

The Land Contracts (Actions) Act

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Chapter L-3 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan, 1979-80, c.92; 1980-81, c.83; 1982-83, c.16; 1983-84, c.42; 2001, c.8 and 50; and 2004, c.L-16.1.*

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER L-3

An Act to Confer Powers upon the Court of Queen's Bench respecting Actions founded upon Certain Contracts affecting Land

Short title

1 This Act may be cited as *The Land Contracts (Actions) Act*.

Interpretation

2 In this Act:

(a) **“action”** means:

(i) an action by a mortgagee or his personal representatives or assigns for:

(A) foreclosure of an equity of redemption;

(B) sale or possession of mortgaged premises; or

(C) the recovery of any moneys payable under a mortgage; or

(ii) an action by a vendor of land or his personal representatives or assigns for:

(A) specific performance or cancellation of;

(B) sale or possession of land sold under; or

(C) any other relief that may be granted under;

an agreement for sale of land;

(b) **“court”** means Her Majesty's Court of Queen's Bench for Saskatchewan;

(c) **“judge”** means a judge of the court.

1979-80, c.92, s.46.

Leave required to commence action

3(1) No action shall be commenced except by leave of the court granted upon application under this section.

(1.1) An action that is commenced without obtaining leave pursuant to this section is a nullity.

(2) A person desiring to commence an action may, after the expiry of a period of thirty clear days from the date of service upon the Provincial Mediation Board of a notice in writing of his intention to do so, apply *ex parte* to a judge for an appointment to hear an application for leave to commence the action.

(3) A notice of intention pursuant to subsection (2) shall set forth the names of the parties to the proposed action and the nature of the proposed action and when served upon the Provincial Mediation Board shall be deemed to constitute an application in writing within the meaning of subsection (1) of section 6 of *The Provincial Mediation Board Act* and upon receipt of such notice the board shall comply with the said subsection (1). The notice may be served by registered mail and shall be deemed to have been served on the date of the receipt of the postmaster for the envelope containing the notice.

(4) Upon an application under subsection (2) the judge shall grant an appointment for a hearing, and notice of the hearing shall be served upon the registered owner of the mortgaged land or in the case of an action under an agreement for sale of land, upon the purchaser, or his assignee if known to the applicant, and approved by him if approval is required by the agreement, and upon any person, other than a tenant, in personal occupation of the land, and, if any of the said persons is deceased and there is no personal representative, the judge may order service of the notice upon the surviving spouse or child of the deceased person or upon such person as to the judge may seem fit:

Provided that the hearing may proceed without notice and the application may be disposed of *ex parte* if it appears to the judge that there is no person upon whom notice can be served as required by this subsection and that there is no person upon whom he should order service under the power conferred by this subsection, or if the registered owner of the mortgaged land, or the purchaser or his assignee, has consented to the application or has abandoned the land and does not reside in the province.

(5) In subsection (4) “**any person, other than a tenant, in personal occupation of the land**” includes a person farming the land notwithstanding that he does not reside thereon.

(6) Every application for an appointment under subsection (2) shall be made at the judicial centre nearest to which the land or any part thereof is situated, and every hearing shall take place at that judicial centre.

(7) All notices of the hearing shall be served not less than fifteen days before the date of the hearing.

(8) The notice may be served by personal service or by registered mail with postage prepaid. Where service is made by registered mail, the service shall be deemed sufficient if a receipt from the postmaster for the envelope containing the notice and a post office receipt form therefor purporting to be signed by the person to be served are produced as exhibits to the affidavit of service. A notice served by registered mail shall be deemed to have been served on the day of the date of the receipt that purports to be signed by the person to be served.

(9) Upon the hearing the judge may require the parties to the proceedings to furnish information respecting the value of the land, the state of cultivation of the land, the state of the mortgagor's or purchaser's account with the mortgagee or vendor, the income and assets of the parties, prevailing conditions of a local or temporary nature and all other matters that may appear relevant and make such inquiries with regard to any of the said matters as he deems necessary, and may grant the application, adjourn the hearing from time to time for such period or periods not exceeding eight months in all as he deems fit or refuse to grant the application, and, except where an action has been commenced, vary any order, including an order for adjournment, from time to time. Refusal to grant an application shall not be a bar to the granting of any further application to commence the action. On a second or subsequent application the material used on the previous application may be used.

(10) In disposing of an application the judge shall have and exercise discretion in each case and shall act upon his own view of the proper order to be made having regard to all the facts

(11) The judge may in his discretion order any party to an application to pay the whole or any portion of the costs of the application.

(12) An appeal lies from any fiat or order made on an application under this section.

(13) The appeal shall be to the Court of Appeal.

(14) The appellant shall give notice of his intention to appeal by filing, in the office of the registrar of the Court of Appeal, within 15 days after the date of the fiat or order complained of, a notice in writing stating with reasonable certainty the fiat or order complained of.

(14.1) An appeal to the Court of Appeal is to be returnable on a day to be fixed by the Court of Appeal.

(14.2) The respondent is to be served with a copy of the notice of appeal four clear days before the return date and service may be effected in the manner described in subsection (8) or, where the respondent appeared by solicitor on the application before the judge, service on the respondent may be effected by service on that solicitor.

(14.3) No notice of appeal need be served on any person who did not appear on the application before the judge.

(14.4) The time fixed in subsection (14.2) may be abridged by a judge or a judge of the Court of Appeal on *ex parte* application.

(15) Except as herein otherwise provided, all statutory provisions and all rules of the Court of Queen's Bench respecting service of process, including those respecting substitutional service, apply with respect to service of a notice under this section.

(16) Where an appeal is taken, the judge shall certify to the Court of Appeal what, if any inquiry the judge has made and all the information obtained upon which he has purported to act, and the information so certified is part of the record before the Court of Appeal.

(16.1) The registrar of the Court of Appeal shall obtain the certificate and place it on the file, but the Court of Appeal hear and dispose of the appeal without a certificate in the case of the absence, illness or death of the judge.

(17) Where an appeal is taken the judge appealed to has, and shall exercise, a discretion similar to that of the judge appealed from, notwithstanding that the fiat or order appealed from was made in the discretion of the judge appealed from, and may draw inferences of fact and make the order that, in the judgment of the judge appealed to, the judge appealed from ought to have made.

(18) There shall be no appeal from an order of a judge of the Court of Appeal except on a question of law.

(19) Notwithstanding *The Limitations Act*, where an application is made for leave to commence an action, the period between the date of the first application for an appointment and the date on which leave is given to commence the action shall not be included in a calculation of time under that Act for commencing the action.

R.S.S. 1978, c.L-3, s.3; 1979-80, c.92, s.46; 1980-81, c.83, s.42; 1982-83, c.16, s.49; 1983-84, c.42, s.3; 2001, c.50, s.8; 2004, c.L-16.1, s.53.

Discretionary powers of court in actions

4(1) In an action, whether heretofore or hereafter commenced, the court or judge may require the parties to furnish information respecting the value of the land, the state of cultivation of the land, the state of the mortgagor's or purchaser's account with the mortgagee or vendor, the income and assets of the parties, prevailing conditions of a local or temporary nature and all other matters that may appear relevant and make such inquiries with regard to any of the said matters as he deems necessary, and may grant or refuse to grant an order, stay the action, postpone payment of any moneys due, prescribe terms and conditions to which an order made shall be subject, vary or extend an order from time to time, and give any direction as to costs; and in disposing of an application the court or judge shall have and exercise discretion in each case and shall act upon its or his own view of the proper order to be made having regard to all the facts and notwithstanding any order or ruling made before the fifteenth day of May, 1943, in any other action. Notwithstanding that appearance has not been entered to the writ, the defendant may nevertheless enter an appearance at any time for the purpose only of receiving notice of any application in the action and of being heard upon such application.

(2) Where an appeal is taken from a judgment or order given or made under subsection (1), the court or judge whose decision is appealed from shall certify to the court or judge appealed to what, if any, inquiry the court or judge appealed from has made and all the information obtained upon which it or he has purported to act, and the information so certified shall be part of the record before the appellate court or judge.

(3) Where an appeal is taken each court or judge appealed to has, and shall exercise, a discretion similar to that of the court or judge appealed from, notwithstanding that the judgment or order appealed from was made in the discretion of the court or judge, and may draw inferences of fact and pronounce the judgment or make the order that in its or his judgment the court or judge whose judgment or order is appealed from ought to have pronounced or made. The registrar of the Court of Appeal shall obtain the certificate required by subsection (2) and place it on the file; provided that the appellate court or judge may hear and dispose of the appeal without a certificate in case of the absence, illness or death of the judge from whose judgment or order the appeal is taken.

R.S.S. 1978, c.L-3, s.4; 1979-80, c.92, s.46.

Agreements waiving Act null and void

5(1) Subject to subsection (2), every agreement or bargain, verbal or written, express or implied, that this Act or any provision of it shall not apply or that any benefit or remedy provided by it shall not be available, or which in any way limits, modifies or abrogates or in effect limits, modifies or abrogates any such benefit or remedy, is null, void and of no effect, and moneys paid under or by reason of any such agreement or bargain are recoverable in any court of competent jurisdiction.

(2) A corporate body may in writing agree that this Act shall have no application to an action, as herein defined, with respect to:

- (a) a mortgage given by it after March 25, 1959; or
- (b) an agreement for sale of land entered into by it as purchaser after March 25, 1959;

and where there is an agreement made by a corporate body under this subsection this Act does not apply to such action.

1983-84, c.42, s.4.

Act not to apply to Industrial Development Bank

6 Nothing in this Act applies to a mortgage given after the day this section comes into force to secure a loan made under the *Industrial Development Bank Act* (Canada) by the Industrial Development Bank established under that Act.

R.S.S. 1978, c.L-3, s.6.

Exemption

7 Nothing in this Act applies to a mortgage given on or after the second day of October, 1975 to secure a loan made under the *Federal Business Development Bank Act* (Canada) by the Federal Business Development Bank established under that Act or by its successor, the Business Development Bank of Canada, pursuant to the *Business Development Bank of Canada Act*.

R.S.S. 1978, c.L-3, s.7; 2001, c.8, s.10.

