

TITLE 12 • BUSINESS CODE

Ch. 12.30 NEZ PERCE TRIBE UNIFORM COMMERCIAL CODE

TABLE OF CONTENTS

| | | |
|------------|---|----|
| ARTICLE 1. | UNIFORM COMMERCIAL CODE – GENERAL PROVISIONS | 1 |
| PART 1. | GENERAL PROVISIONS..... | 1 |
| | Section 12.30.1.101. Short Titles..... | 1 |
| | Section 12.30.1.102. Scope of Article | 1 |
| | Section 12.30.1.103. Construction of UCC to Promote its Purposes and Policies; Applicability of Supplemental Principles of Law | 1 |
| | Section 12.30.1.104. Construction Against Implied Repeal | 2 |
| | Section 12.30.1.105. Severability | 2 |
| | Section 12.30.1.106. Use of Singular and Plural; Gender | 2 |
| | Section 12.30.1.107. Section Captions | 2 |
| | Section 12.30.1.108. No Waiver of Sovereign Immunity | 2 |
| | Section 12.30.1.109. Art Dealers and Artists | 2 |
| | Section 12.30.1.110. No Application to Property Not Alienable | 2 |
| PART 2. | GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION | 3 |
| | Section 12.30.1.201. General Definitions | 3 |
| | Section 12.30.1.202. Notice; Knowledge | 7 |
| | Section 12.30.1.203. Lease Distinguished From Security Interest..... | 8 |
| | Section 12.30.1.204. Value..... | 9 |
| | Section 12.30.1.205. Reasonable Time; Seasonableness | 10 |
| | Section 12.30.1.206. Presumptions | 10 |
| PART 3. | TERRITORIAL APPLICABILITY AND GENERAL RULES | 10 |
| | Section 12.30.1.301. Choice of Law | 10 |
| | Section 12.30.1.302. Variation by Agreement | 11 |
| | Section 12.30.1.303. Course of Performance, Course of Dealing, and Usage of Trade..... | 11 |
| | Section 12.30.1.304. Obligation of Good Faith | 12 |
| | Section 12.30.1.305. Remedies to be Liberally Administered | 12 |
| | Section 12.30.1.306. Waiver or Renunciation of Claim or Right After Breach..... | 12 |
| | Section 12.30.1.307. Prima Facie Evidence by Third-Party Documents..... | 12 |
| | Section 12.30.1.308. Performance or Acceptance Under Reservation of Rights..... | 13 |
| | Section 12.30.1.309. Option to Accelerate at Will..... | 13 |
| | Section 12.30.1.310. Subordinated Obligations | 13 |
| ARTICLE 2. | [RESERVED] | 13 |
| ARTICLE 3. | [RESERVED] | 13 |
| ARTICLE 4. | [RESERVED] | 13 |
| ARTICLE 5. | [RESERVED] | 13 |
| ARTICLE 6. | [RESERVED] | 13 |
| ARTICLE 7. | [RESERVED] | 13 |
| ARTICLE 8. | [RESERVED] | 13 |
| ARTICLE 9. | NEZ PERCE TRIBE SECURED TRANSACTIONS ACT | 13 |
| PART 1. | GENERAL PROVISIONS..... | 13 |


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

| | | |
|----------------------|---|-----------|
| Section 12.30.9.101. | Short Title | 13 |
| Section 12.30.9.102. | General Definitions | 14 |
| Section 12.30.9.103. | General Scope | 28 |
| Section 12.30.9.104. | Excluded Transactions | 28 |
| Section 12.30.9.105. | Administration of STA; Authority to Promulgate Regulations | 30 |
| Section 12.30.9.106. | Purchase-Money Security Interest; Application of Payments; Burden of Establishing | 30 |
| Section 12.30.9.107. | Control of Deposit Account..... | 31 |
| Section 12.30.9.108. | Control of Electronic Chattel Paper | 32 |
| Section 12.30.9.109. | Control of Investment Property | 32 |
| Section 12.30.9.110. | Control of Letter-of-Credit Right..... | 33 |
| Section 12.30.9.111. | Sufficiency of Description in Security Agreement..... | 33 |
| Section 12.30.9.112. | Parties' Power to Choose Applicable Law | 34 |
| PART 2. | EFFECTIVENESS, ATTACHMENT, AND RIGHTS OF PARTIES | 34 |
| Section 12.30.9.201. | General Effectiveness of Security Agreement | 34 |
| Section 12.30.9.202. | Attachment and Enforceability of Security Interest; Proceeds; Formal Requisites..... | 35 |
| Section 12.30.9.203. | After-Acquired Collateral; Future Advances | 37 |
| Section 12.30.9.204. | Rights and Duties When Collateral is in Secured Party's Possession or Control | 37 |
| Section 12.30.9.205. | Additional Duties of Certain Secured Parties | 38 |
| Section 12.30.9.206. | [Reserved]..... | 40 |
| Section 12.30.9.207. | Request for Accounting; Request Regarding List of Collateral or Statement of Account | 40 |
| PART 3. | PERFECTION AND PRIORITY | 41 |
| SUBPART 1. | LAW GOVERNING PERFECTION AND PRIORITY | 41 |
| Section 12.30.9.301. | Law Governing Perfection and Priority of Security Interests | 41 |
| Section 12.30.9.302. | Law Governing Perfection and Priority of Agricultural Liens | 42 |
| Section 12.30.9.303. | Law Governing Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title..... | 42 |
| Section 12.30.9.304. | Law Governing Perfection and Priority of Security Interests in Deposit Accounts..... | 43 |
| Section 12.30.9.305. | Law Governing Perfection and Priority of Security Interests in Investment Property..... | 44 |
| Section 12.30.9.306. | Law Governing Perfection and Priority of Security Interests in Letter-of-Credit Rights | 45 |
| Section 12.30.9.307. | Location of Debtor; Location of Collateral | 45 |
| SUBPART 2. | PERFECTION | 47 |
| Section 12.30.9.308. | When Security Interest is Perfected; Continuity of Perfection | 47 |
| Section 12.30.9.309. | Security Interest Perfected Upon Attachment | 48 |
| Section 12.30.9.310. | When Filing Required to Perfect Security Interest; Security Interests to Which Filing Provisions Do Not Apply | 48 |
| Section 12.30.9.311. | Perfection of Security Interests in Property Subject to Certain Statutes, Regulations, and Treaties | 49 |
| Section 12.30.9.312. | Perfection of Security Interests in Chattel Paper, Documents, Goods Covered by Documents, Instruments, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession | 50 |
| Section 12.30.9.313. | When Possession by Secured Party Perfects Security Interest Without Filing..... | 51 |


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

| | | |
|--|---|-----------|
| Section 12.30.9.314. | Perfection by Control..... | 52 |
| Section 12.30.9.315. | Secured Party’s Rights on Disposition of Collateral and in Proceeds..... | 53 |
| Section 12.30.9.316. | Continued Perfection of Security Interest Following Change in Governing Law..... | 54 |
| SUBPART 3. PRIORITY..... | | 56 |
| Section 12.30.9.317. | Interests That Take Priority Over Security Interest | 56 |
| Section 12.30.9.318. | No Interest Retained in Right to Payment That is Sold; Rights and Title of Seller of Account or Chattel Paper With Respect to Creditors and Purchasers | 58 |
| Section 12.30.9.319. | Rights and Title of Consignee With Respect to Creditors and Purchasers..... | 58 |
| Section 12.30.9.320. | Buyer of Goods | 58 |
| Section 12.30.9.321. | Licensee of General Intangible and Lessee of Goods in Ordinary Course of Business..... | 59 |
| Section 12.30.9.322. | Priorities Among Conflicting Security Interests in and Agricultural Liens on Same Collateral | 59 |
| Section 12.30.9.323. | Future Advances | 61 |
| Section 12.30.9.324. | Priority of Purchase-Money Security Interests | 62 |
| Section 12.30.9.325. | Priority of Security Interests in Transferred Collateral..... | 64 |
| Section 12.30.9.326. | Priority of Security Interests Created by New Debtor..... | 65 |
| Section 12.30.9.327. | Priority of Security Interests in Deposit Account | 65 |
| Section 12.30.9.328. | Priority of Security Interests in Investment Property | 65 |
| Section 12.30.9.329. | Priority of Security Interests in Letter-of-Credit Right..... | 66 |
| Section 12.30.9.330. | Priority of Purchaser of Chattel Paper or Instrument..... | 67 |
| Section 12.30.9.331. | Priority of Rights of Purchasers of Instruments, Documents, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements Under Article 8..... | 68 |
| Section 12.30.9.332. | Transfer of Money; Transfer of Funds From Deposit Account | 68 |
| Section 12.30.9.333. | Priority of Certain Liens Arising by Operation of Law..... | 68 |
| Section 12.30.9.334. | Priority of Security Interests in Fixtures and Crops | 69 |
| Section 12.30.9.335. | Accessions..... | 71 |
| Section 12.30.9.336. | Commingled Goods | 71 |
| Section 12.30.9.337. | Priority of Security Interests in Goods Covered by Certificate of Title..... | 72 |
| Section 12.30.9.338. | Priority Subject to Subordination..... | 72 |
| Section 12.30.9.339. | Priority of Security Interest or Agricultural Lien Perfected by Filed Financing Statement Providing Certain Incorrect Information | 72 |
| Section 12.30.9.340. | Effectiveness of Right of Recoupment or Setoff Against Deposit Account | 73 |
| Section 12.30.9.341. | Bank’s Rights and Duties With Respect to Deposit Account..... | 73 |
| Section 12.30.9.342. | Bank’s Right to Refuse to Enter Into or Disclose Existence of Control Agreement | 73 |
| PART 4. RIGHTS OF THIRD PARTIES | | 74 |
| Section 12.30.9.401. | Alienability of Debtor’s Rights..... | 74 |
| Section 12.30.9.402. | Secured Party Not Obligated on Contract of Debtor or in Tort | 74 |
| Section 12.30.9.403. | Agreement Not to Assert Defenses Against Assignee..... | 74 |
| Section 12.30.9.404. | Rights Acquired by Assignee; Claims and Defenses Against Assignee..... | 75 |
| Section 12.30.9.405. | Modification of Assigned Contract | 76 |


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

| | | |
|----------------------|--|-----------|
| Section 12.30.9.406. | Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective..... | 76 |
| Section 12.30.9.407. | Restrictions on Creation or Enforcement of Security Interest in Leasehold Interest or in Lessor’s Residual Interest | 78 |
| Section 12.30.9.408. | Restrictions on Assignment of Promissory Notes, Health Care-Insurance Receivables, and Certain General Intangibles Ineffective | 79 |
| Section 12.30.9.409. | Restrictions on Assignment of Letter-of-Credit Rights Ineffective..... | 81 |
| PART 5. | FILING..... | 82 |
| Section 12.30.9.501. | Filing; Acceptance, Refusal, and Effectiveness of Financing Statements; Administration | 82 |
| Section 12.30.9.502. | Contents of Financing Statement; Record of Mortgage as Financing Statement; Time of Filing Financing Statement..... | 82 |
| Section 12.30.9.503. | Name of Debtor and Secured Party | 83 |
| Section 12.30.9.504. | Indication of Collateral..... | 85 |
| Section 12.30.9.505. | Filing and Compliance With Other Statutes and Treaties for Consignments, Leases, Other Bailments, and Other Transactions..... | 85 |
| Section 12.30.9.506. | Effect of Errors or Omissions..... | 85 |
| Section 12.30.9.507. | Effect of Certain Events on Effectiveness of Financing Statement | 86 |
| Section 12.30.9.508. | Effectiveness of Financing Statement If New Debtor Becomes Bound by Security Agreement | 86 |
| Section 12.30.9.509. | Persons Entitled to File a Record | 87 |
| Section 12.30.9.510. | Effectiveness of Filed Record | 88 |
| Section 12.30.9.511. | Secured Party of Record | 88 |
| Section 12.30.9.512. | Amendment of Financing Statement | 88 |
| Section 12.30.9.513. | Termination Statement..... | 89 |
| Section 12.30.9.514. | Assignment of Powers of Secured Party of Record..... | 90 |
| Section 12.30.9.515. | Duration and Effectiveness of Financing Statement; Effect of Lapsed Financing Statement..... | 91 |
| Section 12.30.9.516. | What Constitutes Filing; Effectiveness of Filing | 92 |
| Section 12.30.9.517. | Effect of Indexing Errors..... | 92 |
| Section 12.30.9.518. | Claim Concerning Inaccurate or Wrongfully Filed Record..... | 92 |
| Section 12.30.9.519. | [Reserved]..... | 93 |
| Section 12.30.9.520. | Acceptance and Refusal to Accept Record..... | 93 |
| PART 6. | DEFAULT..... | 93 |
| SUBPART 1. | DEFAULT AND ENFORCEMENT OF SECURITY INTERESTS..... | 93 |
| Section 12.30.9.601. | Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes..... | 93 |
| Section 12.30.9.602. | Waiver and Variance of Rights and Duties | 94 |
| Section 12.30.9.603. | Agreement on Standards Concerning Rights and Duties..... | 95 |
| Section 12.30.9.604. | Procedure If Security Agreement Covers Real Property or Fixtures | 95 |
| Section 12.30.9.605. | Unknown Debtor or Secondary Obligor | 96 |
| Section 12.30.9.606. | Time for Default for Agricultural Lien..... | 96 |
| Section 12.30.9.607. | Collection and Enforcement by Secured Party | 96 |
| Section 12.30.9.608. | Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus | 97 |
| Section 12.30.9.609. | Secured Party’s Right to Take Possession After Default..... | 98 |


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

| | | |
|--|---|------------|
| Section 12.30.9.610. | Disposition of Collateral After Default | 98 |
| Section 12.30.9.611. | Notification Before Disposition of Collateral | 99 |
| Section 12.30.9.612. | Timeliness of Notification Before Disposition of Collateral | 101 |
| Section 12.30.9.613. | Contents and Form of Notification Before Disposition of Collateral..... | 101 |
| Section 12.30.9.614. | Contents and Form of Notification Before Disposition of Collateral; Consumer Goods Transaction | 102 |
| Section 12.30.9.615. | Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus..... | 104 |
| Section 12.30.9.616. | Explanation of Calculation of Surplus or Deficiency | 106 |
| Section 12.30.9.617. | Rights of Transferee of Collateral | 107 |
| Section 12.30.9.618. | Rights and Duties of Certain Secondary Obligors | 108 |
| Section 12.30.9.619. | Transfer of Record or Legal Title..... | 108 |
| Section 12.30.9.620. | Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Notification of Proposal; Effect of Acceptance; Compulsory Disposition of Collateral..... | 109 |
| Section 12.30.9.621. | Notification of Proposal to Accept Collateral..... | 111 |
| Section 12.30.9.622. | Effect of Acceptance of Collateral..... | 111 |
| Section 12.30.9.623. | Right to Redeem Collateral..... | 112 |
| Section 12.30.9.624. | Waiver | 112 |
| SUBPART 2. NONCOMPLIANCE WITH ACT | | 113 |
| Section 12.30.9.625. | Remedies for Secured Party's Failure to Comply With STA | 113 |
| Section 12.30.9.626. | Action in Which Deficiency or Surplus is in Issue | 114 |
| Section 12.30.9.627. | Determination of Whether Conduct Was Commercially Reasonable | 115 |
| Section 12.30.9.628. | Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor | 116 |
| PART 7. MISCELLANEOUS PROVISIONS..... | | 117 |
| Section 12.30.9.701. | Severability | 117 |

TITLE 12 • BUSINESS CODE

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| CHAPTER 12.30 NEZ PERCE TRIBE UNIFORM COMMERCIAL CODE |
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ARTICLE 1. UNIFORM COMMERCIAL CODE – GENERAL PROVISIONS

PART 1. GENERAL PROVISIONS

Section 12.30.1.101. Short Titles

- (a) This chapter may be cited as the Nez Perce Tribe Uniform Commercial Code (“UCC”).
- (b) Article 1 may be cited as the UCC’s General Provisions.

Section 12.30.1.102. Scope of Article

This chapter applies to a transaction to the extent that it is governed by another article of the UCC.

Section 12.30.1.103. Construction of UCC to Promote its Purposes and Policies; Applicability of Supplemental Principles of Law

- (a) Since time immemorial, the Nez Perce Tribe has had the power to control the land and resources of the Nez Perce Reservation, the power to govern those upon the Nez Perce Reservation, and the power to establish the institutions of government and sovereign immunity. Such power and authority shall not be abridged by the adoption of the UCC.
- (b) Subject to subsection (a), the UCC must be liberally construed and applied to promote its underlying purposes and policies, which are:
 - (1) to simplify, clarify, and modernize the law governing commercial transactions;
 - (2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties;
 - (3) to make uniform the law among the various jurisdictions; and
 - (4) to promote economic growth of the Nez Perce Tribe and its members, on and off the Nez Perce Reservation.
- (c) Judicial interpretations of a Uniform Commercial Code as enacted in any jurisdiction are persuasive to the extent they interpret identical or substantially similar language as contained in this UCC and do not conflict with applicable Nez Perce Tribal law.
- (d) Subject to subsection (a) and (b), unless displaced by the particular provisions of this UCC, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud,

misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating causes supplement its provisions.

Section 12.30.1.104. Construction Against Implied Repeal

The UCC being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Section 12.30.1.105. Severability

If any provision or clause of the UCC or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the UCC which can be given effect without the invalid provision or application, and to this end the provisions of the UCC are severable.

Section 12.30.1.106. Use of Singular and Plural; Gender

In the UCC, unless the statutory context otherwise requires:

- (1) words in the singular number include the plural, and those in the plural include the singular; and
- (2) words of any gender also refer to any other gender.

Section 12.30.1.107. Section Captions

Section captions are part of the UCC.

Section 12.30.1.108. No Waiver of Sovereign Immunity

No part of this UCC, and no provision or action related to any transaction subject to this UCC, shall be interpreted as any waiver (in whole or in part) of the sovereign immunity of the Nez Perce Tribe and its related agencies and instrumentalities and all other Tribal entities possessing sovereign immunity.

Section 12.30.1.109. Art Dealers and Artists

Title 28, Chapter 11 of the Idaho Code shall control over any conflicting provision of this UCC.

Section 12.30.1.110. No Application to Property Not Alienable

This UCC does not apply to any property interest that is subject to federal restrictions regarding sale, transfer, or encumbrance, including but not limited to real property interests related to 25 U.S.C. § 483a, lease-related property interests subject to federal approval, and per capita payments to Nez Perce Tribal members.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Section 12.30.1.201. General Definitions

- (a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this UCC that apply to particular articles or parts thereof, have the meanings stated.
- (b) Subject to definitions contained in other articles of the Nez Perce Tribal Code that apply to particular articles or parts thereof:
 - (1) “Action,” in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined.
 - (2) “Aggrieved party” means a party entitled to pursue a remedy.
 - (3) “Agreement,” as distinguished from “contract,” means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in Section 12.30.1.303.
 - (4) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company, but does not include the Nimiipuu Community Development Fund or the Fund’s successor in interest.
 - (5) “Bearer” means a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or indorsed in blank.
 - (6) “Bill of lading” means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.
 - (7) “Branch” includes a separately incorporated foreign branch of a bank.
 - (8) “Burden of establishing” a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.
 - (9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of

that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under other applicable law may be a buyer in ordinary course of business. “Buyer in ordinary course of business” does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

- (10) “Conspicuous,” with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following:
 - (A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
 - (B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size or set off from surrounding text of the same size by symbols or other marks that call attention to the language.
- (11) “Consumer” means an individual who enters into a transaction primarily for personal, family, or household purposes.
- (12) “Contract,” as distinguished from “agreement,” means the total legal obligation that results from the parties’ agreement as determined by this UCC as supplemented by any other applicable laws.
- (13) “Creditor” includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor’s or assignor’s estate.
- (14) “Defendant” includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.
- (15) “Delivery,” with respect to an instrument, document of title, or chattel paper, means voluntary transfer of possession.
- (16) “Document of title” 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 financing 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.

- (17) "Fault" means a default, breach, or wrongful act or omission.
- (18) "Fungible goods" means:
 - (A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or
 - (B) goods that by agreement are treated as equivalent.
- (19) "Genuine" means free of forgery or counterfeiting.
- (20) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (21) "Holder" means:
 - (A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or
 - (B) the person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.
- (22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.
- (23) "Insolvent" means:
 - (A) having generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute;
 - (B) being unable to pay debts as they become due; or
 - (C) being insolvent within the meaning of federal bankruptcy law.
- (24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.
- (25) "Organization" means a person other than an individual.
- (26) "Party," as distinguished from "third party," means a person that has engaged in a transaction or made an agreement subject to this UCC.
- (27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

- (28) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.
- (29) “Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
- (30) “Purchaser” means a person that takes by purchase.
- (31) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (32) “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.
- (33) “Representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.
- (34) “Right” includes remedy.
- (35) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation, except for lease-purchase agreements under the Idaho Code. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to this UCC. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under Article 2-401 of a Uniform Commercial Code or a comparable statute of a tribal or state jurisdiction, but a buyer may also acquire a “security interest” by complying with Article 9 of this UCC. Except as otherwise provided in Article 2-505 of a Uniform Commercial Code or a comparable statute of a tribal or state jurisdiction, the right of a seller or lessor of goods under Article 2 or 2A of a Uniform Commercial Code or a comparable statute of an applicable jurisdiction to retain or acquire possession of the goods is not a “security interest,” but a seller or lessor may also acquire a “security interest” by complying with Article 9 of this UCC. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Article 2-401 of a Uniform Commercial Code or a comparable statute of an applicable jurisdiction is limited in effect to a reservation of a “security interest.” Whether a

transaction in the form of a lease creates a “security interest” is determined pursuant to the provisions of this UCC and Section 12.30.1.203.

- (36) “Send” in connection with a writing, record, or notice means:
- (A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none, to any address reasonable under the circumstances; or
 - (B) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.
- (37) “Signed” includes using any symbol executed or adopted with present intention to adopt or accept a writing, including to attach or logically associate an electronic symbol, sound, or process to or with a record.
- (38) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (39) “Surety” includes a guarantor or other secondary obligor.
- (40) “Term” means a portion of an agreement that relates to a particular matter.
- (41) “Unauthorized signature” means a signature made without actual, implied, or apparent authority. The term includes a forgery.
- (42) “Warehouse receipt” means a receipt issued by a person engaged in the business of storing goods for hire.
- (43) “Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.

Section 12.30.1.202. Notice; Knowledge

- (a) Subject to subsection (f), a person has “notice” of a fact if the person:
- (1) has actual knowledge of it;
 - (2) has received a notice or notification of it; or
 - (3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.
- (b) “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.
- (c) “Discover,” “learn,” or words of similar import refer to knowledge rather than to reason to know.

- (d) A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.
- (e) Subject to subsection (f), a person “receives” a notice or notification when:
 - (1) it comes to that person’s attention; or
 - (2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.
- (f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

Section 12.30.1.203. Lease Distinguished From Security Interest

- (a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.
- (b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:
 - (1) the original term of the lease is equal to or greater than the remaining economic life of the goods;
 - (2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
 - (3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
 - (4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

- (c) A transaction in the form of a lease does not create a security interest merely because:
 - (1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
 - (2) the lessee assumes risk of loss of the goods;
 - (3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
 - (4) the lessee has an option to renew the lease or to become the owner of the goods;
 - (5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
 - (6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.
- (d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:
 - (1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or
 - (2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.
- (e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

Section 12.30.1.204. Value

In this UCC, and except as otherwise provided under applicable laws dealing with negotiable instruments, bank deposits, letters of credit, and bulk transfers and sale, a person gives value for rights if the person acquires them:

- (1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon

and whether or not a charge-back is provided for in the event of difficulties in collection;

- (2) as security for, or in total or partial satisfaction of, a preexisting claim;
- (3) by accepting delivery under a preexisting contract for purchase; or
- (4) in return for any consideration sufficient to support a simple contract.

Section 12.30.1.205. Reasonable Time; Seasonableness

- (a) Whether a time for taking an action required by the UCC is reasonable depends on the nature, purpose, and circumstances of the action.
- (b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

Section 12.30.1.206. Presumptions

Whenever the UCC creates a “presumption” with respect to a fact, or provides that a fact is “presumed,” the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

PART 3. TERRITORIAL APPLICABILITY AND GENERAL RULES

Section 12.30.1.301. Choice of Law

- (a) This section represents a fundamental policy of the Nez Perce Tribe.
- (b) Except as provided hereafter in this section, this UCC shall apply to all transactions bearing a reasonable relationship to the Nez Perce Tribe or to any of its members.
- (c) To the extent this UCC governs a transaction, if any provision of Section 12.30.9.301 through Section 12.30.9.307 specifies the applicable law, that provision governs and any contrary agreement is ineffective.
- (d) Notwithstanding any agreement to the contrary and except as otherwise provided in Section 12.30.9.301 through Section 12.30.9.307, this UCC shall apply in any:
 - (1) consumer transaction in which the debtor is a member of the Nez Perce Tribe; or
 - (2) consumer transaction in which the collateral is located on the Nez Perce Reservation.
- (e) The fact that the law of another tribe, state, or country is applicable to this UCC shall not by itself affect the jurisdiction, venue, and sovereign immunity of the Nez Perce Tribe and all of its related Tribal actors, officers, agencies, and instrumentalities.

Section 12.30.1.302. Variation by Agreement

- (a) Except as otherwise provided in Section 12.30.1.301, subsection (b) below, or elsewhere in the UCC, the effect of provisions of the UCC may be varied by agreement.
- (b) The obligations of good faith, diligence, reasonableness, and care prescribed by the UCC may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the UCC requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.
- (c) The presence in certain provisions of the UCC of the phrase “unless otherwise agreed,” or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

Section 12.30.1.303. Course of Performance, Course of Dealing, and Usage of Trade

- (a) A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:
 - (1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
 - (2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.
- (b) A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.
- (c) A “usage of trade” is any practice or method of dealing, including a commonly known Native custom or tradition of the Nez Perce Tribe having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.
- (d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

- (e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:
 - (1) express terms prevail over course of performance, course of dealing, and usage of trade;
 - (2) course of performance prevails over course of dealing and usage of trade; and
 - (3) course of dealing prevails over usage of trade.
- (f) A course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.
- (g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

Section 12.30.1.304. Obligation of Good Faith

Every contract or duty within the UCC imposes an obligation of good faith in its performance and enforcement, further defined as an obligation that each party be honest and act in a manner consistent with reasonable commercial standards of fair dealing.

Section 12.30.1.305. Remedies to be Liberally Administered

- (a) The remedies provided by the UCC must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in the UCC or by other rule of law.
- (b) Any right or obligation declared by the UCC is enforceable by action unless the provision declaring it specifies a different and limited effect.

Section 12.30.1.306. Waiver or Renunciation of Claim or Right After Breach

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

Section 12.30.1.307. Prima Facie Evidence by Third-Party Documents

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is

prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

Section 12.30.1.308. Performance or Acceptance Under Reservation of Rights

- (a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice,” “under protest,” or the like are sufficient.
- (b) Subsection (a) does not apply to an accord and satisfaction.

Section 12.30.1.309. Option to Accelerate at Will

A term providing that one party or that party’s successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or when the party “deems itself insecure,” or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

Section 12.30.1.310. Subordinated Obligations

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated, or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

ARTICLE 2. [RESERVED]

ARTICLE 3. [RESERVED]

ARTICLE 4. [RESERVED]

ARTICLE 5. [RESERVED]

ARTICLE 6. [RESERVED]

ARTICLE 7. [RESERVED]

ARTICLE 8. [RESERVED]

ARTICLE 9. NEZ PERCE TRIBE SECURED TRANSACTIONS ACT

PART 1. GENERAL PROVISIONS

Section 12.30.9.101. Short Title

- (a) Article 9 may be cited as the Nez Perce Tribe Secured Transaction Act (“STA”).

(b) This Part 1 may be cited as the STA's General Provisions.

Section 12.30.9.102. General Definitions

(a) In the STA:

- (1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.
- (2) "Account," (except as used in "account for"):
 - (A) means a right to payment of a monetary obligation, whether or not earned by performance:
 - (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
 - (ii) for services rendered or to be rendered;
 - (iii) for a policy of insurance issued or to be issued;
 - (iv) for a secondary obligation incurred or to be incurred;
 - (v) for energy provided or to be provided;
 - (vi) for the use or hire of a vessel under a charter or other contract;
 - (vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or
 - (viii) as winnings in a lottery or other game of chance operated or sponsored by a tribe, governmental unit of a tribe, a person licensed or authorized by a tribe or governmental unit of a tribe to operate the game, a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.
 - (B) includes health care-insurance receivables; and
 - (C) does not include:
 - (i) rights to payment evidenced by chattel paper or an instrument;
 - (ii) commercial tort claims;
 - (iii) deposit accounts;
 - (iv) securities or investment accounts, including assets held in investment accounts;
 - (v) letter-of-credit rights or letters of credit; or
 - (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or

charge card or information contained on or for use with the card.

- (3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.
- (4) “Accounting” (except as used in “accounting for”) means a record:
 - (A) authenticated by a secured party;
 - (B) indicating the aggregate unpaid secured obligation as of a date not more than 35 days earlier or 35 days later than the date of the record; and
 - (C) identifying the components of the obligations in reasonable detail.
- (5) “Agricultural lien” means an interest, other than a security interest, in farm products:
 - (A) which secures payment or performance of an obligation for:
 - (i) goods or services furnished in connection with a debtor’s farming operation; or
 - (ii) rent on real property leased by a debtor in connection with its farming operation;
 - (B) which is created by statute in favor of a person that:
 - (i) in the ordinary course of its business, furnished goods or services to a debtor in connection with a debtor’s farming operation; or
 - (ii) leased real property to a debtor in connection with the debtor’s farming operation; and
 - (C) whose effectiveness does not depend on the person’s possession of the personal property.
- (6) “As-extracted collateral” means:
 - (A) oil, gas, or other minerals that are subject to a security interest that:
 - (i) is created by a debtor having an interest in the minerals before extraction; and
 - (ii) attaches to the minerals as extracted; or
 - (B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

- (7) “Authenticate” means:
- (A) to sign; or
 - (B) to execute or otherwise adopt a symbol or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.
- (8) “Cash proceeds” means money, checks, deposit accounts, or the like.
- (9) “Certificated security” means a security that is represented by a certificate.
- (10) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interests obtaining priority over the rights of a lien creditor with respect to the collateral.
- (11) “Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. A monetary obligation means an obligation secured by the goods or owed under a lease of the goods and includes such an obligation with respect to software used in the goods. The term does not include:
- (A) charters or contracts involving the use or hire of a vessel or
 - (B) records that evidence a right to payment arising out of the use of a credit or charge card, or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.
- (12) “Collateral” means the property subject to a security interest. The term includes:
- (A) proceeds to which a security interest attaches;
 - (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
 - (C) goods that are the subject of a consignment.
- (13) “Commercial tort claim” means a claim arising in tort with respect to which:


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

- (A) the claimant is an organization; or
 - (B) the claimant is an individual and the claim:
 - (i) arose in the course of the claimant’s business or profession; and
 - (ii) does not include damages arising out of personal injury to or the death of an individual; and
 - (iii) does not include a claim for liability for damages to person or property that contains an issue of Nez Perce Tribal culture as a material and substantial element of the claim or damages.
- (14) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
- (15) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:
- (A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
 - (B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.
- (16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.
- (17) “Commodity intermediary” means a person that:
- (A) is registered as a futures commission merchant under federal commodities law; or
 - (B) in the ordinary course of its business, provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.
- (18) “Communicate” means:
- (A) to send a written or other tangible record;
 - (B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or
 - (C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

- (19) “Consignee” means a merchant to which goods are delivered in a consignment.
- (20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:
- (A) the merchant:
 - (i) deals in goods of that kind under a name other than the name of the person making delivery;
 - (ii) is not an auctioneer; and
 - (iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;
 - (B) with respect to each delivery, the aggregate value of the goods is \$3,000 or more at the time of delivery;
 - (C) the goods are not consumer goods immediately before delivery; and
 - (D) the transaction does not create a security interest that secures an obligation.
- (21) “Consignor” means a person that delivers goods to a consignee in a consignment.
- (22) “Consumer debtor” means a debtor in a consumer transaction.
- (23) “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.
- (24) “Consumer transaction” means a transaction in which
- (A) an individual incurs an obligation primarily for personal, family, or household purposes; and
 - (B) a security interest secures the obligation.
- (25) “Continuation statement” means an amendment of a financing statement which:
- (A) identifies, by its file number, the initial financing statement to which it relates; and
 - (B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.
- (26A) “Control,” *with respect to a certificated security in registered form*, means that the certificate is delivered to the purchaser and
- (A) indorsed to the secured party or in blank by an effective indorsement; or


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

- (B) registered in the name of the secured party, upon original issue or registration of transfer by the issuer.
- (26B) “Control,” *with respect to an investment account*, means that
- (A) the secured party has become the holder of the investment account;
 - (B) the investment intermediary has agreed that it will comply with orders relating to the investment account originated by the secured party without further consent by the holder of the investment account;
 - (C) another person has control of the investment account on behalf of the secured party or, having previously acquired control of the investment account, acknowledges that it has control on behalf of the secured party; or
 - (D) a security interest has been granted by the holder of the investment account to the holder’s own investment intermediary.
- (26C) “Control,” *with respect to mutual fund shares that are not in an investment account*, means that
- (A) the mutual fund shares have been delivered to the secured party under applicable law; or
 - (B) the issuer of the mutual fund shares has agreed that it will comply with instructions originated by the secured party without further consent by the debtor.
- (27) “Debtor” means:
- (A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor on the debt secured;
 - (B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or
 - (C) a consignee.
- (28) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.
- (29) “Document” means a record
- (A) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers; and


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

- (B) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods.
- (30) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.
- (31) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.
- (32) "Equipment" means goods other than inventory, farm products, or consumer goods.
- (33) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:
- (A) crops grown, growing, or to be grown, including:
 - (i) crops produced on trees, vines, and bushes; and
 - (ii) aquatic goods produced in aquacultural operations;
 - (B) livestock, born or unborn, including wild game or aquatic goods produced in aquacultural operations;
 - (C) supplies used or produced in a farming operation; or
 - (D) products of crops or livestock in their unmanufactured states.
- (34) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, wild game, or aquacultural operation.
- (35) "File number" means the number assigned to an initial financing statement pursuant to the required filing system adopted by this STA.
- (36) "Filing office" means an office designated pursuant to the required filing system adopted by this STA.
- (37) "Filing-office rule" means a rule adopted pursuant to the required filing system adopted by this STA.
- (38) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.
- (39) "Fixture filing" means the filing of a financing statement covering goods that are, or are to become, fixtures and satisfying the requirements of this STA relating to contents of financing statements.

The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

- (40) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.
- (41) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.
- (42) “Goods” means all things that are movable when a security interest attaches.
 - (A) The term includes:
 - (i) fixtures;
 - (ii) standing timber that is to be cut and removed under a conveyance or contract for sale;
 - (iii) the unborn young of animals;
 - (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes;
 - (v) manufactured homes; and
 - (vi) a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:
 - (I) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or
 - (II) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.
 - (B) The term does not include:
 - (i) a computer program embedded in goods that consist solely of the medium in which the program is embedded;
 - (ii) accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction; or
 - (iii) a manufactured home converted to real property.


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

- (43) “Governmental unit” means to the extent not further defined by this STA and the Nez Perce Tribal law, a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, tribe, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.
- (44) “Health care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided or to be provided.
- (45) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include:
- (A) a security or an investment account;
 - (B) a letter of credit;
 - (C) a writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card;
 - (D) a writing that does not contain a promise or order to pay; or
 - (E) a writing that is expressly nontransferable or nonassignable.
- (46) “Inventory” means goods, other than farm products, which:
- (A) are leased by a person as lessor;
 - (B) are held by a person for sale or lease or to be furnished under a contract of service;
 - (C) are furnished by a person under a contract of service; or
 - (D) consist of raw materials, work in process, or materials used or consumed in a business.
- (47) “Investment account” means a financial account maintained by an investment intermediary to which securities or commodity contracts are or may be credited by agreement.
- (48) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.
- (49) “Investment intermediary” means a securities intermediary under applicable law or a commodity intermediary under applicable law.


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

- (50) “Jurisdiction of organization,” *with respect to a registered organization*, means the jurisdiction under whose law the organization is organized, provided that for any tribal corporation chartered under 25 U.S.C. § 477, the relevant jurisdiction shall be the jurisdiction of the tribe, or if multiple tribes involved as owners any of the member owner tribes, that received the relevant federal charter.
- (51) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.
- (52) “Lien creditor” means:
- (A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;
 - (B) an assignee for benefit of creditors from the time of assignment;
 - (C) a trustee in bankruptcy from the date of the filing of the petition; or
 - (D) a receiver in equity from the time of appointment.
- (53) “Manufactured home” means any structure meeting the definitional requirements found under 42 U.S.C § 5402(6) (2004), as the same may be amended from time to time.
- (54) “Manufactured-home transaction” means a secured transaction:
- (A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
 - (B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.
- (55) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.
- (56) “New debtor” means a person that becomes bound as debtor under this STA by a security agreement previously entered into by another person.
- (57) “New value” means:
- (A) money;
 - (B) money’s worth in property, services, or new credit; or
 - (C) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

- (58) “Noncash proceeds” means proceeds other than cash proceeds.
- (59) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral,
- (A) owes payment or other performance of the obligation,
 - (B) has provided property other than the collateral to secure payment of other performance of the obligation, or
 - (C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.
- (60) “Original debtor” means a person that as a debtor entered into a security agreement to which a new debtor has become bound under Section 12.30.9.202.
- (61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.
- (62) “Person related to,” *with respect to an individual*, means
- (A) the spouse of the individual;
 - (B) a brother, brother-in-law, sister, or sister-in-law of the individual;
 - (C) a grandparent, grandchild, parent, daughter, or son of the individual or individual’s spouse; or
 - (D) any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home as the individual or individual’s spouse and treats that home as a primary residence.
- (63) “Person related to,” *with respect to an organization*, means:
- (A) a person directly or indirectly controlling, controlled by, or under common control with the organization;
 - (B) an officer or director of, or a person performing similar functions with respect to, the organization;
 - (C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A) of this paragraph;
 - (D) the spouse of an individual described in subparagraph (A), (B), or (C) of this paragraph; or
 - (E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) of this

paragraph and shares the same home as his/her primary residence with the individual.

- (64) “Proceeds,” means the following property:
- (A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
 - (B) whatever is collected on, or distributed on account of, collateral;
 - (C) rights arising out of collateral;
 - (D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
 - (E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.
- (65) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.
- (66) “Proposal” means a record authenticated by a secured party, which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 12.30.9.620, 12.30.9.621, and 12.30.9.622 herein.
- (67) “Public-finance transaction” means a secured transaction in connection with which
- (A) debt securities are issued;
 - (B) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and
 - (C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is, or is a governmental unit of, the Nez Perce Tribe or a state.
- (68) “Pursuant to commitment,” with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.
- (69) “Registered organization” means an organization organized solely under the laws of a single state, tribe, or the United States and as to

which the relevant state, tribe, or the United States must maintain a publicly accessible record showing the organization to have been organized.

- (70) “Secondary obligor” means an obligor to the extent that:
- (A) the obligor’s obligation is secondary; or
 - (B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.
- (71) “Secured party” means:
- (A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
 - (B) a consignor;
 - (C) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
 - (D) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest is created or provided for; or
 - (E) a person that holds a security interest arising under other applicable law.
- (72) “Security agreement” means an agreement that creates or provides for a security interest.
- (73) “Sign” means, with the present intent to authenticate any record:
- (A) to execute or adopt a tangible symbol; or
 - (B) to attach or logically associate an electronic symbol, sound, or process to or with a record.
- (74) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.
- (75) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, including any political subdivision or any department, agency, or instrumentality thereof.
- (76) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account,

chattel paper, a document, a general intangible, an instrument, or investment property.

- (77) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.
 - (78) “Termination statement” means an amendment of a financing statement which:
 - (A) identifies, by its file number, the initial financing statement to which it relates; and
 - (B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.
 - (79) “Transmitting utility” means a person primarily engaged in the business of:
 - (A) operating a railroad, subway, street railway, or trolley bus;
 - (B) transmitting communications electrically, electromagnetically, or by light;
 - (C) transmitting goods by pipeline or sewer; or
 - (D) transmitting or producing and transmitting electricity, steam, gas, or water.
 - (80) “Tribal business day” means a day on which the offices of the government of the Nez Perce Tribe are open for conduct of their ordinary business.
 - (81) “Tribal land” means all the land within the exterior boundaries of the Nez Perce Reservation and all land held in trust for the Nez Perce Tribe or a member of the Nez Perce Tribe outside the exterior boundaries of the Nez Perce Reservation.
- (b) To the extent any additional terms are necessarily implicated by this STA, the definition of these terms under the relevant Uniform Commercial Code statutes of the state of Idaho will apply, but only to the extent not in conflict with Nez Perce Tribal law. Provided further, and subject to the provisions of this STA dealing with course of performance, course of dealing, and usage of trade (Section 12.30.1.303), the meaning of a term not defined by this STA is to be derived from the context involved, with due consideration for consistency in meaning with uniform principles of commercial and contract law operative in the United States.
- (c) Article 1 of this UCC contains additional general definitions, and principles of construction and interpretation, applicable through this Article 9.

Section 12.30.9.103. General Scope

- (a) **General Scope of Article.** Except as otherwise provided in the section on excluded transactions (Section 12.30.9.104), this STA applies to all transactions under Section 12.30.1.301 of the UCC and also the following, if within the jurisdiction of the Nez Perce Tribe:
- (1) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
 - (2) an agricultural lien;
 - (3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;
 - (4) a consignment; and
 - (5) any other commercial activities, including sales of goods, leases of goods, other transactions in goods, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, documents of title, and investment securities, to the extent those commercial activities are implicated in clauses (1), (2), (3) or (4) of this subsection (a).
- (b) Subject to the provisions of this STA dealing with course of performance, course of dealing, and usage of trade (Section 12.30.1.303), the application of this STA to a type of transaction enumerated in subsection (a)(5) is to be derived from the context involved, with due consideration for consistency in application with uniform principles of commercial and contract law operative in the United States.
- (c) The application of this STA 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 STA does not apply.

Section 12.30.9.104. Excluded Transactions

This STA does not apply to:

- (a) a landlord's lien, other than an agricultural lien;
- (b) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 12.30.9.333 applies with respect to priority of the lien;
- (c) property subject to Section 12.30.1.110 of this UCC;
- (d) an assignment of a claim for wages, salary, or other compensation of an employee;
- (e) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

- (f) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
- (g) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- (h) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- (i) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health care-insurance receivable and any subsequent assignment of the right to payment, but Sections 12.30.9.315 and 12.30.9.317 apply with respect to proceeds and priorities in proceeds;
- (j) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- (k) a right of recoupment or setoff, but the section on agreements not to assert defenses against assignees (Section 12.30.9.403) applies with respect to defenses or claims of an account debtor;
- (l) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
 - (1) a fixture filing; and
 - (2) security agreements covering personal and real property in Section 12.30.9.604;
- (m) an assignment of a claim arising in tort, other than a commercial tort claim, except as provided with respect to proceeds and priorities in proceeds;
- (n) an assignment of a deposit account in a consumer transaction of a deposit account on which checks can be drawn, except as provided with respect to proceeds and priorities in proceeds;
- (o) a transfer by the Nez Perce Tribe or a governmental unit of the Tribe;
- (p) an applicable statute, regulation, or treaty of the United States preempts this article;
- (q) the rights of a transferee beneficiary or nominated person under a letter of credit are independent or superior under applicable law; or
- (r) a statute of a state, a foreign country, or a governmental unit of a state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit.

Section 12.30.9.105. Administration of STA; Authority to Promulgate Regulations

The Nez Perce Tribal Executive Committee is charged with the administration of this STA. The Nez Perce Tribal Executive Committee may promulgate regulations necessary for the effective implementation and enforcement of this STA.

Section 12.30.9.106. Purchase-Money Security Interest; Application of Payments; Burden of Establishing

(a) **Definitions.** In this section:

- (1) “Purchase-money collateral” means goods or software that secures a purchase-money obligation incurred with respect to that collateral.
- (2) “Purchase-money obligation” means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

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

- (1) to the extent that the goods are purchase-money collateral with respect to that security interest;
- (2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and
- (3) also, to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

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

- (1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and
- (2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

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

- (e) **Application of payment in non-consumer transaction.** In a transaction other than a consumer transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:
- (1) in accordance with any reasonable method of application to which the parties agree;
 - (2) if paragraph (1) does not apply, in accordance with the intention of the obligor manifested at or before the time of payment; or
 - (3) if neither paragraph (1) nor paragraph (2) applies, in the following order:
 - (A) to obligations that are not secured; and
 - (B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.
- (f) **No loss of status of purchase-money security interest in non-consumer goods transaction.** In a transaction other than a consumer transaction, a purchase-money security interest does not lose its status as such, even if:
- (1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;
 - (2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or
 - (3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.
- (g) **Burden of proof in non-consumer goods transaction.** In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.
- (h) **Non-consumer-goods transactions; no inference.** The limitation of the rules in subsections (e), (f), and (g) of this section to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

Section 12.30.9.107. Control of Deposit Account

- (a) **Requirements for control.** A secured party has control of a deposit account if:

- (1) the secured party is the bank with which the deposit account is maintained;
 - (2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or
 - (3) the secured party becomes the bank's customer with respect to the deposit account.
- (b) **Debtor's right to direct disposition.** A secured party that has satisfied subsection (a) of this section has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

Section 12.30.9.108. Control of Electronic Chattel Paper

A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

- (1) a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in subsections (4), (5), and (6) of this section, unalterable;
- (2) the authoritative copy identifies the secured party as the assignee of the record or records;
- (3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;
- (4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;
- (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

Section 12.30.9.109. Control of Investment Property

- (a) **Control under Idaho Code § 28, Chapter 8.** A person has control of a certificated security, uncertificated security, or security entitlement as provided in Idaho Code § 28-8-106.
- (b) **Control of commodity contract.** A secured party has control of a commodity contract if:
- (1) the secured party is the commodity intermediary with which the commodity contract is carried; or

- (2) the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.
- (c) **Effect of control of securities account or commodity account.** A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

Section 12.30.9.110. Control of Letter-of-Credit Right

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under Idaho Code § 28-5-114 or otherwise applicable law or practice.

Section 12.30.9.111. Sufficiency of Description in Security Agreement

- (a) **Sufficiency of description.** Except as otherwise provided in subsections (c), (d), and (e) of this section, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.
- (b) **Examples of reasonable identification.** Except as otherwise provided in subsection (d) of this section, a description of collateral reasonably identifies the collateral if it identifies the collateral by:
 - (1) specific listing;
 - (2) category;
 - (3) except as otherwise provided in subsection (e) of this section, a type of collateral defined in the UCC;
 - (4) quantity;
 - (5) computational or allocational formula or procedure; or
 - (6) except as otherwise provided in subsection (c) of this section, any other method, if the identity of the collateral is objectively determinable.
- (c) **Supergeneric description not sufficient.** A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral. However, as provided in Section 12.30.9.504, such a description is sufficient in a financing statement.
- (d) **Investment property.** Except as otherwise provided in subsection (e) of this section, a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

- (1) the collateral by those terms or as investment property; or
- (2) the underlying financial asset or commodity contract.
- (e) **When description by type is insufficient.** A description only by type of collateral defined in this STA is an insufficient description of:
 - (1) a commercial tort claim; or
 - (2) in a consumer transaction, any collateral.

Section 12.30.9.112. Parties' Power to Choose Applicable Law

- (a) **Effective applicable law choices.** Except as provided in subsection (b) and unless preempted by federal law, if a transaction bears a reasonable relation to the Nez Perce Tribe and also to another Indian tribe or nation, state, or country, the parties may agree that the law either of the Nez Perce Tribe or of such other tribe or nation, state, or country governs their rights and duties. In the absence of an effective agreement, this STA applies to all transactions bearing an appropriate relation to the Nez Perce Tribe. The fact that the law of another Indian tribe or nation, state, or country is applicable as provided in this section does not affect the jurisdiction or venue of the Nez Perce Tribe, nor does it waive the sovereign immunity of the Nez Perce Tribe or of any agency or instrumentality thereof.
- (b) **Ineffective applicable law choices.** An agreement otherwise effective under subsection (a) is ineffective in any of the following cases:
 - (1) in a consumer transaction;
 - (2) to the extent the agreement purports to vary the provisions of Subpart 1 of Part 3 of this STA, concerning the law governing perfection and priority; or
 - (3) to the extent that application of the law of the Indian tribe or nation, state, or country designated in the agreement would be contrary to a fundamental policy of the Nez Perce Tribe.

PART 2. EFFECTIVENESS, ATTACHMENT, AND RIGHTS OF PARTIES

Section 12.30.9.201. General Effectiveness of Security Agreement

- (a) **General effectiveness of security agreement.** Except as otherwise provided in this STA or other applicable law, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.
- (b) **Applicable consumer laws and other law.** A transaction subject to this STA is subject to any applicable rule of law which establishes a different rule for consumers and

- (1) any other applicable tribal, federal or state statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit; and
- (2) any consumer-protection statute or regulation.
- (c) **Other applicable law controls.** In case of conflict between this STA and a rule of law, statute, or regulation described in subsection (b) of this section, the rule of law, statute, or regulation prevails. Failure to comply with a statute or regulation described in subsection (b) of this section has only the effect the statute or regulation specifies.
- (d) **Further deference to other applicable law.** This article does not
 - (1) validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b) of this section; or
 - (2) extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.
- (e) **Title to collateral immaterial.** Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

**Section 12.30.9.202. Attachment and Enforceability of Security Interest;
Proceeds; Formal Requisites**

- (a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral unless an agreement expressly postpones the time of attachment.
- (b) **Enforceability.** Except as otherwise provided in subsections (c) through (g), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:
 - (1) value has been given;
 - (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
 - (3) one of the following conditions is met:
 - (A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - (B) the collateral is not a certified security and is in the possession of the secured party pursuant to the debtor's security agreement and this STA;

- (C) the collateral is a certified security in registered form and the secured party has control (including delivery of the security certificate to the secured party) pursuant to the debtor's security agreement; or
 - (D) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under Section 12.30.9.107, 12.30.9.108, 12.30.9.109, or 12.30.9.110 pursuant to the debtor's security agreement.
- (c) **Other applicable law.** Subsection (b) is subject to a collecting bank's interest in items under applicable law or agreement, any recognized security interest of a letter-of-credit issuer or nominated person under applicable law or agreement. A security interest arising under recognized sales and leases law, and a security interest in a security or in an investment account arising due to the purchase or delivery of the financial asset.
 - (d) **Proceeds.** The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by this STA and is also attachment of a security interest in a supporting obligation for the collateral.
 - (e) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest, mortgage, or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.
 - (f) **Certain items credited to investment account.** The attachment of a security interest in an investment account is also attachment of a security interest in any securities or commodity contracts credited to the investment account.
 - (g) **When person becomes bound by another person's security agreement.** A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:
 - (1) the security agreement becomes effective to create a security interest in the person's property; or
 - (2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.
 - (h) **Effect of new debtor becoming bound.** If a new debtor becomes bound as debtor by a security agreement entered into by another person:

- (1) the agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
- (2) another agreement is not necessary to make a security interest in the property enforceable.

Section 12.30.9.203. After-Acquired Collateral; Future Advances

- (a) **After-acquired collateral.** Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.
- (b) **After-acquired property clause not effective.** A security interest does not attach under a term constituting an after-acquired property clause to:
 - (1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or
 - (2) a commercial tort claim.
- (c) **Future advances.** A security agreement may provide that collateral secures or that accounts, chattel paper, or payment intangibles are sold in connection with future advances or other value, whether or not the advances or value are given pursuant to commitment.

Section 12.30.9.204. Rights and Duties When Collateral is in Secured Party's Possession or Control

- (a) **Duty of care when secured party in possession.** Except as otherwise provided in subsection (c) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.
- (b) **Right of repledge.** A secured party having possession or control of securities or control of an investment account may create a security interest in the collateral.
- (c) **Buyer of certain rights to payment.** If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:
 - (1) subsection (a) does not apply unless the secured party is entitled under an agreement:
 - (A) to charge back uncollected collateral; or

- (B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and
- (2) subsections (d) and (e) of this section do not apply.
- (d) **Expenses, risks, duties, and rights when secured party in possession.** Except as otherwise provided in subsection (c) of this section, if a secured party has possession of collateral:
 - (1) reasonable expenses, including the cost of 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;
 - (2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;
 - (3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
 - (4) the secured party may use or operate the collateral:
 - (A) for the purpose of preserving the collateral or its value;
 - (B) as permitted by an order of a court having competent jurisdiction; or
 - (C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.
- (e) **Duties and rights when secured party in possession or control.** Except as otherwise provided in subsection (c) of this section, a secured party having possession of collateral or control of collateral under Section 12.30.9.107, 12.30.9.108, 12.30.9.109, or 12.30.9.110:
 - (1) may hold as additional security any proceeds, except money or funds, received from the collateral;
 - (2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
 - (3) may create a security interest in the collateral.

Section 12.30.9.205. Additional Duties of Certain Secured Parties

- (a) **Applicability of Section.** This section applies to cases in which there is no outstanding secured obligation, and the secured party is not committed to make advances, incur obligations, or otherwise give value.
- (b) **Duty of secured party in control of investment account.** Within ten tribal business days after receiving a signed demand by the debtor, a secured party having control of an investment account shall send to the investment

intermediary with which the investment account is maintained an authenticated statement that releases the investment intermediary from any further obligation to comply with instructions originated by the secured party.

- (c) **Duty of a secured party having control of a deposit account** under Section 12.30.9.107 shall:
- (1) pay the debtor the balance on deposit in the deposit account; or
 - (2) transfer the balance on deposit into a deposit account in the debtor's name.
- (d) **Duty of a secured party, other than a buyer, having control of electronic chattel paper** under Section 12.30.9.108 shall:
- (1) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;
 - (2) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
 - (3) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.
- (e) **Duty of a secured party having control of investment property** under Section 12.30.9.109 shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party.
- (f) **Duty of a secured party having control of a letter-of-credit right** under Section 12.30.9.110 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.
- (g) **Duty of secured party if account debtor has been notified of assignment.** This subsection categorically does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible. In all other settings, this subsection applies if (i) there is no outstanding secured obligation; and (ii) the secured party is not committed to make advances,

incur obligations, or otherwise give value. Upon application of this subsection, within ten tribal business days after receiving a signed demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under the provisions of this STA dealing with discharge of an account debtor and notification of an assignment, an authenticated record that releases the account debtor from any further obligation to the secured party.

Section 12.30.9.206. [Reserved]

Section 12.30.9.207. Request for Accounting; Request Regarding List of Collateral or Statement of Account

(a) **Definitions.** In this section:

- (1) “Request” means a record of a type described in paragraph (2), (3), or (4) of this subsection.
- (2) “Request for an accounting” means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request, and also containing what the debtor believes to be the aggregate amount of unpaid indebtedness as of a specified date.
- (3) “Request regarding a list of collateral” means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.
- (4) “Request regarding a statement of account” means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) **Duty to respond to requests.** Subject to subsections (c), (d), (e), and (f) of this section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

- (1) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and
- (2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

- (c) **Request regarding list of collateral; statement concerning type of collateral.** A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.
- (d) **Request regarding list of collateral; no interest claimed.** A person that receives a request regarding a list of collateral, and claims no interest in the collateral when it receives the request, but claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:
 - (1) disclaiming any interest in the collateral; and
 - (2) if known to the recipient, providing the name and mailing address of any assignee of, or successor to, the recipient's interest in the collateral.
- (e) **Request for accounting or regarding statement of account; no interest in obligation claimed.** A person that receives a request for an accounting or a request regarding a statement of account, and claims no interest in the obligations when it receives the request, but claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:
 - (1) disclaiming any interest in the obligations; and
 - (2) if known to the recipient, providing the name and mailing address of any assignee of, or successor to, the recipient's interest in the obligations.
- (f) **Charges for responses.** A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding \$25 for each additional response.

PART 3. PERFECTION AND PRIORITY

SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY

Section 12.30.9.301. Law Governing Perfection and Priority of Security Interests

Except as otherwise provided with respect to goods covered by a certificate of title (Section 12.30.9.303), the following rules determine the law governing perfection, the effect of perfection or non-perfection, and the priority of a security interest in collateral:


NEZ PERCE TRIBE REVISED CODES
As Amended through Resolution NP 24-439 (Aug. 27, 2024)

- (1) Except as otherwise provided in this section, the local law of the Nez Perce Tribe governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in collateral
 - (A) if the security interest is created pursuant to this STA;
 - (B) from the time that the debtor becomes subject to the jurisdiction of the Nez Perce Tribe and the STA (Section 12.30.9.316(d) and (e));
 - (C) from the time that the collateral is transferred to a person that thereby becomes a debtor and is subject to the jurisdiction of the Nez Perce Tribe; and
 - (D) as outlined in Section 12.30.1.301 of the UCC.
- (2) Except as provided in paragraph (3), while goods are located in a jurisdiction, the local law of that jurisdiction governs:
 - (A) perfection of a security interest in the goods by filing a fixture filing;
 - (B) perfection of a security interest in timber to be cut; and
 - (C) the effect of perfection or non-perfection and the priority of the nonpossessory security interest in the collateral.
- (3) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in as-extracted collateral.
- (4) This section does not determine the law governing matters not expressly referred to herein, including attachment, validity, characterization, and enforcement.

Section 12.30.9.302. Law Governing Perfection and Priority of Agricultural Liens

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of an agricultural lien on the farm products.

Section 12.30.9.303. Law Governing Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title

- (a) **Applicability of Section.** This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods of the debtor.
- (b) **When goods covered by certificate of title.** Goods become covered by a certificate of title when a valid application for the certificate of title and the

applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

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

Section 12.30.9.304. Law Governing Perfection and Priority of Security Interests in Deposit Accounts

- (a) **Law of bank's jurisdiction governs.** The local law of a bank's jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in a deposit account maintained with that bank.
- (b) **Bank's jurisdiction.** The following rules determine a bank's jurisdiction for purposes of this part:
- (1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.
 - (2) If paragraph (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
 - (3) If neither paragraph (1) nor paragraph (2) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
 - (4) If paragraphs (1) through (3) of this subsection do not apply, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.
 - (5) If paragraphs (1) through (4) of this subsection do not apply, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

Section 12.30.9.305. Law Governing Perfection and Priority of Security Interests in Investment Property

- (a) **Governing law: General rules.** Except as otherwise provided in subsection (c) of this section, the following rules apply:
- (1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby.
 - (2) The local law of the issuer's jurisdiction as specified in Idaho Code Title 28, Chapter 8 governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in an uncertificated security.
 - (3) The local law of the securities intermediary's jurisdiction as specified in Idaho Code Title 28, Chapter 8 governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account.
 - (4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account.
- (b) **Commodity intermediary's jurisdiction.** The following rules determine a commodity intermediary's jurisdiction for purposes of this part:
- (1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.
 - (2) If paragraph (1) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
 - (3) If neither paragraph (1) nor paragraph (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
 - (4) If paragraphs (1) through (3) of this subsection do not apply, the commodity intermediary's jurisdiction is the jurisdiction in which the

office identified in an account statement as the office serving the commodity customer's account is located.

- (5) If paragraphs (1) through (4) of this subsection do not apply, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.
- (c) **When perfection governed by law of jurisdiction where debtor located.** The local law of the jurisdiction in which the debtor is located governs:
- (1) perfection of a security interest in investment property by filing;
 - (2) automatic perfection of a security interest in investment property created by a broker or securities intermediary; and
 - (3) automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

Section 12.30.9.306. Law Governing Perfection and Priority of Security Interests in Letter-of-Credit Rights

This section does not apply to a security interest that is perfected only under Section 12.30.9.308(d). In all other situations:

- (a) **Governing law: Issuer's or nominated person's jurisdiction.** The local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.
- (b) **Issuer's or nominated person's jurisdiction.** For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in Idaho Code Title 28, Chapter 5.

Section 12.30.9.307. Location of Debtor; Location of Collateral

For purposes of location of debtor only, the following rules apply:

- (a) **Place of business.** In this section, "place of business" means a place where a debtor conducts its affairs.
- (b) **Debtor's location: General rules.** Except as otherwise provided in this section, the following rules determine a debtor's location:
 - (1) A debtor who is an individual is located at the individual's principal residence.
 - (2) A debtor that is an organization and has only one place of business is located at its place of business.

- (3) A debtor that is an organization and has more than one place of business is located at its chief executive office.
- (c) **Limitation of applicability of subsection (b).** Subsection (b) of this section applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) of this section does not apply, the debtor is located in the District of Columbia, United States.
- (d) **Continuation of location: Cessation of existence, etc.** A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this section.
- (e) **Location of registered organization organized under state or tribal law.**
 - (1) A registered organization that is organized under the law of a state is located in that state.
 - (2) A registered organization that is organized under the law of a Native American tribe is located in the state in which the tribe is located.
- (f) **Location of registered organization organized under federal law; bank branches and agencies.** Except as otherwise provided in subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state is located:
 - (1) in the state that the law of the United States designates, if the law designates a state of location;
 - (2) in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or
 - (3) in the District of Columbia, United States if neither (1) nor (2) of this subsection applies.
- (g) **Continuation of location: change in status of registered organization.** A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) of this section notwithstanding:
 - (1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or
 - (2) the dissolution, winding up, or cancellation of the existence of the registered organization.

- (h) **Location of United States.** The United States is located in the District of Columbia.
- (i) **Location of foreign bank branch or agency if licensed in only one state.** A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.
- (j) **Location of foreign air carrier.** A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.
- (k) **Special rules for Nez Perce Tribe and entities located on Tribal lands.**
 - (1) The Nez Perce Tribe is located in the state of Idaho.
 - (2) An individual who resides on Tribal land is located in the state in which such land is situated.
 - (3) A place of business or chief executive office located on Tribal land is located in the state in which such land is situated.
- (l) **Collateral on Tribal land.** For the purposes of location of collateral on Tribal land, collateral on Tribal land is located in the state and county in which such collateral would be located if the Tribal land were not Native sovereign territory.

SUBPART 2. PERFECTION

Section 12.30.9.308. When Security Interest is Perfected; Continuity of Perfection

- (a) **Timing of perfection of security interest.** Except as otherwise provided in this section and the next section dealing with security interests perfected upon attachment, a security interest is perfected if it has attached and all of the applicable requirements for perfection set forth in this STA have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.
- (b) **Continuous perfection; perfection by different methods.** A security interest is perfected continuously if it is originally perfected by one method under this STA and is later perfected by another method under this STA, without an intermediate period when it was unperfected.
- (c) **Lien securing right to payment.** Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

- (d) **Certain items credited to investment account.** Perfection of a security interest in an investment account also perfects a security interest in any securities or commodity contracts credited to the investment account.
- (e) **Supporting obligation.** Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

Section 12.30.9.309. Security Interest Perfected Upon Attachment

The following security interests are perfected when they attach:

- (1) a purchase-money security interest in consumer goods, except as otherwise provided in Section 12.30.9.311(b) regarding goods subject to certain statutes, regulations or treaties;
- (2) a security interest created by an assignment of accounts which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts;
- (3) a sale of a payment intangible or a promissory note;
- (4) a security interest created by an assignment of a health care-insurance receivable to the provider of the health care goods or services;
- (5) a security interest created by an assignment of a beneficial interest in a decedent's estate; and
- (6) a security interest created by an assignment by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

Section 12.30.9.310. When Filing Required to Perfect Security Interest; Security Interests to Which Filing Provisions Do Not Apply

- (a) **General rule: perfection by filing.** Except as otherwise provided in subsection (b) and the section of this STA dealing with perfection of a security interest in money, a financing statement must be filed to perfect all security interests.
- (b) **Exceptions: filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:
 - (1) that is perfected under Section 12.30.9.308(c), dealing with liens securing rights to payment;
 - (2) that is perfected when it attaches under Section 12.30.9.309;
 - (3) in property subject to a statute, regulation, or treaty described in Section 12.30.9.311(a);

- (4) in goods in possession of a bailee which is perfected under Section 12.30.9.312(d)(1) or (2);
 - (5) in certificated securities, negotiable documents, goods, or instruments which is perfected without filing or possession under Section 12.30.9.312(e), (f), or (g);
 - (6) in collateral in the secured party's possession under Section 12.30.9.313;
 - (7) in a security or an investment account perfected by control under Section 12.30.9.314;
 - (8) in proceeds which is perfected under Section 12.30.9.315; or
 - (9) that is perfected under Section 12.30.9.316 relating to continued perfection of security interests perfected under the law of another jurisdiction.
- (c) **Assignment of perfected security interest.** If a secured party assigns a perfected security interest, a filing under this STA is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Section 12.30.9.311. Perfection of Security Interests in Property Subject to Certain Statutes, Regulations, and Treaties

- (a) **Security interest subject to other law.** Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:
- (1) any law of the United States whose requirements for a security interest obtaining priority over the rights of a lien creditor with respect to the property preempt the provisions of this STA requiring that security interests be perfected by filing;
 - (2) any statutes adopted by the Nez Perce Tribe regarding certificate-of-title related to automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection, and any central filing statute other than the one provided by this STA; or
 - (3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest obtaining priority over the rights of a lien creditor with respect to the property.
- (b) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this STA. Except as otherwise provided in subsection (d)

and the provisions of this STA providing for perfection by possession when goods covered by a certificate of title issued by one jurisdiction become covered by a certificate of title issued by another jurisdiction, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

- (c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) and the provisions of this STA providing for continued perfection when goods covered by a certificate of title issued by one jurisdiction become covered by a certificate of title issued by another jurisdiction, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this STA.
- (d) **Inapplicability to certain inventory.** During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

Section 12.30.9.312. Perfection of Security Interests in Chattel Paper, Documents, Goods Covered by Documents, Instruments, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession

- (a) **Perfection by filing permitted.** A security interest in chattel paper, negotiable documents, instruments, securities, or investment accounts may be perfected by filing.
- (b) **Possession of money.** Except as otherwise provided in the provisions of this STA dealing with perfection with respect to proceeds, a security interest in money may be perfected only by the secured party taking possession under the provisions of this STA dealing with perfection by possession.
- (c) **Goods covered by negotiable document.** While goods are in the possession of a bailee that has issued a negotiable document covering the goods:
 - (1) a security interest in the goods may be perfected by perfecting a security interest in the document; and
 - (2) a security interest perfected in the document has priority over any security interest in the goods that becomes perfected by another method during that time.

- (d) **Goods covered by nonnegotiable document.** While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:
 - (1) issuance of a document in the name of the secured party;
 - (2) the bailee's receipt of notification of the secured party's interest; or
 - (3) filing as to the goods.
- (e) **Temporary perfection: new value.** A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under a signed security agreement.
- (f) **Temporary perfection: goods or documents made available to debtor.** A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:
 - (1) ultimate sale or exchange; or
 - (2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.
- (g) **Temporary perfection: delivery of security certificate or instrument to debtor.** A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:
 - (1) ultimate sale or exchange; or
 - (2) presentation, collection, enforcement, renewal, or registration of transfer.
- (h) **Expiration of temporary perfection.** After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this STA.

Section 12.30.9.313. When Possession by Secured Party Perfects Security Interest Without Filing

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

- (b) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by the Nez Perce Tribe or a state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Section 12.30.9.316(c), relating to continued perfection of goods covered by a certificate of title.
- (c) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:
 - (1) the person in possession signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
 - (2) the person takes possession of the collateral after having signed a record acknowledging that it will hold possession of collateral for the secured party's benefit.
- (d) **Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.
- (e) **Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.
- (f) **Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:
 - (1) the acknowledgment is effective under subsection (c), even if the acknowledgment violates the rights of a debtor; and
 - (2) unless the person otherwise agrees or law other than this STA otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

Section 12.30.9.314. Perfection by Control

- (a) **Perfection by control.** A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral as each of the aforementioned types of collateral can be controlled as discussed in this STA.
- (b) **Specified collateral: Time of perfection by control; continuation of perfection.** A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control when the secured party

obtains control and remains perfected by control only while the secured party retains control.

- (c) **Investment property: Time of perfection by control; continuation of perfection.** A security interest in investment property is perfected by control as this type of collateral can be controlled as discussed in the STA from the time the secured party obtains control and remains perfected by control until:
- (1) the secured party does not have control; and
 - (2) one of the following occurs:
 - (A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;
 - (B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or
 - (C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

Section 12.30.9.315. Secured Party's Rights on Disposition of Collateral and in Proceeds

- (a) **Disposition of collateral: continuation of security interest; proceeds.** Except as otherwise provided in this STA and in any applicable law dealing with entrustment of goods:
- (1) a security interest continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest; and
 - (2) a security interest attaches to any identifiable proceeds of collateral.
- (b) **When commingled proceeds identifiable.** Proceeds that are commingled with other property are identifiable proceeds:
- (1) if the proceeds are goods, to the extent provided by the provisions of this STA dealing with commingled goods; and
 - (2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this STA with respect to commingled property of the type involved.
- (c) **Perfection of security interest in proceeds.** A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.
- (d) **Continuation of perfection.** A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

- (1) the following conditions are satisfied:
 - (A) a filed financing statement covers the original collateral;
 - (B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
 - (C) the proceeds are not acquired with cash proceeds;
 - (2) the proceeds are identifiable cash proceeds; or
 - (3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.
- (e) **When perfected security interest in proceeds becomes unperfected.** If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:
- (1) when the effectiveness of the filed financing statement lapses or is terminated under the provisions of this STA dealing with lapse or termination; or
 - (2) the 21st day after the security interest attaches to the proceeds.

Section 12.30.9.316. Continued Perfection of Security Interest Following Change in Governing Law

- (a) **General rule: effect on perfection of change in governing law.** A security interest to which this STA becomes applicable that is perfected pursuant to the law of another jurisdiction remains perfected until the earliest of:
- (1) the time perfection would have ceased under the law of that jurisdiction;
 - (2) the expiration of four months after the debtor becomes subject to the jurisdiction of the Nez Perce Tribe (subsections (d) and (e)); or
 - (3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is subject to the jurisdiction of the Nez Perce Tribe.
- (b) **Security interest perfected or unperfected under law of the Nez Perce Tribe.** If a security interest described in subsection (a) becomes perfected under the law of the Nez Perce Tribe before the end of the applicable period described in that subsection, it remains perfected thereafter until perfection lapses in accordance with this STA. Otherwise, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

- (c) **Goods covered by certificate of title from the Nez Perce Tribe.** A security interest to which this STA becomes applicable which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from the Nez Perce Tribe remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered. However, the security interest becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value, if the applicable requirements for perfection under Section 12.30.9.311(b) or 12.30.9.313, dealing with perfection by compliance with other law or by possession, are not satisfied before the earlier of:
- (1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from the Nez Perce Tribe; or
 - (2) the expiration of four months after the goods had become so covered.
- (d) **When debtor subject to jurisdiction of the Nez Perce Tribe for purposes of this section.** For purposes of this section only, a debtor becomes subject to the jurisdiction of the Nez Perce Tribe if:
- (1) the debtor is an individual whose principal residence comes to be within this jurisdiction or who becomes a member of the Nez Perce Tribe;
 - (2) the debtor is an organization, other than a registered organization, and its sole place of business (with place of business defined as a place where a debtor conducts its affairs) or, if it has more than one place of business, its chief executive office, comes to be within this jurisdiction; or
 - (3) the debtor comes to be
 - (A) a registered organization that is organized solely under the law of the Nez Perce Tribe; or
 - (B) incorporated under a charter issued to a tribe by the United States Secretary of the Interior pursuant to 25 U.S.C. § 477, as the same may be amended from time to time.
- (e) **Continuation of jurisdiction: cessation of existence, etc.** For purposes of subsection (d):
- (1) a person other than a registered organization continues to be subject to the jurisdiction of the Nez Perce Tribe notwithstanding the fact that it ceases to exist, have a residence, or have a place of business; and
 - (2) a registered organization continues to be subject to the jurisdiction of the Nez Perce Tribe notwithstanding

- (A) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such; or
 - (B) the dissolution, winding up, or cancellation of the existence of the registered organization.
- (f) **Possessory security interest in collateral moved to new jurisdiction.** A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:
- (1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
 - (2) thereafter the collateral is brought into another jurisdiction; and
 - (3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.
- (g) **Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.** A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:
- (1) the time the security interest would have become unperfected under the law of that jurisdiction; or
 - (2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.
- (h) **Subsection (g) of this section security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (g) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in subsection (g) of this section, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

SUBPART 3. PRIORITY

Section 12.30.9.317. Interests That Take Priority Over Security Interest

- (a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:
- (1) a person entitled to priority under Section 12.30.9.322; and

- (2) except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:
- (A) the security interest or agricultural lien is perfected; or
 - (B) one of the conditions specified in Section 12.30.9.202(b)(3) is met and a financing statement covering the collateral is filed.
- (b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.
- (e) **Purchase-money security interest.** Except as otherwise provided in Section 12.30.9.324, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.
- (f) **Tribal cultural gift exchange.** A recipient of an item from a Tribal member in a Tribal cultural event commonly known as a “give away” shall take such item free of any applicable security interest; provided that upon notice of this event, the last prior secured obligor shall promptly offer to the secured party comparable security of equivalent value and otherwise provide accommodation for any change in value or priority from the prior security interest.

Section 12.30.9.318. No Interest Retained in Right to Payment That is Sold; Rights and Title of Seller of Account or Chattel Paper With Respect to Creditors and Purchasers

- (a) **Seller retains no interest.** A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.
- (b) **Deemed rights of debtor if buyer's security interest unperfected.** For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

Section 12.30.9.319. Rights and Title of Consignee With Respect to Creditors and Purchasers

- (a) **Consignee has consignor's rights.** Except as otherwise provided in subsection (b) of this section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.
- (b) **Applicability of other law.** For purposes of determining the rights of a creditor of a consignee, law other than this article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

Section 12.30.9.320. Buyer of Goods

- (a) **Buyer in ordinary course of business.** Except as otherwise provided in subsection (e) of this section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.
- (b) **Buyer of consumer goods.** Except as otherwise provided in subsection (e) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:
 - (1) without knowledge of the security interest;
 - (2) for value;
 - (3) primarily for the buyer's personal, family, or household purposes; and

- (4) in the case of goods having a value of \$3,000.00 or more, before the filing of a financing statement covering the goods.
- (c) **Effectiveness of filing for subsection (b) of this section.** To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by Section 12.30.9.316.
- (d) **Buyer in ordinary course of business at wellhead or minehead.** A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.
- (e) **Possessory security interest not affected.** Subsections (a) and (b) of this section do not affect a security interest in goods in the possession of the secured party under Section 12.30.9.313.

Section 12.30.9.321. Licensee of General Intangible and Lessee of Goods in Ordinary Course of Business

- (a) **“Licensee in ordinary course of business.”** In this section, “licensee in ordinary course of business” means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor’s own usual or customary practices.
- (b) **Rights of licensee in ordinary course of business.** A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.
- (c) **Rights of lessee in ordinary course of business.** A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

Section 12.30.9.322. Priorities Among Conflicting Security Interests in and Agricultural Liens on Same Collateral

- (a) **General priority rules.** Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:
 - (1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from

the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected if there is no period thereafter when there is neither filing nor perfection.

- (2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.
 - (3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.
- (b) **Time of perfection: Proceeds and supporting obligations.** For the purposes of subsection (a)(1) of this section:
- (1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and
 - (2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.
- (c) **Special priority rules: Proceeds and supporting obligations.** Except as otherwise provided in subsection (f) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under Section 12.30.9.324, 12.30.9.327, 12.30.9.328, 12.30.9.329, or 12.30.9.334 also has priority over a conflicting security interest in:
- (1) any supporting obligation for the collateral; and
 - (2) proceeds of the collateral if:
 - (A) the security interest in proceeds is perfected;
 - (B) the proceeds are cash proceeds or of the same type as the collateral; and
 - (C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.
- (d) **First-to-file priority rule for certain collateral.** Subject to subsection (e) of this section and except as otherwise provided in subsection (f) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.
- (e) **Applicability of subsection.** Subsection (d) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

- (f) **Limitations on subsections (a) through (e) of this section.** Subsections (a) through (e) of this section are subject to:
- (1) subsection (g) of this section and the other provisions of this part;
 - (2) the comparable statute of another jurisdiction, with respect to a security interest of a collecting bank; and
 - (3) the comparable statute of another jurisdiction, with respect to a security interest of an issuer or nominated person.
- (g) **Priority under agricultural lien statute.** A perfected agricultural lien on collateral has priority over a conflicting security interest in an agricultural lien on the same collateral if the statute creating the agricultural lien so provides. Conflicts as to priority between and among security interests in crops and agricultural liens not explicitly addressed in this STA are governed by the provisions of the comparable UCC section of Idaho statutes.

Section 12.30.9.323. Future Advances

- (a) **When priority based on time of advance.** Except as otherwise provided in subsection (c) of this section, for purposes of determining the priority of a perfected security interest under Section 12.30.9.322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:
- (1) Is made while the security interest is perfected only:
 - (A) under Section 12.30.9.309 when it attaches; or
 - (B) temporarily under Section 12.30.9.312(e), (f), or (g); and
 - (2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Section 12.30.9.309 or 12.30.9.312(e), (f), or (g).
- (b) **Lien creditor.** Except as otherwise provided in subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:
- (1) without knowledge of the lien; or
 - (2) pursuant to a commitment entered into without knowledge of the lien.
- (c) **Buyer of receivables.** Subsections (a) and (b) of this section do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.
- (d) **Buyer of goods.** Except as otherwise provided in subsection (e) of this section, a buyer of goods other than a buyer in ordinary course of business

takes free of a security interest to the extent that it secures advances made after the earlier of:

- (1) the time the secured party acquires knowledge of the buyer's purchase;
or
 - (2) 45 days after the purchase.
- (e) **Advances made pursuant to commitment: Priority of buyer of goods.** Subsection (d) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.
- (f) **Lessee of goods.** Except as otherwise provided in subsection (g) of this section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:
- (1) the time the secured party acquires knowledge of the lease; or
 - (2) 45 days after the lease contract becomes enforceable.
- (g) **Advances made pursuant to commitment: Priority of lessee of goods.** Subsection (f) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

Section 12.30.9.324. Priority of Purchase-Money Security Interests

- (a) **General rule: Purchase-money priority.** Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 12.30.9.327, a perfected security interest in its identifiable proceeds also has priority if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.
- (b) **Inventory purchase-money priority.** Subject to subsection (c) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 12.30.9.330, and, except as otherwise provided in Section 12.30.9.327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:
- (1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

- (2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
 - (3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
 - (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.
- (c) **Holders of conflicting inventory security interests to be notified.** Subsections (b)(2) through (4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:
- (1) if the purchase-money security interest is perfected by filing, before the date of the filing; or
 - (2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 12.30.9.312(f), before the beginning of the 20-day period thereunder.
- (d) **Livestock purchase-money priority.** Subject to subsection (e) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 12.30.9.327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:
- (1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;
 - (2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
 - (3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and
 - (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.
- (e) **Holders of conflicting livestock security interests to be notified.** Subsections (d)(2) through (4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

- (1) if the purchase-money security interest is perfected by filing, before the date of the filing; or
 - (2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 12.30.9.312(f), before the beginning of the 20-day period thereunder.
- (f) **Software purchase-money priority.** Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 12.30.9.327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.
- (g) **Conflicting purchase-money security interests.** If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f) of this section:
- (1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
 - (2) in all other cases, Section 12.30.9.322(a) applies to the qualifying security interests.

Section 12.30.9.325. Priority of Security Interests in Transferred Collateral

- (a) **Subordination of security interest in transferred collateral.** Except as otherwise provided in subsection (b) of this section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:
- (1) the debtor acquired the collateral subject to the security interest created by the other person;
 - (2) the security interest created by the other person was perfected when the debtor acquired the collateral; and
 - (3) there is no period thereafter when the security interest is unperfected.
- (b) **Limitation of subsection.** Subsection (a) of this section subordinates a security interest only if the security interest:
- (1) otherwise, would have priority solely under Section 12.30.9.322(a) or 12.30.9.324; or
 - (2) arose solely under Idaho Code § 28-2-711(3).

Section 12.30.9.326. Priority of Security Interests Created by New Debtor

- (a) **Subordination of security interest created by new debtor.** Subject to subsection (b) of this section, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under Section 12.30.9.508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under Section 12.30.9.508.
- (b) **Priority under other provisions; multiple original debtors.** The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under Section 12.30.9.508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

Section 12.30.9.327. Priority of Security Interests in Deposit Account

The following rules govern priority among conflicting security interests in the same deposit account:

- (1) A security interest held by a secured party having control of the deposit account under Section 12.30.9.107 has priority over a conflicting security interest held by a secured party that does not have control.
- (2) Except as otherwise provided in subsections (3) and (4) of this section, security interests perfected by control under Section 12.30.9.314 rank according to priority in time of obtaining control.
- (3) Except as otherwise provided in subsection (4) of this section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.
- (4) A relevant security interest perfected by control under Section 12.30.9.314 has priority over a security interest held by the bank with which the deposit account is maintained.

Section 12.30.9.328. Priority of Security Interests in Investment Property

The following rules govern priority among conflicting security interests in the same investment property:

- (1) A security interest held by a secured party having control of investment property under Section 12.30.9.314 has priority over a security interest held by a secured party that does not have control of the investment property.

- (2) Except as otherwise provided in subsections (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under Section 12.30.9.314 rank according to priority in time of:
 - (A) if the collateral is a security, obtaining control;
 - (B) if the collateral is a security entitlement carried in a securities account and:
 - (i) if the secured party obtained control under Idaho Code § 28-8-106 or the comparable statute of another jurisdiction, the secured party's becoming the person for which the securities account is maintained; or
 - (C) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in this STA with respect to commodity contracts carried or to be carried with the commodity intermediary.
- (3) A security interest held by a securities intermediary in a security entitlement, or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.
- (4) A security interest held by a commodity intermediary in a commodity contract, or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.
- (5) A security interest in a certificated security in registered form which is perfected by taking delivery under this STA and not by control under this STA has priority over a conflicting security interest perfected by a method other than control.
- (6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under Section 12.30.9.314 rank equally.

Section 12.30.9.329. Priority of Security Interests in Letter-of-Credit Right

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

- (1) A security interest held by a secured party having control of the letter-of-credit right as specifically addressed in this STA has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.
- (2) Security interests perfected by control under Section 12.30.9.314 rank according to priority in time of obtaining control.

Section 12.30.9.330. Priority of Purchaser of Chattel Paper or Instrument

- (a) **Purchaser's priority: Security interest claimed merely as proceeds.** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:
- (1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper as specifically addressed in this STA; and
 - (2) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.
- (b) **Purchaser's priority: Other security interests.** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 12.30.9.314 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.
- (c) **Chattel paper purchaser's priority in proceeds.** Except as otherwise provided in Section 12.30.9.327, a purchaser having priority in chattel paper under subsection (a) or (b) of this section also has priority in proceeds of the chattel paper to the extent that:
- (1) Section 12.30.9.322 provides for priority in the proceeds; or
 - (2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.
- (d) **Instrument purchaser's priority.** Except as otherwise provided in Section 12.30.9.331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.
- (e) **Holder of purchase-money security interest gives new value.** For purposes of subsections (a) and (b) of this section, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.
- (f) **Indication of assignment gives knowledge.** For purposes of subsections (b) and (d) of this section, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a

purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

Section 12.30.9.331. Priority of Rights of Purchasers of Instruments, Documents, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements Under Article 8

- (a) **Rights under Articles 3, 7, and 8 not limited.** This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8 of the Uniform Commercial Code.
- (b) **Protection under Article 8.** This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8 of the Uniform Commercial Code.
- (c) **Filing not notice.** Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b) of this section.

Section 12.30.9.332. Transfer of Money; Transfer of Funds From Deposit Account

- (a) **Transferee of money.** A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.
- (b) **Transferee of funds from deposit account.** A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

Section 12.30.9.333. Priority of Certain Liens Arising by Operation of Law

- (a) **“Possessory lien.”** In this section, “possessory lien” means an interest, other than a security interest or an agricultural lien:
 - (1) which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person’s business;
 - (2) which is created by statute or rule of law in favor of the person; and
 - (3) whose effectiveness depends on the person’s possession of the goods.
- (b) **Priority of possessory lien.** A possessory lien on goods has priority over a security interest in the goods only if the lien is created by a statute that expressly so provides.

- (c) **Priority of preparer, processor, or depositor's lien.** A preparer lien or processor lien properly created pursuant to Idaho statutory law or a depositor's lien created pursuant to Idaho statutory law takes priority over any perfected or unperfected security interest.

Section 12.30.9.334. Priority of Security Interests in Fixtures and Crops

- (a) **Security interest in fixtures under this STA.** A security interest under this STA may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this STA in ordinary building materials incorporated into an improvement on land.
- (b) **Security interest in fixtures under real-property law.** This STA does not prevent creation of an encumbrance upon fixtures under real property law.
- (c) **General rule: subordination of security interest in fixtures.** In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.
- (d) **Fixtures purchase-money priority.** Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:
- (1) the security interest is a purchase-money security interest;
 - (2) the interest of the encumbrancer or owner arises before the goods become fixtures; and
 - (3) the security interest is perfected by an appropriate filing before the goods become fixtures or within 20 days thereafter.
- (e) **Priority of security interest in fixtures over interests in real property.** A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:
- (1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:
 - (A) is perfected by an appropriate filing before the interest of the encumbrancer or owner is of record; and
 - (B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;
 - (2) before the goods become fixtures, the security interest is perfected by any method permitted by this STA and the fixtures are readily removable:
 - (A) factory or office machines;

- (B) equipment that is not primarily used or leased for use in the operation of the real property; or
 - (C) replacements of domestic appliances that are consumer goods;
- (3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this STA; or
- (4) the security interest is:
 - (A) created in a manufactured home in a manufactured-home transaction; and
 - (B) perfected pursuant to a statute described in Section 12.30.9.311(a)(2).
- (f) **Priority based on consent, disclaimer, or right to remove.** A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:
 - (1) the encumbrancer or owner has, in a signed record, consented to the security interest or 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.
- (g) **Continuation of paragraph (f)(2) priority.** The priority of the security interest under paragraph (f)(2) continues for a reasonable time if the debtor right to remove the goods as against the encumbrancer or owner terminates.
- (h) **Priority of construction mortgage.** 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 a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.
- (i) **Priority of security interest in crops.** A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.
- (j) **Subsection (i) prevails.** Subsection (i) prevails over any inconsistent provisions of the Nez Perce Tribal Code.

Section 12.30.9.335. Accessions

- (a) **Creation of security interest in accession.** A security interest may be created in an accession and continues in collateral that becomes an accession.
- (b) **Perfection of security interest.** If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.
- (c) **Priority of security interest.** Except as otherwise provided in subsection (d), the other provisions of this part determine the priority of a security interest in an accession.
- (d) **Compliance with certificate-of-title statute.** A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under Section 12.30.9.311(b).
- (e) **Removal of accession after default.** After default, subject to Part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.
- (f) **Reimbursement following removal.** A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Section 12.30.9.336. Commingled Goods

- (a) **Commingled goods.** In this section, commingled goods means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.
- (b) **No security interest in commingled goods as such.** A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.
- (c) **Attachment of security interest to product or mass.** If collateral becomes commingled goods, a security interest attaches to the product or mass.

- (d) **Perfection of security interest.** If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.
- (e) **Priority of security interest.** Except as otherwise provided in subsection (f), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c).
- (f) **Conflicting security interests in product or mass.** If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:
 - (1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.
 - (2) If more than one security interest is perfected under subsection (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

Section 12.30.9.337. Priority of Security Interests in Goods Covered by Certificate of Title

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this jurisdiction issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

- (1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and
- (2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 12.30.9.311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

Section 12.30.9.338. Priority Subject to Subordination

This STA does not preclude subordination by agreement by a person entitled to priority.

Section 12.30.9.339. Priority of Security Interest or Agricultural Lien Perfected by Filed Financing Statement Providing Certain Incorrect Information

If a security interest or agricultural lien is perfected by a filed financing statement providing information which is incorrect at the time the financing statement is filed:

- (1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and
- (2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

Section 12.30.9.340. Effectiveness of Right of Recoupment or Setoff Against Deposit Account

- (a) **Exercise of recoupment or setoff.** Except as otherwise provided in subsection (c) of this section, a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.
- (b) **Recoupment or setoff not affected by security interest.** Except as otherwise provided in subsection (c) of this section, the application of this article to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with the secured party.
- (c) **When setoff ineffective.** The exercise by a bank of a setoff against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under Section 12.30.9.314, if the setoff is based on a claim against the debtor.

Section 12.30.9.341. Bank's Rights and Duties With Respect to Deposit Account

Except as otherwise provided in Section 12.30.9.340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

- (1) the creation, attachment, or perfection of a security interest in the deposit account;
- (2) the bank's knowledge of the security interest; or
- (3) the bank's receipt of instructions from the secured party.

Section 12.30.9.342. Bank's Right to Refuse to Enter Into or Disclose Existence of Control Agreement

This article does not require a bank to enter into an agreement of the kind described in Section 12.30.9.107, even if its customer so requests or directs. A bank

that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

PART 4. RIGHTS OF THIRD PARTIES

Section 12.30.9.401. Alienability of Debtor's Rights

Whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this STA; however, an agreement between a debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect. This section is subject to Sections 12.30.9.408 and 12.30.9.409, which invalidates certain legal and contractual restrictions on transferability that generally would be effective under other law.

Section 12.30.9.402. Secured Party Not Obligated on Contract of Debtor or in Tort

The existence of a security interest or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

Section 12.30.9.403. Agreement Not to Assert Defenses Against Assignee

- (a) **“Value.”** In this section, “value” has the meaning provided in Idaho Code § 28-3-303.
- (b) **Agreement not to assert claim or defense.** Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:
 - (1) for value;
 - (2) in good faith;
 - (3) without notice of a claim of a property or possessory right to the property assigned; and
 - (4) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under Idaho Code § 28-3-305(1).
- (c) **When subsection (b) of this section not applicable.** Subsection (b) of this section does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under Idaho Code § 28-3-305(2).
- (d) **Omission of required statement in consumer transaction.** In a consumer transaction, if a record evidences the account debtor's obligation,

and applicable law other than this article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

- (1) the record has the same effect as if the record included such a statement; and
 - (2) the account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.
- (e) **Rule for individual under other law.** This section is subject to applicable law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
- (f) **Other law not displaced.** Except as otherwise provided in subsection (d) of this section, this section does not displace applicable law other than this article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

Section 12.30.9.404. Rights Acquired by Assignee; Claims and Defenses Against Assignee

- (a) **Assignee's rights subject to terms, claims, and defenses; exceptions.** Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e) of this section, the rights of an assignee are subject to:
- (1) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and
 - (2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.
- (b) **Account debtor's claim reduces amount owed to assignee.** Subject to subsection (c) of this section, and except as otherwise provided in subsection (d) of this section, the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) of this section only to reduce the amount the account debtor owes.
- (c) **Rule for individual under other law.** This section is subject to applicable law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

- (d) **Omission of required statement in consumer transaction.** In a consumer transaction, if a record evidences the account debtor's obligation, applicable law other than this article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.
- (e) **Inapplicability to health care-insurance receivable.** This section does not apply to an assignment of a health care-insurance receivable.

Section 12.30.9.405. Modification of Assigned Contract

- (a) **Effect of modification on assignee.** A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d) of this section.
- (b) **Applicability of subsection (a) of this section.** Subsection (a) of this section applies to the extent that:
 - (1) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or
 - (2) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under Section 12.30.9.406(a).
- (c) **Rule for individual under other law.** This section is subject to applicable law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
- (d) **Inapplicability to health care-insurance receivable.** This section does not apply to an assignment of a health care-insurance receivable.

Section 12.30.9.406. Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective

- (a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (j) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying

the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

- (b) **When notification ineffective.** Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:
- (1) if it does not reasonably identify the rights assigned;
 - (2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or
 - (3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
 - (A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;
 - (B) a portion has been assigned to another assignee; or
 - (C) the account debtor knows that the assignment to that assignee is limited.
- (c) **Proof of assignment.** Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.
- (d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e) of this section, Section 12.30.9.407, and Idaho Code § 28-12-303, and subject to subsections (h), (i), and (j) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:
- (1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or
 - (2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right

of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

- (e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.
- (f) [Reserved]
- (g) **Subsection (b)(3) not waivable.** Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subsection (b)(3) of this section.
- (h) **Rule for individual under other law.** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
- (i) **Inapplicability to health care-insurance receivable.** This section does not apply to an assignment of a health care-insurance receivable.
- (j) **Inapplicability of subsection (d) of this section to certain transactions.**
 - (1) Subsection (d) of this section does not apply to the assignment or transfer of or creation of a security interest in:
 - (A) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104(a)(1) or (2); or
 - (B) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. § 1396p(d)(4).
 - (2) This subsection will not affect a transfer of structured settlement payment rights under Idaho statutory law.

Section 12.30.9.407. Restrictions on Creation or Enforcement of Security Interest in Leasehold Interest or in Lessor’s Residual Interest

- (a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a lease agreement is ineffective to the extent that it:
 - (1) prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor’s residual interest in the goods; or
 - (2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

- (b) **Effectiveness of certain terms.** Except as otherwise provided in Idaho Code § 28-12-303(7), a term described in subsection (a)(2) of this section is effective to the extent that there is:
- (1) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or
 - (2) a delegation of a material performance of either party to the lease contract in violation of the term.
- (c) **Security interest not material impairment.** The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of Idaho Code § 28-12-303(4) or the comparable statute of another jurisdiction unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

**Section 12.30.9.408. Restrictions on Assignment of Promissory Notes,
Health Care-Insurance Receivables, and Certain
General Intangibles Ineffective**

- (a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health care-insurance receivable, or general intangible, is ineffective to the extent that the term:
- (1) would impair the creation, attachment, or perfection of a security interest; or
 - (2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care-insurance receivable, or general intangible.
- (b) **Applicability of subsection (a) of this section to sales of certain rights to payment.** Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

- (c) **Legal restrictions on assignment generally ineffective.** A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation is not a Tribal law, statute, or regulation, and:
- (1) would impair the creation, attachment, or perfection of a security interest; or
 - (2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care-insurance receivable, or general intangible.
- (d) **Limitation on ineffectiveness under subsections (a) and (c) of this section.** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this section would be effective under law other than this article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health care-insurance receivable, or general intangible:
- (1) is not enforceable against the person obligated on the promissory note or the account debtor;
 - (2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
 - (3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
 - (4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care-insurance receivable, or general intangible;
 - (5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

- (6) does not entitle the secured party to enforce the security interest in the promissory note, health care-insurance receivable, or general intangible.
- (e) **Inapplicability of subsections (a) and (c) of this section to certain payment intangibles.**
 - (1) Subsections (a) and (c) of this section does not apply to the assignment or transfer of or creation of a security interest in:
 - (A) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104(a)(1) or (2); or
 - (B) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. § 1396p(d)(4).
 - (2) This subsection will not affect a transfer of structured settlement payment rights under Idaho Code.

Section 12.30.9.409. Restrictions on Assignment of Letter-of-Credit Rights Ineffective

- (a) **Term or law restricting assignment generally ineffective.** A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:
 - (1) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or
 - (2) provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.
- (b) **Limitation on ineffectiveness under subsection (a) of this section.** To the extent that a term in a letter of credit is ineffective under subsection (a) of this section but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:
 - (1) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;
 - (2) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

- (3) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

PART 5. FILING

Section 12.30.9.501. Filing; Acceptance, Refusal, and Effectiveness of Financing Statements; Administration

- (a) **Place to file.** The place to file a financing statement to perfect a security interest or agricultural lien governed by this STA or another record relating to a security interest is the office of the Idaho Secretary of State. However, if (i) the collateral is as-extracted collateral or timber to be cut, or (ii) the financing statement is filed as a fixture filing, the collateral is goods that are or are to become fixtures, and the debtor is not a transmitting utility, then the place to file the financing statement is the office designated for the filing or recording of a record of a mortgage on the related real property.
- (b) **Pre-filing; acceptance and refusal.** A financing statement may be filed before a security agreement is made or a security interest attaches.
- (c) **Administration of the STA.** The office of the Idaho Secretary of State shall, pursuant to agreement with the Nez Perce Tribe, administer the filing system on behalf of the Nez Perce Tribe until such time as the Nez Perce Tribe establishes its own central filing office. For the limited purpose of adoption of a filing system for the STA, all filings required by the STA shall be conducted pursuant to relevant administrative filing procedures in Idaho Code §§ 28-9-501–526; provided that this adoption shall not include the adoption of any internal reference to another section of the Idaho Code when the internal reference is in conflict with the STA or other provisions of the Nez Perce Tribal Code; provided further that IDAPA 34.05.06 *et seq.* may be considered for persuasive, but not controlling, authority in interpreting filings under the STA.

Section 12.30.9.502. Contents of Financing Statement; Record of Mortgage as Financing Statement; Time of Filing Financing Statement

- (a) **Sufficiency of financing statement.** Subject to subsection (b) of this section, a financing statement is sufficient only if it:
 - (1) provides the name of the debtor;
 - (2) provides the name of the secured party or a representative of the secured party; and
 - (3) indicates the collateral covered by the financing statement.

- (b) **Real-property-related financing statements.** Except as otherwise provided in Idaho Code § 28-9-501(b) and applicable federal or Tribal law, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:
- (1) indicate that it covers this type of collateral;
 - (2) indicate that it is to be filed for record in the real property records;
 - (3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under applicable law if the description were contained in a record of the mortgage of the real property; and
 - (4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.
- (c) **Record of mortgage as financing statement.** A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:
- (1) the record indicates the goods or accounts that it covers;
 - (2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as extracted collateral or timber to be cut;
 - (3) the record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and
 - (4) the record is recorded.
- (d) **Filing before security agreement or attachment.** A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

Section 12.30.9.503. Name of Debtor and Secured Party

- (a) **Sufficiency of debtor's name.** A financing statement sufficiently provides the name of the debtor:
- (1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized; provided, that for registered organizations chartered under Tribal law or 25 U.S.C. § 477, the financing statement may reasonably rely on other commercial and

public records that the secured party under the financing statement reasonably believes display the accurate name of the debtor and where the relevant party has made a reasonable prior effort to contact the tribe and the United States for this identification purpose.

- (2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;
 - (3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:
 - (A) provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and
 - (B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and
 - (4) in other cases:
 - (A) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and
 - (B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.
- (b) **Additional debtor-related information.** A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:
- (1) a trade name or other name of the debtor; or
 - (2) unless required under subsection (a)(4)(B) of this section, names of partners, members, associates, or other persons comprising the debtor.
- (c) **Debtor's trade name insufficient.** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.
- (d) **Representative capacity.** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.
- (e) **Multiple debtors and secured parties.** A financing statement may provide the name of more than one debtor and the name of more than one secured party.

Section 12.30.9.504. Indication of Collateral

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

- (1) a description of the collateral pursuant to Section 12.30.9.111; or
- (2) an indication that the financing statement covers all assets or all personal property.

Section 12.30.9.505. Filing and Compliance With Other Statutes and Treaties for Consignments, Leases, Other Bailments, and Other Transactions

- (a) **Use of terms other than “debtor” and “secured party.”** A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in Section 12.30.9.311(a), using the terms “consignor,” “consignee,” “lessor,” “lessee,” “bailor,” “bailee,” “licensor,” “licensee,” “owner,” “registered owner,” “buyer,” “seller,” or words of similar import, instead of the terms “secured party” and “debtor.”
- (b) **Effect of financing statement under subsection (a) of this section.** This part applies to the filing of a financing statement under subsection (a) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under Section 12.30.9.311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

Section 12.30.9.506. Effect of Errors or Omissions

- (a) **Minor errors and omissions.** A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.
- (b) **Financing statement seriously misleading.** Except as otherwise provided in subsection (c) of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 12.30.9.503(a) is seriously misleading.
- (c) **Financing statement not seriously misleading.** If a search of the records of the filing office under the debtor’s correct name, using the filing office’s standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section

12.30.9.503(a), the name provided does not make the financing statement seriously misleading.

- (d) **“Debtor’s correct name.”** For purposes of Section 12.30.9.508(b), the “debtor’s correct name” in subsection (c) of this section means the correct name of the new debtor.

Section 12.30.9.507. Effect of Certain Events on Effectiveness of Financing Statement

- (a) **Disposition.** A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.
- (b) **Information becoming seriously misleading.** Except as otherwise provided in subsection (c) of this section and Section 12.30.9.508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 12.30.9.506.
- (c) **Change in debtor’s name.** If a debtor so changes its name that a filed financing statement becomes seriously misleading under Section 12.30.9.506:
- (1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and
 - (2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

Section 12.30.9.508. Effectiveness of Financing Statement If New Debtor Becomes Bound by Security Agreement

- (a) **Financing statement naming original debtor.** Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.
- (b) **Financing statement becoming seriously misleading.** If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) of this section to be seriously misleading under Section 12.30.9.506:

- (1) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 12.30.9.202(d); and
 - (2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under Section 12.30.9.202(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.
- (c) **When section not applicable.** This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under Section 12.30.9.507(a).

Section 12.30.9.509. Persons Entitled to File a Record

- (a) **Person entitled to file record.** A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:
- (1) the debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c) of this section; or
 - (2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.
- (b) **Security agreement as authorization.** By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:
- (1) the collateral described in the security agreement; and
 - (2) property that becomes collateral under Section 12.30.9.315(a)(2), whether or not the security agreement expressly covers proceeds.
- (c) **Acquisition of collateral as authorization.** By acquiring collateral in which a security interest or agricultural lien continues under Section 12.30.9.315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under Section 12.30.9.315(a)(2).
- (d) **Person entitled to file certain amendments.** A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:
- (1) the secured party of record authorizes the filing; or
 - (2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a

termination statement as required by Section 12.30.9.513 (a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

- (e) **Multiple secured parties of record.** If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d) of this section.

Section 12.30.9.510. Effectiveness of Filed Record

- (a) **Filed record effective if authorized.** A filed record is effective only to the extent that it was filed by a person that may file it under Section 12.30.9.509.
- (b) **Authorization by one secured party of record.** A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.
- (c) **Continuation statement not timely filed.** A continuation statement that is not filed within the six-month period prescribed by Section 12.30.9.515(d) is ineffective.

Section 12.30.9.511. Secured Party of Record

- (a) **Secured party of record.** A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under Section 12.30.9.514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.
- (b) **Amendment naming secured party of record.** If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under Section 12.30.9.514(b), the assignee named in the amendment is a secured party of record.
- (c) **Amendment deleting secured party of record.** A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

Section 12.30.9.512. Amendment of Financing Statement

- (a) **Amendment of information in financing statement.** Subject to Section 12.30.9.509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e) of this section, otherwise amend the information provided in, a financing statement by filing an amendment that:

- (1) identifies, by its file number, the initial financing statement to which the amendment relates; and
 - (2) if the amendment relates to an initial financing statement filed or recorded in a filing office described in Section 12.30.9.501(a)(1), provides the information specified in Section 12.30.9.502(b).
- (b) **Period of effectiveness not affected.** Except as otherwise provided in Section 12.30.9.515, the filing of an amendment does not extend the period of effectiveness of the financing statement.
- (c) **Effectiveness of amendment adding collateral.** A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.
- (d) **Effectiveness of amendment adding debtor.** A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.
- (e) **Certain amendments ineffective.** An amendment is ineffective to the extent it:
- (1) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or
 - (2) purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

Section 12.30.9.513. Termination Statement

- (a) **Consumer goods.** A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:
- (1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or
 - (2) the debtor did not authorize the filing of the initial financing statement.
- (b) **Time for compliance with subsection (a) of this section.** To comply with subsection (a) of this section, a secured party shall cause the secured party of record to file the termination statement:
- (1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or
 - (2) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

- (c) **Other collateral.** In cases not governed by subsection (a) of this section, within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:
- (1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;
 - (2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;
 - (3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or
 - (4) the debtor did not authorize the filing of the initial financing statement.
- (d) **Effect of filing termination statement.** Except as otherwise provided in Section 12.30.9.510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in Section 12.30.9.510, for purposes of Idaho Code §§ 28-9-519(g), 28-9-522(a), and 28-9-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

Section 12.30.9.514. Assignment of Powers of Secured Party of Record

- (a) **Assignment reflected on initial financing statement.** Except as otherwise provided in subsection (c) of this section, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.
- (b) **Assignment of filed financing statement.** Except as otherwise provided in subsection (c) of this section, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:
- (1) identifies, by its file number, the initial financing statement to which it relates;
 - (2) provides the name of the assignor; and

- (3) provides the name and mailing address of the assignee.
- (c) **Assignment of record of mortgage.** An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under Section 12.30.9.502(c) may be made only by an assignment of record of the mortgage in the manner provided by Nez Perce Tribal Code as a matter of first priority, and to the extent Nez Perce Tribal Code shall not apply, the applicable laws of the state of Idaho.

**Section 12.30.9.515. Duration and Effectiveness of Financing Statement;
Effect of Lapsed Financing Statement**

- (a) **Five-year effectiveness.** Except as otherwise provided in subsections (b), (e), (f), and (g) of this section, a filed financing statement is effective for a period of five years after the date of filing.
- (b) [Reserved]
- (c) **Lapse and continuation of financing statement.** The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.
- (d) **When continuation statement may be filed.** A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) of this section or the 30-year period specified in subsection (b) of this section, whichever is applicable.
- (e) **Effect of filing continuation statement.** Except as otherwise provided in Section 12.30.9.510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.
- (f) **Transmitting utility financing statement.** If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

- (g) **Record of mortgage as financing statement.** A record of a mortgage that is effective as a financing statement filed as a fixture filing under Section 12.30.9.502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

Section 12.30.9.516. What Constitutes Filing; Effectiveness of Filing

- (a) **What constitutes filing.** Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.
- (b) **Refusal to accept record; filing does not occur.** Filing does not occur with respect to a record that a filing office refuses to accept pursuant to Idaho Code § 28-9-516(b).
- (c) [Reserved]
- (d) **Refusal to accept record; record effective as filed record.** A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in Idaho Code § 29-9-516(b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

Section 12.30.9.517. Effect of Indexing Errors

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

Section 12.30.9.518. Claim Concerning Inaccurate or Wrongfully Filed Record

- (a) **Correction statement.** A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.
- (b) **Sufficiency of correction statement.** A correction statement must:
- (1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;
 - (2) indicate that it is a correction statement; and
 - (3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

- (c) **Record not affected by correction statement.** The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

Section 12.30.9.519. [Reserved]

Section 12.30.9.520. Acceptance and Refusal to Accept Record

- (a) [Reserved]
- (b) [Reserved]
- (c) **When filed financing statement effective.** A filed financing statement satisfying Section 12.30.9.502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under Idaho Code § 28-9-520(a).
- (d) **Separate application to multiple debtors.** If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

PART 6. DEFAULT

SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTERESTS

Section 12.30.9.601. Rights After Default; Judicial Enforcement; Conignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes

- (a) **Rights of secured party after default.** After default, a secured party has (i) the rights provided in this part, (ii) the rights and duties related to possession or control of collateral (Section 12.30.9.204) and, (iii) except as otherwise provided in the provisions of this STA dealing with waivers and variances of rights and duties (Section 12.30.9.602), those rights and duties provided by agreement of the parties. A secured party:
 - (1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, by any available judicial procedure; and
 - (2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.
- (b) **Rights cumulative; simultaneous exercise.** The rights under subsections (a) are cumulative and may be exercised simultaneously.
- (c) [Reserved]
- (d) **Rights of debtor and obligor.** Except as otherwise provided in subsection (g) and under the provisions of this STA dealing with an unknown debtor or a secondary obligor (Section 12.30.9.605), after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

- (e) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:
 - (1) the date of perfection of the security interest in the collateral;
 - (2) the date of filing a financing statement covering the collateral; or
 - (3) any date specified in a statute under which the lien was created.
- (f) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this STA.
- (g) **Consignor or buyer of certain rights to payment.** Except as otherwise provided in the provisions of this STA dealing with commercially reasonable collection and enforcement (Section 12.30.9.607(b)), this part imposes no duties upon a secured party that is a consignee or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Section 12.30.9.602. Waiver and Variance of Rights and Duties

Except as otherwise provided in the provisions of this STA dealing with waivers (Section 12.30.9.624), to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following sections of this STA dealing with:

- (1) rights and duties when collateral is in a secured party's possession (Section 12.30.9.204);
- (2) requests for an accounting or requests regarding a list of collateral or statement of an account (Section 12.30.9.207);
- (3) commercially reasonable collection and enforcement (Section 12.30.9.607(b));
- (4) application of proceeds, deficiency and surplus (Sections 12.30.9.608(a) and 12.30.9.615(c)), to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
- (5) application of proceeds and the like (Sections 12.30.9.608 and 12.30.9.615(d)), to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (6) a secured party's right to take possession after default and limitations thereon (Section 12.30.9.609), to the extent that it imposes upon the secured party taking possession of collateral without judicial process the duty to do so without breach of the peace and with consent of the debtor;

- (7) commercially reasonable disposition (Section 12.30.9.610(b)), notification before disposition of the collateral (Section 12.30.9.611), and the contents and form of a notification before disposition of the collateral (Section 12.30.9.613);
- (8) calculation of a deficiency or surplus when the fairness of the amount of proceeds is placed in issue (Section 12.30.9.615(e));
- (9) explanation of the calculation of a surplus or deficiency (Section 12.30.9.616);
- (10) acceptance of collateral in satisfaction of obligation (Section 12.30.9.620);
- (11) right to redeem collateral (Section 12.30.9.623);
- (12) waivers (Section 12.30.9.624); and
- (13) the secured party's liability for failure to comply with this STA (Sections 12.30.9.625 and 12.30.9.626).

Section 12.30.9.603. Agreement on Standards Concerning Rights and Duties

The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in the provisions of this STA dealing with waiver or variance of rights and duties (Section 12.30.9.624) if the standards are not manifestly unreasonable; provided further that this section does not permit or authorize the parties to waive by agreement the duty to refrain from breaching the peace under Section 12.30.9.609.

Section 12.30.9.604. Procedure If Security Agreement Covers Real Property or Fixtures

- (a) **Enforcement: personal and real property.** If a security agreement covers both personal and real property, a secured party may proceed:
 - (1) under this part as to the personal property without prejudicing any rights with respect to the real property; or
 - (2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.
- (b) **Enforcement: fixtures.** Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:
 - (1) under this part; or
 - (2) in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

- (c) **Removal of fixtures.** Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.
- (d) **Injury caused by removal.** A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property 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 assurance for the performance of the obligation to reimburse.

Section 12.30.9.605. Unknown Debtor or Secondary Obligor

A secured party does not owe a duty based on its status as secured party:

- (1) to a person that is a debtor or obligor, unless the secured party knows:
 - (A) that the person is a debtor or obligor;
 - (B) the identity of the person; and
 - (C) how to communicate with the person; or
- (2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
 - (A) that the person is a debtor; and
 - (B) the identity of the person.

Section 12.30.9.606. Time for Default for Agricultural Lien

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

Section 12.30.9.607. Collection and Enforcement by Secured Party

- (a) **Collection and enforcement generally.** If so agreed, and in any event after default, a secured party:
 - (1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
 - (2) may take any proceeds to which the secured party is entitled under this STA;
 - (3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with

respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

- (4) if it holds a security interest in a deposit account perfected by control under Section 12.30.9.314, may apply the balance of the deposit account to the obligation secured by the deposit account; or
 - (5) may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.
- (b) **Commercially reasonable collection and enforcement.** A secured party shall proceed in a commercially reasonable manner if the secured party:
- (1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and
 - (2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.
- (c) **Expenses of collection and enforcement.** A secured party may deduct from the collections made pursuant to subsection (b) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.
- (d) **Duties to secured party not affected.** This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

Section 12.30.9.608. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus

- (a) **Application of proceeds, surplus, and deficiency if obligation secured.** If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:
- (1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 12.30.9.607 in the following order to:
 - (A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
 - (B) the satisfaction of obligations secured by the security interest under which the collection or enforcement is made; and
 - (C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the

security interest under which the collection or enforcement is made if the secured party receives a signed demand for proceeds before distribution of the proceeds is completed.

- (2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).
 - (3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 12.30.9.607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.
 - (4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.
- (b) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus and the obligor is not liable for any deficiency.

Section 12.30.9.609. Secured Party's Right to Take Possession After Default

- (a) **Possession; rendering equipment unusable; disposition on debtor's premises.** After default, a secured party:
 - (1) may take possession of the collateral; and
 - (2) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under Section 12.30.9.610.
- (b) **Judicial and nonjudicial process.** A secured party may proceed under subsection (a) of this section:
 - (1) pursuant to judicial process; or
 - (2) without judicial process if it proceeds without breach of the peace.
- (c) **Assembly of collateral.** If so agreed, and in any event after default, a 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.

Section 12.30.9.610. Disposition of Collateral After Default

- (a) **Disposition after default.** After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present

condition or following any commercially reasonable preparation or processing.

- (b) **Commercially reasonable disposition; Tribal business day.** Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms. In order to protect the debtor's right to redeem collateral (Section 12.30.9.623), a disposition of collateral shall take place only on a Tribal business day.
- (c) **Purchase by secured party.** A secured party may purchase collateral:
 - (1) at a public disposition; or
 - (2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.
- (d) **Warranties on disposition.** A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.
- (e) **Disclaimer of warranties.** A secured party may disclaim or modify warranties under subsection (d):
 - (1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or
 - (2) by communicating to the purchaser, a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.
- (f) **Record sufficient to disclaim warranties.** A record is sufficient to disclaim warranties under subsection (e) if it indicates there is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition or uses words of similar import.

Section 12.30.9.611. Notification Before Disposition of Collateral

- (a) **Notification date.** In this section, "notification date" means the earlier of the date on which:
 - (1) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or
 - (2) the debtor and any secondary obligor waive the right to notification.

- (b) **Notification of disposition required.** Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 12.30.9.610 shall send to the persons specified in subsection (c) a reasonable signed notification of disposition.
- (c) **Persons to be notified.** To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:
- (1) the debtor;
 - (2) any secondary obligor; and
 - (3) if the collateral is other than consumer goods:
 - (A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;
 - (B) any other secured party or lienholder that, 14 calendar days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
 - (i) identified the collateral;
 - (ii) was indexed under the debtor's name as of that date; and
 - (iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and
 - (C) any other secured party that, 14 calendar days before the notification date, held a security interest in the collateral perfected by compliance with other applicable law (Section 12.30.9.311).
- (d) **Subsection (b) inapplicable: perishable collateral; recognized market.** Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.
- (e) **Compliance with subsection (c)(3)(B).** A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:
- (1) not later than 20 calendar days or earlier than 30 calendar days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and
 - (2) before the notification date, the secured party:
 - (A) did not receive a response to the request for information; or

- (B) received a response to the request for information and sent a signed notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

Section 12.30.9.612. Timeliness of Notification Before Disposition of Collateral

- (a) **Reasonable time is question of fact.** Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.
- (b) **Safe harbors for sufficiency of time.** Unless a specific time for sending a notification of disposition is established by the court, a notification of disposition is sent within a reasonable time before the disposition when it is sent after default and:
 - (1) in a consumer transaction, 20 calendar days or more before the earliest time of disposition set forth in the notification; or
 - (2) in all other transactions, ten calendar days or more before the earliest time of disposition set forth in the notification.

Section 12.30.9.613. Contents and Form of Notification Before Disposition of Collateral

The following rules apply to notification before disposition of collateral:

- (1) The contents of a notification of disposition are sufficient if the notification:
 - (A) describes the debtor and the secured party;
 - (B) describes the collateral that is the subject of the intended disposition;
 - (C) states the method of intended disposition;
 - (D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting;
 - (E) states the time and place of a public disposition or the time after which any other disposition is to be made;
 - (F) describes any liability for a deficiency by the person receiving the notice; and
 - (G) states a telephone number or mailing address from which additional information concerning redemption, disposition and the obligation secured is available.

- (2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.
- (3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:
 - (A) information not specified by that paragraph; or
 - (B) minor errors that are not seriously misleading.
- (4) A particular phrasing of the notification is not required.
- (5) The following form of notification and the form appearing in Section 12.30.9.614(3), when completed, provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [Name of debtor, obligor, or other person to which the notification is sent]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

[For a Public Disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date:

Time:

Place:

[For a Private Disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of \$25.00]. You may request an accounting or additional information by calling us at [telephone number].

Section 12.30.9.614. Contents and Form of Notification Before Disposition of Collateral; Consumer Goods Transaction

In a consumer-goods transaction, the following rules apply:

- (1) A notification of disposition must provide the following information:
 - (A) the information specified in Section 12.30.9.613(1);


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- (B) a description of any liability for a deficiency of the person to which the notification is sent;
 - (C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 12.30.9.623 is available; and
 - (D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.
- (2) A particular phrasing of the notification is not required.
- (3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral] because you broke promises in our agreement.

[For a Public Disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date:

Time:

Place:

You may attend the sale and bring bidders if you want.

[For a Private Disposition:]

We will sell [describe collateral] at private sale sometime after [date].

A sale could include a lease or license. The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else. You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number]. If you want us to explain to you in writing how we have figured the amount that

you owe us, you may call us at [telephone number] [or write us at [secured party's address] and request a written explanation. [We will charge you \$25.00 for the explanation if we sent you another written explanation of the amount you owe us within the last six months.] If you need more information about the sale, call us at [telephone number] [or write us at [secured party's address]. We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

- (4) A notification in the form of subsection (3) of this section is sufficient, even if additional information appears at the end of the form.
- (5) A notification in the form of subsection (3) of this section is sufficient, even if it includes errors in information not required by subsection (1) of this section, unless the error is misleading with respect to rights arising under this article.
- (6) If a notification under this section is not in the form of subsection (3) of this section, law other than this article determines the effect of including information not required by subsection (1) of this section.

Section 12.30.9.615. Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus

- (a) **Application of proceeds.** A secured party shall apply or pay over for application the cash proceeds of disposition under Section 12.30.9.610 in the following order to:
 - (1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
 - (2) the satisfaction of obligations secured by the security interest under which the disposition is made;
 - (3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
 - (A) the secured party receives from the holder of the subordinate security interest or other lien a signed demand for proceeds before distribution of the proceeds is completed; and
 - (B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

- (4) a secured party that is a consignor of the collateral if the secured party receives from the consignor a signed demand for proceeds before distribution of the proceeds is completed.
- (b) **Proof of subordinate interest.** If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).
- (c) **Application of noncash proceeds.** A secured party need not apply or pay over for application noncash proceeds of disposition under Section 12.30.9.610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.
- (d) **Surplus or deficiency if obligation secured.** If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):
- (1) unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and
 - (2) the obligor is liable for any deficiency.
- (e) **Calculation of surplus or deficiency in disposition to secured party or related person.** Following a disposition to the secured party or a person related thereto, the surplus or deficiency is calculated based on the amount of proceeds that would have been realized in a hypothetical disposition complying with this part to a person other than the secured party or a person related thereto, if the debtor establishes that the amount of proceeds of the actual disposition is significantly below the range of proceeds that would have been brought by the hypothetical disposition. For purposes of this section, a secondary obligor is a person related to the secured party.
- (f) **Cash proceeds received by junior secured party.** A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest under which the disposition is made:
- (1) takes the cash proceeds free of the security interest or other lien;
 - (2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

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

Section 12.30.9.616. Explanation of Calculation of Surplus or Deficiency

(a) **Definitions.** In this section:

- (1) “Explanation” means a writing that:
 - (A) states the amount of the surplus or deficiency;
 - (B) provides an explanation in accordance with subsection (c) of this section of how the secured party calculated the surplus or deficiency;
 - (C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and
 - (D) provides a telephone number or mailing address from which additional information concerning the transaction is available.
- (2) “Request” means a record:
 - (A) authenticated by a debtor or consumer obligor;
 - (B) requesting that the recipient provide an explanation; and
 - (C) sent after disposition of the collateral under Section 12.30.9.610.

(b) **Explanation of calculation.** In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 12.30.9.615, the secured party shall:

- (1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:
 - (A) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and
 - (B) within 14 days after receipt of a request; or
- (2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party’s right to a deficiency.

(c) **Required information.** To comply with subsection (a)(1)(B) of this section, a writing must provide the following information in the following order:

- (1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a

rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

- (A) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or
 - (B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;
- (2) the amount of proceeds of the disposition;
 - (3) the aggregate amount of the obligations after deducting the amount of proceeds;
 - (4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorneys' fees secured by the collateral which are known to the secured party and relate to the current disposition;
 - (5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in (1) of this subsection; and
 - (6) the amount of the surplus or deficiency.
- (d) **Substantial compliance.** A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) of this section is sufficient, even if it includes minor errors that are not seriously misleading.
 - (e) **Charges for responses.** Each debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding \$25 for each additional response.

Section 12.30.9.617. Rights of Transferee of Collateral

- (a) **Effects of disposition.** A secured party's disposition of collateral after default:
 - (1) transfers to a transferee for value all of the debtor's rights in the collateral;
 - (2) discharges the security interest under which the disposition is made; and
 - (3) discharges any subordinate security interest or other subordinate lien.

- (b) **Rights of good-faith transferee.** A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this STA or the requirements of any judicial proceeding.
- (c) **Rights of other transferee.** If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:
 - (1) the debtor's rights in the collateral;
 - (2) the security interest under which the disposition is made; and
 - (3) any other security interest or other lien.

Section 12.30.9.618. Rights and Duties of Certain Secondary Obligors

- (a) **Rights and duties of secondary obligor.** A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:
 - (1) receives an assignment of a secured obligation from the secured party;
 - (2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
 - (3) is subrogated to the rights of a secured party with respect to collateral.
- (b) **Effect of assignment, transfer, or subrogation.** An assignment, transfer, or subrogation described in subsection (a):
 - (1) is not a disposition of collateral under Section 12.30.9.610; and
 - (2) relieves the secured party of further duties under this STA.

Section 12.30.9.619. Transfer of Record or Legal Title

- (a) **Transfer statement.** In this section, "transfer statement" means a record authenticated by a secured party stating:
 - (1) that the debtor has defaulted in connection with an obligation secured by specified collateral;
 - (2) that the secured party has exercised its post-default remedies with respect to the collateral;
 - (3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
 - (4) the name and mailing address of the secured party, debtor, and transferee.
- (b) **Effect of transfer statement.** A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-

title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

- (1) accept the transfer statement;
 - (2) promptly amend its records to reflect the transfer; and
 - (3) if applicable, issue a new appropriate certificate of title in the name of the transferee.
- (c) **Transfer not a disposition; no relief of secured party's duties.** A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this STA and does not of itself relieve the secured party of its duties under this STA.

Section 12.30.9.620. Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Notification of Proposal; Effect of Acceptance; Compulsory Disposition of Collateral

- (a) **Conditions to acceptance in satisfaction.** A secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:
- (1) the debtor consents to the acceptance under subsection (c) of this section;
 - (2) the secured party does not receive, within the time set forth in subsection (d) of this section, a notification of objection to the proposal authenticated by:
 - (A) a person to which the secured party was required to send a proposal under Section 12.30.9.621; or
 - (B) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;
 - (3) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and
 - (4) subsection (e) of this section does not require the secured party to dispose of the collateral if the debtor waives the requirement pursuant to Section 12.30.9.624.
- (b) **Purported acceptance ineffective.** A purported or apparent acceptance of collateral under this section is ineffective unless:
- (1) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and
 - (2) the conditions of subsection (a) of this section are met.

- (c) **Debtor's consent.** For purposes of this section:
- (1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and
 - (2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:
 - (A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;
 - (B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and
 - (C) does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.
- (d) **Effectiveness of notification.** To be effective under subsection (a)(2) of this section, a notification of objection must be received by the secured party:
- (1) in the case of a person to which the proposal was sent pursuant to Section 12.30.9.621, within 20 days after notification was sent to that person; and
 - (2) in other cases:
 - (A) within 20 days after the last notification was sent pursuant to Section 12.30.9.621; or
 - (B) if a notification was not sent before the debtor consents to the acceptance under subsection (c) of this section.
- (e) **Mandatory disposition of consumer goods.** A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Section 12.30.9.610 within the time specified in subsection (f) of this section if:
- (1) 60 percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or
 - (2) 60 percent of the principal amount of the obligation secured has been paid in the case of a nonpurchase-money security interest in consumer goods.
- (f) **Compliance with mandatory disposition requirement.** To comply with subsection (e) of this section, the secured party shall dispose of the collateral:
- (1) within 90 days after taking possession; or

- (2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.
- (g) **No partial satisfaction in consumer transaction.** In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

Section 12.30.9.621. Notification of Proposal to Accept Collateral

- (a) **Persons to which proposal to be sent.** A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:
 - (1) any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
 - (A) identified the collateral;
 - (B) was indexed under the debtor's name as of that date; and
 - (C) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and
 - (2) any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 12.30.9.311(a).
- (b) **Proposal to be sent to secondary obligor in partial satisfaction.** A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a) of this section.

Section 12.30.9.622. Effect of Acceptance of Collateral

- (a) **Effect of acceptance.** A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:
 - (1) discharges the obligation to the extent consented to by the debtor;
 - (2) transfers to the secured party all of a debtor's rights in the collateral;
 - (3) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and
 - (4) terminates any other subordinate interest.

- (b) **Discharge of subordinate interest notwithstanding noncompliance.** A subordinate interest is discharged or terminated under subsection (a) of this section, even if the secured party fails to comply with this article.

Section 12.30.9.623. Right to Redeem Collateral

- (a) **Persons that may redeem.** A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.
- (b) **Requirements for redemption.** To redeem collateral, a person shall tender:
 - (1) fulfillment of all obligations secured by the collateral; and
 - (2) the reasonable expenses and attorney's fees described in Section 12.30.9.615(a)(1), dealing with application of proceeds of disposition.
- (c) **When redemption may occur.** A redemption may occur at any time before a secured party:
 - (1) has collected collateral under Section 12.30.9.607;
 - (2) has disposed of collateral or entered into a contract for its disposition under Section 12.30.9.610; or
 - (3) has accepted collateral in full or partial satisfaction of the obligation it secures under Section 12.30.9.620.

Section 12.30.9.624. Waiver

- (a) **Waiver of disposition notification.** A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 12.30.9.611 only by an agreement to that effect entered into and authenticated after default.
- (b) **Waiver of mandatory disposition.** A debtor may waive the right to require disposition of collateral under Section 12.30.9.620(e), which deals with mandatory disposition of consumer goods, only by an agreement to that effect entered into and authenticated after default.
- (c) **Waiver of redemption right.** In a transaction other than a consumer transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 12.30.9.623 only by an agreement to that effect entered into and signed after default. In a consumer transaction, a debtor or secondary obligor may not waive such right.

SUBPART 2. NONCOMPLIANCE WITH ACT

Section 12.30.9.625. Remedies for Secured Party's Failure to Comply With STA

- (a) **Judicial orders concerning noncompliance.** If it is established that a secured party is not proceeding in accordance with this STA, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.
- (b) **Damages for noncompliance.** Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this STA. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.
- (c) **Persons entitled to recover damages; statutory damages where collateral is consumer goods.** Except as otherwise provided in Section 12.30.9.628:
 - (1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and
 - (2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.
- (d) **Recovery when deficiency eliminated or reduced.** A debtor whose deficiency is eliminated under Section 12.30.9.626, which deals with actions in which a deficiency or surplus is in issue, may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 12.30.9.626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.
- (e) **Statutory damages: noncompliance with specified provisions.** In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:
 - (1) fails to comply with the provisions of this STA dealing with additional duties of a secured party having control of an investment account (Section 12.30.9.205(b));

- (2) fails to comply with the provisions of this STA dealing with duties of a secured party if an account debtor has been notified of assignment (Section 12.30.9.205(g));
 - (3) files a record that the person is not entitled to file under Section 12.30.9.509;
 - (4) fails to file, cause to be filed or send a termination statement as required by Section 12.30.9.513;
 - (5) fails to comply with the provisions of this STA dealing with explanations of calculations of surplus or deficiency (Section 12.30.9.616), and whose failure is part of a pattern, or consistent with a practice, of noncompliance.
- (f) **Statutory damages: noncompliance with the provisions of this STA dealing with a request for an accounting.** A debtor or consumer obligor may recover damages under subsection (b) and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request for an accounting (Section 12.30.9.207). A recipient of a request under Section 12.30.9.207 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.
- (g) **Limitation of security interest: noncompliance with STA.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 12.30.9.207, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

Section 12.30.9.626. Action in Which Deficiency or Surplus is in Issue

- (a) **Applicable rules if amount of deficiency or surplus in issue.** In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:
- (1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.
 - (2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.
 - (3) Except as otherwise provided in the provisions of this STA dealing with nonliability and limitations on liability of a secured party or secondary obligor (Section 12.30.9.628), if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was

conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is subject to setoff for an amount as stated in the provision of this STA dealing with damages for noncompliance (Section 12.30.9.625), which may be measured by the amount recovered for conversion of collateral.

- (4) For purposes of paragraph (3), the liability of the debtor or a secondary obligor is calculated on the presumption that the proceeds of disposition equal the sum of the secured obligation, expenses, and allowable attorney's fees, but the secured party may rebut the presumption.
- (b) **Rules applicable to consumer transactions.** In a consumer transaction if the secured party's compliance with Part 6 of this article is placed in issue, and the secured party fails to prove that the collection, repossession, disabling of collateral, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is barred.

Section 12.30.9.627. Determination of Whether Conduct Was Commercially Reasonable

- (a) **Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness.** The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.
- (b) **Dispositions that are commercially reasonable.** A disposition of collateral is made in a commercially reasonable manner if the disposition is made:
- (1) in the usual manner on any recognized market;
 - (2) at the price current in any recognized market at the time of the disposition; or
 - (3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.
- (c) **Approval by court or on behalf of creditors.** A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:
- (1) in a judicial proceeding;
 - (2) by a bona fide creditors' committee;

- (3) by a representative of creditors; or
- (4) by an assignee for the benefit of creditors.
- (d) **Approval under subsection (c) of this Section not necessary; absence of approval has no effect.** Approval under subsection (c) of this section need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

Section 12.30.9.628. Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor

- (a) **Limitation of liability of secured party for noncompliance with STA.** Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:
 - (1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this STA; and
 - (2) the secured party's failure to comply with this STA does not affect the liability of the person for a deficiency.
- (b) **Limitation of liability based on status as secured party.** A secured party is not liable because of its status as secured party:
 - (1) to a person that is a debtor or obligor, unless the secured party knows:
 - (A) that the person is a debtor or obligor;
 - (B) the identity of the person; and
 - (C) how to communicate with the person; or
 - (2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
 - (A) that the person is a debtor; and
 - (B) the identity of the person.
- (c) **Limitation of liability if reasonable belief that transaction not a consumer transaction or collateral is not consumer goods.** A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:
 - (1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
 - (2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

- (d) **Limitation of liability for statutory damages.** A secured party is not liable to any person under Section 12.30.9.625(c)(2), which deals with statutory damages where the collateral is consumer goods, for its failure to comply with Section 12.30.9.616, which deals with explanations of calculations of surplus or deficiency.
- (e) **Limitation of multiple liability for statutory damages.** A secured party is not liable under Section 12.30.9.625(c)(2), which deals with statutory damages where the collateral is consumer goods, more than once with respect to any one secured obligation.

PART 7. MISCELLANEOUS PROVISIONS

Section 12.30.9.701. Severability

If any provision of this STA or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this STA which can be given effect without the invalid provision or application, and to this end the provisions of this STA are severable.