, or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of the Blackfeet Tribe provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

#### Comment

This section describes the mechanics of filing a financing statement and continuation statement and fixes the fee for these filings. The section also specifies the duration of the original filing and of a continuation filing, and describes the duties of the filing officer. Some modifications have been made in connection with the duties of the filing officer.

#### Sec. 9-404. Termination Statement

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by separate written statement of assignment signed by the secured party of record complying with subsection (2) of Section 9-405, including payment of the

required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor, he shall be liable to the debtor for one hundred dollars and in addition for any loss caused to the debtor by such failure.

(2) On the presentation to the filing officer of such a termination statement he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one year after receipt of the termination statement.

(3) If the termination statement is in the standard form prescribed by the Clerk of Court, the uniform fee for filing and indexing the termination statement shall be \$10.00.

#### Comment

This section provides for the filing of a termination statement when the security interest transaction is ended. It specifies the fees to be charged and the duties of the filing officer. The section is modified to reflect that all financing statements are to be treated the same.

#### Sec. 9-405. Assignment of Security Interest; Duties of Filing Officer; Fees

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in Section 9-403(4). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be \$10.00.

(2) A secured party may assign of record all or part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record

and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103, he shall index the assignment under the name of the assignor as grantor, and to the extent that Blackfeet law provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be \$10.00. Notwithstanding the provisions of this sub-section, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of Section 9-402) may be made only by an assignment of the mortgage in the manner provided by the law applicable to the recording of such mortgages.

(3) After the disclosure or filing of an assignment under this Section, the assignee is the secured party of record.

#### Comments

This section regulates the procedure when the secured party assigns his interest. The section also prescribes the duties of the filing officer and states the fees to be charged.

#### Sec. 9-406. Release of Collateral; Duties of Filing Officer; Fees

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of Section 9-405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The

uniform fee for filing and noting such a statement of release shall be \$5.00.

#### Comment

This section describes the procedures for releasing some of the collateral without terminating the financing statement. It prescribes the fees and the duties of the filing officer.

#### Sec. 9-407. Information From Filing Officer

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be \$10.00. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of \$.50 per page.

#### Comment

This section provides for the supplying of information by the filing officer to the person filing any document to show the disposition made by the officer. It also provides for the furnishing by the filing officer, upon request of any person, of information relating to financing statements and statements of assignment.

#### Sec. 9-408. Financing Statements Covering Consigned or Leased Goods

A consignor or lessor of goods may file a financing statement using the terms "consignor," "consignee," "lessor," "lessee" or the like instead of the terms specified in Section 9-402. The provision of this Part shall apply as appropriate to such a financing statement, but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (Section 1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which

attaches to the consigned or leased goods is perfected by such filing.

Comment

This section provides a method of protection for persons where consignments or leases are involved and the consignee or lessee is found to be a secured party.



## PART 5

### DEFAULT

#### Sec. 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, foreclose 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 subsections 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;

(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.

#### Sec. 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.

Sec. 9-503. Secured Party's Right 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.

Sec. 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 shall be sent 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

(a) 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

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, 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.

### Sec. 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.

### Sec. 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.

Sec. 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.