GONZAGA UNIVERSITY
SCHOOL OF LAW

MEMORANDUM

To: Drafting Committee for Amendments to the Model Tribal Secured Transactions Act
From: Stephen L. Sepinuck
Date: August 25, 2015
Re: Summary of Proposed Changes

For our first conference call, I prepared charts of the Article 9 Amendments. The charts included a recommendation about whether the each amendment should be incorporated into the MTSTA. Attached are revised charts showing what has been done in the first draft.

Chart One			
Substantive 2010 Amendments to Article 9		**Correlative Provisions of Model Tribal Act**	**Action**
Nature of Amendment	**Section(s) Amended**		
Perfection: Clarifies what documents to examine to determine the name and location of a debtor that is a registered organization	§§ 9-102(a)(68), (71), 9-307(f), 9-503(a)	none. *Cf.* § 9-316(d)	Added §§ 9-106(a)(45A); Amended § 9-316(d)
Perfection: Expands what constitutes control of electronic chattel paper by changing the rule to a safe harbor, to coordinate with § 16 of the Uniform Electronic Transactions Act	§ 9-105	none	None
Perfection: Creates a 4-month grace period for perfection of a security interest in collateral acquired after the debtor moves to a new jurisdiction	§ 9-316(h)	§ 9-316	Added § 9-316(f)
Perfection & Priority: Creates a 4-month grace period for perfection of a security interest in collateral owned or acquired by a new debtor located in a different jurisdiction; subordinates that security interest to a security interest granted by the new debtor	§§ 9-316(i), 9-326	none	None
Enforcement: Clarifies that the broader limits on assignment restrictions in § 9-406, rather than the narrower restrictions in § 9-408, apply if a payment intangible or promissory note secures an obligation and the secured party forecloses by selling the collateral or by conducting a strict foreclosure	§§ 9-406(e), 9-408(b)	§ 9-404	None

Chart One			
Substantive 2010 Amendments to Article 9		**Correlative Provisions of Model Tribal Act**	**Action**
Nature of Amendment	**Section(s) Amended**		
Perfection: Provides alternative rules to determine the name of an individual debtor	§§ 9-502(c), 9-503(a), (g)	§ 9-502	Added § 9-503
Perfection: Clarifies what name to use on a financing statement for collateral held in trust	§ 9-503(a), (h)	none	Check w/ Drafting Committee for Model Tribal Probate Code
Perfection: Clarifies what name to use on a financing statement for collateral of a decedent's estate	§ 9-503(a), (f), (h)	none	Check w/ Drafting Committee for Model Tribal Probate Code
Information Statements: Changes "correction statement" to "information statement" to clarify that the document has no legal effect; authorizes the secured party of record to file an information statement	§ 9-518	none	None

Chart Two			
Technical 2010 Amendments to Article 9		**Correlative Provisions of Model Tribal Act**	**Action**
Nature of Amendment	**Section(s) Amended**		
Definition of "Authenticate"	§ 9-102(a)(7)	none; term is used only in definition of "signed" and § 9-619	None
Definition of "Certificate of Title": Expands the term to include electronic certificates.	§ 9-102(a)(10)	§ 9-106(a)(11)	Amended § 9-106(a)(11)
Reference to Statutes Providing for a Certificate of Title	§ 9-311(a)	§ 9-311(a)	Amended § 9-311(a)
Priority: Clarifies the types of collateral to which the rule protecting buyers applies	§ 9-317(b), (d)	§ 9-317(a)	None
Perfection: Amends the rule regarding a change in the debtor's name from active to passive voice to reflect the fact that a change might result from a change in the debtor's driver's license.	§ 9-507(c)	§ 9-502(h)	Amended § 9-502(h)
Perfection: Clarifies that to avoid the five-year limit on the effectiveness of a financing statement filed against a transmitting utility, the initial financing statement, not an amendment, must include the required indication.	§ 9-515(f)	§ 9-502(c)(2)	Amended § 9-502(c)
Perfection: Eliminates the requirement that a financing statement indicate: (i) the type of organization the debtor is; (ii) the jurisdiction of organization; and (iii) the debtor's organizational identification number	§ 9-516(b)	*Cf.* § 9-502(b)	Amended § 9-502(b)

Chart Two			
Technical 2010 Amendments to Article 9		Correlative Provisions of Model Tribal Act	Action
Nature of Amendment	Section(s) Amended		
Enforcement: Clarifies that to enforce a mortgage supporting a receivable held as collateral, the secured party must swear that a default has occurred on the mortgage loan (not the transaction involving the receivable).	§ 9-607(b)	none	None

Chart Three		
Notable Provisions of Article 9 Omitted from Model Tribal Act		**Action**
Nature of Omission	**Section(s)**	
Provisions dealing with deposit accounts, Letter-of-credit rights an electronic chattel paper as collateral	numerous	None
New debtor rules	§§ 9-102(a)(56), (60), 9-203(e), 9-326, 9-506(d), 9-508, 9-509(b)	None
Agricultural liens	numerous	None
The safe harbor for describing collateral by classification	§ 9-108(b)	Added § 9-116(b)
Automatic attachment and perfection in supporting obligations	§§ 9-203(f), 9-308(d)	Amended §§ 9-202(b); Added 9-308(c)
Power to transfer accounts sold if buyer fails to perfect	§ 9-318	Separate Memo

Chart Four			
Notable Differences between Article 9 and the Model Tribal Act			Action
Issue	Article 9 Section	MTSTA Section	
Description of collateral in consumer transaction	§ 9-108(e)(2)	§ 9-116(c)(2)	None
SP's priority over lien creditor	§ 9-317(a)(2)(B)	§ 9-317(a)(1)	None

Chart Five			
Other Issues for Consideration			Action
Issue	Article 9 Section	MTSTA Section	
The absence of a rule regarding loss of PMSI status for consumer transactions	§ 9-103(h)	§ 9-115	Added § 9-115(h)
The absence of a rule regarding liability for error in consumer transactions	§ 9-626(b)	§ 9-626(b)	Separate Memo
Choice of law for a debtor who becomes subject to the jurisdiction of the Tribe or Nation		§§ 9-301(1)(b), 9-316(d)(1)	Separate Memo