

1967 Bill 25

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Fifth Session, 15th Legislature, 15 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

## **BILL 25**

**An Act to reform and make uniform the Law  
regarding Security Interests in Personal  
Property and Fixtures**

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THE ATTORNEY GENERAL

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First Reading .....

Second Reading .....

Third Reading .....

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# BILL 25

1967

An Act to reform and make uniform the Law  
regarding Security Interests in Personal  
Property and Fixtures

(Assented to \_\_\_\_\_, 1967)

**H**ER MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of Alberta,  
enacts as follows:

**1.** This Act may be cited as *The Personal Property Security Act*.

**2.** In this Act,

- (a) "accessions" means goods that are installed in or affixed to other goods;
- (b) "account debtor" means a person who is obligated on chattel paper or on an intangible;
- (c) "chattel paper" means one or more than one writing that expresses both a monetary obligation and a security interest;
- (d) "collateral" means property that is subject to a security interest;
- (e) "consumer goods" means goods that are used or acquired for use primarily for personal, family or household purposes;
- (f) "creditor" includes an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver, and an executor, administrator or committee;
- (g) "debtor" means a person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes an assignor of book debts and an assignee of the debtor's interest in the collateral referred to in subsection (1) of section 50, or such one or more of them as the context requires;
- (h) "default" means the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event whereupon under the terms of the security agreement the security becomes enforceable;

## **Explanatory Notes**

The purpose of the Bill is to reform and make uniform the law regarding security interests in personal property and fixtures. This law is presently covered by The Conditional Sales Act, The Bills of Sale Act, The Assignments of Book Debts Act, 1958 and sections 99 and 100 of The Companies Act. This Bill is based upon a draft developed in Ontario and under consideration by the other provinces of Canada. The Ontario draft was developed from a Uniform Commercial Code in force in over 30 states of the United States of America.

- (i) "document of title" means any writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee's possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;
- (j) "equipment" means goods that are not inventory or consumer goods;
- (k) "goods" means all chattels personal, other than choses in action and money, and includes emblements and industrial growing crops, and oil, gas and other minerals to be extracted, and timber to be cut, and goods are either consumer goods, equipment or inventory;
- (l) "instrument" means a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada), or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, but does not include a writing that constitutes part of chattel paper, a document of title or securities;
- (m) "intangible" means a chose in action, but does not include chattel paper, a document of title, an instrument or securities;
- (n) "inventory" means goods that are held by a person for sale or lease, or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process or materials used or consumed in a business or profession;
- (o) "judge" means a judge of a district court;
- (p) "notify" means to take such steps as are reasonably required to give information to the person to be notified so that
  - (i) it comes to his attention, or
  - (ii) it is directed to such person at his customary address or at his place of residence, or at such other place as is designated by him over his signature,
 and "notification" has a corresponding meaning;
- (q) "proceeds" means personal property in any form or fixtures derived directly or indirectly from any dealing with collateral or proceeds or that indemnifies or compensates for collateral destroyed or damaged;
- (r) "purchase-money security interest" means a security interest that is
  - (i) taken or reserved by the seller of the collateral to secure payment of all or part of its price, or



- (ii) taken by a person who gives value that enables the debtor to acquire rights in or the use of the collateral, if that value is applied to acquire those rights;
- (s) "registrar" means the registrar of personal property security;
- (t) "secured party" means a person who has a security interest;
- (u) "securities" means shares, stock, warrants, bonds, debentures, debenture stock or the like issued by a corporation or other person, or a partnership, association or government;
- (v) "security agreement" means an agreement that creates or provides for a security interest;
- (w) "security interest" means an interest in goods, other than building materials that have been affixed to the realty, fixtures, documents of title, instruments, securities, chattel papers or intangibles that secures payment or performance of an obligation, and includes an interest arising from an assignment of book debts;
- (x) "value" means any consideration sufficient to support a simple contract.

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## PART 1

**3.** (1) Except as otherwise provided in subsection (2), this Act applies,

- (a) to every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest, including, without limiting the foregoing,
  - (i) a chattel mortgage, conditional sale, equipment trust, floating charge, pledge, trust deed or trust receipt, and
  - (ii) an assignment, lease or consignment intended as security,
 and
- (b) to every assignment of book debts not intended as security.

(2) This Act does not apply

- (a) to a lien given by statute or rule of law, except as provided in section 33, clause (b) of subsection (3) of section 37, and clause (b) of subsection (2) of section 39, or
- (b) to a transfer of an interest or claim in or under any policy of insurance or contract of annuity.

(3) The rights of buyers and sellers under subsection (3) of section 22 and sections 41, 42, 43 and 45 of *The Sale of Goods Act* are not affected by this Act.

**3.** (1) Application of Act.

(2) Where Act does not apply.

(3) Rights under The Sale of Goods Act not affected.

**4.** A document to which this Act applies is not invalidated nor shall its effect be destroyed by reason only of a defect, irregularity, omission or error therein or in the execution thereof unless, in the opinion of the court, the defect, irregularity, omission or error is shown to have actually misled some person whose interests are affected by the document.

**5.** (1) If the office where the assignor of intangibles that are accounts receivable or contract rights keeps the records concerning them is in Alberta, the validity and perfection of a security interest therein and the possibility and effect of proper registration are governed by this Act, otherwise by the law, including the conflict of laws rules, of the jurisdiction where such office is located.

(2) Where the chief place of business of a debtor is in Alberta, the validity and perfection of a security interest and the possibility and effect of proper registration with regard to intangibles, other than accounts receivable or contract rights, or with regard to goods of a type that are normally used in more than one jurisdiction, if the goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others, are governed by this Act, otherwise by the law, including the conflict of laws rules, of the jurisdiction where the chief place of business is located.

(3) If a jurisdiction does not provide, by registration or recording in such jurisdiction, for perfection of a security interest of the kind referred to in subsection (1) or (2), the security interest may be perfected by registration in Alberta.

**6.** (1) Where personal property, other than that governed by subsection (1) or (2) of section 5, was already subject to a security interest when it was brought into Alberta, the validity of the security interest in Alberta is to be determined by the law, including the conflict of laws rules, of the jurisdiction where the property was when the security interest attached.

(2) Where goods brought into Alberta are subject to the seller's right to revendicate or to resume possession of the goods, unless the seller registers a caution in Form 1 within 20 days after the day on which the goods were brought into Alberta, the right is unenforceable in Alberta thereafter.

**7.** (1) A security interest in collateral already perfected under the law of the jurisdiction in which the collateral was when the security interest attached and before being brought into Alberta continues perfected in Alberta for four months and also thereafter if within the four-month period it is perfected in Alberta.

(2) Notwithstanding subsection (1), where the secured party receives notice within the four-month period men-



**4. Errors, omissions, etc.**

**5. Conflict of laws.**

**6. Conflict of laws, continued.**

**7. Conflict of laws, continued.**

tioned therein that the collateral has been brought into Alberta, his security interest in the collateral ceases to be perfected in Alberta unless he registers the security agreement covering the collateral within 15 days from the date that he receives the notice or upon the expiration of the four-month period, whichever is earlier.

(3) A security interest that has ceased to be perfected in Alberta due to the expiration of the four-month period may thereafter be perfected in Alberta, but the perfection takes effect from the time of its perfection in Alberta.

**8.** Where a security interest was not perfected under the law of the jurisdiction in which the property was when the security interest attached and before being brought into Alberta, it may be perfected in Alberta within 15 days from the date the property is brought into Alberta, in which case perfection dates from the time of perfection in Alberta.

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## **PART 2**

### **VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES**

**9.** Except as otherwise provided by this or any other Act, a security agreement is effective according to its terms between the parties to it and against third parties.

**10.** A security interest is not enforceable by or against a third party unless

- (a) the collateral is in the possession of the secured party, or
- (b) the debtor has signed a security agreement that contains a description of the collateral and, if the collateral is or includes fixtures or crops, or oil, gas or other minerals to be extracted, or timber to be cut, a description of the land concerned.

**11.** Where a security interest is created or provided for by a security agreement, the secured party shall deliver a copy of the security agreement to the debtor within 10 days after the execution thereof, and, if he fails to do so after a request by the debtor, a judge may on summary application by the debtor make an order for the delivery of such a copy to the debtor and may make such order as to costs as he considers just.

**12. (1)** A security interest attaches when

- (a) the parties intend it to attach,
- (b) value is given, and
- (c) the debtor has rights in the collateral.

**8.** Conflict of laws, concluded.

**9.** Effectiveness of security agreement.

**10.** Enforceability of security interest.

**11.** Delivery of copy of agreement.

**12.** When security interest attaches.

(2) For the purpose of subsection (1), the debtor has no rights in,

- (a) crops until they become growing crops, or
- (b) fish until they are caught, or
- (c) oil, gas or other minerals until they are extracted, or
- (d) timber until it is cut.

**13.** (1) Except as provided in subsection (2), a security agreement may cover the young of animals after conception and after-acquired property.

(2) No security interest attaches under an after-acquired property clause

- (a) to crops that become such more than one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of that lease, purchase or mortgage, or
- (b) to consumer goods, other than accessions, unless the debtor acquires rights in them within 10 days after the secured party gives value.

**14.** A purchase-money security interest in consumer goods does not attach to any collateral other than those consumer goods.

**15.** Where a security agreement creates or provides for a purchase-money security interest in other than consumer goods and includes collateral in addition thereto, it shall be accompanied by an affidavit of the debtor in Form 2 stating

- (a) that the debtor is fully aware of the nature of the transaction and that he knows that the security interest extends to personal property in addition to that included in the purchase-money security interest, and
- (b) that the security interest was not created in fraud of creditors.

**16.** A security agreement may secure future advances or other value whether or not the advances or other value are given pursuant to commitment.

**17.** Except as to consumer goods, an agreement by a debtor not to assert against an assignee any claim or defence that he has against his seller or lessor is enforceable by the assignee who takes the assignment for value, in good faith and without notice, except as to the defences as may be asserted against the holder in due course of a negotiable instrument under the *Bills of Exchange Act* (Canada).

**13.** After-acquired property, etc.

**14.** Limitation on coverage.

**15.** Where affidavit required

**16.** Future advances.

**17.** Agreement not to assert defence against assignee.

**18.** Where a seller retains a purchase-money security interest in goods,

- (a) *The Sale of Goods Act* governs the sale and any disclaimer, limitation or modification of the seller's conditions and warranties, and
- (b) except as provided in section 17, the conditions and warranties in a sale agreement shall not be affected by any security agreement.

**19.** Where a security agreement provides that the secured party may accelerate payment or performance when he considers himself insecure, such provision shall be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.

**20.** (1) A secured party shall use reasonable care in the custody and preservation of collateral in his possession, and, unless otherwise agreed, in the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties.

(2) Unless otherwise agreed, where collateral is in the secured party's possession,

- (a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in the custody and preservation of the collateral, are chargeable to the debtor and are secured by the collateral,
- (b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage,
- (c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and moneys so received, unless remitted to the debtor, shall be applied forthwith upon its receipt in reduction of the secured obligation,
- (d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled, and
- (e) the secured party may create a security interest in the collateral upon terms that do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss or damage caused by his failure to meet any obligations imposed by subsection (1) or (2), but does not lose his security interest.

(4) A secured party may use the collateral

- (a) in the manner and to the extent provided in the security agreement, or

**18.** Seller's warranties.

**19.** Provision to accelerate.

**20.** Care and use of collateral.

- (b) for the purpose of preserving the collateral or its value, or
- (c) pursuant to an order of
  - (i) the court before which a question relating thereto is being heard, or
  - (ii) a judge upon application by originating notice to all persons concerned.
- (5) A secured party
  - (a) is liable for any loss or damage caused by his use of the collateral otherwise than as authorized by subsection (4), and
  - (b) is subject to being ordered or restrained as provided in subsection (1) of section 63.

**21.** (1) A debtor or a person having an interest in the collateral or an execution creditor may, by notice in writing, require the secured party to furnish him with a statement in writing

- (a) of the amount of the indebtedness and of the terms of payment thereof as of the date specified in the notice,
- (b) approving or correcting as of the date specified in the notice a statement of the collateral attached to the notice, and
- (c) approving or correcting as of the date specified in the notice a statement of the amount of the indebtedness and of the terms of payment thereof,

or any one or two of them.

(2) In the case of clause (b) of subsection (1), if the secured party claims a security interest in all of a particular type of collateral owned by the debtor, he may so indicate in lieu of approving or correcting the itemized list of the collateral contained in the statement of the collateral and attached to the notice.

(3) The secured party shall answer a notice given under subsection (1) within 15 days after he receives it, and, if without reasonable excuse he fails so to do or his answer is incomplete or incorrect, he is liable for any loss or damage caused thereby to the debtor or any other person.

(4) Where the person receiving a notice under subsection (1) no longer has an interest in the obligation or collateral, he shall, within 15 days after he receives the notice, disclose the name and address of the latest successor in interest known to him, and, if without reasonable excuse he fails so to do or his answer is incomplete or incorrect, he is liable for any loss or damage caused thereby to the debtor or any other person.

(5) A successor in interest shall be deemed to be the secured party for the purposes of this section when he receives a notice under subsection (1).



**21.** (1) and (2) Statements of account.

(3) Time for compliance with notice, liability for failure to answer.

(4) and (5) Successors in interest.

**PART 3**  
**PERFECTION OF INTEREST**

**22.** A security interest is perfected when

- (a) it has attached, and
- (b) all steps required for perfection under any provision of this Act have been completed,

regardless of the order of occurrence.

**23.** (1) Except as provided in subsection (3), an unperfected security interest is subordinate to

- (a) the interest of a person,
  - (i) who is entitled to a priority under this or any other Act, or
  - (ii) who, without knowledge of the security interest and before it is perfected, assumes control of the collateral through legal process, or
  - (iii) who represents the creditors of the debtor as assignee for the benefit of creditors, trustee in bankruptcy or receiver,and
- (b) the interest of a transferee who is not a secured party to the extent that he gives value without knowledge of the security interest and before it is perfected,
  - (i) of chattel paper, documents of title, securities, instruments or goods in bulk or otherwise, not in the ordinary course of the business of the transferor and where the transferee receives delivery of the collateral, or
  - (ii) of intangibles.

(2) The rights of a person under subclause (iii) of clause (a) of subsection (1) in respect of the collateral are referable to the date from which his status has effect and arise without regard to the personal knowledge of the representative if any represented creditor was, on the relevant date, without knowledge of the unperfected security interest.

(3) A purchase-money security interest that is registered before or within 10 days after the debtor's possession of the collateral commences has priority over

- (a) interest set out in subclause (ii) or (iii) of clause (a) of subsection (1), and
- (b) transfers in bulk or otherwise, not in the ordinary course of business, occurring between the security interest's attaching and its being registered.

**24.** (1) If a security interest is originally perfected in any way permitted under this Act and is again perfected in some way under this Act without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Act.

**22.** Time when perfected.

**23.** (1) and (2) Where unperfected security interest subordinate.

(3) Purchase-money security interest.

**24.** (1) Continuity of perfection.

(2) An assignee of a security interest succeeds in so far as its perfection is concerned to the position of the assignor at the time of the assignment.

**25.** Except as provided in section 27, possession of the collateral by the secured party, or on his behalf by a person other than the debtor or the debtor's agent, perfects a security interest in

- (a) chattel paper, or
- (b) goods, or
- (c) instruments, or
- (d) securities, or
- (e) letters of credit and advices of credit, or
- (f) negotiable documents of title,

but, subject to section 24, only during its actual holding as collateral.

**26.** (1) Subject to section 22, registration perfects a security interest in

- (a) chattel paper, or
- (b) goods, or
- (c) intangibles, or
- (d) documents of title.

(2) A security interest is not perfected until it is registered, except in the case of a security interest

- (a) in collateral in possession of the secured party under section 25, or
- (b) temporarily perfected in instruments, securities or negotiable documents of title under section 27.

**27.** (1) A security interest in instruments, securities or negotiable documents of title is a perfected security interest for the first 10 days after it attaches to the extent that it arises for new value given under a registered security agreement.

(2) A perfected security interest in

- (a) an instrument that a secured party delivers to the debtor for the purpose of,
  - (i) ultimate sale or exchange, or
  - (ii) presentation, collection or renewal, or
  - (iii) registration of transfer,or
- (b) a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for the purpose of,
  - (i) ultimate sale or exchange, or

(2) Assignees.

**25.** Perfection by possession.

**26.** Perfection by registration.

**27.** Temporary perfection.

- (ii) loading, unloading, storing, shipping or transshipping, or
- (iii) manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange,

remains perfected for the first 10 days after the collateral comes under the control of the debtor.

(3) Beyond the period of 10 days referred to in subsection (1) or (2), a security interest under this section becomes subject to the provisions of this Act for perfecting a security interest.

**28.** (1) Subject to this Act, a security interest in collateral that is dealt with so as to give rise to proceeds

(a) continues as to the collateral, unless the secured party expressly or impliedly authorized such dealing, and

(b) extends to the proceeds.

(2) Where a security interest in collateral was a perfected security interest at the time of the dealing,

(a) the security interest under clause (a) of subsection (1) is perfected in so far as sections 24, 25 and 26 are satisfied, and

(b) the security interest under clause (b) of subsection (1) becomes unperfected 10 days thereafter unless expressly covered by a security agreement relating to the original collateral that was at the time of dealing perfected by registration, but there is no perfected security interest in proceeds that are not identifiable or traceable.

**29.** (1) A security interest in goods in the possession of a bailee who has issued a negotiable document of title covering them is perfected by perfecting a security interest in the document, and any security interest in them otherwise perfected while they are so covered is subject thereto.

(2) A security interest in goods in the possession of a bailee, other than a bailee mentioned in subsection (1), is perfected by

(a) issuance of a document of title in the name of the secured party, or

(b) a holding on behalf of the secured party pursuant to section 25, or

(c) registration as to the goods.

**30.** (1) A security interest in goods that are the subject of a sale or exchange and that are returned to, or repossessed by

(a) the person who sold or exchanged them, or

**28.** Perfecting as to proceeds.

**29.** Perfecting as to goods held by bailee.

**30.** Goods returned or repossessed.

(b) a transferee of an intangible or chattel paper resulting from the sale of them, re-attaches to the extent that the secured indebtedness remains unpaid.

(2) Where the security interest was perfected by a registration that is still effective at the time of the sale or exchange, it re-attaches as a perfected interest, but otherwise requires for its perfection a registration or a taking of possession by the secured party.

(3) A transferee of,

(a) an intangible resulting from a sale, or

(b) except as otherwise provided in section 31, chattel paper resulting from a sale,

has, as against the transferor, a security interest that is,

(c) subordinate to a security interest under subsection (1) that was a perfected interest when the goods became the subject of the sale or exchange, and

(d) otherwise subject to section 36.

(4) A transferee of an intangible or chattel paper resulting from a sale is, with respect to persons asserting interests in the goods under provisions other than subsections (1) to (3), subject to the provisions of this Act for perfecting a security interest.

**31.** (1) A purchaser of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by his seller even though it is perfected and the purchaser actually knows of it.

(2) A purchaser of chattel paper who takes possession of it in the ordinary course of his business has, to the extent that he gives new value, priority over any other security interest in it

(a) that was perfected under section 26 if he did not actually know at the time he took possession that the chattel paper was subject to a security interest, or

(b) that has attached to proceeds of inventory under section 28, whatever the extent of his knowledge.

(3) A purchaser of a non-negotiable instrument who takes possession of it in the ordinary course of his business has priority to the extent that he gives new value over a security interest in it that was perfected under section 27 if he did not actually know at the time he took possession that the instrument was subject to a security interest.

**32.** (1) The rights of

(a) a holder in due course of a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada), or



**31.** Effect of perfection on purchasers of goods in ordinary course of business.

**32.** Bona fide purchasers of negotiable instruments, etc.

- (b) a holder of a negotiable document of title who takes it in good faith for value, or
  - (c) a *bona fide* purchaser of securities,
- are to be determined without regard to this Act.
- (2) Registration under this Act is not such notice as to affect the rights of persons mentioned in subsection (1),

**33.** Where a person in the ordinary course of business furnishes materials or services with respect to goods in his possession that are subject to a security interest, any lien that he has in respect of such materials or services has priority over a perfected security interest unless the lien is given by an Act that provides that the lien does not have such priority.

**34.** The rights of a debtor in collateral may be transferred voluntarily or involuntarily notwithstanding a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but no transfer prejudices the rights of the secured party under the security agreement or otherwise.

**35.** (1) A perfected security interest in crops or their proceeds given for a consideration to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise has priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the persons giving the consideration knew of the earlier security interest.

(2) A purchase-money security interest in inventory or its proceeds has priority over any other security interest in the same collateral,

- (a) if the purchase-money security interest was perfected at the time the debtor received possession of the collateral, and
- (b) if any secured party, whose security interest was actually known to the holder of the purchase-money security interest or who, prior to the registration by the holder of the purchase-money security interest, had registered a security agreement covering the same items or type of inventory, had received notification of the purchase-money security interest before the debtor received possession of the collateral covered by the purchase-money security interest, and
- (c) if that notification states that the person giving the notice had or expected to acquire a purchase-money security interest in inventory of the debtor, describing the inventory by item or type.

**33.** Priority of liens for materials and services.

**34.** Alienation of rights of debtors.

**35.** (1) Special priorities, crops.

(2) Purchase-money security interests, inventory.

(3) A purchase-money security interest in collateral or its proceeds, other than inventory, has priority over any other security interest in the same collateral if the purchase-money security interest was perfected at the time the debtor obtained possession of the collateral or within 10 days thereafter.

**36.** (1) If no other provision of this Act is applicable, priority between security interests in the same collateral shall be determined

- (a) by the order of registration, if the security interests have been perfected by registration, or
- (b) by the order of perfection, unless all security interests have been perfected by registration, or
- (c) by the order of attachment under subsection (1) of section 12, if no security interest has been perfected.

(2) For the purposes of subsection (1), a continuously perfected security interest shall be treated at all times as if perfected by registration, if it was originally so perfected, and it shall be treated at all times as if perfected otherwise than by registration if it was originally perfected otherwise than by registration.

**37.** (1) Subject to subsection (3) of this section and notwithstanding subsection (3) of section 35, a security interest that attached to goods before they became fixtures has priority as to the goods over the claim of any person who has an interest in the real property.

(2) Subject to subsection (3), a security interest that attached to goods after they became fixtures has priority over the claim of any person who subsequently acquired an interest in the real property, but not over any person who had a registered interest in the real property at the time the security interest attached to the goods and who has not consented in writing to the security interest or disclaimed an interest in the goods as fixtures.

(3) The security interests referred to in subsections (1) and (2) are subordinate to the interest of

- (a) a subsequent purchaser or mortgagee for value of an interest in the real property, or
- (b) a creditor with a lien on the real property subsequently obtained as a result of judicial process, or
- (c) a creditor with a prior encumbrance of record on the real property in respect of subsequent advances,

if the subsequent purchase or mortgage was made or the lien was obtained or the subsequent advance under the prior encumbrance was made or contracted for, as the case may be, without actual notice of the security interest.

(4) If a secured party, by virtue of subsection (1) or (2) and subsection (3), has priority over the claim of a person

(3) Purchase-money security interests, other than inventory.

**36.** Priorities, general rule.

**37.** (1) and (2) Priority of security interests, fixtures.

(3) Exceptions.

(4) Removal of collateral.

having an interest in the real property, he may on default, subject to the provisions of this Act respecting default, remove his collateral from the real property if, unless otherwise agreed, he reimburses any encumbrancer or owner of the real property who is not the debtor for the cost of repairing any physical injury excluding diminution in the value of the real property caused by the absence of the goods removed or by the necessity for replacement, but a person so entitled to reimbursement may refuse permission to remove until the secured party has given adequate security for any reimbursement arising under this subsection.

(5) A person having an interest in real property that is subordinate to a security interest by virtue of subsection (1) or (2) and subsection (3) may, before the collateral has been removed from the real property by the secured party in accordance with subsection (4), retain the collateral upon payment to the secured party of the amount owing under the security interest having priority over his claim.

**38.** (1) Subject to subsection (2) and to section 39 and notwithstanding subsection (3) of section 35,

- (a) a security interest in an accession that attached before the goods became an accession has priority as to the accession over the claim of any person in respect of the whole, and
- (b) a security interest in goods that attached after the goods became an accession has priority over the claim of any person who subsequently acquired an interest in the whole, but not against a person who had an interest in the whole at the date of attachment of the security interest in the accession and who has not consented in writing to the security interest in the accession or disclaimed an interest in the accession as part of the whole.

(2) A security interest referred to in subsection (1) is subordinate to the interest of

- (a) a subsequent purchaser for value of an interest in the whole, or
- (b) a creditor with a lien on the whole, subsequently obtained as a result of judicial process, or
- (c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances,

if the subsequent purchase was made, the lien was obtained or the subsequent advance under the prior perfected security interest was made or contracted for without notice of the security interest.

(3) If a secured party, by virtue of subsections (1) and (2), has an interest in an accession that has priority over the claim of any person having an interest in the whole, he

(5) Retention of collateral.

**38.** (1) Accessions.

(2) Exceptions.

(3) Removal of collateral.

may, on default, subject to the provisions of this Act respecting default, remove his collateral from the whole, if unless otherwise agreed, he reimburses any encumbrancer or owner of the whole who is not the debtor for the cost of repairing any physical injury excluding diminution in value of the whole caused by the absence of the goods removed or by the necessity for replacement, but a person so entitled to reimbursement may refuse permission to remove until the secured party has given adequate security for any reimbursement arising under this subsection.

(4) A person having a security interest in the whole that is subordinate to a security interest by virtue of subsections (1) and (2) may, before the collateral has been removed by the second party in accordance with subsection (3), retain the collateral upon payment to the second party of the amount owing under the security interest having a priority over his claim.

**39.** A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass, and, if more than one security interest attaches to the product or mass, the security interests rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

**40.** A secured party may, in the security agreement or otherwise, subordinate his security interest to any other security interest.

**41.** (1) Unless an account debtor has made an enforceable agreement not to assert defences or claims arising out of a sale as provided by section 17, the rights of an assignee are subject to

- (a) all the terms of the contract between the account debtor and the assignor and any defence or claim arising therefrom, and
- (b) any other defence or claim of the account debtor against the assignor that accrued before the account debtor received notice of the assignment.

(2) The account debtor may pay the assignor until the account debtor receives notice, reasonably identifiable with the relevant rights, that the account has been assigned, and, if requested by the account debtor, the assignee shall furnish proof within a reasonable time that the assignment has been made, and, if he does not do so, the account debtor may pay the assignor.



(4) Retention of collateral.

**39.** Comingled goods.

**40.** Priority subject to subordination.

**41.** Account debtors.

**PART 4**  
**REGISTRATION**

**42.** (1) There shall be a Central Registry under the direction and supervision of a registrar.

(2) The Registry shall be a branch of the Department of the Attorney General.

(3) The registrar shall have a seal of office in such form as the Attorney General approves.

(4) The central office of the Registry shall be located at or near the city of Edmonton.

(5) Branch offices of the Registry may be located at such places in the Province as the Attorney General determines.

(6) The central office and the branch offices shall be kept open during the same hours that the offices of the Clerks of the Supreme Court of Alberta are required to be kept open.

(7) The registrar may designate one or more persons on the staff of the central office or a branch office as registration clerks to effect the registration of documents on behalf of the registrar and to authenticate certificates under this Act.

**43.** Upon the request of any person and upon payment of the prescribed fee, the registrar shall

- (a) issue a certificate stating whether there is registered at the time mentioned in the certificate a document in which the person named in the certificate is shown as a debtor and, if there is, the registration number of it, and any other information required to be given in the certificate by the regulations in respect of it,
- (b) provide for inspection at the central office of the Registry of any document registered in the Registry and on file in the central office, unless it has been destroyed or returned pursuant to this Act,
- (c) provide for inspection at the central office or a branch office a reproduced copy of a document registered in the Registry, and
- (d) furnish a certified copy of any document registered in the Registry.

**44.** (1) An assurance fund, called the Central Registry Assurance Fund, shall be formed and into which shall be paid the fees paid to the registrar under subsection (2).

(2) Before the registrar registers any document that may be registered in the Registry under this or any other Act, he shall, in addition to the fee prescribed by or under that Act, demand and receive for the Fund a fee of 25 cents for each document required to be registered.

**42.** Central Registry.

**43.** Search certificates, etc.

**44.** Assurance Fund.

(3) The Fund shall be held and administered by the Provincial Treasurer and the fees paid under subsection (2) shall be paid over to the Provincial Treasurer at such times and in such manner as he may direct.

(4) When the Fund exceeds \$25,000 any part of the Fund in excess of that figure may at the direction of the Provincial Treasurer be invested in

- (a) bonds or debentures issued by the Government of Canada, or
- (b) bonds or debentures guaranteed as to the payment of principal and interest by the Government of Canada or the Government of Alberta.

(5) When the Fund exceeds \$100,000, any amount in the Fund in excess of that figure may, at the direction of the Lieutenant Governor in Council, be transferred to the General Revenue Fund.

**45.** (1) Any person sustaining loss or damage through an omission, mistake or misfeasance of the registrar, or official of the Registry in the execution of his duties under this or any other Act may bring an action against the Crown in right of Alberta for the recovery of damages.

(2) No action for damages under this Act shall be brought against the Crown unless it is brought within three years from the date when the cause of action arose.

(3) No payment shall be made out of the Fund pursuant to section 46 of an amount greater than \$100,000 in respect of any omission, mistake or misfeasance of the registrar or an official of the Registry.

**46.** (1) The Attorney General upon being satisfied that any claim that is or might be the subject of an action for damages against the Crown under this Act is well founded may issue a certificate to that effect, and thereupon the Lieutenant Governor in Council may direct the payment of the claim out of the assurance fund together with a reasonable sum for costs incurred in making the same.

(2) The Provincial Treasurer shall pay the amount of any judgment recovered against the Crown in respect of a claim under section 45 of the Fund.

(3) The Fund is not under any circumstances liable for compensation for loss or damages

- (a) occasioned by the plaintiff's breach of any trust, whether express, implied or constructive, or
- (b) by reason of the improper use of the seal of a corporation or the want of capacity in a corporation to deal with the property or interest involved or to execute or take the benefit of the document registered, or

**45.** Claim against Assurance Fund.

**46.** Payment of claim.

- (c) by reason of the registration of a document executed by a person under legal disability, unless the fact of the disability is disclosed on the face of the document.

(4) Where, in an action against the Crown, judgment is given in favour of the Crown or the plaintiff discontinues the action, the plaintiff is liable to pay the full costs of defending the action, and the full costs when taxed shall be levied in the name of the Crown by the like process of execution as in ordinary civil cases.

**47.** (1) Documents to be registered in the Registry may be submitted at the central office or at any branch office.

(2) Registration of a document in the Registry is effective only from the time of the recording thereof in the central office and the assignment thereto of an appropriate registration number.

(3) When a document is recorded in the central office and is assigned an appropriate registration number, the registrar or a registration clerk shall endorse the document with a memorandum of the date, hour and minute of its filing and its registration number.

(4) The registrar may refuse to accept a document for registration

- (a) where the document does not comply with the Act authorizing its registration in the Registry, or
- (b) where the document is greater in size than eight and one-half inches by 14 inches, or
- (c) unless at least two copies of the document are submitted to him.

(5) Where a document submitted for registration does not clearly identify the debtor thereunder

- (a) by his surname and his given name or names in full, or
- (b) by reference to the Social Insurance Number, if any, assigned to him under the *Canada Pension Plan*, or
- (c) otherwise than by a signature which, in the registrar's opinion, is illegible, or
- (d) in any other manner that is sufficient, in the opinion of the registrar, for the purposes of registration,

the registrar may refuse registration of the document until either the document is changed to contain the information required by him or there is furnished to him a memorandum made by or on behalf of the person submitting the document for registration setting out the information required by the registrar.

**47.** Registration of documents in Registry.

**48.** (1) In order to register under this Act for the purpose of perfecting a security interest, the security agreement or a copy thereof signed by the debtor shall, subject to subsection (2), be registered, and it shall contain and legibly set forth at least

- (a) the full name and address of the debtor,
- (b) the full name and address of the secured party,
- (c) the date of execution of the security agreement,
- (d) a description of the collateral sufficient to identify it,
- (e) the terms and conditions of the security agreement, and
- (f) where appropriate, the affidavit provided for in section 15.

(2) Where the collateral was subject to a security interest in another jurisdiction at the time the collateral was brought into Alberta or where it is desired to perfect a security interest in the proceeds of collateral included in an already perfected security interest, the secured party may register a copy of the security agreement signed by the debtor or a caution in Form 1.

(3) Registration of a copy signed by the debtor or a caution under this section constitutes registration of the security agreement for the purposes of this Act.

(4) Where the collateral is other than instruments, securities, letters of credit, advices of credit or negotiable documents of title, the security agreement shall not be registered after 15 days from the date of its execution.

**49.** (1) An assignment, or a copy thereof signed by the secured party of record, of a security agreement may also be registered, if the security agreement has been registered under this Act previous to the registration of the assignment, if the assignment contains and legibly sets forth at least

- (a) the full name and address of the debtor,
- (b) the full name and address of the secured party of record,
- (c) the full name and address of the assignee, and
- (d) the registration number given at the time of the registration of the security agreement or, if the assignment is presented for registration at the same time as the security agreement, the registration number of the security agreement that is then endorsed thereon.

(2) Upon the registration of an assignment or a copy thereof under subsection (1), the assignee becomes the secured party of record.



**48.** What is to be registered.

**49.** Assignments.

**50.** (1) Where a security interest has been perfected by registration and the debtor with the consent of the secured party assigns his interest in the collateral, the assignee becomes a debtor and the security interest becomes unperfected unless the secured party registers a notice in Form 3 within 15 days of the time he consents to the assignment.

(2) Where a security interest has been perfected by registration and the secured party learns that the debtor has assigned his interest in the collateral, the security interest becomes unperfected 15 days after the secured party learns of the assignment and the name and address of the assignee, unless he registers a notice in Form 3 within the 15 days.

(3) A security interest that becomes unperfected under subsection (1) or (2) may thereafter be perfected by registering a notice in Form 3 or as otherwise provided by this Act.

**51.** An amendment, or a copy thereof, of a security agreement registered under this Act that refers to the registration number of the security agreement that it amends and that is signed by the secured party of record and by the debtor may be registered at any time during the period that the registration of the security agreement is effective.

**52.** A separate agreement signed by the secured party of record that provides for the subordination of a security interest created or provided for by a security agreement registered under this Act and that refers to the registration number of the security agreement may be registered at any time during the period that the registration of the security agreement is effective.

**53.** A renewal statement in Form 4 that is signed by the secured party of record may be registered at any time.

**54.** (1) Where the collateral covered by a security agreement is other than instruments, securities, letters of credit, advices of credit or negotiable documents of title, registration under this Act

- (a) of a security agreement constitutes notice thereof to all persons claiming any interest in such collateral during the period of three years following such registration,
- (b) of a renewal statement constitutes notice of the security agreement to which it relates to all persons claiming any interest in such collateral during the period of three years following such registration, and
- (c) of any other document constitutes notice thereof to all persons claiming any interest in such collateral during the remainder of the period for which the registration of the security agreement is effective.

**50.** (1) Assignments of collateral.

(2) Where security interest becomes unperfected.

(3) Second registration.

**51.** Amendments.

**52.** Subordination.

**53.** Renewal statements.

**54.** (1) Effective registration.

(2) Where the collateral is or includes fixtures or goods that may become fixtures, or crops, or oil, gas or other minerals to be extracted, or timber to be cut, the security agreement or any other document that may be registered under this Act containing a description of the land affected sufficient for registration under *The Land Titles Act* may, whether or not it is registered under this Act, be registered under *The Land Titles Act*.

**55.** (1) Upon performance of all obligations under a security agreement, it shall be discharged, and, upon written demand delivered either personally or by registered mail during the period that the registration of the security agreement is effective by any person having an interest in the collateral to the secured party, the secured party shall sign and deliver personally or by registered mail to the person demanding it, at the place set out in the demand, a certificate of discharge in Form 5 together with unregistered assignments, if any, of the security agreement.

(2) Where it is agreed to release part of the collateral upon payment or performance of certain of the obligations under a security agreement, then, upon performance of such obligations and upon written demand deliver either personally or by registered mail during the period that the registration of the security agreement is effective by any person having an interest in the collateral to the secured party, the secured party shall sign and deliver personally or by registered mail to the person demanding it, at the place set out in the demand, a release in Form 6 of the collateral as agreed.

(3) Where the secured party, without reasonable excuse, fails to deliver the required discharge and assignments or release, as the case may be, within 10 days after receipt of a demand therefor under subsection (1) or (2), he shall pay \$100 to the person making the demand and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

(4) Upon application to the district court by originating notice to all persons concerned, the judge may

- (a) allow security for or payment into court of the amount claimed by the secured party and the costs as he may fix, and thereupon order that the registration of the security agreement be discharged or that a release of collateral be registered, as the case may be, or
- (b) order upon any ground he considers proper that the registration of the security agreement be discharged or that a release of collateral be registered, as the case may be.

(5) Any discharge of a security agreement and any release of collateral may be registered under this Act.

(2) Fixtures.

**55.** (1) Discharge of security agreement.

(2) Release of part of collateral.

(3) Failure to deliver.

(4) Security or payment into court.

(5) Registration of discharges and releases.

## PART 5

### DEFAULT—RIGHTS AND REMEDIES

**56.** (1) The rights and remedies referred to in this Part are cumulative.

(2) Where the debtor is in default under a security agreement, the secured party has, in addition to any other rights and remedies, the rights and remedies provided in the security agreement except as limited by subsection (5), the rights and remedies provided in this Part and, when in possession, the rights, remedies and duties provided in section 20.

(3) The secured party may enforce the security interest by any method available in or permitted by law and, if the collateral is or includes documents of title, the secured party may proceed either as to the documents of title or as to the goods covered thereby, and any method of enforcement that is available with respect to the documents of title is also available, *mutatis mutandis*, with respect to the goods covered thereby.

(4) Where the debtor is in default under a security agreement, he has, in addition to the rights and remedies provided in the security agreement and any other rights and remedies, the rights and remedies provided in this Part and in section 20.

(5) Except as provided in sections 61 and 62, the provisions of subsections (3), (4) and (5) of section 59 and of sections 60, 61, 62 and 63, to the extent that they give rights to the debtor and impose duties upon the secured party, shall not be waived or varied, but the parties may by agreement determine the standards by which the rights of the debtor and the duties of the secured party are to be measured, so long as such standards are not manifestly unreasonable having regard to the nature of such rights and duties.

(6) Where a security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property, in which case this Part does not apply.

(7) A security interest does not merge merely because a secured party has reduced his claim to judgment.

**57.** (1) Where so agreed and in any event upon default under a security agreement, a secured party is entitled

- (a) to notify any account debtor or any obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and
- (b) to take control of any proceeds to which he is entitled under section 28.

**56.** (1) Rights and remedies cumulative.

(2) Secured party's rights and remedies.

(3) Secured party's remedies.

(4) Debtor's rights and remedies.

(5) Waiver and variation of rights and duties.

(6) Where agreement covers both real and personal property.

(7) No merger in judgment.

**57.** Collection rights of secured party.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors on instruments shall proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections.

**58.** Upon default under a security agreement,

- (a) the secured party has, unless otherwise agreed, the right to take possession of the collateral by any method permitted by law,
- (b) if the collateral is equipment and the security interest has been perfected by registration, the secured party may, in a reasonable manner, render such equipment unusable without removal thereof from the debtor's premises, and the secured party shall thereupon be deemed to have taken possession of such equipment, and
- (c) the secured party may dispose of collateral under section 59 on the debtor's premises.

**59.** (1) Upon default under a security agreement, the secured party may dispose of any of the collateral in its condition either before or after any commercially reasonable repair, processing or preparation for disposition and the proceeds of the disposition shall be applied consecutively to

- (a) the reasonable expenses of retaking, holding, repairing, processing, preparing for disposition and disposing of the collateral and, to the extent provided for in the security agreement and not prohibited by law, any other reasonable expenses incurred by the secured party,
- (b) the satisfaction of the obligation secured by the security interest of the party making the disposition, and
- (c) the satisfaction of any obligation secured by the subordinate security interest in the collateral if written demand therefor is received by the party making the disposition before the distribution of the proceeds is completed.

(2) Where a written demand under clause (c) of subsection (1) is received by the secured party, he may request the holder of the subordinate security interest to furnish him with reasonable proof of the holder's interest, and, unless the holder furnishes the proof within a reasonable time, the secured party need not comply with the demand.

(3) Collateral may be disposed of in whole or in part, and any such disposition may be by public sale, private sale, lease or otherwise and, subject to subsection (5), may be



**58.** Secured party's rights to take possession upon default.

**59.** (1) Secured party's right to dispose of collateral upon default.

(2) Request for proof of interest.

(3) Methods of disposition.

made at any time and place and on any terms so long as every aspect of the disposition is commercially reasonable.

(4) The secured party may, subject to subsection (1) of section 61, retain the collateral in whole or in part for such period of time as is commercially reasonable.

(5) Unless the collateral is perishable or unless the secured party believes on reasonable grounds that the collateral will decline speedily in value, the secured party shall give to the debtor and to any other person who has a security interest in the collateral and who has registered a security agreement under this Act indexed in the name of the debtor or who is known by the secured party to have a security interest in the collateral not less than 15 days' notice in writing containing

- (a) a brief description of the collateral,
- (b) the amount required to satisfy the obligation secured by his security interest,
- (c) the amount of the applicable expenses referred to in clause (a) of subsection (1) or, in a case where the amount of such expenses has not been determined, his reasonable estimate thereof,
- (d) a statement that upon payment of the amounts due the debtor may redeem the collateral,
- (e) a statement that unless the amounts due are paid the collateral will be disposed of and the debtor may be liable for any deficiency, and
- (f) the date, time and place of any public sale or of the date after which any private disposition of the collateral is to be made.

(6) The notice required by subsection (5) shall be served personally upon or left at the residence or last known place of abode of the party to be served or may be sent by registered mail to his last known post office address.

(7) The secured party may purchase the collateral or any part thereof only at a public sale.

(8) Where collateral is disposed of in accordance with this section, the disposition discharges the security interest of the secured party making the disposition and, if such disposition is made to a *bona fide* purchaser for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

(9) Where collateral is disposed of by a secured party after default otherwise than in accordance with this section, then

- (a) in the case of a public sale, if the purchaser has no knowledge of any defect in the sale and if he does not purchase in collusion with the secured party, other bidders or the person conducting the sale, or
- (b) in any other case, if the purchaser acts in good faith,

(4) Secured party's right to delay disposition of collateral.

(5) Secured party to give notice of disposition of collateral.

(6) Service of notice.

(7) Secured party's right to purchase collateral.

(8) and (9) Effect of disposition of collateral.

the disposition discharges the security interest of the secured party making the disposition and, where the disposition is made to a purchaser for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

(10) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral.

**60.** Where a security agreement secures an indebtedness and the secured party has dealt with the collateral under section 57 or has disposed of it in accordance with section 59 or otherwise, he shall account for any surplus to any person, other than the debtor, whom the secured party knows to be the owner of the collateral, and, in the absence of such knowledge, he shall account to the debtor for any surplus.

**61. (1)** Where the security agreement secures an indebtedness and the collateral is consumer goods and the debtor has paid at least 60 per cent of the indebtedness secured and has not signed, after default, a statement renouncing or modifying his rights under this Part, the secured party who has taken possession of the collateral shall, within 90 days after taking possession, dispose of or contract to dispose of the collateral under section 59, and, if he fails to do so, the debtor may proceed under section 63 or in an action for damages or loss sustained.

(2) In any case other than that mentioned in subsection (1), a secured party in possession of the collateral may, after default, propose to retain the collateral in satisfaction of the obligation secured and notification of the proposal shall be given to the debtor and to any other person whom such secured party knows to be the owner of the collateral and, except in the case of consumer goods, to any other person who has a security interest in the collateral and who has registered a security agreement under this Act indexed in the name of the debtor or who is known by the secured party in possession to have a security interest in the collateral.

(3) If any person entitled to notification under subsection (2) objects in writing within 15 days after being notified, the secured party in possession shall dispose of the collateral under section 59, and, in the absence of any such objection, such secured party shall, at the expiration of the period of 15 days, be deemed to have irrevocably elected to retain the collateral in satisfaction of the obligation secured, and thereafter is entitled to hold or dispose of the collateral free of all rights and interests therein of any person entitled to notification under subsection (2) who was given the notification.

(10) Certain transfers of collateral.

**60.** Surplus.

**61.** (1) Compulsory disposition of collateral, consumer goods.

(2) and (3) Retention of collateral.

**62.** At any time before the secured party has disposed of the collateral by sale or exchange or contracted for such disposition under section 59 or before the secured party shall be deemed to have irrevocably elected to retain the collateral in satisfaction of the obligation under subsection (2) of section 61, the debtor, or any person other than the debtor who is the owner of the collateral, or any secured party other than the secured party in possession, may, unless he has otherwise agreed in writing after default, redeem the collateral by tendering fulfilment of all obligations secured by the collateral together with a sum equal to the reasonable expenses of retaking, holding, repairing, processing, preparing the collateral for disposition and in arranging for its disposition, and, to the extent provided for in the security agreement and not prohibited by law, the reasonable expenses incurred by the secured party.

**63.** (1) Where a secured party in possession of collateral is not complying with any of the obligations imposed by section 20 or, after default, is not proceeding in accordance with this Part or the account is disputed, the debtor or any person who is the owner of the collateral or the creditors of either of them or any person other than that secured party who has an interest in the collateral may apply to the Supreme Court or to a district court having jurisdiction with respect thereto, and the court may upon hearing any such application, direct that the secured party comply with the obligations imposed by section 20, or that the collateral be or be not disposed of, or order an account to be taken or make such other or further order as the court considers just.

(2) If the disposition of the collateral has been made otherwise than in accordance with this Part,

(a) the debtor or any other person entitled to notice under subsection (5) of section 59 or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss or damage caused by his failure to comply with this Part, and

(b) where the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10 per cent of the principal amount of the debt or the time price differential plus 10 per cent of the cash price.

(3) Where an application under subsection (1) is made to a district court, a respondent may, by notice served on the applicant and on the other respondents, if any, and filed with proof of service thereof with the clerk of the district court not later than the two days preceding the day of the return of the application, require the proceedings to be removed into the Supreme Court.

(4) Upon the filing of the notice and proof of service thereof, the clerk of the district court shall forthwith

**62.** Redemption of collateral.

**63.** (1) and (2) Remedies for failure of secured party to comply with this Part.

(3) Removal of proceedings into Supreme Court.

(4) Transmission of proceedings.

transmit the papers and proceedings to the proper office of the Supreme Court in the district in which the application is made.

(5) When the papers and proceedings are received at the proper office of the Supreme Court, the proceedings are *ipso facto* removed into the Supreme Court.

(6) Where an application under subsection (1) is made to or is removed into the Supreme Court, the court may refer any question to a master or other officer for inquiry and report.

(7) An appeal lies to the Appellate Division of the Supreme Court from any order made under this section.

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## PART 6

### MISCELLANEOUS

**64.** Where in this Act any time is prescribed within which or before which any act or thing must be done, a judge on application may, upon such terms and conditions and with such notice, if any, as he may order, extend that time for compliance upon being satisfied that no interest of any other person will be prejudiced by the extension, but, in the event that it later appears that any such act or thing done within the period so extended has prejudiced the rights that any person acquired prior to the doing of the act or thing, the act or thing shall be presumed not to have been done in conformity with this Act, and the rights that that person acquired prior to the doing of the act or thing shall be determined on that basis.

**65.** This Act applies only where the security interest attaches on or after the day on which this Act came into force, and, except as provided in sections 66 and 67, where the security interest attached before this Act came into force, the security interest continues to have such force and effect as if this Act had not been passed.

**66.** (1) Every security interest that was covered by an unexpired filing or registration when this Act came into force shall be registered under this Act by the registration of a notice as to the security interest signed by the officer with whom it is filed or registered with effect as of the date when this Act came into force.

(2) The officer referred to in subsection (1) shall send a copy of such notice to every holder of record of a security interest that is registered under *The Assignments of Book Debts Act, 1958* or section 99 of *The Companies Act* together with a notice stating that the registration will expire three years after the day on which this Act came into force unless renewed under this Act.



(5) Removal of proceedings.

(6) Reference to master.

(7) Appeal.

**64.** Extension of time.

**65. to 67.** Transitional provision.

(3) Registration of the notice shall continue the existing effect of the prior filing or registration as a perfection for its remaining life or for three years, whichever is the shorter.

**67.** A secured party having security interest that was covered by an unexpired filing or registration when this Act came into force may, if he thinks fit, register it thereafter as if it were a newly attached security interest without prejudice to his position under subsection (1) of section 66.

**68.** Unless otherwise provided in this Act or in the regulations made under this Act, the Consolidated Rules of the Supreme Court apply to proceedings under this Act.

**69.** Any general or special Act or any provision thereof that relates to a security interest, including *The Assignments of Book Debts Act, 1958*, *The Bills of Sale Act*, *The Conditional Sales Act* and *The Companies Act*, shall be deemed to refer to this Act or to the corresponding provision of this Act, as the case may be.

**70.** Where he is directed to do so by the Attorney General, the registrar shall

- (a) cause each document registered in the Registry to be photographed on microfilm, and
- (b) thereafter return the document to the person who registered it,

and the microfilm, for the purposes of this Act or an authorizing Act, shall be deemed to be the document registered in the Registry.

**71.** The Lieutenant Governor in Council may make regulations

- (a) providing for the manner in which any documents are to be registered,
- (b) prescribing the duties of the registrar or registration clerks in respect of the registration of documents and any other functions of the registrar under this Act or an authorizing Act,
- (c) prescribing the manner in which searches may be made or information obtained regarding any document registered in the Registry,
- (d) prescribing fees for the registration of documents or any classes of documents in the Registry and for any other services performed by the registrar or the registration clerks,
- (e) prescribing the information to be given in certificates issued under clause (a) of section 43,
- (f) prescribing the form of any class of documents that may be registered in the Registry, and authorizing

**68.** Rules of practice.

**69.** References

**70.** Microfilming.

**71.** Regulations.

- the registrar to refuse registration of a document of that class that is not in the form so prescribed,
- (g) prescribing, as to any class of documents that may be registered in the Registry, the information to be contained in the document, and authorizing the registrar to refuse registration of a document of that class that does not contain that information, and
  - (h) generally, providing for any other matter necessary for the purposes of carrying out the purpose of this Act.

**72.** (1) *The Sale of Goods Act* is amended as to section 27 by striking out subsection (3) and by substituting the following:

(3) Subsection (2) does not apply to goods the possession of which has been obtained by a buyer under a security agreement whereby the seller retains a security interest within the meaning of *The Personal Property Security Act*, and the rights of the parties shall be determined by that Act.

(2) Section 19 of *The Conditional Sales Act* is transferred to *The Judicature Act* and added thereto as section 37b.

**73.** This Act repeals and replaces the following enactments:

- (a) *The Conditional Sales Act*, except section 19 thereof;
- (b) *The Bills of Sale Act*;
- (c) *The Assignments of Book Debts Act, 1958*;
- (d) sections 99 and 100 of *The Companies Act*;
- (e) *The Chattel Security Registries Act*.

**74.** This Act comes into force on a date to be fixed by Proclamation.

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#### FORM 1

(Sections 6 (2) and 48 (2) )

#### CAUTION

Full Name of Original Debtor.....  
 Address of Original Debtor.....  
 Full Name of Secured Party.....  
 Address of Secured Party.....  
 Description of Collateral Sufficient to Identify It:

(If Caution is being registered to perfect a security interest in the proceeds of collateral included in an already

**72.** Consequential amendments.

**73.** Repeal of present legislation.

perfected security interest, and the already perfected security interest was perfected by registration under this Act, insert:)

\*Assigned  
by the  
Registrar

\*Registration Number of Security Agreement.....

Date of Registration.....

(If the security agreement has been assigned, also insert:)

Full Name(s) of Assignee(s) (in order of the assignments) .....

Address(es) of Assignee(s) .....

\*Registration Number(s) of the Assignment(s) .....

Date(s) of Registration.....

(If the Debtor's interest in the collateral has been assigned, insert:)

Full Name(s)† of Assignee(s) (in order of the assignments) .....

Address(es)† of Assignee(s) .....

\*Registration Number(s) of the Notice(s) of Assignment of collateral.....

Date(s) of Registration.....

(If the security agreement has been amended, insert:)

\*Registration Number(s) of Amendment(s) .....

Date(s) of Registration .....

Nature of Amendment(s) .....

The undersigned certifies that:

the collateral described above has been brought into Alberta and was subject to a security interest in another jurisdiction, namely ....., at the time it was brought into Alberta. Registration detail in that jurisdiction:

OR

it is desired to perfect a security interest in the collateral described above, being the proceeds of collateral included in an already perfected security interest. The security interest in the original collateral was perfected in the following manner: *(state manner of perfection, such as by registration, taking of possession, etc.)*

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

Signature of Secured Party of Record

† In the case of an assignment without the consent of the secured party but of which he learned, the name and address of the assignee as known to the secured party are sufficient.

FORM 2  
(Section 15)

AFFIDAVIT OF DEBTOR

I, ....., of the .....  
of ....., in the ..... of .....,  
....., make oath and say:

1. That I am the debtor referred to in the accompanying security agreement.

2. That I am fully aware of the nature of the transaction and that I know that the security interest extends to personal property in addition to that included in the purchase-money security interest.

3. That the security interest was not created in fraud of creditors.

Sworn before me at the .....  
of .....  
in the .....  
of .....  
this ..... day of .....  
19.....

} .....  
Signature of Debtor

A Commissioner, etc.

FORM 3  
(Section 50)

NOTICE OF ASSIGNMENT OF COLLATERAL

Full Name of Original Debtor.....  
Address of Original Debtor .....  
\*Registration Number of Security Agreement.....  
Date of Registration .....

\*Assigned  
by the  
Registrar

(If the Debtor's interest in the collateral has been assigned, insert:)

Full Name(s)† of Assignee(s) (in order of the assignments) .....

Address(es)† of Assignee(s) .....

\*Registration Number(s) of the Notice(s) of Assignment of collateral .....

Date(s) of Registration.....

(If the security agreement has been assigned, insert:)  
Full Name(s)† of Assignee(s) (in order of the assignments) .....

Address(es)† of Assignee(s) .....

\*Registration Number(s) of the Assignment(s) .....

Date(s) of Registration .....

The undersigned certifies that:

(1) the Debtor under the security agreement referred to above intends to assign, with the consent of the undersigned, his interest in the collateral covered thereby to .....

or

(1) the Debtor under the security agreement referred to above assigned his interest in the collateral covered thereby to.....  
of which assignment the undersigned learned on the ..... (date) .....

(2) the full name and address of the said.....  
referred to in (1) above are:

full name .....

address .....

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

Signature of Secured Party of Record

† In the case of an assignment without the consent of the secured party but of which he learned, the name and address of the assignee as known to the secured party are sufficient.

#### FORM 4

(Section 53)

#### RENEWAL STATEMENT

Full Name of Original Debtor.....

Address of Original Debtor.....

\*Registration Number of Security Agreement.....

Date of Registration .....

\*Assigned  
by the  
Registrar

(If the security agreement has been assigned, insert:)

Full Name(s) of Assignee(s) (in order of the assignments) .....



Address(es) of Assignee(s) .....  
\*Registration Number(s) of the Assignment(s) .....  
Date(s) of Registration .....  
(If the security agreement has been amended, insert:)  
\*Registration Number(s) of Amendment(s) .....  
Date(s) of Registration .....  
Nature of Amendment(s) .....

(If a Release of Collateral has been granted, insert:)  
\*Registration Number(s) of Release(s) of Collateral .....  
Date(s) of Registration .....  
Description of Collateral Released Sufficient to Identify It:

(If prior renewal statements have been registered, insert:)  
\*Registration Number(s) of Renewal Statements(s) .....  
Date(s) of Registration .....

(If the Debtor's interest in the collateral has been assigned, insert:)  
Full Name(s)† of Assignee(s) (in order of the assignments) .....

.....  
Address(es)† of Assignee(s) .....  
\*Registration Number(s) of the Notice(s) of Assignment of collateral .....  
Date(s) of Registration .....

The undersigned certifies that:

- (1) the undersigned is the secured party of record in reference to the security agreement referred to above;
- (2) the debtor is still indebted under the security agreement; and
- (3) the registration hereof is not for any fraudulent purpose.

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

.....  
Signature of Secured Party of Record

† In the case of an assignment without the consent of the secured party but of which he learned, the name and address of the assignee as known to the secured party are sufficient.

FORM 5  
(Section 55 (1) )

CERTIFICATE OF DISCHARGE

Full Name of Original Debtor.....  
Address of Original Debtor.....  
\*Assigned by the Registrar \*Registration Number of Security Agreement.....  
Date of Registration.....

(If the security agreement has been assigned, insert:)

Full Name(s) of Assignee(s) (in order of the assignments) .....

Address(es) of Assignee(s) .....

\*Registration Number(s) of the Assignments(s).....

Date(s) of Registration .....

The undersigned certifies that:

(1) he is the person entitled by law to discharge the security agreement; and

(2) the security agreement referred to above is discharged.

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

.....  
Signature of Secured Party of Record

FORM 6  
(Section 55 (2) )

RELEASE OF COLLATERAL

Full Name of Original Debtor.....  
Address of Original Debtor.....  
\*Assigned by the Registrar \*Registration Number of Security Agreement.....  
Date of Registration .....

(If the security agreement has been assigned, insert:)

Full name(s) of Assignee(s) (in order of the assignments) .....

Address(es) of Assignee(s) .....

\*Registration Number(s) of the Assignment(s).....

Date(s) of Registration.....

(If the Debtor's interest in the collateral has been assigned, insert:)

Full Name(s)† of Assignee(s) (in order of the assignments) .....

Address(es)† of Assignee(s) .....

\*Registration Number(s) of the Notice(s) of Assignment of collateral .....

Date(s) of Registration .....

The undersigned certifies that:

- (1) he is the person entitled by law to release the collateral described below;
- (2) the collateral described below is released from the security interest created or provided for by the security agreement referred to above.

(Here insert a description of the collateral sufficient to identify it:)

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

.....  
Signature of Secured Party of Record

† In the case of an assignment without the consent of the secured party but of which he learned, the name and address of the assignee as known to the secured party are sufficient.