

**CROW/APSAALOOKE TRIBAL SECURED
TRANSACTIONS ACT**

APRIL 2006 CROW TRIBAL LEGISLATURE
BILL NO. CLB06-01

ADOPTED IN SUBSTANTIAL CONFORMANCE WITH THE
MODEL TRIBAL SECURED TRANSACTIONS ACT

BY THE
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

APRIL 2006

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CROW/APSAALOOKE TRIBAL SECURED TRANSACTIONS ACT

PART 1

GENERAL PROVISIONS

SECTION 15-9-101. SHORT TITLE. This Act may be cited as the “Crow/Apsaalooke Secured Transactions Act.”

SECTION 15-9-102. NO WAIVER OF SOVEREIGN IMMUNITY. The sovereign immunity of neither this Crow/Apsaalooke Tribe nor of any of its agencies or instrumentalities is waived with respect to any provision of any transaction subject to this Crow/Apsaalooke Secured Transactions Act, absent a recorded, properly ratified, express waiver of sovereign immunity.

SECTION 15-9-103. PURPOSE. This Crow/Apsaalooke Secured Transactions Act must be liberally construed and applied to promote its underlying purposes and policies, which are the promotion of economic development and the continued expansion of commercial practices involving this Crow/Apsaalooke Tribe.

SECTION 15-9-104. NO APPLICATION TO PROPERTY NOT ALIENABLE. This Crow/Apsaalooke Secured Transactions Act does not apply to any property interest that is subject to federal restrictions regarding sale, transfer, or encumbrance.

SECTION 15-9-105. SECURITY INTEREST IN RELIGIOUS-CEREMONIAL-HISTORICAL ITEMS PROHIBITED. No security interest may be acquired in any Crow/Apsaalooke or any other Indian Tribe's religious or ceremonial-historical items.

SECTION 15-9-106. GENERAL DEFINITIONS.

(a) **Definitions.** In this Crow/Apsaalooke Secured Transactions Act:

(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) [Reserved.]

(5) "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 the section on those terms (Section 15-9-114).

(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) “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.

(8) [Reserved.]

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

(10) "Certificated security" means a security that is represented by a certificate.

(11) "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 interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(12) "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 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. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(13) "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.

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

(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.

(15) [Reserved.]

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

(17) "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.

(18) "Consignor" means a person that delivers goods to a consignee in a consignment.

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

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

(20) "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.

(21) "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.

(22) "Contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by this Crow/Apsaalooke Secured Transactions Act as supplemented by any other applicable laws.

(22A) "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

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

(22B) "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.

(22C) "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.

(23) "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; or

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

(C) a consignee.

(24) "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

(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.

(25) "Equipment" means goods other than inventory, farm products, or consumer goods.

(26) "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.

(27) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, wild game or aquacultural operation.

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

(29) "Fixture filing" means the filing of a financing statement covering goods that are, or are to become, fixtures and satisfying the requirements of this Crow/Apsaalooke Secured Transactions Act 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.

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

(31) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposits 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.

(32) "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; and

(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; or

- (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.

(33) "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.

(34) "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; or

(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.

(35) "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.

(36) "Investment account" means a financial account maintained by an investment intermediary to which securities or commodity contracts are or may be credited by agreement.

(36A) "Investment intermediary" means a securities intermediary under applicable law or a commodity intermediary under applicable law.

(37) "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.

(38) "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.

(39) "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.

(40) "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.

(41) "Organization" means a person other than an individual.

(42) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(43) "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.

(44) "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.

(45) "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.

(45A) "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, this Tribe or a State.

(46) "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.

(47) "Purchaser" means a person that takes by purchase.

(48) "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.

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

(50) "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.

(51) "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.

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

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

(54) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term 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 Crow/Apsaalooke Secured Transactions Act. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer 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 Crow/Apsaalooke Secured Transactions Act distinguishing leases from security interests (Section 15-9-109).

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

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

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

(56) “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.

(57) “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.

(57A) “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.

(58) “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.

(59) "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.

(60) "Tribal business day" means a day on which the offices of the government of this Crow/Apsaalooke Tribe are open for conduct of their ordinary business.

(b) **Liberal construction.** Subject to the provisions of this Crow/Apsaalooke Secured Transactions Act dealing with course of performance, course of dealing, and usage of trade (Section 15- 15-9-114), the meaning of a term not defined by this Crow/Apsaalooke Secured Transactions Act 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.

SECTION 15-9-107. NOTICE; KNOWLEDGE.

(a) **Notice defined.** 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 defined.** “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

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

(d) **Notifying or giving notice or notification.** 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) **Receipt generally.** 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) **Receipt by organization.** 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 15-9-108. VALUE. Except as otherwise provided under applicable laws dealing with negotiable instruments, bank deposits, letters of credit and bulk transfers and sales, a person gives value for rights if the person acquires them:

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

SECTION 15-9-109. LEASE DISTINGUISHED FROM SECURITY INTEREST.

- (a) **Basic test.** Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.
- (b) **Transactions that create security interests.** 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) Factors that do not create security interests. 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.

SECTION 15-9-110. GENERAL SCOPE.

(a) **General scope of Crow/Apsaalooke Secured Transactions Act.** Except as otherwise provided in the section on excluded transactions (Section 15-9-111), this Crow/Apsaalooke Secured Transactions Act applies to the following, if within the jurisdiction of this Crow/Apsaalooke Tribe:

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

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

(3) a consignment; and

(4) 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) or (3) of this subsection (a).

(b) **Consistency in application.** Subject to the provisions of this Crow/Apsaalooke Secured Transactions Act dealing with course of performance, course of dealing, and usage of trade (Section 15-9-114), the application of this Crow/Apsaalooke Secured Transactions Act to a type of transaction enumerated in subsection (a)(4) 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) **Security interest in secured obligation.** The application of this Crow/Apsaalooke Secured Transactions Act 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 Crow/Apsaalooke Secured Transactions Act does not apply.

SECTION 15-9-111. EXCLUDED TRANSACTIONS.

This Crow/Apsaalooke Secured Transactions Act does not apply to:

- (a) a landlord's lien;
- (b) a lien given by statute or other rule of law for services or materials, but the Section 15-9-318(k) applies with respect to priority of the lien;
- (c) a tribal lien;
- (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;
- (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 15-9-315 and 15-9-317 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 set-off, but the section on agreements not to assert defenses against assignees (Section 15-9-403) 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 15-9-604;

(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; or

(n) an assignment of a deposit account, except as provided with respect to

proceeds and priorities in proceeds.

SECTION 15-9-112. ADMINISTRATION OF CROW/APSAALOOKE SECURED TRANSACTIONS ACT; AUTHORITY TO PROMULGATE REGULATIONS. The Secretary of the Crow/Apsaalooke Tribal Legislature, or its designated successor, is charged with the administration of this Crow/Apsaalooke Secured Transactions Act. In accordance with applicable administrative and interpretive rules and after review and approval by the Crow/Apsaalooke Tribal Legislature, the Secretary of the Crow/Apsaalooke Tribal Legislature, or its designated successor may promulgate regulations necessary for the effective implementation and enforcement of this Crow/Apsaalooke Secured Transactions Act.

SECTION 15-9-113. OBLIGATION OF GOOD FAITH. Every contract or duty within this Crow/Apsaalooke Secured Transactions Act imposes, with respect to its performance or enforcement, an obligation that each party be honest and act in a manner that is consistent with reasonable commercial standards of fair dealing.

SECTION 15-9-114. COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE.

(a) **Course of performance defined.** 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) **Course of dealing defined.** 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) **Usage of trade defined.** A “usage of trade” is any practice or method of dealing, including a local custom or tradition of this 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) **Effect.** 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) **Practical construction; hierarchy.** 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) Subject to other applicable law, 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 15-9-115. PURCHASE-MONEY SECURITY INTEREST.

(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;