

SALE OF GOODS ON CONDITION ACT

CHAPTER 373

Interpretation

1. In this Act

“affixed”, applied to goods, means erected on or fixed or annexed to land in a manner and under circumstances to constitute them fixtures;

“building” includes any structure, mine or work built, erected or constructed on land;

“building materials” includes goods that become so incorporated into a building that their removal would necessarily involve the removal or destruction of another part of the building and cause substantial damage to the building, apart from the value of the goods removed, but does not include

(a) goods that are severable from the land merely by undoing a screw, bolt, clamp, coupling or similar method of connection; or

(b) machinery installed in a building for use in carrying on an industry, where the only substantial damage that would necessarily be caused to the building in removing the machinery, apart from its value, is that arising from the removal or destruction of the bed or casing for the machinery and the making or enlargement of an opening in the building walls sufficient to remove the machinery;

“buyer” means the person who buys or hires goods by a conditional sale, or his successor in interest;

“conditional sale” means a contract

(a) for the sale of goods under which possession is or is to be delivered to the buyer, and the property in the goods is to vest in him at a subsequent time on payment of the whole or part of the price or the performance of any other condition; or

(b) for the hiring of goods by which it is agreed that the hirer shall become, or have the option of becoming, the owner of the goods on full compliance with the terms of the contract;

“court” means the Supreme Court or a County Court;

“goods” means all personal chattels other than things in action or money, and includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale, or under the contract of sale; and in sections 11 to 17 means all personal chattels capable of being affixed to land;

“motor vehicle” means an automobile, locomobile, motorcycle, trailer or other vehicle propelled by any power other than muscular power, and includes accessories belonging to and kept with it, but does not include an aircraft, a vehicle designed primarily for use in fire fighting or a vehicle run only on rails;

“Registrar General” means the Registrar General as defined in the *Chattel Mortgage Act*;

“seller” means the person who sells or lets to hire goods by a conditional sale, or his successor in interest;

“trailer” means a trailer as defined in the *Motor Vehicle Act* and includes a mobile home as defined in that Act.

Contents of document

2. (1) A conditional sale shall be evidenced in writing signed prior to, at the time of or within 10 days after delivery of the goods by the buyer or his agent.

(2) The writing shall describe the goods so that they may be readily and easily known and distinguished, and state the amount unpaid of the purchase price or the terms and conditions of the hiring.

(3) The description of a motor vehicle in a conditional sale shall include the vehicle identification number consisting of the sequence of numbers or numbers and letters impressed on or affixed to the vehicle by its maker.

(4) For the purposes of subsection (3), the vehicle identification number shall not be insufficient or defective where the motor vehicle is particularly described in a manner that sets it apart from any other motor vehicle.

1961-9-3; 1962-12-2; 1973-19-3.

Registration

3. Registration of a conditional sale consists of filing, as set out in section 5, the writing required by section 3, or a copy of it.

1961-9-4.

Place of registration

4. (1) A conditional sale, where the buyer is not a corporation, shall be registered in the office of the Registrar General.

(2) A conditional sale, where the buyer is a corporation, shall be registered

(a) where it does not include a motor vehicle, in the office of the Registrar of Companies;

(b) where it includes only motor vehicles, in the office of the Registrar General; or

(c) where it includes a motor vehicle and other goods, in the offices of the Registrar General and of the Registrar of Companies. [*Note: see s. 31.*]

(3) Where a conditional sale within the scope of paragraph (c) is registered in the office of the Registrar General but not in the office of the Registrar of Companies, it is sufficiently registered for every motor vehicle included in it. Where the conditional sale is registered in the office of the Registrar of Companies but not in the office of the Registrar General, it is sufficiently registered for all the goods included in it other than motor vehicles.

1961-9-5; 1962-12-3.

Time for registration

5. A conditional sale shall be registered within 21 days of the signing of the writing required by this Act or of the date when the seller learns that any of the goods comprised in it and delivered outside the Province have been brought into the Province by a buyer.

1961-9-6.

Renewal statement

6. A renewal statement shall be registered in the office of the Registrar General within 3 years of the date of registration of

- (a) a subsisting conditional sale; or
- (b) a renewal statement for a conditional sale.

1961-9-8.

Contents

7. Registration of a renewal statement for a conditional sale consists of filing
- (a) a statement of the interest of the seller or of his personal representative or transferee in the goods and the amount then owing for principal and interest or the terms of the hiring still subsisting; and
 - (b) an affidavit of the seller or his personal representative or transferee, or the agent of one of them, stating that the statement is true, and that the conditional sale has not been kept in force for any fraudulent purpose.

1961-9-7.

Mistakes

8. (1) If a mistake is discovered in a registered renewal statement, an amended statement and affidavit, referring to the mistake and setting forth the correction, may be registered in the office of the Registrar General.

- (2) If, before registration of an amended statement, a person has in good faith
- (a) given to the buyer under the conditional sale an advance of money or valuable consideration; or
 - (b) incurred costs in proceedings taken in reliance on the accuracy of the statement in which the mistake was discovered

that person shall, with regard to the money advanced, consideration given or costs incurred, remain in the same position under the conditional sale as if the statement with the mistake were correct.

1961-9-9.

Rectification and extension of time

9. (1) The Registrar General, the Registrar of Companies or, where a notice is required to be filed in a land title office, the court, on being satisfied by affidavit that an omission to register a conditional sale or renewal statement within time or to file a land title office notice correctly, or an omission or misstatement of the name, residence or occupation of a person or of a descriptive detail for the goods was accidental or inadvertent or due to other sufficient cause, may, in his or the court's discretion, order the omission or misstatement to be rectified by the insertion of the true name, residence, occupation or detail or by extending the time for registration on terms and conditions, if any, for security, notice by advertisement or otherwise, or any other matter as appears proper.

(2) An order under subsection (1) is without prejudice to the rights of a third party who has in the meantime acquired title to all or some of the goods, by purchase and possession or by registration of a bona fide bill of sale or of a conditional sale of them, within the time provided for registration or to the rights of a liquidator, assignee, receiver or trustee, for the benefit of creditors, or of a sheriff carrying out a process of execution who, in the meantime, has come into possession of all or some of the goods.

(3) An office copy of the order made as aforesaid shall be registered with the conditional sale, notice or renewal statement.

1961-9-10; 1962-12-4; 1965-5-2; 1972-14-1; 1978-25-334.

Satisfaction

10. (1) On payment or tender of the amount due for the goods or performance of the terms of the sale, and on written request delivered personally or by registered mail by the buyer or other person having an interest in the goods, the seller shall sign and deliver to the person requesting it a statement that his claims against the goods are satisfied. The statement may be filed.

(2) If for 10 days after receipt of the request the seller unreasonably fails to mail or deliver the statement, he is liable for all damages suffered in consequence of his default by the buyer or other person having an interest in the goods.

(3) On filing of a statement the Registrar General or Registrar of Companies shall enter satisfaction on the conditional sale or copy registered.

1961-9-11; 1976-2-8.

Goods affixed to land

11. (1) Subject to sections 11 to 17 and notwithstanding the *Land Title Act*, where goods conditionally sold have been delivered to the buyer and affixed to land, they remain subject to the rights of the seller as fully as before being affixed.

(2) This section does not apply to building materials, and on any goods otherwise within the scope of this section becoming affixed to land in such a manner as to constitute building materials, this section ceases to apply to those goods.

1961-9-12(2,3); 1978-25-332,335.

Notice in land title office

12. (1) In addition to compliance with sections 2, 3, 4 and 5 and not later than 20 days after the commencement of affixing goods to land, there shall be filed in the proper land title office a notice setting out

- (a) the name and address of the seller and of the buyer;
- (b) a description of the goods by which they may be readily distinguished;
- (c) the amount unpaid on the purchase price or under the terms of the hiring; and
- (d) a description of the land sufficient for identification in the land title office.

(2) The notice shall be signed by the seller or his agent and shall be attached to a copy of the writing evidencing the conditional sale agreement. The seller or his agent shall verify the notice by affidavit.

1961-9-12(4,5); 1978-25-333,334.

Effect of notice

13. (1) On filing the notice, copy and affidavit in the land title office, and payment of the prescribed fee, the registrar shall file the notice and make an entry in the proper register for the title to the land. If the title has not been registered, the registrar shall file the notice and make an entry of its particulars in an index kept in his office, known as the conditional sales index.

(2) The filing of a notice in the land title office under this section is deemed to be actual notice of the conditional sale agreement and its terms to each person who is an owner, purchaser, lessee, mortgagee or other encumbrancer of the land whether or not he is so registered in the land title office or he acquired his interest in the land before or after the filing of the notice.

(3) The registrar on receipt of a certificate of discharge signed by the seller or by his agent who shall, by affidavit, verify his signature and state that he is the duly authorized agent of the seller in that behalf; or on receipt of an office copy of a memorandum of satisfaction filed under section 10, shall, subject to production of further evidence he may require, cancel the entry of the notice on the register or in the conditional sales index.

(4) The form of the certificate may be varied for a partial discharge and the registrar shall cancel the entry in respect only of the goods to which the partial discharge extends.

(5) Cancellation of the entry may also be made by the registrar in any case, on application of the registered owner of the land, if, after notice to the seller as directed by the registrar, the seller fails to satisfy the registrar that the entry should not be cancelled.

1961-9-12(6,7,10,11,12); 1976-2-8; 1978-25-334.

Effect of cancellation

14. On the cancellation in whole or in part by the registrar of the entry of a notice, the provisions of sections 11 (1), 12 and 13 cease to apply to the goods to which the cancellation extends.

1961-9-12(13); 1973-19-4.

Expiry of notice

15. (1) Every notice filed under section 12 shall, after 3 years from filing the notice or the last renewal statement, cease to be actual notice of the existence and provisions of the conditional sale to which the notice relates unless the notice is renewed before the expiration of the 3 years.

(2) A notice filed under section 12 may be renewed at any time within 3 years from its filing or its last renewal by filing a renewal statement in the form prescribed by regulations made under this Act.

1973-19-5.

Notice of intention to retake goods

16. (1) The seller is not entitled to retake possession of the goods or to remove them from the land unless

- (a) he has given to each registered owner of the land within the meaning of the *Land Title Act* a notice in writing of his intention to do so; and
- (b) each person notified has during the period of 20 days after notice to him, (or a longer period fixed by the court for reasons satisfactory to it) failed to pay the amount owing on the goods.

(2) The notice shall be signed by the seller or his agent and shall state the name and address of the seller and of the buyer, a description of the goods and of the land, and the amount owing on the goods, and shall contain a demand that the amount so owing be paid on or before

- (a) a stated day not earlier than 20 days after the giving of the notice; and
- (b) a statement of intention to retake possession of the goods and to remove them unless the amount owing is paid within the time stated.

(3) The notice may be given by personal delivery or by prepaid registered mail addressed to the person at his last known address. A notice so mailed is deemed to be

given to the person to whom it is addressed at the time when it should reach its destination in the ordinary course of mail.

(4) The notice may in any case be given by a form of substituted service directed by the registrar of the proper land title district.

(5) Every owner, purchaser, lessee, mortgagee or other encumbrancer of the land has the right as against the seller to pay the amount owing within the time mentioned in the notice. On payment, the goods shall, subject to any remaining rights of the seller under the conditional sale, remain affixed to the land.

1961-9-12(8); 1978-25-323,332,333.

Duty on retaking

17. A seller, who is entitled to retake possession of and to remove the goods from the land, shall exercise his right of removal in a manner that will cause no greater damage to the land or to any property on it, or put the owner, lessee or occupier of the land to any greater inconvenience than is necessarily incidental to effect removal of the goods.

1961-9-12(9).

Buyer's duty on any conditional sale

18. (1) The buyer shall not, before complete performance of the contract, dispose of his interest in goods included in a conditional sale, unless he or the proposed transferee has notified the seller in writing, personally or by registered mail, of the name and address of the transferee, not less than 10 days before the disposition.

(2) Where a buyer disposes of his interest in goods contrary to this section, the seller may retake possession of the goods and deal with them as in the case of default in payment of the purchase price.

1961-9-13; 1962-12-5.

Default: seize or sue

19. (1) Subject to subsection (4) and section 23, a seller may enforce his right to recover money due and owing under a conditional sale either

(a) by taking possession of the goods, on a surrender or pursuant to the contract; or

(b) by suing the buyer for the money due and owing,

but not both.

(2) Where the seller takes possession of the goods, the buyer's obligations and the obligations of the guarantor or indemnitor under the contract and in any instrument granting collateral security are extinguished.

(3) Where the seller takes possession of part only of the goods, subsections (1) and (2) apply to the portion of the total indebtedness and of the buyer's, guarantor's and indemnitor's other obligations relating to that part.

(4) This section does not apply where the goods have been damaged or have been allowed to deteriorate, to the extent that the security is materially impaired, by the wilful, reckless or negligent act of the buyer and the court so orders on an application not later than 20 days after the seller takes possession of the goods and having regard to all the circumstances.

1973-19-6; 1978-11-4.

Application of seize or sue rules

20. (1) Where the seller takes possession of the goods pursuant to the conditional sale, he shall retain them for 20 days, and the buyer may redeem them within that period by paying or tendering to the seller the money due and owing, together with the reasonable costs, if any, of taking and keeping possession, or by performance or tender of performance of the condition on which the property in the goods is to vest in the buyer and payment of those reasonable costs. In that event the seller shall deliver up to the buyer possession of the goods so redeemed and any unfulfilled obligations of the buyer, guarantor and indemnitor are revived.

(2) Where the goods are not redeemed within a period of 20 days, the seller may sell the goods, either by private sale or by public auction, at any time thereafter, but he shall pay over to the buyer the surplus, if any, remaining after the money due and owing and the reasonable costs, if any, of the taking, keeping and sale have been satisfied.

(3) Where the seller recovers a judgment for the money due and goods sold under the conditional sale are seized under a writ of execution issued pursuant to the judgment, he may recover only the amount realized from the sale of those goods; and

(a) the judgment, to the extent that it is based on the conditional sale, shall be deemed to be fully paid and satisfied; and

(b) notwithstanding any other Act, the buyer's obligations and the obligations of the guarantor or indemnitor under the conditional sale and in any instrument granting collateral security are extinguished.

(4) Where a seller has taken possession of the goods, or the goods have been seized under a writ of execution issued pursuant to a judgment for the money due, and it is found that an accessory forming part of his original security was removed from the goods before they were repossessed or seized and was not replaced by another accessory of like kind and value, the seller may in the case of taking possession sue the buyer for, or in the case of execution sale recover, whichever is less,

(a) the value of the accessory; or

(b) the amount by which the sum realized on the sale of the goods falls short of the money due and owing and reasonable fees, charges and disbursements for taking possession, seizure and sale.

1973-19-6; 1978-11-4.

Early maturity

21. A provision in a conditional sale that on default the total indebtedness becomes due shall not be effective until the default has continued for at least 15 consecutive days.

1973-19-6.

Waiver void

22. A waiver or release of any benefit given by sections 19 to 24, except if given by a corporation, is void.

1973-19-6.

Repossession where 2/3 of price paid

23. (1) Where the buyer has paid at least 2/3 of the total amount required to be paid under a conditional sale, the seller shall not take possession of or seize the goods unless he first obtains a court order authorizing repossession or seizure.

- (2) The court may
- (a) consider all relevant circumstances, including the present value of the goods, the amount already paid, the reasons for default, and the present and future financial circumstances of the buyer and of the seller; and
 - (b) grant or refuse the order on terms considered advisable by the court.
- 1973-19-7.

Guarantors

24. The rights of a guarantor of a buyer's indebtedness or of a person who indemnifies a seller against any loss incurred under a conditional sale shall in no case be greater than the rights of the seller.

1973-19-7

Failure to comply

25. A provision in a conditional sale that the property in the goods remains in the seller is, after delivery of possession to the buyer, void as against

- (a) a trustee of the buyer's property under the *Bankruptcy Act* (Canada), a receiver of the estate of the buyer and the liquidator of the buyer if a corporation under the *Winding-up Act* (Canada) or under any Act of the Province in a compulsory winding up proceeding;
- (b) a sheriff and other persons seizing goods included in the conditional sale in carrying out any process of execution under order of a court authorizing the seizure of the goods of the buyer;
- (c) a person by whom or on whose behalf the process has been issued; and
- (d) a subsequent bona fide purchaser or mortgagee for valuable consideration.

The buyer shall, notwithstanding the provision, be deemed as against these persons the owner of the goods. The provision is not made valid by the seller taking possession of the goods as against a person who holds a qualification mentioned in paragraphs (a) to (d), and who held that qualification before the taking of possession by the seller unless the provisions of this Act are complied with.

1961-9-15

Defects, irregularities, or omissions

26. (1) An error of a clerical nature or in an immaterial part of the writing that does not mislead, does not invalidate registration or filing.

(2) A defect or irregularity in the execution or attestation of an original writing or a copy evidencing a conditional sale, in a renewal statement, or a defect, irregularity or omission in the affidavit accompanying a renewal statement, does not invalidate the conditional sale, the renewal statement or the filing, unless the court finds that the irregularity has actually misled or was likely to mislead a person whose interests are affected by the conditional sale.

1961-9-16.

Copy of writing for buyer

27. The seller shall deliver a copy of the writing to the buyer within 20 days after the execution of it; and if, after request, he neglects or refuses to do so, the County Court within the territorial limits of which the buyer resided when the contract was made may, on summary application, make an order for the delivery of the copy.

1961-9-17(3).

Particulars to third person

28. (1) The seller shall, within 5 days of a request from a person proposing to purchase the goods or from an actual or intending creditor of the buyer or from any other interested person, furnish particulars of the amount remaining due to the seller and the terms of payment. The person requesting shall pay the postage on a reply by registered letter. In default the seller is liable on conviction to a penalty not exceeding \$50.

(2) It is sufficient if the information is given by registered letter, postage prepaid, deposited in a post office within the prescribed time addressed to the name and post office address given by the person making the request.

1961-9-17(1,2).

Assignment

29. A valid assignment in writing of a conditional sale transfers the assignor's right of property in the goods, right of seizure, removal and sale, and all other rights to enforce the conditional sale.

1961-9-18(1).

Sales in course of buyer's business

30. If the goods are delivered to a trader or other person and the seller expressly or impliedly consents to resale by the buyer in the course of business, and the trader or other person resells the goods in the ordinary course of his business, the property in the goods passes to the purchasers notwithstanding the other provisions of this Act.

1961-9-18(2).

Rolling stock registration provisions

31. Sections 2 to 7 do not apply to conditional sale to a railway, street railway or interurban railway company of rolling stock if within 30 days of its execution the contract or a copy is filed in the office of the Provincial Secretary of the province where the head office or company's chief agency in Canada is situated.

1961-9-19.

Registration time: Sunday

32. Where the time for registering a conditional sale expires on a Sunday or other day when the office of the Registrar General or the Registrar of Companies is closed, registration is valid if made on the next following day on which the office is open.

1961-9-20.

Duties of Registrar General

33. (1) The Registrar General shall number each document filed in his office.

(2) The Registrar General shall keep a record in a form approved by the Attorney General showing the

- (a) number of each document and its date of registration;
- (b) name of each buyer and seller shown on each document; and
- (c) other particulars required by the Attorney General.

(3) Searches of documents filed in the Registrar General's office may be made at a reasonable time under rules made by him.

(4) A person is entitled, on payment of the fee, to obtain from the Registrar General or the Registrar of Companies a copy of a document on file in his office under this Act.

(5) A copy so obtained is evidence of the document filed, of the fact of execution and of the fact and date of registration shown.

(6) The procedure to be followed by the Registrar of Companies for filing and recording documents under this Act shall be as prescribed by the Attorney General.

(7) The Registrar General or the Registrar of Companies may accept for filing a document affecting a conditional sale registered under this Act or earlier enactments.

1961-9-21(1,2,3,4,6,7); 1962-12-6.

Microfilming document

34. Where directed to do so by the Attorney General, the Registrar General shall have a document filed in his office under this Act photographed on microfilm, and return the document to the person who filed it. The microfilm, for the purposes of this Act, shall be deemed to be the original or copy of the document.

1962-12-6.

Fees

35. The Lieutenant Governor in Council may by regulation fix fees for searches, copies of documents, filing documents and any other service performed by a public officer under this Act.

1961-9-21(5).

Renewal statements in companies office

36. A renewal statement for a conditional sale registered before March 27, 1961, is not required to be filed

(a) in the office of the Registrar of Companies; or

(b) where the conditional sale would be required under this Act to be registered only in the office of the Registrar of Companies, in any office, unless the renewal statement is one that should have been filed before March 27, 1961.

1962-12-8.

Regulations

37. The Lieutenant Governor in Council may, to effect the transition from former statutory provisions to the provisions of this Act, make regulations considered necessary, and may therein add to, vary or suspend the operation of any of the provisions contained in sections 33 to 36, and make new provisions, including, without limiting the generality of the foregoing, prescribing a form of statement of particulars of the conditional sale for the purpose of registration, as part of, or in addition to, the conditional sale; and prescribing the effect of registration of the statement of particulars.

1961-9-31; 1972-14-2.