WEST VIRGINIA CODE: §46A-2-119A

§46A-2-119a. Secured transaction; use of price guide value in calculating deficiency or surplus.

****Clerk's NOTE: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.****

(a) This section applies to the following transactions:

(1) Transactions in which a purchase money security interest is taken in collateral which is being purchased primarily for a personal, family, household or agricultural purpose;

(2) Transactions in which a security interest is taken in collateral which was used primarily for a personal, family, household or agricultural purpose prior to the giving the security interest; or

(3) Transactions in which a security interest is taken in collateral for a debt that was incurred primarily for a personal, family, household or agricultural purpose.

(b) This section takes effect on July 1, 2002, and is applicable notwithstanding the provisions of:

(1) Section six hundred ten, article nine, chapter forty-six of this code, providing that disposition may only be by certain public or private sale, lease or license procedures;

(2) Section six hundred ten, article nine, chapter forty-six of this code, requiring that those procedures be commercially reasonable;

(3) Section six hundred fifteen, article nine, chapter forty-six of this code, providing for the application of the proceeds;

(4) Section six hundred twenty, article nine, chapter forty-six of this code, requiring disposition by sale, lease or license in certain circumstances; and

(5) Section six hundred two, article nine, chapter forty-six of this code, providing that these sections may not be waived or varied by agreement.

(c) For purposes of this section, the term "debtor" shall be deemed to refer collectively to each person who is indebted to a secured creditor in connection with a consumer lease or consumer loan, whether the person's obligation arises as a comaker, endorser or guarantor of the lease or loan.

(d) After a default by the debtor and after the secured creditor takes or receives possession of collateral or makes collateral unusable as provided in section six hundred nine, article

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nine, chapter forty-six of this code, the secured creditor may send a written proposal to the debtor setting forth a value for the secured creditor's collateral which value, less any expenses of taking and holding the collateral, shall be credited against the debtor's obligation to the secured creditor. The written proposal must explain that:

(1) The proposal becomes effective only if the debtor agrees to it in writing but the debtor is not required to agree to the written proposal;

(2) If the debtor does not agree to the proposal in writing, then the goods which are the subject of the written proposal will be disposed of in a "commercially reasonable" manner by the secured creditor in accordance with applicable law, and the amount received from the disposition of the collateral, less the expenses of taking and holding the collateral, preparing the collateral of the sale or lease, and selling the collateral, will be the amount credited against the debtor's obligation to the secured creditor when calculating the deficiency owed by the debtor to the secured creditor or the surplus owed by the secured creditor to the debtor;

(3) If the debtor agrees to the written proposal, then the debtor will thereby release and waive any claims against the secured creditor that the disposition of the collateral was not commercially reasonable or was otherwise improper; and

(4) The written proposal may set forth a date and time by which the debtor's written agreement must be received by secured creditor in order for the agreement to become effective.

(5) The following form, when reproduced on a single sheet of paper with no other statements or agreements and accurately completed, meets the requirements of this section even if it contains typographical or other minor errors that are not misleading:

[*Name and address of secured party*]

[*Date*]

TO: [*Name and address of debtor*]

OFFER TO CREDIT PRICE GUIDE VALUE

We have possession of your [*describe collateral*] ("property") (or we have made it unusable by you), because you broke the terms of our agreement.

By law, we may sell, lease or license this property in any commercially reasonable manner. If we choose to sell the property at a public sale we will give you notice of the date, time and place of the sale and you may attend the sale and bring bidders if you want. If we choose to sell the property at a private sale we will give you notice of the date after which the sale will take place. From the money we are paid from the sale of the property, we may subtract our expenses in getting the property from you, storing it, preparing and selling, leasing or

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licensing it. The sale money left over after these expenses are subtracted will then be subtracted from what you owe us. If we receive less money than you owe, you will still owe us the difference. If we receive more money than you owe, you will get the extra money back (unless we are required to pay it to someone else).

Instead of selling, leasing or licensing this property, we are now offering to subtract the amount of $ [*enter amount*] from what you owe us. We have calculated this amount by adding the retail value of the property of $ [*insert retail value*] and the [*insert other value pursuant to § 46A-2-119a(5)*] value of the property of $ [*enter amount*] and dividing that total by 2 ("value amount"). These values were obtained from _____, a price guide in general use as of the date we got possession of or rendered the property unusable by you. From the value amount we have subtracted our expenses of $ [*enter amount*] in taking back the property from you, and our expenses of $ [*enter amount*] for storing the property through the date below by which you must respond to this offer.

You do not have to accept this offer. To agree to our offer, you must sign this notice at the bottom no sooner than one day after the date on which you received this offer and deliver it or have it delivered to us before [*enter date by which the secured party determines the offer must be accepted*] . If you agree to this offer, you are giving up any right to hold us liable for the way that we sell, lease or otherwise dispose of the property and account for the proceeds.

You can get the property back at any time before you accept this offer or we sell, lease or license the property by paying us the full amount you owe (not just the past due payments), including our expenses so far. To learn the exact amount you must pay, you may call us at [*telephone number*] . If you want us to explain to you in writing how we calculated the amount that you owe us, you may call us at [*telephone number*] or write us at [*secured party's address*] and request a written explanation.

[We are sending this notice to the following other people who owe money under our agreement. They will also have to agree to our offer or we will sell the property as we normally do.

[*Names of all other debtors and obligors, if any*]]

I accept the offer:

Signed _____

Date of signature _____

[End of Form]

(e) (1) The value of the collateral set forth in the written proposal shall be determined from any price guide used generally by persons who are not purchasers or lessees of that type of collateral and who insure, lend money for the purchase of, lease or otherwise deal in goods

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of the same type as the collateral when it would be to the advantage of the user for the price guide to have higher values.

(2) The value of the collateral set forth in the written proposal shall be determined as of the date the secured party took possession of the collateral, received possession of the collateral or rendered the collateral unusable.

(3) For a motor vehicle, as that term is defined by section one, article one, chapter seventeen-a of this code, the value of the motor vehicle collateral shall be calculated by adding together the retail value and the trade-in value for the motor vehicle and dividing that sum by two.

(4) For a manufactured home, mobile home or house trailer, as those terms are defined in section one, article six, chapter seventeen-a of this code, which at the time of default was located on a lot owned by the debtor, an obligor or a person related to the debtor, the value of the manufactured home, mobile home or house trailer collateral shall be calculated by adding together the retail value and the wholesale value designated for the manufactured home that is moved for resale, mobile home or house trailer and dividing that sum by two.

(5) For a manufactured home, mobile home or house trailer, as those terms are defined in section one, article six, chapter seventeen-a of this code, which at the time of default was located on a lot owned by a person or organization in the business of renting or leasing lots or on a lot owned by a person who is not the debtor, an obligor or a person related to the debtor or obligor, the value of the manufactured home, mobile home or house trailer collateral shall be calculated by adding together the retail value and the wholesale value designated for collateral that is offered for sale without moving the collateral from its current location, and dividing that sum by two.

(6) For other personal property, the value of the collateral shall be calculated by adding together the used retail value and the highest listed wholesale value for the property and dividing that sum by two.

(f) If the debtor agrees in writing to the written proposal within the time period prescribed by the secured creditor, then:

(1) The collateral value as calculated in subsection (e) above, less any expenses of taking and holding the collateral, shall be applied to the indebtedness as provided in section six hundred fifteen, article nine, chapter forty-six of this code;

(2) Any expenses incurred by the secured creditor in the actual sale or lease of the collateral or preparing the collateral for sale or lease may not be charged to the debtor but must be born by the secured creditor; and

(3) The secured creditor is not required to dispose of the collateral in a commercially reasonable manner and is not liable for any failure to comply with any law of this state

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relating to the disposition of the collateral or application of the proceeds.

(g) The written agreement of the debtor is not valid unless it is signed by the debtor on or after the next calendar day after it is received by the debtor or the second calendar day after it was sent to the debtor.

(h) If the debtor is more than one person, then the secured creditor must send the proposal described in subsection (d) of this section to all such persons. If any one of the persons indebted to a secured creditor on a consumer lease or consumer loan does not agree in writing to the proposal or does not respond timely to the proposal, then the secured creditor must proceed with a sale or other disposition of its collateral as provided in article nine, chapter forty-six of this code.

(i) If a person other than the debtor has a recorded ownership interest in property securing the debtor's obligation to a secured creditor and such other person is not also indebted to the secured creditor on such obligation, then the secured creditor must send a copy of the proposal described in subsection (d) of this section to such other person but is not required to obtain such other person's consent or agreement to the proposal in order to effect the proposal.

(j) Upon receipt of the debtor's executed acceptance of a written proposal described in subsection (d) of this section, title to the collateral described in the proposal shall be deemed to pass to the secured creditor unless such collateral is a vehicle, manufactured home, mobile home or house trailer.

(k) Upon presentation of the debtor's executed acceptance of a written proposal described in subsection (d) of this section to the department of motor vehicles and a certificate of title to the debtor's vehicle, manufactured home, mobile home or house trailer described in the written proposal, the department of motor vehicles shall issue a new certificate of title to the vehicle, manufactured home, mobile home or house trailer in the name of the secured creditor as the owner thereof.

(l) Nothing in this section may be construed to create, directly or indirectly, or impose a duty on the secured creditor to make a written offer or give notice under this section. A secured creditor's failure to make a written proposal shall not subject the secured creditor to any liability to the debtor or any other person.

(m) The provisions of this section may not be waived or varied.

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