

SOUTHERN UTE INDIAN TRIBAL CODE

TITLE 15

ENFORCEMENT OF SECURED TRANSACTIONS CODE

TABLE OF CONTENTS

ARTICLE 1. FORECLOSURE OF SECURED OBLIGATIONS.....1

15-1-101. SELF-HELP REMEDIES ELIMINATED..... 1

15-1-102. ONE ACTION TO FORECLOSE SECURITY INTEREST..... 1

15-1-103. ACTION TO FORECLOSE INTEREST IN PERSONAL PROPERTY 1

15-1-104. ACTION TO FORECLOSE MORTGAGE 2

15-1-105. SALE OF PROPERTY – NOTICE..... 2

15-1-106. CONDUCT OF SALE 3

15-1-107. RETURN OF SALE 3

15-1-108. TITLE TO REAL PROPERTY 3

15-1-109. REDEMPTION 4

15-1-110. SURPLUSES AND DEFICIENCIES FROM SALES 6

ARTICLE 2. ACTIONS TO RECOVER POSSESSION OF REAL PROPERTY6

15-2-101. SELF-HELP REMEDIES FORBIDDEN6

15-2-102. DEFINITIONS6

15-2-103. NOTICES – HOW SERVED 8

15-2-104. ACTION TO REGAIN POSSESSION..... 8

15-2-105. JUDGMENT 9

ARTICLE 3. SHORT TITLE.....10

15-3-101. SHORT TITLE 10

ARTICLE 4. RECOGNITION AND FORECLOSURE OF STATE TAX LIENS10

15-4-101. ENACTMENT AND TITLE..... 10

15-4-102. PURPOSES 10

15-4-103. DURATION 11

15-4-104. FINDINGS 11

15-4-105. STATE TAX LIENS ON TRIBALLY-OWNED INTERESTS 11

15-4-106. STATE TAX LIENS ON INTERESTS OWNED BY INDIANS 12

15-4-107. STATE TAX LIENS ON NON-INDIAN OWNED INTERESTS ON NON-INDIAN FEE LANDS 12

15-4-108. STATE TAX LIENS ON NON-INDIAN OWNED PROPERTY DERIVED FROM OR ASSOCIATED WITH
ACTIVITIES OCCURRING ON TRIBAL LAND..... 13

15-4-109. STATE TAX LIENS ON TRIBAL OR INDIAN-OWNED INTERESTS..... 14

15-4-110. ACTION TO RECOGNIZE 14

15-4-111. AN ACTION TO FORECLOSE OR EXECUTE 15

TITLE 15

SOUTHERN UTE INDIAN TRIBAL CODE

ENFORCEMENT OF SECURED TRANSACTIONS CODE

Article 1. FORECLOSURE OF SECURED OBLIGATIONS

15-1-101. Self-Help Remedies Eliminated.

- (1) All self-help remedies for the recovery of real or personal property secured to ensure payment of obligations are hereby declared unavailable except as otherwise specifically provided herein.
- (2) This section shall not be construed to prevent the voluntary surrender of secured property to a creditor by a debtor.

15-1-102. One Action to Foreclose Security Interest.

- (1) There can be but one action in the Tribal Court to recover any debt or enforce or foreclose any right secured by a mortgage or other security interest on non-trust, real or personal property situated or located on the reservation, which action must be in accordance with the procedure outlined here.
- (2) Notwithstanding the above provision, if the debt for which the encumbrance is held is due in installments, the court may direct the sale of the encumbered property or of the defendant's equity therein or so much thereof as may be necessary to satisfy the amount due, and such encumbrance shall otherwise remain in full force and effect and the holder thereof shall have the right to foreclose on the balance or any part thereof if subsequent installments are not satisfied in due course.

15-1-103. Action to Foreclose Interest in Personal Property.

- (1) An action to foreclose a security interest in personal property shall be commenced by filing a complaint in the Tribal Court. Property which is held in trust for the Southern Ute Indian Tribe or any member is exempt from the jurisdiction of this code.
- (2) The Tribal Court shall determine the issues presented and may by its judgment direct the sale of the encumbered property, or so much thereof as is necessary, and direct the application of the proceeds of the sale to the payment of the costs of court, the expenses of such sale, and to the amount due the plaintiff. If it appears from the report on the return of the sale that the proceeds are insufficient

and that an amount is still due and owing, the court can direct entry of the judgment for such balance against the defendant.

- (3) If, after the complaint is filed, it appears that the collateral is in imminent danger of being concealed or removed from the reservation or otherwise disposed of in a manner inconsistent with the security interest, the court may order the person having possession or control over such property to appear and show cause why such property should not be taken into the custody of the court or other security provided to prevent the improper disposal of the collateral.
- (4) Sale of the property under the court's judgment shall be conducted according to the Southern Ute Indian Rules of Civil Procedure.

15-1-104. Action to Foreclose Mortgage.

- (1) An action to foreclose a mortgage or other security interest in non-trust property shall be commenced by filing a complaint in the Tribal Court.
- (2) A complaint to foreclose a security interest in real property shall name as parties all persons who claim an interest in said property which has been recorded in tribal or county records or both. No interest of the Southern Ute Indian Tribe shall be affected in any action in which the Tribe is not a party by its own affirmative action or consent.
- (3) The Tribal Court shall determine the issues presented and may direct the sale of the encumbered property or so much thereof as is necessary and direct the application of the proceeds to the costs of the court, the expenses of the sale, and the amount due the plaintiffs. If it appears from the return on the sale as filed in accordance with §15-1-107 herein that the proceeds are insufficient and the amount still remains due and owing, the court can direct the entry of the judgment for such balance against the defendant as provided below.

15-1-105. Sale of Property – Notice.

- (1) Before the sale of real property subject to a decree of foreclosure and order of sale there must be notice as follows:
 - (a) By posting written notice of the time and place of the sale giving a specific legal and general description of the property, for 20 days prior to the sale in at least 4 public places on the reservation, including one copy posted at the tribal headquarters, one copy posted at the post office nearest to the property to be sold, and one copy posted on the property to be sold; and
 - (b) That notice be published in a paper of general jurisdiction at least 30 days prior to the sale.

- (2) If there is a sale of property conducted without substantial compliance with the notice requirements as set forth herein, the sale may be declared void and of no effect by the Tribal Court.

15-1-106. Conduct of Sale.

- (1) All sales of property under decree of foreclosure and order for sale must be made at auction, conducted at tribal headquarters, to the highest bidder, between the hours of 9:00 a.m. and 5:00 p.m. on any business day.
- (2) Once sufficient property has been sold to satisfy the judgment plus costs of the court and of the sale, no more property shall be sold.
- (3) The person conducting the sale may not be a purchaser or be interested in any purchase at such sale.
- (4) If the property being sold consists of several known lots or parcels, they must be sold separately. The judgment debtor may direct the order in which the property shall be sold if more than one parcel is involved. If a third person has an interest in part of the property to be sold, he may require that such property be sold separately.
- (5) All purchasers must pay in cash or by certified check. If a purchaser refuses or is unable to pay the amount bid by him for property sold to him at sale, the officer conducting the sale may again sell the property to the highest bidder. If any loss be occasioned thereby, the officer may recover the amount of such loss plus costs from the bidder so refusing. When a purchaser refuses to pay, the person conducting the sale may thereafter reject any subsequent bid of such person.

15-1-107. Return of Sale.

- (1) The person conducting the sale shall make a return thereon to the Tribal Court reciting all the details of the sale including but not limited to the name of the purchaser, the judgment debtor, the legal description, and the amount bid.
- (2) A certified copy of such return, together with a certified copy of the court's order directing said sale, shall be filed by the purchaser in the appropriate county clerk and recorder's office and Tribal Court office.

15-1-108. Title to Real Property.

- (1) On a sale of real property, the purchaser acquires all the right, title, interest, and claim of the judgment debtor thereto.

- (2) The property so acquired is subject to an equity of redemption as provided herein.
- (3) At the time payment for sale is made, the officer conducting the sale must give to the purchasers a certificate of sale containing:
 - (a) The name of the purchaser;
 - (b) The name of the judgment debtor;
 - (c) Particular legal description of the property sold;
 - (d) Price bid for each particular lot or parcel;
 - (e) Total price paid; and
 - (f) That the sale is subject to equity of redemption.
- (4) The officer conducting the sale shall provide the purchaser with sufficient certified copies of the certificate of sale so that the purchaser may file one copy with the office of the clerk and recorder in each county where the property is located. The purchaser shall be provided with one certified copy for his own records and one copy shall be filed with the officer's return on the sale in the Tribal Court.
- (5) If a purchaser of real property sold pursuant to an order of sale or his successor in interest should be evicted therefrom as a consequence of irregularities in the proceedings concerning the sale or of the reversal or discharge of the judgment he may recover the price paid plus interest at the rate of 8% per annum from the judgment creditor.
- (6) If the purchaser of real property sold pursuant to an order of sale or his successor in interest fails to obtain possession of the property as a consequence of irregularity in the proceedings relating to the sale or because the property sold was not subject to execution and sale, the court having jurisdiction thereof must, after notice sent on motion of such party in interest, revise the original judgment in the name of the petitioner, for the amount paid by such purchaser, with interest thereon at the rate of 8% per annum and the judgment so revived has the same force and effect as would the original judgment as of the date of revival.

15-1-109. Redemption.

- (1) All real property sold as provided herein is subject to an equity of redemption by the judgment debtor or his successor in interest in the whole or any part of the property.

- (2) The judgment debtor or redemptioner may redeem real property from the purchaser within 180 days after the sale by paying the purchaser the amount of his purchase together with interest thereon at the rate of 8% per annum from the date of the sale to the date of redemption together with the amount of any assessments or additional costs which the purchaser may have paid thereon after the date of purchase.
- (3) Written notice of redemption must be given to the tribal police and a duplicate filed with the office of the county clerk and recorder in each county in which the property is situated.
- (4) If the debtor redeems, the effect of the sale is terminated and he is restored to his estate.
- (5) Upon redemption by the debtor, the person to whom the payment is made must execute and deliver to him sufficient copies of a certificate of redemption, acknowledged and proved before an officer authorized to take such acknowledgments of conveyance of real properties. Copies of such certificates shall be filed at the appropriate county clerk and recorder's office.
- (6) If no redemption is made within 180 days after the date of sale, the purchaser or his assigns is entitled to a conveyance by means of a tribal police officer's deed at the expiration of such time. Such deed shall be recorded at the appropriate county clerk and recorder's office.
- (7) Redemption payment must be made in United States currency or by certified or cashier's check and made payable to the purchaser or for him to the officer who made the sale or his successor in office.
- (8) A judgment debtor or successor in interest desiring to redeem property must present to the person from whom he seeks to redeem or to the officer a certified copy of the judgment and order of sale under which he claims a right to redeem and his own affidavit that he is the person entitled to redeem and showing the amount due to effect the redemption.
- (9) Until expiration of the time for redemption, the court may forbid any waste or change of character in the property.
- (10) The purchaser, from the time of sale until redemption, is entitled to receive from tenants in possession the rents of the property sold or the value of the use and occupation thereof. However, when any rents or profits have been received by the purchaser or his assigns from the property, the amount of such rents and profits shall be a credit on the redemption money to be paid. If a purchaser or his assigns fails or refuses to give an accounting to the judgment debtor or his assigns, the redemptioner may, within 60 days of such demand, bring an action

in the Tribal Court to compel an accounting and disclosure of such rents and profits, and until 15 days after the final determination of such action, the right of redemption is extended to such redemptioner.

15-1-110. Surpluses and Deficiencies from Sales.

- (1) If there remains surplus money after the payment of the costs of court and of the sale and payment of the judgment creditor, such funds may be distributed by the court to the judgment debtor or other person entitled thereto.
- (2) A deficiency judgment may be entered by the court in a case involving the foreclosure and sale of real property whenever the amount due under the secured indebtedness plus costs of court and of the sale exceed the reasonable value of the property at the time of the sale. The court is not bound by the price for the property received at the sale but may take evidence to determine the actual reasonable value.

Article 2. ACTIONS TO RECOVER POSSESSION OF REAL PROPERTY

15-2-101. Self-Help Remedies Forbidden. Except in a case where a person in possession voluntarily surrenders such possession to another claiming a paramount right to such possession, all self-help remedies to recover possession of real property are forbidden.

15-2-102. Definitions.

- (1) **Forcible Entry.** A person commits forcible entry whenever he either:
 - (a) Breaks open or by any other type of unauthorized opening of doors, windows, or other parts of a house, or other residential dwelling, or by fraud, intimidation or stealth, or by any kind of violence or circumstances of fear enters upon or into any real property; or
 - (b) After entering peaceably upon real property turns out by force, threats, or menacing conduct, the party in possession.
- (2) **Forcible Detainer.** A person commits forcible detainer whenever he:
 - (a) By force, menacing, threats or violence unlawfully holds and keeps the possession of any real property whether the same was acquired peaceably; or
 - (b) In the nighttime or in the absence of the occupants of any real property unlawfully enters thereon and after demand made for the surrender thereof

refuses for a period of 3 days to surrender the same to the former occupant or owner.

- (3) **Unlawful Detainer.** A person commits unlawful detainer if being a tenant of real property with a term of less than his life, he either:
- (a) Continues in possession in person or by subtenant of the property or any part thereof after the expiration of the term for which it is let to him. In all cases where real property is leased or rented for a specific term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of such specified time or period; or
 - (b) Having leased or rented property for an indefinite time with monthly or other periodic rent reserved, he continues in possession thereof in person or by subtenant after the end of such month or period after having been served with notice requiring him to quit the premises at the end of such month or period, such notice having been served upon him 10 days or more prior to the end of such month or period in the cases of tenancies at will where he remains in possession of such premises after the expiration of a notice of not less than 5 days; or
 - (c) When he continues in possession either in person or by subtenant after default in the payment of any rent and after a notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises and payment of rent or surrender have remained uncomplished with for a period of 3 days; or
 - (d) When he assigns or sublets the leased or rented property contrary to the covenants and lease or contract or commits or permits waste thereon or when he sets up or maintains thereon any unlawful business or when he suffers, permits or maintains on or about said premises any nuisance and remains in possession after service upon him of a notice to surrender the premises within 3 days; or
 - (e) Continues in possession or by subtenant after neglect or failure to perform any material condition or covenant of the lease or rental agreement under which the property is held other than those heretofore mentioned; and
 - (f) After notice in writing requiring in the alternative the performance of such conditions or covenants, or the surrender of the property served upon him; and if there is a subtenant in actual occupation of the premises, also upon such subtenant, such performance shall remain uncomplished with for 5 days after service thereof. Within the 5-day period, any subtenant, or mortgagee

of the term or other person interested in the continuance of the term may perform such conditions or covenant and thereby save the lease or agreement from forfeiture, unless such condition or covenant cannot then be performed or cannot be performed by anyone except the original tenant. If the broken covenant or condition is not capable of remedial performance after its breach, the required notice need not list such performance as an alternative.

15-2-103. Notices – How Served.

- (1) The notices required by the preceding section may be served either by:
 - (a) Delivering a copy to the tenant personally, or
 - (b) If he is absent from his place of residence or from his usual place of business, leaving a copy with some person of suitable age and discretion at either place and sending a copy thereof through the mail addressed to the tenant at his place of residence or place of business; or
 - (c) If such place of residence or business cannot be ascertained or a person of suitable age and discretion cannot be found there, then by fixing a copy in a conspicuous place on the property and also delivering a copy to a person there residing if such a person can be found and also sending a copy through the mail addressed to the tenant at the place where the leased property is situate.
 - (d) Service on a subtenant may be made in the same manner as prescribed above.

15-2-104. Action to Regain Possession.

- (1) The Tribal Court shall have jurisdiction to hear and decide actions to recover possession of both trust and non-trust property as a result of an alleged forcible entry, forcible detainer or unlawful detainer in an accelerated manner as provided herein. Any other action to regain possession of property may at the discretion of the judge, but need not be handled in an accelerated manner as provided herein.
- (2) In any accelerated proceeding allowed herein, the court shall endorse on the summons the number of days within which the defendant has to answer which shall not be less than 3 nor more than 20 days from the date of service. The time for reply to a counterclaim, if any, shall be deemed likewise shortened.
- (3) At the close of the pleadings, the court may advance the hearings on its trial docket.

- (4) The plaintiff's complaint, in addition to setting forth the facts and allegations on which he seeks to recover, may also set forth therein any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry, forcible detainer or unlawful detainer and claim damages therefor or compensation for the occupation of the premises or both. When unlawful detainer is charged after default in the payment of rent, the complaint must state the amount of such rent.
- (5) At the trial of any proceeding for forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in the actual possession of the premises in question or was entitled to possession at the time of the forcible detainer.
- (6) In cases of tenancy of agricultural land where the tenants have held or have retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or his successor in estate, tenant shall be deemed to have the permission of the landlord or his successor in estate to hold over for a full year under the same terms and conditions as the original tenancy and such tenant shall not be guilty of an unlawful detainer for such a period by reason of his holding over.
- (7) Remedies available herein shall be available to a tenant to regain possession from a subtenant in appropriate cases.
- (8) No person other than the tenant of the premises, or subtenant if there is one in actual occupation of the premises at the time the action is commenced, may be made a party defendant. Any person entering into possession with the consent of the tenant after an action is commenced for forcible entry or forcible or unlawful detainer shall be bound by such action whether made a party or not.

15-2-105. Judgment.

- (1) If at trial, whether with or without a jury, the finding is in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises to the plaintiff.
- (2) In a proceeding for unlawful detainer from neglect or failure to perform any condition or covenant under a lease or agreement under which property is held or after default in the payment of rent, the judgment shall declare the forfeiture of such lease or agreement.
- (3) At trial, the findings of fact, whether by the jury or by the judge without a jury, shall also assess damages caused to the plaintiff by the forcible entry or forcible or unlawful detainer, if proved, including damage or waste by the defendant during the tenancy, and shall also find the amount of rent due if such is an issue.

- (4) When an action is for unlawful detainer after defaulting in the payment of rent if the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not issue until 5 days after the entry of the judgment, within which time the tenant or any subtenant or any other party interested in the continuance of the term, may pay to the court or the landlord the amount of judgment and costs and thereupon the portion of the judgment shall be satisfied and the tenant's estate shall be restored. However, if such payment is not made within 5 days, a judgment may be enforced in its full amount and for the possession of the premises. In all other cases, the judgment may be enforced immediately.

Article 3. SHORT TITLE

15-3-101. Short Title. This title shall be known as and may hereafter be cited as the Secured Transactions Code.

Article 4. RECOGNITION AND FORECLOSURE OF STATE TAX LIENS

15-4-101. Enactment and Title. There is hereby added to Title 15 of the Southern Ute Indian Tribal Code this Article 4, which shall be known as the "State Tax Lien Code."

15-4-102. Purposes. The purposes of the State Tax Lien Code are as follows:

- (1) To clarify the relationship between state tax enforcement laws and tribal law with respect to:
 - (a) Real and personal property owned by the Tribe;
 - (b) Real and personal property within the boundaries of the Southern Ute Indian Reservation owned by enrolled members of federally-recognized Indian tribes;
 - (c) Real and personal property owned by non-Indians within the boundaries of the Southern Ute Indian Reservation; and
- (2) To establish a vehicle which reasonably furthers:
 - (a) The legitimate interests of the State of Colorado in procuring enforcement of those state tax laws which may be lawful and entitled to tribal recognition under principles of comity;
 - (b) The legitimate interests of the Tribe in protecting its sovereign power to regulate the ownership and disposition of real and personal property, over which it possesses jurisdiction;

- (c) The legitimate interests of the federal government in fulfilling its statutory, regulatory or trust responsibilities over the conduct of activities on reservation lands and the regulation of ownership and disposition of lands over which it possesses jurisdiction; and
- (3) To satisfy a condition precedent to the performance of the Taxation Compact entered into by and among the Southern Ute Indian Tribe, La Plata County and the State of Colorado, dated March 18, 1996 (“the Taxation Compact”).

15-4-103. Duration. Unless separately reaffirmed by enactment of the Tribal Council, the State Tax Lien Code shall automatically terminate 30 days following termination of the Taxation Compact.

15-4-104. Findings. The Tribal Council hereby makes the following legislative findings:

- (1) The imposition of state taxes upon the Tribe, upon the trust and non-trust real property interests of the Tribe, upon the personal property of the Tribe, or upon the conduct of activities of the Tribe within the boundaries of the Southern Ute Indian Reservation (“the Reservation”), would seriously threaten the economic well-being of the Tribe, the political integrity of the Tribe, and the general welfare of the Tribe and its members.
- (2) The Tribal Council has not consented to the encumbrance of its property or assets arising from operation of state tax laws as required by 25 U.S.C. § 476.
- (3) The State of Colorado has a legitimate interest in imposing taxes upon non-Indian real property interests, upon non-Indian personal property, and upon the activities conducted by non-Indian persons and property, so long as such taxation does not seriously and demonstrably threaten the economic well-being of the Tribe, the political integrity of the Tribe, or the general welfare of the Tribe.
- (4) Pursuant to and as part of the Taxation Compact, the Tribal Council has found that under current circumstances, and so long as present levels of state and local taxation do not change significantly, such state and local taxation of non-Indian real and personal property interests located within the Reservation boundaries does not threaten the economic well-being, political security or general welfare of the Tribe.

15-4-105. State Tax Liens on Tribally-Owned Interests.

- (1) In the absence of express consent issued by the Tribal Council, no tax or resultant lien imposed by any state or local government on the trust or non-trust real property interests of the Tribe, on the personal property of the Tribe, or on the activities conducted by the Tribe within the exterior boundaries of the

Reservation shall be recognized as valid by the Tribe. For purposes of this section, tribal property shall include the ownership interests of the Tribe and partnerships, ventures, business entities, and the on-Reservation assets thereof.

- (2) Nothing herein shall preclude the voluntary payment in lieu of taxes by the Tribe to La Plata County, as provided in the Taxation Compact.

15-4-106. State Tax Liens on Interests Owned by Indians.

- (1) **Enrolled Members of the Southern Ute Indian Tribe.** No tax or resultant lien imposed by any state or local government on the trust or non-trust real property interests, the personal property, or the activities of an enrolled member of the Tribe located or conducted within the boundaries of the Reservation shall be recognized as valid, except to the extent required by federal law. The burden of demonstrating the lawfulness of any such lien shall be on the lien claimant.
- (2) **Non-Member Indians.** To the extent that federal law may permit the on-Reservation real or personal property or activities of an enrolled member of a federally-recognized Indian tribe, other than the Southern Ute Indian Tribe (“a Non-Member Indian”), to be exempt from operation of state tax law based upon the adverse impacts of such taxation on the Tribe, the Tribal Court may consider the totality of circumstances, including reservation residence and close social ties to the Tribe, in determining whether to recognize a state tax lien on such property. The burden of demonstrating such an exemption shall be on the Non-Member Indian.

15-4-107. State Tax Liens on Non-Indian Owned Interests on Non-Indian Fee Lands.

- (1) **Non-Indian Interests on Fee Lands.** Except as provided in subsection (2) of this section, with respect to tax liens arising from operation of state law on non-Indian owned interests in real property located within the boundaries of the Reservation, where the underlying surface or subsurface estate from which the real property interest is derived is also owned by a non-Indian, the Tribe shall not, in accordance with the Taxation Compact, question the lawfulness of the tax or the validity of the tax lien. In such instances, it shall not be necessary for the lien claimant to obtain Tribal Court recognition of such liens in order for such liens to be considered as valid by the Tribe. Foreclosure on such liens shall be conducted in accordance with state law under state procedures.
- (2) **Ownership of Coalbed Methane Not Affected.** Nothing herein contained is intended, however, to diminish or affect currently pending claims by the Tribe of its ownership of coalbed methane underlying lands within the Reservation patented pursuant to the Act of March 3, 1909, ch. 270, 35 Stat. 844, or the Act of June 22, 1910, ch. 318, 36 Stat. 583 (“Coalbed Methane Claims”). To the

extent permitted by federal law, or unless otherwise agreed by the Tribal Council, the Tribe shall not recognize as valid any ownership interest or encumbrance relative to such coalbed methane, unless and until a non-appealable judicial determination is rendered against the Tribe, except for the trust ownership of the United States for the benefit of the Tribe, which is currently disclaimed by the United States.

- (3) **Non-Indian Interests in Personal Property Located on Non-Indian Fee Lands.** Except as provided in subsection (4) of this section, with respect to tax liens arising from operation of state law on personal property owned by a non-Indian and located on the surface of non-Indian owned land within the Reservation, the Tribe shall not for the duration of the Taxation Compact question the validity of the tax lien. In such instances it shall not be necessary for the lien claimant to obtain Tribal Court recognition in order for such liens to be considered as valid by the Tribe. Execution on such liens shall be conducted in conformity with state law using state procedures.
- (4) **Ownership of Claims to Coalbed Methane Personal Property Unaffected.** Nothing herein contained is intended, however, to diminish or affect currently pending claims by the Tribe related to ownership or possession of personal property utilized in association with the development of coalbed methane, subject to the Tribe's Coalbed Methane Claims. To the extent permitted by federal law, or unless otherwise agreed to by the Tribal Council, the Tribe shall not recognize as valid any ownership interest or encumbrance relative to such personal property, unless and until a non-appealable judicial determination is rendered against the Tribe relative to the Tribe's claims to such personal property.

15-4-108. State Tax Liens on Non-Indian Owned Property Derived from or Associated with Activities Occurring on Tribal Land.

- (1) For the duration of the Taxation Compact, no lien created by operation of State law in any interest owned by a non-Indian in tribal real property located within the Reservation shall be recognized as valid by the Tribe or as having lawful effect unless recognized under principles of comity by the Tribal Court under the procedures set forth in this article. For purposes of this section, such interests shall include, but shall not be limited to: the lessee's interest, working interest, royalty or overriding royalty interest, or farmout interest in tribally-issued mineral leases; the grantee's interest in rights-of-way or easements issued by the United States with Tribal Council consent or by the Tribe; the lessee's interest in agricultural or commercial leases issued by the Tribe; or other licenses, permits, or contractual rights to use tribal real property.

- (2) For the duration of the Taxation Compact, no lien created by operation of State law in the personal property or improvements owned by a non-Indian located on tribal real property within the Reservation shall be recognized as valid by the Tribe or as having lawful effect, unless recognized under principles of comity by the Tribal Court under the procedures set forth in this article.

15-4-109. State Tax Liens on Tribal or Indian-Owned Interests. For the duration of the Taxation Compact, no tax lien imposed by a state or local government on tribally-owned property, as set forth in § 15-4-105, or on property owned by an enrolled member of a federally-recognized Indian tribe, as set forth in § 15-4-106, shall be recognized as valid by the Tribe or as having any lawful effect unless recognized under principles of comity by the Tribal Court under the procedures set forth in this article.

15-4-110. Action to Recognize.

- (1) An action for recognition of state created liens in property described in §§ 15-4-108 and 15-4-109, for nonpayment of taxes, shall be commenced by the filing of a complaint in Tribal Court by the appropriate officer of the state or applicable political subdivision thereof.
- (2) The complaint for recognition shall:
 - (a) Name as the respondent, the person or persons against whom the lien is claimed together with the addresses of the same;
 - (b) List all persons, if known, with an interest in the property allegedly subject to the lien, including, if applicable, the Tribe and the Bureau of Indian Affairs;
 - (c) Identify or describe the property allegedly subject to the lien;
 - (d) Set forth the basis supporting the lien, including, the State statutory authority for the tax, the date of assessment of the tax, and the alleged delinquency;
 - (e) Include a certificate of mailing, as described below.
- (3) A copy of the complaint, together with a summons issued by the clerk of the Tribal Court, shall be served upon the named respondent by certified mail by the clerk of the court.
- (4) The complainant shall serve a complete copy of the complaint on each of the persons listed as having an interest in the property by first class United States mail, postage prepaid. A certificate of mailing listing the address to which such

notice has been sent shall be attached to the complaint, and the complaint shall be deemed incomplete until such certificate is attached. Notice sent to the Tribe shall be sent to:

Office of the Tribal Chairman Southern Ute Indian Tribe
P.O. Box 737
Ignacio, Colorado 81137

Notice sent to the Bureau of Indian Affairs shall be sent to:

Attention: Superintendent
Southern Ute Agency Bureau of Indian Affairs
P.O. Box 315
Ignacio, Colorado 81137

- (5) Any named respondent shall have the right, in accordance with the Tribe's Civil Procedure Code, to contest the underlying jurisdictional basis of such lien or the sufficiency of due process in its issuance.
- (6) Any other person claiming an interest in the subject property shall also be entitled to enter an appearance in the proceeding and to participate in accordance with the directives of the Tribal Court.
- (7) In all cases, except those arising from circumstances described in § 15-4-105(1) (related to tribal property), or § 15-4-106(1) (related to property owned by an enrolled member of the Tribe), the burden of demonstrating an insufficient underlying jurisdictional basis for such lien or an insufficiency of due process shall be on the named respondent. Should the named respondent fail to meet such burden, or should the complaining party in cases arising under § 15-4-105(1) or § 15-4-106(1) meet its burden of demonstrating a sufficient underlying jurisdictional basis and compliance with due process, the Tribal Court shall afford recognition to said lien effective as of the date of its creation under State law, and a judgment to that effect shall be so entered by the Tribal Court.

15-4-111. An Action to Foreclose or Execute.

- (1) Either by an independent action commenced following entry of a recognition judgment under § 15-4-110, or in conjunction with the filing of a complaint under § 15-4-110, a State tax lien holder may petition the Tribal Court for an order of foreclosure or execution on such State tax lien.
- (2) If by independent action, such petition shall:
 - (a) Name the person against whom the lien has been obtained;

- (b) List the persons, if known, with an interest in the property subject to the lien, including if applicable, the Tribe and the Bureau of Indian Affairs;
 - (c) Identify or describe the property subject to the lien;
 - (d) Set forth the effective date of the lien;
 - (e) Contain a certificate of mailing listing the persons having an interest in the property notified of the petition in accordance with the procedures similar to those described in § 15-4-110(4).
- (3) Tax liens on personal property that have been recognized by the Tribal Court may be executed upon and in accordance with Article 1 of Title 15, Enforcement of Secured Transactions Code.
- (4) The foreclosure on real property interests in tribal real property shall comport with both tribal and federal law, including, except as expressly modified herein, the procedures set forth in §§ 15-1-104 through 15-1-110 of the Tribal Code, and to the extent applicable, state law.
- (5) Regarding any State tax lien related to tribal real property, in addition to entering a judgment of recognition, the Tribal Court may enter a decree foreclosing on the interest subject to the lien, and directing a sale of such interest with the sale proceeds applied to the following in the order specified: 1) costs of the courts, 2) expenses of the sale, 3) amounts due the Tribe (e.g., lease payments, tribal taxes), and 4) amounts due the plaintiff.
- (6) Prior to the foreclosure sale of any real property interest pursuant to this section, the Tribe and the Bureau of Indian Affairs shall have the opportunity to review the qualifications of potential bidders to ensure that such bidders are qualified to own such interests and qualified to obtain a valid assignment approved by the Bureau of Indian Affairs (i.e., ensure that potential bidders are technically capable and financially capable of fulfilling the Tribe's lease obligations). Only potential bidders who are approved by the Tribe and BIA may bid at the foreclosure sale. The purpose of this provision is to provide both the Tribe and the United States with an opportunity to ensure that the purchasers of interests foreclosed upon meet the necessary qualifications to hold such interests under tribal and federal law. This provision, however, is not intended to unduly restrict the ability for the State or its political subdivisions to foreclose on liens on tribal real property interests owned by non-Indians within the Southern Ute Indian Reservation.
- (7) Prior to the transfer of an interest in tribal real property through a foreclosure sale, written consent for such transfer must be obtained from the Tribal Council and the United States.

- (8) If it appears from the return on the sale as filed in accordance with § 15-1-107 of the Tribal Code that the proceeds are insufficient and an amount still remains due and owing, the Tribal Court shall direct entry of a deficiency judgment for such balance against the defendants as provided in § 15-1-110(2) of the Tribal Code, unless otherwise agreed by the parties.
- (9) In the event the foreclosing party submits the highest bid and no party in interest redeems pursuant to § 15-1-109 of the Tribal Code, at the end of the 180-day redemption period as set forth in § 15-1-109 of the Tribal Code, the foreclosed interest shall be assigned to the party submitting the highest bid. The party submitting the highest bid, including the plaintiff, must obtain the written consent of the Tribal Council and the United States before obtaining title through a foreclosure sale. Tribal Council consent must also be obtained prior to any subsequent transfer from the purchaser at foreclosure sale.

TITLE 15
ENFORCEMENT OF SECURED TRANSACTIONS CODE

History and Amendments¹

Title 15 adopted by Tribal Resolution No. 80-120, approved by the Bureau of Indian Affairs and effective on 2/25/81.

Title 15 section and page numbering scheme revised and amended by Tribal Resolution No. 89-34, and effective on 3/21/89.

Title 15, Article 4, adopted by Tribal Resolution No. 96-81, approved by the Bureau of Indian Affairs and effective on June 10, 1996.

Resolution No. 2021-151 repealed and replaced the Secured Transactions Code with a reformatted Secured Transactions Code for online publication that contained only minor technical corrections, no substantive revisions, that the Bureau of Indian Affairs concurred it did not need to formally approve (April 25, 2023).

Resolution No. 2023-079 authorized on-line publication of the 2021-151 reformatted Secured Transactions Code and provided an effective date of May 25, 2023.

¹ This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes.