1970

c 76 Conditional Sales Act

Ontario

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CHAPTER 76

The Conditional Sales Act

1. In this Act,

(a) "contract" means a conditional sale contract and includes a hire receipt;
(b) "goods" includes wares and merchandise;
(c) "prescribed form" means a form provided or approved under this Act by the registrar;
(d) "purchaser" includes a proposed purchaser and a hirer;
(e) "registrar" means the registrar of personal property security appointed under The Personal Property Security Act; R.S.O. 1970, c. 344
(f) "sale" includes a hiring;
(g) "seller" includes a lender for hire;
(h) "sold" includes lent for hire. R.S.O. 1960, c. 61, s. 1; 1970, c. 81, s. 1 (1).

2.—(1) Where possession of goods is delivered to a purchaser of them under a contract which provides that the ownership is to remain in the seller until payment of the consideration money or part of it, as against a subsequent purchaser or mortgagee claiming from or under the purchaser, without notice, in good faith and for valuable consideration, such provision is invalid and the purchaser shall be deemed to be the owner of the goods, unless,

(a) in the case of registration on or after the 1st day of January, 1968, the contract is evidenced by a writing signed by the purchaser or his agent and containing and legibly setting forth at least,
   (i) the name and address of the purchaser,
   (ii) the name and address of the seller and of his assignee, if any,
   (iii) the date of execution of the contract,
   (iv) a description of the goods sold sufficient to identify them, and
   (v) the terms and conditions of the contract; and

(b) within ten days after the execution of the contract a true copy of it is registered in the office of the clerk of the county or district court of the county or district in which the purchaser resided at the time of the sale and the
(2) Subsection 1 applies to the case of a hire receipt where the hirer is given an option to purchase.

(3) Where the delivery is made to a person for the purpose of resale by him in the course of business, such provision is also, against his creditors, invalid and he shall be deemed to be the owner of the goods unless this Act has been complied with.

(4) Where such person resells the goods in the ordinary course of his business, the property in and ownership of such goods passes to the purchaser notwithstanding that this Act has been complied with. R.S.O. 1960, c. 61, s. 2 (2-4).

(5) Clause b of subsection 1 does not apply to a contract that is executed on or after the 1st day of January, 1971,

(a) respecting goods that are used or acquired for use primarily for personal, family or household purposes where the amount secured by the contract does not exceed $300; or

(b) respecting goods that are used or acquired for use other than for personal, family or household purposes and the goods are,

(i) manufactured goods, including pianos, organs and other musical instruments, that at the time possession is delivered have the name and address of the seller painted, printed, stamped or engraved thereon or plainly attached thereto, or

(ii) household furniture other than pianos, organs and other musical instruments. 1970, c. 81, s. 2 (4).

(6) An error or inaccuracy in the name or address of the seller that does not mislead does not prevent the application of subsection 5.

(7) Where a true copy of a contract is not duly registered within the time prescribed by clause b of subsection 1, the judge of the county or district court of the county or district in which the purchaser resided when the contract was made may permit it to be registered at a later date upon being satisfied by affidavit that the failure to register arose from misadventure, ignorance or some other cause which constitutes a reasonable excuse and that the parties have acted and are acting in good faith, but in such case the provision of the contract mentioned in subsection 1 shall be deemed to be effective as against creditors of and subsequent purchasers or mortgagees claiming from or under the purchaser, without notice, in good faith and for valuable consideration, only
from the actual date of registration, and, for the purpose of registering a renewal statement, such true copy shall be deemed to have been registered on the actual date of registration.

(8) The word "creditors" in subsection 7 means creditors of a purchaser to whom goods have been delivered for the purpose of resale by him in the course of business. R.S.O. 1960, c. 61, s. 2 (6-8).

3.—(1) This Act does not apply to a contract for the sale of railway stock by an incorporated company to an incorporated company if the contract or a copy of it is filed in the office of the Minister of Financial and Commercial Affairs within ten days from its execution. R.S.O. 1960, c. 61, s. 3 (1); 1966, c. 20, s. 1, amended.

(2) A contract under subsection 1 may be discharged by filing a certificate signed by the seller to the effect that all moneys due under it have been satisfied. R.S.O. 1960, c. 61, s. 3 (2), amended.

4. The seller shall deliver a copy of the contract to the purchaser within twenty days after the execution thereof, and if, after request, he neglects or refuses to do so the judge of the county or district court of the county or district in which the purchaser resided when the contract was made may, on summary application, make an order for the delivery of such copy. R.S.O. 1960, c. 61, s. 4.

5.—(1) Every contract of which a copy has been registered under this Act ceases to be valid as against the creditors of the purchaser and as against subsequent purchasers claiming from or under such purchaser, without notice, in good faith and for valuable consideration, at the expiration of three years from the day of the registration of such copy unless, within thirty days next preceding the expiration of three years from the day of the registration of such copy, a renewal statement in Form 5 has been registered in the same office in which the original copy of the contract was registered. 1970, c. 81, s. 3 (1).

(2) The renewal statement shall be signed by the seller or his assignee, personal representative or agent, and shall be verified by the affidavit in Form 6 of such seller, assignee, personal representative or agent having personal knowledge of the matters required to be verified, and the affidavit of such assignee, personal representative or agent shall state that he has such knowledge.

(3) Every contract in respect of which a renewal statement has been registered under this Act ceases to be valid as against the creditors of the purchaser and as against subsequent purchasers claiming from or under such purchaser, without notice, in good
faith and for valuable consideration, at the expiration of three years from the day of the registration of such renewal statement unless, within thirty days next preceding the expiration of three years from the day of the registration of such renewal statement, a further renewal statement in like form has been registered in the same office.

(4) This section applies to the case of a hire receipt where the hirer is given an option to purchase.

(5) Where a renewal statement is not duly registered within the time prescribed by this section, the judge of the county or district court may permit it to be registered at a later date upon being satisfied by affidavit that the failure to register arose from misadventure, ignorance or some other cause which constitutes a reasonable excuse and that the parties have acted and are acting in good faith, but in such case the renewal statement shall, as against creditors of the purchaser and as against subsequent purchasers claiming from or under such purchaser, without notice, in good faith and for valuable consideration, who have become creditors, mortgagees or purchasers after the expiry of the contract but before registration, be deemed to have been executed and to be effective only from the date of registration, and, for the purposes of registration of any further statement of renewal, such statement of renewal shall be deemed to have been registered on the actual date of registration.

(6) The word "creditors" in this section means creditors of a purchaser to whom goods have been delivered for the purpose of resale by him in the course of business. R.S.O. 1960, c. 61, s. 5 (2-6).

6.—(1) The clerk of a county or district court shall make a record of every contract or renewal statement of which a copy is registered in his office under this Act in an index book to be kept for that purpose.

(2) The clerk is entitled for services under this Act to the fees prescribed by the regulations made under The Personal Property Security Act. 1967, c. 11, s. 3.

7. An error of a clerical nature or in an immaterial or non-essential part of the copy of the contract or renewal statement or in the contents of a prescribed form that does not mislead does not invalidate the registration or destroy the effect of it. R.S.O. 1960, c. 61, s. 7; 1970, c. 81, s. 4.

8.—(1) The seller shall, within five days after the receipt of a request in writing from the purchaser of any goods to which this Act applies, or from any other person interested, furnish particu-
lars of the amount remaining due to him and the terms of payment of it, and in default he is guilty of an offence and on summary conviction is liable to a fine of not more than $50.  

(2) If the request is by letter, the person making the request shall give a name and post office address to which a reply may be sent, and it is sufficient if the information is given by registered letter deposited in the post office within the prescribed time addressed to the person inquiring at his proper post office address, or, where the name and address are given by him, by the name and at the post office address so given. R.S.O. 1960, c. 61, s. 8.

9.—(1) Where the seller retakes possession of the goods for breach of condition, he shall retain them for twenty days, and the purchaser or his successor in interest may redeem the goods within that period on payment of the amount then in arrear, together with interest and the actual costs and expenses of taking and keeping possession.

(2) Where the purchase price of the goods exceeds $30 and the seller intends to look to the purchaser for any deficiency on a resale, the goods shall not be resold until after notice in writing of the intention to sell has been given to the purchaser or his successor in interest.

(3) The notice shall contain,

(a) a brief description of the goods;

(b) an itemized statement of the balance of the contract price due and the actual costs and expenses of taking and keeping possession up to the time of the notice;

(c) a demand that the amount as stated in the notice shall be paid on or before a day mentioned, which day shall not be less than twenty days from the day of retaking possession of the goods;

(d) a statement that, unless the amount stated in the notice is paid within the time mentioned, the goods will be sold either at private sale or advertised and sold by public auction, and that the seller intends to look to the purchaser for any deficiency occasioned by any resale.

(4) The notice shall be served personally upon or left at the residence or last known place of abode in Ontario of the purchaser or his successor in interest at least five days before the date set out in the notice for payment or may be sent by registered mail at least seven days before the date set out in the notice for payment addressed to the purchaser or his successor in interest at his last known post office address.

(5) The notice may be given during the twenty days mentioned in subsection 1.
(6) This section applies notwithstanding an agreement to the contrary. R.S.O. 1960, c. 61, s. 9.

10.-(1) Subject to subsection 2 and section 14, where the goods, other than building material, have been affixed to realty, they remain subject to the rights of the seller as fully as they were before being so affixed, but the owner of the realty or any purchaser or any mortgagee or other encumbrancer thereof has the right, as against the seller or other person claiming through or under him, to retain the goods upon payment of the amount owing on them.

(2) Where the goods consist of mining machinery or appliances on a mining claim for which the patent or lease, as the case may be, has not issued, they remain subject to the rights of the seller whether they have been affixed to the realty or otherwise as fully as they were before being so affixed, and the contract or a copy thereof may be registered with the recorder of the mining division in the same manner as a contract may be registered with the clerk of a county or district court, and the provisions of this Act with regard to registering a renewal statement and a discharge apply mutatis mutandis.

(3) The registration of a contract as provided in subsection 2 shall be deemed to be actual notice to a creditor, subsequent purchaser or mortgagee of such goods or realty. R.S.O. 1960, c. 61, s. 10.

11. Where the goods are in or upon premises with respect to which rent is in arrears, the landlord or other person exercising the right of distress has the right to distrain the goods upon payment of the amount owing thereon to the seller or other person claiming through or under him, and the landlord may add the amount so paid to his claim for the rent. R.S.O. 1960, c. 61, s. 11.

12. Where a contract has been made out of Ontario with reference to goods not then in Ontario which if made in Ontario with reference to goods in Ontario would come within this Act, or where under the law governing the contract the seller has the right of revendication or to resume possession of the goods notwithstanding the possession of the purchaser upon default in payment of the price or the insolvency of the purchaser, and the goods are brought into Ontario, the contract is subject to this Act, but the period for registering in the office of the clerk of the county or district court of the county or district in which the purchaser resided at the time of the sale is within twenty days after the date on which the goods are brought into Ontario, and a caution under oath stating the nature of the agreement and of the right claimed may be registered in lieu of a true copy of the contract. R.S.O. 1960, c. 61, s. 12.
13. A contract may be discharged by registering in the office of the clerk of the county or district court in which a copy of the contract was registered a certificate in Form 3 that all moneys due thereunder have been satisfied, or to the like effect, signed by the seller and verified by affidavit of a subscribing witness, and the clerk of the court shall, upon receiving the certificate, write the words "See discharge number (stating the number of the certificate)" opposite the place where the number of the contract has been entered in the index book kept for that purpose and he shall also endorse a similar memorandum upon the instrument discharged. R.S.O. 1960, c. 61, s. 13.

14.—(1) In addition to any other registration made under this Act, notice of a contract in Form 1 may be registered in the proper registry or land titles office, and shall set out,

(a) the name and residence of the seller and the purchaser;
(b) a brief description of the goods sold;
(c) the amount owing on the goods sold;
(d) a description of the land upon which the goods are affixed or placed or are to be affixed or placed, sufficient for the purpose of registration, and, where the land is registered under The Land Titles Act, also a reference to the number of the parcel of the land and to the register in which the land is registered in the land titles office.

(2) The notice shall be signed by the seller or his assignee, personal representative or agent, and shall be verified by the affidavit in Form 2 of the seller or his assignee, personal representative or agent having personal knowledge of the matters required to be verified, and the affidavit of the assignee, personal representative or agent shall state that he has such knowledge.

(3) The registration of a contract under this section shall be deemed to be actual notice to the owner of the land or an interest therein or to a subsequent purchaser, mortgagee or other encumbrancer of the land or an interest therein.

(4) Where the goods have become affixed to the land or are fixtures and there is already registered against the land a mortgage or charge, all payments or advances made on the mortgage or charge after the goods have become affixed or have become fixtures and before registration of notice of the contract under this section have priority over the rights of the seller under the contract. R.S.O. 1960, c. 61, s. 14 (1-4).

(5) A notice of a contract registered under this section may be discharged by a certificate in Form 4 signed by the seller or his assignee, personal representative or agent, accompanied by an affidavit of execution, except that an affidavit of execution is not necessary where the discharge is executed under the seal of a corporation. R.S.O. 1960, c. 61, s. 14 (6).
Affidavits, etc., in case of a corporation

Contents of affidavit by a corporation

When instruments tendered for registration to be accompanied by statement

Regulations

Repeal of Act by proclamation

15. (1) Where a seller or his assignee, personal representative or agent is a corporation, any officer, employee or agent of the corporation may make any verifying affidavit or sign any notice or renewal statement under this Act on behalf of the corporation.

(2) Where a verifying affidavit is made on behalf of a corporation, it shall state that the deponent has personal knowledge of the facts therein deposed to. R.S.O. 1960, c. 61, s. 15.

16. Where required by the regulations made under this Act, a contract, or a renewal, assignment or discharge of a contract shall, when tendered for registration as provided by this Act, be accompanied by a statement that sets forth in the prescribed form the information prescribed by the regulations. 1970, c. 81, s. 5, part.

17. The Lieutenant Governor in Council may make regulations,

(a) prescribing additional duties of the clerks of the county and district courts in connection with the registration of documents under this Act;

(b) requiring or permitting a statement to accompany any instrument tendered for registration under this Act, prescribing the information to be contained in such statement and the manner of recording such information, and for requiring the forms of statements to be used shall be those provided or approved by the registrar;

(c) defining any expression used in the regulations;

(d) providing that clause d of section 27 of The Interpretation Act does not apply to a prescribed form;

(e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1970, c. 81, s. 5, part.

18. This Act is repealed on a day to be named by the Lieutenant Governor by his proclamation and thereafter any reference in any Act or regulation to The Conditional Sales Act shall be deemed to be a reference to The Personal Property Security Act. 1967, c. 11, s. 4.
FORM 1

The Conditional Sales Act
(Section 14 (1))

NOTICE OF CONDITIONAL SALE CONTRACT OR HIRE RECEIPT

I, ..........................................................................................................., of the
(residence) ..............................................................................................
(seller, or as the case may be)
hereby give notice that ...........................................................................
(brief description of goods)
was sold under a conditional sale contract (or hire receipt) to ............... .. .
(name of purchaser)
of the .................................................................................................
(residence)

The amount owing thereon is $ .................................................

The following is a description of the land upon which the goods are affixed or
placed or are to be affixed or placed:
...........................................................................................................

This notice is given for the purpose of registration in the registry (or land titles)
office of .....................................................................................................
(city, county or district)

Dated this ................................... day of .................................., 19 ...........

(signature of seller, or as the case may be)

R.S.O. 1960, c. 61, Form 1.

FORM 2

The Conditional Sales Act
(Section 14 (2))

AFFIDAVIT VERIFYING NOTICE

I, ..........................................................................................................., named in the
above (or attached) notice, make oath and say:

1. That the facts set out in such notice are true.

(Where the affidavit is made by the assignee, personal representative or
agent, or by an officer of a corporation, a clause to the following effect
must be added:)

2. That I have full knowledge of the facts set forth in such notice.

Sworn, etc.

(signature of seller, or as the case may be)

R.S.O. 1960, c. 61, Form 2.
FORM 3

The Conditional Sales Act

(Section 18)

Discharge

I certify that has paid all money payable to me under a conditional sale agreement (or hire receipt) dated the , signed by him and registered on the , as No. 

NOTE: — The signature of the seller, or as the case may be, must be proved by the affidavit of a subscribing witness.

R.S.O. 1960, c. 61, Form 3.

FORM 4

The Conditional Sales Act

(Section 14 (5))

Certificate of Discharge

The lien registered by of of upon the following lands: dated the day of , and registered the day of as No. in the registry (or land titles) office for the is discharged.

R.S.O. 1960, c. 61, Form 4.
FORM 5
The Conditional Sales Act
(Section 5 (1))

RENEWAL STATEMENT

Statement exhibiting the interest of ......................................................
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FORM 6

The Conditional Sales Act

(Section 5 (2)

Affidavit Verifying Renewal Statement

I, ........................................................., named in the
(name of seller, or as the case may be)
above (or attached) renewal statement, make oath and say:

1. That the facts set out in such statement are true and the conditional sale
contract (or hire receipt) mentioned in this affidavit is not being kept on foot
for fraudulent purposes.

(Where the affidavit is made by the assignee, personal representative or
agent of the seller or lender or by an officer of a corporation, a clause to
the following effect must be added:)

2. That I have full knowledge of the facts set forth in the above (or attached)
renewal statement.

Sworn, etc.

...........................................................

(signature of seller, or as the case may be)

R.S.O. 1960, c. 61, Form 6.