

2023 Law and Order Code Supplement

A new version of the Law and Order Code is released annually to incorporate Resolutions that are approved by Council in any given year. The current version of the Code incorporates Tribal Council Resolutions passed as of September 30, 2022. This Supplement contains sections of the Code that have been amended by Resolutions passed after September 30, 2022, but prior to the next annual update of the Law and Order Code.

These sections repeal and replace their corresponding subparts (if any) in the Code. These amendments will be incorporated into the full version of the Law and Order Code during the next annual update.

Contents

October 6, 2021 5
M-60 Crimes of Special Tribal Criminal Jurisdiction 5
February 17, 2022 11
S-2 Drug Free Work Place Act..... 11
July7, 2022 11
J-25 Illegal Opioids and Stimulants Control Act 12
Subpart L The Children’s Code (2022 Restatement) 13
L-1 Statement of Policy 13
L-2 Definitions 14
L-3 Children’s Court Established..... 22
L-4 Jurisdiction of the Pueblo of Pojoaque Children’s Court..... 23
L-5 Children’s Court Rules of Procedure - General..... 26
L-6 Duty to Report Child Abuse and Neglect..... 28
L-7 Child Abuse and Neglect Investigations/Interagency Cooperation 30
L-8 Taking a Child into Protective Custody..... 32
L-9 Placement Preferences..... 34
L-10 Initiating Children’s Court Proceedings 35
L-11 Children’s Court First Hearing 38
L-12 Guardian ad Litem/Youth Attorney..... 41
L-13 Active Efforts/Case Plan/Staffings 42
L-14 Out of Home Placement Status Hearings and Updates..... 44
L-15 44
Adjudication/Fact Finding Hearing..... 44
L-16 Order after an Adjudication of Abuse or Neglect..... 46
L-17 Permanency Review/Status Conferences..... 48
L-18 Juvenile Delinquency Proceedings 49
L-19 Confidentiality and Destruction of Records. 50
L-20 Permanent Suspension or Termination of Parental Rights. 51
L-21 Adoption 63
L-22 School Attendance Policy 68
L-23 Policy and Procedures of Child Protection Team 68
L-24 Foster Care Standards 69
L-25 Forgiveness of Foster Care Debt 78
L-26 Curfew for Minors 79
Q- PUEBLO OF POJOAQUE SECURED TRANSACTIONS CODE 79

PART 1 – GENERAL PROVISIONS	79
§ 9-105. Reserved.	80
§ 9-107. Notice; Knowledge.	89
§ 9-109. Lease Distinguished From Security Interest.	90
§ 9-110. General Scope.	91
§ 9-114. Course Of Performance, Course Of Dealing, And Usage Of Trade.	92
§ 9-115. Purchase-Money Security Interest.	93
§ 9-116. Sufficiency Of Description.	94
§ 9-117. Parties’ Power To Choose Applicable Law.	94
PART 2 – EFFECTIVENESS, ATTACHMENT AND RIGHTS OF PARTIES	95
§ 9-201. General Effectiveness Of Security Agreement.	95
§ 9-202. Attachment And Enforceability Of Security Interest; Proceeds; Formal Requisites.	95
§ 9-203. After-Acquired Collateral; Future Advances.	96
§ 9-204. Rights And Duties When Collateral Is In Secured Party’s Possession Or Control.....	96
§ 9-205. Additional Duties Of Certain Secured Parties.	96
§ 9-206. No Interest Retained In Right To Payment That Is Sold; Retained Power Of Seller Of Account Or Chattel Paper.	97
§ 9-207. Request For Accounting; Request Regarding List Of Collateral Or Statement Of Account.....	97
PART 3 – PERFECTION AND PRIORITY	98
§ 9-302. RESERVED.....	98
§ 9-303. Law Governing Perfection And Priority Of Security Interests In Goods Covered By A Certificate Of Title.....	98
§ 9-308. When Security Interest Or Agricultural Lien Is Perfected; Continuity Of Perfection.....	99
§ 9-310. When Filing Required To Perfect Security Interest Or Agricultural Lien; Security Interests And Agricultural Liens To Which Filing Provisions Do Not Apply.....	100
§ 9-311. Perfection Of Security Interests In Property Subject To Certain Laws, Regulations, And Treaties.	100
§ 9-312. Perfection Of Security Interests In Chattel Paper, Deposit Accounts, Documents, Goods Covered By Documents, Instruments, And Money; Perfection By Permissive Filing; Temporary Perfection Without Filing Or Transfer Of Possession.....	101
§ 9-313. When Possession By Secured Party Perfects Security Interest Without Filing.	102
§ 9-315. Secured Party’s Rights On Disposition Of Collateral And In Proceeds.	102
§ 9-316. Continued Perfection Of Security Interest Following Change In Governing Law.	103
SUBPART 3. PRIORITY	105
§ 9-317. Interests That Take Priority Over Security Interest Or Agricultural Lien.	105
§ 9-318. Particular Priority Rules.....	106
§ 9-319. Priority Of Security Interests In Fixtures And Crops.	108
§ 9-320. Accessions.	109

§ 9-321. Commingled Goods.....	110
PART 4 – RIGHTS OF THIRD PARTIES.....	111
§ 9-403. Rights Of Assignee.....	111
§ 9-404. Restrictions On Assignment.....	112
PART 5 – FILING.....	113
§ 9-501. Acceptance, Refusal, And Effectiveness Of Financing Statement; Administration.....	113
§ 9-502. Contents Of Records; Authorization; Lapse; Continuation; Termination.....	114
§ 9-503. Claim Concerning Inaccurate Or Wrongfully Filed Record.....	115
PART 6 – DEFAULT.....	116
§ 9-601. Rights After Default; Judicial Enforcement; Consignor Or Buyer Of Accounts, Chattel Paper, Payment Intangibles, Or Promissory Notes.....	116
§ 9-604. Procedure If Security Agreement Covers Real Property Or Fixtures.....	117
§ 9-607. Collection And Enforcement By Secured Party.....	118
§ 9-608. Application Of Proceeds Of Collection Or Enforcement; Liability For Deficiency And Right To Surplus.....	118
§ 9-609. Secured Party’s Limited Right To Take Possession After Default.....	119
§ 9-610. Disposition Of Collateral After Default.....	119
§ 9-611. Notification Before Disposition Of Collateral.....	120
§ 9-612. Timeliness Of Notification Before Disposition Of Collateral.....	121
§ 9-614. RESERVED.....	121
§ 9-615. Application Of Proceeds Of Disposition; Liability For Deficiency And Right To Surplus.....	122
§ 9-616. Explanation Of Calculation Of Surplus Or Deficiency.....	123
§ 9-617. Rights Of Transferee Of Collateral.....	123
§ 9-618. Rights And Duties Of Certain Secondary Obligors.....	123
§ 9-619. TRANSFER OF RECORD OR LEGAL TITLE.....	123
§ 9-620. Acceptance Of Collateral In Full Or Partial Satisfaction Of Obligation; Notification Of Proposal; Effect Of Acceptance; Compulsory Disposition Of Collateral.....	124
§ 9-621. RESERVED.....	125
§ 9-623. Right To Redeem Collateral.....	125
§ 9-624. Waiver.....	125
SUBPART 2. NONCOMPLIANCE WITH CODE.....	125
§ 9-625. Remedies For Secured Party’s Failure To Comply With Code.....	125
§ 9-626. Action In Which Deficiency Or Surplus Is In Issue.....	126
§ 9-627. Determination Of Whether Conduct Was Commercially Reasonable.....	127
§ 9-628. Nonliability And Limitation On Liability Of Secured Party; Liability Of Secondary Obligor...	127
PART 7 – MISCELLANEOUS PROVISIONS.....	128

October 6, 2021

M-60 Crimes of Special Tribal Criminal Jurisdiction

The Pueblo of Pojoaque exercises criminal jurisdiction to the fullest extent possible under tribal, state, and federal law. The Pueblo here adopts the provisions of the Indian Civil Rights Act, 25 USC §1304, pertaining to expanded criminal jurisdiction over non-Indians who commit a covered crime in the Pueblo of Pojoaque. Indians and Non-Indians may be charged with the crimes in this subsection.

Other than for Obstruction of Justice or Assault of Tribal Justice Personnel (Sections M-60 (b) and (f)), if neither the defendant nor the victim is an Indian, the Pueblo may not exercise criminal jurisdiction until tribal jurisdiction is expanded under federal law.

Covered crimes in this subsection are (a) assault of tribal justice personnel; (b) child violence; (c) dating violence; (d) domestic violence; (e) obstruction of justice; (f) sexual violence; (g) sex trafficking; (h) stalking; and (i) violation of a protection order.

- (a) Rights of Defendants Charged under this Subsection, in addition to rights enumerated under 25 US section 1302 (a)(6) of the Indian Civil Rights Act.
 1. The right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution;
 2. If the defendant cannot afford an attorney, the Pueblo will provide without charge the assistance of an appointed defense attorney, licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;
 3. The judge presiding over the criminal proceeding must have sufficient legal training to preside over criminal proceedings; and is licensed to practice law by any jurisdiction in the United States;
 4. The criminal laws, rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges) of the Pueblo must be publicly available;
 5. A record of the criminal proceeding, including an audio or other recording of the trial proceeding, must be maintained;
 6. The right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians.
 7. The Right to Petition to Stay Detention
 - i. Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Pueblo of Pojoaque and may petition Tribal Court to stay further detention pending the habeas proceeding.

- ii. Tribal Court shall grant a stay if the Court finds that there is a substantial likelihood that the habeas corpus petition will be granted; and after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the Court, the petitioner is not likely to flee or pose a danger to any person or the community if released.
8. Petitions for Writs of Habeas Corpus. After a defendant has been sentenced by Tribal Court, the defendant may file a petition for a writ of habeas corpus in a court of the United States under 25 USC §1303.

When Tribal Court has ordered the detention of any person, it has a duty to timely notify in writing such person of their rights and privileges to petition for a writ of habeas corpus under 25 USC §1303.

9. Other Rights. All other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the Pueblo to exercise special tribal criminal jurisdiction over the defendant charged with a covered crime under this subsection.

COVERED CRIMES

(b) Assault of Tribal Justice Personnel

1. Any person who uses, attempts to use, or threatens use of physical force against an individual authorized to act for, or on behalf of, the Pueblo or serving the Pueblo during, or because of, the performance or duties of that individual in—
 - i. preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;
 - ii. adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;
 - iii. detaining, providing supervision for, or providing services for persons charged with a covered crime; or
 - iv. incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime;is guilty of Assault of a Tribal Justice Personnel.
2. Anyone who is convicted of a second or subsequent Assault of Tribal Justice Personnel or Law Enforcement Officer in any jurisdiction or commits Assault of Tribal Justice Personnel with a deadly weapon while she or he is in the lawful discharge of duties related to a covered crime is guilty of Aggravated Assault of Tribal Justice Personnel.
3. Sentencing.
 - i. Anyone convicted of Assault of Tribal Justice Personnel may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.

- ii. Anyone convicted of Aggravated Assault of Tribal Justice Personnel may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.

(c) Child Violence.

1. Any person who uses, threatens to use, or attempts the use of violence against a child is guilty of an offense.
2. Anyone who is convicted of a second or subsequent crime of child violence in any jurisdiction, or who inflicts great bodily harm against a child; assaults a child with a deadly weapon; or strangles a child is guilty of Aggravated Child Violence.
3. Sentencing
 - i. Anyone convicted of Child Violence may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.
 - ii. Anyone convicted of Aggravated Child Violence may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.
4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(d) Dating Violence.

1. Any person who commits an act of violence against someone he or she is or has been in a social relationship of a romantic or intimate nature, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship is guilty of an offense. Dating violence is defined as physical harm, bodily injury, or assault; or the infliction of fear that physical harm, bodily injury, or assault could occur momentarily; or terroristic threats; or, criminal sexual conduct.
2. Anyone who is convicted of a second or subsequent Dating Violence charge in any jurisdiction or who inflicts great bodily harm against the victim; commits Dating Violence with a deadly weapon; or strangles the victim is guilty of Aggravated Dating Violence.
3. Sentencing
 - i. Anyone convicted of Dating Violence may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.
 - ii. Anyone convicted of Aggravated Dating Violence may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.

4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(e) Domestic Violence.

1. Any person who commits physical harm, bodily injury, or assault; or, the infliction of fear that physical harm, bodily injury, or assault could occur momentarily; or, terroristic threats; or, criminal sexual conduct where the act of violence is committed by (A) a current or former spouse or intimate partner of the victim; (B) a person with whom the victim shares a child in common; (C) a person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or (D) a person similarly situated to a spouse of the victim is guilty of Domestic Violence.
2. Anyone who is convicted of a second or subsequent Domestic Violence charge in any jurisdiction or who inflicts great bodily harm against the victim or commits strangulation or commits Dating Violence with a deadly weapon is guilty of Aggravated Domestic Violence.
3. Sentencing
 - i. Anyone convicted of Domestic Violence may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.
 - ii. Anyone convicted of Aggravated Domestic Violence may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.
4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

- (f) Obstruction of Justice. Anyone who influences, obstructs, interferes, or impedes, or endeavors to influence, obstruct, or impede, the administration or due process of the laws of the Pueblo of Pojoaque, including any Tribal criminal proceeding or investigation of a crime is guilty of obstruction of justice.

Anyone convicted of Obstruction of Justice may be sentenced to incarceration for up to 365 days and/or fined up to \$5,000.00.

(g) Sexual Violence.

1. Anyone who forces or manipulates someone else into an unwanted sexual act or contact without their consent, including in any case in which the victim lacks the capacity to consent to the act is guilty of sexual violence.
2. Anyone who (a) has a prior conviction for sexual violence in any jurisdiction; or (b) commits any type of sexual contact with a minor under the age of 17, except when the minor is 14-17 years old and there are 4 or fewer years age difference between the actors and all sexual action is consensual; or (c) uses any weapon or strangulation while committing sexual violence is guilty of Aggravated Sexual Violence.

3. Sentencing

- i. Anyone convicted of Sexual Violence may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.
- ii. Anyone convicted of Aggravated Sexual Violence may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.

4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders that are necessary for victim safety.

(h) Sex Trafficking.

1. Whoever knowingly recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act knowing, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described, or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, is guilty of a crime.
2. Anyone who is convicted of a second or subsequent sex trafficking charge in any jurisdiction or who inflicts great bodily harm against the victim or uses a deadly weapon in the course of sex trafficking is guilty of Aggravated Stalking.

3. Sentencing

- i. Anyone convicted of Sex Trafficking may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.
- ii. Anyone convicted of Aggravated Sex Trafficking may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.

4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(i) Stalking.

1. Anyone who stalks another is guilty of an offense. The term “stalking” means engaging in a pattern of conduct, without lawful authority, directed at a specific person that would cause a reasonable person— (A) to fear for the person’s safety or the safety of others; or (B) to suffer substantial emotional distress.
2. Anyone who is convicted of a second or subsequent Stalking charge in any jurisdiction or who inflicts great bodily harm against the victim or commits Stalking with a deadly weapon is guilty of Aggravated Stalking.

3. Sentencing

- i. Anyone convicted of Stalking may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.
 - ii. Anyone convicted of Aggravated Stalking may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.
4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(j) Violation of a Protection Order

1. Anyone who commits an act within the Pueblo, that violates a provision of a protection order is guilty of an offense, provided that the order— (i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; (ii) was issued against the defendant; (iii) is enforceable by the Pueblo; and (iv) the issuing Court had proper jurisdiction over the parties and matter to issue the order of protection; and the restrained party had reasonable notice and opportunity to be heard to protect that person’s right to due process. In the case of ex-parte orders, notice and opportunity to be heard must be provided within a reasonable time after the order is issued, sufficient to protect the respondent’s due process rights.

The term “protection order” means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

2. Aggravated Violation of a Protection Order. Anyone who is convicted of a second or subsequent Violation of a Protection Order, in any jurisdiction, or who inflicts great bodily harm against the victim, or uses a deadly weapon in the commission of the violation of a protection order is guilty of Aggravated Violation of a Protection Order.
3. Sentencing
 - i. Anyone convicted of Violation of a Protection Order may be sentenced up to a maximum of 365 days of incarceration and/or \$5,000.00.
 - ii. Anyone convicted of Aggravated Violation of a Protection Order may be sentenced up to a maximum of 3 years of incarceration and/or \$15,000.00.

4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

February 17, 2022

S-2 Drug Free Work Place Act

(a) To protect the health, safety, and welfare of the Pueblo's members, employees, and visitors by ensuring drug- and alcohol-free workplace, all employees of the Pueblo of Pojoaque as a condition of that employment shall comply with the Pueblos Drug-Free Workplace Policy as Adopted or amended by the Pueblo

July7, 2022

J-24 Installment Payments for Members Struggling with Substance Misuse

(a) From time to time throughout the year, the Pueblo may disburse funds to tribal Members, including such payments as Winter Weatherization, Spring Disbursement, or Summer Disbursement.

(b) Some tribal Members are struggling with substance misuse, such that obtaining a lump sum cash payment may endanger that individual's health and safety.

(c) Any tribal disbursements provided to an enrolled Member who is struggling with substance misuse may be disbursed in monthly installments, rather than a lump sum, when directed by order of the Tribal Court.

(d) At least one month before any tribal disbursement, any relative of a person struggling with substance misuse or other interested person may petition the Tribal Court for an order to release disbursements to the person struggling with substance misuse ("Affected Member") in monthly installments. Such a petition must include specific facts establishing that installments are necessary to protect the health and safety of the Affected Member. Any such petition must be served on the Affected Member.

(e) Following submission of such a request, the Tribal Court will hold a hearing where the Affected Member is provided an opportunity to be heard and to object to the proposed monthly payments.

(f) After review of the petition and any response or arguments presented by the Affected Member, and based thereon, and in accordance with the customs and traditions of the Pueblo, the Tribal Court will make a determination as to whether the Affected Member shall receive monthly payments instead of a lump sum. The Tribal Court will issue an order setting forth the schedule pursuant to which the Affected Member will receive his or her disbursement. Copies of all such orders will be provided to Tribal Leadership and the Tribal Treasurer. The Tribal Treasurer shall provide copies of all such orders to the Assistant Controller. Any Affected Member will be provided a copy of the order pertaining to that Affected Member only.

(g) An Affected Member whose distribution is allocated on a monthly basis pursuant to this Subpart, may petition the Court to amend the payment schedule or to direct payment of that Affected Member's funds to creditors or vendors.

J-25 Illegal Opioids and Stimulants Control Act

(a) Because of the increased use, possession, manufacturing, and distribution of opioids, methamphetamine, other stimulants, and illegal use of prescription drugs, the Pueblo of Pojoaque enacted this Act to replace the heroin Control Act of 2012 (Section J-17). The Opioids and Stimulants Control Act (OSCA) include civil and Criminal Court- mandated sanctions and treatment approaches for affected individuals and families and to protect the community.

(b) Definitions.

1. Illegal Drug: Any drug the possession of which is prohibited by federal and/or state law, with the exception of cannabis, which is legal pursuant to the Pueblo law and order code illegal drugs including any unlawfully prescribed drug that is not used as prescribed, such as by snorting or injecting. Illegal drugs also include any illegal drug the possession of which is illegal when not prescribed by a licensed physician.
2. Opioids: A class of drug that includes heroin and other opium products; synthetic opioids, including but not limited to substances such as fentanyl and carfentanyl; and prescription opioid pain relievers, including, but not limited to, oxycodone (Oxycotin, Percocet), hydrocodone (Vicodin), codeine, and morphine. Opioids include any natural or synthetic compound that is, or becomes, classified as an opioid.
3. Stimulants: A class of drug that includes amphetamines, methamphetamine, and amphetamine-related compound such as Adderall, and cocaine and any cocaine derivatives such as a crack cocaine it also includes any synthetic stimulant compound that are illegal under federal laws such as "Bath Salts" (cathinones).

(c) The Illegal Opioids and Stimulants Control Act supersedes all prior conflicting provisions concerning possession, use, or sell of illegal drugs that are contained in the tribal law and order code regulations and ordinances, lease agreements or employee handbooks

(d) A copy of the Illegal Opioids and Stimulants Control Act will be available to all enrolled members of the Pueblo of Pojoaque and will be publicly available as part of the law-and-order code.

(e) Threat to public health, safety, and welfare.

1. Any person who uses, possesses, buys, sells, gives away, or manufactures illegal opioids or stimulants or unlawfully uses or sells prescription drugs within the exterior boundaries, or any trust land, of the Pueblo of Pojoaque is considered a threat to the public health, safety, and welfare.
2. Any person who admits two or is arrested for illegal opioid or stimulant use, possession, purchase, distribution, or manufacturing or illegal use or sell a prescription drug within the exterior boundaries, or any trust land, of the Pueblo of Pojoaque is considered a threat to the public health, safety, and welfare and may undergo mandatory drug testing at time of arrest. Law enforcement or probation may present such findings to the Court and Tribal Officials.
3. Any person who is found guilty in any court of law of illegal possessing, using, manufacturing, or distributing opioids or stimulants shall be considered a threat to the public health, safety, and welfare of the Pueblo.

4. Any Tribal Police Officer, Tribal Official, Probation Officer, or Family and Children Services Staff who suspects a person abusing illegal opioids or stimulants or the illegal use of prescription drugs they petitioned the tribal court for drug testing of the suspected user.
5. Any allegations of illegal use under this Section may be supported by articulable facts before testing is ordered by tribal court.

(f) Civil Offense. Any person who uses possesses, buys, sells, gives away, or manufactures illegal opioids or stimulants or unlawfully, uses or sells prescription drugs within the exterior boundaries of the Pueblo of Pojoaque has committed an offense under this section and will be deemed a threat to the public health, safety, and welfare of the community.

(g) Civil Penalties. Any person found to have violated this Section may be sentenced to pay a fine of not less than three hundred dollars (\$300) and to exceed five thousand dollars (\$5000), or both.

1. The Court may also exclude the violator from the exterior boundaries, or any trust land, of the Pueblo of Pojoaque for duration to be determined by the Tribal Court.
2. If the violator is employed by the Pueblo or is a member of the Pueblo, the violator's eligibility for tribal enrollment and all tribal benefits, including any tribal disbursements, will be immediately terminated for a duration to be determined by the Tribal Court.
3. The violator may be responsible for pain drug testing and treatment costs.
4. When the parent is determined to be a threat to the public health, safety, and welfare, under the provisions of this Section, for any child that is under children's jurisdiction, children's court may adjudicate the child to be an abandoned child or your child in need of services for your duration to be determined by Children's Court.

(g) Deferral and Rescission of Penalties

1. Tribal court may differ penalties if the violator is willing to comply with court imposed conditions, including participation in Path to Wellness Court, or similar intensive court-ordered supervision, substance use disorder treatment, and drug testing. The court may impose conditions recommended by Tribal Police, Family and Children Services or other service provider.
2. The Tribal court shall provide a written order to the person who is determined to be in violation of this Section. The order will set out the conditions under which any of the penalties imposed may be deferred or rescinded.
3. In the case of a neglected child education connected to a parent's violation of this Section, the parent has two (2) years in which to successfully comply with the children's court order, including completion of Path to Wellness Court. If the parent has not successfully complied with the tribal court order within two (2) years, termination of parental rights should be initiated by Pueblo of Pojoaque Family and Children Services pursuant to the Children's Code. The two (2) years may be extended to Tribal Court with a written justification for the extension.

Subpart L The Children's Code (2022 Restatement)

L-1 Statement of Policy

(a) Children are sacred. They are the vehicle through which culture, language, ceremony, and traditional practices are passed to generations to come. Pueblo of Pojoaque children belong to the Pueblo and are entrusted to the care of their parents. Protecting our children and supporting

the families that raise them is our highest priority. The Pueblo's custom has been for the community to share responsibility for taking care of children and community members, by stepping forward when needed; and returning children to their parents when the crisis has passed.

(b) As an exercise of its inherent sovereignty, the Pueblo of Pojoaque Tribal Council has the authority to delegate to Tribal Court the authority to hear and decide child abuse and neglect cases using written and customary law.

(c) The Pueblo recognizes the rights of parents to raise their children, free from interference by the Tribal government, except in cases of abuse, neglect, or abandonment.

(d) The Pueblo of Pojoaque is responsible for protecting its children's safety, well-being, and welfare; preserving children's identity as members of the Pueblo of Pojoaque and extended family; and, supporting its children's sense of belonging and desire to learn about Pueblo of Pojoaque culture, religion, language, values, and relationships.

(e) If a child is put at risk, based on evidence of abuse, neglect, or abandonment, the Pueblo will take action to protect the child while maintaining the overall objective of reunifying the child with his or her parent(s).

L-2 Definitions

In this subpart, unless the context otherwise requires:

(a) "Abandonment": A parent has abandoned a child when the child is left alone or in the care of someone other than the other parent, without provision for support and has failed to return within

a reasonable amount of time, considering the age of the child and the surrounding circumstances. Custody provided with family members through mutual consent to short-term placement does not constitute abandonment.

(b) “Act of delinquency”: An act that if committed by an adult would be punishable as a criminal offense in the Pueblo of Pojoaque Law and Order Code.

(c) “Active Efforts”: Energetic efforts that show an active attempt to resolve the problems or issues that led to removal of the child, or puts the child at risk for removal, from the family as soon as possible by arranging for the best-fitting services and helping families engage in those services, such as by providing transportation and helping make appointments.

(d) “Adjudication Hearing”: Hearing held within 60 days after a petition alleging abuse or neglect is filed to determine whether the alleged abuse or neglect occurred, if denied by the parent.

(e) “Adoptee”: The individual who is adopted or is to be adopted.

(f) “Adoption”: The legal process, including a customary process, that gives a child a legally recognized, permanent parent-child relationship with a person other than the child’s biological parent and terminates or modifies the legal parent-child relationship between the child and the biological parents.

(g) “Aggravated Circumstances”: Circumstances in which the parent(s), guardian or custodian has:

1. Attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child’s sibling;
2. Attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;

3. Attempted, conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; or
4. Had parental rights over a sibling of the child terminated involuntarily.

(h) “Best Interests of the Child”: The deliberation that Tribal Court undertakes when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of a child. Guiding principles include:

1. The health, safety, and/or protection of the child;
2. The importance of maintaining or encouraging the child’s ties to the Pueblo of Pojoaque, family members, community, culture, and values;
3. The importance of family integrity and preference for avoiding removal of the child from his/her home and the care of his/her parent(s);
4. The importance of maintaining sibling and other close family bonds;
5. The importance of timely permanency decisions; and
6. The assurance that a child removed from his/her home will be given care, treatment, and guidance that will assist the child in developing into a self-sufficient adult.

(i) “Best Interests of the Pueblo”: are served when the children of the Pueblo are connected to the Pueblo and receive the care and guidance through religion, culture, history, language, traditions, and values, which will prepare them to become contributing members of the Pueblo.

(j) “Caretaker”: (1) a person who is required by tribal law or custom to provide services or resources to another person; or (2) who voluntarily undertakes to provide care or resources to another person; or (3) an institution or agency which voluntarily provides or is required by tribal

law or custom, or other applicable law, to provide services or resources to a person, including, but not limited to, the duty to follow up on placements, and any such institution or agency which receives anything of value in return for providing services or resources; or (4) an employee or agent of any institution or agency described in paragraph 3 above.

(k) “Case Management”: the activity of a child welfare case worker in assessing client and family obstacles, case planning, coordinating and linking services for clients, monitoring service provisions and client milestones, advocacy, tracking and evaluating services provided, and providing other direct services such as accountability of funds, data collection, and documenting activities in the case file.

(l) “Case Plan”: a written plan with time-limited goals which is developed and signed by a client and a child welfare case worker. The case plan will include documentation of referral and disapproval of eligibility for other services.

(m) “Child”: an individual under the age of eighteen (18) who has not been emancipated by order of a court with proper jurisdiction.

(n) “Child Abuse” – psychological or physical harm to the child or substantial risk of psychological or physical harm to the child by acts, or the failure to act, of a person responsible for the child’s welfare. Child abuse may include:

1. Physical abuse: a child is dead or exhibits evidence of any injury or physical maltreatment, including but not limited to bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and the condition is not justifiably explained.
2. Sexual Abuse: any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.

3. Verbal, psychological, or emotional abuse: Recurring verbal and/or non-verbal behavior of a person characterized by intimidating, ignoring, belittling and/or otherwise damaging a child's sense of self-worth and emotional development. Witnessing violence/abusive behavior between adults or directed at other children impacts all children in the home and may be abuse.

(o) "Child in Need of Services" (CHINS)/ "family in need on services" (FINS):

1. The behavior of the parent, guardian, custodian, or other family member endangers the child's health, safety, education, or well-being;
2. The child's behavior endangers the child's health, safety, education or well-being;
3. The child is absent from the child's place of residence for twenty-four hours or more without the consent of the parent, guardian, or custodian;
4. The parent, guardian or custodian of a child refuses to permit the child to live with the parent, guardian or custodian; or
5. The child refuses to live with his parent, guardian or custodian.

(p) "Child Neglect": Failure of parent(s) to provide adequate food, clothing, shelter, medical care, education, supervision, or emotional support to a child. Illegal drug use by the parent is presumed to be child neglect.

(q) "Child Welfare Specialist": Family and Children's Services employee with specialized training in ICWA and child welfare and family in need of services case management.

(r) "Court": Pueblo of Pojoaque Children's Court

(s) “Custodian”: An adult with whom the child lives who is not a parent or guardian of the child. A person who exercises physical control, care, and custody of a child, including an employee of a residential facility.

(t) “Customary Adoption”: Permanent custody alternative based on traditional tribal practice recognized by the community that gives a child a permanent parent-child relationship with someone other than the child’s birth parent without requiring that the parental rights of the biological parent to be terminated.

(u) “Emergency Placement”: Limited instances when Family and Children’s Services must place a child in the home of private individuals, including neighbors, friends or relatives, as a result of sudden unavailability of the child’s primary caretaker.

(v) “Extended Family”: Any person related to the child by blood or marriage and having significant connection to the child and viewed as an extended family member in accordance with Pueblo of Pojoaque tradition and custom.

(w) “Family and Children’s Services” (FCS): The Pueblo of Pojoaque child welfare agency responsible for ensuring the safety of children and families.

(x) “Family in Need of Services” (FINS): a family whose child is not alleged to be abused or neglected but needs services because, for example, the child is unreasonably absent from school or a runaway.

(y) “Family Services”: Services that address specific needs of the child or family usually administered by department, including culturally appropriate services before to prevent removal.

(z) “Family Violence”: Any act, or threatened act, of violence, including forceful detention, of a person that results in, or puts the victim in fear of, physical or mental injury and is committed by a parent, a child or grandchild, a current or former spouse or current or former partner of the victim, by a person with whom the victim shares a child in common, by a person or partner who is

cohabitating with or has cohabitated with the victim as a spouse or partner, or by a person similarly situated to a spouse or partner of the victim, by persons involved in a significant romantic or sexual relationship, or by a person related to the victim by blood.

(aa) “Good Faith”: Acting out of an honest belief or purpose and the lack of intent to do harm.

(bb) “Guardian”: an adult other than a parent, appointed by tribal court or other court of competent jurisdiction, to provide care and control of a minor as detailed by court order. May be temporary or permanent.

(cc) “Guardian ad Litem”: court-appointed legal advocate for a child to represent the interests of the child in court.

(dd) “Kinship Care/Guardianship”: care of the children by relatives or any other person deemed to be a relative by tribal law or custom.

(ee) “Legal Custody”: the right and duty to the custody and care of minor as authorized by law, including the duty to protect, educate, nurture, discipline, and provide the child with food, clothing, shelter, medical care, and a supportive environment.

(ff) “Mediator/Peacekeeper”: a person appointed by the Pojoaque Tribal Court to serve as an impartial third person to assist parties in conflict to resolve their conflict themselves.

(gg) “Modification of Parental Rights”: legally limiting the parental rights of a parent to a child in the best interests of the child. This may include limitation on custody, visitation, information sharing, and participation in decision-making about the child’s education, medical treatment, care, and control.

(hh) “Neglect”: Abandonment; failure to provide proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian

or custodian, when able to do so, to provide them; reckless failure of a parent or guardian to protect a child from abuse.

(ii) “Parent”: an individual who is legally recognized as a mother or father or a child, or whose consent is necessary for an adoption under this code. “Parent” does not include any person whose parental rights to the child have been terminated by court order.

(jj) “Parental Rights”: The fundamental right of parents to conceive and raise their child; to make major decisions about the child's health, education, and religious upbringing; and to pass property to a child via gift or inheritance.

(kk) “Pueblo”: the Pueblo of Pojoaque

(ll) “Permanent Legal Guardian”: Person designated by Tribal Court to be have legal custody of the child when reunification is no longer the goal.

(mm) “Permanency Plan”: A plan approved by the Court that includes the current goal for permanency. Permanency plans may include an alternate plan if the primary plan fails. A permanency plan is decisive, with time-limited, goal-oriented activities to maintain children within their families of origin or place them with other permanent families. Permanency plans include the child's goal for permanency, the tasks required to achieve the goal, and the roles and responsibilities of all involved. Permanency goals include reunification, adoption, customary adoption, permanent placement with a relative or legal guardian, other planned permanent living arrangement, or emancipation.

(nn) “Physical Custody”: The care, custody, and supervision of a child where he or she lives.

(oo) “Relative”: Parent, grandparent, great-grandparent, first cousin, aunt, uncle, niece, nephew, or any other person deemed to be a relative by tribal law or custom.

(pp) “Relinquishment”: The voluntary giving up of parental rights by the legal parent(s), including for purposes of customary adoption.

(qq) “Reunification”: The return of a child back to the care, custody and supervision of his or her parent(s).

(rr) “Suspension of Parental Rights”: The permanent suspension of the rights of biological parents to provide for the care, custody and control of their child.

(ss) “Temporary Caretaker”: Emergency caretaker or foster parent when the expectation is that the child will be reunified with the parents.

(tt) “Termination of Parental Rights” (TPR): Legally ending the parental rights of a person to a child by court process. TPR does not end the rights of the child to tribal membership relationships recognized by custom and tradition.

L-3 Children’s Court Established

(a) The Pueblo of Pojoaque Children’s Court is hereby established. The primary function of Children’s Court is to ensure the well-being of all children and families within the Pueblo of Pojoaque in accordance with the values, customs, and traditions of the Pueblo of Pojoaque.

(b) Children’s Court cases include all cases where the interests of minor children are central, including Child Welfare, Juvenile Delinquency, Child or Family in Need of Services, Suspension or Termination of Parental Rights, and Adoption Proceedings.

(c) Children’s Court Judges. Judges of the Pueblo of Pojoaque Children’s Court will have the same qualifications, power, and duties as judges of the Pojoaque Tribal Court. All Children’s Court judges will have specialized training in presiding over Child Welfare and Juvenile Delinquency cases by participating in at least 20 hours of training focused on child welfare per year.

(d) Children's Court decisions must be made on a case-by-case basis, with findings of fact and conclusions of law in a written order based on evidence presented to the Court.

L-4 Jurisdiction of the Pueblo of Pojoaque Children's Court

(a) Personal Jurisdiction. Children's Court has personal jurisdiction over all mandatory parties in Children's Court Cases, including:

1. Children:

- A. All children who reside within the exterior bounds of the Pueblo of Pojoaque.
- B. Children who are enrolled or eligible for enrollment in the Pueblo of Pojoaque.
- C. Children deemed members of the Pueblo of Pojoaque by tradition and custom.
- D. Children whose legal parent, custodian, or guardian is a member of the Pueblo of Pojoaque.
- E. Children over whom the Pueblo of Pojoaque has jurisdiction pursuant to the Indian Child Welfare Act.
- F. Children by the consent of the parties with custody/guardianship of the children and with permission of the Court.
- G. Children who commit an act of delinquency within the exterior boundaries of the Pueblo of Pojoaque.

2. Parents/custodians/guardians. Children's Court has jurisdiction over both parents and any caregivers to determine the best interests of the child and to decide other related matters.

3. Foster parents/temporary guardians. Children's Court has jurisdiction over any foster parents or temporary guardians of the child.

(b) Subject Matter Jurisdiction. Children's Court has the power to make decisions regarding:

- 1. Abuse and neglect, child- or family-in-need-of-services, termination of parental rights, adoption, guardianship, and juvenile delinquency;

2. Appointing any legal guardian or custodian or similar arrangements for the care, custody, protection, or best interests of a minor, whether or not arising from a proceeding under this Code;
3. Child custody proceedings transferred from state proceedings, pursuant to the Indian Child Welfare Act (ICWA).
4. Transferring cases to state court or other tribal court. In any proceeding before the Children's Court, the Court may transfer the proceedings to an appropriate state court or another tribal court when the Children's Court judge determines, after taking into account recommendations from Family and Children's Services, other agencies, parents, and guardians, that a state or other tribe has a significant interest in the well-being of the child and the transfer would be in the best interests of the child.
5. Transfer from other court. The Children's Court may accept or decline transfers of child welfare cases from federal, international, state, and tribal courts.
6. Juvenile Delinquency Matters. Where a child is accused of committing an offense under the Criminal Code, a judge of the Court may either:
 - A. If the child is over sixteen (16) years old, proceed with the case as a regular criminal matter and treat the child as an adult when the interests of justice require; or
 - B. Declare the proceeding a Children's Court matter and proceed as provided in this subsection.

(c) Jurisdiction over Extended Family and Other Involved Parties:

1. Where the Children's Court exercises jurisdiction over a child under this Code, the Court will also have civil jurisdiction over the child's family whenever the Court deems it appropriate.
2. The Children's Court will also have personal jurisdiction over any adult whose behavior causes or tends to cause the child to come within the jurisdiction of the Court. Such person will be provided notice and opportunity to be heard.
3. In any Children's Court proceeding, upon application of a party, or on the Court own motion, the Court may enter an order restraining the conduct of any party over whom the Court has obtained jurisdiction.

- A. The Court finds that the person's conduct is or may be detrimental or harmful to the child and will interfere with the Court's orders or any case plan; and
- B. The restrained party has notice of the order and an opportunity to be heard on any such order.

(d) Emergency Jurisdiction. Children's Court may exercise emergency jurisdiction if the child is present in the Pueblo and the child has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse. An emergency order may remain in place until another jurisdiction, such as the child's tribe or the state, takes jurisdiction over the case.

(e) Continuing jurisdiction. Children's Court may exercise continuing jurisdiction in any Children's Court case to further the best interest of children and their extended families. Children's Court may cede or transfer jurisdiction to another forum in the best interests of the child.

(f) Concurrent jurisdiction. Nothing in this code precludes Children's Court from exercising concurrent jurisdiction with another forum.

(g) Comity. The Court will exercise comity with regard to state, tribal, or other foreign child custody orders, where such orders are consistent with the public policy of the Pueblo, the intent of ICWA, due process, and the laws and customs of the Pueblo of Pojoaque.

(h) Forum Selection Clause.

1. If the child is not a member of the Pueblo of Pojoaque, except in an emergency, Children's Court will not act in cases where there is an open case about the same child or family issue in another jurisdiction.
2. If the child is a member, or eligible to be a member, of the Pueblo of Pojoaque, Children's Court will determine whether taking jurisdiction is in the best interests of the child.

3. Upon learning a case is open concerning the same child in another jurisdiction, Children's Court will communicate with the other Court about the case. The Children's Court Judge will determine whether the case should be dismissed from Pojoaque Tribal Court because the other jurisdiction has an already-pending case about the same issue.

L-5 Children's Court Rules of Procedure - General

(a) Summons/Notice of Hearing. Family and Children's Services or another designated department will work with Pueblo of Pojoaque Tribal Police and Tribal Court to serve all pleadings, petitions, notices of hearing, orders, reports, etc. related to the case to all necessary parties.

1. Notice may be made pursuant to PPLOC §C-9 (Service of Process) and §G-11 (Service and Filing).
2. Service may be achieved through electronic service by email to the party's email of record with acknowledgment of receipt.
3. If service cannot be achieved pursuant to paragraphs 1 or 2 above, the Children's Court judge may make a finding that the party had actual notice of the proceeding made by direct communication with Family and Children's Services, Pueblo of Pojoaque Tribal Police, or Tribal Court with a sworn statement by the person who provided notice that the served party acknowledged the hearing time and date.
4. Notice to other relatives. Family and Children's Services will make reasonable efforts to notify all grandparents and other relatives, unless notice is not in the child's best interests.

(b) Confidential. All Children's Court hearings and files are confidential and closed to anyone not a party to the case or otherwise authorized to attend the hearing for view the file. Any person who intentionally and unlawfully releases any confidential information or records to any

unauthorized person or releases or makes other unlawful use of records may be found in contempt of court and be fined up to \$5,000

- (c) Record. All Children's Court hearings will be recorded.
- (d) Virtual or telephonic appearances are permitted unless otherwise directed by Children's Court.
- (e) Evidence Standards. Except where specified in this code, the rules of evidence for the Pojoaque Tribal Court Section G-22 apply to the Pojoaque Children's Court.
- (f) No Right to a Jury. Except in juvenile delinquency proceedings where incarceration is a possibility, there is no right to a jury trial in any proceeding before the Pueblo of Pojoaque Children's Court.
- (g) Presence of Child. The Court may, on its own motion or the motion of any party, order that the child be present in Court or meet with the judge. The child will be present for any juvenile delinquency hearings, unless the child's presence is waived by their attorney.
- (h) Contempt of Court. The Pojoaque Children's Court has the power to find any person in contempt of court for failure to abide by lawful court orders. A Children's Court judge may issue a bench warrant upon finding a person in contempt of court.
- (i) Rights of Parties.
 - 1. The Pueblo—through Family and Children's Services or Pueblo of Pojoaque Tribal Police—must produce in Court all witnesses and evidence supporting petitions in child- or family- in need of services, abuse and neglect, termination of parental rights, adoption, and juvenile delinquency proceedings.
 - 2. The accused will be given a copy of the child welfare petition or delinquency complaint as soon as possible but at the first hearing at the latest.

3. The accused have a right to timely notice of any proceedings and the opportunity to be heard in court.
4. The parent(s) and other parties, including the child in a delinquency proceeding, may be represented by counsel at their own expense.
5. Parties may present any relevant information. The Court will determine whether any proposed information is relevant to the hearing.
6. Parties may ask the Court to order witnesses to appear at hearings. Parties must provide sufficient witness contact information to the Court to allow service.
7. The parties may testify on their own behalf or remain silent.
8. The parties may confront and cross-examine witnesses brought by the Pueblo.
9. The parent/caregiver has the right to seek independent medical, psychological or psychiatric evaluations of themselves or their child, at their own expense.
10. A parent/caregiver has the right to refuse services for treatment, counseling, parenting classes, etc. The Court may use the refusal as a negative factor when weighing what decisions to make in the case.

L-6 Duty to Report Child Abuse and Neglect

- (a) **Mandatory Reporters.** The care of youth within the Pueblo of Pojoaque is a family, community, and tribal responsibility. Any person who has reason to suspect that a child is or has been abused or neglected in any way must report the suspicions immediately to Pueblo of Pojoaque Tribal Police; other local law enforcement agency; Pojoaque Family

and Children's Services; or the New Mexico Children, Youth, and Family Department (CYFD).

- (b) Reports by Agency. Reports of child abuse or neglect may be made to an agency in person, by email, or by phone. Pojoaque Pueblo of Pojoaque Tribal Police or Family and Children's Services must create a written report within 24 hours after they receive a report. The report must include as much information as possible: (1) the child's information (name, age, tribe, address, parent/caregiver telephone); (2) a statement of the alleged facts, including date, time, location of the event(s), and witness statements; and (3) the reporter's information, unless anonymous.
- (c) Confidential Reports. Child abuse or neglect reports are confidential. The name and identifying information of the person making the report will not be disclosed without the consent of the reporter or by Court order if disclosure is found necessary to ensure the safety and well-being of the child.
- (d) Use of Confidential Reports. All reports of child abuse or neglect will be reviewed by Family and Children's Services and Pueblo of Pojoaque Tribal Police. After the initial review, the reports of abuse and neglect may be used by Pueblo of Pojoaque Tribal Police to investigate whether criminal charges are appropriate and/or by Family and Children's Services to initiate child welfare proceedings.
- (e) Immunity. Anyone who reports child abuse or neglect in good faith is immune from civil liability and criminal prosecution.
- (f) Sanction for Failure to Report. Any person who knowingly fails to report child abuse or neglect to law enforcement or a child welfare agency may be charged with a civil offense in Pueblo of Pojoaque Tribal Court and fined up to five thousand dollars (\$5,000).

- (g) Sanction for Bad Faith Reporting. Any person who reports child abuse or neglect in bad faith or fraudulently may be charged with a civil offense in Pueblo of Pojoaque Tribal Court and fined up to five thousand dollars (\$5,000).

L-7 Child Abuse and Neglect Investigations/Interagency Cooperation

- (a) Interagency Cooperation. The confidentiality requirements set forth in this Subpart do not prevent cooperation between Tribal Police, Family and Children's Services, and other agencies to investigate fully abuse and neglect reports. When there is a conflict between confidentiality and the need for communication between departments and other agencies, protection of the child is the primary consideration.
- (b) Immediate referrals between Pueblo of Pojoaque Tribal Police and Family and Children's Services.
 1. Pueblo of Pojoaque Tribal Police. In addition to conducting its own investigation, including any criminal investigation, on child abuse and neglect allegations, Pueblo of Pojoaque Tribal Police will immediately refer all child abuse or neglect reports or allegations to Family and Children's Services as soon as possible with the alleged facts and all known contact information for the reporter, parents, child, alleged perpetrator, and other family members. Pueblo of Pojoaque Tribal Police will provide a written report to Family and Children's within 24 hours.
 2. Pueblo of Pojoaque Family and Children's Services. In addition to conducting its own non-criminal investigation on child abuse and neglect allegations, Pueblo of Pojoaque Family and Children's Services will immediately refer all child abuse or neglect reports or allegations to Pueblo of Pojoaque Tribal Police by providing the alleged facts and all known contact information for the reporter, parents, child, alleged perpetrator, and other family members. Family and Children's Services will provide a written report to Pueblo of Pojoaque Tribal Police within 24 hours of the reported abuse.

3. Report to other tribal and/or state agencies. If, after investigation and ensuring the child is safe, the reported child is determined to not be a member or eligible for membership in the Pueblo of Pojoaque, Family and Children's Services will alert New Mexico's Children, Youth, and Family Department (CYFD) and/or the child's tribal Indian Child Welfare contact. Reporting to other agencies does not itself relieve Family and Children's Services and Tribal Police of their obligations in the case.

4. Investigating Reports of Child Abuse or Neglect.

A. Immediate Investigation. When Pueblo of Pojoaque Tribal Police and/or Family and Children's Services receive a report of alleged abuse or neglect, the agencies will take immediate steps to investigate and protect the welfare of the alleged abused or neglected child, as well as the safety of any other child under the same care.

B. Specialized Training. Pojoaque Pueblo of Pojoaque Tribal Police and Family and Children's Services will designate one or more child welfare specialists. These employees must have annual specialized training on child abuse and neglect investigation best practices.

C. Pueblo of Pojoaque Tribal Police will work with a designated Family and Children's Services child welfare specialist. If a child welfare specialist is not available, Pueblo of Pojoaque Tribal Police and Family and Children's Services will act in the best interests of the child until a trained child welfare specialist is able to offer guidance.

D. Forensic interviews. The Pueblo of Pojoaque Tribal Police will arrange for forensic interviews or child abuse medical exams. Family and Children's Services may ask Tribal Police to arrange for forensic interviewing with the appropriate agency.

E. Written Report. Pueblo of Pojoaque Tribal Police Department is responsible for ensuring that a written child abuse or neglect incident report with sufficient detail is completed. The report should contain information about the child; the

parent/guardian/custodian; the nature and extent of the child's injuries; any specific allegation; the location where the alleged incident occurred; any evidence or reports of previous child maltreatment; all children and/or adults residing in the child's home; information identifying the child's caretaker; any information regarding the alleged perpetrator; and all other information that might be helpful in establishing the cause of the injuries and the identity of the person(s) alleged to be responsible for the injuries.

5. Intervene to Prevent Removal. Family and Children's Services will make active efforts to prevent or eliminate the need for removing the child from the child's home. Active efforts may include family meetings, counseling, substance use disorder treatment and monitoring, or other strategies to ensure the child's safety.
6. Agency Policies and Procedures/Prioritization of Action Plan. Family and Children's Services and Pueblo of Pojoaque Tribal Police will cooperate to create standard operating procedures, prioritization of action plans, memorandum of understanding, or other written documents to detail how child abuse and neglect cases will be handled. Any such document will be reviewed regularly to make changes to align with current best practices.

L-8 Taking a Child into Protective Custody

- (a) Pueblo of Pojoaque Tribal Police and Family and Children's Services will work together to determine as quickly as possible, but no later than 24 hours after the initial abuse/neglect report, whether emergency removal of the child is necessary to protect the child from immediate danger of substantial harm or injury if not taken into custody.
- (b) Both Pueblo of Pojoaque Tribal Police and Family and Children's Services have the authority to remove a child from the home when the child is in immediate danger of substantial harm or injury if not taken into custody. If there is a dispute between the agencies regarding removal, the agencies will work together in the child's best interests.

- (c) If no Family and Children's staff member is available to respond to the scene, Pueblo of Pojoaque Tribal Police will notify Family and Children's Services immediately when a decision is made to take a child into custody.
- (d) Removal without Court Order. Pueblo of Pojoaque Tribal Police or Family and Children's Services may remove a child to protect the child from immediate danger of substantial harm or injury without a court order.
- (e) Emergency Custody Orders. Pueblo of Pojoaque Tribal Police or Family and Children's Services must notify the Children's Court Judge to request an emergency custody order as soon as possible, but will act without judicial permission if a judge is not available.
1. A judge may issue an emergency custody order upon a sworn oral or written statement of facts that provide probable cause that the child is in immediate danger of substantial harm or injury if not taken into custody.
 2. The emergency ex-parte custody order will name the child to be taken into custody, name the agency authorized to take the child into custody, and specify the date that the order was issued.
 3. Emergency ex-parte custody orders are valid for 72 hours, unless extended for good cause by the Court.
- (e) Required language in First Order. The FIRST order, including any ex-parte orders, issued by the Court for removal of a child MUST contain findings that CONTINUATION IN THE HOME IS CONTRARY TO THE WELFARE OF THE CHILD.
- (f) Parent/Guardian/Custodian Notification of Removal. Family and Children's Services will notify the parent, guardian, or custodian as soon as possible after the child is taken into custody. Within 24 hours of removal Family and Children's Services will provide the parents or guardian a written notice of the reason for the action.

- (g) Emergency Placement. Family and Children's Services will attempt to place the child with a relative before turning to other available placement options pursuant to the Pueblo of Pojoaque Placement Preferences.
- (h) Custody Petition. Family and Children's Services will file a petition to initiate proceedings whenever a child is removed from the home as soon as possible, but by the end of the next business day the Court is open, and within 72 hours at the latest. See §L-10 (Initiating Children's Court Proceedings).
- (i) Criminal Complaint in addition to FCS Petition. If Pueblo of Pojoaque Tribal Police Department determines that there is probable cause that a criminal act has occurred within the Pueblo of Pojoaque, Pueblo of Pojoaque Tribal Police may take any necessary action to begin a criminal case including arrest the alleged offender; request warrants; file a criminal complaint or summons against the alleged perpetrator in Tribal Court.

L-9 Placement Preferences

- (a) The best interests of the child will always be taken into consideration when placing a child outside their home.
- (b) A child should be placed as geographically close as possible to the parent(s) or legal custodian.
- (c) Temporary caretakers should commit to actively supporting the child's ability to participate in cultural/traditional activities; to maintain a connection with the child's extended family, especially siblings and grandparents, if in the children's best interests; and to remain in the same school and activities during the placement period.
- (d) Child placements require foster care licensing through Pojoaque Family and Children's Services.

1. Family and Children's Services may waive foster care licensing requirements for up to three months after placement.
2. If a placement is in the child's best interests and licensing is not possible or feasible after the three month waiver period, the licensing requirement may be waived permanently with written approval from the Director of Family and Children's Services and a finding from Children's Court that allowing placement in an unlicensed home is in the child's best interests.

(j) The following order of priorities will guide all out-of-home placements:

1. Immediate relatives;
2. Extended family members;
3. A Pueblo of Pojoaque Tribal Member;
4. Native American family licensed foster home;
5. A non-Native American licensed foster home in the Pojoaque Valley area;
6. Placement in a facility or home in collaboration with the New Mexico Children Youth and Family Division (CYFD), including treatment foster care.
7. Depending on the child's mental health or delinquency needs, placement in a youth mental health treatment center, youth substance use disorder residential treatment facility, youth home, youth shelter, etc., approved by Pueblo of Pojoaque Family and Children's Services and Pojoaque Children's Court.

(a) All Children's Court cases begin with Pueblo of Pojoaque Tribal Police or Family and Children's Services filing a Petition in Tribal Court.

1. Child welfare, child abuse or neglect, child in need of services, educational neglect and/or family in need of services proceedings are initiated when Family and Children's Services files a petition in Tribal Court.
2. Pueblo of Pojoaque Tribal Police or Tribal Prosecutor file juvenile delinquency complaints.
3. Tribal Police may file an emergency child welfare, child abuse or neglect, or child in need of services petition if no Family and Children's Services caseworkers are available to file an emergency petition.
4. Criminal charges related to child welfare and juvenile delinquency cases begin with Tribal Police or the Tribal Prosecutor filing a criminal or delinquency complaint detailing charges and statement of probable cause in Tribal Court.

(b) If, after investigation of a report of alleged child abuse or neglect, Pueblo of Pojoaque Tribal Police determines that the child is not in immediate danger of substantial harm or injury if not placed outside the home, Family and Children's Services will review all related reports to determine if a petitioner for a child in need of services (CHINS) or family in need of services (FINS) should be filed.

(c) Necessary information. Petitions do not have to be in any particular form but should contain as much of the following information as possible:

1. Facts showing that Children's Court has jurisdiction, such as the child is enrolled or eligible for enrollment in the Pueblo of Pojoaque or resides on the Pueblo;

2. Sufficient alleged facts to allow the judge to determine that the child is in immediate danger of substantial harm or injury if not placed outside the home or that the child or family is in need of court ordered services;
3. Contact information for the child and both parents, including any tribal affiliations, addresses, phone numbers, email addresses, birthdates;
4. Contact information for any temporary caretakers;
5. Any relevant prior history or related cases involving the child or other children in the family or any domestic violence cases or criminal history of the parents or guardians;
6. Any steps taken by Family and Children's Services to provide services; to prevent or avoid removal; or to make it possible for the child to return home;
7. A sworn statement under penalty of perjury that the signer has knowledge of the facts alleged in the petition and believes them to be true.

(d) Time for filing. If a child is removed from the home, Family and Children's Services must file a petition for an emergency order with Tribal Court as soon as possible but at the latest, on the next day that Tribal Court is open. If there is an extended break, such as for a holiday weekend, or an emergency need, the Chief Judge or designee should be contacted via his or her work phone and e-mail.

(e) Petition for Ex-Parte Order. If a parent or other necessary party is not available for an emergency hearing, an affidavit for an ex-parte custody order may be filed by Family and Children's Services or Tribal Police.

(f) Children's Court will schedule a hearing as soon as possible after a Petition is filed or ex-parte order issued, to allow sufficient notice to the parents and other necessary parties. Tribal Court, in its discretion, may convene emergency and ex-parte hearings with or without a written

request when there is good cause to believe that an emergency hearing is in the best interests of the child.

- (g) Failure to file on time. If a child is removed from the home and the petition for custody is not filed on time, the child must be returned to the parent or custodian.
- (h) Amended Petitions. Because investigations routinely continue beyond the date of the initial filing, the petition may be amended to include newly discovered evidence or information. A copy of the amended petition must be provided to all parties at the time of filing.
- (i) Electronic Filing. Petitions for emergency orders may be filed electronically by emailing the Children's Court Judge and/or Court Clerk.

L-11 Children's Court First Hearing

- (a) Time limit. After an ex-parte order is issued or a petition or a juvenile delinquency complaint is filed, Children's Court will issue any emergency orders it deems necessary (e.g. out-of-home custody, stay-away, order of protection) and schedule a hearing to bring all interested parties into court as soon as possible.
- (b) If a child is removed from the home, the first hearing will be no later than 72 hours after the Petition is filed by Family and Children's Services or Pueblo of Pojoaque Tribal Police, unless good cause is shown in a written motion to delay the hearing.
- (c) The parent(s), guardians, or custodians of the child must be given notice of the time and place of all hearings. If the child's parent, guardian, or custodian is not present at the First Hearing, the Court will determine what efforts Family and Children's Services made to give notice and to get the parent, guardian, or custodian to attend the hearing. If a short delay will allow the attendance of the parent, guardian, or custodian, the Court will recess proceedings for a reasonable time, but no longer than the end of the same days' court hours.

(d) Evidence. At the First Hearing the Court may look to the Federal Rules of Evidence to determine what weight to give the information presented. Information that may be inadmissible in other proceedings may be considered at this hearing.

(e) Presence of Counsel. Children's Court will not continue a First Hearing solely to allow a party to obtain representation.

(f) Purpose of First Hearing. The Court must make the following determinations based on information presented at the first hearing:

1. The Court has jurisdiction to hear the matter;
2. Whether there is probable cause to believe the child is in immediate danger of substantial harm or injury if returned to, or left in the care of, the parent, guardian, or custodian;
3. Whether any continued out-of-home placement is necessary;
4. Whether Family and Children's Services made reasonable efforts to prevent removal or reasons why reasonable efforts were not possible.

(g) Findings for an out-of-home placement. If the Court determines that an out-of-home placement should continue pending further proceedings, the Court must find there is probable cause to believe:

1. The child is in immediate danger of substantial harm or injury if not placed outside the home; or
2. Someone present in the home presents an immediate danger of substantial harm or injury to the child, including the child witnessing domestic violence; or

3. No parent, guardian, or custodian is able, willing, or available to provide adequate supervision and care of the child; or
4. The child will run away or cause serious damage to persons or property if returned to the parent, guardian, or custodian; or
5. The child requires medical care, treatment, or evaluation or other services that he or she will not receive if returned to the parent, guardian, or custodian; or
6. The child has been abandoned.

(h) **Services Ordered.** The Court will order any services—which may include counseling for the child and/or parent/guardian, psychological evaluations, parenting classes, domestic violence intervention, substance use disorder assessment and treatment through Pojoaque Behavioral Health or similar agency—necessary to ensure the child’s health and safety and to provide active efforts toward reunification. Unless good cause is shown otherwise, the Court will order that the child be enrolled in the Pueblo of Pojoaque Early Childhood Education Center or the Pojoaque Boys and Girls Club or similar programs.

(i) When the home of an adult relative of the child is safe and adequate and placement in the home would be in the best interests of the child, the Pueblo will give preference to placement of the child in that home. Family and Children’s Services will conduct home studies on appropriate relatives who express an interest in providing placement for the child.

(j) **Child Returned to Custody of Parent, Guardian, or Custodian with Conditions.** If the Court determines that the child is not in immediate danger of substantial harm or injury if returned to the home, it may find that the child or family is in need of court-ordered services and retain jurisdiction to ensure the child’s health and safety. The Court may order:

1. The child returned to the parent, guardian, or custodian with the requirement to work with Family and Children’s Services on a case plan and/or pending further proceedings;

2. That any person who poses a threat to the child be restrained from contacting or approaching the child, whether the child is returned to his or her home or in an out-of-home placement;
3. That the child, if age appropriate, and the parent, guardian, or other custodian attend mediation, peacekeeping, family meetings, or similar meetings as ordered by the Court;
4. Any other orders for services or actions necessary for the protection and well-being of the child, including ordering the child and/or parent, guardian, or custodian, to undergo assessments, counseling through Pojoaque Behavioral Health or similar agency, residential treatment, mandatory school attendance for the child, parenting time/visitation orders, and any other service or activity for the benefit of the child and family. The Court may make reunification or placement conditional on participation in services and achieving milestones. Unless good cause is shown otherwise, the Court will order that the child be enrolled in the Pueblo of Pojoaque Early Childhood Education Center or the Pojoaque Boys and Girls Club or similar programs.
5. Path to Wellness. The Court may order the parent, guardian, or custodian to complete Pojoaque's Path to Wellness Treatment Court as part of any case plan.

(k) Return of Child. If the facts alleged are not sufficient to allow the court to determine that the child is in immediate danger of substantial harm or injury if not placed outside the home, the child must be returned to the custody of the parent(s) or caregiver.

L-12 Guardian ad Litem/Youth Attorney

(a) The Children's Court judge may appoint a guardian ad litem or, for minors under 14 years old. For minors 14 and older and in any juvenile delinquency proceeding, the Court may appoint a youth attorney.

(b) Anyone appointed to be a GAL or youth attorney will be an attorney eligible for admission to the Pueblo of Pojoaque Bar and have sufficient training and experience in child welfare cases, as determined by the appointing Children's Court judge.

(c) A guardian ad litem shall zealously represent the child's best interests in the proceeding for which the guardian ad litem has been appointed. Unless a child's circumstances render the following duties and responsibilities unreasonable, a guardian ad litem shall:

1. Meet with and interview the child prior to custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews and any other hearings scheduled in accordance with the provisions of the Children's Code;
2. Convey the child's declared position to the court at every hearing;
3. Communicate with health care, mental health care and other professionals involved with the child's case;
4. Review medical and psychological reports relating to the child and the respondents;
5. Contact the child prior to any proposed change in the child's placement;
6. Contact the child after changes in the child's placement;
7. Attend staffings or other administrative reviews concerning the child, including child protective team meetings, and include an assessment of any permanency and treatment plans;
8. Report to the Court on the child's adjustment to placement and family time; compliance with prior court orders and treatment plans; and
9. Represent and protect the cultural needs of the child.

(d) The youth attorney's role is to zealously advocate for the child's expressed wishes and needs. The youth attorney shall provide the same manner of legal representation and be bound by the same duties to the child as is due an adult client, in accordance with the rules of professional conduct .

- (e) The parent(s) or guardian and Family and Children's Services will meet as soon as possible before or after the first hearing to develop a written reunification/treatment plan that will serve the child's best interests.
- (f) The written reunification/treatment plan will be filed with Tribal Court within 7 calendar days after the First Hearing or after the Petition is filed if no hearing is held within 7 calendar days.
- (g) Family and Children's Services must make active efforts to preserve and reunify the family, with the primary focus on the child's safety.
- (h) Active efforts mean that Family and Children's Services will help the parents access services, including, but not limited to, help with identifying services, enrolling in health insurance and other public benefits, setting up appointments, and ensuring transportation to services.
- (i) Case Staffing. Family and Children's Services and/or Pueblo of Pojoaque Tribal Police may invite necessary professionals and interested parties to attend child welfare case staffings without violating confidentiality requirements.

1. Other necessary participants include:

- A. Employees of the Pojoaque Behavioral Health Department whose professional duties are relevant to the case;
- B. The child's guardian ad litem or youth attorney;
- C. Other employees or child welfare service providers whose presence is deemed necessary by the child welfare specialist or Pueblo of Pojoaque Tribal Police officer assigned to the case.

2. Everyone who attends a family case staffing must sign a confidentiality form agreeing that any information learned through a case staffing will remain confidential.

The

confidentiality agreement will also contain a consent to jurisdiction that allows Pojoaque Children's Court to impose contempt sanctions for violating confidentiality.

3. Parent or Caretaker Attendance at Case Staffings. A parent, guardian, or custodian may attend a case staffing, if the Pojoaque child welfare specialist or Pueblo of Pojoaque Tribal Police officer assigned to the case agree that it is in the child's best interests. The child welfare specialist has the authority to determine how much involvement the parent, guardian, or custodian may have in a case staffing. Parents who attend case staffings are not subject to confidentiality requirements.

L-14 Out of Home Placement Status Hearings and Updates

- (a) At the end of the first hearing, if the child remains out of the home, Children's Court will schedule a review hearing for no later than 30 days after the first hearing.
- (b) Within 30 days after the initial petition is filed, Family and Children's Services will provide a written status report to Children's Court and the parents or guardian at least the day before the day of the status hearing.
- (c) The purpose of the status hearing is to review parental progress with case plan milestones and determine whether the child can be safely returned to the care of the parent or guardian.

L-15

Adjudication/Fact Finding Hearing

- (h) If a parent, guardian, or custodian disputes that the alleged abuse or neglect occurred, Children's Court will schedule a trial where the accused and the Pueblo may present evidence on the alleged abuse or neglect.
- (i) The adjudication hearing must be held within 60 days after the first abuse/neglect hearing.
- (j) All necessary parties will receive adequate notice as described above in §L-5(a).

(k) At least the day before the adjudicatory hearing, the parent(s) or caregivers, Family and Children's Services, Pueblo of Pojoaque Tribal Police, and any other necessary party will meet to determine if an agreement can be reached.

(l) At the time of the adjudication hearing, the Court will ask whether the allegations in the petition are admitted or denied.

(m) If an agreement has been reached, the parties will inform the judge, who will issue any orders based on the agreement, including ongoing services.

(n) If the allegations are denied and no agreement reached, the Court will hear evidence about the allegation(s).

(o) Standard of Proof. The Pueblo must prove the allegation(s) by clear and convincing evidence that is reliable, material, and relevant.

(p) The parent(s) may present any evidence on their own behalf and have the rights described in §L-5(i).

(q) Evidence. The evidence standards in §L-5(e) apply in the adjudication hearing.

(r) To ensure that the Court has as much information as possible to determine the child's best interests, the Court may question any witnesses or request relevant information from Pueblo of Pojoaque Tribal Police, Family and Children's Services, or any other agency.

(s) If the Court finds, based on evidence presented, that child was abused or neglected, the Court will enter the finding as an order, including any services for the child and parent/caregiver.

(t) A finding that the allegations are true does not preclude returning the child to the home if there is no longer an immediate danger of substantial harm or injury if the child is returned to the home.

(u) If there is a finding of abuse or neglect, a review hearing will be scheduled for no less than 60 days after the adjudication hearing.

(v) If the Court does not find that the child was abused or neglected, the Court will dismiss the allegations. The Court may order that the child or family is in need of services and order any services necessary to ensure the health and safety of the child.

L-16 Order after an Adjudication of Abuse or Neglect

(w) The Court must issue a written order on disposition of the case within 5 days after the adjudication hearing. In the Order after the Adjudication Hearing, the Court will:

1. If a child was found to be abused or neglected and the Court permits the child to return to the home, place conditions and limitations on that placement;
 - A. The Court may order the parents to cooperate with any treatment plan and services;
 - B. The Court may order the caregiver to ensure the child receives recommended services
2. Make findings regarding any placement of the child outside the home, including the child's adjustment to the home;
3. Provide for reasonable parenting time between the child and the parent, unless it is not in the child's best interests;
4. Describe the permanency plan (e.g. reunification, kinship guardianship, customary adoption).

5. The Order will detail:

- A. Whether Family and Children's Services has used active efforts to prevent the child from being removed from the home;
- B. Whether active efforts were used to reunify the child with the parent(s);
- C. Whether active efforts were used to keep siblings together, if applicable;
- D. The Court may determine that active efforts are not required to be made when the Court finds that the efforts would be futile; or the parent, guardian, or custodian has subjected the child to aggravated circumstances.
- E. If the Court finds that the child was neglected or abused, the Court will order the parent(s) to pay reasonable costs of support and maintenance, taking into account income. The parent(s) may be ordered to reimburse the Pueblo for any necessary payments the Pueblo pays to foster parents.

(x) Family Plan. Within three days after the adjudication, Family and Children's Services will meet with the family and prepare a written family plan with input from the affected family members.

- 1. The Family Plan will include recommendations for what steps need to be achieved to reunite the family or complete Family and Children's Services oversight.
- 2. The plan should include a treatment plan that details steps to ensure that the child's physical, medical, psychological, and educational needs are met and lists any services to be provided to the child and the parents to help with reunification.
- 3. Wellness Court. The case plan may include that the parent, guardian, or custodian must complete Pojoaque's Wellness Treatment Court, if eligible.
- 4. Unless good cause is shown otherwise, the Court will order that the child be enrolled in the Pueblo of Pojoaque Early Childhood Education Center or the Pojoaque Boys and Girls Club or similar programs.

5. If Family and Children's Services does not believe that reunification is possible, it will provide details of an alternative permanency plan for the Court's approval.

6. Family and Children's Services may also provide a plan that provides for reunification and a concurrent plan for an alternative permanent placement if reunification does not work out.

L-17 Permanency Review/Status Conferences.

(y) A review hearing will be held within 60 days of the adjudication hearing or sooner on the Court's own motion or motion of any party.

(z) After the first review hearing until permanency is achieved, the Court will hold a permanency review/status conference at least every three months to determine progress and compliance with the case plan. The Court, on its own motion or the motion of any party, may schedule review hearings more frequently.

(aa) Family and Children's Services will monitor whether and how much the parent, guardian, or custodian is making progress on agreements, case plans, and/or court ordered services.

(bb) Family and Children's Services Report. At least a day before each review hearing, Family and Children's Services must file a written report to include information about any progress or lack of progress since the previous hearing. The report will include any recommended changes to the case plan and/or permanency plan.

(cc) After hearing from all parties and reviewing all documents, the Court will order a permanency plan, which may include concurrent permanency plans. This permanency plan will be in place at least until the next hearing, and may include:

1. reunification;

2. adoption after a motion has been filed to suspend or terminate parental rights;
 3. placement with a person who will be the child's permanent legal guardian;
 4. placement in the legal custody of Pojoaque Family and Children's Services with the child placed in the home of a fit and willing relative; or
 5. Placement in the legal custody of FCS under a planned permanent living arrangement, provided that there is substantial evidence that none of the above plans are in the child's best interests.
- (dd) If reunification is not possible or parents fail to make progress toward reunification, Family and Children's Services will petition Children's Court for permanent suspension or termination of parental rights pursuant to §L-18.

L-18 Juvenile Delinquency Proceedings

(a) General Procedure.

1. Tribal Police will file all juvenile delinquency complaints based on charges that would be criminal in subsection M if committed by an adult.
2. Family and Children's Services will be notified as soon as possible after a delinquency complaint is filed.
3. The minor child has the right to have at least one parent or guardian present for all juvenile proceedings.
4. The juvenile defendant will have all the rights afforded to adult criminal defendants.
5. At the first hearing, the Court will determine whether there is probable cause to proceed with the juvenile delinquency charge(s).
6. The minor may proceed to a bench or jury trial on the charges if the Pueblo does not agree to declare the alleged delinquent a child in need of services.

(b) Informal proceedings

1. The Court, on its own motion and at any time, may dismiss the complaint or petition and/or declare the minor a child in need of services if it feels that court adjudication is unnecessary or unwarranted under the circumstances.
2. The Court may order any appropriate services for the minor.

(c) Order of Adjudication/Probation

1. An order of disposition or other adjudication in juvenile proceedings shall not be deemed a conviction for a crime. The disposition of a child and evidence given in any juvenile proceeding shall not be admissible against the child in any case or proceeding in any other court, whether before or after they has reached majority.
2. An order of probation or information supervision will remain in effect for as long as the Court deems necessary.
3. When the minor reaches eight years, all Children's Court orders will no longer be in effect.

(d) Probation Revocation

1. A minor who violates any terms imposed by the Court may be required to appear for a violation hearing.
2. The Pueblo must show by clear and convincing evidence that a term of the minor's probation conditions was violated.
3. If the minor is found to have violated a condition of probation, the Court may extend the period of probation or require any other services or incarceration based on the violation.

[L-19 Confidentiality and Destruction of Records.](#)

(ee) The records of proceedings in Children's Court matters shall be kept separate from other Court records and shall not be open to anyone other than the parties to the proceeding, the Court, or other persons authorized by Court order.

(ff) No part of the record shall be published or made public in any manner.

- (gg) When a child who has been in a Children's Court proceeding attains the age of eighteen (18) years, the Tribal Court shall order the Court Clerk to completely destroy all records of such proceedings involving such child.

L-20 Permanent Suspension or Termination of Parental Rights.

(e) General Considerations.

1. When deciding whether to permanently suspend or terminate parental rights, the Court must give primary consideration to the physical, mental and emotional welfare, and needs of the child, including the likelihood of the child being adopted if parental rights are terminated or permanently suspended; preservation of the child's identity as a tribal member and member of the extended family; providing the child with knowledge of and experience of his or her customs, traditions, culture, religion, language, values, history, and way of life.

2. When there is overwhelming evidence that a child has been physically abused or neglected and there is little chance that the conditions or causes of the abuse or neglect are likely to change in the foreseeable future, or when the effects of the physical abuse or neglect are serious, Children's Court shall consider terminating or permanently suspending parental rights and allowing adoption if it is in the best interests of the child.

3. The Pueblo of Pojoaque recognizes that the effects of termination or permanent suspension of parental rights have profound consequences for the parent and the child. To ensure a fair process, to protect the best interests of the child, and to guard parental rights, Children's Court will follow all procedures contained in this code.

4. A parent whose rights have been terminated or suspended is not legally entitled to any of the child's income, disbursements, or other benefits and may not inherit from the child.

(f) Termination of Parental Rights or Permanent Suspension of Parental Rights.

1. Children's Court may order termination or suspension of parental rights only after a trial is held specifically on the question of terminating or suspending the rights of the parent(s), unless the trial is knowingly, intelligently, and voluntarily waived by the parent.
2. An action to permanently suspend or terminate a parental rights begins when an interested party files a petition in the Court. A petition may be filed by:
 - A. One or both parents who voluntarily request that their parent-child relationship be permanently suspended or terminated;
 - B. One parent requesting that the parent-child relationship between the child and the other parent be suspended or terminated;
 - C. Pueblo of Pojoaque Family and Children's Services; or
 - D. A Guardian, Caretaker, or any other person having legitimate interest in the child.
3. There is a presumption of a parent's ability to parent unless proven otherwise.
4. Burden of Proof. The Court may not permanently suspend or terminate parental rights unless (1) the grounds for termination or suspension is proven beyond a reasonable doubt, and (2) there is no other option that is in the child's and the tribe's best interest.
5. All evidence admissible under the Federal Rules of Evidence or as otherwise specified in Pueblo of Pojoaque Law and Order Code is admissible. The competency of witnesses to testify will be similarly determined. The Court may admit otherwise inadmissible evidence if the interests of justice require or based on established custom and tradition.
6. Permanent Suspension Preferred. The Court may not terminate parental rights unless permanent suspension of parental rights is not in the child's best interests and termination is the only option.

7. Enrollment unaffected. Permanent suspension or termination of parental rights will not affect the child's enrollment status or rights as a Pueblo of Pojoaque Tribal Member.
8. If the Court terminates or suspend parental rights, it must appoint a custodian for the child.
9. A judgment of the court terminating or suspending parental rights divests the parent of all legal rights. Termination of parental rights does not affect the child's right of inheritance through the former parent or the child's right to be a member of the Pueblo of Pojoaque.

(g) Voluntary Relinquishment of Parental Rights.

1. General Considerations.
 - A. With permission of the Court, a parent may relinquish any legal connection they have with a child by petitioning the Court.
 - B. Except when it is in the best interest of the child, a parent may not relinquish their legal parental rights unless another adult with a strong parental bond with the child, including a step-parent, is willing and able to adopt the child.
 - C. Voluntary relinquishment will not be permitted to avoid financial responsibility for the child.
2. Procedure for Voluntary Relinquishment of Parental Rights.
 - A. A parent must petition the Court, in writing, to relinquish parental rights. Family and Children's Services may assist in preparing the petition for voluntary relinquishment.
 - B. The writing does not have to be filed in any particular form but must be in writing and contain:
 - i. A statement about why the parent wants to relinquish parental rights;

- ii. A specific list of facts supporting the request for relinquishment of parental rights. Permanent suspension or termination of parental rights will not be granted if the request is made to avoid child support obligations;
- iii. complete name and contact information for the other legal parent and any guardian or custodian;
- iv. the child's full name, date of birth, place of birth and enrollment status;
- v. A written statement that the parent understands that relinquishing parental rights means that, if the petition is granted, the parent will have no legal rights or responsibilities regarding the child.
- vi. A statement that the parent was individually counseled by a qualified clinician that about the possible psychological effects on both the parent and the child of relinquishing parental rights.
- vii. A confirmation that everything in the petition is true under the penalty of perjury.

C. Before the date of the relinquishment hearing, the relinquishing parent must obtain and file in Tribal Court a written report by a qualified psychologist or psychiatrist showing that the parent was counseled about the possible psychological effects on both the parent and the child of relinquishing parental rights. The petitioner is responsible for paying for the report.

D. A copy of the relinquishment petition will be provided to Family and Children's Services.

E. Family and Children's Services will receive notice of all relinquishment proceedings.

F. Upon filing of the Petition, the Court will schedule a hearing on whether relinquishment is in the best interests of the child.

G. Notice of the hearing will be served on the natural or legal parents, if known, and any current guardian/caretaker of the child.

3. Voluntary Relinquishment Hearing.

A. The parent wishing to relinquish must be informed by the Court on the record and the Court must be satisfied that the parent understands that if the petition is granted:

- i. the parent will have no legal rights or responsibilities to the child;
- ii. the parent will not be notified, or have any participation, in future adoption proceedings;
- iii. The Court may order, or the guardian or adoptive parent may decide that the child will have no contact with the former parent.

B. Before relinquishment is granted, the Court must find:

- i. That the parent understands that relinquishing parental rights means that the parent will have no legal rights or responsibilities to the child, including no rights for visitation for themselves or their families, unless agreed by the guardian or custodian.
- ii. That the parent's request to terminate parental rights is voluntary: it is not coerced, unduly influenced, or an involuntary act considering all the circumstances.

iii. That the permanent suspension or termination is in the best interests of the child.

Petitions filed by a biological parent to evade child support obligations are *prima facie* not in the child's best interests.

C. The parent who is relinquishing their parental rights will sign an acknowledgment under oath that he or she understands that she is giving up all legal rights to the child; that all questions were answered; and that the parent is freely consenting to relinquishing all legal rights and duties to the child.

D. If the Tribal Court determines that permanent suspension or termination of parental rights is in the child's best interests, the Court will issue a written order terminating the parent-child relationship. This is a final order for purposes of appeal.

E. After the Tribal Court enters the relinquishment order, the former parent(s) are not entitled to notice of legal proceeding concerning the child, including adoption. The former parents have no right to object to the adoption or placement of the child.

F. A biological parent whose rights have been terminated or suspended may not inherit from the child.

G. The rights of one parent may be terminated or permanently suspended without affecting the rights of the other parent.

(h) Involuntary Permanent Suspension or Termination of Parental Rights.

1. General Considerations.

A. The Pueblo of Pojoaque—through Family and Children's Services—may act on behalf of the child to request, in writing, that the Tribal Court terminate or permanently suspend the parental rights of a child.

B. A termination of parental rights proceeding may go forward only after active efforts as described in PPLOC § L-13 have failed to reunite the family. In rare cases, such as when abuse, neglect, or abandonment is so severe that reunification will never be in the child's best interests, the Pueblo may allege that any efforts toward reunification would be futile.

C. Termination or Permanent Suspension of Parental Rights will generally not be granted unless an adoptive placement has been identified, unless there are special circumstances that must be detailed in the Petition for Termination.

D. In deciding whether the conduct or condition of the parent is unlikely to change within a reasonable time, the Court must find that continuation of the parent-child relationship will, more likely than not, result in continued abuse or neglect, or that the conduct or condition of the parent renders the parent or parents unfit, unable or unwilling to give the child adequate parental care.

2. Grounds for Involuntary Suspension or Termination of Parental Rights.

A. Abandonment of the Child. When either parent has left the child without provisions or support for more than thirty (30) consecutive days.

i. The custodial parent or Family and Children's Services has given written notice to the Tribal Court of the abandonment, and

ii. After a Court hearing, the parent who has abandoned the child has not followed a court order and case plan that outlines the steps to remedy the abandonment.

B. When child has been placed in the care of others, including care by other relatives, either by a court order or otherwise, and the following conditions exist:

i. The child has lived in the home of others for an extended period of time;

ii. The parent-child relationship has disintegrated;

- iii. A psychological parent-child relationship has developed between the substitute family and the child;
- iv. If the court deems the child of sufficient capacity to express a preference, the child no longer prefers to live with the natural parent;
- v. The substitute family desires to adopt the child; and
- vi. A presumption of abandonment created by the conditions described in Subparagraphs (a) through (e) of this paragraph has not been rebutted

C. Severe neglect. Neglect is considered severe when a court action has adjudicated that the child was abused or neglected and the conditions and causes of the abuse or neglect are unlikely to change.

D. Parental abuse. When a parent has caused great bodily harm to the child or their siblings, or the other parent has encouraged or neglected evidence of incest between the siblings, or attempted to sexually abuse the child or torture the child.

3. Initiating Involuntary Termination or Suspension of Parental Rights.

A. Petition.

- i. A Petition to Permanently Suspend or Terminate Parental Rights may be filed by Family and Children's Services or a representative of the Pueblo.
- ii. Diligent efforts must be made to serve the Petition to Terminate and Notice of Hearing on all interested parties, particularly the parents.

B. Contents of Petition.

- i. The name, birthday, gender and residence of the child;

- ii. The names, addresses, phone numbers, and any other contact information (email address) of the parents;
- iii. The names, addresses, phone numbers, and any other contact information (email address) of the child's guardian, custodian, or caretaker;
- iv. The specific grounds for involuntary suspension or termination of parental rights, supported by medical, psychiatric, child protection worker, family member and/or psychological reports or testimony;
- v. A statement detailing how the suspension or termination will lead to a permanent relationship for the child in adoption, customary adoption, or permanent guardianship that is in accordance with tribal preferences, and how connections will be maintained and enhanced with extended family and with the Pueblo of Pojoaque's culture and tradition;

C. The Pueblo prefers permanent suspension of parental rights, but if termination of parental rights is sought, a detailed statement must be submitted to the Children's Court regarding why it is in the best interests of the child and the tribe, that the parental rights be terminated as opposed to suspended, and why the suspension of parental rights is not a better option for the child and the tribe.

D. Notice. The agency filing a Petition is responsible for providing a copy of the Petition and Notice of Hearing to necessary parties pursuant to PPLOC § G-11 (Service and Filing). Tribal Court may assist with service if contact information is provided to the Court. Proof of service for each necessary party will be made part of the Court file. The following parties are to be notified:

- i. The petitioner;
- ii. The child's tribe, if other than the Pueblo of Pojoaque;

iii. The child's biological parent(s);

iv. Foster parents, guardian(s), extended family members; caretaker, if any; and

v. Appropriate tribal and other agencies that may have an interest in the proceedings or may be of assistance to the Court.

E. Notice by publication. If the agency filing the Petition is unable to locate the parents, and with permission of the Court, service may be achieved by publication per §G-11(c)(3) (weekly publication in local paper for four weeks). An affidavit of publication must be filed.

4. Procedure for Permanent Suspension or Termination Hearing.

A. A hearing on a Petition for Permanent Suspension or Termination of Parental Rights will be held no sooner than 30 days and no later than 60 days of the filing date unless all parties agree otherwise.

B. If the parent(s) are not present, Court will ask on the record whether the parent received proper notice if there is no sworn return of service showing receipt by the parent of the Petition and Notice of Hearing. A sworn return of service by Tribal Court, Police, Family and Children's Services or another Tribal Agency that actual notice of hearing was provided to the biological parent(s) is prima facie evidence that notice was provided.

C. Necessary parties: biological parents, petitioner, respondent, family members, Family and Children's Services, caregiver or foster parents, guardians or other individuals the Court deems necessary may be present at the hearing.

D. The Court will address the parents and ensure they know and understand:

- i. Their rights under §L-5(h);
- ii. The nature of the proceedings;
- iii. The potential consequences, including permanent suspension or termination of parental rights.

E. The Court must find that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite active efforts made by Family and Children's Services, or that any such efforts would be futile due to the severity or nature of the abuse, neglect, or abandonment.

F. The Court will consider:

- i. Mental illness of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;
- ii. A history of severe violent behavior by the parent;
- iii. Severe substance use disorder of the parent that endangers the child and active efforts by the Pueblo have been unable to rehabilitate the parent;

G. Findings.

- i. The Court must find that active efforts by the Pueblo were unable to rehabilitate the parent that or that any such efforts would be futile due to the severity of the case.
- ii. That all services available to the Pueblo have been made available to the parent and the parent's behavior is not conducive to treatment or rehabilitation.

iii. That the conduct or condition of the parent that makes him or her unfit is unlikely to change in a reasonable time and continuation of the parent-child relationship will, more likely than not, result in continued abuse or neglect, or that because of the seriousness of the conduct or conditions, the parent(s) are unfit, unable, or unwilling to ensure the safety of the child.

(i) Final Order Permanently Suspending or Terminating Parental Rights. An Order Permanently Suspending or Terminating Parental Rights under this section will include finding of fact and conclusions of law, including the basis for the order. The Court may issue a decision on the record immediately following the hearing. A written final order must be entered within twenty-eight (28) days after the final hearing.

(j) The respondent parent is entitled to Appellate Review of the order and must file their notice of appeal within ten (10) calendar days pursuant to §§B-4(f)(Civil Appeals) and B-5 (Right of Appeal).

(k) The Tribal Secretary will be sent a copy of a Final Order at the conclusion of any proceeding involving the Permanent Suspension or Termination of Parental Rights.

(l) Child's Continued Rights to Benefits. An Order Terminating the Parent-Child Relationship will not disqualify a child from any benefit due the child from any third person, agencies, states or the United States. A termination order will not prevent a child from inheriting property or interest in the same manner as any other biological child from the biological parent. Nor will any action under this code be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized Indian tribe.

(m) Effect of Termination of Parent-Child Relationship.

1. Upon the termination of parental rights, all rights, powers, privileges, immunities, duties and obligations, including any rights to custody, control, visitation or support existing between the child and the parent will be severed and terminated unless otherwise provided in the termination order. The parent will have no standing to appear at any future legal

proceeding concerning the child. Any support obligation existing prior to the effective date of the order terminating parental rights will be severed or terminated.

2. The rights of one parent may be terminated without affecting the rights of the other parent. A biological parent may not, however, inherit from a biological child after termination.

L-21 Adoption

(a) Adoption creates a legal relationship between a parent and adopted child that is identical to that of a parent and biological child.

(b) All adoption proceedings are strictly confidential.

1. Unless the adoptive parent agrees to be contacted or agrees to the release of their identity to any biological parent, Tribal Court, Family and Children's Services, and any other party shall maintain confidentiality regarding the names of the parties, unless the information is already otherwise known.
2. Unless any biological parent agrees to be contacted or agrees to the release of their identity to the adoptive parent, Tribal Court, Family and Children's Services, and any other party shall maintain confidentiality regarding the names of the parties, unless the information is already otherwise known.
3. After the petition is filed and prior to the entry of the decree, the records in adoption proceedings shall be open to inspection only by the petitioner or their attorney, Family and Children's Services, any attorney appointed as a guardian ad litem or attorney for the adoptee, any attorney retained by the adoptee, or other persons upon order of Children's Court for good cause shown.
4. All records, whether on file with Tribal Court, Family and Children's Services, an attorney or other provider of professional services in connection with an adoption, are confidential and may be disclosed only pursuant to Court Order.

5. All hearings in adoption proceedings shall be confidential and shall be held in closed court without admittance of any person other than parties, including Family and Children's Services and any necessary professional.
 6. A person who intentionally and unlawfully releases any information or records closed to the public or releases or makes other unlawful use of records is may be found in contempt of court and be fined up to \$5,000.
- (c) Any caretaker may petition, in writing, Children's Court for adoption of a child when that child has no living parent or parental rights of the biological parent have been terminated or suspended.
- (d) A child may go through the adoption proceeding when parental rights have been permanently suspended, rather than terminated. Customary adoption is the process of creating new parents without terminating the parental rights of biological parents. Adoption will permanently suspend a parent's traditional and legal right to a relationship with the child if Children's Court determines that it is in the child's best interests.
- (e) The Pueblo of Pojoaque represents the caretaker when there is a written petition for adoption of a child.
1. Family and Children's Services will be served with any adoption petitions and will participate in any adoption hearings.
 2. Family and Children's Services may provide or request additional information from any adoptive parent or other person involved.
- (f) All prospective adoptive parent(s) will complete a Pueblo of Pojoaque program for adoptive parent(s). The required program shall be administered through the Pueblo of Pojoaque Family and Children's Services Department. The required program will not be longer than six (6) months, unless the Court finds that there is good cause for extending the length of the program. If there is good cause, the program may recommend adoption to Children's Court before six (6) months.

(g) Before any adoption is finalized, a pre-placement study will be completed by Family and Children's Services and will include:

1. An interview with each adoptive parent;
2. A home visit, including interviews with any other individuals residing at the home, including children;
3. An interview with the adoptee, if age appropriate;
4. A Criminal records check of each adoptive parent and adult residents of the home;
5. A statement from the adoptive parents of their readiness and ability to shelter, feed, care for, clothe, and educate the adoptee;
6. Verification of the adoptive parent's financial resources;

(h) Hearing for Decree of Adoption.

1. When all preliminary studies and counseling are complete, the Court will conduct a hearing on the petition for adoption. The petitioner and the adoptee shall attend the hearing unless the Court waives a party's appearance. Appearances may be telephonic or virtual.
2. Family and Children's Services will work with the adoptive parent to ensure that all necessary paperwork is filed and all necessary parties receive notice of the hearings. Notice shall not be served on alleged parents or parents whose rights have been terminated or suspended. Service of the petition and notice of hearing is required to:
 - A. Family and Children's Services;
 - B. Any acknowledged parent whose rights have not been terminated or suspended;
 - C. The legal guardian or custodian of the adoptee;
 - D. Any spouse of the adoptive parent;
 - E. Any parent of a deceased biological parent of the adoptee;
 - F. Anyone known to have court-ordered custody of or visitation with the adoptee;
 - G. Anyone in whose home the child has resided for at least two month of the six months before the hearing; and

H. Any other person designated by the Court.

3. Any person may respond to a petition for adoption by filing a response with Children's Court within 20 days after the petition is filed.

4. The court shall grant a decree of adoption if it finds that the petitioner has proved by clear and convincing evidence that:

A. Pojoaque Children's Court has jurisdiction to enter a decree of adoption affecting the adoptee;

B. The adoptee has been placed with the adoptive parent for a period of ninety days if the adoptee is under the age of one year at the time of placement or for a period of one hundred eighty days if the adoptee is one year of age or older at the time of placement, unless, for good cause shown, the requirement is waived by Children's Court.

C. All necessary consents, relinquishments, terminations or suspension of parental rights, or waivers have been obtained.

D. Service of the petition for adoption has been made or waived to all persons entitled to notice.

E. The petitioner is a suitable adoptive parent and the best interests of the adoptee are served by the adoption.

F. If visitation between the biological family and the adoptee is contemplated, that the visitation is in the child's best interests.

G. The results of the criminal records check have been received and considered.

(i) When the decree of adoption is issued, the adoptive parent(s) becomes the legal parent(s) of the child. The biological parent(s) will have no legal obligation to give any emotional or financial support to the child.

(j) Stepparent adoption.

1. A person may adopt her or her spouse's children under certain circumstances:

A. The adoptee must have lived with the stepparent for at least one year following marriage to the custodial parent.

- B. The non-custodial parent must have had their parental rights terminated or the must consent to voluntarily relinquish their parental rights in a court of competent jurisdiction.
- C. If the child is 10 years of age or older, he or she will receive counseling about the adoption;
- D. If age-appropriate or if the child is 10 years of age or older, the Children's Court judge will meet with the child before adoption and may require the child to appear at any adoption hearings;
- E. If the adoptee is 14 years of age or older, he or she must consent to any name changes;
 - 2. A petition for stepparent adoption will be completed and filed with the Children's Court with all pertinent information.
 - 3. Any petition for stepparent adoption, notice of hearing for the adoption proceeding will be served by the Petitioner on the following people, unless notice has been waived previously in writing. Service may be by publication with permission of the Court when a person's whereabouts are unknown.
 - A. Any acknowledged mother or father of the adoptee;
 - B. The surviving parent of a deceased parent of the adoptee;
 - C. Any person known to the Petitioner having custody of, or visitation with the child under a court order;
 - D. Notice does not have to be served on any alleged or putative father or any person whose parental rights have been legally relinquished or terminated (court order).

(k) All decrees of adoption are final and not appealable. Children's Court may reconsider adoption decrees only upon a finding of fraud.

(l) Within 30 days after an adoption decree is issued, the Petitioner will prepare an application for a birth certificate in the new name of the adoptee and have it certified by the Tribal Court Clerk. The birth certificate will be in the new name of the adoptee showing the Petitioner(s) as the adoptee's parent(s). Petitioner will then forward the application to New Mexico Vital Records or the vital statistics office of the state where the child was born.

(m) Access to Records after Adoption. After the final order of adoption is entered, the court file containing documents related to the adoption will be kept strictly confidential. Any person or agency seeking to look at the court file must obtain an order from Tribal Court.

1. At any time, a biological parent may file with Tribal Court or Family and Children's Services a consent or refusal to open the file for inspection by the adoptee or be contacted about the adoption.
2. At any time, an adoptee who is eighteen years of age or older may file with the court, a placing agency or the department a consent or refusal to open the adoptee's adoption file to the adoptee's biological parent(s) or be contacted about the adoption.

L-22 School Attendance Policy

(a) The Pueblo of Pojoaque Social Services Department shall petition the Pueblo of Pojoaque Juvenile Court to declare a child who does not attend school as "a neglected child" or "a child in need of supervision."

(b) The parent or parents of the child shall attend all court hearings and the Juvenile Court shall order those parent or parents to comply with any of the court's conditions that will stop the absenteeism.

(c) The Juvenile Court decisions in these matters shall be final and not appealable to the Tribal Council.

L-23 Policy and Procedures of Child Protection Team

(a) Policy for Child Protective Services. The Pueblo recognizes that children are one of its most valuable resources. The Pueblo hereby declares that it is the policy of the Pueblo to protect the best interest of its children and to promote the stability and security of the Pueblo through the Child Protection Team ("CPT or Team").

(b) Mission Statement and Purpose. The purpose of Indian child protective services is to promote the stability and security of Indian Tribes and families, and to prevent abuse, neglect, delinquency and exploitation of children by reaching out with services to stabilize family life and to preserve the family unit.

(c) Goals.

1. To implement tribal placement standards established by Pueblo of Pojoaque Tribal Council for the placement of Pueblo of Pojoaque children from their families in which abuse and/or neglect occur.

2. To provide recommendations for the placement of abused and/or neglected tribal children in foster or adoptive homes which reflect the unique values of Pueblo culture.
3. To make recommendations for the provision of short and long-term child protective services for any case of tribal delinquency, child abuse, child neglect, educational neglect or child in need of supervision.

(d) Responsibilities & Duties of the CPT. The CPT shall serve as an advisory board to the Pueblo on child custody and placement matters. The CPT shall review child custody placements involving Pueblo children, as requested by the Social Services Department, and make recommendations regarding placements of Pueblo children. The CPT may make recommendations concerning tribal policies and practices with respect to Pueblo children to the Social Services Department and to the Pueblo of Pojoaque Tribal Council. The CPT shall undertake such additional duties and responsibilities as requested by the Tribal Council.

(e) Members and Leadership of the CPT. Membership shall consist of seven (7) voting members and three (3) nonvoting members appointed by Pueblo of Pojoaque Tribal Council to serve such terms at the pleasure of the Tribal Council until removed or replaced. Members shall be recruited from groups, professions and tribal representatives with special interest or expertise in child welfare and child abuse and neglect. Voting Members may include but not limited to members representative of Tribal Officials, Tribal Council, Tribal Education Department, Tribal Law Enforcement, and Tribal Social Services Department. Nonvoting Members may include but not limited to members representative of Boys and Girls Club, Child Development Center, Youth Program, and where necessary, an attorney or other legal representative. The designated head of the CPT shall be a Chairperson.

(f) Confidentiality. All information and records acquired by the CPT in the exercise of its duties are confidential and may only be disclosed as necessary to carry out its lawful purposes. CPT members shall be advised of the confidential nature of the position and are required to sign confidentiality agreements on a yearly basis. A breach of confidentiality is grounds for removal from the CPT or work-related disciplinary actions if the member is an employee of the Pueblo of Pojoaque.

(g) Conflict of Interest. Conflicts of interest are determined on a case-by-case basis by the Chairperson. If a case involves a relative to one of the CPT members, the member may withdraw their participation. If the member decides not to withdraw participation, (s)he may remain involved in the case as long as their involvement does not interfere with the proper handling of the case as determined at the discretion of the Chairperson.

L-24 Foster Care Standards

(a) Purpose. The Pueblo of Pojoaque Social Services Department through Tribal Council Resolution 2014-056 established these foster care standards to implement a foster care system for children placed in protective custody. By enacting the standards set forth in this document, the Pueblo of Pojoaque does not waive sovereign immunity. Nothing contained in this

document shall be construed or interpreted in any way as a waiver, express or implied, of the Pueblo's sovereign immunity.

The Department established these foster care policies and procedures in order to set forth basic standards for safe guarding, protecting, and promoting the health, safety, and welfare of children placed in foster homes. These procedures establish requirements for the licensing of Foster Parents and their homes. These standards assure the placement of a child in a foster care setting that both protects the best interests of the child while promoting the continued unity of the family, extended family, and the Pueblo.

(b) Policy.

1. Safety and Cultural Competency. The Pueblo of Pojoaque believes strongly in the safety and well-being of children and their families. The Pueblo believes that children are the key to its future and survival of the Pueblo's culture and customs. Under certain circumstances it may become necessary to place a child (ren) in protective custody, resulting in out of home placement, in order to ensure safety. The Department will initially seek placement of the child (ren) within his or her extended family or within a tribally sanctioned family setting within the Pueblo. Such placement will constitute foster family care. While the child is in out of home placement, every effort will be made by the Department to work toward reunification of the child with his or her biological family; if it is in the best interest of the child.

(c) Definitions.

1. "Change in the Household" shall mean a specific change that have occurred which either increases or decreases the number of members in the household.
2. "CPT" means Pueblo of Pojoaque Child Protection Team.
3. "Department" refers to the Pueblo of Pojoaque Social Services Department.
4. "Emergency Foster Home" means a tribally-licensed private family home that agrees to be available 24 hours a day, seven days a week for children who are in need of emergency substitute care. Placement in these homes should not exceed 30 days.
5. "Extended Family" refers to those family members who are not considered immediate family, but referred to as family by blood relation, to include maternal/paternal grandparents, aunts, uncles, cousins, etc.
6. "Foster Care" means a child who is receiving protective services from law enforcement and social services, which has been placed in a tribal licensed foster family home.
7. "Foster Home Care" means a service by which temporary, planned substitute care is provided to a child in a private, tribally licensed home when his/her own home is determined to be contrary to the safety of the child.

8. "Foster Parent" or "Foster Care Parent" includes any person who acts as parent and guardian for a child in place of the child's natural parents but without legally adopting the child (ren).
9. "Good Character and Habits" refers to an individual who displays responsible and mature behaviors in all aspects of self and community.
10. "License" means a document issued by the Pueblo of Pojoaque that officially sanctions a tribal member's eligibility to maintain a foster home for children.
11. "Major Crime" refers to a serious crime such as murder, rape, armed robbery, etc. that are looked upon as felonies in a Court of Law.
12. "Permanency Planning Activities" means specific activities that affect biological parents, Foster Parents and foster child, which address the problem and implement goals towards reunification.
13. "Permanent Change of Residence" occurs when a residence has changed to another location with full knowledge that the residence is to be permanent.
14. "Regular Foster Home" means a tribally-licensed private family home that agrees to provide on-going temporary foster care for a child for a period up to one year.
15. "Pueblo" means the Pueblo of Pojoaque.
16. "Tribal Court" means the Pueblo of Pojoaque Tribal Court.
17. "Tribally Licensed" means an individual or individuals holding a valid license as a foster family issued by the Pueblo of Pojoaque.

(d) Licensure Assessment. The Department is the designated agency responsible for licensing of foster home providers for the Pueblo based on assessments or home studies of the applicant, the applicant's family, and the applicant's home environment to determine whether the home would be safe and appropriate for foster children. In order for and Application to be considered complete, the Applicant must provide:

1. Application. The initial evaluation of Foster Parent(s) shall include the following information contained within an Application:
 - A. Background information
 - B. Health information
 - C. Appropriate BIA/Tribal/State Police background check

- D. Three Character References (non-relatives)
- E. Pass a Drug Test
- 2. Foster Parent Agreement
- 3. Classification of Home:
 - A. Emergency
 - B. Regular
 - C. Kinship

(e) Determination of License.

1. The Department shall evaluate the applicant based upon personal interviews, screenings, criminal background check and home visits. Based on the evaluation, tribal social services shall determine whether to issue a foster care license.
2. The Department shall re-evaluate the foster home provider for continued licensure on an annual basis. Re-evaluation shall consist of home visits to review licensure compliance, and if appropriate, a renewal of licensure will be issued.
3. Any license issued by the Department shall apply only to the residence where the foster home provider is living at the time an application for license is made.
4. Any Foster Parent arrested of any criminal offense while being licensed as a Foster Parent, must complete a drug/alcohol evaluation and comply with the recommendations of the evaluation. The Foster Parent must provide the Department with a copy of the criminal complaint and the order of disposition on the Foster Parent's criminal case. Upon notice of the criminal offense, the Department will conduct an assessment to determine the safety and impact of the arrest and/or criminal offense on the foster child. If a determination is made by the Department that the foster child will no longer be safe in the home, the child(ren) will be removed immediately and the foster licensure will be terminated. If the offense is minor and does not involve drugs or violence, then the Department, after completing the foster child safety assessment, may determine with the recommendation of the CPT to allow the foster child(ren) to continue to reside at the foster home with close supervision by social services. Upon conviction of a criminal offense, the Foster Parent must comply with all conditions set by the Court. A second criminal arrest will result in immediate termination of foster care licensure and immediate removal of the foster child(ren) from the home.

(f) Assessment.

1. The Department shall examine homes of tribal members and other applicants who reside within the exterior boundaries of the Pueblo for either approval or renewal of licensure of the home.
2. The Department shall submit licensing recommendations to the Governor for approval within thirty (30) days of the initial assessment, upon submission of licensure; the Governor shall have five (5) business days to review and approve/disapprove the recommendations.
3. No foster home should have more than four foster children placements, except in a case involving a sibling group or under exceptional circumstances.
4. A permanent change of residence of a foster family outside of the Pueblo's exterior boundaries will automatically terminate the foster care license.
5. Foster Parents are required to notify the department whenever a change of residence is contemplated.
6. Foster Parents must notify the Department whenever a change in the household occurs. For example, if one of the Foster Parents is convicted or is accused of a major crime or one of the parent's moves out of the home, or any other person moves into the residence, the Department MUST be notified within 72 hours.
7. The Department may inspect a foster care dwelling at any reasonable time, or at any time where there is a specific concern regarding licensure compliance or safety of a child. The Department will inspect a home once each month unless otherwise ordered by the Tribal Court.
8. The Department's staff will not be licensed as Foster Parents due to a conflict of interest. They may, however, become licensed through another agency.

(g) Foster Home Requirements.

1. The foster home shall be constructed, arranged, and maintained so as to provide for the health and safety of all occupants.
2. Heating, ventilation, and lighting shall be sufficient to provide a comfortable atmosphere. Furnishing and housekeeping shall be adequate to protect the health and comfort of the foster child.
3. Comfortable beds shall be provided for all members of the family.
4. Sleeping rooms must provide adequate opportunities for rest.
5. All sleeping rooms must have a window of a type that may be opened readily and may be used for evacuation in case of fire.

6. A working smoke detector must be in place and in working order. A fire escape plan to the exterior should be in place and explained at the time of the home study.

7. Play space shall be available and free from hazards, which might be dangerous to the life or health of the child.

(h) The Foster Family.

1. All members of the household must be in good physical, mental health and free of physical/mental illnesses that may adversely affect the health of the child(ren) or the quality and manner of his/her care.

2. Members of the foster family shall provide letters of reference and exhibit good habits, be responsible, and be viewed by most community members as being of good moral character.

3. Foster home providers must be able to pass a criminal background investigation.

4. Members of the foster family must never have been convicted of a sex/child abuse offense or any violent crime and may not have any felony convictions within the last three (3) years from the date of application.

5. The Department is authorized to make a complete investigation to determine the adequacy of the foster care home if abuse or neglect is reported on the Foster Parent. It is the responsibility of the Department (with assistance from law enforcement, if necessary, to remove the child from the foster home until the investigation is complete.

6. The person in charge of the foster home shall be of suitable temperament to care for the children, shall understand the special needs of the child and shall be capable of raising the child in a sound cultural supportive environment that promotes the child's development that enables the child to get along within the tribal community and the surrounding non-Indian community as well. Foster Parents may introduce the foster child to Christianity if they are practicing Christians. In such cases, they should inform the Department so this activity is specifically identified in the child's care plan.

7. Foster Parents must be at least twenty-five years of age. The exception will be when a member of the foster child's family applies to care for its sibling and is between the age of 18 and 25 years of age. The adult sibling must demonstrate ability to provide a home and safe environment for the foster child and meet the same criteria as all other Foster Parent applicants. All Foster Parent applicants must be assessed by the Department for physical and emotional stamina to deal with the care and supervision of a foster child.

8. The Foster Parents must be willing, when necessary, to cooperate with the biological parents and must be willing to help the family towards reunification as determined by the Department in conjunction with the Tribal Court.

9. A foster home does not require both a male and female Foster Parents. The Department, at their discretion, will certify a foster home with a single Foster Parent provided that Foster Parent displays the outstanding qualities necessary to raise a foster child.

10. The Foster Parent(s) will be willing to accept the goals and policies of the foster care program and be able to effectively follow through with all plans determined to be in the child's best interest.

11. The Foster Parent(s) will partake in permanency planning activities that involves the foster child.

12. The Foster Parent(s) will be required to complete a two and a half day training on foster care responsibilities, parenting for special needs, child development and family services and education classes and services available for Foster Parents. Additionally, Foster Parents must complete a continuing education class of at least eight hours, as identified by the Department that will be required to maintain licensure.

13. The Foster Parent(s) shall treat the child as a member of the family. Each child is entitled to the same treatment as members of the family.

14. The Foster Parent(s) must have an income sufficient to care for the child placed in their home. Only in exceptional situations shall a family be licensed when the foster care payment is the primary source of income for the family.

A. Payment for Foster Parents is \$500.00 monthly

B. In the event that a foster child is with a Foster Parent longer than six (6) months the Foster Parent may request up to \$500.00 for bedding, clothing and any extra necessities that the foster child may need.

C. If a Foster Parent is in need of assistance of any monetary help with medical bills, or other emergency situations, assistance will be provided only if approved by Director of the Department or any Pueblo of Pojoaque Tribal Official.

D. Foster children who receive SSI benefits will have the monthly foster care payment paid by the Pueblo reduced to the amount essential to meet the \$500 monthly foster care payment.

15. For school age children, the Foster Parent must arrange to provide for childcare for those periods of time when both Foster Parents are employed. Infants and young children shall never be left alone without competent supervision. "School age" refers to children 6 to 12 years of age and 5 year olds who are in kindergarten.

16. The Foster Parent(s) will not release information pertaining to the foster child in public media (Facebook, etc.). The Foster Parents will release information only to the school in

which the child is enrolled; to medical care providers; or other service providers included in the child's care plan. The Department must approve all other releases of information. Release of unauthorized foster child information is a violation of the child's confidentiality.

The standards the Department will use in judging the above criteria shall be those of the Pueblo.

17. A Foster Parent must comply with the reunification plan developed by the Department. The only visitation with biological parents will be times established by the Department. The Foster Parent must report to the Department when biological parents attempt to visit the child outside of the times specified in the reunification plan.

18. Foster Parents are mandated to notify the Departments when they are leaving foster children with other relatives for an extended period of time. The Foster Parents must provide Department with the name of the temporary care taker, care taker's home address, and phone number. An emergency plan for medical care must be arranged with the temporary care taker in the absence of the Foster Parent.

(i) The Foster Child.

1. The daily routine of a foster child shall be such as to promote education, good health, rest, and play habits.

2. The responsibility for the child's health care shall rest with the Foster Parent(s).

A. In case of sickness or accident to a child, it is mandated that the Department be contacted immediately. Foster Parents will be assisted in obtaining a Medicaid card for the foster child, as well as provide the Indian Health Service (IHS) card number for medical services through IHS.

B. Foster Care Parent(s) may consent to surgery or other treatment in a medical emergency, but are mandated to contact the Department as soon as the medical provider determines surgery is necessary.

3. The Foster Care Parent(s) or their family members shall not subject the child(ren) to verbal abuse, derogatory remarks about himself, his natural parents or relatives and/or threats to expel the child from the foster home.

A. No child shall be deprived of meals, mail or family visits (when authorized by the Department or the Tribal Court) as a method of discipline.

4. Discipline shall be administered by the Foster Parents in such a way as to help the child develop self-control and learn to assume responsibility for his/her actions and shall be administered with understanding and reason.

5. No family member of the Foster Parents shall discipline the child.

6. Task and work assignments shall be appropriate to the age and abilities of the child and should not interfere with school, health and necessary recreation. All Foster Parents' family members should work equally in the home.

(j) Physical Characteristics of Foster Home.

1. The Department shall inspect the entire premises and property of the Foster Parent to ensure licensing requirements are met. The Department will write a report on the inspection for inclusion in the Foster Parents' applicant file.

2. The house and premises must be clean and free from hazards that jeopardize health and safety of the foster child and family members. The Department will conduct health inspections during monthly home visits.

3. The home must comply with any tribal fire inspection codes and tribal ordinances. Any physical changes to the home will need to be re-inspected to insure that no deficiencies exist. Any deficiency identified by the Department will be corrected within a certain period of time set by the Department. The Foster Parent will receive a letter providing them with a description of the deficiency and timeline for making the corrections. Once the corrections are made, the Department will conduct an inspection to ensure compliance of the home for licensure.

4. Each foster home must be equipped with a smoke alarm/detector and fire extinguisher. This equipment must be checked periodically to show they are in excellent working order.

5. Windows, doors and lights must be in good working condition to show that they can be used in the plan of escape route in case of fire.

(k) Revocation of Foster Care License.

1. The Department may revoke foster care licenses when the licensee has substantially violated any provision of these Standards.

2. The Department shall give the licensee written notice within one (1) business day from the time of violation. The representative will provide written documentation as to the grounds for revocation of the foster care license, which will be hand deliver the notice to that foster home.

(l) Administrative Hearing.

1. Any licensed Foster Parent(s) whose license has been revoked has the right to request an administrative hearing by the Governor or Tribal Court.

2. A request for such a hearing must be filed within ten (10) business days of receipt of the written notice of revocation of license, to the Governor.

3. The Foster Parent(s), Governor, the Department, Law Enforcement, (if applicable), and any other parties directly involved in the matter pertaining to the violation may attend the hearing.
4. A final determination of revocation following a hearing will be based on the decision of the Governor.
5. During the time of violation up until the final outcome of the hearing the foster child will be placed in an emergency foster home.
6. A determination by the Governor of no violation of licensure will result in the return of the child to the Foster Parent with a plan to be developed by the Department for weekly monitoring until which time the child is reunified with the biological parents.

L-25 Forgiveness of Foster Care Debt

- (a) Outstanding foster care debt to the Pueblo pursuant to Subpart I-13 may be forgiven through Tribal Court Order.
- (b) The parent(s) of children placed in foster care with outstanding debt of Family and Children's Services may petition the Court for debt forgiveness any time after family reunification. The parent(s) of children placed in permanent guardianship or who have relinquished or had their parental rights terminated by tribal Court order may petition the Court at any time for foster care debt forgiveness.
- (c) Tribal Court will schedule a hearing on the issue of foster care debt forgiveness. The party requesting debt forgiveness may testify, bring witnesses, or produce other evidence to the Court to support the petition.
- (d) Family and Children's Services will provide a written recommendation to the Court regarding whether foster care debt should be forgiven, or how much of the debt should be forgiven.
- (e) In deciding whether outstanding foster care debt should be forgiven, Tribal Court will consider any relevant information including but not limited to, how well the parent(s) followed their case plan or court orders; the stability and/or length of time since reunification, permanent placement with others, or whether any of the parent(s) children aged out of foster care or were placed permanently with others; and the recommendation from Family and Children's Services.
- (f) Based on the relevant information produced on the record, Tribal Court may order that some, all, or none of any outstanding foster care debt be forgiven. Tribal Court will make written findings to support its decision.

(g) Any decision on whether any outstanding foster care debt is forgiven is solely in the discretion of Tribal Court.

(h) The Tribal Court decision may be appealed pursuant to the Pueblo of Pojoaque Law and Order Code, Subpart J-8.

L-26 Curfew for Minors

(a) Curfew for Parks & Recreation Areas. No person under eighteen (18) years of age, other than duly authorized employees or officers of the Pueblo, is permitted to be in or on any park or recreational area within the exterior boundaries of Pojoaque Pueblo between the hours of 9 PM and 6AM of any day from June 1 through August 31 and between the hours of 7PM and 6AM of any day from September 1 through May 31, except when organized activities are scheduled by approval of the Pueblo of Pojoaque Tribal Council and/or the Governor.

(b) No parent or legal guardian of a child under the age of eighteen (18) years may knowingly allow such child to be upon the streets or other public places within the exterior boundaries of Pueblo of Pojoaque between the hours of 9PM and 6AM from June 1 through August 31 and between the hours of 7PM and 6AM from September 1 through May 31, hereinafter called "Curfew Hours".

(c) No child under the age of eighteen (18) years is permitted to be upon the streets and other public places within the exterior boundaries of the Pueblo of Pojoaque during Curfew Hours, except under the following conditions:

1. When accompanied by a parent or legal guardian or by some adult to whose care the child has been entrusted by such parent or guardian;
2. When attending a social, patriotic, religious, education, athletic, civic or other similar activity sponsored by a recognized school, church, fraternal or community organization, but in such event, not later than 9PM from June 1 through August 31 or 7 PM from September 1 through May 31 or forty-five (45) minutes after such events terminate.

(d) Any parent or legal guardian who violates or allows a child under his or her custody or control to violate this ordinance may be assessed a civil penalty up to ten dollars (\$10) for the first violation, and twenty dollars (\$20) for the second violation. Any subsequent violations will be assessed a civil penalty of fifty dollars (\$50) and family counseling will be mandatory.

NOVEMBER 3, 2022

Q- PUEBLO OF POJOAQUE SECURED TRANSACTIONS CODE

PART 1 – GENERAL PROVISIONS

§ 9-101. Short Title. This Code may be cited as the Pueblo of Pojoaque Secured Transactions Code.

§ 9-102. Sovereign Immunity. The sovereign immunity of neither the Pueblo nor of any of its agencies or instrumentalities is waived with respect to any provision of any transaction subject to this Code, absent a recorded, properly ratified, express waiver of sovereign immunity.

§ 9-103. Purpose. This Code must be liberally construed and applied to promote its underlying purposes and policies, which are the promotion of economic development and the continued expansion of commercial practices involving the Pueblo.

§ 9-104. No Application To Property Not Alienable. This Code does not apply to any property interest that is subject to federal restrictions regarding sale, transfer, or encumbrance.

§ 9-105. Reserved.

§ 9-106. General Definitions.

(a) Definitions. In this Code:

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

(2) "Account", except as used in "account for":

(A) means a right to payment of a monetary obligation, whether or not earned by performance:

(i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

(ii) for services rendered or to be rendered;

(iii) for a policy of insurance issued or to be issued;

(iv) for a secondary obligation incurred or to be incurred;

(v) for energy provided or to be provided;

(vi) for the use or hire of a vessel under a charter or other contract;

(vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or

(viii) as winnings in a lottery or other game of chance operated or sponsored by a tribe, governmental unit of a tribe, a person licensed or authorized by a tribe or governmental unit of a tribe to operate the game, a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state;

(B) includes health-care-insurance receivables; and

(C) does not include:

(i) rights to payment evidenced by chattel paper or an instrument;

(ii) commercial tort claims;

(iii) deposit accounts;

(iv) securities or investment accounts, including assets held in investment accounts;

- (v) letter-of-credit rights or letters of credit; or
 - (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.
- (3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.
- (4) Reserved.
- (5) “Agreement”, as distinguished from “contract”, means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in the section on those terms (§ 9-114).
- (6) “Agricultural lien” means an interest in farm products:
- (A) which secures payment or performance of an obligation for:
 - (i) goods or services furnished in connection with a debtor’s farming operation; or
 - (ii) rent on real property leased by a debtor in connection with its farming operation;
 - (B) which is created by law in favor of a person that:
 - (i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; or
 - (ii) leased real property to a debtor in connection with the debtor’s farming operation; and
 - (C) whose effectiveness does not depend on the person’s possession of the personal property.
- (7) “As-extracted collateral” means:
- (A) oil, gas, or other minerals that are subject to a security interest that:
 - (i) is created by a debtor having an interest in the minerals before extraction; and
 - (ii) attaches to the minerals as extracted; or
 - (B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.
- (7A) “Bank” means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.
- (8) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under other applicable law may be a buyer in ordinary course of business. “Buyer in ordinary course of business” does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- (9) “Cash proceeds” means money, checks, deposit accounts, or the like.
- (10) “Certificated security” means a security that is represented by a certificate.
- (11) “Certificate of title” means a written certificate issued by a governmental unit of a state

or tribe or other record maintained by a governmental unit of a state or tribe with respect to which a law provides for the security interest in question to be indicated on the certificate or record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(12) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means an obligation secured by the goods or owed under a lease of the goods and includes such an obligation with respect to software used in the goods. The term does not include:

- (A) charters or contracts involving the use or hire of a vessel; or
- (B) records that evidences a right to payment arising out of the use of a credit or charge card, or information contained on or for use with the card.

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

(13) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

- (A) proceeds to which a security interest attaches;
- (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (C) goods that are the subject of a consignment.

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

- (A) the claimant is an organization; or
- (B) the claimant is an individual and the claim:
 - (i) arose in the course of the claimant's business or profession; and
 - (ii) does not include damages arising out of personal injury to or the death of an individual.

(15) Reserved.

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

(17) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

- (A) the merchant:
 - (i) deals in goods of that kind under a name other than the name of the person making delivery;
 - (ii) is not an auctioneer; and
 - (iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is \$3,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

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

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

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

family, or household purposes.

(20) “Consumer transaction” means a transaction in which:

- (A) an individual incurs an obligation primarily for personal, family, or household purposes; and
- (B) a security interest secures the obligation.

(21) “Continuation statement” means an amendment of a financing statement which:

- (A) identifies, by its file number, the initial financing statement to which it relates; and
- (B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(22) “Contract”, as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by this Code as supplemented by any other applicable laws.

(22A) “Control”, with respect to securities, means:

(A) in the case of a certificated security in registered form, means that the certificate is delivered to the secured party and:

- (i) indorsed to the secured party or in blank by an effective indorsement; or
- (ii) registered in the name of the secured party, upon original issue or registration of transfer by the issuer; or

(B) in the case of an uncertificated security, means:

- (i) the security is registered in the name of the secured party, upon original issue or registration of transfer by the issuer; or
- (ii) the issuer has agreed in an authenticated writing among the debtor, the issuer and the secured party, that the issuer will comply with an order originated by the secured party to register the uncertificated security in the name of the secured party without further consent by the debtor.

(22B) “Control,” with respect to an investment account, means that:

- (A) the secured party has become the holder of the investment account;
- (B) the investment intermediary has agreed that it will comply with orders relating to the investment account originated by the secured party without further consent by the holder of the investment account;
- (C) another person has control of the investment account on behalf of the secured party or, having previously acquired control of the investment account, acknowledges that it has control on behalf of the secured party; or
- (D) a security interest has been granted by the holder of the investment account to the holder’s own investment intermediary.

(22C) “Control” of deposit account.

- (A) With respect to a deposit account, a secured party has control of a deposit account if:
 - (i) the secured party is the bank with which the deposit account is maintained;
 - (ii) 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;
 - (iii) the secured party becomes the bank’s customer with respect to the deposit account;
 - (iv) the name on the deposit account is the name of the secured party or indicates that the secured party has a security interest in the deposit account; or
 - (v) another person has control of the deposit account on behalf of the secured party or, having previously acquired control of the deposit account, acknowledges that it has

control on behalf of the secured party.

- (B) A secured party that has satisfied subsection (A) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.
- (C) A secured party has control under subsection (A)(2) even if any duty of the bank to comply with instructions originated by the secured party directing disposition of the funds in the deposit account is subject to any condition or conditions or the timing or occurrence of such condition or conditions (other than further consent by the debtor).
- (D) The naming of the deposit account in the name of the secured party or with an indication that the secured party has a security interest in the deposit account under subsection (A)(4) does not impose upon the bank any duty not expressly agreed to by the bank.

(22D) Control of electronic chattel paper.

- (A) General rule: control of electronic chattel paper. A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.
- (B) Specific facts giving control: safe harbor. A system satisfies subsection (A) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:
 - (i) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
 - (ii) the authoritative copy identifies the secured party as the assignee of the record or records;
 - (iii) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;
 - (iv) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;
 - (v) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
 - (vi) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(23) “Debtor” means:

- (A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor on the debt secured; or
- (B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or
- (C) a consignee.

(23A) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include an investment account or accounts evidenced by an instrument.

(24) “Document” means a record:

- (A) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers; and
- (B) that purports to be issued by or addressed to a bailee and to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass.

The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods.

(24A) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

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

(26) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including wild game or aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

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

(27A) “Filing office” means an office designated in § 9-501 as the place to file a financing statement.

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

(29) “Fixture filing” means the filing of a financing statement covering goods that are, or are to become, fixtures and satisfying the requirements of this Code relating to contents of financing statements. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

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

(31) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(32) “Goods” means all things that are movable when a security interest attaches. The term:

(A) includes:

(i) fixtures;

(ii) standing timber that is to be cut and removed under a conveyance or contract for sale;

(iii) the unborn young of animals;

(iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes;

(v) manufactured homes; and

(vi) a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:

(I) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or

(II) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods; and

(B) does not include:

- (i) a computer program embedded in goods that consist solely of the medium in which the program is embedded; or
 - (ii) accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.
- (33) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.
- (34) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include:
- (A) a security or an investment account;
 - (B) a letter of credit; or
 - (C) a writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.
- (35) “Inventory” means goods, other than farm products, which:
- (A) are leased by a person as lessor;
 - (B) are held by a person for sale or lease or to be furnished under a contract of service;
 - (C) are furnished by a person under a contract of service; or
 - (D) consist of raw materials, work in process, or materials used or consumed in a business.
- (36) “Investment account” means a financial account maintained by an investment intermediary to which securities or commodity contracts are or may be credited by agreement.
- (36A) “Investment intermediary” means a securities or commodity intermediary under applicable law.
- (37) “Lien creditor” means:
- (A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;
 - (B) an assignee for benefit of creditors from the time of assignment;
 - (C) a trustee in bankruptcy from the date of the filing of the petition; or
 - (D) a receiver in equity from the time of appointment.
- (38) “Manufactured home” means a structure meeting the definitional requirements found under 42 U.S.C Section 5402(6), as amended from time to time.
- (39) “Manufactured-home transaction” means a secured transaction:
- (A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
 - (B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.
- (40) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:
- (A) owes payment or other performance of the obligation;
 - (B) has provided property other than the collateral to secure payment or other performance of the obligation; or
 - (C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.
- (41) “Organization” means a person other than an individual.

- (42) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.
- (43) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (44) “Proceeds” means the following property:
- (A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
 - (B) whatever is collected on, or distributed on account of, collateral;
 - (C) rights arising out of collateral;
 - (D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
 - (E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.
- (45) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.
- (45A) “Public-finance transaction” means a secured transaction in connection with which:
- (A) debt securities are issued;
 - (B) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and
 - (C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is, or is a governmental unit of, the Pueblo or a state.
- (45B) “Publicly searchable record” means a record that is available to the public for inspection and that:
- (A) is filed with or issued by the Pueblo, a state, or the United States to form or organize an organization and any record filed with or issued by the Pueblo, a state, or the United States which amends or restates the initial record; or
 - (B) consists of legislation enacted by the Pueblo, a state, or the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the Pueblo, a state, or the United States which amends or restates the name of the organization.
- (46) “Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
- (47) “Purchaser” means a person that takes by purchase.
- (48) “Pursuant to commitment”, with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.
- (49) “Record”, except as used in “for record”, “of record”, “record or legal title”, and “record owner”, means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(49A) “Registered organization” means an organization formed or organized solely under the law of the Pueblo, a single state, or the United States by the filing of a publicly searchable record with, the issuance of a publicly searchable record by, or the enactment of legislation by the Pueblo, the state, or the United States.

(50) “Secondary obligor” means an obligor to the extent that:

- (A) the obligor’s obligation is secondary; or
- (B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(51) “Secured party” means:

- (A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
- (B) a person that holds an agricultural lien;
- (C) a consignor;
- (D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
- (E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest is created or provided for; or
- (F) a person that holds a security interest arising under other applicable law.

(52) “Security” means:

- (A) a share or similar equity interest issued by a corporation, business trust, statutory trust, joint stock company, or similar entity, but does not include an interest in a partnership or limited liability company except those satisfying the following requirements of (B) or (C);
 - (B) a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered; or
 - (C) an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer which:
 - (i) is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;
 - (ii) is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and
- (iii) is, or is of a type, dealt in or traded on securities exchanges or securities markets.

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

(54) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. The term includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to this Code. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a “security interest.” Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to § 9-109.

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

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

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

(56) “Sign” means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(57) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(57A) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, including any political subdivision, or any department, agency, or instrumentality thereof.

(57B) “Supporting obligation” means a guaranty, rights under a letter of credit, or other similar obligation that supports the payment or performance of an obligation.

(58) “Termination statement” means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(59) “Transmitting utility” means a person primarily engaged in the business of

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(60) “Tribal business day” means a day on which the offices of the government of the Pueblo are open for conduct of their ordinary business.

(61) “Tribe”, except in the phrase, “this tribe,” means a federally recognized tribe as defined in 25 U.S.C. Section 4103(13)(B), as amended from time to time.

(62) “Uncertificated security” means a security that is not represented by a certificate.

(b) Liberal construction. The meaning of a term not defined by this Code is to be derived from the context involved, with due consideration for consistency in meaning with uniform principles of commercial and contract law operative in the United States.

§ 9-107. Notice; Knowledge.

(a) Notice defined. Subject to subsection (f), a person has “notice” of a fact if the person has:

(1) actual knowledge of it;

(2) received a notice or notification of it; or

(3) reason to know that it exists from all the facts and circumstances known to the person at the time in question.

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

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

(d) Notifying or giving notice or notification. A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

- (e) Receipt generally. Subject to subsection (f), a person “receives” a notice or notification when:
 - (1) it comes to that person’s attention; or
 - (2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.
- (f) Receipt by organization. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

§ 9-108. Value. Except as otherwise provided under applicable laws dealing with negotiable instruments, bank deposits, letters of credit and bulk transfers and sales, a person gives value for rights if the person acquires them:

- (a) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (b) as security for, or in total or partial satisfaction of, a preexisting claim;
- (c) by accepting delivery under a preexisting contract for purchase; or
- (d) in return for any consideration sufficient to support a simple contract.

§ 9-109. Lease Distinguished From Security Interest.

- (a) Basic test. Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.
- (b) Transactions that create security interests. A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:
 - (1) the original term of the lease is equal to or greater than the remaining economic life of the goods;
 - (2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
 - (3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
 - (4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.
- (c) Factors that do not create security interests. A transaction in the form of a lease does not create a security interest merely because:
 - (1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market

value of the goods at the time the lease is entered into;

- (2) the lessee assumes risk of loss of the goods;
- (3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
- (4) the lessee has an option to renew the lease or to become the owner of the goods;
- (5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
- (6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

§ 9-110. General Scope.

- (a) General scope of Code. Except as otherwise provided in § 9-111, this Code applies to the following, if within the jurisdiction of the Pueblo:
 - (1) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
 - (2) an agricultural lien;
 - (3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;
 - (4) a consignment; and
 - (5) any other commercial activity, including a sale of goods, lease of goods, other transaction in goods, a negotiable instrument, bank deposit and collection, funds transfer, letter of credit, document of title, and investment security, to the extent the commercial activity is implicated in paragraph (1), (3) or (4).
- (b) Consistency in application. Subject to § 9-114, the application of this Code to a type of transaction enumerated in subsection (a)(5) is to be derived from the context involved, with due consideration for consistency in application with uniform principles of commercial and contract law operative in the United States.
- (c) Security interest in secured obligation. The application of this Code to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Code does not apply.

§ 9-111. Excluded Transactions. This Code does not apply to:

- (1) a landlord's lien, other than an agricultural lien;
- (2) a lien, other than an agricultural lien, given by law or principle of law for services or materials, but § 9-318(k) applies with respect to priority of the lien;
- (3) a tribal lien;
- (4) an assignment of a claim for wages, salary, or other compensation of an employee;
- (5) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- (6) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
- (7) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- (8) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

- (9) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 9-315 and 9-317 apply with respect to proceeds and priorities in proceeds;
- (10) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- (11) a right of recoupment or set-off, but § 9-403 applies with respect to defenses or claims of an account debtor;
- (12) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
 - (A) a fixture filing; and
 - (B) security agreements covering personal and real property in § 9-604;
- (13) an assignment of a claim arising in tort, other than a commercial tort claim, except as provided with respect to proceeds and priorities in proceeds; or
- (14) an assignment of a deposit account in a consumer transaction, except as provided with respect to proceeds and priorities in proceeds.

§ 9-112. Administration Of Code. The Tribal Secretary is charged with the administration of this Code.

§ 9-113. Obligation Of Good Faith. Every contract or duty within this Code imposes, with respect to its performance and enforcement, an obligation that each party be honest and act in a manner that is consistent with reasonable commercial standards of fair dealing.

§ 9-114. Course Of Performance, Course Of Dealing, And Usage Of Trade.

- (a) Course of performance defined. A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:
 - (1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
 - (2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.
- (b) Course of dealing defined. A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.
- (c) Usage of trade defined. A “usage of trade” is any practice or method of dealing, including a local custom or tradition of the Pueblo, having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.
- (d) Effect. A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

- (e) Practical construction; hierarchy. Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:
 - (1) express terms prevail over course of performance, course of dealing, and usage of trade;
 - (2) course of performance prevails over course of dealing and usage of trade; and
 - (3) course of dealing prevails over usage of trade.
- (f) Subject to other applicable law, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.
- (g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

§ 9-115. Purchase-Money Security Interest.

- (a) Definitions. In this section:
 - (1) “Purchase-money collateral” means goods or software that secures a purchase-money obligation incurred with respect to that collateral.
 - (2) “Purchase-money obligation” means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.
- (b) Purchase-money security interest in goods. A security interest in goods is a purchase-money security interest:
 - (1) to the extent that the goods are purchase-money collateral with respect to that security interest;
 - (2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and
 - (3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.
- (c) Purchase-money security interest in software. A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:
 - (1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and
 - (2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.
- (d) Consignor’s inventory purchase-money security interest. The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.
- (e) Application of payment in non-consumer transaction. In a transaction other than a consumer transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:
 - (1) in accordance with any reasonable method of application to which the parties agree;

- (2) if paragraph (1) does not apply, in accordance with the intention of the obligor manifested at or before the time of payment; or
- (3) if paragraphs (1) and (2) do not apply, in the following order:
 - (A) to obligations that are not secured; and
 - (B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.
- (f) No loss of purchase-money security interest in non-consumer transaction. In a transaction other than a consumer transaction, a purchase-money security interest does not lose its status as such, even if:
 - (1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;
 - (2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or
 - (3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.
- (g) Burden of proof in non-consumer transaction. In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.
- (h) Non-consumer-goods transactions; no inference. The limitation of the rules in subsections (e), (f), and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

§ 9-116. Sufficiency Of Description.

- (a) Sufficiency of description. Except as otherwise provided in subsections (c) and (d), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.
- (b) Examples of reasonable identification. Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:
 - (1) a type of collateral defined in this Code; or
 - (2) except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.
- (c) Broad, generic descriptions insufficient. In a security agreement, a description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.
- (d) Description by type insufficient. A description only by type of collateral defined in this Code is an insufficient description of:
 - (1) a commercial tort claim; or
 - (2) in a consumer transaction, any collateral.

§ 9-117. Parties’ Power To Choose Applicable Law.

- (a) Choice of law generally. Except as provided in subsection (b) and unless preempted by federal law, if a transaction bears a reasonable relation to the Pueblo and also to another tribe, state, or country, the parties may agree that the law either of the Pueblo or of the other tribe, state, or country governs the parties’ rights and duties. In the absence of an effective agreement, this Code applies to all transactions bearing an appropriate relation to the Pueblo. The fact that the law of another

tribe, state, or country is applicable as provided in this section does not affect the jurisdiction or venue of the Pueblo, nor does it waive the sovereign immunity of the Pueblo or of any agency or instrumentality the Pueblo.

- (b) When agreement ineffective. An agreement otherwise effective under subsection (a) is ineffective in any of the following cases:
- (1) in a consumer transaction;
 - (2) to the extent the agreement purports to vary the provisions of Subpart 1 of Part 3 of this Code, concerning the law governing perfection and priority; or
 - (3) to the extent that application of the law of the tribe, state, or country designated in the agreement would be contrary to a fundamental policy of the Pueblo.

PART 2 – EFFECTIVENESS, ATTACHMENT AND RIGHTS OF PARTIES

§ 9-201. General Effectiveness Of Security Agreement.

- (a) General effectiveness. Except as otherwise provided in this Code or other applicable law, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.
- (b) Applicable consumer laws and other law. A transaction under this Code is subject to:
- (1) any applicable rule of law which establishes a different rule for consumers;
 - (2) any other applicable tribal, federal or state law or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit; and
 - (3) any consumer-protection law or regulation.
- (c) Other applicable law controls. If a conflict exists between this Code and a rule of law or regulation described in subsection (b), the rule of law or regulation prevails.

§ 9-202. Attachment And Enforceability Of Security Interest; Proceeds; Formal Requisites.

- (a) Attachment. A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral unless an agreement expressly postpones the time of attachment.
- (b) Enforceability. Except as otherwise provided in subsections (c) through (g), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:
- (1) value has been given;
 - (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
 - (3) one of the following conditions is met:
 - (A) the debtor has signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - (B) the collateral is in the possession of the secured party pursuant to the debtor's security agreement and this Code; or
 - (C) the collateral is a security, an investment account, electronic chattel paper, or a deposit account and the secured party has control pursuant to the debtor's security agreement.
- (c) Other applicable law. Subsection (b) is subject to a collecting bank's interest in items under applicable law or agreement, any recognized security interest of a letter-of-credit issuer or nominated person under applicable law or agreement, a security interest arising under recognized sales and leases law, and a security interest in a security or in an investment account arising due to the purchase or delivery of the financial asset.

- (d) Proceeds and supporting obligations. The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by this Code and is also attachment of a security interest in a supporting obligation for the collateral.
- (e) Lien securing right to payment. The attachment of a security interest in a right to payment or performance secured by a security interest, mortgage, or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.
- (f) Certain items credited to investment account. The attachment of a security interest in an investment account is also attachment of a security interest in any securities, commodity contracts, or cash credited to the investment account.
- (g) Other persons bound. Law other than this Code determines if and when another person becomes bound by a security agreement entered into by a debtor.

§ 9-203. After-Acquired Collateral; Future Advances.

- (a) After-acquired collateral. Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.
- (b) After-acquired property clause not effective. A security interest does not attach under a term constituting an after-acquired property clause to:
 - (1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or
 - (2) a commercial tort claim.
- (c) Future advances. A security agreement may provide that collateral secures or that accounts, chattel paper, or payment intangibles are sold in connection with future advances or other value, whether or not the advances or value are given pursuant to commitment.

§ 9-204. Rights And Duties When Collateral Is In Secured Party's Possession Or Control.

- (a) Duty of care when secured party in possession. A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession.
- (b) Right of repledge. A secured party having possession or control of securities or control of an investment account may create a security interest in the collateral.
- (c) Buyer of certain rights to payment. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, subsection (a) does not apply unless the secured party is entitled under an agreement:
 - (1) to charge back uncollected collateral; or
 - (2) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral.

§ 9-205. Additional Duties Of Certain Secured Parties.

- (a) Applicability of section. This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.
- (b) Duty of secured party in control of investment account or deposit account. Within 10 tribal business days after receiving a signed demand by the debtor, a secured party having control of an investment account or a deposit account shall send to the investment intermediary or the bank, as applicable, with which the investment account or the deposit account is maintained a signed statement that releases the investment intermediary or the bank from any further obligation to comply with instructions originated by the secured party.

- (c) Duty of secured party if account debtor has been notified of assignment. Within 10 tribal business days after receiving a signed demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee § 9-403, a signed record that releases the account debtor from any further obligation to the secured party. However, this subsection does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.
- (d) Duty of secured party in control of electronic chattel paper. Within 10 tribal business days after receiving a signed demand by the debtor, a secured party, other than a buyer, having control of electronic chattel paper shall:
- (1) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;
 - (2) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
 - (3) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

§ 9-206. No Interest Retained In Right To Payment That Is Sold; Retained Power Of Seller Of Account Or Chattel Paper.

- (a) Seller retains no interest. A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the property sold.
- (b) Power of debtor with respect to account or chattel paper sold. A debtor that has sold an account or chattel paper has the power to transfer a security interest in the account or chattel paper:
- (1) while the buyer's security interest is unperfected; or
 - (2) to a person that, before the sale, filed a financing statement identifying the account or chattel paper sold as collateral, while the financing statement remains effective.

§ 9-207. Request For Accounting; Request Regarding List Of Collateral Or Statement Of Account.

- (a) A debtor may sign a record indicating what the debtor believes to be the aggregate amount of unpaid indebtedness as of specified date and send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.
- (b) A secured party, other than a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor, must comply with such a request within 10 tribal business days after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor the secured party may indicate that fact in the reply and need not approve or correct an itemized list of such collateral. If the secured party no longer has an interest in the obligation or collateral at the time the request is received, the secured party must disclose the name and address of any known successor in interest. A successor in interest is not subject to this section until a request is received by the successor.
- (c) A debtor is entitled to such statement once every six months without charge. The secured party

may require payment of a charge not exceeding \$25 for each additional statement furnished.

PART 3 – PERFECTION AND PRIORITY

SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY

§ 9-301. Law Governing Perfection And Priority Of Security Interests. Except as otherwise provided in § 9-303, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

- (1) Except as otherwise provided in this section, the local law of the Pueblo governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:
 - (A) if the security interest is created pursuant to this Code;
 - (B) from the time that the debtor becomes subject to the jurisdiction of the Pueblo under § 9-316(d) and (e); or
 - (C) from the time that the collateral is transferred to a person that thereby becomes a debtor and is subject to the jurisdiction of the Pueblo.
- (2) Except as provided in paragraph (3), while goods are located in a jurisdiction, the local law of that jurisdiction governs:
 - (A) perfection of a security interest in the goods by filing a fixture filing;
 - (B) perfection of a security interest in timber to be cut; and
 - (C) perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on farm products.
- (3) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.
- (4) This section does not determine the law governing matters not expressly referred to herein, including attachment, validity, characterization, and enforcement.

§ 9-302. RESERVED.

§ 9-303. Law Governing Perfection And Priority Of Security Interests In Goods Covered By A Certificate Of Title.

- (a) Applicability of section. This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.
- (b) When goods covered by certificate of title. Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.
- (c) Applicable law. The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

§ 9-304. RESERVED.

§ 9-305. RESERVED.

§ 9-306. RESERVED.

§ 9-307. RESERVED.

SUBPART 2. PERFECTION

§ 9-308. When Security Interest Or Agricultural Lien Is Perfected; Continuity Of Perfection.

(a) Perfection of security interest. Except as otherwise provided in this section and § 9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection set forth in this Code have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) Perfection of agricultural lien. An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection set forth in this Code have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) Continuous perfection; perfection by different methods. A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Code and is later perfected by another method under this Code, without an intermediate period when it was unperfected.

(d) Supporting obligation. Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Lien securing right to payment. Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Certain items credited to investment account. Perfection of a security interest in an investment account also perfects a security interest in any securities, commodity contracts, or cash credited to the investment account.

§ 9-309. Security Interest Perfected Upon Attachment. The following security interests are perfected when they attach:

- (1) a purchase-money security interest in consumer goods, except as otherwise provided in § 9-311(b) regarding goods subject to certain laws, regulations, or treaties;
- (2) a security interest created by an assignment of accounts which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts;
- (3) a sale of a payment intangible or a promissory note;
- (4) a security interest created by an assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (5) a security interest created by an assignment of a beneficial interest in a decedent's estate; and
- (6) a security interest created by an assignment by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

§ 9-310. When Filing Required To Perfect Security Interest Or Agricultural Lien; Security Interests And Agricultural Liens To Which Filing Provisions Do Not Apply.

(a) General rule: perfection by filing. Except as otherwise provided in subsection (b) and Sections 9-312 and 9-313, a financing statement must be filed to perfect all security interests and agricultural liens.

(b) Exceptions: filing not necessary. The filing of a financing statement is not necessary to perfect a security interest:

(1) that is perfected under § 9-308(c), dealing with liens securing rights to payment;

(2) that is perfected when it attaches under § 9-309;

(3) in property subject to a law, regulation, or treaty described in § 9-311(a);

(4) in goods in possession of a bailee which is perfected under § 9-312(d)(1) or (2);

(5) in certificated securities, negotiable documents, goods, or instruments which is perfected without filing or possession under § 9-312(e), (f) or (g);

(6) in collateral in the secured party's possession under § 9-313;

(7) in a security, an investment account, electronic chattel paper, or a deposit account perfected by control under § 9-314;

(8) in proceeds which is perfected under § 9-315; or

(9) that is perfected under § 9-316 relating to continued perfection of security interests perfected under the law of another jurisdiction.

(c) Assignment of perfected security interest. If a secured party assigns a perfected security interest or agricultural lien, a filing under this Code is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

§ 9-311. Perfection Of Security Interests In Property Subject To Certain Laws, Regulations, And Treaties.

(a) Security interest subject to other law. Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) any law of the United States whose requirements for a security interest obtaining priority over the rights of a lien creditor with respect to the property preempt the provisions of this Code requiring that security interests be perfected by filing;

(2) list any law covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on a certificate of title as a condition or result of perfection, and any central filing law other than the one provided by this Code; or

(3) a law of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with other law. Compliance with the requirements of a law, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Code. Except as otherwise provided in subsection (d) and the provisions of this Code providing for perfection by possession when goods covered by a certificate of title issued by one jurisdiction become covered by a certificate of title issued by another jurisdiction, a security interest in property subject to a law, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of

possession of the collateral.

(c) Duration and renewal of perfection. Except as otherwise provided in subsection (d) and the provisions of this Code providing for continued perfection when goods covered by a certificate of title issued by one jurisdiction become covered by a certificate of title issued by another jurisdiction, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a law, regulation, or treaty described in subsection (a) are governed by the law, regulation, or treaty. In other respects, the security interest is subject to this Code.

(d) Inapplicability to certain inventory. During any period in which collateral subject to a law specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

§ 9-312. Perfection Of Security Interests In Chattel Paper, Deposit Accounts, Documents, Goods Covered By Documents, Instruments, And Money; Perfection By Permissive Filing; Temporary Perfection Without Filing Or Transfer Of Possession.

(a) Perfection by filing permitted. A security interest in chattel paper, negotiable documents, instruments, securities, or investment accounts may be perfected by filing.

(b) Control or possession of certain collateral. Except as otherwise provided in the provisions of this Code dealing with perfection with respect to proceeds:

(1) a security interest in a deposit account may be perfected only by control; and

(2) a security interest in money may be perfected only by the secured party taking possession under the provisions of this Code dealing with perfection by possession.

(c) Goods covered by negotiable document. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest in the goods that becomes perfected by another method during that time.

(d) Goods covered by nonnegotiable document. While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) Temporary perfection: new value. A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under a signed security agreement.

(f) Temporary perfection: goods or documents made available to debtor. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

- (g) Temporary perfection: delivery of security certificate or instrument to debtor. A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:
- (1) ultimate sale or exchange; or
 - (2) presentation, collection, enforcement, renewal, or registration of transfer.
- (h) Expiration of temporary perfection. After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this Code.

§ 9-313. When Possession By Secured Party Perfects Security Interest Without Filing.

- (a) Perfection by possession. Except as otherwise provided in subsection (b), a secured party may perfect a security interest in certificated securities, negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral.
- (b) Goods covered by certificate of title. With respect to goods covered by a certificate of title issued by the Pueblo or a state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in § 9-316(c), relating to continued perfection of goods covered by a certificate of title.
- (c) Collateral in possession of person other than debtor. With respect to collateral other than goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:
- (1) the person in possession signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
 - (2) the person takes possession of the collateral after having signed a record acknowledging that it will hold possession of collateral for the secured party's benefit.
- (d) Time of perfection by possession; continuation of perfection. If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.
- (e) Acknowledgment not required. A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.
- (f) Effectiveness of acknowledgment; no duties or confirmation. If a person acknowledges that it holds possession for the secured party's benefit:
- (1) the acknowledgment is effective under subsection (c), even if the acknowledgment violates the rights of a debtor; and
 - (2) unless the person otherwise agrees or law other than this Code otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

§ 9-314. Perfection By Control. A security interest in a security, an investment account, electronic chattel paper, or a deposit account may be perfected by control.

§ 9-315. Secured Party's Rights On Disposition Of Collateral And In Proceeds.

- (a) Disposition of collateral: continuation of security interest or agricultural lien; proceeds. Except as otherwise provided in this Code and in any applicable law dealing with entrustment of goods:
- (1) a security interest or agricultural lien continues in collateral notwithstanding sale, lease,

license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) a security interest attaches to any identifiable proceeds of collateral.

(b) When commingled proceeds identifiable. Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by the provisions of this Code dealing with commingled goods; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Code with respect to commingled property of the type involved.

(c) Perfection of security interest in proceeds. A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) Continuation of perfection. A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.

(e) When perfected security interest in proceeds becomes unperfected. If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses or is terminated under the provisions of this Code dealing with lapse or termination; or

(2) the 21st day after the security interest attaches to the proceeds.

§ 9-316. Continued Perfection Of Security Interest Following Change In Governing Law.

(a) Definition: “place of business”. In this section, “place of business means a place where a debtor conducts its affairs.

(b) General rule: effect on perfection of change in governing law. A security interest to which this Code becomes applicable that is perfected pursuant to the law of another jurisdiction remains perfected until the earliest of:

(1) the time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after the debtor becomes subject to the jurisdiction of the Pueblo under subsections (e) and (f); or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is subject to the jurisdiction of the Pueblo.

(c) Security interest perfected or unperfected under law of the Pueblo. If a security interest described in subsection (b) becomes perfected under the law of the Pueblo before the end of the applicable period described in subsection (b), it remains perfected thereafter until perfection lapses in accordance with this Code. Otherwise, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) Goods covered by certificate of title from the Pueblo. A security interest to which this Code

becomes applicable which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from the Pueblo remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered. However, the security interest becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value, if the applicable requirements for perfection under § 9-311(b) or 9-313 are not satisfied before the earlier of:

- (1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from the Pueblo; or
- (2) the expiration of four months after the goods had become so covered.

(e) When debtor subject to jurisdiction of the Pueblo. In this section, a debtor is subject to the jurisdiction of the Pueblo if:

- (1) the debtor is an individual whose principal residence is within this jurisdiction or who becomes a member of the Pueblo;
- (2) the debtor is an organization, other than a registered organization, and its sole place of business or, if it has more than one place of business, its chief executive office, is within this jurisdiction; or
- (3) the debtor becomes:
 - (A) a registered organization that is organized solely under the law of the Pueblo; or
 - (B) incorporated under a charter issued to a tribe by the United States Secretary of the Interior pursuant to 25 U.S.C. Section 5124 (formerly Section 477), as amended from time to time.

(f) Continuation of jurisdiction: cessation of existence, etc. For purposes of subsection (e),

- (1) a person other than a registered organization continues to be subject to the jurisdiction of the Pueblo notwithstanding the fact that it ceases to exist, have a residence, or have a place of business; and
- (2) a registered organization continues to be subject to the jurisdiction of the Pueblo notwithstanding:
 - (A) the suspension, revocation, forfeiture, or lapse of the registered organization's status; or
 - (B) the dissolution, winding up, or cancellation of the existence of the registered organization.

(g) Effect of filed financing statement with respect to after-acquired collateral. If a security interest remains perfected under subsection (b)(2):

- (1) a financing statement that perfected the security interest under the law applicable before the debtor becomes subject to the jurisdiction of the Pueblo is effective to perfect a security interest in collateral to which a security interest attaches after the debtor becomes subject to the jurisdiction of the Pueblo until the earlier of the times or events described in subsection (b)(1) and (2); and
- (2) subsection (c) applies to after-acquired collateral to the same extent that it applies to collateral to which the security interest attached before the debtor became subject to the jurisdiction of the Pueblo.

SUBPART 3. PRIORITY

§ 9-317. Interests That Take Priority Over Security Interest Or Agricultural Lien.

- (a) Subordination to certain lien creditors and purchasers. Subject to subsection (b), security interest or agricultural lien is subordinate to the rights of:
- (1) a person that becomes a lien creditor before the security interest is perfected;
 - (2) a buyer, other than a secured party, of tangible personal property, lessee of goods, licensee of a general intangible, or buyer of accounts or general intangibles or securities which:
 - (A) gives value;
 - (B) in the case of a buyer of tangible personal property, lessee of goods, or buyer of certificated securities, acquires possession; and
 - (C) lacks knowledge of the security interest or agricultural lien before it is perfected; or
 - (3) a secured party entitled to priority under subsection (c).
- (b) Purchase-money grace period. A purchase-money secured party that files a financing statement before or within 20 days after the debtor acquires possession of the collateral has priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.
- (c) General rule for priority among conflicting secured parties. Priority among conflicting security interests and agricultural liens in the same collateral is determined as follows:
- (1) Conflicting perfected security interests and agricultural liens in the same collateral rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.
 - (2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.
 - (3) The first security interest or agricultural lien to attach has priority if conflicting security interests and agricultural liens are unperfected.
- (d) Time of perfection for proceeds. The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds, except as provided in § 9-318.
- (e) Priority in proceeds. Except as provided elsewhere in this part, a security interest that has priority under § 9-318(e), (f) or (j) also has priority over a conflicting security interest in proceeds if:
- (1) the security interest in proceeds is perfected;
 - (2) the proceeds are cash proceeds or of the same type as the collateral; and
 - (3) in the case of proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.
- (f) First-to-file rule for certain collateral. The order of filing determines priority in proceeds if:
- (1) a security interest in chattel paper, a negotiable document, instrument, security or investment account is perfected by a method other than filing; and
 - (2) the proceeds are not cash proceeds, chattel paper, negotiable documents, instruments, securities, investment accounts or letter-of-credit rights.
- (g) Deferral to other applicable law. If applicable law other than this Code gives a security interest or right of set-off to a collecting bank, an issuer or nominated person with respect to a letter of credit, a buyer or seller or lessee of goods, or in personal property that is not subject to

this Code, that law governs a conflict with this Code.

§ 9-318. Particular Priority Rules.

- (a) Relationship to preceding Section. This section creates exceptions to the priority rules of § 9-317.
- (b) Consignee deemed to have rights of consignor. For the purpose of this Code, while goods are in the possession of a consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer. If Part 3 of this Code results in the consignor having priority over a creditor of the consignee, law other than this Code determines the rights and title of the consignee with regard to that creditor.
- (c) Ordinary-course buyer, licensee and lessee takes free. Except as otherwise provided in this subsection, a buyer in ordinary course of business, a person that takes a non-exclusive license of a general intangible in ordinary course of business, or a person that takes a lease of goods in ordinary course of business, takes its interest in the collateral free of a security interest in the collateral created by the seller, licensor, or lessor, even if the security interest is perfected and the buyer, licensee or lessee knows of its existence. Whether a licensee or lessee takes its interest in ordinary course of business is determined by criteria parallel to those used to determine whether a buyer is a buyer in ordinary course of business under § 9-106(a)(8). This subsection does not apply to:
 - (1) a buyer of farm products from a person engaged in farming operations, unless the buyer
 - (A) obtains from the seller a notarized statement setting forth the name and address of any person that has a security interest in the farm products; and
 - (B) either (i) obtains a consent to the sale free of the security interest from the secured party or (ii) makes payment for the farm products jointly to the seller and the secured party; and
 - (2) a buyer of goods in the possession of the secured party under § 9-313.
- (d) Buyer of consumer goods takes free of security interest. Unless goods are in the possession of the secured party under § 9-313, a buyer of goods from a person who used or bought the goods for use primarily for personal, family or household purposes takes free of a security interest, even if perfected, if the buyer buys:
 - (1) without knowledge of the security interest;
 - (2) for value;
 - (3) primarily for the buyer's personal, family, or household purposes; and
 - (4) for goods having a value of \$5,000 or more, before the filing of a financing statement covering the goods.
- (e) Purchaser of chattel paper or instrument. The following rules apply to a purchaser of chattel paper or an instrument:
 - (1) The purchaser of chattel paper or an instrument has priority over a security interest if:
 - (A) the purchaser, in good faith and in the ordinary course of the purchaser's business, gives new value and takes possession of the collateral;
 - (B) the collateral does not indicate that it previously has been assigned to an identified person other than the purchaser; and
 - (C) the purchaser is otherwise without knowledge that the purchase violates the rights of the secured party.
 - (2) The purchaser with priority in chattel paper under paragraph (1) also has priority in proceeds of the chattel paper to the extent that:
 - (A) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the security interest in the proceeds is unperfected; or

(B) § 9-317(c), (d) or (e) so provides.

(f) Holder in due course and others protected. This Code does not limit the rights of, or impose liability on, a holder in due course of a negotiable instrument, a holder to which a negotiable document has been duly negotiated, or a person protected against the assertion of a claim to securities under other law. Filing under this Code is not notice of a claim or defense to the holder or protected person.

(g) Priority of future advance. The following rules govern priority of a security interest to the extent that it secures a future advance:

(1) For a conflicting security interest, the priority of an advance under a security agreement is determined under § 9-317(b), except that perfection dates from the time the advance is made if the security interest securing it is perfected only by attachment under § 9-309 or temporarily by law under § 9-312(e), (f), or (g) and is not made pursuant to a commitment entered into before or while the security interest is perfected by another means.

(2) For a lien creditor, the security interest securing an advance is subordinate if the advance is made more than 45 days after the person becomes a lien creditor, unless the advance is made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

(3) For a buyer of goods other than a buyer in ordinary course of business under § 9-106(a)(8), and with respect to a lessee of goods that does not take its lease in ordinary course of business under § 9-318(c), the security interest securing an advance is subordinate if the advance is made after the earlier of the time the secured party acquires knowledge of the purchase or 45 days after the purchase, unless the advance is made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45-day period.

(4) Paragraphs (1) and (2) do not apply to a security interest held by a person that is a consignor or a buyer of accounts, chattel paper, payment intangibles or promissory notes.

(h) Purchase-money security interest priority. The following rules govern the priority of a purchase-money security interest and a conflicting security interest in collateral and its proceeds:

(1) Goods other than inventory and livestock. A perfected purchase-money security interest in goods other than inventory or livestock that are farm products has priority over a conflicting security interest in the same goods and in identifiable proceeds of the goods, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(2) Inventory and livestock. A perfected purchase-money security interest in inventory or livestock that are farm products has priority over a conflicting security interest if the purchase-money security interest is perfected when the debtor acquires possession of the goods and the purchase-money secured party sends timely and appropriate notice to the holder of the conflicting security interest, provided that notice is not required unless the holder of the conflicting security interest has filed a financing statement covering the same types of goods:

(A) before the purchase-money security interest is perfected by filing; or

(B) if the purchase-money security interest is temporarily perfected under § 9-312(f), before the beginning of the applicable 20-day period.

(3) If a purchase-money secured party has priority in livestock that are farm products under this paragraph (2), it has priority in their identifiable proceeds and products in their unmanufactured states. If a purchase-money secured party has priority in inventory under paragraph (2), it has priority in chattel paper or an instrument constituting proceeds, in:

(A) proceeds of the chattel paper except as otherwise provided in this section; and

(B) identifiable cash proceeds received on or before delivery of the goods to a buyer.

(4) Software. A perfected purchase-money security interest in software has priority over a conflicting security interest, and a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods.

(5) Priority among purchase-money security interests. Notwithstanding this subsection, if two or more purchase-money security interests are perfected in the same collateral, the security interest securing an obligation for the price has priority, and otherwise priority is determined under § 9-317(b).

(i) Transferee of money or funds takes free of security interest. A transferee of money or of funds from a deposit account takes the money or funds free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(j) Priority of interest perfected by control; possession of certificated security in registered form. A security interest in a security, an investment account, or a deposit account perfected by control under § 9-314 has priority over a security interest perfected by a method other than control. Multiple security interests perfected by control rank according to time of acquiring control; however, a security interest held by an investment intermediary in the investment account or held by a bank in the deposit account that it maintains has priority regardless of time of acquiring control. A security interest in a certificated security in registered form that is perfected by possession under Section 3-313 and not by control has priority over a conflicting security interest perfected by a method other than control.

(k) Possessory lien. A lien on goods created by law or principle of law which secures payment or performance of an obligation for services or materials furnished with respect to the goods by a person in the ordinary course of the person's business and whose effectiveness depends on the person's possession of the goods has priority over a security interest or agricultural lien in the goods unless the possessory lien is created by a law that expressly provides otherwise.

§ 9-319. Priority Of Security Interests In Fixtures And Crops.

(a) Security interest in fixtures under this Code. A security interest under this Code may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Code in ordinary building materials incorporated into an improvement on land.

(b) Security interest in fixtures under real-property law. This Code does not prevent creation of an encumbrance upon fixtures under real property law.

(c) General rule: subordination of security interest in fixtures. In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Fixtures purchase-money priority. Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) the security interest is a purchase-money security interest;

(2) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) the security interest is perfected by an appropriate filing before the goods become fixtures or within 20 days thereafter.

(e) Priority of security interest in fixtures over interests in real property. A perfected security

interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) is perfected by an appropriate filing before the interest of the encumbrancer or owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this Code and the fixtures are readily removable:

(A) factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Code; or

(4) the security interest is:

(A) created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a law described in § 9-311(a)(2).

(f) Priority based on consent, disclaimer, or right to remove. A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in a signed record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) Continuation of paragraph (f)(2) priority. The priority of the security interest under paragraph (f)(2) continues for a reasonable time if the debtor right to remove the goods as against the encumbrancer or owner terminates.

(h) Priority of construction mortgage. A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) Priority of security interest in crops. A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) Subsection (i) prevails. Subsection (i) prevails over any inconsistent provisions of other laws of the Pueblo.

§ 9-320. Accessions.

(a) Creation of security interest in accession. A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) Perfection of security interest. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

- (c) Priority of security interest. Except as otherwise provided in subsection (d), the other provisions of this part determine the priority of a security interest in an accession.
- (d) Compliance with certificate-of-title law. A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title law under § 9-311(b).
- (e) Removal of accession after default. After default, subject to Part 6, 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.
- (f) Reimbursement following removal. A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. 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.

§ 9-321. Commingled Goods.

- (a) “Commingled goods.” 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.
- (b) No security interest in commingled goods as such. A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.
- (c) Attachment of security interest to product or mass. If collateral becomes commingled goods, a security interest attaches to the product or mass.
- (d) Perfection of security interest. If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.
- (e) Priority of security interest. Except as otherwise provided in subsection (f), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c).
- (f) Conflicting security interests in product or mass. If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:
 - (1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.
 - (2) If more than one security interest is perfected under subsection (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

§ 9-322. Priority Of Security Interests In Goods Covered By Certificate Of Title. If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this jurisdiction issues a certificate of title (§ 9-106(a)(11)) that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

- (1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under § 9-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

§ 9-323. Priority Subject To Subordination. This Code does not preclude subordination by agreement by a person entitled to priority.

PART 4 – RIGHTS OF THIRD PARTIES

§ 9-401. Alienability Of Debtor's Rights. Whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Code; however, an agreement between a debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect. This section is subject to § 9-404, which invalidates certain legal and contractual restrictions on transferability that generally would be effective under other law.

§ 9-402. Secured Party Not Obligated On Contract Of Debtor Or In Tort. The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

§ 9-403. Rights Of Assignee.

(a) Waiver-of-defense clauses; limitations thereon. An agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment in good faith, and for value as defined in the law governing negotiable instruments, except as to claims or defenses that may be asserted against a holder in due course of a negotiable instrument. However, such an agreement is not enforceable if:

- (1) the agreement relates to an obligation incurred on account of a sale or lease of goods or services;
- (2) the account debtor seeks or acquires the goods or services primarily for personal, family or household use; and
- (3) the assignor, in the ordinary course of its business, sells or leases goods or services to consumers.

(b) Parallel rule for negotiable instruments. If a negotiable promissory note represents an obligation incurred on account of a sale or lease of goods or service, and the issuer seeks or acquires the goods or services primarily for personal, family or household use, and the payee, in the ordinary course of its business, sells or leases goods or services to consumers, then the issuer may assert any claims and defenses against a person entitled to enforce the note, including a holder in due course.

(c) Assignee's rights subject to terms, claims and defenses. Except to the extent an agreement to the contrary is enforceable under subsection (a), the rights of an assignee are subject to reduction of the amount owed by reason of all terms of the contract between the account debtor and assignor, any defense or claim in recoupment arising from the transaction that gave rise to the contract, and any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives adequate notification of the assignment signed by the assignor or the

assignee. This subsection does not apply to the assignee of a health-care-insurance receivable.

(d) Discharge of account debtor or party to instrument. An account debtor or party to a negotiable promissory note may discharge its obligation by paying the assignor or person formerly entitled to enforce the note until, but not after, such account debtor or party receives:

(1) adequate notification that performance is to be rendered to the assignee or transferee, signed

(A) in the case of an account debtor, by the assignor or assignee, and

(B) in the case of a negotiable promissory note, by the transferor or transferee; and

(2) if requested by such account debtor or party, reasonable proof of the assignment or transfer.

In the case of an account debtor, discharge under this subsection is effective notwithstanding an otherwise enforceable agreement not to assert claims or defenses. In the case of a party to a negotiable promissory note, discharge under this subsection is effective against a holder in due course.

(e) Modifications of contract. A modification of or substitution for an assigned contract is effective against an assignee to the extent provided by law other than this Code.

§ 9-404. Restrictions On Assignment.

(a) Commercially harmful restrictions on alienation invalid. A commercially harmful restriction on alienation (subsections (b), (c) and (d)) of property is invalid.

(b) Commercially harmful defined for certain transactions. In an assignment of accounts other than health-care-insurance receivables, an assignment of chattel paper, an assignment of payment intangibles that is not a sale, or a transfer of promissory notes that is not a sale, the term “commercially harmful restriction on alienation” means a term in an agreement between an account debtor and an assignor, or in a promissory note, to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note, to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the affected property; or

(2) provides that such an assignment, transfer, creation, attachment, perfection, or enforcement may give rise to a default or remedy.

(c)(1) Commercially harmful defined less broadly for other transactions. In an assignment of a health-care-insurance receivable, a sale of promissory notes, a sale of payment intangibles, or a security interest in other general intangibles (including a contract, permit, or license, or franchise) that is not a sale, the term “commercially harmful restriction on alienation” has the same meaning as in subsection (b) except that the references to enforcement of a security interest appearing in subsection (b)(1) and (2) are excluded.

(2) Limitation on effect in such other transactions. To the extent a commercially harmful restriction on alienation under paragraph (c)(1) would otherwise be effective under law other than this Code, the creation, attachment, or perfection of the security interest:

(A) does not impose a duty or obligation on the account debtor or person obligated on the promissory note;

(B) is not enforceable against the account debtor or person obligated on the promissory note; and

(C) does not entitle the secured party to:

(i) use the debtor’s rights in or to the property;

(ii) have access to trade secrets or confidential information of the account debtor or person obligated on the promissory note; or

(iii) enforce the security interest.

(d) Rule of law as commercially harmful restriction. In addition to the meanings set forth in subsections (b) and (c), the term “commercially harmful restriction on alienation” includes a rule of law to the extent that it:

(1) requires the consent of a governmental body or official to the assignment or transfer of, or actions described in subsection (b) or (c), as applicable, regarding a security interest in, the property; or

(2) has any of the effects of a commercially harmful restriction on alienation as defined in subsection (b) or (c), as applicable.

(e) Deferral to consumer law; inapplicability. This section is subject to any different rule in other law for a consumer. In addition, this section does not apply to an assignment of:

(1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104(a)(1) or (2), as the same may be amended from time to time;

(2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. § 1396p(d)(4), as the same may be amended from time to time.

(3) a structured settlement payment right; or

(4) a right to payment of winnings in a lottery or other game of chance regulated by law other than this Code.

PART 5 – FILING

§ 9-501. Acceptance, Refusal, And Effectiveness Of Financing Statement; Administration.

(a) Place to file. The place to file a financing statement to perfect a security interest or agricultural lien governed by this Code or another record relating to a security interest is the office(s) as provided in the corresponding provisions of the Uniform Commercial Code as enacted in New Mexico as in effect at the time of the filing. If (1) the collateral is as-extracted collateral or timber to be cut, or (2) the financing statement is filed as a fixture filing, the collateral is goods that are or are to become fixtures, and the debtor is not a transmitting utility, then the place to file the financing statement is the office designated for the filing or recording of a record of a mortgage on the related real property.

(b) Pre-filing; acceptance and refusal. A financing statement may be filed before a security agreement is made or a security interest attaches. Receipt by the filing office of a financing statement or other record, in appropriate form by an appropriate method, and tender of the filing fee, constitutes filing, and in those cases the filing office must accept the record. If the filing office refuses the record, it must communicate that fact to the person that presented the record, as well as the reason for refusal and the date and time that the record would have otherwise been filed.

(c) Effectiveness of financing statement; minor errors. A record in appropriate form and communicated to a filing office by an appropriate method is effective even if:

(1) it is improperly refused by the filing office, except as against a purchaser of the collateral for value in reasonable reliance on the absence of the record from the files;

(2) it is incorrectly indexed by the filing office; or

(3) it has minor errors or omissions in information required to perfect a security interest, unless the errors or omissions make the record seriously misleading. If a financing statement fails sufficiently to provide the name of the debtor, the name provided does not make the financing statement seriously misleading if a search of the filing office’s records under the debtor’s correct name using the filing office’s standard search logic, if any, would disclose the financing statement.

(d) Subordination in certain cases of reliance. If information that the filing office's regulations require to be included in a record, but that § 9-502(a) does not require for perfection of a security interest, is incorrect at the time the record is filed, the security interest is subordinate to a conflicting perfected security interest or the interest of a purchaser other than a secured party, to the extent that:

(1) the holder of the conflicting security interest gives value in reasonable reliance on the incorrect information; or

(2) the purchaser gives value and, in the case of a buyer or lessee of property capable of being possessed, takes possession, all in reasonable reliance on the incorrect information.

(e) Fees. The fee for filing and indexing a record under subsection (a) is as provided in the corresponding provisions of the Uniform Commercial Code as enacted in New Mexico as in effect at the time of the filing.

§ 9-502. Contents Of Records; Authorization; Lapse; Continuation; Termination.

(a) Information required for perfection; other required contents. A financing statement is sufficient to perfect a security interest or agricultural lien only if it provides the name of the debtor, the name of the secured party or a representative of the secured party, and indicates the collateral covered by the financing statement with a description, whether or not specific, that reasonably identifies the collateral or states that it covers all assets or all personal property. A financing statement or a record of a mortgage that covers as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, is sufficient only if in addition it includes such further information as required by filing office regulations promulgated by the filing office. A record that constitutes a termination statement, assigns a record, continues a record, or otherwise amends a record must comply with the regulations promulgated by the filing office for such records.

(b) Other information and filing office regulations. A record may include information other than that required by subsection (a), such as addresses for the debtor and secured party, the characterization of a party as an individual or an organization, or a trade name for the debtor, and may use terms such as "consignor", "lessor", or "licensor", to the extent permitted by and in compliance with the regulations promulgated by the filing office, and shall include such other information to the extent required by the regulations.

(c) Duration of effectiveness. A validly filed financing statement is effective for five years after the date of filing unless sooner terminated, except as follows:

(1) if the financing statement correctly indicates that it is filed in connection with a manufactured-home transaction or a public-finance transaction, it is effective for thirty years after the date of filing unless sooner terminated;

(2) if the debtor is a transmitting utility and the initial financing statement so indicates, the financing statement is effective until terminated; and

(3) a mortgage that is effective as a financing statement is effective until the mortgage is satisfied of record.

(d) Continuation and lapse. A financing statement lapses at the end of the period specified in subsection (c) unless a continuation statement is filed within six months before the expiration of the period. A lapsed financing statement ceases to perfect the security interest or agricultural lien unless it is perfected otherwise before lapse, and the security interest or agricultural lien is deemed to never have been perfected against a purchaser of the collateral for value.

(e) Effect of continuation and other amendment. On proper continuation under subsection (a),

the effectiveness of a filed financing statement continues for a period of five years, commencing on the date on which it otherwise would have become ineffective, and again may lapse unless further continued. An amendment to a financing statement other than a continuation statement does not extend the effectiveness of a financing statement, is effective only from its date of filing, and may be effective as a termination statement as prescribed in the regulations promulgated by the filing office.

(f) Termination statement. On the filing of a termination statement, a financing statement to which the termination statement relates ceases to be effective. A secured party shall file, cause to be filed, or send the termination statement in accordance with the regulations promulgated by the filing office.

(g) Persons entitled to file. A filed record is effective only to the extent that it was filed by a person authorized to do so in the following circumstances:

(1) Only a person authorized by the debtor in compliance with this paragraph or with regulations promulgated by the filing office, or a person otherwise designated by those regulations, may file an initial financing statement, amendment that adds collateral, or amendment that adds a debtor that is effective. By signing or becoming bound as debtor by a security agreement, the debtor authorizes the filing of a financing statement and amendments covering:

(A) the collateral described in the security agreement; and

(B) property that becomes collateral under § 9-315(a)(2), relating to identifiable proceeds.

(2) Only a person authorized by a secured party may file a termination statement or an amendment other than an amendment that adds collateral or a debtor.

(h) Effect of disposition on effectiveness of financing statement. If a security interest or agricultural lien continues in collateral transferred by the debtor under § 9-315, a filed financing statement with respect to the collateral remains effective, even if the secured party knows of or consents to the transfer.

(i) Effect of name change on effectiveness of financing statement. If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor so that the financing statement becomes seriously misleading, the financing statement is not effective to perfect a security interest or agricultural lien in collateral acquired by the debtor more than four months after the change, unless an appropriate filing is made before the expiration of the time.

§ 9-503. Claim Concerning Inaccurate Or Wrongfully Filed Record.

(a) Permission to file. A person may file in the filing office an information statement with respect to a record filed there if the person believes that the record is inaccurate or was wrongfully filed.

(b) Contents of statement under subsection (a). An information statement under subsection (a) must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) Record not affected by information statement. The filing of an information statement does not affect the effectiveness of a filed record.

(d) No duty to file information statement. A person that believes that a record filed in the filing

office is inaccurate or wrongfully filed does not have a duty to file an information statement relating to the record.

PART 6 – DEFAULT

SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST OR AGRICULTURAL LIEN

§ 9-601. Rights After Default; Judicial Enforcement; Consignor Or Buyer Of Accounts, Chattel Paper, Payment Intangibles, Or Promissory Notes.

(a) Rights of secured party after default. After default, a secured party has the rights provided in this part, the rights and duties related to possession or control of collateral (§ 9-204) under § 9-204 and, except as otherwise provided in § 9-602, those provided by agreement of the parties.

A secured party:

- (1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and
- (2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights cumulative; simultaneous exercise. The rights under subsection (a) are cumulative and may be exercised simultaneously.

(c) Rights of debtor and obligor. Except as otherwise provided in subsection (f) and § 9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(d) Lien of levy after judgment. 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:

- (1) the date of perfection of the security interest or agricultural lien in the collateral;
- (2) the date of filing a financing statement covering the collateral; or
- (3) any date specified in a law under which the agricultural lien was created.

(e) Execution sale. A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Code.

(f) Consignor or buyer of certain rights to payment. Except as otherwise provided in § 9-607(b), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

§ 9-602. Waiver And Variance Of Rights And Duties. Except as otherwise provided in the provisions of this Code dealing with waivers (§ 9-624), to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following sections of this Code dealing with:

- (1) rights and duties when collateral is in a secured party's possession (§ 9-204);
- (2) requests for an accounting or requests regarding a list of collateral or statement of an account (§ 9-207);
- (3) commercially reasonable collection and enforcement (§ 9-607(b));
- (4) application of proceeds, deficiency and surplus (§ 9-608(a) and 9-615(c)), to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or

disposition;

- (5) application of proceeds and the like (Sections 9-608 and 9-615(d)), to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (6) a secured party's right to take possession after default and limitations thereon (§ 9-609), to the extent that it imposes upon the secured party taking possession of collateral without judicial process the duty to do so without breach of the peace and with consent of the debtor;
- (7) commercially reasonable disposition (§ 9-610(b)), notification before disposition of the collateral (§ 9-611), and the contents and form of a notification before disposition of the collateral (§ 9-613);
- (8) calculation of a deficiency or surplus when the fairness of the amount of proceeds is placed in issue (§ 9-615(e));
- (9) explanation of the calculation of a surplus or deficiency (§ 9-616);
- (10) acceptance of collateral in satisfaction of obligation (§ 9-620);
- (11) right to redeem collateral (§ 9-623);
- (12) waivers (§ 9-624);
- (13) the secured party's liability for failure to comply with this Code (Sections 9-625 and 9-626); and
- (14) attorney's fees (§ 9-629).

§ 9-603. Agreement On Standards Concerning Rights And Duties. The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in the provisions of this Code dealing with waiver or variance of rights and duties (§ 9-603), if the standards are not manifestly unreasonable.

§ 9-604. Procedure If Security Agreement Covers Real Property Or Fixtures.

- (a) Enforcement: personal and real property. If a security agreement covers both personal and real property, a secured party may proceed:
 - (1) under this part as to the personal property without prejudicing any rights with respect to the real property; or
 - (2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.
- (b) Enforcement: fixtures. Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:
 - (1) under this part; or
 - (2) in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.
- (c) Removal of fixtures. Subject to the other provisions of this part, 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.
- (d) Injury caused by removal. 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.

§ 9-605. 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 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 lienholder that has filed a financing statement against a person, unless the secured party knows:
 - (A) that the person is a debtor; and
 - (B) the identity of the person.

§ 9-606. Time Of Default For Agricultural Lien. For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the law under which it was created.

§ 9-607. Collection And Enforcement By Secured Party.

- (a) Collection and enforcement generally. If so agreed, and in any event after default, a secured party:
 - (1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
 - (2) may take any proceeds to which the secured party is entitled under § 9-311;
 - (3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral 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 person obligated on the collateral;
- (b) Commercially reasonable collection and enforcement. A secured party shall proceed in a commercially reasonable manner if the secured party:
 - (1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and
 - (2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.
- (c) Expenses of collection and enforcement. A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.
- (d) Duties to secured party not affected. This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

§ 9-608. Application Of Proceeds Of Collection Or Enforcement; Liability For Deficiency And Right To Surplus.

- (a) Application of proceeds, surplus, and deficiency if obligation secured. If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:
 - (1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under § 9-607 in the following order to:
 - (A) 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;

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

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives a signed 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 complies, the secured party need not comply with the holder's demand under subparagraph (1)(C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under § 9-607 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) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

§ 9-609. Secured Party's Limited Right To Take Possession After Default.

(a) Consent or judicial process. Unless otherwise agreed, a secured party has at the time of or after default the powers described in subsection (b), but such powers may be exercised only pursuant to judicial process or with the debtor's consent. Such consent is effective only if expressed after default by means of a separate dated and signed personal statement in the debtor's handwriting, describing the powers to be exercised by the secured party and expressly acknowledging and waiving the debtor's right to require that such exercise be pursuant to judicial process.

(b) Possession, rendering equipment unusable and assembly of collateral. Under the circumstances of subsection (a) the secured party may:

(1) take possession of the collateral;

(2) without removal, render equipment unusable and dispose of collateral on a debtor's premises under § 9-610; and

(3) 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.

(c) No breach of the peace. A secured party acting pursuant to the debtor's consent under subsection (a) must proceed without breach of the peace.

§ 9-610. Disposition Of Collateral After Default.

(a) Disposition after default. 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.

(b) Commercially reasonable disposition; tribal business day. 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. In order to protect the debtor's right to redeem collateral (§ 9-623), a disposition of collateral shall take place only on a tribal business day.

- (c) Purchase by secured party. A secured party may purchase collateral:
 - (1) at a public disposition; or
 - (2) 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.
- (d) Warranties on disposition. 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.
- (e) Disclaimer of warranties. A secured party may disclaim or modify warranties under subsection (d):
 - (1) 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
 - (2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.
- (f) Record sufficient to disclaim warranties. A record is sufficient to disclaim warranties under subsection (e) 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.

§ 9-611. Notification Before Disposition Of Collateral.

- (a) “Notification date.” In this section, “notification date” means the earlier of the date on which:
 - (1) a secured party sends to the debtor and any secondary obligor a signed notification of disposition; or
 - (2) the debtor and any secondary obligor waive the right to notification.
- (b) Notification of disposition required. Except as otherwise provided in subsection (d), a secured party that disposes of collateral under § 9-610 shall send to the persons specified in subsection (c) a reasonable signed notification of disposition.
- (c) Persons to be notified. To comply with subsection (b), the secured party shall send a signed notification of disposition to:
 - (1) the debtor;
 - (2) any secondary obligor; and
 - (3) if the collateral is other than consumer goods:
 - (A) any other person from which the secured party has received, before the notification date, a signed notification of a claim of an interest in the collateral;
 - (B) any other secured party or lienholder that, 14 calendar days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
 - (i) identified the collateral;
 - (ii) was indexed under the debtor’s name as of that date; and
 - (iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and
 - (C) any other secured party that, 14 calendar days before the notification date, held a security interest in the collateral perfected by compliance with other applicable law (§ 9-311).
- (d) Subsection (b) inapplicable: perishable collateral; recognized market. Subsection (b) 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.
- (e) Compliance with subsection (c)(3)(B). A secured party complies with the requirement for

notification prescribed by subsection (c)(3)(B) if:

- (1) not later than 20 calendar days or earlier than 30 calendar days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and
- (2) before the notification date, the secured party:
 - (A) did not receive a response to the request for information; or
 - (B) received a response to the request for information and sent a signed notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

§ 9-612. Timeliness Of Notification Before Disposition Of Collateral.

- (a) Reasonable time is question of fact. Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.
- (b) Safe harbors for sufficiency of time. Unless a specific time for sending a notification of disposition is established by the court, a notification of disposition is sent within a reasonable time before the disposition when it is sent after default and:
 - (1) in a consumer transaction, 20 calendar days or more before the earliest time of disposition set forth in the notification; or
 - (2) in all other transactions, 10 calendar days or more before the earliest time of disposition set forth in the notification.

§ 9-613. Contents And Form Of Notification Before Disposition Of Collateral. The following rules apply to notification before disposition of collateral:

- (a) The contents of a notification of disposition are sufficient if the notification:
 - (1) describes the debtor and the secured party;
 - (2) describes the collateral that is the subject of the intended disposition;
 - (3) states the method of intended disposition;
 - (4) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting;
 - (5) states the time and place of a public disposition or the time after which any other disposition is to be made;
 - (6) describes any liability for a deficiency by the person receiving the notice; and
 - (7) states a telephone number or mailing address from which additional information concerning redemption, disposition and the obligation secured is available.
- (b) Whether the contents of a notification that lacks any of the information specified in subsection (a) are nevertheless sufficient is a question of fact.
- (c) The contents of a notification providing substantially the information specified in subsection (a) are sufficient, even if the notification includes:
 - (1) information not specified by that subsection; or
 - (2) minor errors that are not seriously misleading.
- (d) A particular phrasing of the notification is not required.

§ 9-614. RESERVED.

§ 9-615. Application Of Proceeds Of Disposition; Liability For Deficiency And Right To Surplus.

(a) Application of proceeds. A secured party shall apply or pay over for application the cash proceeds of disposition under § 9-610 in the following order to:

(1) 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;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

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

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

(B) 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

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

(b) Proof of subordinate interest. 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 (a)(3).

(c) Application of noncash proceeds. A secured party need not apply or pay over for application noncash proceeds of disposition under § 9-610 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) Surplus or deficiency if obligation secured. 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 (a) and permitted by subsection (c):

(1) unless subsection (a)(4) 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

(2) the obligor is liable for any deficiency.

(e) Calculation of surplus or deficiency in disposition to secured party or related person.

Following a disposition to the secured party or a person related to the secured party, the surplus or deficiency is calculated based on the amount of proceeds that would have been realized in a hypothetical disposition complying with this part to a person other than the secured party or a person related to the secured party, if the debtor establishes that the amount of proceeds of the actual disposition is significantly below the range of proceeds that would have been brought by the hypothetical disposition. In this section, a secondary obligor is a person related to the secured party.

(f) Cash proceeds received by junior secured party. A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

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

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations

secured by the security interest or other lien; and

(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

§ 9-616. Explanation Of Calculation Of Surplus Or Deficiency.

(a) Explanation of calculation. In a consumer transaction, a secured party must provide the debtor or consumer obligor a reasonably detailed explanation in a record of the manner in which any surplus or deficiency was calculated if the debtor or consumer obligor demands such an explanation or, in any event, 10 tribal business days before commencing an action for a deficiency.

(b) Charges for responses. Each debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding \$25 for each additional response.

§ 9-617. Rights Of Transferee Of Collateral.

(a) Effects of disposition. A secured party's disposition of collateral after default:

(1) transfers to a transferee for value all of the debtor's rights in the collateral;

(2) discharges the security interest under which the disposition is made; and

(3) discharges any subordinate security interest or other subordinate lien other than liens created under laws providing for liens, if any, that are not to be discharged.

(b) Rights of good-faith transferee. A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this Code or the requirements of any judicial proceeding.

(c) Rights of other transferee. If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

(1) the debtor's rights in the collateral;

(2) the security interest or agricultural lien under which the disposition is made; and

(3) any other security interest or other lien.

§ 9-618. Rights And Duties Of Certain Secondary Obligors.

(a) Rights and duties of secondary obligor. A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) receives an assignment of a secured obligation from the secured party;

(2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) is subrogated to the rights of a secured party with respect to collateral.

(b) Effect of assignment, transfer, or subrogation. An assignment, transfer, or subrogation described in subsection (a):

(1) is not a disposition of collateral under § 9-610; and

(2) relieves the secured party of further duties under this Code.

§ 9-619. TRANSFER OF RECORD OR LEGAL TITLE.

(a) "Transfer statement." In this section, "transfer statement" means a record signed by a secured party stating:

(1) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) that the secured party has exercised its post-default remedies with respect to the collateral;
(3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) the name and mailing address of the secured party, debtor, and transferee.

(b) Effect of transfer statement. 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:

(1) accept the transfer statement;

(2) promptly amend its records to reflect the transfer; and

(3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) Transfer not a disposition; no relief of secured party's duties. A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this Code and does not of itself relieve the secured party of its duties under this Code.

§ 9-620. Acceptance Of Collateral In Full Or Partial Satisfaction Of Obligation; Notification Of Proposal; Effect Of Acceptance; Compulsory Disposition Of Collateral.

(a) Proposal to accept collateral in full or partial satisfaction of obligation. Except as provided in subsection (e), a secured party may, after default, propose to retain the collateral in full satisfaction of the obligation it secures or, in a transaction other than a consumer transaction, in partial satisfaction of such obligation.

(b) Notification of proposal to accept collateral. A secured party shall send notice of a proposal under subsection (a) to:

(1) the debtor;

(2) any person from whom the secured party has received, before the debtor consented to the acceptance, a signed notification of a claim of an interest in the collateral;

(3) any person that, 14 calendar days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by means of a financing statement or compliance with other law that makes the interest reasonably discoverable; and

(4) if the proposal is for partial satisfaction of the obligation, any secondary obligor.

(c) Conditions to acceptance. A proposal under this section is not effective unless it is covered by subsection (a) and:

(1) the debtor consents to the acceptance in a record signed after default and if the record consists of a form supplied by the secured party, the term expressing consent is separately signed by the debtor;

(2) no other person specified in subsection (b), and no other person holding an interest in the collateral subject to the secured party's interest, objects to the acceptance within 14 tribal business days after notification was sent; and

(3) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance.

(d) Effect of acceptance. A secured party's acceptance of collateral pursuant to this section:

(1) discharges the obligation to the extent consented to by the debtor;

(2) transfers to the secured party all of the debtor's rights in the collateral;

(3) discharges the security interest or agricultural lien that is the subject of the debtor's consent,

and any security interest or other lien or interest that is subordinate thereto, even if the secured party accepting the collateral fails to comply with this article.

(e) Mandatory disposition of consumer goods. A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Sections 9-610 through 9-616 if:

(1) 60 percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) 60 percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(f) A disposition under subsection (e) must be made no later than 90 calendar days after taking possession, or within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and signed after default.

§ 9-621. RESERVED.

§ 9-622. RESERVED.

§ 9-623. Right To Redeem Collateral.

(a) Persons that may redeem. A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) Requirements for redemption. To redeem collateral, a person shall tender:

(1) fulfillment of all obligations secured by the collateral; and

(2) the reasonable expenses and attorney's fees described in § 9-615(a)(1), dealing with application of proceeds of disposition.

(c) When redemption may occur. A redemption may occur at any time before a secured party:

(1) has collected collateral under § 9-607;

(2) has disposed of collateral or entered into a contract for its disposition under § 9-610; or

(3) has accepted collateral in full or partial satisfaction of the obligation it secures under § 9-620.

§ 9-624. Waiver.

(a) Waiver of disposition notification. A debtor or secondary obligor may waive the right to notification of disposition of collateral under § 9-611 only by an agreement to that effect entered into and signed after default.

(b) Waiver of mandatory disposition. A debtor may waive the right to require disposition of collateral under § 9-620(e), which deals with mandatory disposition of consumer goods, only by an agreement to that effect entered into and signed after default.

(c) Waiver of redemption right. In a transaction other than a consumer transaction, a debtor or secondary obligor may waive the right to redeem collateral under § 9-623 only by an agreement to that effect entered into and signed after default. In a consumer transaction, a debtor or secondary obligor may not waive such right.

SUBPART 2. NONCOMPLIANCE WITH CODE

§ 9-625. Remedies For Secured Party's Failure To Comply With Code.

(a) Judicial orders concerning noncompliance. If it is established that a secured party is not proceeding in accordance with this Code, a court may order or restrain collection, enforcement, or

disposition of collateral on appropriate terms and conditions.

(b) Damages for noncompliance. Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this Code. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Persons entitled to recover damages; statutory damages where collateral is consumer goods. Except as otherwise provided in § 9-628, which deals with the nonliability and limitations on liability of a secured party and the liability of a secondary obligor:

(1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

(d) Recovery when deficiency eliminated or reduced. A debtor whose deficiency is eliminated under § 9-626, which deals with actions in which a deficiency or surplus is in issue, may recover damages for the loss of any surplus.

(e) Statutory damages: noncompliance with specified provisions. In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:

(1) fails to comply with the provisions of this Code dealing with additional duties of a secured party having control of an investment account (§ 9-205(b));

(2) fails to comply with the provisions of this Code dealing with duties of a secured party if an account debtor has been notified of assignment (§ 9-205(c));

(3) files a record that the person is not entitled to file under § 9-502(g);

(4) fails to file, cause to be filed or send a termination statement as required by § 9-502(f);

(5) fails to comply with the provisions of this Code dealing with explanations of calculations of surplus or deficiency (§ 9-616(a)), and whose failure is part of a pattern, or consistent with a practice, of noncompliance.

(f) Statutory damages: noncompliance with the provisions of this Code dealing with a request for an accounting. A debtor or consumer obligor may recover damages under subsection (b) and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request for an accounting (§ 9-207). A recipient of a request under § 9-207 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) Limitation of security interest: noncompliance with Code. If a secured party fails to comply with a request regarding a list of collateral or a statement of account under § 9-207, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

§ 9-626. Action In Which Deficiency Or Surplus Is In Issue.

In an action in which the amount of a deficiency or surplus is in issue, the following rules apply:

(a) 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.

(b) 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.

(c) If, with respect to a consumer transaction, a secured party fails to prove that a collection was conducted in accord with § 9-607(b) or that a disposition was conducted in accordance with § 9-610(b), or fails to comply with § 9-609(c) or 9-623, the proceeds of the collection or disposition fully satisfy the sum of the secured obligation, expenses, and allowable attorney's fees.

(d) Except as provided in subsection (c) or in § 9-628, 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 subject to setoff for an amount as stated in § 9-625(b), which may be measured by the amount recovered for conversion of collateral.

(e) For purposes of subsection (d), the liability of the debtor or a secondary obligor is calculated on the presumption that the proceeds of disposition equal the sum of the secured obligation, expenses, and allowable attorney's fees, but the secured party may rebut the presumption.

§ 9-627. Determination Of Whether Conduct Was Commercially Reasonable.

(a) Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness. 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.

(b) Dispositions that are commercially reasonable. A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) in the usual manner on any recognized market;

(2) at the price current in any recognized market at the time of the disposition; or

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

(c) Approval by court or on behalf of creditors. A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) in a judicial proceeding;

(2) by a bona fide creditors' committee;

(3) by a representative of creditors; or

(4) by an assignee for the benefit of creditors.

Such approval need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

§ 9-628. Nonliability And Limitation On Liability Of Secured Party; Liability Of Secondary Obligor.

(a) Limitation of liability of secured party for noncompliance with Code. Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Code; and

(2) the secured party's failure to comply with this Code does not affect the liability of the

person for a deficiency.

(b) Limitation of liability based on status as secured party. A secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party 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 lienholder that has filed a financing statement against a person, unless the secured party knows:

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

(c) Limitation of liability if reasonable belief that transaction not a consumer transaction or collateral is not consumer goods. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

- (1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
- (2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under § 9-625(c)(2), which deals with statutory damages where the collateral is consumer goods, for its failure to comply with § 9-616, which deals with explanations of calculations of surplus or deficiency.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under § 9-623(c)(2), which deals with statutory damages where the collateral is consumer goods, more than once with respect to any one secured obligation.

§ 9-629. Attorney's Fees In Certain Transactions. If the secured party's compliance with this Code is placed in issue in an action, the following rules apply:

- (1) If the secured party would have been entitled by agreement to attorney's fees as the prevailing party, and the original principal amount of the indebtedness secured does not exceed \$25,000, a debtor or obligor prevailing on the issue is entitled to the costs of the action and reasonable attorney's fees.
- (2) In other cases, the court may award to a consumer debtor or consumer obligor prevailing on that issue the costs of the action and reasonable attorney's fees.
- (3) In determining the attorney's fees, the amount of the recovery on behalf of the prevailing debtor or obligor is not a controlling factor.

PART 7 – MISCELLANEOUS PROVISIONS

SECTION 9-701. Severability. If any provision of this Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

§ 9-702. EFFECTIVE DATE. This Code takes effect upon enactment by the Pueblo of Pojoaque Tribal Council.