

## Chapter 20. Repossession of Personal Property

### Sec. 1. Legislative Intent.

For many years creditors or their agents have come onto the lands of the Fort McDermitt Tribe and demanded the return of property purchased under credit in a manner that was insulting to tribal members.

The Tribal Council acknowledges the right of a creditor to retrieve their property upon which a security agreement was executed but the method by which a creditor or, in most cases their agent, is able to retrieve that property be it a vehicle or television must ensure that the party against whom the recovery is sought is explained exactly what their rights are and what their options are.

By enacting this provision, it is not the intent of the Tribal Council to prevent voluntary repossession. The Tribal Council hopes that all parties, creditors and debtors, can find mutually agreeable methods of solving their problems. The Tribe merely wishes to exercise that inherent sovereign power to exercise those “forms of civil jurisdiction over non-Indians” within our lands that federal courts, including the United States Supreme Court, find acceptable. See Montana v. United States, 450 U.S. 544, 565 (1981). The United States Supreme Court has repeatedly recognized tribal courts “as appropriate forums for the exclusive adjudication of disputes affecting personal and property interests of both Indians and non-Indians.” See Santa Clara Pueblo v. Martinez, 436 U.S. 49, 65 (footnote omitted). The power to exercise tribal civil authority over non-Indians derives not only from the tribe’s inherent power necessary to self-government and territorial management, but also from the power to exclude nonmembers from tribal land. See Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 141-44 (1982). Nonmembers lawfully entering tribal lands even pursuant to a contract nonetheless remain “subject to the tribe’s power to exclude them.” Id at 144 (emphasis in original). A tribe has the power “to place conditions on entry, on continued presence, or on reservation conduct . . . , [and] nonmember[s] who [enter] the jurisdiction of the tribe [remain] subject to the risk that the tribe will later exercise [this] sovereign power.” Id at 144-45 (footnote omitted). See also Babbitt Ford, Inc. v. Navajo Tribe, Nos. 82-5002, 81-6052 (9<sup>th</sup> Cir. July 15, 1983) 10 ILR 2153 (September 1983), cert. denied, \_\_\_ U.S. \_\_\_, 53 U.S.L.W. \_\_\_.

### Sec. 2. Repossession of Personal Property.

The personal property of Indians shall not be taken from land subject to the jurisdiction of the Fort McDermitt Tribe under the procedures of repossession except in strict compliance with the following:

1. Written consent to remove the property from land subject to the jurisdiction of the Fort McDermitt Tribe (Hog John Ranch, Lasa Purchase, Hearn and Giacometto Ranches, Oregon lands including the Hopping Meadows, etc.) shall be secured from the purchaser at the time repossession is sought. The written consent shall be obtained by the creditor and exhibited to the Fort McDermitt Tribe or its law enforcement officials upon proper demand.

2. Where an Indian refuses to sign said written consent to permit removal of the property from land subject to the jurisdiction of the Fort McDermitt Tribe, the property shall be removed only order of a judge of the Fort McDermitt Tribal Court in an appropriate legal proceeding.

Sec. 3. Violations; Penalty.

- (a) Any nonmember of the Fort McDermitt Tribe, except persons authorized by federal law to be present on tribal land, found to be in willful violation of section 2 of this chapter may be excluded from land subject to the jurisdiction of the Fort McDermitt Tribe in accordance with constitutional authority, Art. VI, Section (f), and in a manner that affords due process, the opportunity to present and cross-examine witnesses, and equal protection of the law before the Tribal Council.
- (b) Any business whose employees or agents are found to be in willful violation of section 2 of this chapter may be denied the privilege of doing business on land subject to the jurisdiction of the Fort McDermitt Tribe by the Tribal Council in accordance with constitutional authority, Art. VI, Section 1(f).
- (c) Any Indian who violates any section of this chapter shall be guilty of an offense, and upon conviction shall be punished by a fine of not more than \$500.

Section 4. Civil Liability.

Any person who violates section 2 of this chapter and any business whose employee or agent violates such section is deemed to have breached the peace of the lands under the jurisdiction of the Fort McDermitt Tribe, and shall be civilly liable to the purchaser for any loss caused by the failure to comply with any section of this chapter.

If the personal property repossessed is consumer good to-wit: good used or bought for use primarily for personal family or household purposes), the purchaser has the right to recover in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the debt or the time price differential plus 10 percent of the cash price.

“Purchaser” means the person who owes payment or other performance of an obligation secured by personal property, whether or not the purchaser owns or has rights in the personal property.

Sec. 5. Severability.

Should any sections of this chapter be disapproved by the Secretary of the Interior, in accordance with the Constitution, or be found unconstitutional or in violation of tribal or federal law by any court of competent jurisdiction, such declaration shall not affect the remaining terms or sentences of any section or the remaining sections of this chapter.