

NORTHERN CHEYNNÉ
UNIFORM COMMERCIAL
CODE

1999

**NORTHERN CHEYENNE TRIBAL COUNCIL
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

RESOLUTION NO. DOI-013 (99)

**A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL ADOPTING
THE NORTHERN CHEYENNE UNIFORM COMMERCIAL CODE.**

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Indian Reservation by authority vested in it pursuant to the Amended Constitution and By-laws of the Northern Cheyenne Tribe as approved by the Secretary of the Interior on May 31, 1996; and,

WHEREAS, pursuant to Article IV, Section 1(i), of the Amended Constitution and By-laws of the Northern Cheyenne Tribe the Tribal Council is authorized to promulgate ordinances; and


WHEREAS, Tribal Council believes that the adoption of a Uniform Commercial Code governing transactions on the Northern Cheyenne Reservation will result in increased economic activity by encouraging off-Reservation business to come on to the Reservation and do business with the Tribe and Tribal members; and

WHEREAS, the Tribal Council further believes that the adoption of a Uniform Commercial Code will result in the orderly resolution of disputes involving transaction that take place on the Reservation; and

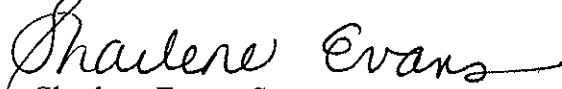
WHEREAS, the Tribal Council believes all of these results are desirable and in the best interest of the Northern Cheyenne Tribe and its members.

NOW, THEREFORE, BE IT RESOLVED, that the Northern Cheyenne Tribal Council hereby adopts the Northern Cheyenne Uniform Commercial Code attached hereto; provided, that at the expiration of the comment period (October 29, 1998), the Tribal Attorney make a final review of the code and incorporate any constructive comments. The Tribal President is authorized to sign the Uniform Commercial Code upon the recommendation of the Tribal Attorney.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 7 votes for passage and adoption and 2 votes against passage and adoption and 0 vote abstaining on this 23rd day of October, 1998.


William Walks Along, President
Northern Cheyenne Tribal Council

ATTEST:


Sharlene Evans, Secretary
Northern Cheyenne Tribal Council

APPROVED: 
SUPERINTENDENT

1st DRAFT : 6/2/97
2nd DRAFT : 8/13/97
3rd DRAFT : 9/14/98
4th DRAFT : 10/1/98
5th DRAFT : 10/14/98
6th DRAFT : 10/18/98

NORTHERN CHEYENNE

UNIFORM COMMERCIAL CODE

DEVELOPED BY NATIVE ACTION
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NORTHERN CHEYENNE UNIFORM COMMERCIAL CODE

INTRODUCTION

The purpose for the development of the Northern Cheyenne Uniform Commercial Code and its adoption by the Northern Cheyenne Tribal Council, is to improve the conditions for business and economic development on the Northern Cheyenne Reservation. A further purpose of this code is to exercise Tribal Sovereignty through the enactment of tribal regulation of commercial activity on the Northern Cheyenne Reservation.

The adoption of this ordinance, (hereinafter referred to as "UCC"), represents a tribal effort to bring certainty to the regulation of business transactions, by creating a tribal legal/commercial infrastructure for the recognition and protection of the rights of both creditors and debtors. While the laws and procedures developed herein do not mirror the corresponding Montana UCC provisions verbatim, the state statute was relied upon for guidance, in order to maintain internal consistency and promote uniformity to the degree possible, between tribal and state law.

This exercise of Tribal Sovereignty is designed to increase the level of commercial lending activity for both consumer transactions and the development of tribal member owned and operated small businesses on the Northern Cheyenne Reservation. Additionally, non-Indian owned businesses operating on the Reservation will be provided certainty with regard to the status of tribal regulation of commercial activity, through the creation of tribal laws and procedures which must be adhered to in order to do business on the Reservation.

ARTICLE I: GENERAL PROVISIONS

Part 1. SHORT TITLE, CONSTRUCTION, APPLICATION
AND SUBJECT MATTER OF THE CODE

1-101. Short Title. All Articles of this code shall be known and may be cited as the Northern Cheyenne Uniform Commercial Code.

1-102. Purposes--Rules of Construction--Variation by Agreement

(1) This code shall be liberally construed and applied to promote the following underlying purposes and policies.

(a) To simplify, clarify and modernize tribal law governing commercial transactions on the Northern Cheyenne Reservation.

(b) To permit the continued expansion of commercial practices through the application of custom, usage, tribal customary law (as certified by Tribal Council action), and agreement of the parties.

(c) To make uniform the laws governing commercial transactions throughout the jurisdiction of the Northern Cheyenne Tribe.

(2) The effect of the provisions of this Code may be varied by agreement, unless such modification is expressly prohibited by any provision of this Code, and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Code may not be disclaimed by agreement, but the parties may by agreement determine the standards by which the performance of such obligations are to be measured if such standards are not manifestly unreasonable.

1-103. Supplementary General Principles of Law are Applicable.

(1) Unless displaced by any provision of this Code, the general principles of law and equity as recognized in the jurisdiction of the State of Montana, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, bad faith, misrepresentation, duress, coercion, mistake, bankruptcy, accord and satisfaction, or related to other validating or invalidating causes, are generally adopted by the Northern Cheyenne Tribe, and shall supplement the provisions of this Code.

PROVIDED, that in the instance of a conflict between Tribal statute, resolution or ordinance, and Montana law which is

generally adopted in (1) above, the Tribal statute, resolution or ordinance shall be the governing authority and shall be the controlling law to be applied.

1-104. Construction Against Implicit Repeal.

This Code is intended to provide unified coverage and regulation of commercial transactions, and any part may be expressly repealed or modified pursuant to Tribal statute, resolution or ordinance. However, no part of this Code shall be deemed to be impliedly repealed or modified by any such Tribal legislation, if such construction (to repeal or modify) can be reasonably avoided.

1-105. Territorial Application of the Code--Parties' Power to Designate Applicable Law.

Except as provided in this section, when a commercial transaction bears a reasonable relation to the Northern Cheyenne Tribe and also to any other tribe, nation, or state, the parties may agree that the law of either the Northern Cheyenne Tribe or of such other tribe, nation, or state shall govern their rights and duties. The designation of the law of any other tribe, nation, or state as the choice of applicable law shall be closely scrutinized for any commercial transactions which arise within the jurisdiction of the Northern Cheyenne Tribe; and shall be given effect if contained in a written acknowledgment separate from the security agreement, and which states the choice of applicable law to be applied, printed in capital letters of not less than 10 point boldfaced type; and signed separately by the parties. When such separate acknowledgment is not obtained, such designation of applicable law shall only be effective if made freely and knowingly, and expressed in written form. Failing such valid agreement, this Code applies to all commercial transactions arising within the jurisdiction of the Northern Cheyenne Tribe.

1-106. Remedies to be Liberally Administered.

(1) Remedies under this Code are to be liberally applied in order to put the aggrieved party in a position as close as possible to where they would have been had the other party fully performed. Consequential, special or punitive damages can only be obtained if expressly provided for in the Code or in other applicable law.

(2) Any right or obligation described in this Code is enforceable by court action, even though no remedy may be expressly provided, unless a different and/or limited remedy is specified.

1-107. Waiver of Claim or Right After Breach.

At their option, an aggrieved party may entirely or partially waive

their right or claim arising from an alleged breach of contract, by signing and delivering to the other party, a written waiver.

1-108. Severability.

All parts of this Code are severable and should a court of competent jurisdiction invalidate any part, it shall be deemed severed, however, the remainder of this Code will be given effect.

1-109. Special Limitation on Application of Code.

The traditions and customs of the Northern Cheyenne Tribe will exclusively govern all transactions which are entirely barter in nature, provided that the value of all goods and/or services involved do not exceed a value of \$500.

**Part 2. GENERAL DEFINITIONS AND PRINCIPLES
OF INTERPRETATION**

1-201. General Definitions.

(1) "Agreement" is the bargain that the parties have negotiated and entered into, and is based upon the express language used in the written agreement.

(2) "Agricultural lien" is not a security interest but means an interest in farm products or proceeds of farm products: which secures payment or performance of an obligation; which is created by tribal statute, resolution or ordinance in favor of a person that in the ordinary course of business furnishes goods or services to a debtor engaged in a farming operation; and the effectiveness of which does not depend on the person's possession of the farm products or proceeds of farm products.

(3) "Barter" is an exchange of goods or services, without the use of money.

(4) "Burden of establishing" a fact means the burden of proving that it is more likely than not, that something is true or exists.

(5) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.

(6) "Creditor" is a person or company to whom a debt is owed.

(7) "Debtor" is a person who owes a debt or obligation to another.

(8) "Deliver" means the voluntary transfer of possession of an item.

(9) "Deposit account" means a demand, time, savings, passbook, or like account maintained with a depository institution.

(10) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(11) "Fixture" is an item whose nature is considered so attached to the real property where it is situated that it becomes a part of the ownership interest in the real property itself.

(12) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures, including equipment, products, crops and inventory, but does not include money, documents, instruments, minerals or natural resources prior to extraction. "Goods" also includes standing timber that is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops

(13) "Instrument" is a negotiable document or other writing which supports the right to the payment of money according to its terms.

(14) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(15) "Notice" is the knowledge of a fact. There can be actual knowledge of the fact; or notification of a fact, so as to be "put on notice"; or implied knowledge of a fact, based upon all of the facts and circumstances known to a person at the time. In such a case, a person knew or should have known something to be a fact.

(16) "Party" is a person, organization or corporation who has entered into an agreement or otherwise engaged in a transaction within the scope of this Code.

(17) "Punitive Damages" are an award of damages intended to punish malicious or willful conduct, or bad faith, and deter such conduct in the future. Such damages are not limited to the value of the actual damages sustained.

(18) "Presumption" or "presumed" means that the trier of fact must accept the existence of a fact unless and until evidence is received which supports a finding of its non-existence.

(19) "Purchase" is a transaction where one party receives something of value through sale, barter, discount, negotiation, mortgage, pledge lien, issue or re-issue, gift or other voluntary transfer of interest in property. However, some purchases by barter do not fall within the scope of this Code (See Section 1-109).

(20) "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.

History

(21) "Security agreement" means an agreement which creates or provides for a security interest.

(22) "Security interest" is an interest in personal property and goods, including fixtures, used to secure payment or performance of an obligation.

(23) "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 of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party.

(24) "Special Damages" are unique to the course of dealing between parties and must be specifically identified in order to inform the opposing parties of the nature and extent of such damages.

(25) "Trade/business fixtures" are personal property placed at a location for the purpose of conducting a trade or business and are presumed not to become a part of the ownership interest in the real estate itself.

(26) "Tribe" refers to the Northern Cheyenne Tribe.

(27) "Tribal law" refers to Northern Cheyenne Tribal Council enacted statute, resolution or ordinance.

(28) "Tribal customary law" refers to customary methods for resolving issues between tribal members including disputes, such as ownership or control of, property; and wrongful acts committed. Includes both substantive and procedural customary practices. May also be applied to relationships between tribal members and non-members, within the Tribe's jurisdiction. In order to be recognized, such customary law must be certified by Tribal Council action.

(29) "Usage of Trade" refers to the usual and accepted customs or understandings within a particular trade or industry.

(30) "Value". Except as otherwise provided with respect to negotiable instruments, a person gives "value" for rights if he/she

acquires them; in return for a binding commitment to extend credit; as security for or in total or partial satisfaction of a pre-existing claim; by accepting delivery pursuant to a pre-existing contract for purchase; in return for any consideration sufficient to support a simple contract;

(31) " A Writing" is any printed, typewritten, handwritten or other tangible expression.

1-202. Prima Facie Evidence by Third Party Documents.

A document authorized or required by contract to be issued by a third party, shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document.

1-203. Obligation of Good Faith.

Every contract or duty within this Code is subject to a requirement that all parties act in good faith in its performance or enforcement.

1-204. Statute of Frauds for Personal Property not otherwise Covered.

Oral contracts for sale of personal property valued at more than \$500.00 are not valid or enforceable. To be valid and enforceable, such contracts must be in writing, contain all material terms, and be signed by the party against whom enforcement is sought.

1-205. Performance or Acceptance Under Reservation of Rights.

A party may expressly reserve his/her contractual rights and then perform or promise performance in a manner demanded or proposed by the other party, without waiving the rights reserved.

Chapters 3 through 8 reserved.

**SECURED TRANSACTIONS; SALES OF ACCOUNTS
AND CHATTEL PAPER**

PART 1. GENERAL PROVISIONS

9-101. Short Title.

This Article may be cited as Commercial Transactions--Secured Transactions.

9-102. Sufficiency of Description.

(1) A description of personal property or real estate is sufficient if it reasonably identifies what is described.

9-103. Policy and Scope of Article.

(1) Except as otherwise provided in Section 9-105 on excluded transactions, this Article applies to:

(a) any transaction, regardless of its form, that creates a security interest in personal property of fixtures, including goods, or fixtures by contract;

(b) a sale of an account or chattel paper; and

(c) a consignment.

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

9-104. Transactions Excluded from Article.

(1) Except as provided in 9-105(2), this Article does not apply to:

(a) a security interest subject to any federal statute, regulation or applicable treaty, to the extent that such statute, regulation or treaty preempts tribal law and governs the rights of participating parties or third parties affected by the transaction;

(b) a landlord's lien;

(c) a lien given by statute or other rule of law for services or materials except as provided in Section 9-331;

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

(e) a transfer by a government or governmental subdivision or agency;

(f) a sale of accounts or chattel paper, as part of a sale of the business out of which they arose;

(g) an assignment of accounts or chattel which is for the purpose of collection only;

(h) a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract;

(i) a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness;

(j) a transfer of an interest or claim under any insurance policy, except: (i) a transfer by a healthcare provider of a right to payment arising out of the furnishing of healthcare goods or services; and (ii) as provided with respect to proceeds (Section 9-313) and priorities in proceeds (Section 9-319);

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

(l) any right of set-off;

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

(2) The application of this Title is limited to the extent that provision is made within this Title for:

(a) fixtures in Section 9-332, or

(b) the creation or transfer of an interest, including a lease or rents, or lien on real estate.

9-105. Purchase Money Security Interest.

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

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

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.

9-106. Classification of goods-"consumer goods"-"equipment"-"farm products"-"inventory". Goods are:

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

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

"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 and eggs), including crops growing or to be grown, 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;

"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 or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

9-107. Applicability of Other Statutes.

A transaction, although subject to this Title, may also be subject to the requirements found in other tribal statutes, resolutions or ordinances. In case of conflict between the provisions of this Title and any other tribal statute, resolution or ordinance, the more specific legal authority controls.

PART 2. VALIDITY OF SECURITY AGREEMENT, ATTACHMENT OF SECURITY INTEREST, AND RIGHTS OF PARTIES TO SECURITY AGREEMENT

9-201. General Validity of Security Agreement.

(1) 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.

(2) Nothing in this Title validates any practice illegal under any statute or regulation governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject to the statute or regulation.

9-202. Title to Collateral Immaterial.

Each provision of this chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured

party or in the debtor.

**9-203. Attachment and Enforceability of Security Interest;
Proceeds; Support Obligations; Formal Requisites.**

(1) A security interest is not enforceable against the Debtor or third parties with respect to the collateral and does not attach unless:

(a) (i) the collateral is in the possession of the Secured Party pursuant to the debtor's agreement, or the debtor has signed a security agreement which contains a description of the collateral. When the security interest covers crops growing, crops to be grown or timber to be cut, the description must also include a description of the land concerned; or

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in Section (1) have taken place unless explicit agreement by the parties postpones the time of attaching.

(5) Unless otherwise agreed:

(a) a security agreement gives the secured party the rights to proceeds provided by Section 9-313;

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

(1) Except as provided in subsection (2), a security agreement may create or provide for a security interest in after acquired collateral.

(2) No security interest attaches to consumer goods under an after-acquired property clause, except:

(a) to accessions (Section 9-333) when given as additional security; or

(b) the debtor acquires rights to the after acquired Consumer Goods within ten (10) days after the secured party gives value.

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.

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

(1) A security interest is not invalid or fraudulent against creditors by reason of:

(a) liberty in the debtor to:

(i) use, commingle, or dispose of all or part of the collateral (including returned or repossessed goods); or

(ii) collect, compromise, enforce, or otherwise deal with collateral; or

(iii) accept the return of goods or make authorized repossessions; or

(iv) use, commingle or dispose of proceeds; or

(b) the failure of the secured party to require the debtor to account for proceeds or replace collateral.

(2) This section does not relax the requirements of possession where perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party or by a bailee.

9-206. Agreement not to assert defenses against assignee-modification of sales warranties where security agreement exists.

Subject to any tribal statute, resolution or ordinance 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. A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

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

A secured party must use reasonable care in the custody and

preservation of collateral in the secured party's 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.

(2) Unless otherwise agreed and notwithstanding any contrary provision in Section 9-602, 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, must be applied to reduce the secured obligation;

(d) the secured party must keep the collateral identifiable but collateral of which any unit is by nature or usage of trade the equivalent of any other like unit 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:

(a) for the purpose of preserving the collateral;

(b) for the purpose of preserving the collateral's value;

(c) pursuant to Tribal Court order; or

(d) in the manner and to the extent provided in the security agreement. However, a security agreement may not restrict the use or operation of a consumer good.

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

(1) A debtor may sign a statement indicating what the debtor believes to be the total amount of unpaid indebtedness as of a specified date and send it to the secured party with a request that

the statement be approved or corrected and returned to the debtor.

(2) The secured party must comply with such a within two weeks after receipt, by sending a written correction or approval. If the secured party fails to comply without reasonable excuse, the secured party is liable for any loss caused to the debtor as a result of such noncompliance.

(a) 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 the secured party's noncompliance.

(b) If 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.

(c) 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 the reply and need not approve or correct an itemized list of such collateral. If the secured party no longer has an interest in the obligation or collateral at the time the request is received, the secured party shall disclose the name and address of any successor in interest known to the secured party and is liable for any loss caused to the debtor as a result of his failure to disclose this information. A successor in interest is not subject to this section until a request is received by him.

(4) 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 \$15.00 for each additional statement furnished.

Part 3. PERFECTION OF SECURITY INTERESTS.

9-301. Perfection and Priority of Certain Possessory and Non-possessory Security Interest.

(1) The following rules apply to a possessory or nonpossessory security interest in collateral other than goods covered by a certificate of title described in Section 9-303, deposit accounts, investment property, and minerals and related accounts described in Section 9-306.

(2) Except as otherwise provided in this section, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the laws of the Northern Cheyenne Tribe.

9-302. Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title.

(1) This subsection applies to goods covered by certificate of title issued under Northern Cheyenne Tribal law or from any other jurisdiction under which indication of a security interest on the certificate is required as a condition of perfection.

(2) Goods become covered by a certificate of title when an appropriate application for the certificate and the applicable fee are delivered to the appropriate authority.

(3) Perfection, the effect of perfection or non-perfection, and the priority of the security interest are governed by the local law of the jurisdiction under whose certificate the goods are covered. This security interest is valid from the time the goods become covered by the certificate until the time the certificate becomes ineffective under the law of that jurisdiction, or the time the goods become covered by a certificate of title from another jurisdiction.

9-303. Persons who take priority over unperfected security interests -- right 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 30-9-312;

(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 or is a buyer of farm products in ordinary course of business, to the extent that the person 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, general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that the person 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 20 days after the debtor receives possession of the collateral, the secured party takes priority over the rights of a transferee in bulk 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 a 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 a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before the person 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.

9-304. When filing is required to perfect security interest -- security interests to which filing provisions of this chapter 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 30-9-305;

(b) a security interest temporarily perfected in instruments, certificated securities, or documents without delivery under 30-9-304 or in proceeds for a 10-day period under 30-9-306;

(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 30-9-313;

(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 (30-4-208) or arising under the Chapter on Sales or covered in subsection (3) of this section;

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

(h) a security interest in investment property that is perfected without filing under 30-9-115 or 30-9-116.

(2) If a secured party assigns a perfected security interest, no

filing under this chapter 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 chapter 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 chapter for filing of the security interest; or

(b) the following statutes of this state: Title 61, chapter 3; Title 23, chapter 2, parts 5 and 6; 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 chapter (part 4) apply to a security interest in that collateral created by the person 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 (30-9-103(2)).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in 30-9-103 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 chapter.

9-305. 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 for perfection have been taken. Such steps are specified in 30-9-115, 30-9-302, 30-9-304, 30-9-305, and 30-9-306. 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 chapter and is subsequently perfected in some other way under this chapter, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this chapter.

9-306. Perfection of security interest in instruments, documents, proceeds of a written letter of credit, 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 the right to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. 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 30-9-306 on proceeds.

(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, certificated securities, 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 certificated security, 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 30-9-312(3); or

(b) delivers the instrument or certificated security 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 chapter.

9-307. When possession by secured party perfects security interest

without filing. A security interest in goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. 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 relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

9-308. "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. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "noncash proceeds".

(2) Except where this chapter 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) (a) 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 10 days after receipt of the proceeds by the debtor unless:

(i) 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;

(ii) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds;

(iii) the original collateral was investment property and the

proceeds are identifiable cash proceeds; or

(iv) the security interest in the proceeds is perfected before the expiration of the 10-day period.

(b) 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 chapter 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 noncash 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 subsection (4) (d) is:

(i) subject to any right of setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of:

(A) the payments to the secured party on account of cash proceeds received by the debtor during such period; and

(B) the cash proceeds received by the debtor during such period to which the secured party is entitled under subsections (4) (a) through (4) (c).

(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. The security interest is prior to a security interest asserted under subsection (5) (a) to the extent that the transferee of the chattel paper was entitled to priority under 30-9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. The security interest is subordinate to a security interest asserted under subsection (5) (a).

(d) A security interest of an unpaid transferee asserted under subsection (5) (b) or (5) (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

9-309. Protection of buyers of goods. (1) A buyer in ordinary course of business (subsection (9) of 30-1-201) other than a person buying farm products from a person engaged in farming operations 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 and in the case of farm equipment having an original purchase price not in excess of \$2,500 (other than fixtures, see 30-9-313), 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 or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.

9-310. 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:

(1) which is perfected under 30-9-304 (permissive filing and temporary perfection) or under 30-9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(2) which is claimed merely as proceeds of inventory subject to a security interest (30-9-306), even though he knows that the

specific paper is subject to the security interest.

9-311. Protection of purchasers of instruments, documents, and securities. Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (30-3-302) or a holder to whom a negotiable document of title has been duly negotiated (30-7-501) or a protected purchaser of a security (30-8-333), and the holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to the holders or purchasers.

9-312. 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.

9-313. Alienability of debtor's rights -- judicial process. 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.

9-314. 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 where applicable: 30-4-210 with respect to the security interest of collecting banks in items being collected, accompanying documents, and proceeds; 30-9-103 on security interests related to other jurisdictions; 30-9-114 on consignments; and 30-9-115 on security interests in investment property.

(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 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that the earlier interest secures obligations due more than 6 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 if the purchase money security interest is temporarily perfected without filing or possession (30-9-304(5)); and

(c) the holder of the conflicting security interest receives notification within 5 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 the 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 20 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 must be determined according to the following rules:

(a) Conflicting security interests rank according to priority in the 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.

(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 under 30-9-115 or

30-9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) or 30-9-115(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.

9-315. Priority of security interests in fixtures. (1) In this section and in the provisions of part 4 of this chapter 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 real estate law;

(b) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of 30-9-402(5);

(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 cost of the land, if the recorded writing so indicates.

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

(3) This chapter 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 real estate if:

(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 10 days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate;

(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;

(c) the fixtures are readily removable factory or office machines 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 chapter; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter.

(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 if:

(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 subsection (4)(a) but otherwise subject to subsections (4) and (5), 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) 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 diminution in value of the real estate 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.

9-316. 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 30-9-315(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 subsection (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.

9-317. 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 paragraph (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 30-9-314.

(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.

9-318. **Priority subject to subordination.** Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

9-319. **Secured party not obligated on contract of debtor.** 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.

9-320. **Defenses 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 30-9-206 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.

~~9-319. Priorities Among Conflicting Security Interests and
Agricultural Liens in the Same Collateral.~~

~~(1) Except as otherwise provided in this part, with respect to a security interest of a collecting bank, and with respect to a security interest of an issuer or nominated person, priority among conflicting security interest and agricultural liens in the same collateral is 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, which ever is earlier, provided that there is no period thereafter when there is neither filing nor perfection~~

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

~~(2) For the purposes of 9-319(1), a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.~~

~~9-321. Priority of Production Money Security Interests
and Agricultural Liens.~~

~~(1) Except as otherwise provided in 9-321(5), if the requirements of 9-321(2) are met, a perfected production money security interest in production money crops has priority over a conflicting security interest in the same crops and, except as otherwise provided in Section 9-326, also has priority in their identifiable proceeds. A production money security interest has priority under this subsection only to the extent that the conflicting security interest secures obligations incurred more than 6 months before the production money secured party first gives new value to enable the debtor to produce the crops.~~

~~(2) A production money security interest has priority under 9-321(1) if:~~

~~(a) the production money security interest is perfected by filing when the production money secured party first gives new~~

~~value to enable the debtor to produce the crops;~~

~~(b) the production money secured party gives written notification to the holder of the conflicting security interest before the production money secured party first gives new value to enable the debtor to produce the crops, if the holder had filed a financing statement covering the crops before the date of the filing made by the production money secured party; and~~

~~(c) the notification states that the production money secured party has or expects to acquire a production money security interest in the debtor's crops and contains a description of the crops.~~

~~(3) Except as otherwise provided in 9-321(4), if more than one security interest qualifies for priority in the same collateral under 9-321(1), the priority of the security interests is determined according to priority in time of filing under Section 9-319(2).~~

~~(2) If a purchase money security interest in inventory has priority over a conflicting security interest under 9-322(1), a security interest held by the purchase money secured party in chattel paper constituting proceeds of the inventory has priority over a conflicting security interest in the chattel paper if:~~

~~(a) the purchase money secured party takes possession of the chattel paper in good faith, in the ordinary course of the secured party's business, and without knowledge that the security interest violates the rights of the holder of the conflicting security interest.~~

~~(3) Except as otherwise provided in 9-322(5), a perfected purchase money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock and, except as otherwise provided in Section 9-326, also has priority in its identifiable proceeds and identifiable products in their unmanufactured states if:~~

~~(a) the purchase money security interest is perfected when the debtor receives possession of the livestock;~~

~~(b) the purchase money secured party gives written notification to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of livestock before the date of a the filing made by the purchase money secured party, or before the beginning of the 20 day period if the purchase money security interest is~~

~~temporarily perfected without filing or possession under Section 9-310(5);~~

~~—(c) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and~~

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

~~(4) Except as otherwise provided in 9322(5), a purchase money security interest in collateral other than inventory or livestock has priority over a conflicting security interest in the same collateral and, except as otherwise provided in Section 9-326, also has priority in its identifiable proceeds if the purchase money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.~~

~~(5) If more than one security interest qualifies for priority in the same collateral under 9-322(1), (3), or (4):~~

~~—(a) a security interest securing an obligation incurred as the price of the collateral has priority over a security interest securing an obligation incurred by an obligor for value given to enable the debtor to acquire rights in collateral; and~~

~~—(b) in all other cases, Section 9-319(2) applies to the qualifying security interests.~~

PART 4. RIGHTS OF THIRD PARTIES.

9-401. Restrictions on Assignment of Certain General Intangibles Ineffective

(1) Section 9-401(2) applies to a security interest in a payment intangible only if the security interest arises out of a sale of the payment intangible.

(2) A term in a general intangible, including a contract, permit, license, or franchise, between an account debtor and a debtor that prohibits, restricts, or requires the account debtor's consent to the assignment or transfer of or creation, attachment, or perfection of a security interest in the general intangible, is ineffective to the extent that:

(a) the term would impair the creation, attachment, or perfection of a security interest; or

(b) the creation, attachment, or perfection of the security

interest would cause a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the general intangible.

(3) A term in a statute or governmental rule or regulation that prohibits, restricts, or requires the consent of a government or governmental body or official to the assignment or creation of a security interest in a general intangible, including a contract, permit, license, or franchise, between an account debtor and a debtor is ineffective to the extent that the term would impair the creation, attachment, or perfection of a security interest; or the creation, attachment, or perfection of the security interest would cause a default, breach, claim, defense, termination, right of termination, or remedy under the general intangible.

(4) To the extent that a term in a general intangible, statute, rule, or regulation is ineffective under Section 9-401 (3) or (4) but is effective under other law, the creation, attachment, or perfection of a security interest in the general intangible:

(a) is not enforceable against the account debtor;

(b) imposes no duties or obligations on the account debtor;
and

(c) does not require the account debtor to recognize the security interest, pay or tender performance to the secured party, or accept payment or performance from the secured party.

(5) This section controls over any inconsistent provisions of other parts of this Code, or any other conflicting Tribal law or authority.

PART 4. FILING.

9-401. Place of filing -- erroneous filing -- removal of collateral. (1) Except for financing statements filed pursuant to 30-9-409, the proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept;

(b) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or when the financing statement is filed as a fixture filing (30-9-313) 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;

(c) in all other cases, in the office of the secretary of state.

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

(3) A filing which is made in the proper place in this state 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 30-9-103 determine whether filing is necessary in this state.

(5) 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.

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 and the county of residence 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. If the financing statement covers timber to be cut, minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or farm products or if the financing statement is filed as a fixture filing (30-9-313) 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.

(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 state, or when

the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances.

(b) proceeds under 30-9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(c) collateral as to which the filing has lapsed, if within 5 years of the lapse; 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)

Social security number or tax identification number

Address

Name of secured party (or assignee)

Address

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

(Describe)

2. (If collateral is crops, livestock, or unmanufactured agricultural products) The above described crops, livestock, or unmanufactured agricultural products are growing, being raised, or being produced or are to be grown, raised, or produced on:

(Describe Real Estate and County Where Located)

3. (If applicable) The above goods are to become fixtures on:

(Describe Real Estate)

and this financing statement is to be filed in the real estate record. (If the debtor does not have an interest or record) The name of a record owner is

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

(Use whichever Signature of Debtor (or Assignor)

is applicable) Signature of Secured Party (or Assignee)

.....
(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 chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) (a) A financing statement covering timber to be cut or

covering minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or a financing statement filed as a fixture filing (30-9-313) when the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed 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 law of this state. 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.

(b) A financing statement covering farm products must contain a reasonable description of the real estate upon which the farm products are produced or located. A legal description of the real estate is not required; a statement naming the county or counties in which the farm products are produced or located is sufficient to satisfy this subsection (b).

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

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

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

(iii) 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

(iv) the mortgage is duly recorded.

(b) 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 social security number or tax identification number of the debtor and the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners. If the debtor so changes the debtor's name or in the case of an organization its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 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.

9-403. What constitutes filing -- duration of filing -- fees -- effect of lapsed filing -- duties of filing officer -- computerized farm statement system. (1) (a) 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 chapter.

(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of 30-9-402 and subsection (1)(a) of this section. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(c) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

(2) Except as provided in subsection (6), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-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 60 days after termination of the insolvency proceedings or until expiration of the 5-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 considered 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 6 months prior to the expiration of the 5-year period specified in subsection (2). Any 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 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective,

after which it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to the lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if the filing officer has retained a microfilm or other photographic record or a record produced according to rules adopted by the secretary of state or, in other cases after 1 year after the lapse, upon approval by the local government records destruction subcommittee provided for in 2-6-403. The filing officer shall arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if the filing officer physically destroys the financing statements of a period more than 5 years past, those that have been continued by a continuation statement or that are still effective under subsection (6) must be retained.

(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. The filing officer shall hold the statement or a microfilm or other photographic copy or a copy produced according to rules adopted by the secretary of state for public inspection. In addition, the filing officer shall index the statements 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 fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing must be set pursuant to subsection (12).

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) 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 30-9-103(5) 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 this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee under the financing statement or, if

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be established by the secretary of state in an amount commensurate with the costs of establishing and operating the computerized access system described in subsection (9).

(9) Within 1 working day of receipt of a financing or continuation statement, the secretary of state shall record the information contained in the statement on a centralized computer system that the secretary of state shall establish. The computer system must allow access to financing statement information by any type of communications that conform to standards used by the state central computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest is not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document that does not specifically indicate the county of the principal debtor's residence on its face.

(11) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

(12) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit all fees in the enterprise fund in the state treasury. The secretary of state shall disseminate the uniform fee schedule

deposit all fees in the enterprise fund in the state treasury. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use.

9-404. Termination statement. (1) If a financing statement covering consumer goods is filed on or after October 1, 1983, then within 1 month or within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must file with 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. In other cases, 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 a separate written statement of assignment signed by the secured party of record complying with 30-9-405(2), 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 10 days after proper demand therefor, he shall be liable to the debtor for any loss caused to the debtor by such failure.

(2) On 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 or a record produced according to rules adopted by the secretary of state 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. If he has no such record, he may remove them from the files at any time after 1 year after receipt of the termination statement.

(3) The uniform fee for filing and indexing the termination statement shall be set pursuant to 30-9-403.

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 30-9-403(4). The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be set pursuant to 30-9-403.

(2) A secured party may assign of record all or a 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, the name and address of the assignee, and except as provided in 30-9-409(2), 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 30-9-103(5), he shall index the assignment under the name of the assignor as grantor and to the extent that the law of this state 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 set pursuant to 30-9-403. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (30-9-402(6)) may be made only by an assignment of the mortgage in the manner provided by 71-1-207.

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

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 (except as provided in 30-9-409(2)), 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 30-9-405(2), 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 set pursuant to 30-9-403.

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 of the statement, 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 the person.

(2) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file on the date and hour stated in the certificate, any presently effective financing statement naming a particular debtor and any statement of assignment and, if there is, giving the date and hour of filing of each statement and the name and address of each secured party in the statement. For financing statements recorded on the system described in 30-9-403(9), the filing officer shall, upon request of any person, also furnish written information concerning the collateral described for any presently effective financing statement covering collateral described in 30-9-403(8). However, the information is not a part of the filing officer's certificate and may not constitute a complete description of the collateral covered by the financing statement. The uniform fee for a certificate and description of collateral must be set pursuant to 30-9-403. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of 50 cents per page.

(3) A computer printout from the system described in 30-9-403(9) constitutes the certificate of the secretary of state as to whether there is on file, on the date and hour stated on the printout, a financing statement covering the collateral described in 30-9-403(8). The fee for requesting a printout from the secretary of state must cover the cost of the printout. If a certificate is made on a requestor's own computer using telephone dial-up access, a fee commensurate with costs must be charged.

(4) The secretary of state shall ensure that the system described in 30-9-403(9) complies with the requirements for a central filing system as defined by 7 U.S.C. 1631 as that statute read on January 1, 1987. The secretary of state shall distribute portions of the master list to registered buyers at least once each month. The secretary of state may distribute portions of the master list more frequently if the secretary of state determines it is necessary to improve the flow of agricultural credit.

9-408. Utility financing statement -- place of filing -- contents -- perfection of security interest. (1) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other corporation covered hereby is in the office of the secretary of state.

(2) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required.

(3) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20(c) of the Interstate Commerce Act or by filing a financing statement pursuant to subsection (1).

9-409. Continued applicability of laws to transmitting utilities. Unless displaced by the specific provisions of 30-9-409, this code and other applicable laws remain in full force and effect and supplement the provisions of 30-9-409.

9-410. Security agreements and termination statements -- when destroyed. Termination statements filed under this chapter shall be retained by the filing officer for a period of 8 years after receipt, after which they may be destroyed. Financing statements, continuation statements, statements of assignment, and statements of release, the filing of which is authorized by this chapter and as to which no termination statement has been filed, shall be retained by the filing officer for a period of 8 years after lapse of the original financing statement or of the latest continuation statement, whichever is later. At the expiration of such period all such statements may be destroyed.

9-411. 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 30-9-402. The provisions of this part shall be applied as appropriate to such a financing statement, but its filing may not of itself be a factor in determining whether or not the consignment or lease is intended as security (30-1-201(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 that attaches to the consigned or leased goods is perfected by such filing.

9-412. Rules for agricultural lien filing -- duties -- perfection and priority rights. (1) The secretary of state may adopt rules concerning the operation of the central agricultural security interest computer filing system, prescribing such matters as format for data and the type of information to be

recorded from the financing statement.

(2) A financing statement covering the collateral described in 30-9-403(8) which was filed with a county clerk and recorder prior to July 1, 1985, and which was sufficient on that date to perfect a security interest in the collateral described therein retains its perfection and priority rights upon being centrally filed.

9-413. Filing provisions not to affect department authority as to branded livestock. Nothing contained in 30-9-403 may be construed to limit the authority of the department of livestock to accept and file notices of security agreements covering branded livestock. All liens on any livestock bearing a recorded brand must be filed with the department of livestock as provided for in 81-8-301.

9-414. Filing of a facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this part and the signatures on the facsimile copy in the same manner as an original for purposes of this part. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

9-415. Removal of improper or fraudulent liens. (1) If a filing officer receives a complaint or has reason to believe that a lien submitted or filed with the filing officer's office is improper or fraudulent, the filing officer may reject the submission or remove the filing from existing files after giving notice and an opportunity to respond to the secured party.

(2) A person adversely affected by a lien that is determined to be improper or fraudulent by the filing officer may recover treble damages from the person responsible for submitting the lien.

PART 6. DEFAULT.

Sub-Part 1. Default and Enforcement of Security Interest.

9-601. Default and Enforcement of Security Interest.

(1) When a debtor is in default under a security agreement:

(a) a secured party has the rights and remedies provided in this Title and provided in the security agreement

(b) The secured party may reduce the claim to judgment, foreclose, or enforce the security interest by any legal procedure.

(c) If the collateral is documents, the secured party may proceed against the documents or the goods covered thereby.

(d) A secured party in possession has the rights, remedies and duties provided in Section 9-207.

(e) The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies as provided in this Title and as provided in the security agreement.

(3) When a secured party has reduced the claim to judgment, the lien of any levy upon the collateral made by execution based upon the judgment, shall relate back to the date of perfection of the security interest in the 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 requirements of this Title.

9-602. Waiver and Variance of Rights and Duties.

(1) To the extent they give rights to a debtor or obligor, and impose duties on a secured party, the rules stated in the below sections may not be waived or varied by a debtor or by a consumer obligor, except as specifically provided in Section 9-622:

(a) Section 1-105, which deals with the territorial application of this title;

(b) Sections 9-609, 9-610, and 9-612, which deal with disposition of collateral;

(c) Sections 9-606 and 9-613 insofar as they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(d) Sections 9-606, 9-607, and 9-613 insofar as they require accounting for or payment of surplus proceeds of collateral;

(e) Sections 9-617, 9-618, or 9-619, which deal with acceptance of collateral in satisfaction of obligation;

(f) Section 9-620, which deals with redemption of collateral;

(g) Section 9-621, which deals with reinstatement of

obligations;

(h) Sections 9-623, 9-624, and 9-627, regarding the secured party's liability for failure to comply with this article;

(i) Section 9-404(6)(c), which deals with an account debtor's right to ignore certain notifications; and

(j) Section 9-209, which deals with requests for an accounting, list of collateral, and statement of account.

9-603. Agreement on Standards Concerning Rights and Duties.

The parties may determine by written agreement, reasonable standards by which the fulfillment of the debtor's rights, obligor's rights and secured party's duties are to be measured.

9-604. Procedure if Security Agreement Covers Both Real And Personal Property or Fixtures.

(1) If a security agreement covers both real and personal property, a secured party may proceed:

(a) as to the personal property without prejudicing any rights and remedies with respect to the real property; or

(b) as to both the real and personal property in accordance with the rights and remedies with respect to the real property, in which case the other provisions of this part do not apply.

(2) If a security agreement covers goods that are or become fixtures, a secured party, subject to Section 9-604(3), may proceed under this part or in accordance with the rights and remedies with respect to real property, in which case the other provisions of this part do not apply.

(3) If a secured party with a security interest in fixtures has priority over all owners and encumbrancers of the real estate, the secured party may, on default, subject to the other provisions of this part, remove the collateral from the real estate. The secured party shall reimburse any encumbrancer or owner of the real estate that is not the debtor, for the cost of repair of any physical injury, but not for any diminution 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 the obligation to reimburse.

9-605. Time of Default for Agricultural Lien.

For purposes of this part, a default occurs in connection with an agricultural lien at the earlier of the time provided by agreement of the parties and the time at which the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

9-606. Collection Rights of Secured Party.

(1) If so agreed in the security agreement and in any event upon default the secured party may:

(a) notify an account debtor or the obligor on an instrument to make payment to the secured party whether or not the assignor was making collections on the collateral; and

(b) take control of any proceeds to which the secured party is entitled under 9-313.

(2) (a) A secured party who by agreement is entitled to charge back uncollected collateral, or is entitled 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.

(b) The secured party may deduct reasonable expenses of collection from any amounts recovered, including reasonable attorney's fees and other legal costs.

(c) 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. 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, or a recognized Court Order, so allows.

9-607. Secured Party's Right to Take Possession After Default.

(1) Unless otherwise agreed, upon default a secured party has the right to take possession of the collateral. In taking possession a secured party must either obtain the written consent of the debtor when the default occurs or obtain a judicial order of repossession. The secured party may ask that the debtor be required to assemble the collateral at a reasonably convenient location for both parties and make it available to the secured party.

(2) If the debtor consents at the time of default or the secured party obtains a judicial order of foreclosure, the secured party may take possession of the collateral and without removal may render the collateral unusable, and may dispose of collateral on

the debtor's premises under Section 9-609.

9-608. Disposition of Collateral After Default.

(1) After default a secured party may sell, lease or otherwise dispose of any or all of the collateral in the condition at time of default, or follow any commercially reasonable preparation or processing of the collateral for disposal.

(2) (a) Disposition of the collateral may be by public or private proceedings and by way of one or more contracts.

(b) Sale or other disposition may be as a unit or in parcels; may be at any reasonable time and place; may be made upon any terms; and must be commercially reasonable.

(c) The secured party may buy the collateral at a public sale. If the collateral is customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, the secured party may buy the collateral at private sale for a commercially reasonable price.

(d) A secured party shall account to and pay a debtor for any surplus notwithstanding any agreement to the contrary, and, unless otherwise agreed, the obligor is liable for a deficiency. Recovery of a deficiency is subject to Section 9-624.

(3) The debtor or other obligor is liable for any deficiency after disposition of the collateral, only if its agreement so provides.

(4) The debtor or other obligor is liable for any deficiency after disposition of the collateral, only if its agreement so provides. Recovery of a deficiency under this subsection is subject to Section 9-624.

9-609. Persons Entitled to Notification Before Disposition of Collateral.

(1) The notification date is the earlier of either the date on which a secured party sends to the debtor and any secondary obligor, written notification of disposition, or the date on which the debtor and any secondary obligor waive the right to notification.

(2) A secured party shall send to a debtor and any secondary obligor reasonable written notification of disposition under Section 9-612, unless collateral is perishable or threatens to rapidly decline in value or is of a type customarily sold on a recognized market. In the case of consumer goods, no other notification need be sent. In other cases a secured party shall

send written notification of disposition to:

(a) any other person from whom the secured party has received, before the notification date, written notification of a claim of an interest in the collateral; and

***** Need input from Steve**

(b) any other secured party that, 30-days before the notification date, held a security interest or agricultural lien in the collateral perfected by the filing of a financing statement that identified the collateral and was indexed under the debtor's name as of that date; and

(3) A secured party complies with the notification requirement specified in Section 9-610(2)(b) if:

(a) not later than 30-days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in Section 9-610(2)(b); and

(b) before the notification date, either the secured party did not receive a response to the request for information or the secured party received a response to the request for information and the secured party sent written notification to each secured party named in that response and whose financing statement covered the collateral.

9-610. Timeliness of Notification Before Disposition of Collateral.

(1) Notification of a disposition after default is sent within a reasonable time before disposition if sent in a consumer secured transaction, 21-days or more before the earliest time of disposition stated in the notification; or in other transactions, 10-days or more before the earliest time of disposition set forth in the notification.

(2) Notification that does not meet applicable time requirements of Section 9-611(1) is presumed unreasonable. Rebuttal of this presumption is a question of fact.

9-611. Contents and Form of Notification Prior to Disposition of Collateral.

(1) Except in a consumer secured transaction, the following rules apply:

(a) Unless otherwise agreed, the contents of a notification of disposition are sufficient if the notification:

- (i) describes the debtor, secured party, and the collateral that is the subject of the intended disposition;
- (ii) states, whether the method of intended disposition is by public or private sale;
- (iii) states that the debtor or secondary obligor has the right to redeem the collateral as provided in Section 9-620
- (iv) states the time and place of a public sale or the time after which the private sale is to be made.

(b) Whether a notification that lacks any of the information set forth in Section 9-612(1)(a) is sufficient, is a question of fact in each case.

(c) A particular phrasing of the notification is not required. A notification substantially complying with the requirements of this subsection is sufficient, even if it contains minor errors that are not seriously misleading.

(d) Notifications utilizing applicable Tribal forms are presumed to provide sufficient notice.

(2) In a consumer secured transaction, the following rules apply:

(a) A notification of disposition must contain the following information:

- (i) the information specified in Section 9-613(1)(a);
- (ii) the amount that must be paid to the secured party to redeem the obligation secured under Section 9-620;
- (iii) the amount that must be paid to the secured party to reinstate the obligation secured under Section 9-621; and
- (iv) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(3) A particular phrasing of the notification is not required. A notification that substantially complies with the requirements of this subsection is sufficient, even if it contains minor errors that are not seriously misleading.

(4) Notifications utilizing applicable Tribal forms are presumed to provide sufficient notice.

(5) Notification by the secured party is reasonable under subsection (3)(a) and constitutes steps reasonably required to

inform another in the ordinary course under 30-1-201(26) if it is sent by certified mail to the most recent address provided by the debtor or another secured party as follows:

(a) the address stated on the security agreement or other applicable loan document in the case of a debtor or on the written notice of claim in the case of another secured party; or

(b) such other address of which the secured party receives notice in writing from the debtor or other secured party prior to the time notification is sent to the most recent address previously given under subsection (3)(b)(i) or this subsection (3)(b)(ii).

9-612. Rights of Transferee of Collateral.

(1) After default, disposition of collateral by a secured party to a purchaser for value, transfers all of the debtor's rights in the collateral; discharges the security interest under which the disposition is made; and discharges any security interest or lien subordinate to which disposition is made.

(2) The purchaser at disposal takes free of all rights and interests of the debtor, secured party or subordinate interests even though the secured party fails to comply with the requirements of this Section 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 the purchaser 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.

9-613. Rights and Duties of Certain Persons Liable to Secured Party.

(1) A person that is liable to a secured party under a guaranty, indorsement, repurchase agreement, or the like acquires the rights and assumes the duties of the secured party if the person:

(a) receives an assignment of a secured obligation from the secured party;

(b) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(c) is subrogated to the rights of a secured party.

(2) Assignment, transfer, or subrogation as described in Section 615(1), is not a disposition of collateral and does not relieve the secured party of its duties under this article.

9-614. **Compulsory disposition of collateral -- acceptance of the collateral as discharge of obligation.** (1) If the debtor has paid 60% of the cash price in the case of a purchase money security interest in consumer goods or 60% of the loan in the case of another security interest in consumer goods and has not signed after default a statement renouncing or modifying his rights under this part, a secured party who has taken possession of collateral must dispose of it under 30-9-504, and if he fails to do so within 90 days after he takes possession the debtor at his option may recover in conversion or under 30-9-507(1) on secured party's liability.

(2) (a) In any other case involving consumer goods or any other collateral 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 (2). In the case of consumer goods, no other notice need be given. In other cases 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.

(b) Notice by the secured party is sufficient under subsection (2)(a) and constitutes steps reasonably required to inform another in the ordinary course under 30-1-201(26) if it is sent by certified mail to the most recent address provided by the debtor or another secured party as follows:

(i) the address stated on the security agreement or other applicable loan document in the case of a debtor or on the written notice of claim in the case of another secured party; or

(ii) such other address of which the secured party receives notice in writing from the debtor or other secured party prior to the time notification is sent to the most recent address previously given under subsection (2)(b)(i) or this subsection (2)(b)(ii).

(c) If the secured party receives objection in writing from a person entitled to receive notification within 21 days after the notice was sent, the secured party must dispose of the collateral under 30-9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

9-615. Rights to Redeem Collateral.

At any time before a secured party has disposed of collateral or entered into a contract for its disposition under Section 9-609, or accepted collateral in full satisfaction of the obligation it secures under Section 9-617, the debtor, any secondary obligor, or any other secured party or lienholder may redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the reasonable expenses and attorney's fees of the type described in Section 9-613(1)(a).

9-616. Reinstatement of Obligation Secured Without Acceleration.

(1) If 60% of the cash price has been paid in the case of a purchase money security interest in consumer goods or 60% of the principal amount of the obligation secured has been paid in the case of another consumer secured transaction, a debtor or a secondary obligor that is a consumer obligor may cure a default consisting only of the failure to make a required payment and may reinstate the secured obligation without acceleration by tendering the unpaid amount of the secured obligation due at the time of tender, without acceleration, including charges for delinquency, default, or deferral, and reasonable expenses and attorney's fees of the type described in Section 9-613(1)(a).

(2) A tender of payment under Section 9-621(1) is ineffective to cure a default or reinstate a secured obligation unless made before the later of:

(a) 21-days after the secured party sends a notification of disposition under Section 9-610(2) to the debtor and any consumer obligor who is a secondary obligor; and

(b) the time the secured party disposes of collateral or enters into a contract for its disposition under 9-609 or accepts collateral in full satisfaction of the obligation it secures under Section 9-617.

(3) A tender of payment under 9-621(1) restores to the debtor and consumer obligor who is a secondary obligor, their rights as if the default had not occurred and all payments had been made when scheduled, including the debtor's right, if any, to possess the collateral. Upon the tender, the secured party shall cause any judicial process affecting the collateral to be vacated and any pending action based on the default to be dismissed.

(4) A secured obligation may be reinstated under Section 9-621(1) only once, unless the parties have agreed otherwise.

(5) The debtor's rights under this subsection may not be waived

by agreement.

9-617. Waiver of Agreement by Debtor or Consumer Obligor.

(1) Subject to Section 9-622(3), a debtor or a consumer obligor may waive the right to notification of disposition of collateral under Section 9-610 or the right to redeem the collateral under 9-620 only by signing a statement to that effect after default.

Sub-Part 2. Noncompliance With This Article.

9-618 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 failure to comply with the provisions of this part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price.

(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.

9-619. Action in Which Deficiency or Surplus is at Issue.

In an action in which the amount of a deficiency or surplus is in issue the following rules apply:

(a) A secured party need not establish compliance with the provisions of this part relating to collection, enforcement,

disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue; in which case the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with the applicable provisions of this Code.

(b) Except as otherwise provided in 9-626, if a secured party fails to meet the burden of establishing that collection, enforcement, disposition, or acceptance was conducted according to the provisions of this Code, the following rules apply:

- (i) in a consumer secured transaction for which no other collateral remains to secure the obligation, neither the debtor nor a secondary obligor is liable for a deficiency;
- (ii) in other cases, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of the actual proceeds of the collection, enforcement, disposition, or acceptance or the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part. The amount that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party meets the burden of establishing that the amount is less than that sum.

9-620. Attorney's Fees Are Reciprocal.

If the secured party would have been entitled to attorney's fees as the prevailing party, the court shall award to debtor or obligor prevailing on the issue, the costs of the action and reasonable attorney's fees.

PART 7. JUDICIAL PROCEDURE.

9-701. Action to Foreclose Interest in Personal Property.

(1) An action to foreclose a security interest in non-trust personal property when the debtor is in default of a security agreement shall be commenced in Tribal Court.

(2) The creditor must file a complaint for repossession and in said complaint, the creditor must include a concise statement for the creditor's claim against the debtor. The debtor may file an Answer to the creditor's complaint at any time prior to the hearing. At the hearing both creditor and debtor may present documentary evidence and witness to support their positions in the debt dispute. At the hearing, if the Tribal Judge determines

that repossession is in fact justified, the Tribal Judge shall issue an order authorizing the creditor to repossess the personal property involved. Any such order shall direct that a creditor may repossess the property only when accompanied by a Bureau of Indian Affairs or Tribal Police Officer.

(3) The Tribal Court shall direct the sale of the encumbered property, or so much thereof as is necessary, and direct the proceeds of the sale to the payment of the costs of court, the expenses of such sale, and to the amount due the plaintiff. If it appears from the police officer's return on the sale that the proceeds thereof are insufficient and that an amount still remains due, the Court shall direct Entry of a Judgment for such balance against the defendant or defendants.

(4) Sale of property under the Court's judgment shall be conducted in:

(a) accordance with the Tribal Court decree; or

(b) in a commercially reasonable manner if:

(i) the court does not issue instructions for the sale of the property; or

(ii) there is no Tribal statute or regulation governing the sale of property:

9-702. Right of Attachment.

(1) At the time of the issuance of a Summons and Complaint in a civil action, or at any time prior to final judgment, a creditor may file with the clerk of the Tribal Court a request for a Prejudgment Order of Attachment, which must be accompanied by an affidavit of the creditor which shall state the following facts:

(a) that a debt is owed to the creditor by a debtor and the nature and specific amount of the debt;

(b) that the personal property being attached, is non-trust personal property belonging to the debtor; and

(c) that the creditor has reasonable cause to believe that the specific personal property sought to be attached may be lost, damaged, vandalized or removed from the reservation prior to payment of a final judgment, so as to jeopardize the ability of the creditor to collect on any judgment that may later be obtained.

(2) If the Tribal Judge is satisfied after reviewing the Complaint and Affidavit, the judge may issue an Order of

Attachment of the designated personal property. The Bureau of Indian Affairs Police or Tribal Police shall be given the Order of Attachment and the police shall seize any property identified by the order. Said property shall be kept in storage under the control of the police. Said personal property shall be held by the police pending any further order of the Tribal Court.

(3) An Order of Attachment shall not be issued until the creditor has filed with the clerk a surety bond or cash bond in the sum of at least \$500 or 5% of the value of the property to be seized, whichever is less. Said bond shall be necessary in the event that the Order of Attachment was wrongfully issued and the debtor was damaged, or in the event the debtor prevails when final judgment is rendered.

(4) The debtor shall be served with the Order of Attachment at the time the police seize the personal property of the debtor. If the debtor is not available or present at the time the personal property is seized, said Order of Attachment shall be posted in a conspicuous place on the door of the debtor's house, mobile home or residence and a copy mailed to the debtor's last known address. The service shall be documented for court records.

(5) At any time following the issuance of an Order of Attachment, the debtor shall be entitled to challenge the validity of the issuance of that writ. The debtor may contest the Writ of Attachment by filing a Response to Writ of Attachment. At the time that the Response is filed with the Clerk of the Tribal Court, the court shall set a hearing date and notice of said hearing shall be served on the creditor at least 5-days before to that hearing. At the hearing the debtor must establish by a preponderance of the evidence that:

(a) (i) the specific personal property sought to be attached would not be likely to be lost, damaged, vandalized or removed from the reservation prior to final judgment; or

(ii) that said loss, damage, vandalism or removal of property would not jeopardize the ability of the creditor to collect on a judgment if one should subsequently be obtained;

(b) that no debt is owed to the creditor; or

(c) that the property sought to be attached is exempt or is trust property.

(6) If the court determines that the Prejudgment Writ of Attachment was wrongfully issued, the court may impose a

fine up to \$500 and order payment of the other party's attorney fees and costs.

9-703. Conduct of Sale.

(1) Unless otherwise ordered by the Tribal Court, all sales of property under decrees of repossession and orders for sale conducted by the Bureau of Indian Affairs Police or Tribal police must be made at auction, conducted at the Tribal Courthouse, to the highest bidder, between the hours of 9:00 a.m. and 5:00 p.m. on any business day.

(2) Once sufficient property has been sold to satisfy the judgment plus the costs of court and of the sale, no more property shall be sold.

(3) The person conducting the sale may not be a purchaser or be interested in any purchase at such sale.

(4) If the property being sold consists of several lots or parcels, they may be sold separately. The judgment debtor, if present at the sale, may direct the order in which the property shall be sold when such property consists of several known lots or parcels. If a third persons claims an interest in part of the property to be sold, that party may require that such part be sold separately.

(5) If the successful bidder refuses to pay the amount bid for property sold to the bidder at sale, at the time of sale, the officer conducting the sale may again sell the property to the highest bidder and if any less be occasioned thereby, the officer may recover the amount of such loss, plus costs, from the bidder so refusing, in the Tribal Court. When a purchaser refuses to pay, the officer may, in the officer's discretion, thereafter reject any subsequent bid of such person.

9-704. Return on Sale.

(1) The police officer conducting the sale shall make a return thereon to the Tribal Court reciting the details of the sale including the following: the name and address of the highest bidder; the successful bid price; the date and time of sale; the name of the officer conducting the sale; any other relevant information.

(2) A certified copy of such return together with a certified copy of the Court's order directing the sale shall be filed by the purchaser in the Tribal records filing office under the name of the original debtor.