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CHAPTER ONE
SHORT TITLE APPLICABILITY AND DEFINITION

Section 101. Short Title

This Title shall be known and may be cited as Kickapoo Secured Transactions Code.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 102. Policy and Scope of Title

(a) Except as otherwise provided herein this Title applies so far as concerns any personal property and fixtures within the jurisdiction of the Kickapoo Nation to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including all goods, documents, and instruments.

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

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 103. Perfection of Security Interests in Multiple Jurisdiction Transactions

(a) Ordinary Goods, documents, and instruments.

(1) This subsection applies to documents and instruments and goods other than those covered by a certificate of title described in subsection (b) of this Section, mobile goods described in subsection (c) of this Section, and minerals described in subsection (e) of this Section.

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

(3) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understood at the time that the security interest attached that the goods will be kept in a second jurisdiction, then the law of the second jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from time it attaches until thirty (30) days after the debtor receives possession of the goods and thereafter if the goods are taken to the second jurisdiction before the end of the thirty-day period.

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

(i) If the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four (4) months after the collateral is brought into this jurisdiction, whichever period first expire, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal, or

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

(b) Certificate of Title.

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

(2) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law, including the conflict of laws rules, of the jurisdiction issuing the certificate until four (4) months after the goods are registered in another jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this Section.

(3) A security interest in a motor vehicle as to which a certificate of title may be properly issued by the Tax Commission shall be perfected only when a lien entry form, which shall be upon a form prescribed by the Kickapoo Tax Commission, and the existing certificate of title, if any, or application for a certificate of title and manufacturer's certificate of origin, containing the name and address of the secured party and the date of the security agreement and the required fee are delivered to the Tax Commission. The filing provisions of Section 302 shall not be applicable to perfection of

security interests in vehicles as to which a certificate of title may be properly issued by the Tax Commission, except as to vehicles held by a dealer for sale or lease.

- (i) whenever a person creates a security interest in a vehicle, such person shall surrender to the secured party the certificate of title or the signed application for a new certificate of title, on the form prescribed by the Commission, and the manufacturer's certificate of origin. The secured party shall deliver the lien entry form and the required lien filing fee within the (10) days as provided hereafter with certificate of title or the application for certificate of title and the manufacturer's certificate of origin to the Tax Commission. If the lien entry form, the required filing fee and the certificate of title or application for certificate of title and the manufacturer's certificate of origin are delivered to the Tax Commission within Ten days (10) after the date of the lien entry form, perfection of the security interest shall begin from the date of the execution of the lien entry form, but, otherwise, perfection of the security interest shall begin from the date of the delivery to the Tax Commission.
 - (ii) upon the receipt of the lien entry form and the required fees with either the certificate of title or an application for certificate of title and manufacturer's certificate of origin, the Tax Commission shall, by placement of a clearly distinguishing mark, record the date and number, shown in a conspicuous place, on each of these instruments.
 - (iii) the certificate of title or the application for certificate of title and manufacturer's certificate of origin with the record of the date of receipt clearly marked thereon shall be returned to the debtor.
 - (iv) any person creating a security interest in a vehicle that has been previously registered in the debtor's name and on which all taxes due the Kickapoo Tax Commission have been paid shall surrender the certificate of title to the secured party. The secured party shall have the duty to record the security interest as provided in this Section and shall, at the same time, obtain a new duplicate certificate of title which shall show the secured interest on the face of such certificate of title.
 - (v) the lien entry form with the date and assigned number thereof clearly marked thereon shall be returned to the secured party.
 - (vi) the Tax Commission shall have the duty to record the lien upon the face of the certificate of title issued at the time of registering and paying all fees and taxes due on such vehicle.
- (4) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this jurisdiction and thereafter covered by a

certificate of title issued by this jurisdiction is subject to the rules stated in paragraph 94) of subsection (a) of this Section.

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

(c) Mobile Goods.

(1) This subsection applies to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others and are not covered by a certificate of title described in subsection (b) of this Section.

(2) The law, including the conflict of law rules, of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(3) If, however, the debtor is located in a jurisdiction which is not a part of the United States and which does not provide for perfection of the security interest by filing or recording in that jurisdiction the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. As used in this paragraph, "united States" included its territories and possessions and the Commonwealth of Puerto Rico.

(4) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business; otherwise, at his residence.

(5) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four (4) months after a change of the debtor's location to another jurisdiction or until perfection would have ceased by the law of the first jurisdiction whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(d) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like, including oil and gas, before extraction and which attached thereto as extracted, are governed by the law, including the conflict of law rules, of the jurisdiction wherein the wellhead or minehead is located.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 104. Transactions Excluded From Title

This Title does not apply:

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

(2) To a landlord's lien; or

(3) To a lien given by statute or other rule of law for services or materials, except as provided in Section 310, on priority of such liens; or

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

(5) To a transfer by a government or governmental subdivision or agency; or

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

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

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

(9) To any right of setoff; or

(10) Except to the extent that provision is made for fixtures in Section 313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

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

(12) To a transfer of an interest in any deposit account (Subsection (a) of Section 105), except as provided with respect to proceeds (Section 306) and priorities in process (Section 312).

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 105. Definitions and Index of Definitions

(a) In this Title unless the context otherwise requires:

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

(2) “Collateral” means the property subject to a security interest and includes chattel paper which has been sold;

(3) “Commission” means Kickapoo Tax Commission;

(4) “Consignment” means the deliverer of the goods reserves title until payment or resale;

(5) “Debtor” means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral. Where the debtor and the owner of the collateral are not the same person, the term “debtor” means the owner of the collateral in any provision of the Title dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

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

(7) “Goods” includes all things which are movable at the time the security interest attaches or which are fixtures, but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction;

(8) “Jurisdiction” means the territorial jurisdiction of the Kickapoo Nation to wit: as defined by the treaty of May 18, 1854.

(9) “Lien” means a charge imposed upon specific property, by which it is made security for the payment or discharge of debt or duty;

(10) “Mortgage” means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(11) “Negotiable instrument” is a writing signed by the maker or drawer which contains an unconditional promise or order to pay a sum certain in money, and is payable on demand or at a definite time to order or to bearer.

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

(13) An action is taken “reasonably” when it is taken at or within the time agreed or if no time is agree, at or within a reasonable time;

(14) “Security Agreement” means an agreement which creates or provides for a security interest;

(15) “Secured party” means a lender, seller or other person in whose favor there is a security interest;

(16) “Tribe” means the Kickapoo Nation

(17) “Tribal Court Clerk” means the Court Clerk for the Tribal Court of the Kickapoo Nation.

(b) Other definition applying to this Title and the Section in which they appear are:

“Attach”	Section 203
“Construction Mortgage”	Section 313
“Consumer Goods”	Section 109
“Equipment”	Section 109
“Farm Products”	Section 109
“Fixture”	Section 313

“Fixture Filing”	Section 313
“Inventory”	Section 109
“Lien Creditor”	Section 301
“Proceeds”	Section 306
“Purchase Money Security Interest”	Section 107

(History: PUBLIC LAW # 90-14, February 6, 1990)

Section 106. Reserved

Section 107. Definitions: “Purchase Money Security Interest”

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

- (a) Taken or retained by the seller of the collateral to secure all or part of its price; or
- (b) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 108. Reserved

Section 109. Classification of Goods; “Consumer Goods”; “Equipment”; “Farm Products”; “Inventory”

Goods are:

- (a) “Consumer” if they are used or brought for use primarily for personal, family or household purposes;
- (b) “Equipment” if they are used or brought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;
- (c) “Farm Products” if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 110. Sufficiency of Description

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 111. Reserved

Section 112. Where Collateral Is Not Owned By Debtor

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

(a) To receive statements under Section 208;

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

(c) To redeem the collateral under Section 506;

(d) To obtain injunctive or other relief under Section 507(a); and

(e) To recover losses caused to him under Section 208(b).

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 113. Title Severable

The provisions of this Title are declared to be severable.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 114. Reserved

CHAPTER TWO

VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

Section 201. General Validity of Security Agreement

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 202. Title To Collateral Immaterial

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 203. Attachment and Enforceability of Security Interest; Proceeds, Formal Requisites

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

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

(2) Value has been given; and

(3) The debtor has rights in the collateral.

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

(c) Unless otherwise agreed, a security agreement gives the secured party the rights to proceeds provided by Section 306.

(d) A transaction, although subject to this Title, may also be subject to other statutes.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 204. After-Acquired Property; Future Advances

(a) Except as provided in subsection (b) of this Section a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(b) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (Section 314) when given as additional security unless the debtor acquires rights in them within ten (10) days after the secured party gives value.

(c) Obligations covered by a security agreement may include future advances whether or not the advances or value are given pursuant to commitment (subsection (a)(12) of Section 105).

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 205. Use or Disposition of Collateral Without Accounting Permissible

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 206. Reserved

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

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

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

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

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

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

(3) The secured party must keep the collateral identifiable but fungible collateral may be commingled;

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

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

(d) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 208. Request for Statement of Account or List of Collateral

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

(b) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval if the secured party claims a security interest in all of a particular type of collateral. If the secured party without reasonable excuse fails to comply he is liable for and loss caused to the debtor thereby, and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an

interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this Section until a request is received by him.

(c) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding Ten Dollars (\$10.00) for each additional statement furnished.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 209. Reserved

CHAPTER THREE

RIGHTS OF THIRD PARTIES;
PERFECTED AND UNPERFECTED SECURITY INTERESTS;
RULES OF PRIORITY**Section 301. Persons Who Take Priority Over Unperfected Security Interests;
“Lien Creditor”**

(a) Except as otherwise provided in subsection (b), an unperfected security interest is subordinate to the rights of:

(1) Persons entitled to priority under Section 312;

(2) A person who becomes a lien creditor before the security interests is perfected;

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

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

(b) If the secured party files with respect to a purchase money security interest before or within ten (10) days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

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

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 302. When Filing is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Title Do Not Apply

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

(1) A security interest in collateral in possession of the secured party under Section 305;

(2) Security interest temporarily perfected in instruments or documents without delivery under Section 304 or in proceeds for a ten day period under Section 306;

(3) A Security interest in a motor vehicle under Section 103 (b)(3).

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

(c) The filing provisions of this Title do not apply to a security interest in property subject to a statute.

(1) Of the United States which provides for a national registration or filing of all security interests in such property; or

(2) Of this jurisdiction which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

(d) A security interest in property covered by a statute described in subsection (c) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 303. When Security Interest is Perfected; Continuity of Perfection

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

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

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

(a) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments, other than instruments which constitute part of chattel paper, can be perfected only by the secured party's taking possession,, except as provided in subsection (d) and (e) of this Section and substances (d) and (e) of this Section and Subsections (b) and (c) of Section 306 on proceeds.

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

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

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

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

(1) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (c) of Section 312; or

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

(f) After the 21 day period in subsections (d) and (e) perfection depends upon compliance with applicable provisions of this Title.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 305. When Possession by Secured Party Perfects Security Interest Without Filing

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 306. "Proceeds"; Secured Party's Rights on Disposition of Collateral

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

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

(c) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten (10) days after receipt of the proceeds by the debtor unless:

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

(2) A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected before the expiration of the ten (10) day period.

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

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

(1) Identifiable non-cash proceeds and separate deposit accounts containing only proceeds;

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

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

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

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

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

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

(2) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs(1) through (3) of this subsection.

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

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 307. Protection of Buyers of Goods

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

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 308. Reserved

Section 309. Protection of Purchasers of Instrument and Documents

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 310. Priority of Certain liens Arising by Operation of Law

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 311. Alienability of Debtor's Right; Judicial Process

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 312. Priorities Among Conflicting Security Interest in the Same Collateral

(a) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three (3) months before crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six (6) months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

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

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

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

(3) The holder of the conflicting security interest receives the notification within five (5) years before the debtor receives possession of the inventory; and

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

(c) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten (10) days thereafter.

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

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

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

(e) For the purpose of subsection (d) of this section, a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(f) If future advances are made while a security interest is perfected by filing or the taking or possession, the security interest has the same priority for the purposes of subsection (d) of this Section with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 313. Priority of Security Interests in Fixtures

(a) In this Section and in the provisions of Chapter Four of this Title referring to fixture filing, unless the context otherwise requires:

(1) Goods are “fixtures” when they become so related to particular real estate that an interest in them arises under real estate law.

(2) A “fixture filing” is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of subsection (e) of Section 402.

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

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

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

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

(1) The security interest is a purchase money security interest; the interest of the encumbrancer or owner arises before the goods become fixtures; the security interest is perfected by a fixture filing before the goods become fixtures or within ten (10) days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

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

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

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

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

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

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

(f) Notwithstanding paragraph (1) of subsection (d) of this Section but otherwise subject to subsections (d) and (e) of this Section, a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures, if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

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

(h) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Chapter Five, remove his collateral from the real estate, but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed, for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 314. Accessions

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

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

(c) The security interest described in subsections (a) and (b) do not take priority over

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

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

(3) A creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this Section;

(d) When under subsections (a) or (b) and (c) a secured party has an interest in accessions which has priority over the claims of all persons who have interest in the whole, he may on default subject to the provisions of Chapter 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 315. Priority When Goods Are Commingled or Processed

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

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

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

In a case to which paragraph (2) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 314.

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 316. Priority Subject To Subordination

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

CHAPTER FOUR

FILING

Section 401. Place of Filing; Erroneous

- (a) The proper place to file in order to perfect a security interest is as follows:
- (1) When the collateral is equipment used in farming operations, livestock, farm products, or consumer goods, then in the office of the Kickapoo Tribal Court Clerk, or if the debtor is not a resident of this jurisdiction, then in the office of the county clerk in the county where the goods are kept, and in addition, when the collateral is crops, in the office of the county clerk in the county where the land on which the crops are growing or to be growing is located;
 - (2) When the collateral is timber to be cut or is mineral or the like, including oil and gas, or when the financing statement is filed as a fixture filing (Section 313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;
 - (3) In all other cases, in the office of the Kickapoo Tribal Court Clerk.
- (b) A filing which is made in good faith in an improper place or not in all of the places required by this Section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Title and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.
- (c) A filing which is made in the proper office continues effective for four (4) months after a change to another jurisdiction of the debtor's residence or place of business or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new jurisdiction. A change in the use of the collateral does not impair the effectiveness of the original filing.
- (d) The rules stated in Section 103 of this Title determines whether filing is necessary in this jurisdiction.
- (e) For the purpose of this Section, the residence of an organization is its place of business if it has one, or its chief executive office if it has more than one place of business.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 401A. Statements Pertaining To Real Estate; Legal Description; Recording and Indexing Fees

(a) No filing of financial statement, continuation statement, termination statement, or assignment or release of a financing statement under the provisions of subsection (a)(2) of Section 401 of this Title shall constitute record notice of the contents thereof against any subsequent purchaser or encumbrancer of real estate or any interest therein unless the same contains a legal description of the real estate adequate for the purpose of indexing in the tract indexes of the Kickapoo Court Clerk.

(b) It shall be the duty of the Court Clerk to cause all such financing statements, continuation statements, termination statements, or assignments or releases of financing statement containing an adequate legal description to be recorded and indexed in the records of said office in the same place and manner as a mortgage on real estate or assignments or releases thereof.

(c) The fees for filing, recording and indexing a financing statement, continuation statement, termination statement, assignment or release filed under the provisions of subsection (a)(2) of Section 401 of this Title, or procuring certified copies thereof, shall be \$5.00.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 402. Formal Requisites of Financing Statements; Amendments; Mortgage as Financing Statement

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

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

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

(2) Proceeds under Section 306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(3) Collateral as to which the filing has lapsed; or

(4) Collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (g) of this Section).

(c) A form substantially as follows is sufficient to comply with subsection (a);

Name of Debtor (Or Assignor): _____

Address: _____

Name of Secured Party (or assignee): _____

Address: _____

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

(Describe): _____

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate): _____

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

(Describe Real Estate): _____

and this financing statement is to be filed against the tract index in the real estate records.

(if the debtor does not have an interest of record) The name of a record owner is: _____

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

Signature of Debtor (or Assignor): _____

Signature of Secured Party (or Assignee): _____

(Use whichever is applicable)

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

(e) When a writing constituting a mortgage upon lands, or interests in lands such as oil and gas leasehold estates, also covers minerals to be severed from such lands, equipment used in mining, storing, treating and marketing such minerals and the accounts and proceeds to be derived from disposition of such minerals contains a legal description of such lands sufficient to comply with Tribal standards, has been validly executed, acknowledged and recorded in the office of the Tribal Court Clerk, such mortgage shall constitute a financing statement covering such collateral and no other filing or recording shall be required to perfect the security interests in such collateral covered by the mortgage. The mortgage shall remain effective to perfect such security interests until it shall be released or satisfied of record or its effectiveness as to the land or interest in lands described therein shall be otherwise effectively terminated.

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

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

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

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

(4) The mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(g) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name, or in the case of an organization, its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 403. What Constitutes Filing; Term of Filing; Effect; Continuation Statement; Duties of Filing Officer; Fees

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

(b) Except as provided in subsection (f) of this Section a filed financing statement is effective for a period of five (5) years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty (60) days or until expiration of the five-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(c) A continuation statement may be filed by the secured party within (6) six months prior to the expiration of the five year period specified in subsection (b) of this Section. Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (b) of Section 405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five (5) years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (b) of this Section unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provided otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one (1) year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five (5) years past, those which have been continued by a continuation statement or which are still effective under subsection (f) of this Section shall be retained.

(d) Except as provided in subsection (g) of this Section a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(e) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be Five Dollars (\$5.00), which shall include the cost of filing a termination statement and a statement of release.

(f) A real estate mortgage which is effective as a fixture filing under subsection (f) of Section 402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(g) When a writing constituting a mortgage upon lands, or interest in lands such as oil and gas leasehold estates, also covers minerals to be severed from such lands, equipment used in mining, storing, treating and marketing such minerals and the accounts and proceeds to be derived from disposition of such minerals contains a legal description of such lands that has been validly executed, acknowledged and recorded in the office of the Tribal Court Clerk, such mortgage shall constitute a financing statement covering such collateral and no other filing or recording shall be required to perfect the security interest in such collateral covered by the mortgage. The mortgage shall remain effective to perfect such security interests until it shall be released or satisfied of record or its effectiveness as to the lands or interest in lands described therein shall be otherwise effectively terminated.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 404. Termination Statement

(a) If a financing statement covering consumer goods has been filed on or after Feb. 6, 1990 then within thirty (30) days without demand or within ten (10) days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with the Tribal Court Clerk or other filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with subsection (b) of Section 405, including payment of the required fee. If the affected secured party fails to file or send such a termination statement as required by this subsection, he shall be liable to the debtor for One Hundred Dollars (\$100.00) and in addition for any loss caused to the debtor by such failure.

(b) On presentation to the filing officer of such a termination statement he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one (1) year after receipt of the termination statement.

(c) There shall be no fee, or any other associated costs, for filing and indexing a termination statement, or for sending or delivering a financing statement, or termination statement.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 405. Assignment of Security Interest; Fees; Duty of Filing Officer

(a) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement, the filing officer shall mark the same as provided in Section 403(d). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be Five Dollars (\$5.00).

(b) A secured party may assign of record all or a part of his rights under a financing statement by the filing with the Tribal Court Clerk of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing office shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement; or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like, including oil and gas, he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this Tribe provides for indexing the assignment of a mortgage under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be five dollars (\$5.00).

Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (f) of Section 402) may be made only by an assignment of the mortgage in the manner provided by the law of this Tribe other than this Title.

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 406. Release of Collateral; Duties of Filing Officer; Fees

(a) A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record and complying with subsection (b) of Section 405, including payment of the required fee. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. There shall be no fee, or other associated cost, for filing, noting, sending or delivering such a statement of release.

(b) A party with:

(1) A security interest in a vehicle as to which a certificate of title may be or has been properly issued by the Tax Commission shall, within fifteen (15) business days after the satisfaction of such security interest, furnish directly or by mail a release of a security interest to the Tax Commission and mail a copy thereof to the last-known address of the debtor. If the secured party fails to furnish such release as herein required, the secured party shall be liable to the debtor for a penalty of One Hundred Dollars (\$100.00) and, in addition, any loss caused to the debtor by such failure.

(2) Upon release of a security interest the owner may obtain a new duplicate certificate of title omitting reference to the security interest, by submitting to the Tax Commission:

(i) a release signed by the secured party, an application for new certificate of title and the proper fees, or

(ii) an affidavit supported by such documentation as the Commission may require, by the owner on a form prescribed by the Commission stating that the security interest has been satisfied and stating the reasons why a release cannot be obtained, an application for a new certificate of title and the proper fees, or

Upon receiving such affidavit that the security interest has been satisfied, the Commission shall issue a new certificate of title eliminating the satisfied security interest and the name and address of the secured parties who have been paid and satisfied.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 407. Information From Filing Officer

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

(b) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and, if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be Five Dollars (\$5.00). Upon request the filing officer shall furnish a certified copy of any filed financing statement or statement of assignment for a uniform fee of Two Dollars (\$2.00) per page.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 408. Financing Statements Covering Consigned or Leased Goods

A consignor or lessor of goods may file a financing statement using the terms “consignor”, “consignee”, “lessor”, “lessee” or the like instead of the terms specified in Section 402. The provisions of this part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security. However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

CHAPTER FIVE

DEFAULT

Section 501. Default; Procedure When Security Agreement; Covers; Both Real and Personal Property

(a) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Chapter and those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. The rights and remedies referred to in this subsection are cumulative.

(b) After default, the debtor has the rights and remedies provided in this Chapter, those provided in the security agreement and those provided in Section 207.

(c) If the security agreement covers both real and personal property, the secured party may proceed under this Chapter as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property, in which case the provisions of this Chapter do not apply.

(d) When a secured party has reduced his claim to judgment, the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this Section, and the party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Title.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 502. Reserved**Section 503. Secured Party's Right to Take Possession After Default**

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 504.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition

(a) A secured party, after default, may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. The proceeds of disposition shall be applied, in the order following to:

(1) The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(3) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand thereof is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must reasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(b) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency.

(c) Disposition of the collateral may be made by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place any on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor if he has not signed, after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods, no other notification need be sent. In other cases, notification shall be sent to any other secured party and any holder of a subordinate lien from whom the secured party has received, before sending his notification to the debtor or before the debtor's renunciation of his rights, written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if, the collateral is of type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale.

(d) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the secured party fails to comply with the requirements of this Chapter or of any judicial proceedings:

(1) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

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

(d) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such transfer of collateral is not a sale or disposition of the collateral under this Title.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 505. Compulsory Disposition of Collateral; Acceptance of the Collateral Or Discharge of Obligation

(a) If the debtor has paid sixty percent (60%) of the cash price in the case of a purchase money security interest in consumer goods or sixty percent (60%) of the loan in the case of another security interest in consumer goods, and has not signed, after default, a statement renouncing or modifying his rights under this Chapter a secured party who has taken possession of collateral must dispose of it under Section 504 and if he fails to do so within ninety (90) days after he takes possession, the debtor at his option may recover in conversion or under Section 507(a) on secured party's liability.

(b) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed, after default, a statement renouncing or modifying his rights under this subsection. In case of consumer goods, no other notice need be given. In other cases, notice shall be sent to any other secured party and any holder of a subordinate lien from whom the secured party has received, before sending his notice to the debtor or before the debtor's renunciation of his rights, written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one (21) days after the notice was sent, the secured party must dispose of the collateral under Section 504. In the absence of such written objection, the secured party may retain the collateral in satisfaction of the debtor's obligation.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 506. Debtor's Right to Redeem Collateral

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Section 504 or before the obligation has been discharged under Section 505(b) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and, to the extent provided in the agreement and not prohibited by law, his reasonable attorney's fees and legal expenses.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 507. Secured Party's Liability for Failure to Comply With This Part

(a) If it is established that the secured party is not proceeding in accordance with the provisions of this Chapter disposition may be ordered or restrained or appropriate terms and conditions. If the disposition has occurred, the debtor or any person entitled to notification, other than the holder of a subordinate lien that is not a security interest, or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this part. If the collateral is consumer goods, the debtor has a right to recover, in any event, an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the debt or the time price differential plus ten percent (10%) of the cash price.

(b) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells that the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold, he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditor's committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

