

CHATTEL MORTGAGE ACT

CHAPTER 48

Interpretation

1. (1) In this Act
“chattel mortgage” includes

- (a) a bill of sale, mortgage, sale, assignment or transfer of chattels;
- (b) a declaration of trust without transfer;
- (c) an inventory of goods with receipts attached;
- (d) a receipt for purchase money of goods;
- (e) a power of attorney, authority or licence to take possession of chattels as security for a debt; and
- (f) an agreement, whether intended or not to be followed by another instrument, conferring a right in equity to chattels or to a charge or security on them,

whereby the holder or grantee has power, with or without notice, immediately or otherwise, to seize or take possession of the chattels included in the document, whether or not

- (g) the chattels are the property of, or are in the possession, custody, or control of, the grantor or bargainor, or anyone on his behalf, at the time of the making of an instrument mentioned above;
- (h) the chattels are intended to be delivered at some future time;
- (i) the chattels are, at the making of the instrument, actually procured, provided, or ready for delivery; or
- (j) some act may be required to make or complete the chattels or make them fit for delivery;

and also includes,

- (k) for chattels that may be seized under a power of distress, an instrument or agreement, other than a mining lease,
 - (i) giving or agreeing to give a power of distress by way of security for a present, future or contingent debt or advance; and
 - (ii) reserving or making payable rent to provide for interest on the debt or advance, or for security only,if the document is not a mortgage of land that the grantee in possession has granted to the grantor as his tenant at a fair and reasonable rent;

but does not include

- (l) an assignment for the benefit of creditors of the person making or giving the chattel mortgage;
- (m) a marriage settlement;
- (n) a disposition of a vessel or a share in it;
- (o) a disposition of goods in the ordinary course of business of a trade or other occupation;
- (p) a chattel mortgage of goods in foreign parts or at sea;
- (q) a bill of lading;
- (r) a security taken by a bank under section 88 of the *Bank Act* (Canada), except where other provision is made by that Act;

- (s) a warehouse keeper's certificate,
 - (t) a warrant or order for the delivery of goods,
 - (u) any other document used in the ordinary course of business to prove possession or control of goods or authorizing or purporting to authorize, by endorsement or delivery, possession of the document to transfer or receive the goods included in the document, or
 - (v) a corporation's mortgage or charge, specific or floating, of chattels and contained in
 - (i) a trust deed or similar document to secure its bonds, debentures or debenture stock, or
 - (ii) its bonds, debentures or debenture stock, secured or not secured,
- “chattels” includes goods, furniture, other articles capable of complete transfer by delivery, trade machinery and fixtures and growing crops when separately assigned or charged, but does not include
- (a) chattel interests in real estate or fixtures that are not trade machinery and that are assigned together with a freehold or leasehold interest in land or a building to which they are affixed,
 - (b) growing crops that are assigned together with any interest in the land from which they grow,
 - (c) a share or interest in the stock, funds, or securities of a government, or in the capital or property of a corporation,
 - (d) a chose in action, or
 - (e) any stock or produce on a farm or land that, by virtue of a covenant or agreement or custom, ought not to be removed from the farm on which it is situate at the time of the making of a chattel mortgage,
- “court” means the Supreme Court or a County Court,
- “Farm Credit Corporation” means the corporation by that name established under the *Farm Credit Act* (Canada),
- “grantee” includes assignee,
- “grantor” means a person who grants a chattel mortgage
- “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 appointed under the *Public Service Act*,
- “trade machinery” means machinery used at a workshop, except
- (a) fixed motive power units such as steam engines, steam boilers and things fixed to them,
 - (b) fixed power machinery such as shafts, wheels, drums and things fixed to them, used to transmit motive power to other machinery, fixed or loose, and
 - (c) pipes for steam, gas and water in the workshop,
- “trailer” means a trailer as defined in the *Motor Vehicle Act* and includes a mobile home as defined in that Act,
- “workshop” means premises where manual labour is performed as a trade or for gain, in or incidental to the making, alteration, repair, finishing or adaptation for sale of an article or part of it

Assumptions

2. (1) Fixtures and crops are not deemed, for this Act, to be separately assigned or charged merely because they are assigned by separate words, or power is given to sever them without otherwise taking possession of or dealing with the land if by the same document an interest in the land is also conveyed or assigned to the same person

(2) Chattels shall be deemed to be in the apparent possession of the person making a chattel mortgage of them if they are on land occupied by him, or are used and enjoyed by him anywhere, whether or not formal possession has been given to or taken by another person

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Contents of mortgage

3. (1) The signature of each person who signs (executes) a chattel mortgage shall be witnessed, and the witness shall sign as witness

(2) The description of a motor vehicle in a chattel mortgage shall include the vehicle identification number consisting of the sequence of numbers, or numbers and letters, impressed on or fixed to the vehicle by its maker

(3) The vehicle identification number is not insufficient or defective for the purposes of subsection (2) where the motor vehicle is particularly described in a manner that sets it apart from any other motor vehicle

(4) A chattel mortgage shall set forth the true consideration for which it was given

(5) Where a chattel mortgage is made subject to a condition or declaration of trust not contained in the body of the document, the condition or declaration is deemed to be part of the chattel mortgage and shall be written on the chattel mortgage, otherwise the chattel mortgage is not made in compliance with this Act

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Affidavit of witness

4. (1) A witness or one of them shall complete an affidavit to be attached to the chattel mortgage. The affidavit shall identify the chattel mortgage and state

- (a) the date of execution of the chattel mortgage,
- (b) the address and occupation of the deponent and of the person making the chattel mortgage, and
- (c) the address and occupation of the person against whom the process was issued if given under process of execution

(2) Where the person making the chattel mortgage is a corporation, the affidavit may be sworn by an officer, director, or agent of the corporation authorized to do so

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Order of court

5. Where the witness dies or leaves the Province without making the affidavit, refuses to make the affidavit, or becomes incapable of making the affidavit, the court may make an order for the registration of the chattel mortgage

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Registration: not corporate

6. A chattel mortgage and each affidavit required under section 4 to be attached or the order of the court made under section 5 together with the proof required by the

order, or a copy of any document mentioned shall be registered in the office of the Registrar General if the grantor is not a corporation.

1961-6-8,9(1).

Registration: corporate

- 7.** (1) A chattel mortgage granted by 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 chattels, in the offices of the Registrar General and of the Registrar of Companies.

(2) Where a chattel mortgage within the scope of subsection (1) (c) is registered in the office of the Registrar General but not the office of the Registrar of Companies, it shall be deemed to be sufficiently registered for every motor vehicle included in it. Where the chattel mortgage is registered in the office of the Registrar of Companies but not in the office of the Registrar General, it shall be deemed to be sufficiently registered for all chattels included in it, other than motor vehicles.

1961-6-9(2,3); 1962-7-5

Time for registration

- 8.** A chattel mortgage shall be registered within 21 days of its making or within
- (a) 30 days where the grantee is the Farm Credit Corporation; or
 - (b) 21 days of the date when the grantee learns that any of the included chattels located outside the Province at the date of the making of the chattel mortgage have been brought into the Province.

1962-7-6(part).

Transfer of chattel mortgage

9. Subject to section 11, a transfer of a chattel mortgage registered under this Act need not be registered.

1962-7-6(part).

Renewal statement

10. A renewal statement shall be registered within 3 years of the date of registration of a chattel mortgage, or of the last renewal statement, for a chattel mortgage registered in the office of the Registrar General. This section does not apply where the grantee is the Farm Credit Corporation.

1961-6-12.

Contents

11. A renewal statement shall state whether or not the chattel mortgage has been transferred, the name of the transferee, if any, the interest of the grantee or his personal representative or the transferee in the chattels, and the amount then owing for principal and interest or the extent or amount of the liability then secured.

1961-6-11. 1972-6-3

Mistakes

12. (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 grantor under the chattel mortgage 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 chattel mortgage as if the statement with the mistake were correct

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Rectification and extension of time

13. (1) The Registrar General or Registrar of Companies, as appropriate, on being satisfied by affidavit that an omission to register a mortgage or renewal statement within time or an omission or misstatement of the name, residence or occupation of a person or of a descriptive detail for a chattel was accidental or inadvertent, or due to other sufficient cause, may, in his 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, if any, for security, notice by advertisement or otherwise, or any other matter he thinks 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 chattels, by purchase and possession or by registration in good faith of a chattel mortgage for 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 chattels

(3) An office copy of the order shall be registered with the chattel mortgage or renewal statement

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Satisfaction

14. (1) On the grantor discharging the debt or cause for which the chattel mortgage was given as security, and making a written request, delivered personally or by registered mail, the grantee or other person interested shall sign and deliver to the grantor a statement that his claim under the mortgage is satisfied. The statement may be filed in the office where the mortgage is registered

(2) If for 10 days after receipt of the request the grantee or other person unreasonably fails to deliver the statement, he is liable for all damages suffered by the grantor in consequence of the default

(3) On filing of the statement the Registrar General or Registrar of Companies, as the case may be, shall enter satisfaction on the mortgage or copy registered in his office

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Effect of noncompliance

15. (1) A chattel mortgage or a renewal statement not registered under this Act, is as against

- (a) the liquidator, assignee, receiver or trustee of the estate of the person, any of whose chattels are included in the mortgage or are under assignment for the benefit of his creditors,

- (b) sheriffs and other persons seizing any chattels included in the mortgage in executing a writ of a court authorizing the seizure of the chattels of a person whose chattels were included in the mortgage,
- (c) every person by whom the writ was issued, and
- (d) a subsequent bona fide purchaser or mortgagee for valuable consideration,

null and void for the purposes of property in or right to possession of any chattels included in the mortgage which, after expiry of the time for the registration and at or after the making of a receiving order, assignment for benefit of creditors or winding up order for the estate of the person whose chattels were included in the mortgage, or of the purchase or mortgage, are in the possession or apparent possession of the person who made or gave the chattel mortgage or of a person against whom the writ has issued under or in execution of which the mortgage has been given

(2) A chattel mortgage that is null and void as against the persons mentioned in subsection (1) is not, by the subsequent taking by the grantee of possession of the chattels included in the mortgage, made valid as against a person who was one of those persons before possession is taken by the grantee

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Priority

16. Where a subsequent chattel mortgage

- (a) is made after an earlier chattel mortgage not registered under an enactment requiring registration of it
- (b) includes some or all of the chattels included in the prior chattel mortgage, and
- (c) is given as security for some or all of the same debt as the earlier chattel mortgage,

it is to that extent void for the chattels included in the earlier chattel mortgage unless the court is satisfied that the subsequent mortgage was not given to evade this Act but was given in good faith to correct a material error in the earlier mortgage or to effect registration where the earlier mortgage was, through accident, inadvertence or other sufficient cause, not registered under the Act under which it was required to be registered

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Registered mortgage has priority

17. A chattel mortgage registered in accordance with this Act has priority, subject to this Act, over an unregistered mortgage of the same chattels

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Registered mortgages: priority

18. Two or more registered mortgages of some or all of the same chattels have, as between themselves and for those chattels, priority in the order of the dates of registration, subject to a contrary intention appearing from the chattel mortgages

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Statement of accounts for creditors

19. (1) A creditor of the grantor may by request in writing, require the grantee to furnish a full statement of the accounts between the parties to the mortgage

(2) The request shall be accompanied by a full statement of accounts between the grantor and the creditor, and shall state, verified by affidavit, the existence of the relationship of debtor and creditor between them

(3) Within 15 days after the request the grantee shall furnish the creditor with a full statement of the accounts between himself and the grantor in relation to the bill of sale, otherwise the registration of the chattel mortgage is void. The person furnishing the statement is entitled to receive from the person requesting it 60¢ a page for the statement and affidavit on delivery

(4) The grantee may be relieved from compliance with this section by order of the court where the court is satisfied that the demand is frivolous or is not made in good faith, or for any other reason that the court considers just. The court may award the costs occasioned by the request and the application to be paid, after taxation, by one party to the other

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Duties of the Registrar General

20. (1) The Registrar General shall number each chattel mortgage, copy and affidavit registered 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 filed in his office and its date of registration,

(b) name of each person making each mortgage or copy, and

(c) other particulars required by the Attorney General

(3) Searches of documents in the Registrar General's office may be made at reasonable times 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 or earlier enactments

(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 regulations may fix fees for searches, copies of documents, filing documents, and any other service performed by a public officer under this Act

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

(8) The Registrar General or the Registrar of Companies may accept for filing a document affecting a mortgage registered under this Act or earlier enactments

1961 6 21 1962 7 8

Microfilm

21. Where directed to do so by the Attorney General, the Registrar General shall have photographed on microfilm a document registered under this Act 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 7 8

Registration time: Sunday

22. Where the time for registering a chattel mortgage 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 6-22

Election of remedy

23. (1) Subject to sections 24 (4) and 26, a grantee may enforce his right to the money due and owing under a chattel mortgage either by

(a) taking possession of the chattels, on a surrender or under the mortgage, or

(b) suing the grantor for the money due and owing, but not both

(2) Where the grantee takes possession of the chattels, the grantor's obligations and the obligations of the guarantor or indemnitor under the mortgage and in any instrument giving collateral security are extinguished

(3) Where the grantee takes possession of part of the chattels, subsections (1) and (2) apply to the portion of the total indebtedness and of the grantor's, guarantor's and indemnitor's other obligations relating to that part

(4) This section does not apply where the chattels 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 grantor and a court, on application not later than 20 days after repossession, having regard to all the circumstances, so orders

1973 7 4 1978 11 3

Election procedure

24. (1) A grantee who takes possession of the chattels under the mortgage shall retain them for 20 days. The grantor may redeem them within that period by paying or tendering to the grantee the money due and owing, and 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 chattels is to vest in the grantor and payment of reasonable costs. The grantee shall deliver up to the grantor possession of the chattels so redeemed, in which case any unfulfilled obligations of the grantor, guarantor and indemnitor are revived

(2) When the chattels are not redeemed within the 20 days, the grantee may sell them by private sale or public auction at any time thereafter. He shall pay over to the grantor the surplus, if any, remaining after the money due and owing and the reasonable costs of the taking, keeping and sale have been satisfied

(3) Where the grantee recovers a judgment for the money due and owing, and the chattels are seized under a writ of execution issued pursuant to the judgment, he may recover only the amount realized from the sale of those chattels. The judgment, to the extent it is based on the mortgage, shall be deemed to be fully satisfied, and the grantor's obligations and the obligations of the guarantor or indemnitor under the mortgage and in any instrument granting collateral security are extinguished

(4) Where a grantee takes possession of the chattels, or they are seized under a writ of execution issued pursuant to a judgment for the money due and owing, 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 a similar type and value, the grantee may in the case of taking possession sue the grantor for, or in the case of execution sale recover the value of the accessory, or the amount by which the sum realized on the sale falls short of the money due and

owing and reasonable fees, charges, claims, and disbursements for taking possession, seizure, and sale, whichever is less.

1973-7-4; 1978-11-3.

Contractual provisions

25. (1) A provision in a bill of sale that on default the total indebtedness becomes due is not effective until the default has continued for at least 15 consecutive days.

(2) A waiver or release of a right, benefit or protection given by sections 23 to 28, except if given by a corporation, is void.

1973-7-4.

Seizure where 2/3 paid

26. Where a grantor has paid at least 2/3 of the total amount required under the mortgage, the grantee shall not seize the chattels unless he first obtains a court order authorizing seizure. The court may consider all relevant circumstances including the present value of the chattels, the amount already paid, the reasons for default, and the present and future financial circumstances of the parties and may grant or refuse the order on terms it considers advisable.

1973-7-4.

Guarantor

27. The rights of a guarantor of a grantor's indebtedness or of a person who indemnifies a grantee against a loss incurred under a mortgage shall in no case be greater than the rights of the grantee.

1973-7-4.

Application

28. (1) Sections 23 to 27 apply to chattel mortgages made before or after July 1, 1973, except a mortgage where proceedings are on that date being taken to enforce it.

(2) Section 24 (2) does not apply to a mortgage in existence on July 1, 1973 and which did not provide that the total remaining indebtedness becomes due and owing on default.

(3) The word "instrument" in section 23 (2) does not include a mortgage on land granted before July 1, 1973.

1973-7-4.

Registrar General

29. A Registrar General may be appointed under the *Public Service Act* and shall have the powers and duties prescribed by statute and regulation.

1961-6-23.

Defects

30. A defect, omission or irregularity in a chattel mortgage, affidavit or statement required to be registered under this Act does not invalidate the mortgage, its renewal statement or the registration unless the court finds that the defect, omission or irregularity has actually misled or was likely to mislead a person whose interests are affected by the mortgage.

1962-7-9.

Renewal statement in companies office

31. A renewal statement for a mortgage registered before March 27, 1961 is not required to be filed

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

(b) where the bill of 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.

1962-7-10

Regulations

32. The Lieutenant Governor in Council may make regulations. The regulations may include provision for a form of statement of particulars of a chattel mortgage for the purpose of registration as part of, or in addition to, the mortgage, and may provide for the effect of registration of the statement of particulars.

1961-6-34, 1972-6-6.