

**TITLE 33
COMMERCIAL LAW**

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§ 801. Definitions.

When used in this chapter, unless the context otherwise requires:

(1) “Issuer” means any person who issues or proposes to issue any security, except that:

(a) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term “issuer” means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and

(b) with respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any “issuer.”

(2) “Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(3) “Sale or sell” means every contract of sale or disposition of a security or interest in a security for value.

(4) “Security” means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest, or participation in an oil, gas, or mining title or lease, or in payments out of production under such a title or lease, or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. “Security” does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or for some other specified period.

Source: COM PL 3-3 § 8; TT Code 1970, 71 TTC 8; TT Code 1980, 71 TTC 8.

Editor's note: Subsections rearranged in alphabetical order in 1982 edition of this code.

§ 802. Registration required.

It shall be unlawful for any person, directly or indirectly, to issue, sell, exchange, or transfer any security, as defined in section 801 of this chapter, in the Trust Territory unless or until such security has been registered with the Registrar of Corporations and approval of the registered security has been granted by the High Commissioner.

Source: COM PL 3-3 § 1; TT Code 1970, 71 TTC 1; TT Code 1980, 71 TTC 1.

§ 803. Method of registration.

Any security may be registered by filing a registration statement signed by each issuer, its principal executive officer or officers, and the majority of its board of directors or persons performing similar functions, and in case the issuer is a noncitizen, as that term is defined in section 202 of title 32 of this code, by its duly authorized representative in the Trust Territory. In case of a security issued by a foreign government, the United States, or any political subdivision thereof, the statement may be signed by the underwriter of such security.

Source: COM PL 3-3 § 2; TT Code 1970, 71 TTC 2; TT Code 1980, 71 TTC 2.

Cross-reference: Title 32 of this code is on Business Regulation.

§ 804. Contents of registration statement.

The registration statement, when relating to a security other than a security issued by a foreign government, the United States, or any political subdivision thereof, shall contain the information the Registrar of Corporations by rule or regulation shall require for the protection of investors, and shall contain the approval of the High Commissioner for the issuance, sale, exchange, or transfer of such security.

Source: COM PL 3-3 § 3; TT Code 1970, 71 TTC 3; TT Code 1980, 71 TTC 3.

§ 805. Stop orders.

The High Commissioner may issue a stop order against any security transaction subject to this chapter if after approval of such transaction it appears that:

- (1) the registration statement includes any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein not misleading; or
- (2) upon examination by the Registrar of Corporations of the books, records, practices, and management of the issuer, material misrepresentations or misleading statements were made at the time of registration, and approval under the circumstances prevailing at the time of examination.

Source: COM PL 3-3 § 4; TT Code 1970, 71 TTC 4; TT Code 1980, 71 TTC 4.

§ 806. Review of orders.

(1) Any person aggrieved by an order of the High Commissioner may obtain review on the record upon which the order was based, by filing a petition for review in the Trial Division of the High Court within 60 days of entry of such order, asking that it be modified or set aside.

(2) The findings of the Registrar of Corporations as to facts, if supported by evidence, shall be conclusive.

(3) The decision of the Trial Division shall be subject to review by the Appellate Division of the High Court on appeal in accordance with law or rule.

Source: COM PL 3-3 § 5; TT Code 1970, 71 TTC 5; TT Code 1980, 71 TTC 5.

§ 807. Exemptions.

(1) The provisions of this chapter shall not apply to the following classes of securities:

(a) any security issued or guaranteed by the United States or the Trust Territory or any political subdivision thereof;

(b) any security issued by an entity organized and operated exclusively for religious, educational, benevolent, fraternal, or charitable purposes and not for pecuniary profit, no part of the net earnings of which inures to the benefit of any person or individual;

(c) certificates issued by a receiver or trustee in bankruptcy, with the approval of the Court;

(d) any security exchanged by the issuer with its existing security holders exclusively;

(e) any security which is issued in exchange for one or more bona fide outstanding securities, claims, or property interest or partly in exchange and partly for cash, when the terms and conditions of such issuance and exchange are approved by the High Commissioner as to the fairness thereof;

(f) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace or any renewal thereof.

(2) The Registrar of Corporations may from time to time by rule and regulation, and subject to such terms and conditions as may be prescribed therein, add any class of securities exempted, if he finds that the enforcement of this chapter with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering.

Source: COM PL 3-3 § 6; TT Code 1970, 71 TTC 6; COM PL 4C-15 §§ 1, 2; TT Code 1980, 71 TTC 6.

§ 808. Right to sue for damages incurred through misrepresentation.

In the event any registration application contains a misrepresentation of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements not misleading, any person acquiring such security (unless it be proved that at the time of acquisition he knew of such misrepresentation or omission) may sue the issuer and every person who signed

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the registration application or any supporting document, or any officer or director of the issuer, for the recovery of such damages as shall represent the difference between the amount paid for the security and the value at the time of suit. No such action shall be filed later than one year after the discovery of the misrepresentation or omission.

Source: COM PL 3-3 § 7; TT Code 1970, 71 TTC 7; TT Code 1980, 71 TTC 7.

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Editor’s note: This chapter was renamed by PL 14-34 § 2. Sections 921-933, which comprise subchapters II and III, were repealed in their entirety by.

§ 901. Short title.

This chapter is known and may be cited as the “Real Property Security Instruments Act of 1977.”

Source: COM PL 7-53 § 1; TT Code 1980, 57 TTC 351; PL 14-34 § 3.

Editor’s note: This chapter applies only in districts adopting it as law. See § 919 of this chapter.

§ 902. Transfers in trust of real property to secure obligations permitted.

Transfers in trust of any estate in real property may be made to secure the performance of an obligation or the payment of any debt. Real property to secure obligations shall be by deed of trust pursuant to the provisions of this subchapter. Such transfer does not entitle the trustee or beneficiary to the possession of the property, except as herein otherwise provided.

Source: COM PL 7-53 § 2; TT Code 1980, 57 TTC 352.

§ 903. Trustee for deeds of trust.

The trustee for any deed of trust executed on real property in the Trust Territory may be the housing authority of the district in which the real property is situated.

Source: COM PL 7-53 § 3; TT Code 1980, 57 TTC 353.

§ 904. Writing and recordation required.

A deed of trust can be created, renewed, modified, or extended only by writing and must be recorded with the land commission of the district in which the real property is situated.

Source: COM PL 7-53 § 4; TT Code 1980, 57 TTC 354.

§ 905. Compliance with chapter required for foreclosure.

Foreclosure of a deed of trust shall be only by the exercise of a power of sale in accordance with the provisions of this subchapter. This section does not preclude a court from granting equitable relief other than foreclosure.

Source: COM PL 7-53 § 5; TT Code 1980, 57 TTC 355.

§ 906. Power of sale—Authorized.

Where any transfer in trust of any estate in real property is made to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security.

Source: COM PL 7-53 § 6(1); TT Code 1980, 57 TTC 356(1).

§ 907. Power of sale—Requisites.

The power of sale shall not be exercised, however, until:

- (1) the trustee or beneficiary shall first file for record with the land commission in the district in which the real property is situated a notice of default, identifying the deed of trust by stating the name or names of the trustor or trustors and giving the date of recordation and the location where the same is recorded in the records of the district land commission, and containing a statement that a breach of the obligation for which such transfer in trust in security was made has occurred, and setting forth the nature of such breach and of his election to sell or cause to be sold such property to satisfy the obligation;
- (2) a copy of the notice of default and election to sell is personally served or, if personal service is not made despite efforts in good faith, is mailed by registered or certified mail with postage prepaid to the trustor or his successor in interest if such address is known, otherwise to the address of the trust property;
- (3) not less than three months shall thereafter elapse; and
- (4) after the lapse of the three months, the trustee shall within 60 days thereof give notice of sale, stating the time and place thereof, in the manner, and for a time not less than that, specified in the provisions of this subchapter for exercise of the power of sale in a deed of trust.

Source: COM PL 7-53 § 6(2); COM PL 7-59 § 1; TT Code 1980, 57 TTC 356(2).

§ 908. Power of sale—Eligibility to acquire title to property sold.

Title to any real property in the Trust Territory sold pursuant to exercise of power of sale in a deed of trust shall pass only to a citizen of the Trust Territory or such others as are permitted to hold title to real property in the Trust Territory under the provisions of this code.

Source: COM PL 7-53 § 6(3); TT Code 1980 57, TTC 356(3).

§ 909. Reinstatement.

Whenever all or a portion of the principal sum of any obligation secured by deed of trust on real property has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of default in payment of interest or of any installment of principal, or by reason of failure of the trust to pay in accordance with the terms of such obligation or of such deed of trust, or when the trustor voluntarily conveys the property to the trustee, the trustor or his successor in interest in the trust property or any part thereof, at any time under such deed of trust, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such deed of trust and the obligation secured thereby (including costs and expenses actually incurred in enforcing the terms of such obligation and deed of trust, and trustee's or attorney's fees, as may be awarded by the Court) and thereby cure the default theretofore existing. Thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust shall be reinstated and shall be and remain in force and effect as if no such acceleration had occurred.

Source: COM PL 7-53 § 7; TT Code 1980, 57 TTC 357.

§ 910. Sale under power—Auction required; Time and district designated.

All sales of property under power contained in any deed of trust must be held in the district where said property is situated, and must be made at auction, to the highest bidder, between the hours of 7:30 a.m. and 4:30 p.m.

Source: COM PL 7-53 § 8(1); TT Code 1980, 57 TTC 358(1).

§ 911. Sale under power—Notice requirements.

Before the sale of property under power contained in any deed of trust, notice thereof must be given by:

- (1) personal service or, if personal service is not made despite efforts in good faith, by mailing a copy of said notice at least 20 days and not more than 60 days before the date of sale by registered or certified mail with postage prepaid to the trustor or his successor in interest if such address is known, otherwise to the address of the trust property;
- (2) publishing a copy thereof once a week for at least 20 days before the date of sale in some newspaper of general circulation in the community or district in which the property is situated, or, if there be no such newspaper, by posting such notice for the same period in three public places in the community or district in which the property is to be sold; and
- (3) posting a copy of said notice in some conspicuous place on the property to be sold, at least 20 days before date of sale.

Source: COM PL 7-53 § 8(2); TT Code 1980, 57 TTC 358(2).

§ 912. Sale under power—Postponement.

Whenever a request in writing signed by both trustor and beneficiary for a postponement of the sale to an agreed date and hour is given to the trustee, the trustee shall thereupon by public declaration postpone the sale to the day and hour so fixed in such request. The sale shall be held at the place originally fixed by the trustee for the sale. In case of postponement, notice must be given by public declaration by the trustee at the time and place last appointed for the sale. No other notice of postponed sale need be given.

Source: COM PL 7-53 § 8(3); COM PL 7-59 § 2; TT Code 1980, 57 TTC 358(3).

§ 913. Sale under power—Trustee’s deed; Purchaser’s title.

(1) The trustee, upon such sale, shall make without warranty, execute, and, after due payment made, deliver to purchaser or purchasers, his or their heirs or assigns, a deed or deeds of the premises so sold which shall convey to the purchaser or purchasers all the title of the trustor in the trust premises, and shall apply the proceeds of the sale thereof in payment, firstly, of the expenses of such sale, together with the reasonable expenses of trust, including attorney’s fees as may be awarded by the Court, which shall become due upon any default made by the trustor in any of the payments, and in payment, secondly, of the obligation or debts secured, and interest thereon then remaining unpaid, and the amount of all other moneys with interest thereon agreed to be paid by the trustor. The balance or surplus of such proceeds of sale shall be paid to trustor, his heirs, executors, administrators, or assigns.

(2) A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding filing of notice of default, personal service, or mailing copies of the notice of default, election to sell, and notice of sale to the trustor or his successor in interest, publishing or posting, or both, notice of sale, and personal service or mailing copies of notices shall constitute prima facie evidence of compliance with such requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(3) Every sale made under the provisions of this subchapter vests in the purchaser the title of the trustor without equity or right of redemption.

Source: COM PL 7-53 § 8(4)-(6); TT Code 1980, 57 TTC 358(4)-(6).

§ 914. Sale under power—Purchase by trustee in absence of eligible buyer; Fiduciary obligations.

(1) If, at the time and place specified for sale, no buyer appears or is eligible to purchase under the provisions of this code, the trustee shall purchase the property in its own name in trust for and on behalf of the beneficiary, for the remaining unpaid balance of the debt secured by the deed of trust, and may thereupon enter into possession of the property; and such purchase and other evidence of title shall be recorded with the land commission for the district in which the property is situated.

(2) In the event of such a purchase, or acquisition in lieu of foreclosure, the trustee shall in all respects be a fiduciary with respect to such property for the benefit of the beneficiary, and may lease, operate, manage, and sell, or otherwise dispose of the property, under such terms,

covenants, and conditions as may be specified by the beneficiary. The trustee and beneficiary of any deed of trust may at any time agree or enter into a trust or holding agreement formalizing the rights, duties, and obligations concerning the property secured by deed of trust, in the event the trustee purchases under the deed of trust under the provisions of this subchapter.

Source: COM PL 7-53 § 8(7); TT Code 1980, 57 TTC 358(7).

§ 915. Deed of trust—Discharge, reconveyance, and satisfaction.

(1) A deed of trust must be discharged by an acknowledged certificate signed by the beneficiary, his personal representative, or assigns, stating that the debt secured by the deed of trust has been paid, satisfied, or discharged. Reference shall be made in such certificate to the name or names of the trustor or trustors, the date of recordation, and the location where the deed of trust is recorded in the records of the district land commission.

(2) When any debt secured by a deed of trust has been justly satisfied, the beneficiary of the deed of trust, or his assignee, must execute, acknowledge, and deliver to the trustor or the owner of the land a certificate of discharge of the debt, and, upon notice thereof, the trustee shall execute a full reconveyance of title to the trustor or owner. The beneficiary, his assignee, or personal representative shall deliver to the trustor, his heirs, successors, or assigns, the deed of trust and the note so paid or satisfied.

Source: COM PL 7-53 § 9; TT Code 1980, 57 TTC 359.

§ 916. Waste prohibited.

No person who has transferred in trust any estate in real property as security for the performance of an obligation or the payment of any debt may do any act which will substantially impair the beneficiary's security.

Source: COM PL 7-53 § 10; TT Code 1980, 57 TTC 360.

§ 917. Appointment of receiver.

(1) At any time after the filing of a notice of breach and election to sell real property under a power of sale contained in a deed of trust, the trustee or beneficiary of the deed of trust may apply to the High Court for the district in which the property is located for the appointment of a receiver of such property.

(2) A receiver shall be appointed where it appears that real property subject to the deed of trust is in danger of substantial waste, or that the income therefrom is in danger of being lost, or that personal property subject to the deed of trust is in danger of being lost, removed, materially injured, or destroyed, or that the property is or may become insufficient to discharge the debt which it secures.

Source: COM PL 7-53 § 11; TT Code 1980, 57 TTC 361.

§ 918. Assignment of beneficial interest.

Any assignment of the beneficial interest under a deed of trust may be recorded at the land commission of the district in which the land is situated, and from the time the same is filed for record all persons are deemed to have constructive notice of the contents thereof.

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Source: COM PL 7-53 § 12; TT Code 1980, 57 TTC 362.

§ 919. District legislature Act.

This subchapter shall apply to a district by a bill adopting this subchapter, and upon its enactment by the district legislature, becoming law.

Source: COM PL 7-53 § 13; TT Code 1980, 57 TTC 363.

§ 920. Construction with other laws.

Insofar as the provisions of this subchapter are inconsistent with the provisions of any other law, the provisions of this subchapter shall be controlling.

Source: COM PL 7-53 § 14; TT Code 1980, 57 TTC 364.

CHAPTER 10
Secured Transactions Act

Editor's note: Section 4 of PL 14-34 enacted a new chapter 10 entitled The Secured Transactions Act. The word "The" has been removed as unnecessary and to comport with standard code formatting.

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SUBCHAPTER I
General Provisions

Editor's note: PL 14-34 § 5 created this subchapter as subchapter 1. This subchapter is redesignated subchapter I for format consistency.

§ 1001. Purpose; construction; authority; title.

(1) The purpose of this Act is to promote commerce through a unified set of rules on personal property as security, consignments, the sale and assignment of accounts and chattel paper, and on leasing of goods. This Act shall be liberally construed to effectuate its purpose.

(2) If there is a conflict between a provision of this Act and a provision of any other law enacted by the Congress of the Federated States of Micronesia, this Act shall govern unless the other law specifically cites or amends the conflicting provision of this Act.

(3) This Act is adopted pursuant to the power of the Congress to regulate interstate commerce, banking, and bankruptcy under article IX, section 2(g) of the Constitution of the Federated States of Micronesia.

(4) This chapter may be cited as "The Secured Transactions Act".

Source: PL 14-34 § 6.

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code. The provisions of the Constitution are found in Part I of this code.

§ 1002. Definitions.

(1) "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper.

(2) "Account debtor" means the person who is obligated on an account, chattel paper, or other intangible property.

(3) "Assignee" means a person who takes an assignment.

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(4) “Assignment” means the transfer from one person to another, in whole or in part, of any right in an account, chattel paper, document, instrument, or other right to payment.

(5) “Assignor” means the person who makes an assignment.

(6) “Buyer in the ordinary course of business” means a person who buys goods from a person in the business of selling goods of that kind, if the buyer buys in good faith and without actual knowledge that the sale violates the rights of another person in the goods.

(7) “Chattel paper” means a record that creates a debt and a security interest in, or a lease of, goods.

(8) “Collateral” means the property subject to a security interest, and may include personal property, including tangible and intangible property, of any nature, farm products, fixtures, timber to be cut, and minerals to be extracted. The term includes collateral that arises in the future and collateral located in or outside of the Federated States of Micronesia. The term includes goods subject to consignment. The term includes accounts and chattel paper that have been sold, leased goods, and proceeds of collateral.

(9) “Consignment” means a transaction, regardless of the form or terminology used in the agreement, in which a person (the consignor) delivers goods for the purpose of sale to a merchant (the consignee) who deals in goods of that kind under a name other than that of the consignor and who is not an auctioneer. The term excludes transactions involving goods that are consumer goods of the consignor.

(10) “Consumer goods” means goods used primarily for personal, family, or household purposes.

(11) “Debtor” means the person who owes payment or other performance of the secured obligation, whether or not the person owns or has rights in the collateral, and includes the seller of accounts or chattel paper, and the lessee or consignee of goods.

(12) “Department” means the Department of Economic Affairs of the Federated States of Micronesia.

(13) “Deposit account” means a demand, time, savings, or similar account maintained with an institution licensed under any law. The term does not include investment property or accounts evidenced by chattel paper or an instrument.

(14) “Document” means a document of title or a receipt, such as a bill of lading or warehouse receipt, issued by a person in the business of transporting or storing goods.

(15) “Equipment” means goods that are not farm products, inventory, or consumer goods.

(16) “Farm products” means goods of a debtor engaged in farming, other than standing timber, which are:

- (a) crops grown, growing, or to be grown;
- (b) aquatic goods produced in aquacultural operations;
- (c) livestock, including the unborn;
- (d) supplies used or produced in a farming operation; or
- (e) products of crops or livestock in their unmanufactured state.

(17) “Filing office” means the secured transactions filing office established in subchapter 4 of this chapter.

(18) “Fixture” means goods that are fixed to real property, or are intended to become fixed to real property, in a manner that causes a property right to arise in the goods under the

prevailing law. Readily removable factory machines, office machines, and domestic appliances are not fixtures.

(19) “Goods” means all things that are movable when a security interest attaches. The term includes fixtures, timber to be cut and removed for sale, and farm products. The term does not include accounts or chattel paper, money, documents, or instruments.

(20) “Guarantee” means a secondary obligation that consists of an obligation to pay, or an issuer’s obligation to pay under a letter of credit, and that supports the payment on an account, chattel paper, document, instrument, or other intangible property.

(21) “Instrument” means a writing that evidences a right to the payment of money, that is not itself a security agreement or lease, and that is of a type which is in the ordinary course of business transferred by delivery with any necessary endorsement or assignment. The term includes a certificated security.

(22) “Inventory” means goods held for sale or lease, or goods that are raw materials, work in process, or materials used or consumed in a business.

(23) “Investment property” means a security other than a certificated security.

(24) “Lease of goods for a period greater than one year” means:

(a) a lease of goods for a stated duration of more than one year;

(b) a lease of goods for an indefinite term;

(c) a lease of goods for an initial term of one year or less if the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for more than one year after the lessee first acquired possession of the goods, but the lease does not become a lease for a term of more than one year until the lessee’s possession extends beyond one year; or

(d) a lease of goods for a term of one year or less where the lease provides that it is renewable for a period that may exceed one year.

(25) “Lessee in the ordinary course of business” means a person who, in good faith and without actual knowledge that the lease is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases from a person in the business of selling or leasing goods of that kind.

(26) “Lien holder” means:

(a) a person who obtains a right in a secured party’s collateral, or a right to seize a secured party’s collateral, by order of a court or by order of any authority under prevailing law, or by the authority of an administrator in an insolvency proceeding; or

(b) any other person who obtains a right in a secured party’s collateral by operation of law, except a person with a right of retention.

(27) “Motor vehicle” means an automobile or truck, except that, this term does not include a vehicle held as inventory of a debtor.

(28) “Notice” means a record filed or presented for filing in the filing office. The term includes amendments, continuation statements, and termination statements that are filed or presented for filing. An “initial notice” is the notice to which an amendment, continuation statement, termination statement, or correction statement may relate.

(29) “Obligor” means a person that, with respect to an obligation secured by a security interest on the collateral,

(a) owes payment or other performance of the obligation,

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(b) has provided property other than the collateral to secure payment or other performance of the obligation, or

(c) is otherwise accountable, in whole or in part, for payment or performance of the obligation.

(30) “Other intangible property” means any movable property other than goods, accounts, chattel paper, documents, instruments, and money.

(31) “Person” means an individual, a corporation whether for profit or not for profit, a partnership or joint venture, a trust and all national, state and municipal governments of the Federated States of Micronesia.

(32) “Proceeds” means

(a) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(b) whatever is collected on, or distributed with respect to, collateral;

(c) rights arising out of collateral;

(d) to the extent of the value of collateral, claims arising out of the loss or nonconformity of, defects in, or damage to the collateral;

(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 in, or damage to the collateral.

(33) “Cash proceeds” means proceeds that are money, checks, funds on deposit in banks, and the like.

(34) “Purchase” means to take collateral as a buyer, a donee, a person receiving a security interest such as a secured party, consignor, lessor, or mortgagee, or by any other voluntary transaction creating an interest in property. A person who takes by purchase is a “purchaser”.

(35) “Purchase money security interest”. A security interest is a purchase money security interest to the extent that it is:

(a) taken or retained by the seller of goods to secure all or part of its price; or

(b) taken by a person other than the seller who gives value to enable the debtor to acquire rights in or the use of goods, if such value is in fact so used.

(36) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. The term includes a photocopy, facsimile copy, and electronic mail.

(37) “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.

(38) “Secured party” means a lender, seller or other person in whose favor a security interest is created under a security agreement, including a person to whom accounts or chattel paper have been sold, and a lessor of goods. The term includes a consignor of goods.

(39) “Security” shall be given the same meaning set forth in section 801 of title 33 of this code.

(40) “Security agreement” means an agreement that creates or provides for a security interest.

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(41) “Security interest” means a property right in collateral that secures performance of an obligation.

(42) “Unless otherwise agreed” means unless the secured party and the debtor agree otherwise.

(43) “Value” A person gives value for rights if the person acquires the rights

(a) in return for a binding commitment to give credit, whether or not drawn upon; or

(b) as security for or satisfaction of a pre-existing claim, in whole or in part; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) in return for anything given in exchange, or for any promise.

Source: PL 14-34 § 7.

§ 1003. Scope.

(1) This chapter applies to:

(a) all transactions where the effect is to secure an obligation with collateral, including pledge, conditional sale, chattel mortgage, and assignment;

(b) the sale of accounts and chattel paper;

(c) consignments;

(d) the lease of goods for a period greater than one year; and

(e) the interest of a lien holder in collateral.

(2) This chapter applies without regard to the form of an agreement or the terminology used in an agreement, and whether ownership of the collateral is held by the secured party or the debtor. The retention of title by a seller of goods has no effect other than the taking of a security interest in the goods.

(3) Notwithstanding subsection (1) of this section, this chapter does not apply to:

(a) the transfer of an interest in real property, except as provided with respect to fixtures, crops, timber to be cut, or minerals to be extracted;

(b) the transfer of a claim for compensation of an employee;

(c) a sale of accounts or chattel paper as part of a sale of a business out of which they arose;

(d) an assignment of accounts, chattel paper, or instruments for the purpose of collection only;

(e) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(f) the transfer of an interest in a flagged vessel subject to the maritime and admiralty law of the Federated States of Micronesia;

(g) the transfer of an interest in investment property.

Source: PL 14-34 § 8.

Cross-reference: The statutory provisions on Admiralty and Maritime are found in title 19 of this code.

§ 1004. Security interest.

(1) Any person may give a security interest in collateral, and any person may take a security interest in collateral.

(2) Notwithstanding subsection (1) of this section, no security interest other than a purchase money security interest may be given or taken in consumer goods.

(3) A security interest may not be deemed invalid because the debtor has the right to use, possess, sell, exchange, commingle, or otherwise dispose of the collateral.

Source: PL 14-34 § 9.

§ 1005. Secured obligation.

(1) A security interest may secure one or more obligations.

(2) Secured obligations may be described specifically or in general terms.

(3) Secured obligations may be monetary or non-monetary obligations.

(4) Secured obligations may be governed by foreign law.

(5) A security interest may secure future obligations, whether mandatory, conditional, or optional.

(6) A security interest may secure pre-existing obligations.

Source: PL 14-34 § 10.

§ 1006. Collateral description.

(1) A description of collateral is sufficient if it reasonably identifies what is described.

(2) A description of collateral may be expressed in general terms, except that a motor vehicle may be described generally or by serial number.

(3) A description such as “all assets” or “all movable property” of the debtor is sufficient, except with respect to a security interest in consumer goods of a debtor.

Source: PL 14-34 § 11.

§ 1007. Effectiveness of security agreement.

(1) A security agreement must be in the form of a writing signed by the debtor and the secured party, provided that the agreement may be signed in counterparts.

(2) A security agreement may be found in multiple writings when read together.

(3) A security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors and lien holders, except as otherwise provided in this chapter.

Source: PL 14-34 § 12.

§ 1008. Collateral in secured party’s possession or control.

(1) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party’s possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, if collateral is in the secured party’s possession:

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- (a) reasonable expenses shall be charged to the debtor and secured by the collateral, including the cost of any insurance, and the payment of taxes or fees associated with the collateral;
 - (b) the risk of accidental loss or damage is born by the debtor to the extent of a deficiency in any insurance coverage;
 - (c) the secured party may hold as additional security any increases received from the collateral except money, and shall apply money to reduce the secured obligation unless the money is remitted to the debtor;
 - (d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
 - (e) the secured party may use or operate the collateral:
 - (i) for the purpose of preserving the collateral or its value;
 - (ii) as permitted by an order of a court having competent jurisdiction;or
 - (iii) in the manner and to the extent agreed by the debtor.
- (3) A secured party having possession or control of collateral:
- (a) may hold as additional security any proceeds, except money or funds, received from the collateral; and
 - (b) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor.
- (4) This section does not apply to a buyer of accounts, chattel paper, or other intangible property.

Source: PL 14-34 § 13.

§ 1009. Assignment.

- (1) A person may assign all or part of the person's rights in accounts, chattel paper, instruments, or other intangible property.
- (2) An assignment under this section may be a specific or general assignment.
- (3) An assignment may include accounts, chattel paper, instruments, or other intangible property that have not been created at the time of the assignment.
- (4) The assignee is subject to all the terms of the agreement between the account debtor and assignor.
- (5) No communication to the account debtor shall be required for attachment, perfection or enforcement of a security interest arising from an assignment, except as provided in this section.
- (6) If an account debtor is given information about an assignment, the information shall be in writing, shall identify the rights assigned, and shall be signed by the assignor or the assignee, but need not disclose any of the terms or conditions of the assignment.
- (7) After being informed of an assignment of a right to payment, the account debtor shall perform the obligation by paying the assignee, and not the assignor. However, if requested by the account debtor, the assignee shall furnish timely and sufficient evidence of the assignment, and unless the assignee complies, the account debtor may perform the obligation by paying the assignor.

(8) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, the rights of an assignee are subject to:

(a) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee;

Provided, however, that the claim of an account debtor against an assignor may be asserted against an assignee only to reduce the amount the account debtor owes.

Source: PL 14-34 § 14.

§ 1010. Restriction on sale or assignment.

An agreement between a secured party and a debtor is unenforceable if it prohibits or restricts the sale or assignment of an account, lease, or chattel paper.

Source: PL 14-34 § 15.

§ 1011. Attachment of security interest to collateral.

(1) A security interest attaches to collateral and becomes enforceable against the debtor and third parties with respect to the collateral only if:

(a) the debtor has signed a security agreement that provides a description of the collateral;

(b) value has been given by the secured party to the debtor; and

(c) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party.

(2) Unless otherwise agreed, the attachment of a security interest in collateral gives the secured party the right to a security interest in proceeds as provided in this chapter.

(3) Goods shall be determined to be equipment, inventory, farm products, or consumer goods at the time that a security interest attaches to the goods.

Source: PL 14-34 § 16.

SUBCHAPTER II
Perfection and Priority of Security Interests

Editor's notes: PL 14-34 § 17 created this subchapter as subchapter 2. This subchapter entitled Perfection and Priority of Security Interest is redesignated as subchapter II for format consistency.

§ 1012. Perfection of security interest.

(1) *Means of perfection.* A security interest is perfected when it has attached to the collateral and a means of perfection has been completed. There are four means of perfecting a security interest:

(a) the filing of a notice in the filing office;

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- (b) perfection upon attachment of the security interest to collateral, without further action;
 - (c) possession of the collateral by the secured party; and
 - (d) control of the collateral by the secured party.
- (2) *Perfection by filing of notice.* A notice must be filed in the filing office to perfect a security interest, unless this section provides otherwise.
- (3) *Perfection by attachment.* The following security interests are perfected when they attach to the collateral and without the filing of a notice:
- (a) a purchase money security interest in consumer goods;
 - (b) a security interest in proceeds, if the underlying security interest is perfected;
 - (c) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder.
- (4) *Perfection by possession.*
- (a) A security interest in goods, instruments, documents, or chattel paper may be perfected by the secured party's taking possession, and without filing a notice.
 - (b) A security interest in money may be perfected only by the secured party's taking possession of the money, except for cash proceeds.
 - (c) A security interest is perfected by possession from the time possession is taken and continues only so long as possession is retained.
 - (d) A security interest perfected by possession under this subsection may also be perfected by filing a notice before, during, or after a period of possession by a secured party.
- (5) *Perfection by control of collateral.* A security interest in a deposit account may be perfected by the secured party's taking control of the deposit account, as provided in section 1027 of this chapter and without filing a notice.
- (6) *Bailment.* While goods are in the possession of a bailee that has issued a document covering the goods, a security interest in the goods may be perfected by perfecting a security interest in the document. Any security interest in the goods perfected by filing a notice during the period that goods are in the possession of the bailee is subordinate to a security interest perfected in the document.
- (7) *Guarantees.* Perfection of a security interest in collateral also perfects a security interest in a guarantee supporting the collateral. The filing of a notice is not necessary to perfect a security interest in a guarantee.
- (8) *Right to payment secured by real property mortgage.* Perfection of a security interest in a right to payment or performance also perfects a security interest in a mortgage on real property securing the right to payment.
- (9) *Property subject to a treaty.* The filing of a notice is not necessary to perfect a security interest in property subject to a treaty under which the requirements for perfecting a security interest vary from the requirements of this chapter. Compliance with the requirements of the treaty to perfect a security interest is equivalent to the filing of a notice under this chapter.

Source: PL 14-34 § 18.

§ 1013. Continuity of perfection.

(1) A security interest is perfected continuously if it is first perfected in one manner and later perfected in another manner, without a period when it is not perfected.

(2) If a secured party assigns a perfected security interest, a notice need not be filed under this chapter to continue perfection of the security interest against creditors of the debtor, transferees from the debtor, and lien holders.

Source: PL 14-34 § 19.

§ 1014. Priority among security interests in the same collateral.

(1) Security interests in the same collateral have priority according to time of filing of a notice or perfection, except as otherwise provided in this chapter.

(2) Priority is measured from the time the first notice is filed covering the collateral, or the time the security interest is first perfected, whichever is earlier, if there is no time after the first time of filing or perfection at which the notice was ineffective or the continuity of perfection was interrupted.

(3) The first security interest to attach to collateral has priority among security interests for which no effective notice covers the collateral and for which there is no perfection.

(4) A date of filing or perfection as to collateral is deemed to be the date of filing or perfection of a security interest in proceeds.

Source: PL 14-34 § 20.

§ 1015. Priority of lien holder.

A security interest has priority over the rights of a lien holder unless a notice of the rights of the lien holder is filed in accordance with this chapter:

- (1) before the security interest is perfected; and
- (2) before a notice covering the collateral is filed.

Source: PL 14-34 § 21.

§ 1016. Purchasers of collateral.

(1) *Generally.* A purchaser takes collateral free of a security interest if the purchaser gives value for the collateral without actual or constructive knowledge of the security interest and before it is perfected. If the collateral is tangible, the purchaser must also take delivery of the collateral without actual or constructive knowledge of the security interest and before it is perfected.

(2) *Buyer in the ordinary course of business.* Notwithstanding subsection (1) of this section, a buyer in the ordinary course of business takes goods free of a security interest in the goods, even if the security interest is perfected and even if the buyer has actual or constructive knowledge of its existence.

(3) *Purchaser of consumer goods.* Notwithstanding subsections (1) and (2) of this section, a buyer of goods that are consumer goods of the seller takes the goods free of a security interest whether or not the security interest is perfected, if the person buys and takes delivery of the goods without actual or constructive knowledge of the security interest.

(4) *Purchaser of a motor vehicle.* Notwithstanding subsections (1) and (3) of this section, a person who buys a motor vehicle or who takes a security interest in a motor vehicle,

other than a buyer in the ordinary course of business, takes the motor vehicle or security interest free of a prior security interest only if:

- (a) the person bought without actual knowledge of the security interest; and
- (b) the motor vehicle was not described, or was incorrectly described, by serial number in a filed notice.

(5) *Purchaser of farm products.* Notwithstanding any other provision of this section, a person who buys farm products takes the farm products free of any security interest.

Source: PL 14-34 § 22.

§ 1017. Lessees of collateral.

(1) *Generally.* A lessee of goods takes its leasehold interest free of a security interest in the goods if the lessee receives delivery of the goods:

- (a) without actual or constructive knowledge of the security interest; and
- (b) before the security interest is perfected.

(2) *Lessee in the ordinary course of business.* Notwithstanding any other provision of this section, a lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods even if the security interest is perfected and even if the lessee has actual or constructive knowledge of its existence.

(3) *Lessee of a motor vehicle.* Notwithstanding any other provision of this section, a lessee, other than a lessee in the ordinary course of business, takes a motor vehicle free of a security interest only if the lessee leased:

- (a) without actual knowledge of the security interest; and
- (b) the motor vehicle was not described, or was incorrectly described, by serial number in a filed notice.

Source: PL 14-34 § 23.

§ 1018. Disposition of collateral and proceeds.

(1) A security interest continues in collateral notwithstanding sale, lease, license, exchange, or other disposition of the collateral, except as otherwise provided in this chapter or agreed upon by the parties.

(2) Upon the disposition of collateral, a security interest attaches to proceeds of the collateral, except as otherwise provided in this chapter or agreed upon by the parties.

(3) A security interest in proceeds is a continuously perfected security interest if the security interest in the original collateral was perfected. The security interest in proceeds becomes unperfected 20 days after the debtor receives the proceeds unless:

- (a) a filed notice covers the original collateral, and the proceeds are cash proceeds or proceeds of a nature described in the notice; or
- (b) the security interest in the proceeds is perfected before the expiration of the 20 day period.

Source: PL 14-34 § 24.

§ 1019. Priority of purchase money security interest in goods.

Subject to the provisions of section 1020 of this chapter relating to security interests in inventory and livestock, a purchase money security interest in goods, perfected by the filing of a notice, has priority over a conflicting security interest in the same collateral and the interest of a lien holder, and also has priority in its proceeds, if the purchase money security interest is perfected when the debtor receives possession of the goods, or within five days thereafter.

Source: PL 14-34 § 25.

§ 1020. Priority of purchase money security interest in inventory or livestock.

A perfected purchase money security interest in inventory or livestock has priority over a conflicting security interest in the same inventory or livestock if:

- (1) the purchase money security interest is perfected when the debtor receives possession of the inventory or livestock; and
- (2) the purchase money secured party notifies in writing the holder of the conflicting security interest if the holder had filed a notice covering the same types of inventory or livestock before the time of a notice filed by the purchase money secured party. The notification must describe the inventory or livestock and state that the person giving the notification has or expects to acquire a purchase money security interest in inventory or livestock of the debtor.

Source: PL 14-34 § 26.

§ 1021. Priority of lien arising by operation of law.

A lien or right of retention arising by operation of law in goods has priority over a perfected security interest while the goods are in the possession of the person holding the right of retention if:

- (1) the right of retention is created in favor of a person in possession of the goods to secure payment for materials or services with respect to the goods; and
- (2) the materials or services are provided in the ordinary course of business.

Source: PL 14-34 § 27.

§ 1022. Fixtures.

(1) A security interest may be created in goods that are fixtures. A security interest may continue in goods that become fixtures.

(2) Notwithstanding subsection (1) of this section, a security interest in ordinary building materials is unenforceable when the building materials are incorporated into real property.

(3) This section does not determine priority in readily removable factory machines, office machines, and domestic appliances.

(4) A security interest in fixtures is subordinate to all other real rights in real property, except as provided in this section.

(5) A perfected security interest in fixtures has priority over the interest of the owner of real property, or a mortgagee notwithstanding any provision in the mortgage, if a notice is filed before the interest of the owner or the mortgagee is registered in the land registry.

(6) A perfected security interest in fixtures has priority over the interest of a lien holder if a notice is filed before the filing of a notice of the interest of the lien holder as required by this chapter.

(7) A perfected security interest in fixtures has priority over the interest of the owner of real property, a lien holder, or a mortgagee notwithstanding any provision in the mortgage, if the security interest is a purchase money security interest given by the debtor before the goods become fixtures, and a notice is filed before the goods become fixtures or within five days thereafter. The priority established in this subsection is not effective against a person who holds a construction mortgage. A mortgage is a construction mortgage to the extent that it secures an obligation to pay for the construction of an improvement on real property, if the mortgage is registered in accordance with the land law and if the mortgage indicates that it secures such an obligation.

Source: PL 14-34 § 28.

§ 1023. Crops.

A perfected security interest in crops growing on real property has priority over a conflicting interest of the owner or a mortgagee if the debtor is in possession of the real property or has an interest in the real property that is registered in accordance with the real property law.

Source: PL 14-34 § 29.

§ 1024. Accessions.

(1) “Accession” means goods that are physically united with other goods in a manner such that the identity of the goods is not lost.

(2) A security interest may be created in an accession and continues in collateral that becomes an accession. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the accession.

(3) On default, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(4) A secured party that removes an accession shall promptly reimburse the holder (other than the debtor) of any interest in the whole or the other goods for the cost of repair of any physical injury to the whole.

(a) A secured party that removes accessions shall promptly reimburse any other secured party for the cost of repair of any damage to the property.

(b) The secured party need not reimburse the debtor or other secured party for any diminution in value caused by the absence of the goods removed or by any necessity for replacing them.

(c) A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Source: PL 14-34 § 30.

§ 1025. Commingled goods.

(1) In this section, “commingled goods” means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(2) A security interest may not be created in commingled goods. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(3) If collateral becomes commingled goods, a security interest in the collateral attaches to the product or mass.

(4) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass is perfected without the need for filing a notice. The priority of the security interest in the product or mass is measured from the time of perfection of the security interest in the collateral that became commingled.

(5) If more than one security interest attaches to the product or mass, the following rules determine priority.

(a) A security interest that is perfected has priority over a security interest that is unperfected at the time the collateral becomes commingled goods;

(b) The first security interest to attach to the product or mass has priority among unperfected security interests; and

(c) If more than one security interest is perfected, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

Source: PL 14-34 § 31.

§ 1026. Purchase of chattel paper and instruments.

A purchaser of chattel paper or instruments has priority over a conflicting security interest in the chattel paper or instruments and also has priority with respect to the proceeds of the chattel paper or instruments if:

(1) in the ordinary course of the purchaser’s business, the purchaser gives new value and takes possession of the chattel paper or instruments; and

(2) the chattel paper or instruments do not indicate an assignment to the person holding the conflicting security interest.

Source: PL 14-34 § 32.

§ 1027. Control of deposit account.

(1) A secured party has control of a deposit account if:

(a) the secured party is the bank with which the deposit account is maintained;

(b) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(c) the secured party becomes the bank’s customer with respect to the deposit account.

(2) A secured party that has satisfied subsection (1) of this section has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

Source: PL 14-34 § 33.

§ 1028. Priority of conflicting security interests in deposit accounts.

(1) A security interest held by a secured party having control of a deposit account has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in subsections (3) and (4) of this section, security interests perfected by control have priority according to the time of obtaining control.

(3) Except as otherwise provided in subsection (4) of this section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control has priority over a security interest held by the bank with which the deposit account is maintained if the secured party has become the customer of the bank with respect to the deposit account.

Source: PL 14-34 § 34.

§ 1029. Transfers of money and funds from deposit accounts.

A transferee of money, including funds from a deposit account, takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

Source: PL 14-34 § 35.

§ 1030. Right of recoupment or setoff against deposit account.

(1) Except as otherwise provided in subsection (2) of this section, a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.

(2) A setoff by a bank based on a claim against a debtor is ineffective against a secured party that has established control of a deposit account by becoming the bank's customer with respect to the deposit account.

Source: PL 14-34 § 36.

§ 1031. Inter-bank transactions.

Nothing in this chapter limits any special priorities, protections or preferences under the banking law, held by banks that acquire instruments or documents in a manner or under circumstances that entitles them to such priorities, protections or preferences. These interests take preference over an earlier security interest, even if perfected, to the extent provided by the banking law.

Source: PL 14-34 § 37.

SUBCHAPTER III
Filing

Editor's note: PL 14-34 § 38 created this subchapter as subchapter 3. This subchapter entitled Filing has been redesignated as subchapter III for format consistency.

§ 1032. Filing office.

- (1) A secured transactions filing office is established in the Department.
 - (a) The Department may contract with any person for the performance of some or all of the duties required of the filing office.
 - (b) The Department shall provide electronic means for filing notices and searching notices, and the electronic records of the filing office shall be the official records. All notices shall be filed and searches shall be performed by electronic means.
 - (c) All obligations of the Department under this chapter shall be fully discharged by the creation and businesslike maintenance of an electronic information system that provides for the filing of notices of security interests and notices of the interests of lien holders, and for the search of such notices by any person.
- (2) The filing of a notice complying with the requirements of this chapter provides constructive knowledge of its contents to all persons. The filing of a notice does not create a security interest in collateral and does not provide evidence that a security interest in collateral exists.
- (3) The duties of the filing officer are merely administrative. By filing a notice or refusing to file a notice, the filing office does not determine the sufficiency, correctness, authenticity, or validity of any information contained in the notice.
- (4) The secured transactions filing office is the place to file
 - (a) a notice of a security interest in collateral;
 - (b) a notice of the interest of a lien holder; and
 - (c) a notice of the interest of a secured party in a transaction concluded prior to the effective date of this Act as provided in this Act.
- (5) Records of the filing office shall be maintained in the English language.

Source: PL 14-34 § 39.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1033. Regulations.

- (1) The Department has power to issue regulations only as provided in this section.
- (2) Regulations may prescribe filing fees not to exceed the reasonable estimation of costs necessary to operate the filing office.
 - (a) Regulations may prescribe the fee for filing of a notice.
 - (b) Regulations may prescribe the fee for filing of a certified search report.
 - (c) There shall be no fee for filing a notice of the interest of a lien holder.
 - (d) There shall be no fee for a search of filing office records.
 - (e) There shall be no fee for any other services of the filing office.
- (3) Regulations may prescribe the means by which fees authorized by this chapter may be paid.

Source: PL 14-34 § 40.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1034. Notice of the interest of a lien holder.

The Department shall adopt an electronic form for the submission of notice of the interest of a lien holder. The notice of the interest of a lien holder shall be limited to identification of the lien holder, identification of the person owing payment or performance to the lien holder, and a description of movable property against which the lien holder claims a right, in the same manner as provided in this chapter for the filing of a notice of a security interest.

Source: PL 14-34 § 41.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1035. Access to filing office records.

- (1) A notice is a public record.
- (2) Indexes and other records created by the filing office with respect to notices, in any form or medium, are public records.
- (3) Any person has a right to inspect and make copies of the records of the filing office.

Source: PL 14-34 § 42.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1036. Contents of initial notice.

- (1) An initial notice is sufficient if it:
 - (a) identifies the debtor and provides a mailing address;
 - (b) identifies the secured party or an agent of the secured party and a mailing address; and
 - (c) describes the collateral covered by the notice, as provided in section 1006 of this title. In addition, a notice must provide a description of the relevant real property if it covers timber to be cut, minerals to be extracted, or fixtures. A description of real property need only reasonably describe the real property, and need not satisfy the requirements of a description necessary to create a mortgage in real property or to establish ownership rights in real property.
- (2) A person is entitled to file an initial notice only if the debtor authorizes the filing in a signed writing. The debtor's authorization need not be contained in the notice.
- (3) By signing a security agreement, a debtor authorizes the filing of an initial notice covering the collateral described in the security agreement, and proceeds of the collateral, whether or not the security agreement expressly covers proceeds.
- (4) A notice may be filed before a security agreement is concluded or before a security interest attaches to collateral.

(5) A notice substantially complying with the requirements of this chapter is effective, even if it is insufficient under this section, unless the insufficiency makes the notice seriously misleading. A notice that insufficiently provides the name of the debtor is seriously misleading.

Source: PL 14-34 § 43.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1037. Name of debtor and secured party.

- (1) A notice sufficiently provides the name of the debtor when:
- (a) the debtor is a natural person and a citizen of the Federated States of Micronesia and the notice contains the name of the person as it appears on the records of the Social Security Administration;
 - (b) the debtor is a natural person and not a citizen of the Federated States of Micronesia and the notice contains the name of the person as it appears on the person's passport and identifies the country that issued the passport;
 - (c) the debtor is a corporation organized under law enacted by the Federated States of Micronesia or a state of the Federated States of Micronesia, and the notice contains the name of the debtor as shown on the registry established by that law;
 - (d) the debtor is a foreign corporation qualified to do business under law enacted by the Federated States of Micronesia or a state of the Federated States of Micronesia and the notice provides the name of the debtor as shown in the registry established under that law;
 - (e) the debtor is a foreign corporation not registered under the law enacted by the Federated States of Micronesia or any state of the Federated States of Micronesia, and the notice contains the name of the debtor as shown on the appropriate registry in the country where the foreign corporation is organized.
- (2) A notice that sufficiently provides the name of the debtor is not rendered ineffective by the presence or absence of a trade name or other name of the debtor. A notice that provides only the debtor's trade name does not sufficiently provide the name of a debtor.
- (3) A notice may provide the name of more than one debtor and the name of more than one secured party.
- (4) The failure to indicate on a notice that a person is an agent of the secured party does not affect the sufficiency of a notice.

Source: PL 14-34 § 44.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1038. Effect of changes in circumstance.

- (1) A filed notice remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest continues, even if the secured party has actual or constructive knowledge of or consents to the disposition.

(2) If a debtor changes its name so that a filed notice becomes seriously misleading, the notice is effective to perfect a security interest in collateral acquired by the debtor before or within four months after the change. The notice is effective to perfect a security interest in collateral acquired by the debtor more than four months after the change only if an amendment to the notice is filed within four months of the change to correct the name.

(3) Except as provided for a change of debtor name under subsection (2) of this section, a notice remains effective if, after the notice is filed, a change of circumstances renders the notice seriously misleading.

Source: PL 14-34 § 45.

§ 1039. Duration of notice and effect of lapse.

(1) A filed notice is effective for a period of five years after the date of filing.

(2) The effectiveness of a filed notice lapses on the expiration of the five year period unless, before the lapse, a continuation statement is filed.

(3) Upon lapse, a notice becomes ineffective and any security interest that was perfected by the notice becomes unperfected, unless the security interest is perfected without filing.

(4) If the security interest becomes unperfected upon lapse, it is deemed never to have been perfected against a prior or subsequent purchaser of the collateral for value.

Source: PL 14-34 § 46.

§ 1040. Amendment of notice.

(1) An initial notice may be amended by one or more amendments. An amendment must:

(a) identify the initial notice by its file number;

(b) identify the secured party on the notice who authorizes the amendment;

(c) indicate that it is an amendment to the notice; and

(d) provide all of the information required of an initial notice, completely restating the notice in a manner that reflects the amended state of the notice.

(2) If an amendment adds collateral covered by a notice, or adds a debtor to a notice, it is effective if the debtor authorizes the filing in a signed writing. By signing a security agreement, a debtor authorizes the filing of an amendment, covering the collateral described in the security agreement, and proceeds of the collateral, whether or not the security agreement expressly covers proceeds.

(3) If there is more than one secured party on the notice, the amendment is effective if a secured party authorizes the filing.

(4) An amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(5) An amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(6) An amendment other than an amendment to add collateral or add a debtor is effective only if a secured party on the notice authorizes the filing of the amendment in an authenticated record.

(7) An amendment is ineffective if it purports to delete all secured parties and fails to provide the name of a new secured party, or purports to delete the names of all debtors and fails to provide the name of a debtor not previously named on the notice.

(8) If there is more than one secured party on the notice, each secured party may authorize the filing of an amendment.

(9) The filing of an amendment does not extend the period of effectiveness of a notice.

Source: PL 14-34 § 47.

§ 1041. Continuation of notice.

(1) The period of effectiveness of a notice may be continued by filing a continuation statement that:

- (a) identifies the initial notice by its file number;
- (b) identifies a secured party on the notice who authorizes the continuation statement; and
- (c) indicates that the effectiveness of the notice, with respect to the secured party who authorized the filing, is to be continued.

(2) A continuation statement may be filed only within six months before the expiration of the five-year period of the notice.

(a) Upon timely filing of a continuation statement, the effectiveness of the notice continues for a period of five years commencing on the day on which the notice would have become ineffective in the absence of the filing.

(b) The effectiveness of a notice is continued only with respect to the secured party who authorized the filing of the continuation statement.

(c) Upon the expiration of the new five-year period, the notice lapses with respect to the secured party unless, before the lapse, another continuation statement authorized by that secured party is filed. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the notice.

Source: PL 14-34 § 48.

§ 1042. Termination of notice.

(1) The effectiveness of a notice may be terminated by filing a termination statement that:

- (a) identifies the initial notice by its file number;
- (b) identifies a secured party on the notice who authorizes the termination statement; and
- (c) indicates that the notice is no longer effective with respect to the interest of the secured party who authorized the filing of the termination statement.

(2) Within 20 days after the secured party receives a written demand by the debtor, the secured party on a notice shall file a termination statement if:

- (a) there is no outstanding secured obligation and no commitment to make an advance, incur an obligation, or otherwise give value; or
- (b) the debtor did not authorize the filing of the initial notice; or

(c) the notice covers accounts or chattel paper that have been sold but as to which the account debtor or other person obligated has discharged its obligation.

(3) A termination statement effectively terminates the interest of a secured party on the notice only if the termination statement is authorized in a writing signed by that secured party. Upon the filing of an effective termination statement, the notice to which the termination statement relates becomes ineffective with respect to the authorizing secured party.

Source: PL 14-34 § 49.

§ 1043. Effectiveness of notice.

(1) An initial notice, amendment, continuation statement, or termination statement is effective at the time it becomes public by means of a search of the records of the filing office as provided in this chapter.

(2) The filing office may refuse to file a record because:

(a) in the case of an initial notice, the record does not provide the name of a debtor;

(b) in the case of an amendment, the record does not provide the name of a debtor, does not provide the file number of the initial notice, or the record identifies an initial notice whose effectiveness has lapsed;

(c) in the case of a continuation statement, the record does not provide the file number of the initial notice, or was not delivered within the permitted six-month time period;

(d) in the case of a termination statement, the record does not provide the file number of the initial notice, or the record relates to an initial notice that has lapsed with respect to each secured party on the notice; or

(e) less than the full filing fee is tendered, or no arrangement has been made for the periodic payment of fees.

(3) A record that the filing office refuses to accept for a reason other than one set forth in this section is effective as a filed record except against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the record from the files.

(4) If a filing office refuses to accept a record for filing, it shall promptly communicate the fact of and reason for its refusal to the person that presented the record.

(5) A notice authorized by one secured party on the notice does not affect the rights of another secured party on the notice.

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

Source: PL 14-34 § 50.

§ 1044. Filing office duties.

(1) For each notice filed, the filing office shall:

(a) assign a unique file number in the case of an initial notice;

(b) assign a unique number to notices other than the initial notice;

(c) create a record that bears the number assigned to the filed record and the date and time of filing; and

(d) maintain the filed record for public inspection.

(2) The filing office shall index an initial notice by the name of the debtor and shall index all filed records relating to an initial notice in a manner that associates the initial notice and all filed records relating to the initial notice. For notices containing serial numbers of motor vehicles, the filing office shall maintain an index of serial numbers.

(3) The filing office shall maintain the capability to retrieve a record by the name of the debtor and by the file number assigned to the initial notice to which the record relates, and that associates an initial notice and all records relating the initial notice with one another. For notices containing the serial number of a motor vehicle, the filing office shall maintain the capability to retrieve a record by the serial number of the motor vehicle.

(4) The filing office shall maintain records of lapsed notices for a period of ten years beyond the date of lapse.

Source: PL 14-34 § 51.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1045. Information from filing office.

(1) The filing office shall communicate the following information to any person that requests it:

(a) whether there is on file on a date and time specified by the filing office, any notice that designates a particular debtor and has not lapsed with respect to all secured parties;

(b) the file number, and the date and time of filing of each notice;

(c) the name and address of each debtor and secured party on each notice;

(d) all of the information contained in each notice.

(2) A request may be made to search the records of the filing office by any of the following criteria:

(a) the file number of a notice;

(b) the name of a debtor; or

(c) the serial number of a motor vehicle.

(3) In complying with its duty, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a written certificate that can be admitted into evidence in the courts without extrinsic evidence of its authenticity.

Source: PL 14-34 § 52.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1046. Filing Office Revolving Fund.

(1) There is established a Filing Office Revolving Fund, hereinafter referred to as the “Fund,” separate from the General Fund of the Federated States of Micronesia and all other funds.

(2) The purpose of the Fund is to establish an ongoing revolving fund to allow appropriations for, and revenues from, the filing of notices to be used for the costs of maintenance of a filing office.

(3) All future appropriations for, and revenues received from, the filing of notices shall be deposited in the Fund. Any unexpended monies in the Fund shall not revert to the General Fund nor lapse at the end of the fiscal year; provided that at the end of each fiscal year, funds in excess of 50 percent of the actual operating costs of the filing system during the fiscal year just closed shall be deposited in the General Fund.

(4) The Fund shall be administered by the Secretary of the Department of Economic Affairs. The Secretary shall, not later than 30 days after the close of each governmental fiscal year, submit a complete report of the activities and condition of the Fund for the fiscal year just closed to the President and the Congress of the Federated States of Micronesia.

(5) The Public Auditor shall audit the Fund at such times as the Public Auditor deems appropriate.

Source: PL 14-34 § 53.

Cross-reference: The statutory provisions on the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code. The statutory provisions on the Public Auditor are found in chapter 5 of title 55 of this code.

SUBCHAPTER IV Enforcement of Security Interests

Editor's note: PL 14-34 § 54 created this subchapter as subchapter 4. This subchapter entitled Enforcement of Security Interests has been redesignated subchapter IV for format consistency.

§ 1047. Rights after default—General provisions.

(1) After default a secured party has the rights provided in this chapter and those provided by agreement of the parties.

(2) After default, a secured party may reduce a claim to judgment, foreclose, or otherwise enforce the claim, or security interest by any available judicial procedure.

(3) After default, if the collateral is documents, the secured party may proceed either as to the documents or as to the goods they cover.

(4) A secured party in possession of collateral or control of collateral has the rights and duties provided in section 1008 of this chapter.

(5) Rights under this section are cumulative and may be exercised simultaneously.

(6) Except as otherwise provided in this chapter with respect to an unknown debtor, after default, a debtor and an obligor have the rights provided in this subchapter and by agreement of the parties.

(7) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- (a) the date of perfection of the security interest in the collateral; or
- (b) the date of filing a notice covering the collateral.

(8) A secured party may purchase at any execution sale or sale pursuant to judicial foreclosure upon collateral and thereafter hold the collateral free of any other requirements of this chapter.

(9) This subchapter imposes no duties upon a secured party that is a consignor or a buyer of accounts, chattel paper, or other intangible property.

Source: PL 14-34 § 55.

§ 1048. Procedure if security agreement covers fixtures.

(1) Subject to subsection (2) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

- (a) under this subchapter; or
- (b) in accordance with the rights with respect to real property.

(2) Subject to the other provisions of this subchapter, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(3) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Source: PL 14-34 § 56.

§ 1049. Unknown debtor or secondary obligor.

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

(1) to a person that is a debtor or obligor, unless the secured party actually or constructively knows:

- (a) that the person is a debtor or obligor;
- (b) the identity of the person; and
- (c) how to communicate with the person; or

(2) to a secured party or lien holder that has filed a notice naming the person as a debtor, unless the secured party actually or constructively knows:

- (a) that the person is a debtor; and
- (b) the identity of the person.

Source: PL 14-34 § 57.

§ 1050. Collection and enforcement of debt or obligation by secured party.

(1) If so agreed by the debtor, and in any event after default, a secured party:

(a) may notify an account debtor or other obligor to make payment or otherwise render performance to or for the benefit of the secured party;

(b) may take any proceeds to which the secured party is entitled;

(c) may enforce the obligations of an account debtor or other obligor and exercise the rights of the debtor with respect to the obligation of the account debtor or other obligor to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other obligor.

(2) If so agreed by the debtor, and in any event after default:

(a) if a secured party holds a security interest in a deposit account perfected by control pursuant to section 1027(1)(a) of this chapter the secured party may apply the balance of the deposit account to the obligation secured by the deposit account; or

(b) if a secured party holds a security interest in a deposit account perfected pursuant to section 1027(1)(b) or (c) of this chapter, the secured party may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(3) A secured party shall proceed in a commercially reasonable manner if the secured party:

(a) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(b) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(4) A secured party may deduct from the collections made pursuant to subsection (3) of this section reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

Source: PL 14-34 § 58.

§ 1051. Application of proceeds of collection or enforcement—Liability for deficiency and right to surplus.

(1) The following rules apply with respect to proceeds from enforcement or collection under section 1050 of this chapter:

(a) a secured party shall apply or pay over for application the cash proceeds of collection or enforcement in the following order to:

(i) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(ii) the satisfaction of obligations secured by a superior security interest in or other lien on the collateral subject to the security interest under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed;

(iii) the satisfaction of obligations secured by the security interest under which the collection or enforcement is made; and

(iv) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) if requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand.

(c) a secured party need not apply or pay over for application noncash proceeds of collection and enforcement unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) a secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(2) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

Source: PL 14-34 § 59.

§ 1052. Secured party's right to take possession after default.

(1) After default, a secured party:

(a) may take possession of the collateral; and

(b) without removal, may render equipment unusable and dispose of collateral on a debtor's premises.

(2) A secured party may proceed under subsection (1) of this section:

(a) pursuant to judicial process; or

(b) without judicial process, if it proceeds without breach of the peace.

(3) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

Source: PL 14-34 § 60.

§ 1053. Judicial enforcement of right to possession—Pre-judgment orders.

(1) Upon default, a secured party, in connection with any judicial proceeding to enforce rights under section 1052 of this chapter, shall be entitled to an expedited hearing upon application for a pre-judgment order granting the secured party possession of the collateral. Such application shall include a statement by the secured party, under oath, verifying the existence of the security agreement attached to the application and identifying at least one event of default by the debtor under the security agreement.

(2) The secured party shall serve a copy of the application upon the debtor, including a copy of all documents and evidence submitted to the court in support thereof. The court shall schedule the hearing under subsection (1) of this section at the earliest available time, provided that no hearing shall be conducted without service on the debtor of the application and reasonable notice of the hearing unless

(a) the court finds that the secured party has made reasonable efforts to make service on the debtor and that such efforts have not been successful; or

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(b) the court finds that the hearing should be conducted without delay to prevent damage to the collateral, substantial loss of the collateral's value or the secured party's right to possession.

(3) If the court finds, after hearing, that it is probable that a default has occurred under the security agreement and that the secured party has a right to take possession of the collateral, the court shall enter a pre-judgment order granting the secured party possession of the collateral pending final judgment or further order of the court. The order may direct the debtor to take such action as the court deems necessary and appropriate so that the secured party may take possession.

(4) If the court enters an order under subsection (3) of this section granting the secured party pre-judgment possession of the collateral, it shall also, upon application by the secured party, enter an order permitting the prejudgment sale or other disposition of the collateral under section 1054 of this chapter unless the collateral is rare or unique, or otherwise of such a nature that it is unlikely to be replaceable. In the event of a disposition under this subsection, the secured party shall retain possession of the proceeds of the disposition pending final judgment or further order of the court.

(5) A secured party who takes possession of collateral under an order issued pursuant to subsection (3) of this section shall hold such collateral subject to the rights and duties set forth in section 1008 of this chapter, pending disposition under subsection (4) of this section, final judgment or further order of the court.

(6) Nothing contained herein shall affect the right of a secured party to proceed under sections 1405 and 1406 of title 6 of this code at any time with respect to collateral or to bring any civil action for foreclosure in such manner as may be authorized under any other law.

Source: PL 14-34 § 61.

Cross-reference: The statutory provisions on the FSM Supreme Court are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 1054. Disposition of collateral after default.

(1) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(2) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(3) A secured party may purchase collateral:

(a) at a public disposition; or

(b) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(4) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(5) A secured party may disclaim or modify warranties under subsection (4) of this section:

(a) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(b) by including in the contract for disposition an express disclaimer or modification of the warranties.

(6) A contract is sufficient to disclaim warranties under subsection (5) of this section if it indicates “There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition” or uses words of similar import.

Source: PL 14-34 § 62.

§ 1055. Notification before disposition of collateral.

(1) In this section, “notification date” means the earlier of the dates on which:

(a) a secured party sends to the debtor and any secondary obligor written notification of disposition; or

(b) the debtor and any secondary obligor waive the right to notification.

(2) Except as otherwise provided in subsection (4) of this section, a secured party that disposes of collateral under section 1054 of this chapter shall send to the persons specified in subsection (3) of this section reasonable notification of disposition. This subsection does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(3) To comply with subsection (2) of this section, the secured party shall send notification of disposition to:

(a) the debtor;

(b) any secondary obligor; and

(c) if the collateral is other than consumer goods:

(i) any other person from which the secured party has received, before the notification date, notification of a claim of an interest in the collateral; and

(ii) any other secured party or lien holder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a notice that identified the collateral and was indexed under the debtor’s name as of that date.

(4) A secured party complies with the requirement for notification prescribed by subsection (3)(c)(ii) of this section if:

(a) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning notices indexed under the debtor’s name in the filing office; and

(b) before the notification date, the secured party:

(i) did not receive a response to the request for information; or

(ii) received a response to the request for information and sent notification of disposition to each secured party or other lien holder named in that response whose notice covered the collateral.

Source: PL 14-34 § 63.

§ 1056. Timeliness of notification before disposition of collateral.

(1) Except as otherwise provided in subsection (2) of this section, whether a notification is sent within a reasonable time is a question of fact.

(2) In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

Source: PL 14-34 § 64.

§ 1057. Contents of notification before disposition of collateral—General.

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(a) describes the debtor and the secured party;

(b) describes the collateral that is the subject of the intended disposition;

(c) states the method of intended disposition;

(d) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(e) states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in subsection (1) of this section are nevertheless sufficient is a question of fact.

Source: PL 14-34 § 65.

Case annotation: The general rule is that where a creditor has failed to both procure credit insurance paid for by the debtor and to notify the debtor of his failure to procure the insurance requested, prior to loss, the debtor may plead such failure as a defense or setoff. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

Equity does not dictate that a setoff for the amount of a defendant's stock subscription be allowed against a contribution claim when the person claiming the setoff received by far the greatest benefit from the failed corporation while it was operating. Senda v. Semes, 8 FSM R. 484, 507 (Pon. 1998).

A statute that requires the creditor to give written notice to the debtor of the creditor's intention to foreclose prior to foreclosing on the property, is inapplicable to setoffs because foreclosures and setoffs are very different things. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

§ 1058. Application of proceeds of disposition—Liability for deficiency and right to surplus.

(1) A secured party shall apply or pay over for application the cash proceeds of disposition under section 1054 of this chapter in the following order to:

(a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(b) the satisfaction of obligations secured by the security interest under which the disposition is made;

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(c) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(i) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(ii) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(d) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (1), paragraph (c) of this section.

(3) A secured party need not apply or pay over for application noncash proceeds of disposition under section 1054 of this chapter unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (1) of this section and permitted by subsection (3) of this section:

(a) unless subsection (1), paragraph (d) of this section, requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(b) the obligor is liable for any deficiency.

(5) If the underlying transaction is a sale of accounts, chattel paper, or other intangible property:

(a) the debtor is not entitled to any surplus; and

(b) the obligor is not liable for any deficiency.

(6) The surplus or deficiency following a disposition in conformance with this subchapter shall be calculated based on the amount of proceeds actually received from the disposition, except that if:

(a) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(b) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought, the surplus or deficiency shall be calculated based upon the proceeds that would have been received through a disposition to a transferee other than the secured party, a person related to the secured party or a secondary obligor.

(7) A secured party that receives cash proceeds of a disposition in good faith and without actual or constructive knowledge that the receipt violates the rights of the holder of another security interest or lien:

(a) takes the cash proceeds free of the security interest or other lien;

- (b) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and
- (c) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

Source: PL 14-34 § 66.

§ 1059. Rights of transferee of collateral.

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

Source: PL 14-34 § 67.

§ 1060. Rights and duties of certain secondary obligors.

- (1) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:
 - (a) receives an assignment of a secured obligation from the secured party;
 - (b) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
 - (c) is subrogated to the rights of a secured party with respect to collateral.
- (2) An assignment, transfer, or subrogation described in subsection (1) of this section:
 - (a) is not a disposition of collateral under section 1054 of this chapter; and
 - (b) relieves the secured party of further duties under this chapter.

Source: PL 14-34 § 68.

§ 1061. Transfer of record or legal title.

- (1) In this section, "transfer statement" means a writing signed by a secured party stating:
 - (a) that the debtor has defaulted in connection with an obligation secured by specified collateral;
 - (b) that the secured party has exercised its post-default remedies with respect to the collateral;
 - (c) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
 - (d) the name and mailing address of the secured party, debtor, and transferee.

(2) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

- (a) accept the transfer statement;
- (b) promptly amend its records to reflect the transfer; and
- (c) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(3) A transfer of the record or legal title to collateral to a secured party under subsection (2) of this section or otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured party of its duties under this chapter.

Source: PL 14-34 § 69.

§ 1062. Acceptance of collateral in full or partial satisfaction of obligation—Compulsory disposition of collateral.

(1) After default, a secured party may propose to accept collateral in full or partial satisfaction of the obligation secured, provided that the secured party shall dispose of the collateral under section 1054 of this chapter if more than 60 percent of the debt secured by the collateral has been paid at the time of default. Notice of the proposal to accept the collateral shall be provided to the debtor and each person described in section 1063 of this chapter. The notice shall set forth the terms of the proposal, advise the recipient of the right to object as set forth in subsection (2) of this section, and designate an address where notice of objection may be provided during regular business hours.

(2) If any person entitled to notice of the proposal under subsection (1) of this section provides to the secured party notice of objection to the proposal within 20 days after being given notice under subsection (1) of this section, the security party shall dispose of the collateral under section 1054 of this title.

(3) If the secured party receives no notice within the period provided in subsection (2) of this section, the secured party shall be deemed, at the end of such period, to have accepted the collateral according to the terms of the proposal.

(4) Any party with an interest in the collateral may agree in writing to a proposal for a secured party's acceptance of the collateral and such agreement shall be deemed a waiver of the rights to notice and to object provided in subsections (1) and (2) of this section except as may be expressly stated in the agreement.

Source: PL 14-34 § 70.

§ 1063. Notification of proposal to accept collateral.

(1) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

- (a) any person from which the secured party has received, before notice of the proposal under section 1062(1) of this chapter has been given to the debtor, written notification of a claim of an interest in the collateral;

(b) any other secured party or lien holder that, ten days before notice of the proposal under section 1062(1) of this chapter has been given to the debtor, held a security interest in or other lien on the collateral perfected by the filing of a notice that:

- (i) identified the collateral;
- (ii) was indexed under the debtor's name as of that date.

(c) any other secured party that, ten days before notice of the proposal under section 1062(1) of this chapter has been given to the debtor, held a security interest in the collateral perfected by compliance with a statute or treaty.

(2) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (1) of this section.

Source: PL 14-34 § 71.

§ 1064. Effect of acceptance of collateral.

(1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

- (a) discharges the obligation to the extent specified in the proposal;
- (b) transfers to the secured party all of a debtor's rights in the collateral;
- (c) discharges the security interest that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and
- (d) terminates any other subordinate interest.

(2) A subordinate interest is discharged or terminated under subsection (1) of this section, even if the secured party fails to comply with this chapter.

Source: PL 14-34 § 72.

§ 1065. Right to redeem collateral.

(1) A debtor, any secondary obligor, or any other secured party or lien holder may redeem collateral.

(2) To redeem collateral, a person shall tender:

- (a) fulfillment of all obligations secured by the collateral; and
- (b) reasonable expenses and attorney's fees.

(3) A redemption may occur at any time before a secured party:

- (a) has collected collateral under section 1050 of this chapter;
- (b) has disposed of collateral or entered into a contract for its disposition under section 1054 of this chapter; or
- (c) has accepted collateral in full or partial satisfaction of the obligation it secures under section 1064 of this chapter.

Source: PL 14-34 § 73.

§ 1066. Waiver.

(1) A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 1055 of this chapter only by an agreement to that effect entered into and executed after default.

(2) A debtor may waive the right to require disposition of collateral under section 1062, subsection (1) of this chapter, only by an agreement to that effect entered into and executed after default.

(3) A debtor or secondary obligor may waive the right to redeem collateral under section 1065 of this chapter only by an agreement to that effect entered into and executed after default.

Source: PL 14-34 § 74.

§ 1067. Remedies for secured party's failure to comply with Act.

(1) If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(2) Subject to subsection (3) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(3) A debtor whose deficiency is eliminated under section 1068 of this chapter may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 1068 of this chapter may not otherwise recover under subsection (2) of this section for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) In addition to damages recoverable under subsection (2) of this section, a person named as a debtor in a filed record may recover \$500 in each case from a person that files a record that the person is not entitled to file under subchapter III of this chapter, and an additional \$500 in each case where failure is part of a pattern, or consistent with a practice, of noncompliance.

Source: PL 14-34 § 75.

§ 1068. Action in which deficiency or surplus is in issue.

In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) a secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) if the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) If a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(a) the proceeds of the collection, enforcement, disposition, or acceptance; or

(b) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) for purposes of subsection (3), paragraph (b) of this section, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) if a deficiency or surplus is calculated under section 1058, subsection (6) of this chapter, the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

Source: PL 14-34 § 76.

§ 1069. Determination of whether conduct was commercially reasonable.

(1) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(2) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

- (a) in the usual manner on any recognized market;
- (b) at the price current in any recognized market at the time of the disposition;

or

(c) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(3) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

- (a) in a judicial proceeding or
- (b) by an assignee for the benefit of creditors.

(4) Approval under subsection (3) of this section need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

Source: PL 14-34 § 77.

**SUBCHAPTER V
Transition Provisions**

Editor's note: PL 14-34 § 78 created this subchapter as subchapter 5. This subchapter entitled Transition Provisions is redesignated as subchapter V for format consistency.

§ 1070. Effective date of this Act.

This Act shall come into effect upon the date certified by the Department to the President of the Federated States of Micronesia as the date on which the filing office is prepared to perform the duties required in subchapter III of this chapter.

Source: PL 14-34 § 79.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1071. Transactions concluded prior to effective date of this Act.

This section applies to transactions concluded prior to the effective date of this Act that would be subject to this Act if this Act had been in effect at the time the transactions were concluded. In this section, such a transaction is referred to as a “prior transaction.”

(1) The validity, effect and enforcement of a prior transaction shall be determined by reference to the law in effect when the agreement was concluded, except as provided otherwise in this section.

(2) The provisions of this chapter on filing, priority, and enforcement apply to a property interest created by a prior transaction to the extent the interest in the prior transaction conflicts with a security interest created under this chapter.

(3) A secured party under a prior transaction may file a notice of the property interest created by the prior transaction within 60 days of the effective date of this Act, in the same manner as provided for a notice of a security interest. The secured party shall deliver a copy of the notice to the debtor. If a notice establishes priority in a property right created in collateral under a prior transaction, the priority of the property right over a perfected security interest under this chapter shall be measured from the effective date of this Act.

Source: PL 14-34 § 80.

Case annotations: The common law of the United States today concerning secured transactions is the Uniform Commercial Code (UCC), a comprehensive statute covering commercial transactions. Absence in the FSM of any filing requirement to notify others of a security interest, and of a designated place for filing, which provisions are at the heart of the UCC statutory scheme, virtually precludes any judicial attempt to draw heavily on UCC principles in fashioning an approach to secured transactions. *Bank of Guam v. Island Hardware, Inc.*, 2 FSM R. 281, 287 (Pon. 1986).

In considering the law concerning secured transactions, the FSM Supreme Court must look for guidance of the pre-UCC common law and may only declare the existence of such security interests as have been found by other courts to exist in the absence of statutes. *Bank of Guam v. Island Hardware, Inc.*, 2 FSM R. 281, 288 (Pon. 1986).

When a party agrees to create a security interest to secure his debt but then refuses to do what is necessary to vest the other party with statutory or common law lien rights in the property, courts can find that the other party has an equitable lien in property even if statutory or common law lien requirements have not been made. *Bank of Guam v. Island Hardware, Inc.*, 2 FSM R. 281, 290 (Pon. 1986).

Non-possessory equitable liens will not be found to exist against another who had neither actual notice nor reason to know of the existence of the security claim. *Bank of Guam v. Island Hardware, Inc.*, 2 FSM R. 281, 290 (Pon. 1986).

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A “general security agreement,” without more does not establish a lien under common law or pursuant to any statute in the Federated States of Micronesia. *In re Island Hardware*, 3 FSM R. 332, 342 (Pon. 1988).

Unless a statute or common law principle expressly says otherwise, disclosure is a prerequisite for making a lien effective against other creditors. *In re Island Hardware*, 3 FSM R. 332, 342 (Pon. 1988).

A promissory note and a security agreement are enforceable contractual agreements between the parties. *Goyo Corp. v. Christian*, 12 FSM R. 140, 146 (Pon. 2003).

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**CHAPTER 11
[RESERVED]**

**CHAPTER 12
[RESERVED]**