



SCHOOL OF LAW

MEMORANDUM

To: Drafting Committee for Amendments to the Model Tribal Secured Transactions Act
From: Stephen L. Sepinuck
Date: October 15, 2015
Re: Liability for Error

As directed by the Drafting Committee, I revised § 9-626 to extend the “rebuttable presumption” rule to most consumer transactions but also drafted two alternative versions of the “absolute bar” rule for consumer transactions if the secured party conducted a commercially unreasonable collection or disposition.

Each version would prevent the secured party from pursuing the debtor or any primary or secondary obligor for a deficiency. The second alternative, which is phrased not as a limitation on liability but as a conclusive presumption about the amount of proceeds of the collection or disposition, would do more, however. It would also effectively prevent the secured party from foreclosing on any remaining collateral. The Committee should consider which of these options it prefers.