

The Home Owners' Protection Act

being

Chapter H-4.2 of the *Statutes of Saskatchewan, 1981-82* (effective December 31, 1981) as amended by the *Statutes of Saskatchewan, 1993, c.C-26.1*; and 2000, c.L-5.1.

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 H-4.2

An Act respecting the Protection of Residences in Saskatchewan

Short title

1 This Act may be cited as *The Home Owners' Protection Act*.

Interpretation

2 In this Act:

(a) **“action”** means an action with respect to land that is a principal residence:

(i) by a mortgagee, or his personal representatives or assigns, for foreclosure of the equity of redemption, for sale or possession or for the recovery of any moneys payable under a mortgage; or

(ii) by a vendor, or his personal representatives or assigns, for specific performance or cancellation of an agreement for sale, for sale or possession of the land sold under the agreement for sale or for any other relief that may be granted under the agreement for sale;

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

(c) **“home owner”** means a registered owner of land subject to a mortgage, a mortgagor or a purchaser under an agreement for the sale of land or the heirs, successors or assigns of a mortgagor or a purchaser under an agreement for sale;

(d) **“mortgage”** includes an agreement for the sale of land;

(e) **“mortgagee”** includes a vendor under an agreement for the sale of land;

(f) **“principal residence”** means land:

(i) that is subject to a mortgage; and

(ii) on which a home owner, his spouse or his wholly dependant children reside;

and that is:

(iii) a house, including the land appurtenant to the house and consisting of not more than 65 hectares; or

(iv) a unit as defined in *The Condominium Property Act, 1993*, including the owner's share in the common property.

1981-82, c.H-4.2, s.2; 1993, c.C-26.1, s.115;
2000, c.L-5.1, s.312.

c. H-4.2

HOME OWNERS' PROTECTION

Purpose of Act

3 The purpose of this Act is to afford protection to home owners against loss of their principal residences.

1981-82, c.H-4.2, s.3.

Application of Act

4 This Act applies to all mortgages on principal residences in the province, including a mortgage made pursuant to the *National Housing Act* (Canada), as amended from time to time, or the *Farm Credit Corporation Act* (Canada), as amended from time to time.

1981-82, c.H-4.2, s.4.

Crown bound

5 The Crown is bound by this Act.

1981-82, c.H-4.2, s.5.

One principal residence permitted

6 For the purposes of this Act, a home owner is permitted to have only one principal residence.

1981-82, c.H-4.2, s.6.

Actions stayed or prohibited

7(1) Notwithstanding any other Act or law but subject to section 9:

- (a) any application for leave to commence an action under *The Land Contracts (Actions) Act* with respect to a principal residence made prior to December 31, 1981, is adjourned *sine die* until after December 31, 1982;
- (b) all actions commenced against a home owner prior to December 31, 1981, are adjourned *sine die* until after December 31, 1982; and
- (c) no person shall commence an action against a home owner or make an application for leave to commence an action under *The Land Contracts (Actions) Act* with respect to a principal residence until after December 31, 1982.

(2) The period of time from December 31, 1981, until December 31, 1982, is not to be included in calculating the time, under *The Limitation of Actions Act* or under any other Act or rule of court, for commencing any action or making any application for the enforcement or recovery of any sum of money secured by a mortgage with respect to a home owner's principal residence.

1981-82, c.H-4.2, s.7.

Extension of time for redemption

8(1) Notwithstanding the terms of any order *nisi* or decree *nisi* in an action but subject to section 9, the time for redemption under the order or decree is extended until January 1, 1983.

(2) Where a final order was made in an action prior to December 31, 1981, the matter may proceed notwithstanding this Act.

1981-82, c.H-4.2, s.8.

Application to court

9(1) On the application of a mortgagee with respect to a mortgage on a home owner's principal residence, the court may, on any terms and conditions that it considers just and equitable, order that sections 7 and 9 do not apply, and, in addition, may grant leave to commence or continue an action.

(2) Where an application is made under subsection (1), the court may consider:

- (a) the provisions of the mortgage with reference to the date and terms for repayment;
- (b) the value and condition of the principal residence;
- (c) the state of accounts between the parties;
- (d) the earning capacity, income and assets of the home owner;
- (e) the proportion of the income of the home owner and his spouse that is required to meet his obligations pursuant to the mortgage;
- (f) general or local economic conditions;
- (g) whether the home owner has requested or received assistance with respect to the mortgage on his principal residence from any source;
- (h) any conditions and circumstances beyond the control of the home owner; and
- (i) any other relevant conditions and circumstances;

and shall make any inquiries, with respect to any or all of the conditions and circumstances set out in clauses (a) to (i), necessary to dispose of the application.

(3) The court may:

- (a) require the parties to furnish particulars respecting the matters set out in subsection (2);
- (b) adjourn an application under subsection (1) for any period of time that the court considers appropriate.

(4) The court shall dismiss an application under subsection (1) if, after considering all the matters set out in subsection (2), the court is satisfied that it is not just and equitable, according to the spirit of this Act to make the order.

(5) Where an application under subsection (1) has been dismissed, a mortgagee may reapply to the court with respect to the mortgage on a home owner's principal residence, if the court is satisfied that a material change in circumstances has occurred.

(6) The costs of an application under this section are in the discretion of the court.

1981-82, c.H-4.2, s.9.

Appeal

10(1) An appeal lies to the Court of Appeal from an order of the court on an application under section 9.

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

(3) The registrar of the Court of Appeal shall obtain the certificate mentioned in subsection (2) and place it on the file, but the Court of Appeal may hear and dispose of the appeal without a certificate in the case of the absence, illness or death of the judge of the court from whose order the appeal is taken.

(4) The Court of Appeal may, in its discretion, receive any further or additional information and evidence that it thinks fit and proper in the circumstances, including any change in the conditions or circumstances which have arisen since the application was heard or the appeal was taken.

(5) The Court of Appeal has, and shall exercise, a discretion similar to that of the court appealed from, notwithstanding that the order appealed from was made in the discretion of the court, and may draw inferences of fact and make the order that, in the judgment of the Court of Appeal, ought to have been made by the court appealed from.

1981-82, c.H-4.2, s.10.

Land Contracts (Actions) Act not applicable

11 Where an order is made under section 9 or 10 granting leave to commence or continue an action, *The Land Contracts (Actions) Act* does not apply to the mortgagee.

1981-82, c.H-4.2, s.11.

Powers of Attorney General

12(1) The local registrar of the Court of Queen's Bench or the registrar of the Court of Appeal, as the case may be, shall immediately forward to the Attorney General a copy of every application made under section 9, every notice of appeal under section 10 and every order of the court or of the Court of Appeal under this Act.

(2) The Attorney General or counsel appointed by him may at any time intervene or appear on an application under section 9 or an appeal under section 10.

(3) The Attorney General may appeal to the Court of Appeal against an order made by the court under section 9.

(4) No order for costs is to be made for or against the Attorney General.

1981-82, c.H-4.2, s.12.

Effect of agreements

13(1) Subject to subsection (2), an agreement providing that this Act or any provision of this Act does not apply is void.

(2) Where a mortgage on a principal residence, other than a renewal of any such mortgage, is entered into after December 31, 1981, and before January 1, 1983, the mortgagee and the home owner may agree that this Act does not apply, as long as the agreement is accompanied by an acknowledgement in writing, made and signed by the home owner before a solicitor, other than the solicitor acting in the matter on behalf of the mortgagee, or before a justice of the peace, in which the home owner has acknowledged:

- (a) that he is aware of the nature and effect of the agreement; and
- (b) that he is aware of the possible rights he may have under this Act and that he intends to give them up.

(3) Where, but for this Act, a mortgagee would have permitted a home owner to renew a mortgage on a principal residence, the mortgagee shall permit the home owner to renew the mortgage.

1981-82, c.H-4.2, s.13.

Offence and penalty

14(1) Every person who contravenes any provision of this Act is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

(2) Every director, officer or agent of a company who directed, authorized, assented to, acquiesced in or participated in the commission of an offence by the company under subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000 whether or not the company has been prosecuted or convicted.

(3) No prosecution is to be instituted under this section without the consent of the Attorney General.

1981-82, c.H-4.2, s.14.

Advisory board

15(1) The Lieutenant Governor in Council may appoint a board, to be known as the Saskatchewan Home Owners' Protection Act Advisory Board, consisting of not less than three members, one of whom is to be designated as chairman.

(2) In addition to any duties and powers that may be prescribed in the regulations, the board may make recommendations to the Lieutenant Governor in Council respecting the enactment of regulations with respect to the matters described in clause 16(1)(a).

(3) The Lieutenant Governor in Council shall determine the remuneration and allowances to be paid to each member of the board.

1981-82, c.H-4.2, s.15.

Regulations

16(1) The Lieutenant Governor in Council may make regulations:

(a) exempting:

(i) a home owner or mortgagee or a class of home owners or mortgagees; or

(ii) any contract or agreement or any class of contracts or agreements;

from the application of this Act or any provision of this Act on any terms and conditions that the Lieutenant Governor in Council considers appropriate;

(b) prescribing the duties of the Saskatchewan Home Owners' Protection Act Advisory Board.

(2) Every regulation made under subsection (1) is to be laid before the Legislative Assembly in accordance with sections 6 and 7 of *The Tabling of Documents Act*.

1981-82, c.H-4.2, s.16.