

The Distress Act

being

Chapter D-31 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan, 1979-80, c.23 and c.92; 1989-90, c.54; 1993, c.P-6.2; and The Revised Regulations of Saskatchewan, c.D-31 Reg 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 D-31

An Act respecting Distress and Extrajudicial Seizure

SHORT TITLE

Short title

1 This Act may be cited as *The Distress Act*.

Interpretation

2 In this Act:

- (a) “**consumer goods**” means goods that are used or acquired for use primarily for personal, family or household purposes;
- (b) “**debtor**” means a person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the goods;
- (c) “**house trailer**” means a mobile home that is used or intended to be used as living quarters;
- (d) “**secured party**” means a party who has a security interest;
- (e) “**security agreement**” means an agreement that creates or provides for a security interest, and includes a document evidencing a security agreement when the context permits;
- (f) “**security interest**” means an interest in goods that secures payment or performance of an obligation.

1979-80, c.23, s.3.

Costs of distress

2.1 No person making a distress for rent, and no person employed in making the distress or doing any act in the course of the distress or for carrying it into effect, shall levy, take or receive any costs in respect of the distress other than those that are set forth in the appropriate part of the first schedule.

1979-80, c.23, s.3.

Costs of extra-judicial seizures

3 No person making a seizure of consumer goods under the authority of a security agreement or other extra-judicial process, and no person employed in making the seizure or doing any act in the course of the seizure or for carrying it into effect, shall levy, take or receive any costs in respect of the seizure other than those that are set forth in the second schedule.

1979-80, c.23, s.4.

c. D-31**DISTRESS****Work must be done**

4 No person shall make a charge for anything mentioned in either of such schedules unless it has been actually done.

R.S.S. 1978, c.D-31, s.4.

Penalty

5 If any one offends against any of the provisions of the preceding sections, the person aggrieved thereby may, by notice of motion, summon the offender before a judge of Her Majesty's Court of Queen's Bench for Saskatchewan sitting in chambers at the judicial centre nearest to the place where the offence was committed and the judge hearing the motion may order the party making the distress or seizure to pay to the person aggrieved a sum not exceeding treble the amount of the money taken contrary to the provisions of this Act, together with the costs of the proceedings.

R.S.S. 1978, c.D-31, s.5; 1979-80, c.92, s.22.

Seizure of house trailer

6(1) Notwithstanding anything contained in a security agreement creating a security interest in a house trailer, no secured party shall instruct a sheriff to seize, or seek an authorization to seize and sell pursuant to a provision in the security agreement, before the expiration of thirty days after he gives notice in writing to the buyer of his intention to retake possession.

(2) The notice mentioned in subsection (1) shall contain:

- (a) a description of the house trailer sufficient to enable it to be identified;
- (b) the sums actually in arrears, exclusive of the operation of any acceleration clause in the security agreement, and a brief description of any other provision of the security agreement for the breach of which the secured party intends to dispose of the collateral;
- (c) a demand that the amount as stated in the notice be paid, or that the breach of the contract be remedied, if it is capable of remedy, within thirty days after the day on which the notice is given;
- (d) a statement that if the amount as stated in the notice is not paid or the breach is not remedied, within the thirty-day period described in clause (c), the house trailer may be repossessed by the secured party; and
- (e) a statement that, if the house trailer is removed from the place where it is situated at the time of the giving of the notice without the written consent of the secured party, the person removing the house trailer is liable on summary conviction to a fine of not more than \$500.

1979-80, c.23, s.5.

Persons authorized to seize house trailer

6.1(1) No house trailer in which a security interest has been granted shall be seized or sold except by a sheriff or a person duly authorized by a sheriff for the purpose.

(2) The sheriff, before seizing or granting authority to seize, or a person before seizing may require:

- (a) proof that the secured party has given the notice required in section 6 or that he has, in the opinion of the sheriff, taken all reasonable steps to give such notice;
- (b) to be indemnified as to damages and costs in any amount that may be reasonable under the circumstances;
- (c) that the secured party shall advance a sufficient sum to cover all the fees and disbursements shown in the second schedule, except the poundage.

1979-80, c.23, s.5.

Repossession of house trailer

6.2 Where the debtor fails, within thirty days after the day on which the notice mentioned in section 6 is given, to pay the amount owing or remedy the breach, the secured party may, using the services of a sheriff or a person duly authorized by a sheriff for the purpose, repossess the house trailer and, subject to section 3 of this Act, sections 58 and 59 of *The Personal Property Security Act, 1993* apply, *mutatis mutandis*, to any such seizure and sale.

1979-80, c.23, s.5; 1993, c.P-6.2, s.75.

Liability of secured party

6.3 Where a secured party fails to comply with sections 6 to 6.2, he is liable for any loss or damage caused by his failure to comply.

1979-80, c.23, s.5.

Offence and penalty

6.4(1) After notice of intention to retake possession of a house trailer has been given under section 6, no person shall, except with the written consent of the secured party, remove the house trailer from the place where it is situated at the time of the giving of the notice.

(2) A person who violates subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$500.

1979-80, c.23, s.5.

Right to distraint

7 Subject to section 8, the right of a mortgagee of land or of a vendor of land under an agreement of sale, or of the assigns of either, to distraint for interest in arrears or principal due upon the mortgage or agreement of sale, shall, notwithstanding anything to the contrary in the mortgage or in any agreement relating to the same, or in the agreement of sale, or in any other agreement relating thereto, be limited to the goods and chattels of the mortgagor or purchaser, or of their respective assigns, and to such of them as are not exempt from seizure under execution.

R.S.S. 1978, c.D-31, s.7.

Power of mortgagees and vendors to recover rentable value of land

8(1) Subject to the following subsections, a mortgagee of land, or a vendor of land or of land with chattels, may make an application in writing to the tenant or other person occupying the land, or any part thereof, for payment to the mortgagee or vendor of the rent or the rentable value of the land or of such part, to the extent of the interest due, and of all taxes or levies and premiums of insurance payable by the mortgagor or vendee under the mortgage or agreement of sale and paid by the mortgagee or vendor, and of all moneys that the mortgagee or vendor has paid upon or in respect of a prior mortgage or charge upon the land and for payment of which the mortgagor or vendee is liable.

(2) Such rent or rentable value shall, whether or not the mortgagor or vendee has attained:

(a) be payable to and recoverable by the mortgagee or vendor from the tenant or person liable to pay the same or occupying the land or any part thereof, by any remedy, proceeding or claim available as between a landlord and his tenant or the execution creditors of the tenant or persons in whose favour the restriction mentioned in subsection (1) of section 25 of *The Landlord and Tenant Act* does not apply; or

(b) be recoverable in any court of law in the province.

(3) Subject to *The Crop Payments Act*, the right to distrain under this section shall be limited to such goods and chattels as are not exempt from seizure under execution, but no crop or grain shall be deemed to be so exempt by reason of its growing or having been grown upon land free from seizure under or by virtue of execution.

(4) Subject to *The Crop Payments Act*, no tenant who is not also liable under the mortgage or agreement of sale shall be liable to pay to the mortgagee or vendor a greater sum than the amount of rent that, at the time of making the application mentioned in subsection (1) and from time to time thereafter, shall be due by such tenant, and any amount so paid shall be held to be *pro tanto* satisfaction of the rent.

(5) A second or subsequent mortgagee may exercise the rights conferred by subsection (1) only with the previous consent in writing of all prior mortgagees, or, in the absence of such consent, only while all moneys, other than original principal, due and payable under prior mortgages and all taxes on the land are satisfied.

(6) A vendor may exercise the rights conferred by subsection (1) only with the previous consent in writing of all prior mortgagees and vendors, or, in the absence of such consent, only while all moneys, other than original principal, due and payable under prior mortgages or agreements of sale and all taxes on the land are satisfied.

(7) No mortgagee or vendor shall, when acting under this section, be deemed to be or be subject to the liabilities of a mortgagee in possession.

(8) This section applies also to the personal representatives, successors and assigns of a mortgagee or vendor, and to mortgages and agreements of sale heretofore or hereafter made.

R.S.S. 1978, c.D-31, s.8.

DISTRESS

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Notice of sale

9 Goods distrained for such interest or principal shall not be sold except after such notice as is required to be given by a landlord who sells goods distrained for rent.

R.S.S. 1978, c.D-31, s.9.

Method of sale of certain agricultural products

10(1) If:

(a) agricultural products, other than a share of a crop to which *The Crop Payments Act* applies, seized under the authority of a security agreement or other extrajudicial process, are the property of a member of a company or association established for the purpose of carrying on the business of buying, selling and marketing agricultural products on the non-profit co-operative plan; and

(b) such member is under contract to deliver those products to the company or association;

then notwithstanding any statute or law to the contrary the products seized shall be delivered to and sold through the agency of that company or association.

(2) Where any such products are seized and sold by a mortgagee or vendor of land, and where a portion of the sale price thereof remains unpaid at the date of the issue of an order *nisi* for sale, foreclosure or cancellation, then the receipt of that portion of the sale price, if paid prior to sale or final order for foreclosure or cancellation, shall not, unless otherwise ordered by the court or judge, affect the rights of the mortgagee or vendor to a greater extent than if he had been charged therewith in the order *nisi*.

(3) Subsequent to sale or final order for foreclosure or cancellation, the mortgagee or vendor shall continue, notwithstanding any law or practice to the contrary, to be entitled to receive such portion, and when received it shall, unless otherwise ordered by the court or judge, inure to the sole benefit of the mortgagee or vendor unless and until the mortgagee or vendor has received in cash the whole amount of his claim, including all principal, interest, costs and charges whatever.

R.S.S. 1978, c.D-31, s.10; 1979-80, c.23, s.6.

Alteration of fees

11 The Lieutenant Governor in Council may amend by regulation the schedule of fees to this Act as he may see fit.

R.S.S. 1978, c.D-31, s.11; 1989-90, c.54, s.7.

FIRST SCHEDULE

[Section 2.1]

Tariff of Costs for Distress for Rent

- 1 Seizure — 1% of the claim rounded off to the next highest whole dollar, but in any event not less than \$25 nor more than \$100.
- 2 Removal of all or part of goods distrained, when removal is necessary — the amount actually and reasonably incurred.
- 3 Storage — when real or actual possession is necessary, the amount actually and reasonably incurred.
- 4 Providing security at distrained premises — the current minimum wage rate per hour for the actual number of hours spent to a maximum of five days.
- 5 Advertising — the amount actually and reasonably incurred.
- 6 Taking inventory and appraising, when necessary — 5% of the value of the goods, with a minimum of \$15.
- 7 Fee for service:
 - (a) if a sale is held and the net proceeds of the sale are:
 - (i) \$500 or less — 10% of the proceeds;
 - (ii) more than \$500 but not more than \$1,500 — \$50 plus 5% of the amount over \$500;
 - (iii) more than \$1,500 — \$100 plus 3% of the amount over \$1,500;
 - (b) if the amount due is paid in whole or in part after seizure and before sale, the maximum fee that may be charged is 5% of the amount realized plus:
 - (i) the actual cost of removal and storage; and
 - (ii) the amount charged by any licensed auctioneer as a cancellation fee.
- 8 Fee of a licensed auctioneer — the amount actually and reasonably incurred.
- 9 Travel costs — the prevailing rate under the Public Service Regulations, being Saskatchewan Regulations 234/74, for each kilometre necessarily travelled in the course of acting under a warrant for distress or seizure, from the place where the warrant is received, or the office of the person making the distress, whichever is nearer, and return.

11 Oct 85 c.D-31 Reg 1 s.2.

SECOND SCHEDULE

[Section 3]

Tariff of Costs for Seizure under Security Agreements

- 1 Receiving, entering and perusal of security agreement — \$15.
- 2 Locating and seizure — \$25.
- 3 Removing, keeping possession, taking inventory, appraising and selling — the amount actually and reasonably incurred.
- 4 Advertising — the amount actually and reasonably incurred.
- 5 Cancellation fee, if applicable, following seizure and before sale — \$25.
- 6 Fee on the sum realized following sale, if the amount realized from the sale is:
 - (a) \$500 or less — \$25;
 - (b) more than \$500 but not more than \$5,000 — \$25 plus 3% of the amount over \$500;
 - (c) more than \$5,000 — \$160 plus 1.5% of the amount over \$5,000.
- 7 Postage — the amount actually and reasonably incurred.
- 8 Travel costs — the prevailing rate under the Public Service Regulations, being Saskatchewan Regulations 234/74, for each kilometre necessarily travelled in the course of acting under a warrant for seizure, from the place where the warrant is received, or the office of the person directed to make seizure, whichever is nearer, and return.
- 9 If equipment belonging to the sheriff's office is used for towing in the course of acting under a warrant for seizure, an additional fee for travelling costs may be charged by the sheriff equal to one half of the rate charged in accordance with item 8 of this schedule.

11 Oct 85 c.D-31 Reg 1 s.2.

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