

## CHAPTER 5.

SECURED TRANSACTIONS

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An Act to enact a law relating to secured transactions: to amend Title 24 MIRC by adding a new Chapter 5 to enable lending secured by movable property in the Republic of the Marshall Islands, in particular to provide for creation of security interests in movable property, to provide for prioritization of competing interests in movable property, to provide for a public filing office where notices of security interests may be filed and where they are publicly available for inspection, and to provide for simplified, expedited enforcement against collateral when a debtor defaults; to amend Chapter 1 of Title 24 MIRC to delete references to personal property; to amend Section 109 of Title 30 MIRC to harmonize the enforcement of judgments with the Secured Transactions Act; to amend Section 106 of Title 48 MIRC to bring employer withholding tax liens within the notice and priority provisions of the Secured Transactions Act; and to amend Section 158 of Title 49 MIRC to bring social security contribution liens within the notice and priority provisions of the Secured Transactions Act.

Commencement: May 16, 2007  
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P. L. 2007-91

## PART I – DEFINITIONS AND SCOPE OF THE LAW

### DIVISION 1 – DEFINITIONS

#### **§501. Short title.**

This Act may be cited as the Secured Transactions Act of 2007.

#### **§502. Definitions.**

The following terms shall have the meanings set out hereunder:

(a) “*accession*” means goods that are physically united with other goods in a manner such that the identity of the goods is not lost;

(b) “*account*” means an unsecured right to payment for goods sold or otherwise disposed of, or for services rendered;

(c) “*account debtor*” means the person who is obligated on an account, secured sales contract or payment intangible;

(d) “*attachment*” means completion of all conditions necessary to make a security interest enforceable against the debtor with respect to the collateral;

(e) “*collateral*” means present or future movable property subject to a security interest or lien;

(f) “*company*” means an entity such as a corporation, limited liability company or limited partnership, but does not include a sole proprietorship;

(g) “*consumer goods*” means goods used primarily for personal, family, or household purposes, but does not include licensed motor vehicles;

(h) “*debtor*” means a person who owes payment or other performance of a secured obligation, whether or not the person owns or has rights in the collateral, and includes a seller of accounts or secured sales contracts, and a lessee of goods;

(i) “*default*” means a material failure of a debtor to perform under a security agreement;

(j) “*deposit account*” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument;

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

(l) “*equipment*” means goods that are not crops, livestock, inventory, or consumer goods;

(m) “*fixture*” means goods that are fixed or are intended to become fixed to immovable property in a manner that causes a property right to arise in the goods. Building materials and readily removable factory machines, office machines, and domestic appliances are not fixtures;

(n) “*goods*” means all things that are movable when a security interest attaches. The term includes fixtures, crops and livestock but does not include accounts or secured sales contracts, money, documents, or instruments;

(o) “*instrument*” means a writing that evidences a right to payment of money, that is not a security agreement or lease, and that in the ordinary course of business may be transferred by delivery with endorsement or assignment;

(p) “*inventory*” means goods held for sale or lease, or goods that are raw materials, work in process, or materials used or consumed in a business;

(q) “*investment securities*” means equity or debt interests in a business enterprise that are held for investment purposes, whether or not they are evidenced by certificates;

(r) “*lien holder*” means a person who obtains a right in collateral by order of a court or other legal authority, or by the authority of an administrator in an insolvency proceeding, or any other person who obtains a right in collateral by operation of law, except a person with a right of retention;

(s) “*Minister*” means the Minister responsible for the Ministry of Resources and Development;

(t) “*movable property*” means movable things of any nature, intangibles of any nature and fixtures;

(u) “*notice*” means a record filed in the filing office. The term includes an initial notice, amended notice, continuation notice, termination notice and notice of objection;

(v) “*ordinary course of business*” refers to a transfer of movable property by a person who deals in the kind of property transferred;

(w) “*payment intangible*” means a right to receive payment of a monetary obligation, other than an account or a secured sales contract;

(x) “*perfection*” means optimization of a secured party’s rights in collateral against third parties such as buyers, other secured parties, lien holders and an insolvency administrator;

(y) “*proceeds*” means whatever is acquired upon sale, lease or other disposition of collateral, or whatever is collected on or distributed with respect to collateral. Proceeds include money, property exchanged for the original collateral, property purchased with money proceeds, a deposit account into which money proceeds are deposited, and a right to insurance payment or other compensation for loss or damage of the collateral;

(z) “*purchase money security interest*” means a security interest taken by a seller of goods to secure their price or by a person who gives value to enable a debtor to acquire goods;

(aa) “*record*” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(bb) “*right of retention*” means the right of a person who provides services or materials to maintain or enhance the value of goods to retain possession of the goods until paid for the services or materials;

(cc) “*secured party*” means a person in whose favor a security interest is created under a security agreement. For the purposes of priority determination and filing only, it includes a buyer of accounts or secured sales contracts and a lessor of goods for more than a year;

(dd) “*secured sales contract*” means a contract for the sale of goods on credit that includes a security agreement creating a security interest in the sold goods;

(ee) “*security interest*” means a property right in collateral that secures performance of an obligation; and for the purposes of perfection and priority, it includes the interests of a buyer of accounts or secured sales contracts and a lessor of goods for more than one year;

(ff) “*serial numbered equipment*” means major end items of industrial, construction or agricultural equipment that are identified by unique serial numbers.

#### DIVISION 2 – SCOPE OF THE LAW

**§503. Scope.**

(1) This law applies to transactions that secure an obligation with collateral, regardless of the form of the agreement or the terminology used, and whether the collateral is owned by the secured party or the debtor.

(2) This law applies to the sale of accounts and secured sales contracts and to the lease of goods for more than one year, but only for the purposes of priority determination and filing of a notice.

(3) This law does not apply to the sale of a business, assignment for collection action only, the transfer of a claim for compensation of an employee, or interests in vessels that are subject to Chapter 3 of Title 47, MIRC.

(4) This law does not apply to non-resident corporations, partnerships, trusts, limited liability companies, foreign maritime entities, unincorporated associations or other entities not doing business in the Republic that are subject to Title 52, MIRC. [Subsection (4) inserted by P.L. 2007-91.]

**PART II – SECURITY INTEREST****DIVISION 1 – SECURITY INTEREST AND SECURED OBLIGATION****§504. Obligations.**

A security interest may secure one or more obligations. An obligation may be: described specifically or generally; monetary or non-monetary; pre-existing, present or future; or a current account.

**§505. Security interest in consumer goods.**

A security interest may not be taken in the consumer goods of a debtor except for a purchase money security interest in the consumer goods.

**§506. Description of collateral.**

(1) A description of collateral is sufficient, whether it is specific or general, if it reasonably identifies what is described. A description such as “all equipment” or “all movable property” is sufficient.

(2) Reasonable description of consumer goods requires a specific description.

**§507. Attachment of security interest.**

A security interest attaches to collateral and becomes enforceable only if the debtor has signed a security agreement that describes the collateral, if value has been given by the secured party and if the debtor has rights in the collateral. Unless otherwise agreed, a security interest attaches to proceeds.

**§508. Notice to account debtors not required.**

When collateral consists of present or future accounts, secured sales contracts or payment intangibles, notice to the account debtors is not required as a condition of attachment, perfection or enforcement of the security interest.

**§509. Continuity of security interest.**

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

**DIVISION 2 – SECURITY AGREEMENT****§510. Security agreement in a record.**

A security agreement must be in a record or multiple records, which may be electronic. It is effective between the parties and against purchasers and creditors, except as otherwise provided in this law.

**DIVISION 3 – PERFECTION OF SECURITY INTEREST****§511. Perfection of security interest.**

A security interest is perfected when it has attached to the collateral and a means of perfection is completed, subject to the conditions of Section 512. The means of perfection are: filing of a notice; possession of the collateral; control of the collateral; and automatic perfection as provided in paragraphs 1 and 5 of Section 512.

**§512. Means of perfection in special cases.**

(1)A notice must be filed in the filing office to perfect a security interest with the following qualifications:

(a) Perfection occurs automatically upon attachment of the security interest in case of a purchase money security interest in consumer goods of the debtor.

(b)A security interest in goods, instruments, documents, or secured sales contracts may be perfected by the secured party's taking possession.

(c) A security interest in money may be perfected only by the secured party's taking possession of the money, except for cash proceeds.

(d) A security interest in a deposit account may be perfected only by the secured party's control of the deposit account.

(e) Upon disposition of collateral, a security interest attaches to proceeds of the collateral and is continuously perfected if the security interest in the

collateral was perfected. The security interest in proceeds becomes unperfected 15 days after the debtor receives the proceeds unless they are identifiable cash proceeds or are described by the collateral description in the filed notice.

(f) A lessor or a buyer of accounts or secured sales contracts may perfect its interest in the same manner as for a security interest.

(g) A security interest in a motor vehicle or serial numbered equipment may be perfected by filing a notice that describes the motor vehicle or serial numbered equipment generally or by serial number. As against a buyer or lessee, however, priority requires description by serial number.

**§513. Continuity of perfection.**

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

**§514. Assignment of security interest.**

If a secured party assigns a perfected security interest, a notice need not be filed under this law to continue perfection of the security interest.

**§515. Lapse of perfection.**

When a filing period lapses as a result of a failure to file a continuation notice by the lapse date, perfection of the security interest also lapses, unless perfection is achieved by another means prior to the lapse.

DIVISION 4 - PRIORITY

**§516. Priority rules.**

(1) Security interests and interests of lien holders in the same collateral have priority according to time of filing of a notice or perfection by other means, except as otherwise provided in this law.

(2) Priority is measured from the earlier to occur of filing of a notice or perfection by other means, provided that there is no time thereafter when a filed notice is not effective or perfection does not exist.

(3) The first security interest to attach to collateral has priority among security interests for which there is no effective filed notice or other form of perfection.

**§517. Priority continues in proceeds.**

The priority of a security interest in proceeds is the same as the priority of the security interest in the original collateral.

**§518. Purchase of secured sales contracts or instruments.**

A purchaser of secured sales contracts or instruments has priority over a secured party's security interest in the secured sales contracts or instruments if, in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the secured sales contracts or instruments, and if the secured sales contracts or instruments do not indicate an assignment to the secured party.

**§519. Transferee exceptions.**

(1) A transferee takes collateral free of a security interest if the transferee gives value and takes delivery of the collateral without knowledge of the security interest and before a notice is filed or the security interest is otherwise perfected.

(2) A buyer or lessee of goods in the ordinary course of business takes free of a security interest, even if the security interest is perfected and the buyer or lessee knows of its existence.

(3) A buyer or lessee of a motor vehicle or serial numbered equipment takes it free of a security interest if the buyer or lessee does not know of the security interest and if the serial number is not included on a filed notice of security interest.

(4) A buyer takes free of a perfected security interest in goods if the secured party consents to the sale by the debtor.

(5) A person who receives cash for value takes free of a perfected security interest in the cash.

(6) A lien holder who causes collateral to be seized before a security interest is perfected takes free of the security interest.

(7) A court or a liquidator of an insolvent company that takes physical custody of assets before a security interest is perfected in them takes free of the security interest.

**§520. Purchase money security interest.**

(1) A purchase money security interest in equipment has priority over a conflicting security interest if the purchase money security interest is perfected when the debtor receives possession of the equipment or within 10 days thereafter.

(2) A purchase money security interest in goods or their proceeds that is perfected not later than 10 days from the date the debtor obtains possession of the goods has priority over the rights of a buyer, lessee, or lien holder which arise between the time the security interest attaches and the time the notice is filed.

(3) A perfected purchase money security interest in inventory or livestock has priority over a conflicting perfected security interest in the same inventory or livestock if the purchase money security interest is perfected when the debtor receives possession of the inventory or livestock, and if, not later than 10 days after the debtor receives possession, the purchase money secured party gives written notice to the holder of the conflicting perfected security interest in the same types of inventory or livestock.



**§521. Livestock.**

A perfected security interest in livestock given for value to enable the debtor obtain food or medicine for the livestock has priority over any other security interest in the livestock or their proceeds granted by the debtor except for a perfected purchase money security interest in the livestock.

**§522. Fixtures.**

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

(2) A security interest in fixtures is subordinate to rights in the immovable property to which it is affixed unless a notice of the security interest in the fixtures has been filed in the filing office established by this law and, if the right in the immovable property arose after the goods became fixed, filing of notice of the security interest in the fixtures preceded registration of the rights in or seizure of the immovable property.

**§ 523. Crops.**

(1) A perfected security interest in crops growing or to be grown has priority over a conflicting interest of the owner or mortgagee of the land if the debtor is in possession of the land or has an interest in the land that is registered in accordance with the Land law.

(2) A perfected security interest in crops or their proceeds, given for value to enable the debtor to produce or harvest the crops and given while the crops are growing crops or during the 6 month period before the crops were planted has priority over any other security interest in the same collateral given by the same debtor.

(3) An unperfected security interest in crops is subordinate to the rights of a judgment creditor who causes the land to be seized in order to enforce a judgment.

**§524. Right of retention.**

A right of retention has priority over a perfected security interest in goods if it arises in the ordinary course of business of the person in possession of the goods.

**§525. Accessions.**

A security interest continues in collateral that becomes an accession. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the accession.

**§526. Commingled goods.**

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

(2) A security interest may not be created in commingled goods. However, if collateral to which a security interest has attached becomes commingled, the security interest attaches to the product or mass.

(3) If a security interest is perfected before the collateral becomes commingled, the security interest continues to be perfected in the product or mass. The priority of the security interest in the product or mass is measured from the time of perfection of the security interest in the collateral that became commingled, except as limited by paragraph 4(c), below.

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

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

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

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

**§527. Subordination.**

A secured party may, in a security agreement or otherwise, subordinate its security interest to any other interest.

**PART III – FILING**

**DIVISION 1 – FILING OFFICE OPERATION**

**§528. Establishment of electronic filing office**

(1) The filing office will be established by the Ministry of Resources and Development.

(2) The filing office shall provide electronic means for filing of notices of security interest and liens, and for searching for notices. The electronic records of the filing office shall be the official records.

(3) The filing office is the place to file a notice of a security interest or other interest in movable property that is within the scope of this law.

**§529. Regulations.**

The Ministry may issue regulations consistent with this law.

**§530. Public record.**

Information contained in a filed notice is a public record. Indices and other records created by the filing office with respect to notices are public records. Any person may inspect notices in the filing office.

DIVISION 2 – NOTICES TO BE FILED**§531. Sufficiency of notice.**

(1) An initial notice of security interest is sufficient if it includes the following information:

(a) The notice must identify the debtor by name. The standard for correct name shall be the name as it appears in the records of the Social Security Administration if a citizen of the Republic of the Marshall Islands, on its organizational document if a company or other organization, or on his or her passport if an individual other than a citizen.

(b) The notice must identify the secured party or an agent of the secured party by name and provides an address.

(c) The notice must describe the collateral covered by the notice. The collateral description may be general or specific. If the collateral is a fixture, the notice must describe the immovable property to which a fixture is to be affixed.

(2) A debtor must authorize the filing of an initial notice by signing a security agreement or other record. A signature may be any tangible indication of the debtor's intent to enter the agreement.

(3) A notice may be filed before a security agreement is concluded or before a security interest attaches to collateral.

(4) A notice of lien may be filed by a lien holder without the consent of the lienee.

(a) A notice of lien on the property of an insolvent company may be filed by the court or a liquidator constituted by the court.

(b) A notice of a lien created by Section 102 of the Enforcement of Judgments Act on the movable property of a judgment debtor may be filed by the Clerk of the High Court.

(c) A notice of lien on the movable property of a person who is delinquent in payment of taxes or employer Social Security contributions may be filed by the government.

(5) A notice substantially complying with the requirements of this Division is effective unless it is seriously misleading. A notice that does not provide the name of the debtor is seriously misleading.

**§532. Effectiveness of notice.**

(1) A notice is effective at the time it is discoverable on the records of the filing office.

(2) A notice is effective for five (5) years unless a continuation notice is filed before the period lapses.

(3) Upon lapse, a notice becomes ineffective, and the security interest that was perfected by the notice becomes unperfected unless it is perfected by another means.

**§533. Amendment.**

(1) An initial notice may be amended. An amended notice must:

- (a) identify the initial notice by its file number;
- (b) identify each secured party who authorizes the amendment; and
- (c) provide all of the information required for an initial notice.

(2) An amended notice that adds collateral or adds a debtor must be authorized by the debtor by signing the security agreement or other record.

(3) An amended notice is effective only as to each secured party who authorizes it.

(4) An amended notice that adds collateral or a debtor is effective as to the added collateral or debtor from the date of filing of the amended notice.

**§534. Continuation.**

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

- (a) identifies the initial notice by its file number; and
- (b) identifies each secured party who authorizes the continuation notice.

(2) A continuation notice may be filed only within six months before the expiration of the initial period of the notice.

(3) Upon filing of a continuation notice, the effectiveness of the initial notice is extended for five (5) years as to each authorizing secured party.

**§535. Termination.**

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

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

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

(a) there is no outstanding secured obligation and no commitment to make an advance or otherwise give value; or

(b) the debtor did not authorize filing of the initial notice.

(3) A termination notice terminates effectiveness of the initial notice as to each authorizing secured party.

**§536. Notice of objection.**

(1) A person may file a notice of objection to a notice of security interest that identifies the person as a debtor if the person believes that the notice is inaccurate or was wrongfully filed.

(2) A notice of objection must:

(a) identify the notice to which it relates by its file number;

(b) name the person who files the notice of objection; and

(c) provide the basis for the person's belief that the notice of security interest is inaccurate or was incorrectly or wrongfully filed.

(3) Filing of a notice of objection does not affect the effectiveness of a notice of security interest.

DIVISION 3 – FILING OFFICE AUTHORITY AND DUTIES

**§537. Filing office refusal to file notice.**

(1) The filing office may refuse to file a notice because:

(a) in the case of an initial notice, it does not identify a debtor by name;

(b) in the case of an amended notice, it does not identify a debtor by name;

it does not provide the file number of the initial notice; it identifies an initial notice whose effectiveness has lapsed; or it does not identify an authorizing secured party;

(c) in the case of a continuation notice, it does not provide the file number of the initial notice, it was not presented within the permitted six-month period, or it does not identify an authorizing secured party;

(d) in the case of a termination notice, it does not provide the file number of the initial notice, it relates to an initial notice that has lapsed, or it does not identify an authorizing secured party;

(e) in the case of a notice of objection, it does not provide the file number of the initial notice, or it does not name the person who files the notice; or

(f) less than the filing fee is tendered, or no arrangement has been made for payment of fees by other means

(2) If the filing office refuses to file a notice, it shall promptly communicate the fact of and reason for its refusal to the person who presented the notice.

**§538. Filing office duties.**

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

- (a) assign a unique file number;
- (b) create a record that bears the number assigned to the initial notice and the date and time of filing; and
- (c) maintain the record for public inspection.

(2) The filing office shall index notices by the name of the debtor and, for notices containing a serial number of a motor vehicle or serial numbered equipment, by serial number.

(3) The filing office shall return a copy of the electronic record of the notice, to include the file number and the date and time of filing.

(4) The filing office shall maintain the capability to retrieve a record by the name of the debtor, by the file number assigned to the initial notice and, for notices containing the serial number of motor vehicle or serial numbered equipment, by serial number.

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

(6) The duties of the filing office are merely administrative. By filing a notice or refusing to file a notice, the filing office does not determine the sufficiency, correctness, authenticity, or validity of any information contained in the notice.

DIVISION 4 – INFORMATION FROM FILING OFFICE

**§539. Search of filing office records and certified report.**

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

- (a) whether there are in the filing office any effective notices that designate a particular file number, debtor name, or vehicle or serial numbered equipment serial number;
- (b) the file number, and the date and time of filing of each notice;
- (c) the name of each debtor and the name and address of each secured party on each notice;
- (d) all of the information contained in each notice.

(2) If requested, the filing office shall issue a certified report of the results of a search that is an official record of the filing office and shall be admissible into evidence in the courts without extrinsic evidence of its authenticity.

(3) The purpose of information provided by the filing office is only to give notice of the possible existence of a security interest in collateral. For more complete information, the person who requested the information may inquire of the secured party. The secured party may, in its sole discretion, disclose terms of the security agreement, more detailed description of the collateral, and the nature and amount of the secured obligation, notwithstanding contrary provisions of other laws.

#### DIVISION 5 – FEES OF FILING OFFICE

##### **§540. Fees set by regulation.**

The fees for filing a notice and for requesting a certified search report shall be set by regulation to recover the costs of operation. There shall be no fee for access to examine the records of the filing office by electronic means or for other services.

### **PART IV – ENFORCEMENT OF SECURITY INTEREST**

#### DIVISION 1 – SECURED PARTY'S RIGHTS

##### **§541. Secured party rights upon default by debtor.**

(1) If the debtor defaults on its obligation to pay or otherwise perform, or upon the occurrence of another event of default, the security interest becomes enforceable.

(2) Upon default, the secured party shall have:

(a) the right to possession or control of the collateral, even if the security agreement is silent about possession or control;

(b) the right to dispose of the collateral; and

(c) other rights or remedies provided in the security agreement, this law or other law.

##### **§542. Recovery without judicial process.**

(1) Upon default, a secured party with a security interest in an account, secured sales contract or payment intangible may instruct the account debtor to make payment to the secured party, and shall apply such payment to satisfaction of the obligation secured by the security interest after deducting the secured party's reasonable collection expenses.

(2) Upon default, a secured party with a security interest in a document that is perfected by possession may proceed as to the goods covered by the document.

(3) If the security interest secures a debt, the secured party shall pay the debtor any amount collected in excess of the sum of the secured debt and expenses of collection. Unless otherwise agreed, a deficiency continues as an unsecured debt.

(4) If so agreed, and in any event after default:

(a) A bank with a perfected security interest in a deposit account maintained by the bank may apply the balance of the deposit account to the obligation secured by the deposit account; and

(b) In other cases, a secured party that has a security interest in a deposit account perfected by control may instruct the bank to pay the balance of the deposit account to the secured party's account.

(5) The secured party may act under this section without judicial process, notwithstanding any other provision of this law.

**§543. Expedited possession by secured party.**

(1) In cases not covered by Section 542, the secured party may take possession or control of collateral without legal process if the security agreement so provides or if the debtor has agreed in writing after default, provided that possession or control can be taken without a breach of the peace. If the collateral is a fixture, the secured party may remove it from the immovable property to which it is fixed without judicial process only if the debtor has agreed in writing after default.

(2) As used in this section, breach of the peace includes entering the premises of the debtor without permission, resorting to physical violence or intimidation, or being accompanied by a law enforcement officer when taking possession or confronting the debtor.

(3) If, upon default, the secured party cannot take possession or control of collateral without breach of the peace, or if the debtor does not agree after default to removal of collateral that is a fixture, the secured party may proceed as follows:

(a) The secured party shall be entitled to an expedited hearing upon application for a pre-judgment order granting the secured party possession of the collateral. Such application shall include a statement by the secured party, under oath, verifying the existence of the security agreement attached to the application and identifying at least one event of default by the debtor under the security agreement.

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

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



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

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

(d) If the court enters an order under subparagraph c. granting the secured party pre-judgment possession of the collateral, it shall also, upon application by the secured party, enter an order permitting the pre-judgment sale or other disposition of the collateral under Section 544 unless the collateral is rare or unique, or otherwise of such a nature that it is unlikely to be replaceable. In the event of a disposition under this subsection, the secured party shall retain possession of the proceeds of the disposition pending final judgment or further order of the court, unless the Court shall, in its sole discretion, order that the proceeds be held in escrow.

(e) A secured party who takes possession of collateral under an order issued pursuant to subparagraph c. shall use reasonable care in the custody and preservation of collateral in the secured party's possession, pending disposition under subparagraph d. or a final judgment or further order of the court.

(f) Unless otherwise agreed, while the collateral is in the possession of the secured party, reasonable expenses may be charged to the debtor and secured by the collateral, including the cost of any insurance, and the payment of taxes or fees associated with the collateral.

(4) Alternatively to the procedure in paragraph 3, a secured party may elect to proceed to judgment with respect to collateral and to enforce pursuant to 30 MIRC Chapter 1.

#### DIVISION 2 – DISPOSITION OR RETENTION OF COLLATERAL

##### **§544. Right to dispose of collateral**

(1) After default, a secured party may sell, lease, license or otherwise dispose of the collateral, publicly or privately.

(2) The secured party may buy at any public or private sale.

##### **§545. Commercial reasonableness required.**

(1) In disposing of collateral, the secured party shall act in a commercially reasonable manner.

(2) A sale is not commercially unreasonable merely because a better price could have been obtained by a sale at a different time or by a different method from the time and method selected by the secured party.

(3) A sale is commercially reasonable if the secured party disposes of the collateral in conformity with commercial practices among dealers in that type of property.

(4) If a method of disposition of collateral has been approved in any legal proceeding, it is conclusively deemed to be commercially reasonable, but no such approval is required by this law.

**§546. Notice of disposition.**

(1) Not later than ten (10) days before disposition of the collateral, the secured party shall give notice to:

(a) the debtor;

(b) any other secured party or lien holder who, 5 days before the date notice is given, held a security interest or lien in the collateral that was perfected by filing; and

(c) any other person from whom the secured party received notice of a claim of an interest in the collateral if the notice was received before the secured party gives notice of the proposed disposition.

(2) The debtor may waive the right to be notified.

(3) A notice of disposition is sufficient if the notice: identifies the debtor and the secured party; describes the collateral; states the method of intended disposition; and states the time and place of a public sale or the time after which other disposition is to be made.

(4) The requirement for notice described in paragraph 1 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.

**§547. Repair or preparation of collateral.**

The collateral may be disposed of by the secured party in its existing condition or after repair, processing or preparation for disposition.

**§548. Application of proceeds and clear title of buyer.**

(1) The proceeds of disposition shall be applied in the following order.

(a) The reasonable expenses of retaking, holding, preparing for disposition, and disposing of the collateral, including reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of debt secured by the security interest;

(c) The satisfaction of debt secured by any subordinate security interest or lien in the collateral if a written demand and proof of the interest are received before distribution of the proceeds is completed.

(2) The secured party shall account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency.

(3) Where collateral is sold to a purchaser who acquires the interest for value and in good faith and who takes possession of it, the purchaser acquires the collateral free from the interests of the secured party, debtor and any subordinate secured party or lien holder.

**§549. Retention of collateral by secured party**

(1) After default, the secured party may propose to the debtor to take all or part of the collateral in satisfaction of all or a part of the debtor's obligation, and shall give notice of the proposal to:

(a) the debtor;

(b) any other secured party or lien holder who, 5 days before the notice is given to the debtor, has perfected its security interest or lien by filing;

(c) any other person with an interest in the collateral who has given a written notice to the secured party before the notice is given to the debtor.

(2) If the secured party receives objection in writing from a person entitled to receive notice under paragraph 1 within 20 days after the notice was given, the secured party must dispose of the collateral as provided in this Division.

(3) If no objection is received within the 20-day period, the secured party may retain the collateral in satisfaction of the debtor's obligation in accordance with the proposal.

DIVISION 3 – DEBTOR RIGHTS

**§550. Redemption.**

(1) A person who is entitled to receive a notice of disposition may redeem the collateral provided that:

(a) the person has not, after the default, waived in writing the right to redeem;

(b) the secured party has not yet disposed of or contracted for disposition of the collateral; and

(c) the secured party has not irrevocably elected to retain the collateral.

(2) To redeem the collateral, the person must tender performance of all obligations secured by the collateral, and pay the reasonable expenses that were incurred to seize, hold, repair and prepare the collateral for disposition.

**§551. Remedies for secured party noncompliance.**

(1) If the secured party does not comply with the requirements of this Part, the court may order or restrain disposition of collateral.

(2) If disposition has occurred, the debtor or any person entitled to be informed or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with this Part.

**PART V – COLLECTION OF PAYMENTS****§552. Collection of payments to the filing office**

(1) Payments of fees to the Secured Transactions Filing Office may be made to an account in a commercial bank established by the Minister.

(2) The contract with the bank shall provide for a statement of payment details into the filing office's database and for transfer of funds to the General Fund on a schedule and conditions agreed by the bank and the Minister of Resources and Development.

(3) The contract may provide for fees to be paid for the services of the bank on conditions agreed by the bank and the Minister of Resources and Development.

**PART VI – PRE-EMPTION AND TRANSITION****§554. Pre-emption of conflicting laws.**

(1) If there is a conflict between a provision of this law and a provision of any other law, this law shall govern unless the other law specifically amends or repeals a provision of this law.

**§555. Transition provisions.**

(1) This section applies to transactions concluded prior to the effective date of this law that would be subject to this law if it had been in effect at the time the transactions were concluded. In this section, such a transaction is referred to as a "prior transaction."

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

(b) A secured party in a prior transaction may file a notice of the interest in the same manner as provided for a notice of a security interest. The secured party shall deliver a copy of the notice to the debtor.

(c) If the secured party in a prior transaction filed a notice or otherwise perfected its interest by a means provided in this law within 60 days after the effective date of this law, its priority shall be measured from the effective date of this law. If the notice of an interest created by such a prior transaction was filed or otherwise perfected after 60 days after the effective date of this law, its priority shall be measured from the date of filing.

(d) Priority between a security interest perfected under this Law and an interest created by a prior transaction for which a notice has not been filed under paragraph b or otherwise perfected under this law shall be determined under this law. The interest created under the prior transaction shall, for that purpose, be deemed to be an unperfected security interest.

(e) A notice of lien filed in a different office prior to the effective date of this Law shall remain effective for six (6) months after the effective date of this Law. If a notice of such lien is filed under this Law within the six (6) month period after the effective date of this Law, its priority shall relate back to the date of the initial filing under the prior law.

#### **§556. Amendments.**

(1) That the caption to Chapter 1 of Title 24 MIRC is amended to read as “Chapter 1. Real Property.”

(2) That Chapter 1 of Title 24 MIRC be amended by amending the caption to Part 1 thereto to read as “PART 1 – HOUSES ON LAND NOT OWNED.”

(3) That Section 101 of Title 24 MIRC is amended to read as follows:

#### **§ 101. Short title.**

This Chapter may be cited as the “Real Property Act.”

(4) That Section 102 of Title 24 MIRC be amended to read as follows:

#### **§ 102. Interpretations.**

(1) “Debtor” as used in this Chapter shall include any debtor, buyer, lessee, or other person having an equity in the property under an agreement subject to this Chapter.

(2) “Creditor” as used in this Chapter shall include any creditor, seller, lessor, or other person having rights in the property as security under an agreement subject to this Chapter.

(3) “Property” as used in this Chapter shall mean a house on land not owned by the party purporting to give an interest in the house.

(5) That Section 103 of Title 24 MIRC is amended to read as follows:

**§ 103. Application of Chapter.**

This Chapter shall apply to any agreement (hereinafter “Agreement”), regardless of its form, which is intended to give rights in houses on land not owned individually or entirely by the party or parties purporting to give an interest in the house, as security for the performance of any obligation. Such Agreements include, among others, pledges, conditional sales agreements, and leases under which ownership of property is to pass upon completion of the terms of the lease.

(6) That Section 105 of Title 24 MIRC be and is hereby repealed.

(7) That Section 109 of Title 24 MIRC is amended to read as follows:

**§ 109. Property in possession of debtor.**

(1) If the Agreement provides that the creditor may take the property if the debtor is in default for twenty (20) days or more and the debtor is so in default, the creditor may take possession of the property without notice if this can be done without breach of the peace. If the creditor does so, he shall retain the property for twenty (20) days during which period the debtor may redeem the property as provided below; thereafter, if the property has not been so redeemed, the creditor may hold the property as his own subject to the provisions of Section 111 of this Chapter.

(2) If the Agreement does not contain the provision for taking without notice referred to in the preceding Subsection, the creditor shall, not more than forty (40) nor less than twenty (20) days prior to the taking, cause written notice to be given to the debtor of the property on account of default of the debtor. The notice shall state the default and the period at the end of which the property will be taken. This notice may be given personally to the debtor or by leaving it at his usual place of abode or of business with some person not less than eighteen (18) years of age and of sound mind then residing or employed there, and, if the person with whom the notice is left states he is unable to read it, by also orally explaining the substance of it to him, if practical, in a language understood by him, otherwise in a language generally understood in the locality.

(3) If after such notice the debtor does not perform the obligations in which he has made default before the day set in such notice for taking, the creditor may take possession of the property if this can be done without breach of the peace.

(4) Unless the property can be taken without a breach of the peace either under subsection (1) or (3) of this Section, the foreclosure shall proceed thereafter only by a civil action in the High Court under the judicial foreclosure provisions of this Chapter. Nothing herein shall be construed to authorize a violation of the criminal law.

(5) Nothing in this Section shall affect the right of a creditor to proceed under Sections 106 and 107 of the Enforcement of Judgments Act, 30 MIRC 1, of this Revised Code simultaneously with action in accordance with this Section nor shall anything herein limit the discretion of the High Court to order a sale authorized by Section 107 of the Enforcement of Judgments Act of this Revised Code, on such terms or notice, if any, as it deems best.

(8) That Section 111 of Title 24 MIRC is amended to read as follows:

**§ 111. Procedures.**

(1) If the debtor, at the time of the taking or of the foreclosure under this Division, has paid at least one half (1/2) of the principal due under the Agreement, the creditor shall sell the property at public auction where it was located at the time of the taking or foreclosure, such sale to be held not more than ninety (90) days after the taking or foreclosure. The creditor shall give to the debtor not less than ten (10) days written notice of the sale in the manner provided in Section 109(2) of this Division, which notice shall not be given until the expiration of the twenty (20) days retention period provided for in Section 109(1) of this Division if the taking was made under such Section. The creditor shall also give notice of the sale by posting in at least three (3) conspicuous places within the area where the property is to be sold at least five (5) days before the sale and shall make an honest attempt to obtain a fair value at the sale and, provided he does this, may himself bid for the property at the sale.

(2) The proceeds of the sale shall be applied:

- (a) to the payment of the reasonable expenses thereof;
- (b) to the payment of the reasonable expenses of taking;
- (c) to the satisfaction of the balance due under the Agreement;

Any sum remaining after the satisfaction of such claims shall be paid to the debtor. If the proceeds of the sale are not sufficient to defray the reasonable expenses thereof and also the reasonable expenses of taking, keeping and storing the property and the balance due under the Agreement, the creditor may recover the deficiency from the debtor or anyone who has succeeded to the obligations of the debtor.

(3) If the debtor, at the time of the taking or of the foreclosure mentioned above, has not paid at least one half (1/2) of the principal due under the Agreement, the creditor shall have the option of:

(a) notifying the debtor in the manner provided in Section 109(2) of this Division of his election to retain the property as his own without obligation to account to the debtor and the debtor shall then be discharged of all obligations under the Agreement; or

(b) selling the property in the manner provided in subsection (1) of this Section and applying the proceeds as provided in subsection (2) of

this Section, with the same right to recover any deficiency as therein provided.

(4) During the twenty (20) days retention period provided for in Section 109(1) of this Division and at any other time before the creditor has disposed of the property or before the debtor's obligation has been discharged under subsection (3) of this Section, the debtor may redeem the property by tendering fulfillment of all obligations due under the Agreement up to the date of the tender as well as all the expenses reasonably incurred by the creditor in taking the property and in arranging for the sale, and upon so doing shall become entitled to take possession of the property and to continue in the performance of the agreement as if no default has occurred. Upon written demand given by the debtor in the manner provided for notice in Section 109(2) of this Division, the creditor shall furnish to the debtor a written statement of the sum due under the Agreement and the expenses of taking and in arranging for the sale. For failure to furnish such a statement within a reasonable time after demand the creditor shall forfeit to the debtor five dollars and shall also be liable to him for all damages suffered because of such failure.

(9) That Section 109 of Title 30 MIRC is amended to read as follows:

**§ 109. Levying execution.**

The Chief of Police, and every policeman or other person duly authorized, receiving a writ of execution issued by any court, shall levy or cause the Chief of Police or policeman to levy execution as follows:

(a) He shall demand of the person against whom the execution is issued, if he may be found within the Local Government Area where the levy is being attempted, that the person pay the execution or exhibit sufficient property subject to execution. If such person has property of a kind exempt from execution but to an amount exceeding the exemption, he may select the portion of this property provided by law which he desires to retain under the exemption, providing he makes this selection known promptly to the person making the levy. Otherwise, the person making the levy shall make the selection. If the person against whom the execution is issued does not pay the execution in full, including interest and costs and expenses thereof, the person making the levy shall take into his possession property of the person against whom the execution is issued, not exempt from execution, sufficient in his opinion to cover the amount of the execution. He shall take first any property under attachment in the action in which the execution was issued; next, property, if any, indicated by the person against whom the execution was issued. He may, if he thinks best, remove the property to a safe place, or place a caretaker in charge of it. He shall make a list of the property levied upon.

(b) The person making the levy shall, after levy, give public notice of the sale at least seven (7) days in advance of the time and place of sale, by notifying the mayor of the Local Government Area or areas in which the levy was made, by posting a written notice of the sale in a conspicuous place at or near the local



government office in the Local Government Area in which the sale is to be held, and must notify the person against whom the execution is issued, if he can be found within the Local Government Area or areas where the levy was made, or notify any agent who had custody of the property levied upon at the time of levy. The person making the levy shall, after levy, also give ten (10) days written notice of the time and place of sale by mail or personal delivery to any secured party who has, prior to the levy, filed a notice of security interest that identifies the levied property pursuant to Section 531 of Title 24 MIRC.

(c) The person making the levy on the day and at the place set for the sale, unless payment has been made of the amount of the judgment and interest and the costs and expenses in connection with the levy, shall sell the property levied upon at public auction to the highest bidder. He shall deduct from the proceeds of the sale sufficient money for the full payment of his fees and expenses and any amounts owed to secured parties who have filed notice of or perfected security interests in the property prior to levy and prior to any notice of lien filed by the person making the levy pursuant to paragraph 4.b of Section 531 of Title 24 MIRC, and shall then pay the person in whose favor the execution was issued, or his counsel, such balance as remains up to the amount due on the execution. If there are any proceeds of the sale left after the deduction and payment directed above, such remaining proceeds shall be paid over to the person against whom the execution was issued. The person making the levy shall then return the writ to the court with a report of his doings thereon, showing the amounts collected and paid out thereon.

(d) Whenever a request in writing signed by the debtor and creditor for a postponement of the sale to an agreed date and hour is given to the person conducting the sale under execution, such person shall thereupon by public declaration postpone the sale to the day and hour so fixed in such request and at the place originally fixed by the person for the sale. In the case of postponements, notice of each thereof must be given by public declaration by the person conducting the sale at the time and place last appointed for the sale. The person making the sale must also give ten (10) days written notice in advance of the postponed time of sale by mail or personal delivery to each secured party entitled to notice by subsection (b) above. No other notice of postponed sale need be given.

(e) If the Chief of Police, a policeman or other person duly authorized starts to levy execution and for any reason is prevented from or fails to complete the matter, the Chief of Police, a policeman or other person duly authorized may complete the levy, sale, and payment of proceeds as provided in this Section.

(10) That Section 106 of Title 48 MIRC is amended to read as follows:

**§106. Taxes withheld by employer held in trust; employer's liability.**

All taxes withheld by any employer under this Chapter shall be held in trust by such employer for the Government of the Republic of the Marshall Islands and for payment to the Secretary of Finance in the manner and at the time

required by this Chapter. If any employer shall fail, neglect, or refuse to deduct and withhold from the compensation paid to an employee, or to pay over the amount of the tax imposed by this Chapter, such employer shall be liable to pay to the Government of the Republic of the Marshall Islands the tax withheld which amount shall, whether or not tax withholding constituting trust funds have been commingled with said employer's assets, form a lien on the employer's entire assets, having priority over all other claims and liens in the real property of the employer. The priority of a lien in the personal (movable) property of the employer shall have priority as provided by section 516 of Title 24 MIRC. Any employer may recover from an employee any amount which he should have withheld but did not withhold from such employee's wages and salaries, which he has been required to pay and has paid to the Government of the Republic of the Marshall Islands out of his own funds pursuant to this Section.

(11) That Section 126 of Title 48 MIRC is amended to read as follows:

**§ 126. Lien on property.**

(1) All taxes imposed or authorized under this Chapter shall be a lien upon any and all property of the person or business obligated to pay the taxes, and may be collected by judicial foreclosure upon such property.

(2) The lien imposed by subsection (1) shall not be valid against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof which meets the requirements of subsection (3) has been filed by the Secretary.

(3) The notice referred to in subsection (2) shall be filed as provided by Part III of Chapter 5, Title 24 MIRC. The form and content of the notice referred to in subsection (2) shall be prescribed by Section 531 of Title 24 MIRC.

(4) Subject to such regulations as the Secretary may prescribe, the Secretary shall issue a certificate of release of any lien imposed with respect to any income tax not later than thirty (30) days after the day on which:

(a) the Secretary finds that the liability for the amount assessed, together with all interest in respect thereto, has been fully satisfied or has become legally unenforceable; or

(b) there is furnished to the Secretary and accepted by him a bond or letter of credit that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and of the bond and sureties thereon, as may be specified by such regulations.

(5) In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney-General or his delegate may direct a civil action to be filed in the High Court of the Republic to enforce the lien of the Republic under this Chapter with respect to such tax or liability or to subject any property, of whatever nature,

of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability. Civil actions brought for the collection of tax shall be brought in the name of the Secretary of Finance.

(6) The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the Republic therein is established, may decree a sale of such property by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the Republic. If the property is sold to satisfy a first lien held by the Republic, the Republic may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary directs.

(7) In any such proceeding, at the instance of the Republic, the court may appoint a receiver to enforce the lien, or, upon certification by the Secretary during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver.

(12) That Section 158 of Title 49 MIRC is amended to read as follows:

**§ 158. Lien for Contributions.**

All contributions, including penalties, interest accrued, and attorney's fees imposed or authorized under this Chapter, shall be a lien upon any property of any delinquent employer, including a self-employed worker, having priority over all other claims to and liens in the real property of the delinquent employer, including liens for other taxes, and may be collected by levy upon such property in the same manner as the levy of an execution. The priority of a lien in the personal (movable) property of the delinquent employer shall have priority as provided by section 516 of Title 24 MIRC.

**§557. Effective Date.**

This Act shall take effect on the date certain certified by the Minister of Resources and Development to the Speaker of the Nitijela as the date on which the filing office required by this Act will be operational. The Minister shall make his certification when he knows what the operational date of the filing office will be, but not less than one week before the specified effective date.

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