

The Limitation of Civil Rights Act

being

Chapter L-16 of *The Revised Statutes of Saskatchewan, 1978*
(effective February 26, 1979).

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-16

An Act respecting the Limitation of Certain Civil Rights

SHORT TITLE

Short title

1 This Act maybe cited as *The Limitation of Civil Rights Act*.

R.S.S. 1978, c.L-16, s.1.

MORTGAGES AND AGREEMENTS FOR SALE AND LEASES OF LAND

Action on personal covenant prohibited in certain cases

2(1) Where land is hereafter sold under an agreement for sale in writing, or mortgaged whether by legal or equitable mortgage for the purpose of securing the purchase price or part of the purchase price of the land affected, or where a mortgage is hereafter given as collateral security for the purchase price or part of the purchase price of land, the vendor's or mortgagee's right to recover the unpaid balance due shall be restricted to the land sold or mortgaged and to cancellation of the agreement for sale or foreclosure of the mortgage or sale of the property, and no action shall lie on the covenant for payment contained in the agreement for sale or mortgage.

(2) The benefit of subsection (1) extends to and includes:

- (a) the personal covenant of the purchaser contained in any assignment by the vendor of such an agreement for sale;
- (b) the personal covenant of the assignee contained in any assignment by the purchaser of such an agreement for sale;
- (c) the personal covenant of the mortgagor contained in an agreement extending any such mortgage;
- (d) the personal covenant of a purchaser of lands subject to any such mortgage, to assume and pay the mortgage;

and no action lies on any such personal covenant.

R.S.S. 1965, c.103, s.2; R.S.S. 1978, c.L-16, s.2.

Restricted effect of payment or acknowledgment under mortgage or agreement for sale

3 No payment hereafter made or acknowledgment hereafter given to a mortgagee of land or to a vendor of land, of or in respect of moneys payable under the mortgage or agreement of sale, shall have the effect of extending the time within which an action on the personal covenant for payment in the mortgage or agreement must be commenced by the mortgagee or vendor, except as against the person by whom the payment is made or the acknowledgment is given. This section applies with respect to all mortgages and agreements of sale whether given or made before, on or after the first day of April, 1939. In this section "**mortgagee**" and "**vendor**" include a person claiming through a mortgagee or vendor.

R.S.S. 1965, c.103, s.3; R.S.S. 1978, c.L-16, s.3.

Power of court *re* certain executions under judgments on personal covenant

4(1) Where judgment is hereafter obtained in an action on a personal covenant for payment in a mortgage or an agreement for sale of land and a writ of execution, issued under the judgment, has been filed in the land titles office, the court or judge may upon summary application of the judgment debtor, after such hearing as the court or judge deems proper, order that the writ shall not affect any of the lands of the judgment debtor declared by *The Exemptions Act* to be free from seizure by virtue of writs of execution.

(2) When such order is made the local registrar or the local clerk of the district court shall forward a copy thereof, certified by him, to the proper registrar of land titles and the registrar shall file the copy; and thereupon the writ shall have no effect against the lands of the execution debtor mentioned in subsection (1). The fee for filing the certified copy shall be collected from the execution debtor by the local registrar or the local clerk of the district court and shall accompany the copy of the order forwarded by him to the registrar.

R.S.S. 1965, c.103, s.4; R.S.S. 1978, c.L-16, s.4.

Reserve bid in mortgage sales

5 Where, in an action upon or relating to a mortgage of real property, the mortgagee, or a person claiming through or under him, seeks to have the property sold, and the proceeds of sale applied in satisfaction of the mortgage indebtedness in whole or in part, the court or judge shall not order sale of the property except subject to such upset price or reserve bid as the court or judge deems proper having regard to all the circumstances.

R.S.S. 1965, c.103, s.5; R.S.S. 1978, c.L-16, s.5.

Effect of final order of foreclosure

6 Every final order of foreclosure of a mortgage on land shall operate in full satisfaction of the debt secured by the mortgage; provided that a right of redemption exercisable after a final order of foreclosure made prior to the twenty-first day of February, 1935, shall be exercisable after a final order of foreclosure made after that date.

R.S.S. 1965, c.103, s.6; R.S.S. 1978, c.L-16, s.6.

Mortgagee's inspection fees

7 The fees of a mortgagee for inspection of the mortgaged premises except the preliminary inspection consequent upon an application for a loan or a renewal or extension of a loan, shall be borne by the mortgagee and shall not be charged to the mortgagor or to the mortgage account.

R.S.S. 1965, c.103, s.7; R.S.S. 1978, c.L-16, s.7.

Mortgagee's collection costs

8(1) Subject to subsection (2) and notwithstanding any stipulation, agreement or covenant contained in any mortgage of land or in any agreement renewing or extending any such mortgage, no fees, costs, charges or expenses or allowance for the time and service of an officer, inspector or employee of the mortgagee or of any other person appointed for the purpose, shall be charged to the mortgagor or added to the mortgage account in respect of the collection of any moneys due and payable under the mortgage, by way of commission upon or expenses of such collection or of getting in the mortgagee's share of the crop grown on the land in question in any year; and any provision in any such mortgage or agreement whereby the mortgagor contracts, agrees or covenants to pay any such fees, costs, charges, expenses, allowances or commissions, or that the same may be added to the principal money secured by the mortgage, is null, void and of no effect.

(2) Nothing in this section affects a mortgagee's right to recover costs as between party and party in an action under the mortgage instituted in a court of competent jurisdiction, or to recover the costs of distress allowed by *The Distress Act*, or, where grain is taken under *The Crop Payments Act* without levying a distress, to recover the actual expenses reasonably incurred in transporting the grain to the nearest available market, not to exceed one and one-half cents per bushel in the case of oats and two cents per bushel in the case of all other grain for each five miles or fractional part thereof between the place of taking and the said market; nor does anything in this section affect the right of a mortgagee, where under a crop lease or agreement the mortgagor has failed to deliver to the mortgagee the latter's share of the crop within twenty days after the time for delivery thereof, to charge a disbursement made for a collection fee, of five per cent on the amount collected or the sum of ten dollars whichever is the lesser; nor does anything in this section affect, alter or vary any right that, on the first day of May, 1937, a mortgagee had to reasonable and necessary costs and expenses of collecting the rents or profits of the mortgaged land where the land was leased to a person other than the owner.

R.S.S. 1965, c.103, s.8; R.S.S. 1978, c.L-16, s.8.

Declarations as to fixtures in agreements for sale and mortgages

9 Notwithstanding anything contained in any agreement for sale of land heretofore or hereafter made or in any mortgage of land heretofore or hereafter given or in any agreement renewing or extending the same or in any agreement collateral thereto or any other agreement, no erection, machinery, plant, building, improvement or other chattel erected, placed or put upon farm land sold or mortgaged shall, by reason only of a declaration, agreement or covenant in the agreement of sale or mortgage or in an agreement collateral thereto or any other agreement, become or be deemed to be a part of the realty or form a part of the security; and any agreement, stipulation or covenant that a chattel shall become a part of the realty or form part of the security, or having the same or a like effect, is null, void and of no effect.

R.S.S. 1965, c.103, s.9; R.S.S. 1978, c.L-16, s.9.

Payment of overdue moneys without notice or bonus

10 Notwithstanding anything contained in any agreement for sale of land heretofore or hereafter made or in any mortgage of land heretofore or hereafter given or in any agreement renewing or extending the same, in the event of non-payment of the principal money secured by the agreement or mortgage, or of a portion thereof, when due under the terms of the agreement or mortgage, the vendor or mortgagee shall not, by reason of the non-payment or as a condition of acceptance of the overdue moneys or a portion thereof, be entitled to receive any bonus or other additional sum or to receive notice from the purchaser or mortgagor of intention to pay the overdue moneys or a portion thereof; and any agreement, stipulation or covenant to the contrary is null, void and of no effect.

R.S.S. 1965, c.103, s.10; R.S.S. 1978, c.L-16, s.10.

Only land taxes chargeable to mortgagor

11 Notwithstanding anything contained in any mortgage of land whether heretofore or hereafter given or in any agreement renewing or extending the same, no taxes, rates or assessments, other than taxes, rates or assessments levied or charged against the land and paid by the mortgagee, shall be charged by the mortgagee to the mortgagor or added to the mortgage account; and an agreement, stipulation or covenant to the contrary is null, void and of no effect.

R.S.S. 1965, c.103, s11; R.S.S. 1978, c.L-16, s.11.

Life insurance premiums not to form a charge on the land

12(1) Notwithstanding anything contained in any agreement for sale of land hereafter made or in any mortgage of land hereafter given, or in any agreement renewing or extending the same, no premium upon or in respect of an insurance policy on the life of the purchaser or mortgagor taken by or assigned to the vendor or mortgagee as collateral security for the amount owing under the agreement for sale or mortgage, shall be charged or added by the vendor or mortgagee to the account of the purchaser or mortgagor in respect of the amount so owing or form a lien or charge on the land; and any agreement, stipulation or covenant to the contrary is null, void and of no effect.

(2) Subsection (1) does not apply to a premium upon or in respect of an insurance policy taken by or assigned to:

- (a) the Canadian Farm Loan Board as collateral security for the amount owing under a mortgage given before the thirtieth day of March, 1961, to secure a loan made under the *Canadian Farm Loan Act* (Canada) by that board; or
- (b) the Farm Credit Corporation as collateral security for the amount owing under a mortgage heretofore or hereafter given to secure a loan made under the *Farm Credit Act* (Canada) by that corporation; or
- (c) the Industrial Development Bank as collateral security for the amount owing under a mortgage heretofore or hereafter given to secure a loan made under the *Industrial Development Bank Act* (Canada) by that bank.
- (d) the Federal Business Development Bank as collateral security for the amount owing under a mortgage given before or after the coming into force of this clause to secure a loan made under the *Federal Business Development Bank Act* (Canada) by the Federal Business Development Bank.

R.S.S. 1965, c.103, s.12; 1976-77, c.40, s.2; R.S.S. 1978, c.L-16, s.12.

Application of fire insurance moneys

13(1) Notwithstanding anything contained in any agreement for sale of land heretofore or hereafter made or in any mortgage of land heretofore or hereafter given, or in any agreement renewing or extending the same, in the event of damage to or destruction of buildings on the land by fire the purchaser or mortgagor may, after giving the notice required by subsection (2), apply to a judge of the Court of Queen's Bench for an order governing the application of any moneys received or receivable under an insurance policy, in respect of the damage or destruction; and upon such application the judge may make an order directing the application of those moneys on the mortgage or agreement of sale or in or towards rebuilding, restoring or repairing the building damaged or destroyed, or partly in the one way and partly in the other.

(2) No application shall be made under subsection (1) unless within sixty days after the amount of the loss is adjusted and unless ten days' notice of intention to make the application has been given to the vendor or mortgagee, which notice shall be given by registered mail, postage prepaid, and shall be deemed to have been given on the date upon which the envelope containing the notice is deposited with the postmaster.

R.S.S. 1965, c.103, s.13; R.S.S. 1978, c.L-16, s.13.

Hail insurance premiums

14 Notwithstanding anything contained in any lease, agreement for sale or mortgage of land, whether heretofore or hereafter entered into, made or given, or in any agreement renewing or extending the same, where the lessor, vendor or mortgagee insures the crops grown on the land against loss by hail, the cost of the insurance shall not be chargeable against the lessee, purchaser or mortgagor unless with his written consent given in the year in which the insurance is effected; and any agreement, stipulation or covenant to the contrary is null, void and of no effect. This section does not apply to insurance of crops under *The Municipal Hail Insurance Act*.

R.S.S. 1965, c.103, s.14; R.S.S. 1978, c.L-16, s.14.

Restriction of rights under lease option agreements

15(1) Where a lessee of land has an option of purchasing the land, or is to become the purchaser of the land, upon the performance of any condition or conditions, the right of the lessor or his personal representatives or assigns to recover by action or extrajudicial proceeding rent payable by the lessee in respect of the land shall be restricted to the recovery of an amount not exceeding the reasonable rental value of the land, which value shall be determined by the court in the course of the action or, in the case of an extrajudicial proceeding, by a judge of the district court acting at the judicial centre nearest to which the land is situated, on the summary application of the lessor or lessee, provided that in the case of leases of farm lands a one-third share crop rental shall be deemed a reasonable yearly rental and in the case of urban property a one-hundredth part of the price mentioned in the option shall be deemed a reasonable monthly rental, and in such cases application to the said judge shall not be necessary.

(2) If an option of purchasing land, where the holder of the option is in possession thereof as lessee, is sought to be terminated on account of breach or non-performance of any covenant, agreement, stipulation or condition contained in the lease, the holder of the option may make an application for relief to a judge of the district court acting at the judicial centre nearest to which the land is situated, in which case the judge may in his discretion make an order upon such terms as he deems just granting an extension of time wherein the holder of the option may perform his obligations.

(3) For the purpose of an application under subsection (2), the holder of the option may, within thirty days of the giving of notice of termination or intention to terminate, apply to the judge to fix a place and time for hearing the application and the judge shall thereupon fix a place and time, having regard to the requirements of subsection (4).

(4) Fifteen days' notice of an intended application under subsection (1) or (2) stating the place and time thereof shall be given by the lessor or lessee to the other or his assigns, which notice shall be personally served or may be given by registered mail postage prepaid and shall be deemed to have been given on the date following that upon which the envelope containing the notice is deposited with the postmaster.

(5) This section does not apply to leases or options of mines or minerals.

R.S.S. 1965, c.103, s.15; R.S.S. 1978, c.L-16, s.15.

MORTGAGES AND CHATTEL MORTGAGES

Application of moneys realized by mortgagee where more than one debt secured by a mortgage

16 Where a mortgage or chattel mortgage, whether heretofore or hereafter given, is held as security for more than one debt and moneys are paid by the mortgagor or are realized by the mortgagee under the terms of the mortgage, the moneys received or realized shall be applied immediately in or towards payment of one or more of the debts secured by the mortgage and unless the mortgagor, in exercise of any right, has given directions as to the application of those moneys, the mortgagee shall immediately notify the mortgagor of the debt in or towards payment of which the moneys have been applied; and any agreement, stipulation or covenant to the contrary is null, void and of no effect.

R.S.S. 1965, c.103, s.16; R.S.S. 1978, c.L-16, s.16.

Certain conditions prohibited

17 No chattel mortgage or agreement collateral thereto shall contain a provision the application of which depends merely on the opinion of the mortgagee that a circumstance or state of things exists which affects his security; and any such provision is null, void and of no effect.

R.S.S. 1965, c.103, s.17; R.S.S. 1978, c.L-16, s.17.

CONDITIONAL SALES

Vendor's right to recover price restricted

18(1) When an article, the selling price whereof exceeds \$100, is hereafter sold, and the vendor, after delivery, has a lien thereon for all or part of the purchase price, the vendor's right to recover the unpaid purchase money shall be restricted to his lien upon the article sold, and his right to repossession and sale thereof, notwithstanding anything to the contrary in *The Agricultural Implements Act*, or in any other Act or in any agreement or contract between the vendor and purchaser.

(2) Subsection (1) does not apply to:

- (a) the sale of land with chattels upon an entire consideration;
- (b) an agreement for the sale of live stock;
- (c) the sale of aeroplanes or parts thereof, aeroplane engines or parts thereof, mining machinery, equipment or material, or machinery, equipment or material used in the exploration for or production of petroleum or natural gas;
- (d) the sale of an article that is thereafter affixed to realty and to which section 19 of *The Conditional Sales Act* applies;
- (e) the sales of goods in bulk within the meaning of *The Bulk Sales Act*.

(3) Subsection (1) applies to all instalment sales, whether the sales are effected by way of a conditional sale agreement or lien note, or by way of a promissory note in the first instance with the delivery at the time of sale or subsequent thereto to the vendor of a chattel mortgage covering the whole or part of the purchase price of the article sold.

(4) Where an article with respect to which subsection (1) applies is repossessed and not redeemed, or is surrendered to the vendor, any money thereafter paid in respect of the purchase price remaining unpaid at the time of repossession or surrender may be recovered by the purchaser by action in a court of competent jurisdiction.

(5) This section does not apply where the article sold is totally destroyed, either by the wilful act of the purchaser, or otherwise.

(6) Where it is shown to a court of competent jurisdiction that the purchaser has wilfully damaged the article sold or that the article has been damaged by his neglect, or that for any other reason it is inequitable that subsection (1) should apply, the court may make such order as it may deem just and expedient.

R .S.S. 1965, c.103, s.18; 1970, c.37, s.2; 1973, c.57, s.2; R.S.S. 1978, c.L-16, s.18.

PROCEDURE FOR POSSESSION

Interpretation

19 In sections 20 to 36:

“agreement”

- (a) **“agreement”** means a conditional sale contract or agreement or a chattel mortgage contract or agreement heretofore or hereafter executed;

“article”(b) **“article”** means:

- (i) an implement to which *The Agricultural Implements Act* applies;
- (ii) a motor vehicle classified by The Highway Traffic Board in regulations made under *The Vehicles Act* as a farm truck or special farm truck and registered under *The Vehicles Act* as such;
- (iii) a cream separator;
- (iv) a washing machine;
- (v) a stove;
- (vi) a heater;
- (vii) a sewing machine;
- (viii) a refrigerator or freezer or a unit that is a combination of a refrigerator and a freezer; or
- (ix) a snowmobile, as defined in *The Vehicles Act*, that is used by a farmer in connection with farming operations;

“creditor”(c) **“creditor”** means:

- (i) a vendor under a conditional sales agreement or his assignee;
- (ii) a mortgagee under a chattel mortgage agreement or his assignee;

“debtor”(d) **“debtor”** means:

- (i) a purchaser under a conditional sales agreement or his assignee;
- (ii) a mortgagor under a chattel mortgage agreement or his assignee;
- (iii) a person appointed under subsection (1) of section 22.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.19.

Right to possession restricted

20 Notwithstanding anything in this or any other Act or in any contract or agreement between a creditor and debtor, the creditor shall not, by reason only of failure by the debtor to make a payment under an agreement, take any proceedings to take possession of an article that is, in whole or in part, the security under the agreement except in accordance with this section and sections 21 to 35.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.20.

Creditor to notify debtor of intention to take possessions

21 A creditor intending to take possession of an article shall serve two copies of a notice in form A of the schedule on the debtor.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.21.

Appointment of representative of deceased debtor

22(1) If the debtor has died, a judge of the district court acting at the judicial centre nearest to which the debtor resided at the time of his death may, upon *ex parte* application of the creditor, appoint some person to represent the deceased for the purposes of the proceeding and any further proceeding consequent thereon.

(2) Service of the notice in form A shall be made upon the person appointed under subsection (1) in the manner provided in section 32.

(3) An order made under subsection (1) and any orders consequent thereon shall bind the estate of the deceased in the same manner as if a duly appointed personal representative of the deceased had been a party to the proceeding.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.22.

Application for hearing

23(1) A debtor may, at any time before or after the date on which a notice in form A is served on him, apply for a hearing by a judge.

(2) An application for a hearing may be made by a debtor:

- (a) upon *ex parte* application to a judge of the district court;
- (b) by serving Part II of the notice in form A, completed and executed by him, on the local clerk of the district court; or
- (c) by serving a written request on the local clerk of the district court;

at the judicial centre that is nearest to the place where the debtor resides or where the agreement, pursuant to which the article was sold or mortgaged and in respect of which the application is made, was executed by the debtor or, if the debtor does not reside in the province and did not execute the agreement in the province, at the judicial centre that is nearest to the place where the creditor resides or executed the agreement.

(3) No application for a hearing and no hearing shall be questioned in any court or shall be held to be invalid for the reason only that the application was made or the hearing was held at a judicial centre other than a judicial centre mentioned in subsection (2).

(4) No fee is payable in respect of an application for a hearing under this section.

1970, c.37, s.3; 1971, c.50, s.3; R.S.S. 1978, c.L-16, s.23.

Duty of local clerk upon receipt of application for a hearing

24 On receipt of an application made under section 23, the local clerk of the district court shall:

- (a) immediately serve notice on the creditor advising him that an application for a hearing has been made by the debtor;
- (b) as soon as practical thereafter, fix a time and place for the hearing by a judge; and
- (c) serve notice of the hearing and the time and place fixed therefor on the debtor and on the creditor at least ten days prior to the day fixed for the hearing.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.24.

Conditions respecting possession

25(1) If a notice under clause (a) of section 24 is not served on the creditor within thirty days after the date on which the notice in form A, given by him, was served on or received by the debtor, the creditor may take possession of the article.

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(2) If a notice under clause (a) of section 24 is served on the creditor no further proceeding shall be taken by him without leave of the judge.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.25.

Payment cancels notice

26 Acceptance by the creditor of a payment on account of an amount owing under an agreement after a notice in form A has been served by him cancels the notice.

1970, c.37, c.3; R.S.S. 1978, c.L-16, s.26.

Rights of debtor if creditor contravenes certain provisions

27 If a creditor takes possession of an article in contravention of sections 20 to 23 or disposes of an article in contravention of section 31 or in contravention of an order of a judge:

- (a) the agreement is thereupon determined;
- (b) the debtor is released from all liability under the agreement;
- (c) the debtor is entitled to recover from the creditor in an action for money had and received all sums paid by the debtor under the agreement or under any other security given by him in respect thereof.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.27.

Order to preserve article

28 The judge may, upon application of the creditor at any time after service of a notice in form A by the creditor, make such orders as he deems just for the purpose of protecting the article from damage or depreciation including orders restricting or prohibiting the use of the article or giving directions as to its custody.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.28.

Creditor to notify debtor of possession of article

29 Where a creditor takes possession of an article, he shall serve upon the debtor a notice of possession:

- (a) in form B where the possession has been taken pursuant to an order of the judge, which notice shall be accompanied by a copy of the order of the judge;
- (b) in form C in any other case.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.29.

Application for hearing after creditor takes possession of an article

30(1) A debtor, who has not made an application for a hearing by a judge:

- (a) in respect of an article that a creditor took possession of prior to the coming into force of this section, may apply for a hearing by a judge within thirty days after the date on which the creditor took possession of the article if the article has not been legally disposed of prior to the date this section comes into force;
- (b) under section 23, may within thirty days after the date on which a notice of possession is served on or received by the debtor, apply for a hearing by a judge.

- (2) Subsections (2) and (3) of section 23 and sections 24, 26, 31 and 32 apply *mutatis mutandis* in respect of an application for a hearing made under subsection (1).
- (3) On the hearing of an application made under subsection (1) the judge may:
- (a) order delivery of the article to the debtor subject to such conditions as the judge deems just;
 - (b) order delivery of the article to the debtor and postpone the operation of the order:
 - (i) on condition that the debtor pays to the creditor such amount as the judge deems just;
 - (ii) subject to the fulfilment of such other conditions by the debtor as the judge deems just;
- and the judge may vary the terms of any order made under clause (a) or (b) in such manner as he deems just.
- (4) If a notice referred to in clause (a) of section 24 is served on or received by a creditor within the period of time mentioned in clause (a) or (b) of subsection (1), as the case may be, no further proceeding shall be taken by the creditor without leave of a judge.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.30.

Action by creditor after possession of article

31 A creditor who takes possession of an article other than pursuant to an order of a judge shall:

- (a) keep the article for at least thirty days after the date on which the notice in form C, given by him, was served on or received by the debtor; and
- (b) if the debtor applies for a hearing, keep the article in his possession or return it to the debtor unless otherwise ordered by a judge.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.31.

Service

32(1) Any notice or other document that is required by this Act to be served may be served:

- (a) by personal service; or
- (b) by sending it by registered mail, postage prepaid, addressed to the person to be served at his last known address.

(2) Service by registered mail shall be deemed sufficient if there are produced as exhibits to the affidavits of service filed:

- (a) a receipt from the postmaster for the envelope containing the notice or other document; and
- (b) a post office receipt therefor purporting to be signed by the debtor.

(3) A notice or other document sent 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 debtor.

(4) If upon *ex parte* application of the creditor it is made to appear to a judge of the district court acting at the judicial centre nearest to which the debtor resided when the agreement was executed by him:

- (a) that the creditor is from any cause unable to effect prompt service of a notice in form A, B or C; or
- (b) that the whereabouts of the debtor is unknown after all reasonable efforts to ascertain his whereabouts have been exhausted;

rules 22 to 26 of the rules of the Court of Queen's Bench apply, *mutatis mutandis*.

1970, c.37, s.3; 1971, c.50, s.3; R.S.S. 1978,
c.L-16, s.32.

Orders of judge

33(1) Upon the hearing of an application made under section 23, the judge may make such orders as he deems just and, without limiting the generality of the foregoing, may:

- (a) order delivery of the article to the creditor, subject to such conditions as the judge deems just;
- (b) order delivery of the article to the creditor and postpone the operation of the order:
 - (i) on condition that the debtor pays to the creditor such amount as the judge deems just;
 - (ii) subject to fulfilment of such other conditions by the debtor as the judge deems just;

and the judge may vary the terms of any order made under clause (a) or (b) in such manner as he deems just.

(2) Where a creditor and debtor do not agree as to the amount remaining unpaid under the agreement, the judge may determine the amount.

(3) The judge may, subject to such conditions as he deems just, at any time revoke the postponement of the operation of an order for delivery of an article.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.33.

Effect of postponement of operation of judge's orders

34(1) While the operation of an order for delivery of an article is postponed under section 30 or 33 no further sum shall be or become payable by the debtor on account of the unpaid balance under the agreement except in accordance with the terms of the order.

(2) If, while the operation of an order for delivery of an article is so postponed:

- (a) the debtor fails to comply with any condition of the postponement or any term of the agreement as varied by the judge; or
- (b) the debtor disposes of the article;

the creditor shall not, unless the judge has dispensed with a further application, take any proceedings against the debtor otherwise than by making an application to the judge, notice of which shall be served by the creditor on the debtor, and sections 22 and 32 apply *mutatis mutandis*.

(3) When the unpaid balance under the agreement has been paid in accordance with the terms of the order, the creditor's title to the article shall vest in the debtor.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.34.

Costs

35(1) Subject to subsections (2) and (3), no costs shall be awarded to either party with respect to any proceedings under sections 21 to 23, sections 28 to 30 and sections 33 and 34.

(2) Where in the opinion of the judge, an application made to him is in abuse of the applicant's right to make the application, the judge may order payment of costs by the applicant.

(3) Where costs of an application are ordered to be paid by the debtor, the judge may order that the costs be added to the amount remaining payable under the agreement.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.35.

Restriction on payment to assignee

36 Where an article, as defined in clause (b) of section 19, is sold under a conditional sale contract and the vendor:

(a) assigns his interests in the contract; and

(b) agrees with the assignee that he shall be liable to the assignee for any amount due under the contract in default of payment thereof by the buyer;

the vendor is not liable to the assignee for any amount in default during any period that payment by the buyer is postponed by an order of a judge under section 30 or 33.

1970, c.37, s.3; R.S.S. 1978, c.L-16, s.36.

EXECUTIONS

Proceedings upon certain judgments affected

37 Where judgment is hereafter obtained in an action on a personal covenant for payment in a mortgage or an agreement for sale of land, and the debtor, either before or after judgment, sells any of his property declared by *The Exemptions Act* to be free from seizure by virtue or writs of execution, no execution issued under the judgment shall affect the proceeds of the sale, and the execution debtor may dispose of the proceeds as freely as he could have done if the judgment had not been obtained and execution had not issued thereunder.

R.S.S. 1965, c.103, s.24; R.S.S. 1978, c.L-16, s.37.

Power of court or judge to stay execution

38(1) Upon application of a judgment debtor, the court or a judge may make an order staying execution under the judgment or, if a writ of execution has issued, staying seizure or sale thereunder, upon such terms as to costs or otherwise and subject to such undertaking, if any, as the court or judge deems just.

(2) No application shall be made under subsection (1) unless fifteen days' notice of intention to make the application has been given to the judgment creditor. The notice shall be given by registered mail, postage prepaid, and shall be deemed to have been given on the date upon which the envelope containing the notice is deposited with the postmaster.

R.S.S. 1965, c.103, s.25; R.S.S. 1978, c.L-16, s.38.

MISCELLANEOUS

Payment in lawful money of Canada discharges certain obligations

39 Notwithstanding anything contained in any agreement, mortgage, chattel mortgage or other instrument hereafter made or given, whether wholly or in part executed in Saskatchewan, involving payment of money or liability to pay money, whereby payment is secured on land or chattels or land and chattels situated in Saskatchewan and is, expressly or impliedly, to be made otherwise than in lawful money of Canada, all moneys payable under the agreement, mortgage or instrument may be paid in lawful money of Canada and payment in lawful money of Canada of the amount payable under the agreement, mortgage or instrument shall entitle the debtor to a discharge of the obligation and a release of any security given, to the same extent as if payment had been made in accordance with the agreement, mortgage or instrument; and an agreement, stipulation or covenant, whether express or implied, in any such instrument hereafter made or given, whereby payment of money is to be made otherwise than in lawful money of Canada, is null, void and of no effect.

R.S.S. 1965, c.103, s.26; R.S.S. 1978, c.L-16, s.39.

Agreements waiving Act null and void

40(1) Subject to subsection (2), every agreement or bargain, verbal or written, express or implied, that this Act or any provision thereof 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 or any provision thereof shall have no application to:

- (a) any mortgage, charge or other security for the payment of money made, given or created by it after the twenty-fifth day of March, 1959;
- (b) any agreement or instrument entered into by it after the twenty-fifth day of March, 1959, involving the payment by it of money, or its liability to pay money;
- (c) any agreement or instrument renewing or extending or collateral to any such mortgage, charge, other security, agreement or instrument; or
- (d) the rights, powers or remedies of any other person under any such mortgage, charge, other security, agreement or instrument;

and, notwithstanding anything in this Act, an agreement made by a corporate body under this subsection shall be binding upon the corporate body, its successors and assigns.

R.S.S. 1965, c.103, s.27; R.S.S. 1978, c.L-16, s.40.

Appeal

41(1) An appeal lies to the Court of Appeal from an order made under this Act by the Court of Queen's Bench or a judge thereof and the decision of the Court of Appeal is final and there shall be no further appeal.

(2) An appeal lies to a judge of the Court of Queen's Bench from an order made under this Act by a judge of the district court and the decision of the judge of the Court of Queen's Bench is final and there shall be no further appeal.

1970, c.37, s.5; R.S.S. 1978, c.L-16, s.41.

Appeals

42 Where an appeal is taken under this Act each court appealed to shall have and 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 or master or local master, and may draw inferences of fact and pronounce the judgment or make the order that in its judgment the court or judge or master or local master whose judgment or order is appealed from ought to have pronounced or made.

R.S.S. 1965, c.103, s.28; R.S.S. 1978, c.L-16, s.42.

Penalty

43 Every mortgagee who violates any of the provisions of section 7 or 8 is guilty of an offence and liable on summary conviction to a fine not exceeding \$100.

R.S.S. 1965, c.103, s.29; R.S.S. 1978, c.L-16, s.43.

Act not to apply to Industrial Development Bank

44 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.

1969, c.27, s.1; R.S.S. 1978, c.L-16, s.44.

Exemptions

45 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.

1976-77, c.40, s.3; R.S.S. 1978, c.L-16, s.45.

SCHEDULE

FORM A

(Section 21)

PART I

NOTICE OF INTENTION

To:

Take notice:

1. That on account of your failure to make the payment due under the agreement, particulars of which are set out in paragraph 6, I intend to take possession of the article (*or* articles) that are listed as security under the agreement.

2. That if you object to my taking possession of the article (*or* articles) and apply for a hearing by a judge of the district court I am prohibited by *The Limitation of Civil Rights Act* from taking possession of the article until authorized to do so by the judge.

3. That an application for a hearing by a judge shall be made:

- (a) by *ex parte* application to a judge of the district court;
- (b) by serving Part II of this notice, completed and executed by you, on the local clerk of the district court; or
- (c) by serving a written request on the local clerk of the district court;

at the judicial centre that is nearest the place where you reside or where the agreement, pursuant to which the article was mortgaged or sold and in respect of which this application is made, was executed by you or, if you do not reside in the province and did not execute the agreement in the province, at the judicial centre that is nearest to the place where the creditor resides or executed the agreement.

4. That unless you apply for a hearing by a judge I may, after the expiration of thirty days from the date on which this notice is served on or received by you, take possession of the article.

5. That if I take possession of the article after the period of time mentioned in paragraph 4 without a hearing by a judge you may apply for a hearing by a judge in the manner mentioned in paragraph 3 within thirty days after the date on which a notice of possession is served on or received by you.

6. That particulars of your indebtedness to me are as follows:

Mark a check (thus ✓)
in appropriate box.

- (a) nature of agreement:
 - conditional sale
 - chattel mortgage
- (b) date of execution of agreement by debtor
- (c) place at which agreement executed by debtor
- (d) particulars of default:
 - amount due
 - date due
- (e) amount due under agreement as a result of failure by debtor to discharge total indebtedness

Further take notice that I intend to take possession of the following article (or articles) referred to in the agreement:

Further take notice that my address for service of a notice of hearing is _____.

Dated at _____ in the Province of Saskatchewan this _____ day of _____, 19_____.

.....
Creditor.

PART II

(Section 23)

REQUEST FOR HEARING

To the Local Clerk
of the District Court
for the Judicial Centre
of _____.

You are hereby requested to fix a time and place for a hearing by a judge with respect to the notice of intention set out above.

At the time the agreement was executed by me I resided at _____

I now reside at _____

Dated at _____ in the Province of Saskatchewan
this _____ day of _____, 19_____.

.....
Debtor

FORM B

(Section 29)

NOTICE OF POSSESSION

To:

Take notice that pursuant to an order of a judge of the district court at the judicial centre of _____, a copy of which order is hereby enclosed, I have taken possession of the following article (or articles):

Dated at _____ in the Province of Saskatchewan this _____ day of _____, 19____.

.....
Creditor.

FORM C

(Section 29)

PART I

NOTICE OF POSSESSION

To:

Take notice:

1. That a notice of intention to take possession of the article hereinafter mentioned was served on you personally (or received by you by registered mail) on the _____ day of _____, 19____.
2. That a period of thirty days has elapsed since the day on which the notice of intention mentioned in paragraph 1 was served on you.
3. That as no notice of an application by you for a hearing by a judge has been served on me during that period of thirty days, I hereby take possession of the following article (or articles) and I will remove them forthwith.
4. That if you object to my taking possession of the article (or articles) and apply for a hearing by a judge within a period of thirty days after the date on which a notice of possession is served on or received by you *The Limitation of Civil Rights Act* prohibits me from disposing of the article (or articles) until authorized to do so by a judge.

LIMITATION OF CIVIL RIGHTS

c. L-16

5. That an application for a hearing by a judge shall be made within thirty days after the date on which this notice is served on you in the case of personal service thereof, or on which this notice is received by you if it is served by registered mail:

- (a) by *ex parte* application to a judge of the district court;
- (b) by serving Part II of this notice, completed and executed by you, on the local clerk of the district court; or
- (c) by serving a written request on the local clerk of the district court;

at the judicial centre that is nearest the place where you reside or where the agreement, pursuant to which the article was mortgaged or sold and in respect of which this application is made, was executed by you or, if you do not reside in the province and did not execute the agreement in the province, at the judicial centre that is nearest to the place where the creditor resides or executed the agreement.

6. That unless you apply for a hearing I may, after the expiration of a period of thirty days after the date on which this notice is served on you or received by you by registered mail, dispose of the article (*or* articles).

7. That particulars of your indebtedness to me are as follows:

Mark a check (thus ✓) in appropriate box.

- (a) nature of agreement:
 - conditional sale
 - chattel mortgage
- (b) date of execution of agreement by debtor
- (c) place at which agreement executed by debtor
- (d) particulars of default:
 - amount due
 - date due
- (e) amount due under agreement as a result of failure by debtor to discharge total indebtedness

8. That my address for service of a notice of hearing is _____.

Dated at _____ in the Province of Saskatchewan this _____ day of _____, 19____.

.....
Creditor.

PART II

(Section 29)

REQUEST FOR HEARING

To the Local Clerk
of the District Court
for the Judicial Centre
of _____.

You are hereby requested to fix a time and place for a hearing by a judge with respect to the notice of intention set out above.

At the time this agreement was executed by me I resided at _____.

I now reside at _____.

Dated at _____ in the Province of Saskatchewan this
_____ day of _____, 19____.

.....
Debtor