

TRIBAL UNIFORM COMMERCIAL CODE FAQs

1. WHAT IS THE UNIFORM COMMERCIAL CODE?

The Uniform Commercial Code (“UCC”) is a set of laws and regulations governing all commercial transactions in the United States. The UCC is not a federal law, but is uniformly enacted by each state, and a smaller but growing number of tribes. The UCC sets forth rules regarding the type of collateral that can be provided for a loan, how a lender can secure the collateral in relation to the loan and other parties interest in the collateral, and how a lender can collect on the collateral by means other than litigation.

2. WHY SHOULD A TRIBE CODIFY A UNIFORM COMMERCIAL CODE INTO LAW?

The UCC is the backbone of small business lending. A tribal UCC would provide support for small businesses and the economy of a reservation, and would not only help tribal small businesses secure larger loans, but also help them receive loans quicker and with better terms, i.e., interest rates, etc. The failure of most small businesses is due to a lack of access to liquid funds (cash), not a bad business model. A timely small business loan eliminates this obstacle to small business success.

Lenders prioritize certainty above every other element when determining loan approvals. However, during the loan underwriting process, many questions can arise about what laws apply in relation to loans given to tribal members, collateral on a reservation, and if/how a lender can collect loan collateral from a tribal borrower on a reservation or in Indian Country. As a result, there is very low certainty to lenders, especially non-native lenders, when determining loan approvals for tribal businesses in Indian Country. Thus, when applicable laws do not exist within a tribe’s code, small businesses in Indian Country have less access to loan capital and are usually approved for loans with less desirable loan terms, than non-native businesses.

Lenders are required to follow two equally-applicable rules when approving or denying a loan. The first is the ability of the borrower to repay the loan (usually based on the ratio of the borrower’s income in relation to the borrower’s debts, referred to as “debt to income” ratio). The second, which is the most important to the UCC, is the “loan to value” ratio, a hard and fast rule that a lender cannot break. The loan to value ratio is the dollar amount of the loan in comparison to the dollar value of the collateral provided by the borrower for the loan. An example of a loan rule is the “80 percent rule” (the total dollar amount of the loan is limited to no more than 80 percent of the lender’s determined value of the proposed collateral, including certainty about all issues relating to the collateral). Thus, the total dollar amount of collateral value places a ceiling on the total amount of loan funds that can be borrowed.

In determining the loan to value ratio of the dollar amount of proposed collateral, the lender needs to know (i) the certainty with which the collateral can be provided or used as collateral; (ii) the certainty with which the loan collateral lien can attach to the collateral and in what priority; and (iii) the certainty on the ability, rules, and speed for which a lender can foreclose on the collateral (if needed) with a preference for foreclosure before a lawsuit is completed. The better information and certainty the lender has on items (i) through (iii), the better the loan terms will be. A tribal UCC outlines this information and process for a lender doing business in Indian Country.

3. WHAT ARE SOME OF THE RELEVANT PROVISIONS THAT WOULD BE INCLUDED IN THE PROPOSED NEZ PERCE TRIBE UNIFORM COMMERCIAL CODE?

The Nez Perce Tribe UCC would outline the following:

- a) legal “rules” for how collateral can be provided, secured, and foreclosed upon for a tribal small business loan on the Nez Perce Reservation;
- b) rules for certain tribal items of property that could not be taken from a tribal member, i.e., cultural items and per capita payments. There is no “catch all” loan collateral risks allowed within a code for a lender to use in a transaction; and
- c) the tribal government would be excluded from being part of the Nez Perce Tribe UCC without the tribal government specifically asking for the UCC to apply in a particular loan transaction.