

NEZ PERCE TRIBE SECURED TRANSACTIONS ACT FAQ

1. WHAT IS THE NEZ PERCE TRIBE SECURED TRANSACTION ACT?

The Nez Perce Tribe Secured Transaction Act (“Act”) is an adoption of both Article 1 and Article 9 of the Uniform Commercial Code (“UCC”) and is located in Chapter 12.30 of Title 12 of the Nez Perce Tribal Code. The UCC itself is a set of laws and regulations governing certain commercial transactions in the United States. The UCC is not a federal law, but is uniformly enacted by each state, and a smaller but growing number of tribes. The Act sets forth rules based on Article 9 of the UCC regarding the type of collateral that can be provided for a loan, how a lender can secure the collateral in relation to the loan and other parties interest in the collateral, and how a lender can collect on the collateral by means other than litigation.

2. WHERE WOULD THE NEZ PERCE SECURED TRANSACTION ACT APPLY?

The Act applies to credit and consignment transactions and loans by persons and businesses using collateral located on Nez Perce Tribal lands and any other property the parties wish to cover through a mutually acceptable security agreement.

3. WHAT DOES THE NEZ PERCE SECURED TRANSACTION ACT DO?

The Act provides specific authority and clarity on securing collateral, perfecting collateral, and conflicts with competing claims of perfection in the same collateral in a loan transaction. The Act also provides specific authority and clarity on collection and foreclosure, including authority for traditional foreclosure methods.

4. WHY WOULD A TRIBE CODIFY ARTICLE 9 OF THE UCC?

Article 9 of the UCC is the backbone of small business lending. A tribal secured transaction code provides support for small businesses and the economy of a reservation, and not only helps tribal small businesses secure larger loans, but also helps them receive loans quicker and with better terms, i.e., interest rates, etc. The failure of most small businesses is due to a lack of access to liquid funds (cash), not a bad business model. A timely small business loan eliminates this obstacle to small business success.

Lenders prioritize certainty above every other element when determining loan approvals. However, during the loan underwriting process, many questions can arise about what laws apply in relation to loans given to tribal members, collateral on a reservation, and if/how a lender can collect loan collateral from a tribal borrower on a reservation or in Indian Country. This Act provides certainty as it outlines the process for a lender doing business in Indian Country.

5. WHAT ARE SOME IMPORTANT PROVISIONS IN THE NEZ PERCE TRIBE SECURED TRANSACTIONS ACT?

- a. Legal “rules” for how collateral can be provided, secured, and foreclosed upon for a tribal small business loan on the Nez Perce Reservation.
- b. Specific authority and clarity on how most issues during a secured transaction (from start to foreclosure) will stay out of court, including tribal court vs. state court questions or conflicts.
- c. Rules for certain tribal items of property that cannot be taken from a tribal member, i.e., cultural items and per capita payments. There is no “catch all” loan collateral risks allowed within a code for a lender to use in a transaction.

- d. The tribal government would be excluded from being part of the Nez Perce Tribe UCC without the tribal government specifically asking for the UCC to apply in a particular loan transaction.

6. HOW ARE FINANCING STATEMENTS FOR A LOAN UNDER THE ACT RECORDED FOR A LOAN?

The Nez Perce Tribe entered into a Compact with the state of Idaho Secretary of State's Office for the State to provide a Nez Perce Tribe specific portal for recording statements for loans made under the Act. The portal is located on the Idaho Secretary of State's website at <https://sosbiz.idaho.gov/forms/ucc>. A link to the portal can also be found on the Nez Perce Tribe's website at: www.nezperce.org under the resources tab.

7. WHERE ARE THE RECORDED FINANCING STATEMENTS MAINTAINED AND STORED?

The Idaho Secretary of State maintains and stores all filed and recorded documents made under the Act. Any filings made under the Act in the portal can be searched and are publicly available.

8. HOW ARE AMENDMENTS, RENEWALS AND TERMINATIONS RECORDED?

Amendments, renewals, and terminations are recorded in the Nez Perce Tribe specific portal hosted by the Idaho Secretary of State referenced in FAQ No. 6

9. WHAT IS THE FEE FOR FILING UNDER THE ACT?

The filing fees are outlined on the portal and match the filing fees charged by the state of Idaho for similar filings.