

**LEECH LAKE BAND of OJIBWE
SECURED TRANSACTIONS ORDINANCE**

LEECH LAKE RESERVATION BUSINESS COMMITTEE

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1 **LEECH LAKE BAND of OJIBWE**
2 **SECURED TRANSACTIONS ORDINANCE**

3
4 **CHAPTER 1**
5 **GENERAL PROVISIONS**

6
7 **TITLE 9-101. SHORT TITLE.** This ordinance may be cited as the Leech Lake Band of
8 Ojibwe Secured Transactions Ordinance.

9 **TITLE 9-102. NO WAIVER OF SOVEREIGN IMMUNITY.** The sovereign
10 immunity of neither the Leech Lake Band of Ojibwe nor of any of its agencies or
11 instrumentalities is waived with respect to any provision of any transaction subject to this
12 ordinance, absent a recorded, properly ratified, waiver of sovereign immunity, clearly expressed
13 in a Resolution of the Leech Lake Band of Ojibwe Reservation Business Committee (A/K/A
14 Reservation Tribal Council).

15 **TITLE 9-103. PURPOSE.** This ordinance shall be liberally construed and applied to
16 promote its underlying purposes and policies, which are the promotion of economic development
17 and the continued expansion of commercial practices involving the Leech Lake Band of Ojibwe.

18 **TITLE 9-104. NO APPLICATION TO PROPERTY NOT ALIENABLE.** This
19 ordinance does not apply to any property interest that is subject to federal restrictions regarding
20 sale, transfer, or encumbrance.

21 **TITLE 9-105. [RESERVED.]**

22 **TITLE 9-106. GENERAL DEFINITIONS.**

1 (a) **[Definitions]**. In this ordinance:

2 (1) "Accession" means goods that are physically united with other goods
3 in such a manner that the identity of the original goods is not lost.

4 (2) "Account", except as used in "account for":

5 (A) means a right to payment of a monetary obligation, whether or
6 not earned by performance:

7 (i) for property that has been or is to be sold, leased,
8 licensed, assigned, or otherwise disposed of;

9 (ii) for services rendered or to be rendered;

10 (iii) for a policy of insurance issued or to be issued;

11 (iv) for a secondary obligation incurred or to be incurred;

12 (v) for energy provided or to be provided;

13 (vi) for the use or hire of a vessel under a charter or other
14 contract;

15 (vii) arising out of the use of a credit or charge card or
16 information contained on or for use with the card; or

17 (viii) as winnings in a lottery or other game of chance
18 operated or sponsored by a tribe, governmental unit of a tribe, a person licensed or authorized by
19 a tribe or governmental unit of a tribe to operate the game, a State, governmental unit of a State,
20 or person licensed or authorized to operate the game by a State or governmental unit of a State.

21 (B) includes health-care-insurance receivables; and

22 (C) does not include:

1 (i) rights to payment evidenced by chattel paper or an
2 instrument;
3 (ii) commercial tort claims;
4 (iii) deposit accounts;
5 (iv) securities or investment accounts, including assets held
6 in investment accounts;
7 (v) letter-of-credit rights or letters of credit; or
8 (vi) rights to payment for money or funds advanced or sold,
9 other than rights arising out of the use of a credit or charge card or information contained on or
10 for use with the card.

11 (3) “Account debtor” means a person obligated on an account, chattel
12 paper, or general intangible. The term does not include a person obligated to pay a negotiable
13 instrument, even if the instrument constitutes part of chattel paper.

14 (4) **[Reserved.]**

15 (5) “Agreement”, as distinguished from “contract”, means the bargain of
16 the parties in fact, as found in their language or inferred from other circumstances, including
17 course of performance, course of dealing, or usage of trade as provided in the section on those
18 terms (Title 9-114).

19 (6) “As-extracted collateral” means:

20 (A) oil, gas, or other minerals that are subject to a security interest
21 that:

22 (i) is created by a debtor having an interest in the minerals

1 before extraction; and

2 (ii) attaches to the minerals as extracted; or

3 (B) accounts arising out of the sale at the wellhead or mine head of
4 oil, gas, or other minerals in which the debtor had an interest before extraction.

5 (7) “Buyer in ordinary course of business” means a person that
6 buys goods in good faith, without knowledge that the sale violates the rights of another person in
7 the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of
8 selling goods of that kind. A person buys goods in the ordinary course if the sale to the person
9 comports with the usual or customary practices in the kind of business in which the seller is
10 engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or
11 other minerals at the wellhead or mine head is a person in the business of selling goods of that
12 kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or
13 on secured or unsecured credit, and may acquire goods or documents of title under a preexisting
14 contract for sale. Only a buyer that takes possession of the goods or has a right to recover the
15 goods from the seller under other applicable law may be a buyer in ordinary course of business.
16 A buyer in ordinary course of business@ does not include a person that acquires goods in a
17 transfer in bulk or as security for or in total or partial satisfaction of a money debt.

18 (8) **[Reserved.]**

19 (9) “Cash proceeds” means money, checks, deposit accounts, or the like.

20 (10) “Certificated security” means a security that is represented by a
21 certificate.

22 (11) “Certificate of title” means a certificate of title with respect to which

1 a statute provides for the security interest in question to be indicated on the certificate as a
2 condition or result of the security interest's obtaining priority over the rights of a lien creditor
3 with respect to the collateral.

4 (12) "Chattel paper" means a record or records that evidence both a
5 monetary obligation and a security interest in specific goods, a security interest in specific goods
6 and software used in the goods, a security interest in specific goods and license of software used
7 in the goods, a lease of specific goods, or a lease of specific goods and license of software used
8 in the goods. A "monetary obligation" means an obligation secured by the goods or owed under
9 a lease of the goods and includes such an obligation with respect to software used in the goods.

10 The term does not include

11 (A) charters or contracts involving the use or hire of a vessel or

12 (B) records that evidences a right to payment arising out of

13 the use of a credit or charge card, or information contained on or for use with the card. If a

14 transaction is evidenced by records that include an instrument or series of instruments, the group

15 of records taken together constitutes chattel paper.

16 (13) "Collateral" means the property subject to a security interest. The

17 term includes:

18 (A) proceeds to which a security interest attaches;

19 (B) accounts, chattel paper, payment intangibles, and promissory

20 notes that have been sold; and

21 (C) goods that are the subject of a consignment.

22 (14) "Commercial tort claim" means a claim arising in tort with respect to

1 which:

2 (A) the claimant is an organization; or

3 (B) the claimant is an individual and the claim:

4 (i) arose in the course of the claimant's business or

5 profession; and

6 (ii) does not include damages arising out of personal injury

7 to or the death of an individual.

8 (15) **[Reserved.]**

9 (16) "Consignee" means a merchant to which goods are delivered in a
10 consignment.

11 (17) "Consignment" means a transaction, regardless of its form, in which
12 a person delivers goods to a merchant for the purpose of sale and:

13 (A) the merchant:

14 (i) deals in goods of that kind under a name other than the
15 name of the person making delivery;

16 (ii) is not an auctioneer; and

17 (iii) is not generally known by its creditors to be
18 substantially engaged in selling the goods of others;

19 (B) with respect to each delivery, the aggregate value of the goods
20 is \$3,000 or more at the time of delivery;

21 (C) the goods are not consumer goods immediately before delivery;

22 and

1 (D) the transaction does not create a security interest that secures
2 an obligation.

3 (18) “Consignor” means a person that delivers goods to a consignee in a
4 consignment.

5 (19) “Consumer” means an individual who enters into a transaction
6 primarily for personal, family or household purposes.

7 (19A) “Consumer goods” means goods that are used or bought for use
8 primarily for personal, family, or household purposes.

9 (20) “Consumer transaction” means a transaction in which

10 (A) an individual incurs an obligation primarily for personal,
11 family, or household purposes; and

12 (B) a security interest secures the obligation.

13 (21) “Continuation statement” means an amendment of a financing
14 statement which:

15 (A) identifies, by its file number, the initial financing statement to
16 which it relates; and

17 (B) indicates that it is a continuation statement for, or that it is filed
18 to continue the effectiveness of, the identified financing statement.

19 (22) “Contract”, as distinguished from “agreement”, means the total legal
20 obligation that results from the parties’ agreement as determined by this ordinance as
21 supplemented by any other applicable laws.

22 (22A) “Control”, with respect to a certificated security in registered form,

1 means that the certificate is delivered to the purchaser and

2 (A) indorsed to the secured party or in blank by an effective
3 endorsement; or

4 (B) registered in the name of the secured party, upon original issue
5 or registration of transfer by the issuer.

6 (22B) “Control”, with respect to an investment account, means that

7 (A) the secured party has become the holder of the investment
8 account;

9 (B) the investment intermediary has agreed that it will comply with
10 orders relating to the investment account originated by the secured party without further consent
11 by the holder of the investment account;

12 (C) another person has control of the investment account on behalf
13 of the secured party or, having previously acquired control of the investment account,
14 acknowledges that it has control on behalf of the secured party; or

15 (D) a security interest has been granted by the holder of the
16 investment account to the holder’s own investment intermediary.

17 (22C) “Control”, with respect to mutual fund shares that are not in an
18 investment account, means that

19 (A) the mutual fund shares have been delivered to the secured party
20 under applicable law; or

21 (B) the issuer of the mutual fund shares has agreed that it will
22 comply with instructions originated by the secured party without further consent by the debtor.

1 (23) “Debtor” means:

2 (A) a person having an interest, other than a security interest or
3 other lien, in the collateral, whether or not the person is an obligor on the debt secured; or

4 (B) a seller of accounts, chattel paper, payment intangibles, or
5 promissory notes: or

6 (C) a consignee.

7 (24) “Document” means a record

8 (A) that in the regular course of business or financing is treated as
9 adequately evidencing that the person in possession or control of the record is entitled to receive,
10 control, hold, and dispose of the record and the goods the record covers and

11 (B) that purports to be issued by or addressed to a bailee and to
12 cover goods in the bailee’s possession which are either identified or are fungible portions of an
13 identified mass. The term includes a bill of lading, transport document, dock warrant, dock
14 receipt, warehouse receipt, and order for delivery of goods.

15 (25) "Electronic chattel paper" means chattel paper evidenced by a record
16 or records consisting of information stored in an electronic medium.

17 (26) “Equipment” means goods other than inventory, farm products, or
18 consumer goods.

19 (27) “Farm products” means goods, other than standing timber, with
20 respect to which the debtor is engaged in a farming operation and which are:

21 (A) crops grown, growing, or to be grown, including:

22 (i) crops produced on trees, vines, and bushes; and

1 (ii) aquatic goods produced in aqua cultural operations;

2 (B) livestock, born or unborn, including wild game or aquatic
3 goods produced in aqua cultural operations;

4 (C) supplies used or produced in a farming operation; or

5 (D) products of crops or livestock in their unmanufactured states.

6 (28) "Farming operation" means raising, cultivating, propagating,
7 fattening, grazing, or any other farming, livestock, wild game or aqua cultural operation.

8 (29) "Financing statement" means a record or records composed of an
9 initial financing statement and any filed record relating to the initial financing statement.

10 (30) "Fixture filing" means the filing of a financing statement covering
11 goods that are, or are to become, fixtures and satisfying the requirements of this ordinance
12 relating to contents of financing statements. The term includes the filing of a financing statement
13 covering goods of a transmitting utility which are or are to become fixtures.

14 (31) "Fixtures" means goods that have become so related to particular real
15 property that an interest in them arises under real property law.

16 (32) "General intangible" means any personal property, including things in
17 action, other than accounts, chattel paper, commercial tort claims, deposits accounts, documents,
18 goods, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, and
19 oil, gas, or other minerals before extraction. The term includes payment intangibles and
20 software.

21 (33) "Goods" means all things that are movable when a security interest
22 attaches.

1 (A) the term includes:

2 (i) fixtures;

3 (ii) standing timber that is to be cut and removed under a
4 conveyance or contract for sale;

5 (iii) the unborn young of animals;

6 (iv) crops grown, growing, or to be grown, even if the crops
7 are produced on trees, vines, or bushes;

8 (v) manufactured homes; and

9 (vi) a computer program embedded in goods and any
10 supporting information provided in connection with a transaction relating to the program if:

11 (I) the program is associated with the goods in such
12 a manner that it customarily is considered part of the goods; or

13 (II) by becoming the owner of the goods, a person
14 acquires a right to use the program in connection with the goods; and

15 (B) The term does not include:

16 (i) a computer program embedded in goods that consist
17 solely of the medium in which the program is embedded; or

18 (ii) accounts, chattel paper, commercial tort claims, deposit
19 accounts, documents, general intangibles, instruments, securities, investment accounts, letter-of-
20 credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

21 (34) "Health-care-insurance receivable" means an interest in or claim
22 under a policy of insurance which is a right to payment of a monetary obligation for health-care

1 goods or services provided or to be provided.

2 (35) “Instrument” means a negotiable instrument or any other writing that
3 evidences a right to the payment of a monetary obligation, is not itself a security agreement or
4 lease, and is of a type that in ordinary course of business is transferred by delivery with any
5 necessary endorsement or assignment. The term does not include:

6 (A) a security or an investment account;

7 (B) a letter of credit; or

8 (C) a writing that evidences a right to payment arising out of the
9 use of a credit or charge card or information contained on or for use with the card.

10 (36) “Inventory” means goods, other than farm products, which:

11 (A) are leased by a person as lessor;

12 (B) are held by a person for sale or lease or to be furnished under a
13 contract of service;

14 (C) are furnished by a person under a contract of service; or

15 (D) consist of raw materials, work in process, or materials used or
16 consumed in a business.

17 (37) “Investment account” means a financial account maintained by an
18 investment intermediary to which securities or commodity contracts are or may be credited by
19 agreement.

20 (37A) “Investment intermediary” means a securities intermediary under
21 applicable law or a commodity intermediary under applicable law.

22 (38) “Lien creditor” means:

1 (A) a creditor that has acquired a lien on the property involved by
2 attachment, levy, or the like;

3 (B) an assignee for benefit of creditors from the time of
4 assignment;

5 (C) a trustee in bankruptcy from the date of the filing of the
6 petition; or

7 (D) a receiver in equity from the time of appointment.

8 (39) “Manufactured home” means any structure meeting the definitional
9 requirements found under 42 U.S.C 5402(6)(2004), as the same may be amended from time to
10 time.

11 (40) “Manufactured-home transaction” means a secured transaction:

12 (A) that creates a purchase-money security interest in a
13 manufactured home, other than a manufactured home held as inventory; or

14 (B) in which a manufactured home, other than a manufactured
15 home held as inventory, is the primary collateral.

16 (41) “Obligor” means a person that, with respect to an obligation secured
17 by a security interest in or an agricultural lien on the collateral,

18 (A) owes payment or other performance of the obligation,

19 (B) has provided property other than the collateral to secure
20 payment of other performance of the obligation, or

21 (C) is otherwise accountable in whole or in part for payment or
22 other performance of the obligation. The term does not include issuers or nominated persons

1 under a letter of credit.

2 (42) “Organization” means a person other than an individual.

3 (43) “Payment intangible” means a general intangible under which the
4 account debtor’s principal obligation is a monetary obligation.

5 (44) “Person” means an individual, corporation, business trust, estate,
6 trust, partnership, limited liability company, association, joint venture, government,
7 governmental subdivision, agency, or instrumentality, public corporation, or any other legal or
8 commercial entity.

9 (45) “Proceeds”, means the following property:

10 (A) whatever is acquired upon the sale, lease, license, exchange, or
11 other disposition of collateral;

12 (B) whatever is collected on, or distributed on account of,
13 collateral;

14 (C) rights arising out of collateral;

15 (D) to the extent of the value of collateral, claims arising out of the
16 loss, nonconformity, or interference with the use of, defects or infringement of rights in, or
17 damage to, the collateral; or

18 (E) to the extent of the value of collateral and to the extent payable
19 to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of,
20 defects or infringement of rights in, or damage to, the collateral.

21 (46) “Promissory note” means an instrument that evidences a promise to
22 pay a monetary obligation, does not evidence an order to pay, and does not contain an

1 acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

2 (46A) “Public-finance transaction” means a secured transaction in
3 connection with which

4 (A) debt securities are issued;

5 (B) all or a portion of the securities issued have an initial stated
6 maturity of at least 20 years; and

7 (C) the debtor, obligor, secured party, account debtor or other
8 person obligated on collateral, assignor or assignee of a secured obligation, or assignor or
9 assignee of a security interest is, or is a governmental unit of, the Leech Lake Band of Ojibwe or
10 a State.

11 (47) “Purchase” means taking by sale, lease, discount, negotiation,
12 mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction
13 creating an interest in property.

14 (48) “Purchaser” means a person that takes by purchase.

15 (49) “Pursuant to commitment”, with respect to an advance made or other
16 value given by a secured party, means pursuant to the secured party’s obligation, whether or not a
17 subsequent event of default or other event not within the secured party’s control has relieved or
18 may relieve the secured party from its obligation.

19 (50) “Record”, except as used in “for record”, “of record”, “record or legal
20 title”, and “record owner”, means information that is inscribed on a tangible medium or which is
21 stored in an electronic or other medium and is retrievable in perceivable form.

22 (51) “Secondary obligor” means an obligor to the extent that:

1 (A) the obligor's obligation is secondary; or

2 (B) the obligor has a right of recourse with respect to an obligation
3 secured by collateral against the debtor, another obligor, or property of either.

4 (52) "Secured party" means:

5 (A) a person in whose favor a security interest is created or
6 provided for under a security agreement, whether or not any obligation to be secured is
7 outstanding;

8 (B) a consignor;

9 (C) a person to which accounts, chattel paper, payment intangibles,
10 or promissory notes have been sold;

11 (D) a trustee, indenture trustee, agent, collateral agent, or other
12 representative in whose favor a security interest is created or provided for; or

13 (E) a person that holds a security interest arising under other
14 applicable law.

15 (53) "Security" includes mutual fund shares that are not in an investment
16 account.

17 (54) "Security agreement" means an agreement that creates or provides for
18 a security interest.

19 (55) "Security interest" means an interest in personal property or fixtures
20 which secures payment or performance of an obligation. The term includes any interest of a
21 consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a
22 transaction that is subject to this ordinance. The retention or reservation of title by a seller of

1 goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a
2 “security interest.” Whether a transaction in the form of a lease creates a “security interest” is
3 determined pursuant to the provisions of this ordinance distinguishing leases from security
4 interests (Title 9-109).

5 (56) “Send”, in connection with a record or notification, means:

6 (A) to deposit in the mail, deliver for transmission, or transmit by
7 any other usual means of communication, with postage or cost of transmission provided for,
8 addressed to any address reasonable under the circumstances; or

9 (B) to cause the record or notification to be received within the
10 time that it would have been received if properly sent under subparagraph (A).

11 (57) “Sign” means, with the present intent to authenticate any record:

12 (A) to execute or adopt a tangible symbol; or

13 (B) to attach or logically associate an electronic symbol, sound, or
14 process to or with a record.

15 (58) “Software” means a computer program and any supporting
16 information provided in connection with a transaction relating to the program. The term does not
17 include a computer program that is included in the definition of goods.

18 (58A) “State” means a State of the United States, the District of Columbia,
19 Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the
20 jurisdiction of the United States, including any political subdivision, or any department, agency,
21 or instrumentality thereof.

22 (59) “Termination statement” means an amendment of a financing

1 statement which:

2 (A) identifies, by its file number, the initial financing statement to
3 which it relates; and

4 (B) indicates either that it is a termination statement or that the
5 identified financing statement is no longer effective.

6 (60) “Transmitting utility” means a person primarily engaged in the
7 business of

8 (A) operating a railroad, subway, street railway, or trolley bus;

9 (B) transmitting communications electrically, electromagnetically,
10 or by light;

11 (C) transmitting goods by pipeline or sewer; or

12 (D) transmitting or producing and transmitting electricity, steam,
13 gas, or water.

14 (61) “Tribal business day” means a day on which the offices of the
15 government of the Leech Lake Band of Ojibwe are open for conduct of their ordinary business.

16 (b) [**Liberal construction.**] Subject to the provisions of this ordinance dealing
17 with course of performance, course of dealing, and usage of trade (Title 9-114), the meaning of a
18 term not defined by this ordinance is to be derived from the context involved, with due
19 consideration for consistency in meaning with uniform principles of commercial and contract law
20 operative in the United States.

21 **TITLE 9-107. NOTICE; KNOWLEDGE.**

22 (a) [**Notice defined.**] Subject to subsection (f), a person has “notice” of a fact if

1 the person:

2 (1) has actual knowledge of it;

3 (2) has received a notice or notification of it; or

4 (3) from all the facts and circumstances known to the person at the time in
5 question, has reason to know that it exists.

6 (b) **[Knowledge defined.]** “Knowledge” means actual knowledge. “Knows” has
7 a corresponding meaning.

8 (c) **[Discover defined.]** “Discover”, “learn”, or words of similar import refer to
9 knowledge rather than to reason to know.

10 (d) **[Notifying or giving notice or notification.]** A person “notifies” or “gives” a
11 notice or notification to another person by taking such steps as may be reasonably required to
12 inform the other person in ordinary course, whether or not the other person actually comes to
13 know of it.

14 (e) **[Receipt generally.]** Subject to subsection (f), a person “receives” a notice or
15 notification when:

16 (1) it comes to that person’s attention; or

17 (2) it is duly delivered in a form reasonable under the circumstances at the
18 place of business through which the contract was made or at another location held out by that
19 person as the place for receipt of such communications.

20 (f) **[Receipt by organization.]** Notice, knowledge, or a notice or notification
21 received by an organization is effective for a particular transaction from the time it is brought to
22 the attention of the individual conducting that transaction and, in any event, from the time it

1 would have been brought to the individual’s attention if the organization had exercised due
2 diligence. An organization exercises due diligence if it maintains reasonable routines for
3 communicating significant information to the person conducting the transaction and there is
4 reasonable compliance with the routines. Due diligence does not require an individual acting for
5 the organization to communicate information unless the communication is part of the
6 individual’s regular duties or the individual has reason to know of the transaction and that the
7 transaction would be materially affected by the information.

8 **TITLE 9-108. VALUE.** Except as otherwise provided under applicable laws dealing
9 with negotiable instruments, bank deposits, letters of credit and bulk transfers and sales, a person
10 gives value for rights if the person acquires them:

11 (a) in return for a binding commitment to extend credit or for the extension of
12 immediately available credit, whether or not drawn upon and whether or not a charge-back is
13 provided for in the event of difficulties in collection;

14 (b) as security for, or in total or partial satisfaction of, a preexisting claim;

15 (c) by accepting delivery under a preexisting contract for purchase; or

16 (d) in return for any consideration sufficient to support a simple contract.

17 **TITLE 9-109. LEASE DISTINGUISHED FROM SECURITY INTEREST.**

18 (a) **[Basic test.]** Whether a transaction in the form of a lease creates a lease or
19 security interest is determined by the facts of each case.

20 (b) **[Transactions that create security interests.]** A transaction in the form of a
21 lease creates a security interest if the consideration that the lessee is to pay the lessor for the right
22 to possession and use of the goods is an obligation for the term of the lease and is not subject to

1 termination by the lessee, and:

2 (1) the original term of the lease is equal to or greater than the remaining
3 economic life of the goods;

4 (2) the lessee is bound to renew the lease for the remaining economic life
5 of the goods or is bound to become the owner of the goods;

6 (3) the lessee has an option to renew the lease for the remaining economic
7 life of the goods for no additional consideration or for nominal additional consideration upon
8 compliance with the lease agreement; or

9 (4) the lessee has an option to become the owner of the goods for no
10 additional consideration or for nominal additional consideration upon compliance with the lease
11 agreement.

12 (c) **[Factors that do not create security interests.]** A transaction in the form of
13 a lease does not create a security interest merely because:

14 (1) the present value of the consideration the lessee is obligated to pay the
15 lessor for the right to possession and use of the goods is substantially equal to or is greater than
16 the fair market value of the goods at the time the lease is entered into;

17 (2) the lessee assumes risk of loss of the goods;

18 (3) the lessee agrees to pay, with respect to the goods, taxes, insurance,
19 filing, recording, or registration fees, or service or maintenance costs;

20 (4) the lessee has an option to renew the lease or to become the owner of
21 the goods;

22 (5) the lessee has an option to renew the lease for a fixed rent that is equal

1 to or greater than the reasonably predictable fair market rent for the use of the goods for the term
2 of the renewal at the time the option is to be performed; or

3 (6) the lessee has an option to become the owner of the goods for a fixed
4 price that is equal to or greater than the reasonably predictable fair market value of the goods at
5 the time the option is to be performed.

6 **TITLE 9-110. GENERAL SCOPE.**

7 (a) [**General scope of ordinance.**] Except as otherwise provided in the section on
8 excluded transactions (Title 9-111), this ordinance applies to the following:

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

11 (2) a sale of accounts, chattel paper, payment intangibles, or promissory
12 notes;

13 (3) a consignment; and

14 (4) any other commercial activities, including sales of goods, leases of
15 goods, other transactions in goods, negotiable instruments, bank deposits and collections, funds
16 transfers, letters of credit, documents of title, and investment securities, to the extent those
17 commercial activities are implicated in clauses (1), (2) or (3) of this subsection (a).

18 (b) [**Consistency in application.**] Subject to the provisions of this ordinance
19 dealing with course of performance, course of dealing, and usage of trade (Title 9-114), the
20 application of this ordinance to a type of transaction enumerated in subsection (a)(4) is to be
21 derived from the context involved, with due consideration for consistency in application with
22 uniform principles of commercial and contract law operative in the United States.

1 (c) [**Security interest in secured obligation.**] The application of this ordinance to
2 a security interest in a secured obligation is not affected by the fact that the obligation is itself
3 secured by a transaction or interest to which this ordinance does not apply.

4 **TITLE 9-111. EXCLUDED TRANSACTIONS.**

5 This ordinance does not apply to:

- 6 (a) a landlord's lien;
- 7 (b) a lien given by statute or other rule of law for services or materials, but
8 the Title 9-318(k) applies with respect to priority of the lien;
- 9 (c) a tribal lien;
- 10 (d) an assignment of a claim for wages, salary, or other compensation of
11 an employee;
- 12 (e) a sale of accounts, chattel paper, payment intangibles, or promissory
13 notes as part of a sale of the business out of which they arose;
- 14 (f) an assignment of accounts, chattel paper, payment intangibles, or
15 promissory notes which is for the purpose of collection only;
- 16 (g) an assignment of a right to payment under a contract to an assignee that
17 is also obligated to perform under the contract;
- 18 (h) an assignment of a single account, payment intangible, or promissory
19 note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- 20 (i) a transfer of an interest in or an assignment of a claim under a policy of
21 insurance, other than an assignment by or to a health-care provider of a health-care-insurance
22 receivable and any subsequent assignment of the right to payment, but Titles 9-315 and 9-317

1 apply with respect to proceeds and priorities in proceeds;

2 (j) an assignment of a right represented by a judgment, other than a
3 judgment taken on a right to payment that was collateral;

4 (k) a right of recoupment or set-off, but the section on agreements not to
5 assert defenses against assignees (Title 9-403) applies with respect to defenses or claims of an
6 account debtor;

7 (l) the creation or transfer of an interest in or lien on real property,
8 including a lease or rents thereunder, except to the extent that provision is made for:

9 (1) a fixture filing; and

10 (2) security agreements covering personal and real property in Title
11 9-604;

12 (m) an assignment of a claim arising in tort, other than a commercial tort
13 claim, except as provided with respect to proceeds and priorities in proceeds; or

14 (n) an assignment of a deposit account, except as provided with respect to
15 proceeds and priorities in proceeds.

16 **TITLE 9-112. ADMINISTRATION OF ORDINANCE; AUTHORITY TO**

17 **PROMULGATE REGULATIONS.** The Leech Lake Band of Ojibwe Tribal Development
18 Division, or its designated successor, is charged with the administration of this ordinance. In
19 accordance with applicable administrative and interpretive rules and after review and approval of
20 the Leech Lake Band of Ojibwe Reservation Business Committee, the Tribal Development
21 Division, or its designated successor may promulgate regulations necessary for the effective
22 implementation and enforcement of this ordinance.

1 **TITLE 9-113. OBLIGATION OF GOOD FAITH.** Every contract or duty within this
2 ordinance imposes, with respect to its performance or enforcement, an obligation that each party
3 be honest and act in a manner that is consistent with reasonable commercial standards of fair
4 dealing.

5 **TITLE 9-114. COURSE OF PERFORMANCE, COURSE OF DEALING, AND**
6 **USAGE OF TRADE.**

7 (a) **[Course of performance defined.]** A “course of performance” is a sequence
8 of conduct between the parties to a particular transaction that exists if:

9 (1) the agreement of the parties with respect to the transaction involves
10 repeated occasions for performance by a party; and

11 (2) the other party, with knowledge of the nature of the performance and
12 opportunity for objection to it, accepts the performance or acquiesces in it without objection.

13 (b) **[Course of dealing defined.]** A “course of dealing” is a sequence of conduct
14 concerning previous transactions between the parties to a particular transaction that is fairly to be
15 regarded as establishing a common basis of understanding for interpreting their expressions and
16 other conduct.

17 (c) **[Usage of trade defined.]** A “usage of trade” is any practice or method of
18 dealing, including a local custom or tradition of the Leech Lake Reservation, having such
19 regularity of observance in a place, vocation, or trade as to justify an expectation that it will be
20 observed with respect to the transaction in question. The existence and scope of such a usage
21 must be proved as facts. If it is established that such a usage is embodied in a trade code or
22 similar record, the interpretation of the record is a question of law.

1 (d) **[Effect.]** A course of performance or course of dealing between the parties or
2 usage of trade in the vocation or trade in which they are engaged or of which they are or should
3 be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular
4 meaning to specific terms of the agreement, and may supplement or qualify the terms of the
5 agreement. A usage of trade applicable in the place in which part of the performance under the
6 agreement is to occur may be so utilized as to that part of the performance.

7 (e) **[Practical construction; hierarchy.]** Except as otherwise provided in
8 subsection (f), the express terms of an agreement and any applicable course of performance,
9 course of dealing, or usage of trade must be construed whenever reasonable as consistent with
10 each other. If such a construction is unreasonable:

11 (1) express terms prevail over course of performance, course of dealing,
12 and usage of trade;

13 (2) course of performance prevails over course of dealing and usage of
14 trade; and

15 (3) course of dealing prevails over usage of trade.

16 (f) Subject to other applicable law, a course of performance is relevant to show a
17 waiver or modification of any term inconsistent with the course of performance.

18 (g) Evidence of a relevant usage of trade offered by one party is not admissible
19 unless that party has given the other party notice that the court finds sufficient to prevent unfair
20 surprise to the other party.

21 **TITLE 9-115. PURCHASE-MONEY SECURITY INTEREST.**

22 (a) **[Definitions.]** In this section:

1 (1) “Purchase-money collateral” means goods or software that secures a
2 purchase-money obligation incurred with respect to that collateral.

3 (2) “Purchase-money obligation” means an obligation of an obligor
4 incurred as all or part of the price of the collateral or for value given to enable the debtor to
5 acquire rights in or the use of the collateral if the value is in fact so used.

6 (b) **[Purchase-money security interest in goods.]** A security interest in goods is
7 a purchase-money security interest:

8 (1) to the extent that the goods are purchase-money collateral with respect
9 to that security interest;

10 (2) if the security interest is in inventory that is or was purchase-money
11 collateral, also to the extent that the security interest secures a purchase-money obligation
12 incurred with respect to other inventory in which the secured party holds or held a purchase-
13 money security interest; and

14 (3) also to the extent that the security interest secures a purchase-money
15 obligation incurred with respect to software in which the secured party holds or held a purchase-
16 money security interest.

17 (c) **[Purchase-money security interest in software.]** A security interest in
18 software is a purchase-money security interest to the extent that the security interest also secures
19 a purchase-money obligation incurred with respect to goods in which the secured party holds or
20 held a purchase-money security interest if:

21 (1) the debtor acquired its interest in the software in an integrated
22 transaction in which it acquired an interest in the goods; and

1 (2) the debtor acquired its interest in the software for the principal purpose
2 of using the software in the goods.

3 (d) [**Consignor’s inventory purchase-money security interest.**] The security
4 interest of a consignor in goods that are the subject of a consignment is a purchase-money
5 security interest in inventory.

6 (e) [**Application of payment in non-consumer transaction.**] In a transaction
7 other than a consumer transaction, if the extent to which a security interest is a purchase-money
8 security interest depends on the application of a payment to a particular obligation, the payment
9 must be applied:

10 (1) in accordance with any reasonable method of application to which the
11 parties agree;

12 (2) if paragraph (1) does not apply, in accordance with the intention of the
13 obligor manifested at or before the time of payment; or

14 (3) if neither paragraph (1) nor paragraph (2) applies, in the following
15 order:

16 (A) to obligations that are not secured; and

17 (B) if more than one obligation is secured, to obligations secured
18 by purchase-money security interests in the order in which those obligations were incurred.

19 (f) [**No loss of purchase-money security interest in non-consumer**
20 **transaction.**] In a transaction other than a consumer transaction, a purchase-money security
21 interest does not lose its status as such, even if:

22 (1) the purchase-money collateral also secures an obligation that is not a

1 purchase-money obligation;

2 (2) collateral that is not purchase-money collateral also secures the
3 purchase-money obligation; or

4 (3) the purchase-money obligation has been renewed, refinanced,
5 consolidated, or restructured.

6 (g) **[Burden of proof in non-consumer transaction.]** In a transaction other than
7 a consumer-goods transaction, a secured party claiming a purchase-money security interest has
8 the burden of establishing the extent to which the security interest is a purchase-money security
9 interest.

10 **TITLE 9-116. SUFFICIENCY OF DESCRIPTION.**

11 (a) **[Sufficiency of description.]** Except as otherwise provided in subsections (b)
12 and (c), a description of personal or real property is sufficient, whether or not it is specific, if it
13 reasonably identifies what is described.

14 (b) **[Broad, generic descriptions insufficient.]** In a security agreement, a
15 description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or
16 using words of similar import does not reasonably identify the collateral.

17 (c) **[Description by type insufficient.]** A description only by type of collateral
18 defined in this ordinance is an insufficient description of:

19 (1) a commercial tort claim; or

20 (2) in a consumer transaction, any collateral.

21 **TITLE 9-117. PARTIES’ POWER TO CHOOSE APPLICABLE LAW.**

22 (a) **[Choice of law generally.]** Except as provided in subsection (b) and unless

1 preempted by federal law, if a transaction bears a reasonable relation to the Leech Lake Band of
2 Ojibwe and also to another Indian tribe or nation, state, or country, the parties may agree that the
3 law either of the Leech Lake Band of Ojibwe or of such other tribe or nation, State, or country
4 governs their rights and duties. In the absence of an effective agreement, this ordinance applies
5 to all transactions bearing an appropriate relation to the Leech Lake Band of Ojibwe. The fact
6 that the law of another Indian tribe or nation, state, or country is applicable as provided in this
7 section does not affect the jurisdiction or venue of the Leech Lake Band of Ojibwe, nor does it
8 waive the sovereign immunity of the Leech Lake Band of Ojibwe or of any agency or
9 instrumentality thereof.

10 (b) **[When agreement ineffective.]** An agreement otherwise effective under
11 subsection (a) is ineffective in any of the following cases:

12 (1) in a consumer transaction;

13 (2) to the extent the agreement purports to vary the provisions of
14 Subchapter 1 of Chapter 3 of this ordinance, concerning the law governing perfection and
15 priority; or

16 (3) to the extent that application of the law of the Indian tribe or nation,
17 State, or country designated in the agreement would be contrary to a fundamental policy of the
18 Leech Lake Band of Ojibwe.

1 **CHAPTER 2**

2 **EFFECTIVENESS, ATTACHMENT AND RIGHTS OF PARTIES**

3
4 **TITLE 9-201. GENERAL EFFECTIVENESS OF SECURITY AGREEMENT.**

5 (a) [**General effectiveness.**] Except as otherwise provided in this ordinance or
6 other applicable law, a security agreement is effective according to its terms between the parties,
7 against purchasers of the collateral, and against creditors.

8 (b) [**Applicable consumer laws and other law.**] A transaction subject to this
9 ordinance is subject to any applicable rule of law which establishes a different rule for consumers
10 and

11 (1) any other applicable tribal, federal or state statute or regulation that
12 regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions
13 of credit; and

14 (2) any consumer-protection statute or regulation.

15 (c) [**Other applicable law controls.**] In case of conflict between this ordinance
16 and a rule of law, statute, or regulation described in subsection (b), the rule of law, statute, or
17 regulation prevails.

18 **TITLE 9-202. ATTACHMENT AND ENFORCEABILITY OF SECURITY**
19 **INTEREST; PROCEEDS; FORMAL REQUISITES.**

20 (a) [**Attachment.**] A security interest attaches to collateral when it becomes
21 enforceable against the debtor with respect to the collateral, unless an agreement expressly
22 postpones the time of attachment.

1 (b) **[Enforceability.]** Except as otherwise provided in subsections (c) through (g),
2 a security interest is enforceable against the debtor and third parties with respect to the collateral
3 only if:

4 (1) value has been given;

5 (2) the debtor has rights in the collateral or the power to transfer rights in
6 the collateral to a secured party; and

7 (3) one of the following conditions is met:

8 (A) the debtor has signed a security agreement that provides a
9 description of the collateral and, if the security interest covers timber to be cut, a description of
10 the land concerned;

11 (B) the collateral is in the possession of the secured party pursuant
12 to the debtor's security agreement and this ordinance; or

13 (C) the collateral is a security or an investment account and the
14 secured party has control pursuant to the debtor's security agreement.

15 (c) **[Other applicable law.]** Subsection (b) is subject to a collecting bank's
16 interest in items under applicable law or agreement, any recognized security interest of a letter-
17 of-credit issuer or nominated person under applicable law or agreement, a security interest arising
18 under recognized sales and leases law, and a security interest in a security or in an investment
19 account arising due to the purchase or delivery of the financial asset.

20 (d) **[Proceeds.]** The attachment of a security interest in collateral gives the secured
21 party the rights to proceeds provided by this ordinance.

22 (e) **[Lien securing right to payment.]** The attachment of a security interest in a

1 right to payment or performance secured by a security interest, mortgage or other lien on personal
2 or real property is also attachment of a security interest in the security interest, mortgage, or
3 other lien.

4 (f) [**Certain items credited to investment account.**] The attachment of a security
5 interest in an investment account is also attachment of a security interest in any securities or
6 commodity contracts credited to the investment account.

7 (g) [**Whether other persons bound.**] Law other than this ordinance determines
8 when and if another person becomes bound by a security agreement entered into by a debtor.

9 **TITLE 9-203. AFTER-ACQUIRED COLLATERAL; FUTURE ADVANCES.**

10 (a) [**After-acquired collateral.**] Except as otherwise provided in subsection (b), a
11 security agreement may create or provide for a security interest in after-acquired collateral.

12 (b) [**After-acquired property clause not effective.**] A security interest does not
13 attach under a term constituting an after-acquired property clause to:

14 (1) consumer goods, other than an accession when given as additional
15 security, unless the debtor acquires rights in them within 10 days after the secured party gives
16 value; or

17 (2) a commercial tort claim.

18 (c) [**Future advances.**] A security agreement may provide that collateral secures
19 or that accounts, chattel paper, or payment intangibles are sold in connection with future
20 advances or other value, whether or not the advances or value are given pursuant to commitment.

21 **TITLE 9-204. RIGHTS AND DUTIES WHEN COLLATERAL IS IN SECURED**
22 **PARTY'S POSSESSION OR CONTROL.**

1 (a) **[Duty of care when secured party in possession.]** A secured party shall use
2 reasonable care in the custody and preservation of collateral in the secured party's possession.

3 (b) **[Right of repledge.]** A secured party having possession or control of securities
4 or control of an investment account may create a security interest in the collateral.

5 (c) **[Buyer of certain rights to payment.]** If the secured party is a buyer of
6 accounts, chattel paper, payment intangibles, or promissory notes or a consignor, subsection (a)
7 does not apply unless the secured party is entitled under an agreement:

8 (1) to charge back uncollected collateral; or

9 (2) otherwise to full or limited recourse against the debtor or a secondary
10 obligor based on the nonpayment or other default of an account debtor or other obligor on the
11 collateral.

12 **TITLE 9-205. ADDITIONAL DUTIES OF CERTAIN SECURED PARTIES.**

13 (a) **[Applicability of section.]** This section applies to cases in which there is no
14 outstanding secured obligation and the secured party is not committed to make advances, incur
15 obligations, or otherwise give value.

16 (b) **[Duty of secured party in control of investment account.]** Within 10 tribal
17 business days after receiving a signed demand by the debtor, a secured party having control of an
18 investment account shall send to the investment intermediary with which the investment account
19 is maintained a signed statement that releases the investment intermediary from any further
20 obligation to comply with instructions originated by the secured party.

21 (c) **[Duty of secured party if account debtor has been notified of assignment.]**
22 Within 10 tribal business days after receiving a signed demand by the debtor, a secured party

1 shall send to an account debtor that has received notification of an assignment to the secured
2 party as assignee under the provisions of this ordinance dealing with discharge of an account
3 debtor and notification of an assignment (Title 9-403), a signed record that releases the account
4 debtor from any further obligation to the secured party. However, this subsection does not apply
5 to an assignment constituting the sale of an account, chattel paper, or payment intangible.

6 **TITLE 9-206. [RESERVED.]**

7 **TITLE 9-207. REQUEST FOR ACCOUNTING; REQUEST REGARDING LIST**
8 **OF COLLATERAL OR STATEMENT OF ACCOUNT.**

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

14 (b) A secured party, other than a buyer of accounts, chattel paper, payment
15 intangibles or promissory notes or a consignor, must comply with such a request within 10 tribal
16 business days after receipt by sending a written correction or approval. If the secured party
17 claims a security interest in all of a particular type of collateral owned by the debtor the secured
18 party may indicate that fact in the reply and need not approve or correct an itemized list of such
19 collateral. If the secured party no longer has an interest in the obligation or collateral at the time
20 the request is received, the secured party must disclose the name and address of any known
21 successor in interest. A successor in interest is not subject to this section until a request is
22 received by the successor.

- 1 (c) A debtor is entitled to such statement once every six months without charge.
- 2 The secured party may require payment of a charge not exceeding \$25 for each additional
- 3 statement furnished.

1 **CHAPTER 3**

2 **PERFECTION AND PRIORITY**

3 **SUBCHAPTER 1. LAW GOVERNING PERFECTION AND PRIORITY**

4
5 **TITLE 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF**

6 **SECURITY INTERESTS.** Except as otherwise provided with respect to goods covered by a
7 certificate of title (Title 9-303), the following rules determine the law governing perfection, the
8 effect of perfection or non-perfection, and the priority of a security interest in collateral:

9 (1) Except as otherwise provided in this section, the local law of the Leech Lake
10 Band of Ojibwe governs perfection, the effect of perfection or non-perfection, and the priority of
11 a security interest in collateral

12 (A) if the security interest is created pursuant to this ordinance;

13 (B) from the time that the debtor becomes subject to the jurisdiction of the
14 Leech Lake Band of Ojibwe (Title 9-316(d) and (e)); or

15 (C) from the time that the collateral is transferred to a person that thereby
16 becomes a debtor and is subject to the jurisdiction of the Leech Lake Band of Ojibwe.

17 (2) Except as provided in paragraph (3), while goods are located in a jurisdiction,
18 the local law of that jurisdiction governs

19 (A) perfection of a security interest in the goods by filing a fixture filing;

20 and

21 (B) perfection of a security interest in timber to be cut.

22 (3) The local law of the jurisdiction in which the wellhead or mine head is located

1 governs perfection, the effect of perfection or non-perfection, and the priority of a security
2 interest in as-extracted collateral.

3 (4) This section does not determine the law governing matters not expressly
4 referred to herein, including attachment, validity, characterization, and enforcement.

5 **TITLE 9-302. [RESERVED.]**

6 **TITLE 9-303. LAW GOVERNING PERFECTION AND PRIORITY OF**
7 **SECURITY INTERESTS IN GOODS COVERED BY A CERTIFICATE OF TITLE.**

8 (a) **[Applicability of section.]** This section applies to goods covered by a
9 certificate of title, even if there is no other relationship between the jurisdiction under whose
10 certificate of title the goods are covered and the goods or the debtor.

11 (b) **[When goods covered by certificate of title.]** Goods become covered by a
12 certificate of title when a valid application for the certificate of title and the applicable fee are
13 delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the
14 earlier of the time the certificate of title ceases to be effective under the law of the issuing
15 jurisdiction or the time the goods become covered subsequently by a certificate of title issued by
16 another jurisdiction.

17 (c) **[Applicable law.]** The local law of the jurisdiction under whose certificate of title
18 the goods are covered governs perfection, the effect of perfection or non-perfection, and the
19 priority of a security interest in goods covered by a certificate of title from the time the goods
20 become covered by the certificate of title until the goods cease to be covered by the certificate of
21 title.

22 **TITLE 9-304. [RESERVED.]**

1 **TITLE 9-309. SECURITY INTEREST PERFECTED UPON ATTACHMENT.**

2 The following security interests are perfected when they attach:

3 (1) a purchase-money security interest in consumer goods, except as otherwise
4 provided in Title 9-311(b) regarding goods subject to certain statutes, regulations or treaties;

5 (2) a security interest created by an assignment of accounts which does not by
6 itself or in conjunction with other assignments to the same assignee transfer a significant part of
7 the assignor's outstanding accounts;

8 (3) a sale of a payment intangible or a promissory note;

9 (4) a security interest created by an assignment of a health-care-insurance
10 receivable to the provider of the health-care goods or services;

11 (5) a security interest created by an assignment of a beneficial interest in a
12 decedent's estate; and

13 (6) a security interest created by an assignment by an individual of an account that
14 is a right to payment of winnings in a lottery or other game of chance.

15 **TITLE 9-310. WHEN FILING REQUIRED TO PERFECT SECURITY**
16 **INTEREST; SECURITY INTERESTS TO WHICH FILING PROVISIONS DO NOT**
17 **APPLY.**

18 (a) [**General rule: perfection by filing.**] Except as otherwise provided in
19 subsection (b) and the title of this ordinance dealing with perfection of a security interest in
20 money, a financing statement must be filed to perfect all security interests.

21 (b) [**Exceptions: filing not necessary.**] The filing of a financing statement is
22 not necessary to perfect a security interest:

- 1 (1) that is perfected under Title 9-308(c), dealing with liens securing rights
2 to payment;
- 3 (2) that is perfected when it attaches under Title 9-309;
- 4 (3) in property subject to a statute, regulation, or treaty described in Title
5 9-311(a);
- 6 (4) in goods in possession of a bailee which is perfected under Title 9-
7 312(d)(1) or (2);
- 8 (5) in certificated securities, negotiable documents, goods, or instruments
9 which is perfected without filing or possession under Title 9-312(e), (f) or (g);
- 10 (6) in collateral in the secured party's possession under Title 9-313;
- 11 (7) in a security or an investment account perfected by control under Title
12 9-314;
- 13 (8) in proceeds which is perfected under Title 9-315; or
- 14 (9) that is perfected under Title 9-316 relating to continued perfection of
15 security interests perfected under the law of another jurisdiction.

16 (c) **[Assignment of perfected security interest.]** If a secured party assigns a
17 perfected security interest, a filing under this ordinance is not required to continue the perfected
18 status of the security interest against creditors of and transferees from the original debtor.

19 **TITLE 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY**
20 **SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.**

21 (a) **[Security interest subject to other law.]** Except as otherwise provided in
22 subsection (d), the filing of a financing statement is not necessary or effective to perfect a

1 security interest in property subject to:

2 (1) any law of the United States whose requirements for a security interest
3 obtaining priority over the rights of a lien creditor with respect to the property preempt the
4 provisions of this ordinance requiring that security interests be perfected by filing;

5 (2) any certificate-of-title statute covering automobiles, trailers, mobile
6 homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on
7 the certificate as a condition or result of perfection, and any central filing statute other than the
8 one provided by this ordinance; or

9 (3) a certificate-of-title statute of another jurisdiction which provides for a
10 security interest to be indicated on the certificate as a condition or result of the security interest
11 obtaining priority over the rights of a lien creditor with respect to the property.

12 (b) [**Compliance with other law.**] Compliance with the requirements of a
13 statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a
14 lien creditor is equivalent to the filing of a financing statement under this ordinance. Except as
15 otherwise provided in subsection (d) and the provisions of this ordinance providing for perfection
16 by possession when goods covered by a certificate of title issued by one jurisdiction become
17 covered by a certificate of title issued by another jurisdiction, a security interest in property
18 subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by
19 compliance with those requirements, and a security interest so perfected remains perfected
20 notwithstanding a change in the use or transfer of possession of the collateral.

21 (c) [**Duration and renewal of perfection.**] Except as otherwise provided in
22 subsection (d) and the provisions of this ordinance providing for continued perfection when

1 goods covered by a certificate of title issued by one jurisdiction become covered by a certificate
2 of title issued by another jurisdiction, duration and renewal of perfection of a security interest
3 perfected by compliance with the requirements prescribed by a statute, regulation, or treaty
4 described in subsection (a) are governed by the statute, regulation, or treaty. In other respects,
5 the security interest is subject to this ordinance.

6 (d) **[Inapplicability to certain inventory.]** During any period in which
7 collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a
8 person or leased by that person as lessor and that person is in the business of selling goods of that
9 kind, this section does not apply to a security interest in that collateral created by that person.

10 **TITLE 9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL**
11 **PAPER, DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS, AND**
12 **MONEY; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION**
13 **WITHOUT FILING OR TRANSFER OF POSSESSION.**

14 (a) **[Perfection by filing permitted.]** A security interest in chattel paper,
15 negotiable documents, instruments, securities, or investment accounts may be perfected by filing.

16 (b) **[Possession of money.]** Except as otherwise provided in the provisions of
17 this ordinance dealing with perfection with respect to proceeds, a security interest in money may
18 be perfected only by the secured party taking possession under the provisions of this ordinance
19 dealing with perfection by possession.

20 (c) **[Goods covered by negotiable document.]** While goods are in the
21 possession of a bailee that has issued a negotiable document covering the goods:

22 (1) a security interest in the goods may be perfected by perfecting a

1 security interest in the document; and

2 (2) a security interest perfected in the document has priority over any
3 security interest in the goods that becomes perfected by another method during that time.

4 (d) **[Goods covered by nonnegotiable document.]** While goods are in the
5 possession of a bailee that has issued a nonnegotiable document covering the goods, a security
6 interest in the goods may be perfected by:

7 (1) issuance of a document in the name of the secured party;

8 (2) the bailee's receipt of notification of the secured party's interest; or

9 (3) filing as to the goods.

10 (e) **[Temporary perfection: new value.]** A security interest in certificated
11 securities, negotiable documents, or instruments is perfected without filing or the taking of
12 possession for a period of 20 days from the time it attaches to the extent that it arises for new
13 value given under a signed security agreement.

14 (f) **[Temporary perfection: goods or documents made available to debtor.]**
15 A perfected security interest in a negotiable document or goods in possession of a bailee, other
16 than one that has issued a negotiable document for the goods, remains perfected for 20 days
17 without filing if the secured party makes available to the debtor the goods or documents
18 representing the goods for the purpose of:

19 (1) ultimate sale or exchange; or

20 (2) loading, unloading, storing, shipping, transshipping, manufacturing,
21 processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

22 (g) **[Temporary perfection: delivery of security certificate or instrument to**

1 **debtor.]** A perfected security interest in a certificated security or instrument remains perfected
2 for 20 days without filing if the secured party delivers the security certificate or instrument to the
3 debtor for the purpose of:

- 4 (1) ultimate sale or exchange; or
- 5 (2) presentation, collection, enforcement, renewal, or registration of
6 transfer.

7 (h) **[Expiration of temporary perfection.]** After the 20-day period specified in
8 subsection (e), (f), or (g) expires, perfection depends upon compliance with this ordinance.

9 **TITLE 9-313. WHEN POSSESSION BY SECURED PARTY PERFECTS**
10 **SECURITY INTEREST WITHOUT FILING.**

11 (a) **[Perfection by possession.]** Except as otherwise provided in subsection (b), a
12 secured party may perfect a security interest in certificated securities, negotiable documents,
13 goods, instruments, money, or chattel paper by taking possession of the collateral.

14 (b) **[Goods covered by certificate of title.]** With respect to goods covered by a
15 certificate of title issued by the Leech Lake Band of Ojibwe or a State, a secured party may
16 perfect a security interest in the goods by taking possession of the goods only in the
17 circumstances described in Title 9-316(c), relating to continued perfection of goods covered by a
18 certificate of title.

19 (c) **[Collateral in possession of person other than debtor.]** With respect to
20 collateral other than certificated securities and goods covered by a document, a secured party
21 takes possession of collateral in the possession of a person other than the debtor, the secured
22 party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business,

1 when:

2 (1) the person in possession signs a record acknowledging that it holds
3 possession of the collateral for the secured party's benefit; or

4 (2) the person takes possession of the collateral after having signed a
5 record acknowledging that it will hold possession of collateral for the secured party's benefit.

6 (d) **[Time of perfection by possession; continuation of perfection.]** If
7 perfection of a security interest depends upon possession of the collateral by a secured party,
8 perfection occurs no earlier than the time the secured party takes possession and continues only
9 while the secured party retains possession.

10 (e) **[Acknowledgment not required.]** A person in possession of collateral is not
11 required to acknowledge that it holds possession for a secured party's benefit.

12 (f) **[Effectiveness of acknowledgment; no duties or confirmation.]** If a person
13 acknowledges that it holds possession for the secured party's benefit:

14 (1) the acknowledgment is effective under subsection (c), even if the
15 acknowledgment violates the rights of a debtor; and

16 (2) unless the person otherwise agrees or law other than this ordinance
17 otherwise provides, the person does not owe any duty to the secured party and is not required to
18 confirm the acknowledgment to another person.

19 **TITLE 9-314. PERFECTION BY CONTROL.**

20 A security interest in a security or an investment account may be perfected by
21 control.

22 **TITLE 9-315. SECURED PARTY'S RIGHTS ON DISPOSITION OF**

1 **COLLATERAL AND IN PROCEEDS.**

2 (a) **[Disposition of collateral: continuation of security interest; proceeds.]**

3 Except as otherwise provided in this ordinance and in any applicable law dealing with
4 entrustment of goods:

5 (1) a security interest continues in collateral notwithstanding sale, lease,
6 license, exchange, or other disposition thereof unless the secured party authorized the disposition
7 free of the security interest; and

8 (2) a security interest attaches to any identifiable proceeds of collateral.

9 (b) **[When commingled proceeds identifiable.]** Proceeds that are commingled
10 with other property are identifiable proceeds:

11 (1) if the proceeds are goods, to the extent provided by the provisions of
12 this ordinance dealing with commingled goods; and

13 (2) if the proceeds are not goods, to the extent that the secured party
14 identifies the proceeds by a method of tracing, including application of equitable principles, that
15 is permitted under law other than this ordinance with respect to commingled property of the type
16 involved.

17 (c) **[Perfection of security interest in proceeds.]** A security interest in proceeds
18 is a perfected security interest if the security interest in the original collateral was perfected.

19 (d) **[Continuation of perfection.]** A perfected security interest in proceeds
20 becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

21 (1) the following conditions are satisfied:

22 (A) a filed financing statement covers the original collateral;

1 (B) the proceeds are collateral in which a security interest may be
2 perfected by filing in the office in which the financing statement has been filed; and

3 (C) the proceeds are not acquired with cash proceeds;

4 (2) the proceeds are identifiable cash proceeds; or

5 (3) the security interest in the proceeds is perfected other than under
6 subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.

7 (e) **[When perfected security interest in proceeds becomes unperfected.]** If a
8 filed financing statement covers the original collateral, a security interest in proceeds which
9 remains perfected under subsection (d)(1) becomes unperfected at the later of:

10 (1) when the effectiveness of the filed financing statement lapses or is
11 terminated under the provisions of this ordinance dealing with lapse or termination; or

12 (2) the 21st day after the security interest attaches to the proceeds.

13 **TITLE 9-316. CONTINUED PERFECTION OF SECURITY INTEREST**
14 **FOLLOWING CHANGE IN GOVERNING LAW.**

15 (a) **[General rule: effect on perfection of change in governing law.]** A
16 security interest to which this ordinance becomes applicable that is perfected pursuant to the law
17 of another jurisdiction remains perfected until the earliest of:

18 (1) the time perfection would have ceased under the law of that
19 jurisdiction;

20 (2) the expiration of four months after the debtor becomes subject to the
21 jurisdiction of the Leech Lake Band of Ojibwe (subsections (d) and (e)); or

22 (3) the expiration of one year after a transfer of collateral to a person that

1 thereby becomes a debtor and is subject to the jurisdiction of the Leech Lake Band of Ojibwe.

2 (b) [**Security interest perfected or unperfected under law of the Leech Lake**
3 **Band of Ojibwe.**] If a security interest described in subsection (a) becomes perfected under the
4 law of the Leech Lake Band of Ojibwe before the end of the applicable period described in that
5 subsection, it remains perfected thereafter until perfection lapses in accordance with this
6 ordinance. Otherwise, it becomes unperfected and is deemed never to have been perfected as
7 against a purchaser of the collateral for value.

8 (c) [**Goods covered by certificate of title from the Leech Lake Band of**
9 **Ojibwe.**] A security interest to which this ordinance becomes applicable which is perfected by
10 any method under the law of another jurisdiction when the goods become covered by a certificate
11 of title from the Leech Lake Band of Ojibwe remains perfected until the security interest would
12 have become unperfected under the law of the other jurisdiction had the goods not become so
13 covered. However, the security interest becomes unperfected as against a purchaser of the goods
14 for value and is deemed never to have been perfected as against a purchaser of the goods for
15 value, if the applicable requirements for perfection under Title 9-311(b) or 9-313, dealing with
16 perfection by compliance with other law or by possession, are not satisfied before the earlier of:

17 (1) the time the security interest would have become unperfected under the
18 law of the other jurisdiction had the goods not become covered by a certificate of title from the
19 Leech Lake Band of Ojibwe; or

20 (2) the expiration of four months after the goods had become so covered.

21 (d) [**When debtor subject to jurisdiction of the Leech Lake Band of Ojibwe**
22 **for purposes of this section.**] For purposes of this section only, a debtor becomes subject to the

1 jurisdiction of the Leech Lake Band of Ojibwe if:

2 (1) the debtor is an individual whose principal residence comes to be
3 within this jurisdiction or who becomes a member of the Leech Lake Band of Ojibwe;

4 (2) the debtor is an organization, other than a registered organization, and
5 its sole place of business or, if it has more than one place of business, its chief executive office,
6 comes to be within this jurisdiction; or

7 (3) the debtor comes to be

8 (A) a registered organization that is organized solely under the law
9 of the Leech Lake Band of Ojibwe; or

10 (B) incorporated under a charter issued to a tribe by the United
11 States Secretary of the Interior pursuant to 25 U.S.C. § 477, as the same may be amended from
12 time to time.

13 The term “registered organization” means an organization organized solely under the law of the
14 Leech Lake Band of Ojibwe, a single State, or the United States and as to which the Leech Lake
15 Band of Ojibwe, the State, or the United States must maintain a public record showing the
16 organization to have been organized. The term “place of business” means a place where a debtor
17 conducts its affairs.

18 (e) [**Continuation of jurisdiction: cessation of existence, etc.**] For purposes of
19 subsection (d),

20 (1) a person other than a registered organization continues to be subject to
21 the jurisdiction of the Leech Lake Band of Ojibwe notwithstanding the fact that it ceases to exist,
22 have a residence, or have a place of business; and

1 (2) a registered organization continues to be subject to the jurisdiction of
2 the Leech Lake Band of Ojibwe notwithstanding

3 (A) the suspension, revocation, forfeiture, or lapse of the registered
4 organization's status as such; or

5 (B) the dissolution, winding up, or cancellation of the existence of
6 the registered organization.

7
8 **SUBCHAPTER 3. PRIORITY**

9 **TITLE 9-317. INTERESTS THAT TAKE PRIORITY OVER SECURITY**

10 **INTEREST.**

11 (a) [**Subordination to certain lien creditors and purchasers.**] A security
12 interest is subordinate to the rights of:

13 (1) a person that becomes a lien creditor before the security interest is
14 perfected;

15 (2) a buyer of tangible personal property (including instruments and
16 tangible documents or chattel paper), a lessee of goods, a licensee of a general intangible, or a
17 buyer of accounts or general intangibles or securities that

18 (A) gives value; and

19 (B) in the case of a buyer of tangible personal property, a lessee of
20 goods, or a buyer of a security certificate, acquires possession;

21 (C) in all cases to which this subsection (a)(2) applies, without
22 knowledge of the security interest and before it is perfected;

1 (3) a secured party entitled to priority under subsection (c).

2 (b) [**Purchase-money grace period.**] Notwithstanding subsection (a), a purchase
3 money secured party that files a financing statement before or within 20 days after the debtor
4 acquires possession of the collateral has priority over the rights of a buyer, lessee or lien creditor
5 which arise between the time the security interest attaches and the time of filing.

6 (c) [**General rule for priority among conflicting secured parties.**] Priority
7 among conflicting security interests in the same collateral is determined as follows:

8 (1) Conflicting perfected security interests in the same collateral rank
9 according to priority in time of filing or perfection. Priority dates from the earlier of the time a
10 filing covering the collateral is first made or the security interest is first perfected, if there is no
11 period thereafter when there is neither filing nor perfection.

12 (2) A perfected security interest has priority over a conflicting unperfected
13 security interest.

14 (3) The first security interest to attach has priority if conflicting security
15 interests are unperfected.

16 (d) [**Time of perfection for proceeds.**] The time of filing or perfection as to a
17 security interest in collateral is also the time of filing or perfection as to a security interest in
18 proceeds, except as provided in Title 9-318.

19 (e) [**Priority in proceeds.**] Except as provided elsewhere in this part, a security
20 interest that has priority under Title 9-318(e), (f) or (j) also has priority over a conflicting security
21 interest in proceeds if

22 (1) the security interest in proceeds is perfected;

1 (2) the proceeds are cash proceeds or of the same type as the collateral;

2 and

3 (3) in the case of proceeds of proceeds, all intervening proceeds are cash
4 proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

5 (f) **[First-to-file rule for certain collateral.]** If a security interest in chattel
6 paper, negotiable documents, instruments, securities or investment accounts is perfected by a
7 method other than filing, and if the proceeds are not cash proceeds, chattel paper, negotiable
8 documents, instruments, securities, investment accounts or letter of credit rights, then priority in
9 the proceeds is determined by the order of any filing.

10 (g) **[Deferral to other applicable law.]** If applicable law other than this
11 ordinance gives a security interest or right of set-off to a collecting bank, an issuer or nominated
12 person with respect to a letter of credit, a buyer [or seller] or lessee of goods, or in personal
13 property that is not subject to this ordinance, that law governs in the event of conflict with the
14 provisions of this ordinance.

15 **TITLE 9-318. PARTICULAR PRIORITY RULES.**

16 (a) **[Relationship to preceding Title.]** This Title creates exceptions to the
17 general priority rules of Title 9-317.

18 (b) **[Consignee deemed to have rights of consignor.]** For the purpose of this
19 ordinance, while goods are in the possession of a consignee, the consignee is deemed to have
20 rights and title to the goods identical to those the consignor had or had power to transfer. If
21 Chapter 3 of this ordinance results in the consignor having priority over a creditor of the
22 consignee, law other than this ordinance determines the rights and title of the consignee with

1 regard to that creditor.

2 (c) **[Ordinary course buyers, licensees and lessees take free.]** Except as
3 otherwise provided in this subsection, a buyer in ordinary course of business, a person that takes
4 a non-exclusive license of a general intangible in ordinary course of business, or a person that
5 takes a lease of goods in ordinary course of business, takes its interest in the collateral free of a
6 security interest in the collateral created by the seller, licensor, or lessor, even if the security
7 interest is perfected and the buyer, licensee or lessee knows of its existence. Whether a licensee
8 or lessee takes its interest in ordinary course of business is to be determined by criteria parallel to
9 those for a buyer in ordinary course of business (Title 9-106(a)(7)). This subsection does not
10 apply to

11 (1) a buyer of farm products from a person engaged in farming operations,
12 unless the buyer

13 (A) obtains from the seller a notarized statement setting forth the
14 name and address of any person that has a security interest in the farm products; and

15 (B) either (i) obtains a consent to the sale free of the security
16 interest from the secured party or (ii) makes payment for the farm products jointly to the seller
17 and the secured party;

18 (2) a buyer of goods in the possession of the secured party (Title 9-313).

19 (d) **[Buyer of consumer goods takes free.]** A buyer of goods from a person who
20 used or bought the goods for use primarily for personal, family or household purposes takes free
21 of a security interest, even if perfected, if the buyer buys

22 (1) without knowledge of the security interest;

1 (2) for value;
2 (3) primarily for the buyer=s personal, family, or household purposes; and
3 (4) in the case of goods having a value of \$5,000 or more, before the filing
4 of a financing statement covering the goods. However, this subsection does not apply to a buyer
5 of goods in the possession of the secured party (Title 9-313).

6 (e) **[Purchaser of chattel paper or instrument.]**

7 (1) A purchaser of chattel paper or an instrument has priority over a
8 security interest if

9 (A) the purchaser, in good faith and in the ordinary course of the
10 purchaser=s business, gives new value and takes possession of the collateral;

11 (B) the collateral does not indicate that it has been previously
12 assigned to an identified person other than the purchaser; and

13 (C) the purchaser is otherwise without knowledge that the purchase
14 violates the rights of the secured party.

15 (2) A purchaser with priority in chattel paper under subsection (e)(1) also
16 has priority in proceeds of the chattel paper to the extent that

17 (A) the proceeds consist of the specific goods covered by the
18 chattel paper or cash proceeds of the specific goods, even if the security interest in the proceeds
19 is unperfected; or

20 (B) Title 9-317(c), (d) or (e) so provides.

21 (f) **[Holder in due course and others protected.]** This ordinance does not limit
22 the rights of, or impose liability on, a holder in due course of a negotiable instrument, a holder to

1 which a negotiable document has been duly negotiated, or a person protected against the
2 assertion of a claim to investment property under other applicable law. Filing under this
3 ordinance is not notice of a claim or defense to the holder or protected person.

4 (g) **[Priority of future advances.]** (1) With respect to a conflicting security
5 interest, the priority of an advance under a security agreement is determined under Title 9-317(b),
6 except that perfection dates from the time the advance is made if the security interest securing it
7 is perfected only by attachment (Title 9-309) or temporarily by law (Title 9-312(e), (f) or (g)) and
8 is not made pursuant to a commitment entered into before or while the security interest is
9 perfected by another means.

10 (2) With respect to a lien creditor, the security interest securing an advance
11 is subordinate if the advance is made more than 45 days after the person becomes a lien creditor,
12 unless the advance is made without knowledge of the lien or pursuant to a commitment entered
13 into without knowledge of the lien.

14 (3) With respect to a buyer of goods other than a buyer in ordinary course
15 of business (Title 9-106(a)(7)), and with respect to a lessee of goods that does not take its lease in
16 ordinary course of business (Title 9-318(c)), the security interest securing an advance is
17 subordinate if the advance is made after the earlier of the time the secured party acquires
18 knowledge of the purchase or 45 days after the purchase, unless the advance is made pursuant to
19 a commitment entered into without knowledge of the purchase and before the expiration of the
20 45-day period.

21 (4) Paragraphs (1) and (2) of this subsection do not apply to a security
22 interest held by a person that is a consignor or a buyer of accounts, chattel paper, payment

1 intangibles or promissory notes.

2 (h) **[Purchase money super-priority.]** The following rules govern the priority
3 of a purchase money security interest and a conflicting security interest in collateral and its
4 proceeds:

5 (1) **[Goods other than inventory and livestock.]** A perfected purchase-
6 money security interest in goods other than inventory or livestock that are farm products has
7 priority over a conflicting security interest, and a perfected security interest in identifiable
8 proceeds also has priority, if the purchase-money security interest is perfected when the debtor
9 receives possession of the collateral or within 20 days thereafter.

10 (2) **[Inventory and livestock.]** A perfected purchase-money security
11 interest in inventory or livestock that are farm products has priority over a conflicting security
12 interest if the purchase-money security interest is perfected when the debtor acquires possession
13 of the goods and the purchase-money secured party sends timely and appropriate notice to the
14 holder of the conflicting security interest, provided that no such notice is required unless the
15 holder of the conflicting security interest has filed a financing statement covering the same types
16 of goods:

17 (A) before the purchase-money security interest is perfected by
18 filing; or

19 (B) if the purchase-money security interest is temporarily perfected
20 under Title 9-312(f), before the beginning of the applicable 20-day period.

21 If a purchase-money secured party has priority in inventory under this paragraph (2), it also has
22 priority in chattel paper or an instrument constituting proceeds, in proceeds of the chattel paper

1 except as otherwise provided in this section, and in identifiable cash proceeds received on or
2 before delivery of the goods to a buyer. If a purchase-money secured party has priority in
3 livestock that are farm products under this paragraph (2), it also has priority in their identifiable
4 proceeds and products in their unmanufactured states.

5 (3) **[Software.]** A perfected purchase-money security interest in software
6 has priority over a conflicting security interest, and a perfected security interest in its identifiable
7 proceeds also has priority, to the extent that the purchase-money security interest in the goods in
8 which the software was acquired for use has priority in the goods and proceeds of the goods.

9 (4) **[Priority among PMSIs.]** Notwithstanding the rest of this
10 subsection, if two or more purchase-money security interests are perfected in the same collateral,
11 the security interest securing an obligation for the price has priority, and otherwise priority is
12 determined by the rule of Title 9-317(b).

13 (i) **[Transferee of money or funds takes free.]** A transferee of money or of
14 funds from a deposit account takes the money or funds free of a security interest unless the
15 transferee acts in collusion with the debtor in violating the rights of the secured party.

16 (j) **[Priority of interest perfected by control; possession of certificated**
17 **security in registered form.]** A security interest in a security or an investment account
18 perfected by control (Title 9-314) has priority over a security interested perfected in another way.
19 Multiple security interests perfected by control rank according to time of acquiring control;
20 however, a security interest held by an investment intermediary in the investment account that it
21 maintains has priority regardless of time of acquiring control. A security interest in a certificated
22 security in registered form that is perfected by possession (Title 9-313) and not by control has

1 priority over a conflicting security interest perfected by a method other than control.

2 (k) **[Possessory liens.]** A lien created by statute or rule of law which secures
3 payment or performance of an obligation for services or materials furnished with respect to goods
4 by a person in the ordinary course of the person's business and whose effectiveness depends on
5 the person's possession of the goods has priority over a security interest in the goods unless the
6 lien is created by a statute that expressly provides otherwise

7 **TITLE 9-319. PRIORITY OF SECURITY INTERESTS IN FIXTURES AND CROPS.**

8 (a) **[Security interest in fixtures under this ordinance.]** A security interest
9 under this ordinance may be created in goods that are fixtures or may continue in goods that
10 become fixtures. A security interest does not exist under this ordinance in ordinary building
11 materials incorporated into an improvement on land.

12 (b) **[Security interest in fixtures under real-property law.]** This ordinance
13 does not prevent creation of an encumbrance upon fixtures under real property law.

14 (c) **[General rule: subordination of security interest in fixtures.]** In cases not
15 governed by subsections (d) through (h), a security interest in fixtures is subordinate to a
16 conflicting interest of an encumbrancer or owner of the related real property other than the
17 debtor.

18 (d) **[Fixtures purchase-money priority.]** Except as otherwise provided in
19 subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an
20 encumbrancer or owner of the real property if the debtor has an interest of record in or is in
21 possession of the real property and:

22 (1) the security interest is a purchase-money security interest;

1 (2) the interest of the encumbrancer or owner arises before the goods
2 become fixtures; and

3 (3) the security interest is perfected by an appropriate filing before the
4 goods become fixtures or within 20 days thereafter.

5 (e) **[Priority of security interest in fixtures over interests in real property.]** A
6 perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer
7 or owner of the real property if:

8 (1) the debtor has an interest of record in the real property or is in
9 possession of the real property and the security interest:

10 (A) is perfected by an appropriate filing before the interest of the
11 encumbrancer or owner is of record; and

12 (B) has priority over any conflicting interest of a predecessor in
13 title of the encumbrancer or owner;

14 (2) before the goods become fixtures, the security interest is perfected by
15 any method permitted by this ordinance and the fixtures are readily removable:

16 (A) factory or office machines;

17 (B) equipment that is not primarily used or leased for use in the
18 operation of the real property; or

19 (C) replacements of domestic appliances that are consumer goods;

20 (3) the conflicting interest is a lien on the real property obtained by legal or
21 equitable proceedings after the security interest was perfected by any method permitted by this
22 ordinance; or

1 (4) the security interest is:

2 (A) created in a manufactured home in a manufactured-home
3 transaction; and

4 (B) perfected pursuant to a statute described in Title 9-311(a)(2).

5 (f) **[Priority based on consent, disclaimer, or right to remove.]** A security
6 interest in fixtures, whether or not perfected, has priority over a conflicting interest of an
7 encumbrancer or owner of the real property if:

8 (1) the encumbrancer or owner has, in a signed record, consented to the
9 security interest or disclaimed an interest in the goods as fixtures; or

10 (2) the debtor has a right to remove the goods as against the encumbrancer
11 or owner.

12 (g) **[Continuation of paragraph (f)(2) priority.]** The priority of the security
13 interest under paragraph (f)(2) continues for a reasonable time if the debtor right to remove the
14 goods as against the encumbrancer or owner terminates.

15 (h) **[Priority of construction mortgage.]** A mortgage is a construction mortgage
16 to the extent that it secures an obligation incurred for the construction of an improvement on
17 land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates.

18 Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is
19 subordinate to a construction mortgage if a record of the mortgage is recorded before the goods
20 become fixtures and the goods become fixtures before the completion of the construction. A
21 mortgage has this priority to the same extent as a construction mortgage to the extent that it is
22 given to refinance a construction mortgage.

1 (i) **[Priority of security interest in crops.]** A perfected security interest in crops
2 growing on real property has priority over a conflicting interest of an encumbrancer or owner of
3 the real property if the debtor has an interest of record in or is in possession of the real property.

4 (j) **[Subsection (i) prevails.]** Subsection (i) prevails over any inconsistent
5 statutory provisions.

6 **TITLE 9-320. ACCESSIONS.**

7 (a) **[Creation of security interest in accession.]** A security interest may be
8 created in an accession and continues in collateral that becomes an accession.

9 (b) **[Perfection of security interest.]** If a security interest is perfected when the
10 collateral becomes an accession, the security interest remains perfected in the collateral.

11 (c) **[Priority of security interest.]** Except as otherwise provided in subsection
12 (d), the other provisions of this part determine the priority of a security interest in an accession.

13 (d) **[Compliance with certificate-of-title statute.]** A security interest in an
14 accession is subordinate to a security interest in the whole which is perfected by compliance with
15 the requirements of a certificate-of-title statute under Title 9-311(b).

16 (e) **[Removal of accession after default.]** After default, subject to Chapter 6, a
17 secured party may remove an accession from other goods if the security interest in the accession
18 has priority over the claims of every person having an interest in the whole.

19 (f) **[Reimbursement following removal.]** A secured party that removes an
20 accession from other goods under subsection (e) shall promptly reimburse any holder of a
21 security interest or other lien on, or owner of, the whole or of the other goods, other than the
22 debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured

1 party need not reimburse the holder or owner for any diminution in value of the whole or the
2 other goods caused by the absence of the accession removed or by any necessity for replacing it.
3 A person entitled to reimbursement may refuse permission to remove until the secured party
4 gives adequate assurance for the performance of the obligation to reimburse.

5 **TITLE 9-321. COMMINGLED GOODS.**

6 (a) [**“Commingled goods.”**] In this section, “commingled goods” means goods
7 that are physically united with other goods in such a manner that their identity is lost in a product
8 or mass.

9 (b) [**No security interest in commingled goods as such.**] A security interest
10 does not exist in commingled goods as such. However, a security interest may attach to a
11 product or mass that results when goods become commingled goods.

12 (c) [**Attachment of security interest to product or mass.**] If collateral becomes
13 commingled goods, a security interest attaches to the product or mass.

14 (d) [**Perfection of security interest.**] If a security interest in collateral is
15 perfected before the collateral becomes commingled goods, the security interest that attaches to
16 the product or mass under subsection (c) is perfected.

17 (e) [**Priority of security interest.**] Except as otherwise provided in subsection
18 (f), the other provisions of this part determine the priority of a security interest that attaches to the
19 product or mass under subsection (c).

20 (f) [**Conflicting security interests in product or mass.**] If more than one
21 security interest attaches to the product or mass under subsection (c), the following rules
22 determine priority:

1 (1) A security interest that is perfected under subsection (d) has priority
2 over a security interest that is unperfected at the time the collateral becomes commingled goods.

3 (2) If more than one security interest is perfected under subsection (d), the
4 security interests rank equally in proportion to the value of the collateral at the time it became
5 commingled goods.

6 **TITLE 9-322. PRIORITY OF SECURITY INTERESTS IN GOODS COVERED**

7 **BY CERTIFICATE OF TITLE.** If, while a security interest in goods is perfected by any
8 method under the law of another jurisdiction, this jurisdiction issues a certificate of title (Title 9-
9 106(a)(11)) that does not show that the goods are subject to the security interest or contain a
10 statement that they may be subject to security interests not shown on the certificate:

11 (1) a buyer of the goods, other than a person in the business of selling goods of
12 that kind, takes free of the security interest if the buyer gives value and receives delivery of the
13 goods after issuance of the certificate and without knowledge of the security interest; and

14 (2) the security interest is subordinate to a conflicting security interest in the
15 goods that attaches, and is perfected under Title 9-311(b), after issuance of the certificate and
16 without the conflicting secured party's knowledge of the security interest.

17 **TITLE 9-323. PRIORITY SUBJECT TO SUBORDINATION.** This ordinance does
18 not preclude subordination by agreement by a person entitled to priority.

1 **CHAPTER 4**

2 **RIGHTS OF THIRD PARTIES**

3
4 **TITLE 9-401. ALIENABILITY OF DEBTOR'S RIGHTS.** Whether a debtor's rights
5 in collateral may be voluntarily or involuntarily transferred is governed by law other than this
6 ordinance; however, an agreement between a debtor and secured party which prohibits a transfer
7 of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer
8 from taking effect. This section is subject to Title 9-404, which invalidates certain legal and
9 contractual restrictions on transferability that generally would be effective under other law.

10 **TITLE 9-402. SECURED PARTY NOT OBLIGATED ON CONTRACT OF**
11 **DEBTOR OR IN TORT.** The existence of a security interest or authority given to a debtor to
12 dispose of or use collateral, without more, does not subject a secured party to liability in contract
13 or tort for the debtor's acts or omissions.

14 **TITLE 9-403. RIGHTS OF ASSIGNEE.**

15 (a) **[Waiver-of-defense clauses; limitations thereon.]** An agreement between an
16 account debtor and an assignor not to assert against an assignee any claim or defense that the
17 account debtor may have against the assignor is enforceable by an assignee that takes an
18 assignment in good faith, and for value as defined in the law governing negotiable instruments,
19 except as to claims or defenses that may be asserted against a holder in due course of a negotiable
20 instrument. However, such an agreement is not enforceable if

21 (1) the agreement relates to an obligation incurred on account of a sale or
22 lease of goods or services;

1 (2) the account debtor seeks or acquires the goods or services primarily for
2 personal, family or household use; and

3 (3) the assignor, in the ordinary course of its business, sells or leases goods
4 or services to consumers.

5 (b) [**Parallel rule for negotiable instruments.**] If a negotiable promissory note
6 represents an obligation incurred on account of a sale or lease of goods or service, and the issuer
7 seeks or acquires the goods or services primarily for personal, family or household use, and the
8 payee, in the ordinary course of its business, sells or leases goods or services to consumers, then
9 the issuer may assert any claims and defenses against a person entitled to enforce the note,
10 including a holder in due course.

11 (c) [**Assignee's rights subject to terms, claims and defenses.**] Except to the
12 extent an agreement to the contrary is enforceable under subsection (a), the rights of an assignee
13 are subject to reduction of the amount owed by reason of all terms of the contract between the
14 account debtor and assignor, any defense or claim in recoupment arising from the transaction that
15 gave rise to the contract, and any other defense or claim of the account debtor against the
16 assignor which accrues before the account debtor receives adequate notification of the
17 assignment signed by the assignor or the assignee. This subsection does not apply to the assignee
18 of a health-care-insurance receivable.

19 (d) [**Discharge of account debtor or party to instrument.**] An account debtor
20 or party to a negotiable promissory note may discharge its obligation by paying the assignor or
21 person formerly entitled to enforce the note until, but not after, such account debtor or party
22 receives:

1 (1) adequate notification that performance is to be rendered to the assignee
2 or transferee, signed

3 (A) in the case of an account debtor, by the assignor or assignee,
4 and

5 (B) in the case of a negotiable promissory note, by the transferor or
6 transferee; and

7 (2) if requested by such account debtor or party, reasonable proof of the
8 assignment or transfer.

9 In the case of an account debtor, discharge under this subsection is effective notwithstanding an
10 otherwise enforceable agreement not to assert claims or defenses. In the case of a party to a
11 negotiable promissory note, discharge under this subsection is effective against a holder in due
12 course.

13 (e) **[Modifications of contract.]** A modification of or substitution for an
14 assigned contract is effective against an assignee to the extent provided by law other than this
15 ordinance.

16 **TITLE 9-404. RESTRICTIONS ON ASSIGNMENT.**

17 (a) **[Commercially harmful restrictions on alienation invalid.]** A commercially
18 harmful restriction on alienation (subsections (b), (c) and (d)) of property is invalid.

19 (b) **[Commercially harmful defined for certain transactions.]** In an assignment
20 of accounts other than health-care-insurance receivables, an assignment of chattel paper, an
21 assignment of payment intangibles that is not a sale, or a transfer of promissory notes that is not a
22 sale, the term “commercially harmful restriction on alienation” means a term in an agreement

1 between an account debtor and an assignor, or in a promissory note, to the extent that it

2 (1) prohibits, restricts, or requires the consent of the account debtor or
3 person obligated on the promissory note, to the assignment or transfer of, or the creation,
4 attachment, perfection, or enforcement of a security interest in, the affected property; or

5 (2) provides that such an assignment, transfer, creation, attachment,
6 perfection, or enforcement may give rise to a default or remedy.

7 (c) (1) [**Commercially harmful defined less broadly for other transactions.**] In
8 an assignment of a health-care-insurance receivable, a sale of promissory notes, a sale of payment
9 intangibles, or a security interest in other general intangibles (including a contract, permit, or
10 license, or franchise) that is not a sale, the term “commercially harmful restriction on alienation”
11 has the same meaning as in subsection (b) except that the references to enforcement of a security
12 interest appearing in subsection (b)(1) and (2) are excluded.

13 (2) [**Limitation on effect in such other transactions.**] To the extent a
14 commercially harmful restriction on alienation under paragraph (c)(1) would otherwise be
15 effective under law other than this ordinance, the creation, attachment, or perfection of the
16 security interest:

17 (A) does not impose a duty or obligation on the account debtor or
18 person obligated on the promissory note;

19 (B) is not enforceable against the account debtor or person obligated
20 on the promissory note; and

21 (C) does not entitle the secured party to:

22 (i) use the debtor’s rights in or to the property;

1 (ii) have access to trade secrets or confidential information
2 of the account debtor or person obligated on the promissory note; or
3 (iii) enforce the security interest.

4 (d) **[Rule of law as commercially harmful restriction.]** In addition to the
5 meanings set forth in subsections (b) and (c), the term “commercially harmful restriction on
6 alienation” includes a rule of law to the extent that it

7 (1) requires the consent of a governmental body or official to the
8 assignment or transfer of, or actions described in subsection (b) or (c), as applicable, regarding a
9 security interest in, the property; or

10 (2) has any of the effects of a commercially harmful restriction on
11 alienation as defined in subsection (b) or (c), as applicable.

12 (e) **[Deferral to consumer law; inapplicability.]** This section is subject to any
13 different rule in other law for a consumer. In addition, this section does not apply to an
14 assignment of

15 (1) a claim or right to receive compensation for injuries or sickness as
16 described in 26 U.S.C. § 104(a)(1) or (2), as the same may be amended from time to time;

17 (2) a claim or right to receive benefits under a special needs trust as
18 described in 42 U.S.C. § 1396p(d)(4), as the same may be amended from time to time.

19 (3) a structured settlement payment right; or

20 (4) a right to payment of winnings in a lottery or other game of chance
21 regulated by law other than this ordinance.

1 **CHAPTER 5**

2 **FILING**

3 *(As Amended by LLBO Resolution No. 2011-136 on March 23, 2011)*

4 **TITLE 9-501. ACCEPTANCE, REFUSAL, AND EFFECTIVENESS OF**
5 **FINANCING STATEMENTS; ADMINISTRATION.**

6 (a) **[Place to file.]** The place to file a financing statement to perfect a security
7 interest governed by this LLBO Secured Transactions Ordinance is the Office of the Secretary of
8 State which shall, pursuant to a joint powers agreement with the Chairman of the LLBO
9 Reservation Tribal Council, administer the filing system on behalf of the Leech Lake Band of
10 Ojibwe until such time as the Tribe has established its own central filing office. However, if (1)
11 the collateral is as-extracted collateral or timber to be cut, or (2) the financing statement is filed as
12 a fixture filing, the collateral is goods that are or are to become fixtures, and the debtor is not a
13 transmitting utility, then the place to file the financing statement is the office designated for the
14 filing or recording of a record of a mortgage on the related real property.

15 (b) **[Pre-filing; acceptance and refusal.]** A financing statement may be filed
16 before a security agreement is made or a security interest attaches. Receipt by the filing office of a
17 financing statement or other record, in appropriate form by an appropriate method, and tender of
18 the filing fee, constitutes filing, and in those cases the filing office must accept the record. If the
19 filing office refuses the record, it must communicate that fact to the person that presented the
20 record, as well as the reason for refusal and the date and time that the record would have
21 otherwise been filed.

22 (c) **[Effectiveness of financing statement; minor errors.]** A record in

1 appropriate form and communicated to the filing office by an appropriate method is effective even
2 if:

3 (1) it is improperly refused by the filing office, except as against a
4 purchaser of the collateral for value in reasonable reliance on the absence of the record from the
5 files;

6 (2) it is incorrectly indexed by the filing office; or

7 (3) it has minor errors or omissions in information required to perfect a
8 security interest, unless the errors or omissions make the record seriously misleading. If a
9 financing statement fails sufficiently to provide the name of the debtor, the name provided does
10 not make the financing statement seriously misleading if a search of the filing office's records
11 under the debtor's correct name using the filing office's standard search logic, if any, would
12 disclose the financing statement.

13 (d) **[Subordination in certain cases of reliance.]** If information that the filing
14 office's regulations require to be included in a record, but that Title 9-502(a) does not require for
15 perfection of a security interest, is incorrect at the time the record is filed, the security interest is
16 subordinate to a conflicting perfected security interest or the interest of a purchaser other than a
17 secured party, to the extent that

18 (1) the holder of the conflicting security interest gives value in reasonable
19 reliance on the incorrect information; or

20 (2) the purchaser gives value and, in the case of a buyer or lessee of
21 property capable of being possessed, takes possession, all in reasonable reliance on the incorrect
22 information.

1 (e) **[Fees.]** The filing office may set fees for filing and indexing a record under
2 subsection (a) by regulation or, if applicable, pursuant to agreement with the Minnesota Secretary
3 of State.

4 (f) **[Regulations.]** The filing office is charged with administration of Chapter 5
5 of this LLBO Secured Transactions Ordinance. In accordance with applicable administrative and
6 interpretive rules and after review and approval of the LLBO Reservation Business Committee,
7 the filing office shall promulgate and make available the following, in both cases consistent with
8 this LLBO Secured Transactions Ordinance and with tribal and commercial policy:

9 (1) regulations to the extent thought necessary for the effective
10 implementation and enforcement of Chapter 5 of this Ordinance; and

11 (2) an implementation manual providing guidance to persons entering into
12 transactions governed by this Ordinance.

13 (g) **[Delegation of Administration.]** The LLBO Reservation Business
14 Committee may delegate the administration of Chapter 5 of this LLBO Secured
15 Transactions Ordinance to a third party, including the filing office or offices of another
16 jurisdiction. No delegation of performance relieves the filing office of any duty imposed
17 on it by this LLBO Secured Transactions Ordinance.tribal

18 **TITLE 9-502. CONTENTS OF RECORDS; AUTHORIZATION; LAPSE;**
19 **CONTINUATION; TERMINATION.**

20 (a) **[Information required for perfection; other required contents.]** A
21 financing statement is sufficient to perfect a security interest only if it provides the name of the
22 debtor, the name of the secured party or a representative of the secured party, and indicates the

1 collateral covered by the financing statement with a description, whether or not specific, that
2 reasonably identifies the collateral or states that it covers all assets or all personal property. A
3 financing statement or a record of a mortgage that covers as-extracted collateral or timber to be
4 cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, is
5 sufficient only if in addition it includes such further information as required by filing office
6 regulation. A record that constitutes a termination statement, assigns a record, continues a record,
7 or otherwise amends a record must comply with the regulations of the filing office for such
8 records.

9 (b) **[Other information and filing office regulations.]** A record may include
10 information other than that required by subsection (a), such as addresses for the debtor or debtors
11 and secured party or parties, the characterization of a party as an individual or an organization
12 and, if an organization, the type of organization, and the jurisdiction of organization of the debtor,
13 or a trade name for the debtor, and may use other terms such as “consignor”, “lessor”, or
14 “licensor”, to the extent permitted by and in compliance with the regulations of the filing office,
15 and shall include such other information, such as the filing number, to the extent required by such
16 regulations.

17 (c) **[Duration of effectiveness.]** A validly filed financing statement is effective
18 for five years after the date of filing unless sooner terminated, except as follows:

19 (1) If the financing statement correctly indicates that it is filed in
20 connection with a manufactured-home transaction or a public-finance transaction, it is effective
21 for thirty years after the date of filing unless sooner terminated;

22 (2) If the debtor is a transmitting utility and the financing statement so

1 indicates, the financing statement is effective until terminated; and

2 (3) A mortgage that is effective as a financing statement is effective until
3 the mortgage is satisfied of record.

4 (d) [**Continuation and lapse.**] A financing statement lapses at the end of the
5 period specified in subsection (c) unless a continuation statement is filed within six months before
6 the expiration of the period. A lapsed financing statement ceases to perfect the security interest
7 unless it is perfected otherwise before lapse, and the security interest is deemed to never have
8 been perfected against a purchaser of the collateral for value.

9 (e) [**Effect of continuation and other amendments.**] Upon proper continuation,
10 the effectiveness of a filed financing statement continues for an additional period of five years
11 commencing on the date on which it otherwise would have become ineffective, and again may
12 lapse unless further continued. An amendment to a financing statement other than a continuation
13 statement does not extend the effectiveness of a financing statement, is effective only from its date
14 of filing, and may be effective as a termination statement as prescribed in the regulations of the
15 filing office.

16 (f) [**Termination statement.**] Upon the filing of a termination statement, the
17 financing statement to which the termination statement relates ceases to be effective. A secured
18 party or secured party of record shall file, cause to be filed, or send a termination statement in
19 accordance with the regulations promulgated under this LLBO Secured Transactions Ordinance.

20 (g) [**Persons entitled to file.**] Only a person authorized by the debtor in
21 compliance with this subsection or with regulations of the filing office, or a person otherwise
22 designated by those regulations, may file a record that is effective. By signing a security

1 agreement, the debtor authorizes the filing of a financing statement and amendments covering (1)
2 the collateral described in the security agreement and (2) property that becomes collateral under
3 Title 9-315(a)(2), relating to identifiable proceeds.

4 (h) **[Change of name; transfer of collateral; new person becoming bound.]** If
5 a debtor so changes its name, or an organization its identity or corporate structure, that a filed
6 financing statement becomes seriously misleading, the financing statement is not effective to
7 perfect a security interest in collateral acquired by the debtor more than four months after the
8 change, unless an appropriate filing is made before the expiration of that time. If a security
9 interest continues in collateral transferred by the debtor (Title 9-315(a)), a filed financing
10 statement with respect to collateral remains effective, even if the secured party knows of or
11 consents to the transfer.

12 **TITLE 9-503. FILING PROCEDURES.** The rules, procedures and requirements for
13 filing under this Ordinance shall be those specified in Part 5 of Minnesota Statutes 2010 Chapter
14 336.9 (as may be amended from time to time), together with the applicable Minnesota State
15 administrative filing rules and regulations as they pertain to the administration of the central filing
16 system and any requirements thereto (as well as any amendments to such rules or regulations),
17 which the Leech Lake Band of Ojibwe hereby adopts and incorporates by reference into this Band
18 Ordinance. At such time as the Leech Lake Band of Ojibwe establishes its own central filing
19 office, the filing rules and procedures will be set by regulations issued by such Tribal office.

1 **CHAPTER 6**

2 **DEFAULT**

3 **SUBCHAPTER 1. DEFAULT AND ENFORCEMENT OF SECURITY INTERESTS**

4
5 **TITLE 9-601. RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT;**

6 **CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT**

7 **INTANGIBLES, OR PROMISSORY NOTES.**

8 (a) **[Rights of secured party after default.]** After default, a secured party has the
9 rights provided in this chapter, the rights and duties related to possession or control of collateral
10 (Title 9-204) and, except as otherwise provided in the provisions of this ordinance dealing with
11 waivers and variances of rights and duties (Title 9-602), those provided by agreement of the
12 parties. A secured party:

13 (1) may reduce a claim to judgment, foreclose, or otherwise enforce the
14 claim, security interest, by any available judicial procedure; and

15 (2) if the collateral is documents, may proceed either as to the documents or
16 as to the goods they cover.

17 (b) **[Rights cumulative; simultaneous exercise.]** The rights under subsections (a)
18 are cumulative and may be exercised simultaneously.

19 (c) **[RESERVED.]**

20 (d) **[Rights of debtor and obligor.]** Except as otherwise provided in subsection
21 (g) and under the provisions of this ordinance dealing with an unknown debtor or a secondary
22 obligor (Title 9-605), after default, a debtor and an obligor have the rights provided in this chapter

1 and by agreement of the parties.

2 (e) **[Lien of levy after judgment.]** If a secured party has reduced its claim to
3 judgment, the lien of any levy that may be made upon the collateral by virtue of an execution
4 based upon the judgment relates back to the earliest of:

5 (1) the date of perfection of the security interest in the collateral;

6 (2) the date of filing a financing statement covering the collateral; or

7 (3) any date specified in a statute under which the lien was created.

8 (f) **[Execution sale.]** A sale pursuant to an execution is a foreclosure of the security
9 interest by judicial procedure within the meaning of this section. A secured party may purchase at
10 the sale and thereafter hold the collateral free of any other requirements of this ordinance.

11 (g) **[Consignor or buyer of certain rights to payment.]** Except as otherwise
12 provided in the provisions of this ordinance dealing with commercially reasonable collection and
13 enforcement (Title 9-606(b)), this part imposes no duties upon a secured party that is a consignor
14 or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

15 **TITLE 9-602. WAIVER AND VARIANCE OF RIGHTS AND DUTIES.** Except as
16 otherwise provided in the provisions of this ordinance dealing with waivers (Title 9-624), to the
17 extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor
18 or obligor may not waive or vary the rules stated in the following sections of this ordinance
19 dealing with:

20 (1) rights and duties when collateral is in a secured party's possession (Title
21 9-204);

22 (2) requests for an accounting or requests regarding a list of collateral or

1 statement of an account (Title 9-207);

2 (3) commercially reasonable collection and enforcement (Title 9-607(b));

3 (4) application of proceeds, deficiency and surplus (Titles 9-608(a) and 9-

4 615(c)), to the extent that they deal with application or payment of noncash proceeds of collection,

5 enforcement, or disposition;

6 (5) application of proceeds and the like (Titles 9-608 and 9-615(d)), to the

7 extent that they require accounting for or payment of surplus proceeds of collateral;

8 (6) a secured party's right to take possession after default and limitations

9 thereon (Title 9-609), to the extent that it imposes upon the secured party taking possession of

10 collateral without judicial process the duty to do so without breach of the peace and with consent

11 of the debtor;

12 (7) commercially reasonable disposition (Title 9-610(b)), notification

13 before disposition of the collateral (Title 9-611), and the contents and form of a notification before

14 disposition of the collateral (Title 9-613);

15 (8) calculation of a deficiency or surplus when the fairness of the amount of

16 proceeds is placed in issue (Title 9-615(e));

17 (9) explanation of the calculation of a surplus or deficiency (Title 9-616);

18 (10) acceptance of collateral in satisfaction of obligation (Title 9-620);

19 (11) right to redeem collateral (Title 9-623);

20 (12) waivers (Title 9-624);

21 (13) the secured party's liability for failure to comply with this ordinance

22 (Titles 9-625 and 9-626); and

1 (14) attorney's fees (Title 9-629).

2 **TITLE 9-603. AGREEMENT ON STANDARDS CONCERNING RIGHTS AND**

3 **DUTIES.** The parties may determine by agreement the standards measuring the fulfillment of the
4 rights of a debtor or obligor and the duties of a secured party under a rule stated in the provisions
5 of this ordinance dealing with waiver or variance of rights and duties (Title 9-603), if the
6 standards are not manifestly unreasonable.

7 **TITLE 9-604. PROCEDURE IF SECURITY AGREEMENT COVERS REAL**
8 **PROPERTY OR FIXTURES.**

9 (a) [**Enforcement: personal and real property.**] If a security agreement covers
10 both personal and real property, a secured party may proceed:

11 (1) under this chapter as to the personal property without prejudicing any
12 rights with respect to the real property; or

13 (2) as to both the personal property and the real property in accordance with
14 the rights with respect to the real property, in which case the other provisions of this chapter do
15 not apply.

16 (b) [**Enforcement: fixtures.**] Subject to subsection (c), if a security agreement
17 covers goods that are or become fixtures, a secured party may proceed:

18 (1) under this part; or

19 (2) in accordance with the rights with respect to real property, in which case
20 the other provisions of this chapter do not apply.

21 (c) [**Removal of fixtures.**] Subject to the other provisions of this chapter, if a
22 secured party holding a security interest in fixtures has priority over all owners and encumbrancers

1 of the real property, the secured party, after default, may remove the collateral from the real
2 property.

3 (d) **[Injury caused by removal.]** A secured party that removes collateral shall
4 promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the
5 cost of repair of any physical injury caused by the removal. The secured party need not reimburse
6 the encumbrancer or owner for any diminution in value of the real property caused by the absence
7 of the goods removed or by any necessity of replacing them. A person entitled to reimbursement
8 may refuse permission to remove until the secured party gives adequate assurance for the
9 performance of the obligation to reimburse.

10 **TITLE 9-605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR.** A secured
11 party does not owe a duty based on its status as secured party:

12 (1) to a person that is a debtor or obligor, unless the secured party knows:

13 (A) that the person is a debtor or obligor;

14 (B) the identity of the person; and

15 (C) how to communicate with the person; or

16 (2) to a secured party or lien holder that has filed a financing statement
17 against a person, unless the secured party knows:

18 (A) that the person is a debtor; and

19 (B) the identity of the person.

20 **TITLE 9-606. [RESERVED.]**

21 **TITLE 9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY.**

22 (a) **[Collection and enforcement generally.]** If so agreed, and in any event after

1 default, a secured party:

2 (1) may notify an account debtor or other person obligated on collateral to
3 make payment or otherwise render performance to or for the benefit of the secured party;

4 (2) may take any proceeds to which the secured party is entitled under Title
5 9-311;

6 (3) may enforce the obligations of an account debtor or other person
7 obligated on collateral and exercise the rights of the debtor with respect to the obligation of the
8 account debtor or other person obligated on collateral to make payment or otherwise render
9 performance to the debtor, and with respect to any property that secures the obligations of the
10 account debtor or other person obligated on the collateral;

11 (b) **[Commercially reasonable collection and enforcement.]** A secured party
12 shall proceed in a commercially reasonable manner if the secured party:

13 (1) undertakes to collect from or enforce an obligation of an account debtor
14 or other person obligated on collateral; and

15 (2) is entitled to charge back uncollected collateral or otherwise to full or
16 limited recourse against the debtor or a secondary obligor.

17 (c) **[Expenses of collection and enforcement.]** A secured party may deduct from
18 the collections made pursuant to subsection (c) reasonable expenses of collection and
19 enforcement, including reasonable attorney's fees and legal expenses incurred by the secured
20 party.

21 (d) **[Duties to secured party not affected.]** This title does not determine whether
22 an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

1 **TITLE 9-608. APPLICATION OF PROCEEDS OF COLLECTION OR**
2 **ENFORCEMENT; LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.**

3 (a) **[Application of proceeds, surplus, and deficiency if obligation secured.]** If a
4 security interest secures payment or performance of an obligation, the following rules apply:

5 (1) A secured party shall apply or pay over for application the cash
6 proceeds of collection or enforcement under Title 9-607 in the following order to:

7 (A) the reasonable expenses of collection and enforcement and, to
8 the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and
9 legal expenses incurred by the secured party;

10 (B) the satisfaction of obligations secured by the security interest
11 under which the collection or enforcement is made; and

12 (C) the satisfaction of obligations secured by any subordinate
13 security interest in or other lien on the collateral subject to the security interest under which the
14 collection or enforcement is made if the secured party receives a signed demand for proceeds
15 before distribution of the proceeds is completed.

16 (2) If requested by a secured party, a holder of a subordinate security
17 interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time.
18 Unless the holder complies, the secured party need not comply with the holder's demand under
19 paragraph (1)(C).

20 (3) A secured party need not apply or pay over for application noncash
21 proceeds of collection and enforcement under Title 9-607 unless the failure to do so would be
22 commercially unreasonable. A secured party that applies or pays over for application noncash

1 proceeds shall do so in a commercially reasonable manner.

2 (4) A secured party shall account to and pay a debtor for any surplus, and
3 the obligor is liable for any deficiency.

4 **TITLE 9-609. SECURED PARTY'S LIMITED RIGHT TO TAKE POSSESSION**
5 **AFTER DEFAULT.**

6 (a) [**Consent or judicial process.**] Unless otherwise agreed, a secured party has at
7 the time of or after default the powers described in subsection (b), but such powers may be
8 exercised only pursuant to judicial process or with the debtor's consent. Such consent is effective
9 only if expressed after default by means of a separate dated and signed personal statement in the
10 debtor's handwriting, describing the powers to be exercised by the secured party and expressly
11 acknowledging and waiving the debtor's right to require that such exercise be pursuant to judicial
12 process.

13 (b) [**Possession, rendering equipment unusable and assembly of collateral.**]
14 Under the circumstances of subsection (a) the secured party may:

15 (1) take possession of the collateral;

16 (2) without removal, render equipment unusable and dispose of collateral
17 on a debtor's premises under Title 9-610; and

18 (3) require the debtor to assemble the collateral and make it available to the
19 secured party at a place to be designated by the secured party which is reasonably convenient to
20 both parties.

21 (c) [**No breach of the peace.**] A secured party acting pursuant to the debtor's
22 consent under subsection (a) must proceed without breach of the peace.

1 **TITLE 9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.**

2 (a) [**Disposition after default.**] After default, a secured party may sell, lease,
3 license, or otherwise dispose of any or all of the collateral in its present condition or following any
4 commercially reasonable preparation or processing.

5 (b) [**Commercially reasonable disposition; tribal business day.**] Every aspect
6 of a disposition of collateral, including the method, manner, time, place, and other terms, must be
7 commercially reasonable. If commercially reasonable, a secured party may dispose of collateral
8 by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time
9 and place and on any terms. In order to protect the debtor's right to redeem collateral (Title 9-
10 623), a disposition of collateral shall take place only on a tribal business day.

11 (c) [**Purchase by secured party.**] A secured party may purchase collateral:

12 (1) at a public disposition; or

13 (2) at a private disposition only if the collateral is of a kind that is
14 customarily sold on a recognized market or the subject of widely distributed standard price
15 quotations.

16 (d) [**Warranties on disposition.**] A contract for sale, lease, license, or other
17 disposition includes the warranties relating to title, possession, quiet enjoyment, and the like
18 which by operation of law accompany a voluntary disposition of property of the kind subject to
19 the contract.

20 (e) [**Disclaimer of warranties.**] A secured party may disclaim or modify
21 warranties under subsection (d):

22 (1) in a manner that would be effective to disclaim or modify the warranties

1 in a voluntary disposition of property of the kind subject to the contract of disposition; or
2 (2) by communicating to the purchaser a record evidencing the contract for
3 disposition and including an express disclaimer or modification of the warranties.

4 (f) **[Record sufficient to disclaim warranties.]** A record is sufficient to disclaim
5 warranties under subsection (e) if it indicates “There is no warranty relating to title, possession,
6 quiet enjoyment, or the like in this disposition” or uses words of similar import.

7 **TITLE 9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.**

8 (a) **[“Notification date.”]** In this section, “notification date” means the earlier of
9 the date on which:

10 (1) a secured party sends to the debtor and any secondary obligor a signed
11 notification of disposition by United States Postal Office certified mail; or

12 (2) the debtor and any secondary obligor waive the right to notification.

13 (b) **[Notification of disposition required.]** Except as otherwise provided in
14 subsection (d), a secured party that disposes of collateral under Title 9-610 shall send to the
15 persons specified in subsection (c) a reasonable signed notification of disposition by United States
16 Postal Office certified mail.

17 (c) **[Persons to be notified.]** To comply with subsection (b), the secured party shall
18 send a signed notification of disposition to:

19 (1) the debtor;

20 (2) any secondary obligor; and

21 (3) if the collateral is other than consumer goods:

22 (A) any other person from which the secured party has received,

1 before the notification date, a signed notification of a claim of an interest in the collateral;

2 (B) any other secured party or lien holder that, 14 calendar days
3 before the notification date, held a security interest in or other lien on the collateral perfected by
4 the filing of a financing statement that:

5 (i) identified the collateral;

6 (ii) was indexed under the debtor's name as of that date; and

7 (iii) was filed in the office in which to file a financing
8 statement against the debtor covering the collateral as of that date; and

9 (C) any other secured party that, 14 calendar days before the
10 notification date, held a security interest in the collateral perfected by compliance with other
11 applicable law (Title 9-311).

12 (d) **[Subsection (b) inapplicable: perishable collateral; recognized market.]**

13 Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in
14 value or is of a type customarily sold on a recognized market.

15 (e) **[Compliance with subsection (c)(3)(B).]** A secured party complies with the
16 requirement for notification prescribed by subsection (c)(3)(B) if:

17 (1) not later than 20 calendar days or earlier than 30 calendar days before
18 the notification date, the secured party requests, in a commercially reasonable manner,
19 information concerning financing statements indexed under the debtor's name in the office
20 indicated in subsection (c)(3)(B); and

21 (2) before the notification date, the secured party:

22 (A) did not receive a response to the request for information; or

1 (B) received a response to the request for information and sent a
2 signed notification of disposition by United States Postal Office certified mail to each secured
3 party or other lien holder named in that response whose financing statement covered the collateral.

4 **TITLE 9-612. TIMELINESS OF NOTIFICATION BEFORE DISPOSITION OF**
5 **COLLATERAL.**

6 (a) **[Reasonable time is question of fact.]** Except as otherwise provided in
7 subsection (b), whether a notification is sent within a reasonable time is a question of fact.

8 (b) **[Safe harbors for sufficiency of time.]** Unless a specific time for sending a
9 notification of disposition is established by the court, a notification of disposition is sent within a
10 reasonable time before the disposition when it is sent after default and:

11 (1) in a consumer transaction, 20 calendar days or more before the earliest
12 time of disposition set forth in the notification; or

13 (2) in all other transactions, 10 calendar days or more before the earliest
14 time of disposition set forth in the notification.

15 **TITLE 9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE**
16 **DISPOSITION OF COLLATERAL.** The following rules apply to notification before
17 disposition of collateral:

18 (1) The contents of a notification of disposition are sufficient if the
19 notification:

20 (A) describes the debtor and the secured party;

21 (B) describes the collateral that is the subject of the intended
22 disposition;

1 (C) states the method of intended disposition;
2 (D) states that the debtor is entitled to an accounting of the unpaid
3 indebtedness and states the charge, if any, for an accounting;
4 (E) states the time and place of a public disposition or the time after
5 which any other disposition is to be made;
6 (F) describes any liability for a deficiency by the person receiving
7 the notice; and
8 (G) states a telephone number or mailing address from which
9 additional information concerning redemption, disposition and the obligation secured is available.

10 (2) Whether the contents of a notification that lacks any of the information
11 specified in paragraph (1) are nevertheless sufficient is a question of fact.

12 (3) The contents of a notification providing substantially the information
13 specified in paragraph (1) are sufficient, even if the notification includes:

14 (A) information not specified by that paragraph; or

15 (B) minor errors that are not seriously misleading.

16 (4) A particular phrasing of the notification is not required.

17 **TITLE 9-614. [RESERVED.]**

18 **TITLE 9-615. APPLICATION OF PROCEEDS OF DISPOSITION; LIABILITY**
19 **FOR DEFICIENCY AND RIGHT TO SURPLUS.**

20 (a) [**Application of proceeds.**] A secured party shall apply or pay over for
21 application the cash proceeds of disposition under Title 9-610 in the following order to:

22 (1) the reasonable expenses of retaking, holding, preparing for disposition,

1 processing, and disposing, and, to the extent provided for by agreement and not prohibited by law,
2 reasonable attorney's fees and legal expenses incurred by the secured party;

3 (2) the satisfaction of obligations secured by the security interest under
4 which the disposition is made;

5 (3) the satisfaction of obligations secured by any subordinate security
6 interest in or other subordinate lien on the collateral if:

7 (A) the secured party receives from the holder of the subordinate
8 security interest or other lien a signed demand for proceeds before distribution of the proceeds is
9 completed; and

10 (B) in a case in which a consignor has an interest in the collateral,
11 the subordinate security interest or other lien is senior to the interest of the consignor; and

12 (4) a secured party that is a consignor of the collateral if the secured party
13 receives from the consignor a signed demand for proceeds before distribution of the proceeds is
14 completed.

15 (b) **[Proof of subordinate interest.]** If requested by a secured party, a holder of a
16 subordinate security interest or other lien shall furnish reasonable proof of the interest or lien
17 within a reasonable time. Unless the holder does so, the secured party need not comply with the
18 holder's demand under subsection (a)(3).

19 (c) **[Application of noncash proceeds.]** A secured party need not apply or pay
20 over for application noncash proceeds of disposition under Title 9-610 unless the failure to do so
21 would be commercially unreasonable. A secured party that applies or pays over for application
22 noncash proceeds shall do so in a commercially reasonable manner.

1 (d) **[Surplus or deficiency if obligation secured.]** If the security interest under
2 which a disposition is made secures payment or performance of an obligation, after making the
3 payments and applications required by subsection (a) and permitted by subsection (c):

4 (1) unless subsection (a)(4) requires the secured party to apply or pay over
5 cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus;
6 and

7 (2) the obligor is liable for any deficiency.

8 (e) **[Calculation of surplus or deficiency in disposition to secured party or**
9 **related person.]** Following a disposition to the secured party or a person related thereto, the
10 surplus or deficiency is calculated based on the amount of proceeds that would have been realized
11 in a hypothetical disposition complying with this part to a person other than the secured party or a
12 person related thereto, if the debtor establishes that the amount of proceeds of the actual
13 disposition is significantly below the range of proceeds that would have been brought by the
14 hypothetical disposition. For purposes of this section, a secondary obligor is a person related to
15 the secured party.

16 (f) **[Cash proceeds received by junior secured party.]** A secured party that
17 receives cash proceeds of a disposition in good faith and without knowledge that the receipt
18 violates the rights of the holder of a security interest or other lien that is not subordinate to the
19 security interest under which the disposition is made:

20 (1) takes the cash proceeds free of the security interest or other lien;

21 (2) is not obligated to apply the proceeds of the disposition to the
22 satisfaction of obligations secured by the security interest or other lien; and

1 (3) is not obligated to account to or pay the holder of the security interest or
2 other lien for any surplus.

3 **TITLE 9-616. EXPLANATION OF CALCULATION OF SURPLUS OR**
4 **DEFICIENCY.**

5 (a) **[Explanation of calculation.]** In a consumer transaction, a secured party must
6 provide the debtor or consumer obligor a reasonably detailed explanation in a record of the
7 manner in which any surplus or deficiency was calculated if the debtor or consumer obligor
8 demands such an explanation or, in any event, 10 tribal business days before commencing an
9 action for a deficiency.

10 (b) **[Charges for responses.]** Each debtor or consumer obligor is entitled without
11 charge to one response to a request under this section during any six-month period in which the
12 secured party did not send to the debtor or consumer obligor an explanation pursuant to
13 subsection (b)(1). The secured party may require payment of a charge not exceeding \$25 for each
14 additional response.

15 **TITLE 9-617. RIGHTS OF TRANSFEREE OF COLLATERAL.**

16 (a) **[Effects of disposition.]** A secured party's disposition of collateral after
17 default:

18 (1) transfers to a transferee for value all of the debtor's rights in the
19 collateral;

20 (2) discharges the security interest under which the disposition is made; and

21 (3) discharges any subordinate security interest or other subordinate lien.

22 (b) **[Rights of good-faith transferee.]** A transferee that acts in good faith takes

1 free of the rights and interests described in subsection (a), even if the secured party fails to comply
2 with this ordinance or the requirements of any judicial proceeding.

3 (c) **[Rights of other transferee.]** If a transferee does not take free of the rights and
4 interests described in subsection (a), the transferee takes the collateral subject to:

- 5 (1) the debtor's rights in the collateral;
- 6 (2) the security interest under which the disposition is made; and
- 7 (3) any other security interest or other lien.

8 **SECTION 9-618. RIGHTS AND DUTIES OF CERTAIN SECONDARY**
9 **OBLIGORS.**

10 (a) **[Rights and duties of secondary obligor.]** A secondary obligor acquires the
11 rights and becomes obligated to perform the duties of the secured party after the secondary
12 obligor:

- 13 (1) receives an assignment of a secured obligation from the secured party;
- 14 (2) receives a transfer of collateral from the secured party and agrees to
15 accept the rights and assume the duties of the secured party; or
- 16 (3) is subrogated to the rights of a secured party with respect to collateral.

17 (b) **[Effect of assignment, transfer, or subrogation.]** An assignment, transfer, or
18 subrogation described in subsection (a):

- 19 (1) is not a disposition of collateral under Title 9-610; and
- 20 (2) relieves the secured party of further duties under this ordinance.

21 **TITLE 9-619. TRANSFER OF RECORD OR LEGAL TITLE.**

22 (a) **[“Transfer statement.”]** In this section, “transfer statement” means a record

1 authenticated by a secured party stating:

2 (1) that the debtor has defaulted in connection with an obligation secured
3 by specified collateral;

4 (2) that the secured party has exercised its post-default remedies with
5 respect to the collateral;

6 (3) that, by reason of the exercise, a transferee has acquired the rights of the
7 debtor in the collateral; and

8 (4) the name and mailing address of the secured party, debtor, and
9 transferee.

10 (b) **[Effect of transfer statement.]** A transfer statement entitles the transferee to
11 the transfer of record of all rights of the debtor in the collateral specified in the statement in any
12 official filing, recording, registration, or certificate-of-title system covering the collateral. If a
13 transfer statement is presented with the applicable fee and request form to the official or office
14 responsible for maintaining the system, the official or office shall:

15 (1) accept the transfer statement;

16 (2) promptly amend its records to reflect the transfer; and

17 (3) if applicable, issue a new appropriate certificate of title in the name of
18 the transferee.

19 (c) **[Transfer not a disposition; no relief of secured party's duties.]** A transfer
20 of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not
21 of itself a disposition of collateral under this ordinance and does not of itself relieve the secured
22 party of its duties under this ordinance.

1 **TITLE 9-620. ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL**
2 **SATISFACTION OF OBLIGATION; NOTIFICATION OF PROPOSAL; EFFECT OF**
3 **ACCEPTANCE; COMPULSORY DISPOSITION OF COLLATERAL.**

4 (a) **[Proposal to accept collateral in full or partial satisfaction of obligation.]**

5 Except as provided in subsection (e), a secured party may, after default, propose to retain the
6 collateral in full satisfaction of the obligation it secures or, in a transaction other than a consumer
7 transaction, in partial satisfaction of such obligation.

8 (b) **[Notification of proposal to accept collateral.]** The secured party shall send
9 notice of such proposal to:

10 (1) the debtor;

11 (2) any person from whom the secured party has received, before the debtor
12 consented to the acceptance, a signed notification of a claim of an interest in the collateral;

13 (3) any person that, 14 calendar days before the debtor consented to the
14 acceptance, held a security interest in or other lien on the collateral perfected by means of a
15 financing statement or compliance with other law (Title 9-311(a)) that makes such interest
16 reasonably discoverable; and

17 (4) if the proposal is for partial satisfaction of the obligation, any secondary
18 obligor.

19 (c) **[Conditions to acceptance.]** The proposal is not effective unless it is covered
20 by subsection (a) and:

21 (1) the debtor consents to the acceptance in a record signed after default;

22 (2) no other person specified in subsection (b), and no other person holding

1 an interest in the collateral subject to the secured party's interest, objects to the acceptance within
2 14 tribal business days after notification was sent;

3 (3) if the collateral is consumer goods, the collateral is not in the possession
4 of the debtor when the debtor consents to the acceptance

5 (d) **[Effect of acceptance.]** A secured party's acceptance of collateral pursuant
6 to this section

7 (1) discharges the obligation to the extent consented to by the debtor;

8 (2) transfers to the secured party all of the debtor's rights in the collateral;

9 (3) discharges the security interest that is the subject of the debtor's
10 consent, and any security interest or other lien or interest that is subordinate thereto, even if the
11 secured party accepting the collateral fails to comply with this article.

12 (e) **[Mandatory disposition of consumer goods.]** A secured party that has taken
13 possession of collateral shall dispose of the collateral pursuant to Titles 9-610 through 9-616 if:

14 (1) 60 percent of the cash price has been paid in the case of a purchase-
15 money security interest in consumer goods; or

16 (2) 60 percent of the principal amount of the obligation secured has been
17 paid in the case of a non-purchase-money security interest in consumer goods.

18 Such disposition shall be made within 90 calendar days after taking possession, or within any
19 longer period to which the debtor and all secondary obligors have agreed in an agreement to that
20 effect entered into and signed after default.

21 **TITLE 9-621. [RESERVED.]**

22 **TITLE 9-622. [RESERVED.]**

1 **TITLE 9-623. RIGHT TO REDEEM COLLATERAL.**

2 (a) **[Persons that may redeem.]** A debtor, any secondary obligor, or any other
3 secured party or lien holder may redeem collateral.

4 (b) **[Requirements for redemption.]** To redeem collateral, a person shall tender:

5 (1) fulfillment of all obligations secured by the collateral; and

6 (2) the reasonable expenses and attorney's fees described in Title 9-
7 615(a)(1), dealing with application of proceeds of disposition.

8 (c) **[When redemption may occur.]** A redemption may occur at any time before a
9 secured party:

10 (1) has collected collateral under Title 9-607;

11 (2) has disposed of collateral or entered into a contract for its disposition
12 under Title 9-610; or

13 (3) has accepted collateral in full or partial satisfaction of the obligation it
14 secures under Title 9-620.

15 **TITLE 9-624. WAIVER.**

16 (a) **[Waiver of disposition notification.]** A debtor or secondary obligor may waive
17 the right to notification of disposition of collateral under Title 9-611 only by an agreement to that
18 effect entered into and signed after default.

19 (b) **[Waiver of mandatory disposition.]** A debtor may waive the right to require
20 disposition of collateral under Title 9-620(e), which deals with mandatory disposition of
21 consumer goods, only by an agreement to that effect entered into and signed after default.

22 (c) **[Waiver of redemption right.]** In a transaction other than a consumer

1 transaction, a debtor or secondary obligor may waive the right to redeem collateral under Title 9-
2 623 only by an agreement to that effect entered into and signed after default. In a consumer
3 transaction, a debtor or secondary obligor may not waive such right.

4

5 **SUBCHAPTER 2. NONCOMPLIANCE WITH ORDINANCE.**

6 **TITLE 9-625. REMEDIES FOR SECURED PARTY'S FAILURE TO COMPLY**
7 **WITH ORDINANCE.**

8 (a) **[Judicial orders concerning noncompliance.]** If it is established that a secured
9 party is not proceeding in accordance with this ordinance, a court may order or restrain collection,
10 enforcement, or disposition of collateral on appropriate terms and conditions.

11 (b) **[Damages for noncompliance.]** Subject to subsections (c), (d), and (f), a
12 person is liable for damages in the amount of any loss caused by a failure to comply with this
13 ordinance. Loss caused by a failure to comply may include loss resulting from the debtor's
14 inability to obtain, or increased costs of, alternative financing.

15 (c) **[Persons entitled to recover damages; statutory damages where collateral**
16 **is consumer goods.]** Except as otherwise provided in Title 9-628, which deals with the non-
17 liability and limitations on liability of a secured party and the liability of a secondary obligor:

18 (1) a person that, at the time of the failure, was a debtor, was an obligor, or
19 held a security interest in or other lien on the collateral may recover damages under subsection (b)
20 for its loss; and

21 (2) if the collateral is consumer goods, a person that was a debtor or a
22 secondary obligor at the time a secured party failed to comply with this part may recover for that

1 failure in any event an amount not less than the credit service charge plus 10 percent of the
2 principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

3 (d) **[Recovery when deficiency eliminated or reduced.]** A debtor whose
4 deficiency is eliminated under Title 9-626, which deals with actions in which a deficiency or
5 surplus is in issue, may recover damages for the loss of any surplus.

6 (e) **[Statutory damages: noncompliance with specified provisions.]** In addition
7 to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named
8 as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:

9 (1) fails to comply with the provisions of this ordinance dealing with
10 additional duties of a secured party having control of an investment account (Title 9-205(b));

11 (2) fails to comply with the provisions of this ordinance dealing with duties
12 of a secured party if an account debtor has been notified of assignment (Title 9-205(c);

13 (3) files a record that the person is not entitled to file under Title 9-502(g);

14 (4) fails to file, cause to be filed or send a termination statement as required
15 by Title 9-502(f);

16 (5) fails to comply with the provisions of this ordinance dealing with
17 explanations of calculations of surplus or deficiency (Title 9-616(a)), and whose failure is part of
18 a pattern, or consistent with a practice, of noncompliance.

19 (f) **[Statutory damages: noncompliance with the provisions of this ordinance**
20 **dealing with a request for an accounting.]** A debtor or consumer obligor may recover damages
21 under subsection (b) and, in addition, \$500 in each case from a person that, without reasonable
22 cause, fails to comply with a request for an accounting (Title 9-207). A recipient of a request

1 under Title 9-207 which never claimed an interest in the collateral or obligations that are the
2 subject of a request under that section has a reasonable excuse for failure to comply with the
3 request within the meaning of this subsection.

4 (g) **[Limitation of security interest: noncompliance with ordinance.]** If a
5 secured party fails to comply with a request regarding a list of collateral or a statement of account
6 under Title 9-207, the secured party may claim a security interest only as shown in the list or
7 statement included in the request as against a person that is reasonably misled by the failure.

8 **TITLE 9-626. ACTION IN WHICH DEFICIENCY OR SURPLUS IS IN ISSUE.**

9 (a) **[Applicable rules if amount of deficiency or surplus in issue.]** In an action
10 arising from a transaction, other than a consumer transaction, in which the amount of a deficiency
11 or surplus is in issue, the following rules apply:

12 (1) A secured party need not prove compliance with the provisions of this
13 chapter relating to collection, enforcement, disposition, or acceptance unless the debtor or a
14 secondary obligor places the secured party's compliance in issue.

15 (2) If the secured party's compliance is placed in issue, the secured party
16 has the burden of establishing that the collection, enforcement, disposition, or acceptance was
17 conducted in accordance with this chapter.

18 (3) Except as otherwise provided in the provisions of this ordinance dealing
19 with non liability and limitations on liability of a secured party or secondary obligor (Title 9-628),
20 if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was
21 conducted in accordance with the provisions of this chapter relating to collection, enforcement,
22 disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is

1 subject to setoff for an amount as stated in the provision of this ordinance dealing with damages
2 for noncompliance (Title 9-625(b)), which may be measured by the amount recovered for
3 conversion of collateral.

4 (4) For purposes of paragraph (3), the liability of the debtor or a secondary
5 obligor is calculated on the presumption that the proceeds of disposition equal the sum of the
6 secured obligation, expenses, and allowable attorney's fees, but the secured party may rebut the
7 presumption.

8 (b) [**Consumer transactions; no inference.**] The limitation of the rules in
9 subsection (a) to transactions other than consumer transactions is intended to leave to the court the
10 determination of the proper rules in consumer transactions. The court may not infer from that
11 limitation the nature of the proper rule in consumer transactions and may continue to apply
12 established approaches.

13 **TITLE 9-627. DETERMINATION OF WHETHER CONDUCT WAS**
14 **COMMERCIALLY REASONABLE.**

15 (a) [**Greater amount obtainable under other circumstances; no preclusion of**
16 **commercial reasonableness.**] The fact that a greater amount could have been obtained by a
17 collection, enforcement, disposition, or acceptance at a different time or in a different method
18 from that selected by the secured party is not of itself sufficient to preclude the secured party from
19 establishing that the collection, enforcement, disposition, or acceptance was made in a
20 commercially reasonable manner.

21 (b) [**Dispositions that are commercially reasonable.**] A disposition of collateral
22 is made in a commercially reasonable manner if the disposition is made:

- 1 (1) in the usual manner on any recognized market;
- 2 (2) at the price current in any recognized market at the time of the
- 3 disposition; or
- 4 (3) otherwise in conformity with reasonable commercial practices among
- 5 dealers in the type of property that was the subject of the disposition.

6 (c) **[Approval by court or on behalf of creditors.]** A collection, enforcement,
7 disposition, or acceptance is commercially reasonable if it has been approved:

- 8 (1) in a judicial proceeding;
- 9 (2) by a bona fide creditors' committee;
- 10 (3) by a representative of creditors; or
- 11 (4) by an assignee for the benefit of creditors.

12 Such approval need not be obtained, and lack of approval does not mean that the collection,
13 enforcement, disposition, or acceptance is not commercially reasonable.

14 **TITLE 9-628. NONLIABILITY AND LIMITATION ON LIABILITY OF**
15 **SECURED PARTY; LIABILITY OF SECONDARY OBLIGOR.**

16 (a) **[Limitation of liability of secured party for noncompliance with**
17 **ordinance.]** Unless a secured party knows that a person is a debtor or obligor, knows the identity
18 of the person, and knows how to communicate with the person:

- 19 (1) the secured party is not liable to the person, or to a secured party or lien
- 20 holder that has filed a financing statement against the person, for failure to comply with this
- 21 ordinance; and
- 22 (2) the secured party's failure to comply with this ordinance does not affect

1 the liability of the person for a deficiency.

2 (b) **[Limitation of liability based on status as secured party.]** A secured party is
3 not liable because of its status as secured party:

4 (1) to a person that is a debtor or obligor, unless the secured party knows:

5 (A) that the person is a debtor or obligor;

6 (B) the identity of the person; and

7 (C) how to communicate with the person; or

8 (2) to a secured party or lien holder that has filed a financing statement
9 against a person, unless the secured party knows:

10 (A) that the person is a debtor; and

11 (B) the identity of the person.

12 (c) **[Limitation of liability if reasonable belief that transaction not a consumer
13 transaction or collateral is not consumer goods.]** A secured party is not liable to any person,

14 and a person's liability for a deficiency is not affected, because of any act or omission arising out
15 of the secured party's reasonable belief that a transaction is not a consumer transaction or that

16 goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

17 (1) a debtor's representation concerning the purpose for which collateral
18 was to be used, acquired, or held; or

19 (2) an obligor's representation concerning the purpose for which a secured
20 obligation was incurred.

21 (d) **[Limitation of liability for statutory damages.]** A secured party is not liable
22 to any person under Title 9-625(c)(2), which deals with statutory damages where the collateral is

1 consumer goods, for its failure to comply with Title 9-616, which deals with explanations of
2 calculations of surplus or deficiency.

3 (e) [**Limitation of multiple liability for statutory damages.**] A secured party is
4 not liable under Title 9-625(c)(2), which deals with statutory damages where the collateral is
5 consumer goods, more than once with respect to any one secured obligation.

6 **TITLE 9-629. ATTORNEY'S FEES IN CERTAIN TRANSACTIONS.** If the secured
7 party's compliance with this ordinance is placed in issue in an action, the following rules apply:

8 (1) If the secured party would have been entitled by agreement to attorney's
9 fees as the prevailing party, and the original principal amount of the indebtedness secured does not
10 exceed [\$25,000], a debtor or obligor prevailing on the issue is entitled to the costs of the action
11 and reasonable attorney's fees.

12 (2) In other cases, the court may award to a consumer debtor or consumer
13 obligor prevailing on that issue the costs of the action and reasonable attorney's fees.

14 (3) In determining the attorney's fees, the amount of the recovery on behalf
15 of the prevailing debtor or obligor is not a controlling factor.

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CHAPTER 7

MISCELLANEOUS PROVISIONS

TITLE 9-701. EFFECTIVE DATE. This ordinance takes effect on the date of the
Leech Lake Band of Ojibwe Reservation Business Committee Adoption Resolution.

TITLE 9-702. SEVERABILITY. If any provision of this ordinance or its application to
any person or circumstance is held invalid, the invalidity does not affect other provisions or
applications of this ordinance which can be given effect without the invalid provision or
application, and to this end the provisions of this ordinance are severable.