

WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving Posting of Ordinance No. 303, Amending the Business Code of the White Mountain Apache Tribe)

- WHEREAS,** pursuant to Article IV, Section 1(q) of the Tribal Constitution, the Tribal Council may enact ordinances that concern the welfare of the Tribe, to manage all economic affairs and enterprises of the Tribe, and to regulate subordinate organizations for economic and other purposes; and
- WHEREAS,** the Office of the Attorney General has this day proposed revisions to the Business Code, in, as set forth in Ordinance No. 303 attached hereto; and
- WHEREAS,** pursuant to Article XV of the Constitution of the White Mountain Apache Tribe, the proposed amendments shall be posted in each district for at least ten (10) days before final action by the Council; and
- WHEREAS,** the Council has reviewed Ordinance No. 303 carefully, and considered the recommendations and the implications thereof in great detail and finds the posting of Ordinance No. 303 to be in the best interest of the Tribe.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that proposed Ordinance 303, which amends the Business Code, attached hereto, is hereby recommended for posting by the Tribal Council.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe, as follows:



1. The Tribal Council Secretary is hereby authorized and directed to post this resolution and Ordinance No. 303, in each district for at least ten (10) days before final action by the Council. In addition, notices of the proposed ordinance shall be sent in the form of a press release to KNNB-FM and the Apache Scout.
2. Any and all comments concerning Ordinance No. 303 proposed herein may be sent to the attention of the Tribal Council Secretary, White Mountain Apache Tribe, P. O. Box 700, Whiteriver, AZ 85941.
3. Upon completion of the posting period, the Tribal Council Secretary is further directed to submit proof of posting to the Tribal Council and the Attorney General's Office and to report any public comments to the Tribal Council, and schedule a meeting thereof for final action. Proof of posting should include start and end date of posting period, and locations of posting.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances, or any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairwoman, or in her absence, the Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on APRIL 7, 2021 duly adopted by a vote of ELEVEN for, ZERO against, and ZERO abstention by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

 4.7.21 
Gwendena Lee-Gatewood, Chairwoman Date Doreen T. Numkena, Tribal Secretary Date

**ORDINANCE OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

BE IT ENACTED BY THE COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE Ordinance No. 303, revising Chapter 6 of the White Mountain Apache Business Code, as follows:

**CHAPTER SIX
REPOSSESSION OF PERSONAL SECURED PROPERTY**

NOTE: Chapter Six is derived from Ordinance No. 146, enacted September 13, 1984

SECTION 6.1 PURPOSES

The underlying purposes and policies of this chapter are:

- A. To protect and secure the sovereignty of the White Mountain Apache Tribe ~~("Tribe")~~;
- B. To protect the safety and personal property of the members of the White Mountain Apache Tribe and the tribe itself; ~~and~~;
- C. To provide for the simple and speedy resolution of disputes which arise out of secured transactions entered into by a ~~tribal member, person domiciled on the Fort Apache Indian Reservation~~, or the White Mountain Apache Tribe and any of its economic subsidiaries and departments, wherein repossession of personal property located within the boundaries of the White Mountain Apache Tribe is sought.

SECTION 6.2 SUPPLEMENTARY PRINCIPLES OF LAW APPLICABLE

Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause shall supplement its provisions.

SECTION 6.3 U.C.C. PROVISIONS

Insofar as there is no conflict with the provisions of this chapter, the provisions of the Uniform Commercial Code dealing with secured transactions, and set forth in Title ~~44~~ 47 of the Arizona Revised Statutes shall supplement this chapter and shall apply to disputes arising in connection with its administration and enforcement.

SECTION 6.4 APPLICABILITY OF CHAPTER

This chapter shall apply to the repossession of personal property which serves as collateral in secured transactions entered into by ~~members of the White Mountain Apache Tribe~~ persons domiciled on the Fort Apache Indian Reservation, or the White Mountain Apache Tribe and any of its economic subsidiaries and departments, but only if the ~~situs of the~~ personal property is located within the boundaries of the Fort Apache Indian Reservation ~~of the White Mountain Apache Tribe~~. ~~Any conflict between the provisions of this chapter and the laws of the State of Arizona shall be governed by the provisions of this chapter.~~

SECTION 6.5 DEFINITIONS

In this chapter, unless the context otherwise requires:

- A. "Business" includes any enterprise, organization, trade, occupation or profession, whether or not operated as a legal entity or for profit, including any business trust, corporation, partnership, joint venture or sole proprietorship.
- B. "Consumer goods" are those goods that are used or brought for use primarily for personal, family or household purposes.
- C. "Deficiency Judgment" means the contractual liability of a purchaser of secured property to pay to the secured party the money owed on the basis of the purchase agreement following repossession of the secured property.
- D. "Enrolled member" means one who has been duly enrolled as a member of the White Mountain Apache Tribe as provided by tribal law.
- E. "Indian" means ~~any person of Indian descent who is a member of a federally recognized Indian Tribe according to the laws of the Tribe, and any other~~ any person recognized by federal law as an Indian for any purpose, and denotes both the singular and the plural.
- F. "Non-member" means any individual who is not a member of the White Mountain Apache Tribe.
- G. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person, and the White Mountain Apache Tribe and its economic subsidiaries and departments.
- H. "Personal Property" includes all things which are movable at the time a secured transaction is entered into and which in fact serve as security for payment or performance of an obligation arising out of said transaction, including but not limited to vehicles, mobile homes, trailers, storage units, furniture, and appliances, but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. Personal property also includes the unborn young of animals and growing crops.
- I. "Procedures of repossession" refers to the rights of a secured party under Arizona law, and as set forth in A.R.S. 44-3101-§ 47-9601, et seq.
- J. "Purchaser" means the person who owes payment or other performance of an obligation secured by personal property, whether or not the purchaser owns or has rights in the personal property.
- K. "Secured Party" means a lender, seller or other person who has agreed that personal property shall serve as security for payment or performance of an obligation.
- L. "Secured Property" means any personal property, consumer good, or other good to which a secured interest has attached by virtue of a secured transaction.
- M. "Secured Transaction" means any transaction in which personal property acts to secure payment or performance of an obligation by the buyer-owner of the personal property, and wherein the lender, seller or other person retains or reserves equitable title to the personal property not withstanding shipment or delivery to the buyer-owner.
- N. "Self-help Repossession" means the repossession by the secured party, or an agent of the secured party, of secured property, without the consent of the purchaser at the time of repossession.
- O. "Tribal Member" means a member of the White Mountain Apache Tribe, as defined by Tribal law.
- P. "Tribe" means the White Mountain Apache Tribe of the Fort Apache Indian Reservation.

SECTION 6.6 REPOSSESSION OF PERSONAL SECURED PROPERTY

The ~~personal secured~~ property of ~~enrolled members of the White Mountain Apache Tribe~~ persons domiciled on the Fort Apache Indian Reservation, or of the Tribe and its economic subsidiaries and departments shall not be taken by repossession from land subject to the jurisdiction of the White Mountain Apache Tribe ~~under the procedures of repossession~~ except in strict compliance with the following:

- A. Self-help repossession is prohibited on the Fort Apache Indian Reservation. Informed, wWritten consent to remove the personal property from land subject to the jurisdiction of the White Mountain Apache Tribe shall be secured from the purchaser at the time repossession is sought. The written consent shall be retained by the creditor and exhibited to any Judicial or law enforcement officer of the White Mountain Apache Tribe upon demand.

~~B. — Where the Tribal member, or the tribe or its economic subsidiaries and departments, refuses to sign said written consent to permit removal of the personal property from land subject to the jurisdiction of the White Mountain Apache Tribe, said personal property shall be removed only by order of the Tribal Court of the White Mountain Apache Tribe after an appropriate legal proceeding, wherein the rights and liabilities of the parties are determined.~~

- ^AB. Advanced Notice. Repossession consent may not be given, nor may the Tribal Court order repossession, until at least 10 days have elapsed since the secured party provided the purchaser with written notice of intent to repossess the secured property, including the amount of the delinquent balance that the purchaser needs to pay the secured party to avoid repossession proceedings, and how to dispute the alleged default.

C. Consent to Repossession.

i. Validity. Consent to Repossession shall be invalid if achieved under duress, artifice, or harassment, or not during the hours between 8:00 A.M. and 6:00 P.M.,

ii. Retaining the Consent Form. The written consent shall be retained by the creditor and exhibited to any Judicial or law enforcement officer of the White Mountain Apache Tribe upon demand.

iii. Contents. Consent to Repossession Forms, to be valid, shall contain the following:

a) The statement “The laws of the White Mountain Apache Tribe do not allow secured parties to repossess goods without the consent of the purchaser at the time of repossession. If the buyer consents to repossession, the buyer should understand that they are giving up the right to legal review of the secured party’s rights of repossession by the Tribe’s Courts.”

b) A statement that describes the buyer’s right to redeem the repossessed property before public auction, and of the amount necessary to redeem the repossessed property and the date before which the property may be redeemed.

c) The signature(s) of the buyer(s) giving their consent to the repossession; and

d) The name, address, phone number, and tribal business license number of the person and company making the repossession, and the name, address and phone number of the secured party on whose behalf the repossession is being made.

iv. A copy of the written consent shall be provided to the purchaser at the time of repossession.

v. Private Property. Persons attempting to gain the consent of purchasers to repossess secured property may, unless otherwise prohibited, enter the private property of the purchaser, but must leave if requested to do so. For the purposes of this sub-section, “private property” includes assignments or leases on which the secured property or the purchaser are located.

- D. Where the Tribal member person domiciled on the Reservation, or the Tribe or its economic subsidiaries and departments, refuses to sign said written consent to permit removal of the personal property from land subject to the jurisdiction of the White Mountain Apache Tribe, said personal property shall be removed only by order of the Tribal Court of the White Mountain Apache Tribe after an appropriate legal proceeding, wherein the rights and liabilities of the parties are determined.
- E. If the secured property is an automobile or other item that contains the personal property of the purchaser or of any other person besides the secured party, such property shall be removed from the secured property and peaceably returned to the purchaser before repossession of the secured property.
- F. Unsuccessful attempts to repossess property in a manner not provided for herein shall constitute a violation of this chapter. Private parties (non-businesses and non-governmental entities) may not contract to allow repossession terms contrary to this chapter.
- G. The repossession orders issued by courts of other jurisdictions shall not be recognized, domesticated, nor enforced within the confines of the Fort Apache Indian Reservation, but may be used as evidence in repossession proceedings pursuant to this chapter.
- H. Prohibited Remote Devices. Devices installed in a vehicle by the secured party or seller that remotely lock the ignition of a vehicle, remotely immobilize a vehicle, or track the totality of a vehicle's movements are hereby prohibited.

I. Exemptions.

- i. The Tribe. The Tribal Council may, by Resolution, authorize the Tribe, its subsidiaries, departments, enterprises or organizations, to enter into agreement terms contrary to the provisions of this Chapter.
- ii. Businesses. Businesses, other than sole proprietorships, may enter into agreement terms contrary to the provisions of this Chapter, if done so by clear waiver(s) contained in the original financing purchase contract.
- iii. Leases. This Chapter does not apply to the pure lease of equipment or personal property where replevin of the leased item is sought.

SECTION 6.7 PETITION FOR REPOSESSION

- A. In General. Repossession under Section 6.6(B) may only be accomplished by the secured party filing a Petition for Repossession in the Tribal Court.
- B. Contents. A Petition for Repossession shall, at a minimum, contain the following information:
1. The name and address of the purchaser and the location of the property;
 2. An identification of the property as described in the purchase agreement and which distinguishes that property from all other property with reasonable certainty;
 3. A brief description of the agreement terms that give the secured party the right to repossess the secured property and the grounds for breach of that agreement by the purchaser, giving rise to the right of repossession. A copy of that agreement must be attached to the petition.
 4. The total balance due and owed under the agreement;
 5. The remedy sought, whether repossession by the secured party, police escort during the repossession, delivery of item to the Court, damages, or other.
- C. The Petition must be verified by a sworn statement that its contents are accurate and complete.

SECTION 6.8 ACTION ON PETITION

- A. A. — Summons. Upon filing of the Petition, the Clerk of the Court shall verify that it is complete, and if so, the Court shall issue a Summons to the purchaser directing that person to appear before the Court at a date and time certain for a Repossession Hearing.
- B. The Court shall schedule the Repossession Hearing to occur not less than five (5) and not more than ten (10) business days from the time of the filing of the Petition.
- C. The Summons shall contain a copy of the Petition, and a statement that if the purchaser fails to appear, the Court may order repossession.

SECTION 6.9 REPOSESSION HEARING

- A. Conduct of Hearing. Repossession Hearings shall be conducted informally. Because of the accelerated nature of the proceeding, the purchaser shall not be required to file written pleadings and evidence in advance of the hearing, but may present such evidence and witnesses at the time of the hearing, orally and in writing. Any rules of evidence adopted or enacted by the Tribe will be applied liberally and the Court may admit evidence and consider such in light of its credibility under the circumstances.
- B. Burden of Proof. The secured party shall bear the burden of proving, by a preponderance of the evidence, that:
1. The secured party and the purchaser entered into a valid agreement;
 2. The agreement pledged a security interest in a piece of property and allowed repossession of that property in the event of breach by the purchaser;
 3. The purchaser has breached the agreement; and
 4. The property in question is the same property identified as the secured interest in the purchase agreement.
- C. Order. If the secured party proves the above elements to the Court's satisfaction, the Court shall issue a written Repossession Order, consistent with the relief sought in the Petition. Such order shall be executed with the assistance of a law enforcement officer.
- D. Claims by Purchaser. If the purchaser makes actionable and credible claims against the secured party for violations of this chapter, for warranty violation, or for other breaches of contract by the seller or secured party, the Court may order the property impounded pending the filing of a proper pleading by the purchaser within (5) business days, and the Court rendering a decision in that matter. If the purchaser fails to timely file such pleadings, the Court shall immediately issue a Repossession Order.
- E. Statutory Defenses. It shall be a defense to the Petition for Repossession, and a bar to the remedy of repossession, that the purchase agreement for the secured property failed to include those disclosures required by the Truth in Lending Act or regulations promulgated thereunder, or that the annual percentage rate of the purchase agreement was in excess of 9.9%.

SECTION 6.10 NOTICE OF PUBLIC AUCTION

The Secured party shall send, by registered mail return receipt requested, a Notice of Auction to the purchaser no less than (15) days before the auction of the secured property. The Notice shall include notification of the buyer's right to cure the default before the auction and participate in the auction. The notice shall list the time, date and location of such auction.

SECTION 6.11. DEFICIENCY JUDGMENTS

- A. Prohibited. Notwithstanding any contractual terms to the contrary, the Court shall not order any deficiency judgment if the Court has ordered repossession, if the purchaser has consented to such repossession, or if the item has been repossessed in violation of this chapter. The Court shall not enforce deficiency judgments issued by other courts in contradiction of the public policy of the Tribe.
- B. Purchaser's Liability for Damage to Secured Property. Upon the secured party proving damage to the secured property and that this damage occurred while the property was in the possession of the purchaser, the Court may order the purchaser to pay a reasonable amount of depreciation to the value of the secured property as a result of that damage. Such damage shall exclude reasonable wear and tear and value depreciation inherent to the passage of time.

SECTION 6.127 VIOLATIONS; SANCTIONS

- A. Any non-member of the White Mountain Apache Tribe, found to be in willful violation of §6.6 or §6.9 of this chapter may be excluded from land subject to the jurisdiction of the White Mountain Apache Tribe, in accordance with the procedure set forth in the Law and Order Code, as amended, of the White Mountain Apache Tribe.
- B. Any business whose employee or agent (s) are found to be in willful violation of §6.6 or §6.9 of this chapter may be denied the privilege of doing business on land subject to the jurisdiction of the White Mountain Apache Tribe.
- C. Any Indian who violates any provisions of §6.6 of this chapter shall be guilty of a crime, and upon conviction shall be punished by a fine of not more than \$100.

SECTION 6.138 CIVIL LIABILITY

- A. Any person who violates §6.6 the provisions of this chapter and any business whose employee or agent (s) violates such section is deemed to have breached the peace of the lands under the jurisdiction of the White Mountain Apache Tribe, and shall be civilly liable to the purchaser for any loss caused by the failure to comply with §§ 6.6-6.8 of this chapter.
- B. Vicarious Liability. Any business whose employees, contractors or agents violate this Chapter shall be jointly and severally liable with the employees, contractors or agents who acted on the business' behalf, whether or not the business directed the employee, contractor or agent to violate this chapter.
- CB. If the personal property repossessed, in violation of §§6.6-6.8 is consumer goods, then the purchaser has the right to recover in any event an amount not less than the credit service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price.
- D. Civil Fine and Restitution. Any person found to be in willful violation of this §6.6 of this chapter shall be liable for a civil fine of \$5,000.00. Additionally, the person found to be in violation of §6.6 shall be ordered to pay a restitution of either the amount provided in sub-section B, above, or \$5,000.00 to the purchaser. The restitution amount shall be given to the Court at the time of remittance of the civil fine, and then the Court shall record it as paid and turn it over to the purchaser. Failure of the secured party to pay fines in a timely manner may result in exclusion under Section 6.7.

SECTION 6.149 SEVERABILITY

If any provision of this chapter or clause of §§6.6-6.9 inclusive, or application thereof to any person or any business or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or application, and to this end, the provisions of this chapter are declared to be severable.

SECTION 6.1510 **TRIBAL COURT JURISDICTION**

The Tribal court shall have Jurisdiction of all actions arising under this chapter pursuant to the provisions of the Tribal Code relating to civil and Criminal Jurisdiction.

SECTION 6.1611 **SOVEREIGN IMMUNITY NOT WAIVED**

Nothing in this chapter shall be construed as a waiver of the sovereign immunity of the White Mountain Apache Tribe in any court for any purpose.