

**CONSOLIDATION OF CONSUMER PROTECTION ACT**  
**R.S.N.W.T. 1988,c.C-17**

*(Current to: October 11, 2012)*

**AS AMENDED BY NORTHWEST TERRITORIES STATUTES:**

S.N.W.T. 1994,c.8,s.77  
s.77 in force May 7, 2001: SI-001-2001  
S.N.W.T. 1995,c.11  
S.N.W.T. 1998,c.21  
In force January 31, 1999: SI-001-99  
S.N.W.T. 1999,c.6

**AS AMENDED BY NUNAVUT STATUTES:**

S.Nu. 2010,c.4,s.10  
s.10 in force March 23, 2010  
S.Nu. 2011,c.10,s.1  
s.1 in force March 10, 2011  
S.Nu. 2011,c.11,s.1  
s.1 in force March 10, 2011  
S.Nu. 2012,c.11  
In force June 8, 2012

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A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

**TABLE OF CONTENTS****INTERPRETATION**

Definitions	1
Determining price and cost of borrowing	2

**APPLICATION**

Application	3
Application of Act to prior transactions	4

**PART I****DISCLOSURE OF COST OF BORROWING**

Application	5	(1)
Contents of writing		(2)
Application	6	(1)
Contents of writing		(2)
Copy of agreement	7	(1)
Acknowledgement of receipt of writing		(2)
Dates of payments	8	
Delivery date	9	(1)
Late delivery		(2)
Rights preserved		(3)
Where section 9 does not apply	10	
Date of calculation of cost of borrowing	11	
Payments before delivery or service	12	
Application	13	(1)
Content of master agreement		(2)
Table of charges		(3)
Separate document for charges		(4)
Delivery of master agreement	14	
Several master agreements	15	
Governing of variable credit	16	
Copies of master agreement	17	
Variations in master agreement	18	(1)
Decreasing payments under master agreement		(2)
Liability of borrower under master agreement	19	
New master agreement	20	
Where rate of charges not stated	21	
Where no master agreement	22	
Prior agreements	23	(1)
Provisions that apply to prior agreements		(2)
Provisions that do not apply to prior agreements		(3)

Definition of "real property"	24	(1)
Application		(2)
Content of document or memorandum		(3)
Exemption		(4)
Refinancing existing indebtedness	25	(1)
Refinancing combined with new loan		(2)
Refinancing combined with further purchase		(3)
Application of payments		(4)
Prohibition		(5)
New insurance		(6)
Dates for periodic payments	26	
Loans advanced over period	27	
Advancing loan	28	
Where loan not advanced	29	
Delivery of copy of agreement	30	
Payments on borrower's account	31	
Setting out information	32	
Proof of insurance	33	(1)
Liability for insurance premium		(2)
Incorrect statements	34	(1)
Inadvertent mistakes in cost of borrowing		(2)
Inadvertent mistakes in other statements		(3)
Investigation of inadvertent mistakes		(4)
Appearance by Director		(5)
Understatement of cost of borrowing rate on variable credit	35	(1)
Where no master agreement on variable credit		(2)
Restriction on cost of borrowing on variable credit		(3)
Recovery of excess interest paid		(4)
Where no loan agreement or wrong rate	36	(1)
Where refinancing not properly stated		(2)
Recovery of excess costs of borrowing		(3)
Definition of "advertisement"	37	(1)
Content of advertisements		(2)
Prohibition	38	(1)
Exception		(2)
Burden of proof		(3)

## PART II

### PREPAYMENT PRIVILEGES

Application	39	(1)
Prepayment and rebate		(2)
Allowance to credit grantor		(3)
Deducting rebate from payment		(4)
Statement of prepayment		(5)

Prepayment of variable credit	40
Surrender of security	41

### PART III

#### RELIEF AGAINST ACCELERATION AND FORFEITURE

Definition of "real property"	42	(1)
Application of Part		(2)
Default charges	43	(1)
Restrictions on default charges		(2)
Penalty		(3)
Acceleration on default	44	(1)
Restrictions on acceleration		(2)
Default after extension		(3)
Payments in default		(4)
Continuance of acceleration provisions		(5)
Where other penalties void	45	
Damages for breach of obligation	46	(1)
Penalty for breach of obligation		(2)
Relief against acceleration, seizure and forfeiture	47	
Absolute discretion of creditor	48	(1)
Powers to preserve security		(2)
Relief against powers		(3)
Granting relief	49	
Return of seized goods where default remedied	50	

### PART IV

#### TIME SALES

Content of time sale agreement	51	(1)
Delivery of copy to buyer		(2)
Compliance with other requirements	52	
Time sale under master agreement	53	
Serial numbers or distinguishing marks	54	
Non-compliance with section 51, 53 or 54	55	(1)
Partial effect of seller's lien		(2)
Correction of description by consent		(3)
Correction of description by Court		(4)
Seller not prejudiced by variations		(5)
Chattel mortgage for purchase price	56	(1)
Prohibition		(2)
Rights of buyer on seizure for non-payment	57	(1)
Notice of seizure		(2)

Resale with consent of buyer		(3)
Section 59 of <i>Personal Property Security Act</i>		(4)
Rights of buyer on seizure	58	(1)
Notice of seizure		(2)
Repealed		(3)
Power of Court to relieve buyer		(4)
Costs		(5)
Section 59 of <i>Personal Property Security Act</i>		(6)
Reckoning time	59	
Priority of buyer's right to redeem	59.1	
Application of sections 57 and 58	60	(1)
Leave required for seizure		(2)
Notice of application for leave		(3)
Setting aside <i>ex parte</i> order		(4)
Consideration by Court		(5)
Delivery of notice and order	61	(1)
Where notice late		(2)
Extension of time for redemption		(3)
Protection removed	62	(1)
Order when buyer absent		(2)
Substitutional service		(3)
Right of buyer to move or charge goods	63	(1)
Restriction on moving and charging goods		(2)
Order to protect interests of seller		(3)
Right to sue after seizure	64	(1)
Restriction of rights of seller		(2)
Extinguishment of lien on goods		(3)
Exemption		(4)
Execution of collateral under judgment		(5)
Judgment for part of balance		(6)
Exemptions		(7)
Where collateral damaged		(8)
Removal or replacement of collateral	65	(1)
Resale of seized collateral		(2)
Price of resale		(3)
Payment of excess		(4)
Cost of repair		(5)
Charge of overhead		(6)
Retention in place of resale		(7)
Additional collateral prohibited	66	(1)
Excess collateral under variable credit		(2)
Demand payments		(3)
Effect of demand payments		(4)

## PART V

## CHATTEL MORTGAGES

Leave to repossess	67	(1)
Notice of application for leave		(2)
Setting aside order to seize		(3)
Considerations of Court		(4)
Conditions of leave to seize		(5)
Extension of time to pay		(6)
Delivery of notice	68	(1)
Extension of time to set aside order		(2)
Additional rights of mortgagor		(3)
Conflict with section 50		(4)
Where mortgagee not prejudiced	69	

## PART VI

## STATUTORY WARRANTIES ON RETAIL SALES

Warranties on sale	70	(1)
Statement of conditions		(2)
Statements relating to goods on time sales		(3)
Statements relating to goods on cash sales		(4)
Merchantable quality		(5)
Conditions as to services	71	
Effect on other conditions	72	

## PART VII

## DIRECT SALES CONTRACTS

Application of Part	73	
Definitions	74	(1)
Where Part does not apply		(2)
Form and content of sales contract	75	
Cancellation	76	
Additional cancellation rights	77	(1)
Vendor or direct seller not licensed or sales contract deficient		(2)
Goods not delivered or services not rendered		(3)
Extension of time for delivery or performance		(4)
Other rights or remedies	77.1	
Cancellation	77.2	(1)
Notice of cancellation		(2)
Means of notice		(3)

Date of notice		(4)
Address for notice		(5)
Notice to address on record with Government		(6)
If no address		(7)
Effect of cancellation	78	(1)
Credit contract		(2)
Duties of vendor on cancellation	78.1	
Rights of cancellation	79	(1)
Where goods not intact		(2)
Recovery of payment		(3)
Buyer's lien on cancellation		(4)

## PART VIII

### ASSIGNEES, GUARANTORS AND COLLECTION AGENTS

Assignment of rights of borrower	80	(1)
Reservation of rights		(2)
"borrower" and "buyer"		(3)
Rights of guarantors		(4)
Undertaking of personal liability by assignee		(5)
Assignee of credit grantor	81	(1)
Rights of borrowers against assignees		(2)
Restrictions apply to assignees		(3)
Effect of cancellation		(4)
Recovery under promissory note		(5)
Set-off for breach of condition or warranty		(6)
Amount of set-off		(7)
Documents to follow assignment		(8)
Assignee of chattel mortgage	82	(1)
Burden of proof		(2)
Where seller not mortgagee	83	(1)
Disclosure		(2)
Prohibition		(3)
Relief of assignee		(4)
Burden of proof		(5)
Exception		(6)
Dealing with borrower	83.1	
Amount owing on debt	83.2	(1)
No collection of additional money		(2)
Court proceeding	83.3	
Prescribed practices	83.4	(1)
Prohibited practices		(2)

## PART IX

## LICENSING

Licensing of vendors	84	(1)
Licensing of direct sellers		(2)
Licensing of collection agents	85	(1)
Employees		(2)
Issuing and renewal of licences	86	(1)
Expiration of licence		(2)
Refusal to issue licence	87	(1)
Direct sellers' licences		(2)
Conditions		(3)
Special condition	88	(1)
Where licence expires		(2)
Partnership licensed	89	(1)
Name of partnership and partners		(2)
Alteration of partnership		(3)
Change of address	90	
Address of licensee	91	(1)
Service of notice		(2)
Power to refuse renewal of licence	92	(1)
Duty to refuse renewal of licence		(2)
Reasons	93	(1)
Imposition of conditions or restrictions		(2)
Assignment of licence	94	(1)
Authority of vendor's licence		(2)
Authority of direct seller's licence		(3)
Class of transactions		(4)
Function of vendors		(5)
Naming of vendor in direct seller's licence		(6)
Direct seller acting for vendor		(7)
Cancellation of direct seller's licence		(8)
Requirement for licence	95	
Warning of cancellation	96	(1)
Exception		(2)
Notice of cancellation	97	(1)
Content of notice		(2)
Cancellation of licence		(3)
Effect of cancellation of vendor's licence		(4)
Appeal from Director	98	(1)
Compliance with order of Court		(2)
Application to Court respecting section 96 notice	99	(1)
Stay of further notices		(2)
Appeal of cancellation	100	(1)
Time of filing appeal		(2)

Where appeal allowed		(3)
Dismissal of appeal		(4)
Determination of fact by Court	101	(1)
Director as respondent		(2)
Substitution of opinion by Court		(3)
Bond for collection agent	102	(1)
Smaller bond		(2)
Change in officers of collection agent		(3)
Cancellation of bond		(4)
Suspension of licence		(5)
Where bond cancelled		(6)
Bond for vendor	103	(1)
Amount of bond		(2)
Rights of Government under bond		(3)
Forfeiture of bond		(4)
Sale of collateral to bond		(5)
Payment of moneys recovered under bond		(6)
Refund of surety		(7)
Appeal from decision of Director	104	(1)
Form of appeal		(2)

## PART X

### MISCELLANEOUS

Director of Consumer Services	105	
Duties of Director	106	
Agreements waiving benefits	107	
Investigation and inspection	108	(1)
Offence		(2)
Confidentiality of information		(3)
Exception		(4)
Actions against Director and others	109	
Prohibition respecting advertising of licence	110	
Offence and punishment for individual	111	(1)
Offence and punishment for corporation		(2)
Regulations	112	

## CONSUMER PROTECTION ACT

### INTERPRETATION

#### Definitions

1. In this Act,

"assignee" includes any person in whom the right or benefit concerned has become vested as a result of an assignment or series of assignments; (*cessionnaire*)

"borrower" means a person borrowing money or obtaining credit and includes a buyer of goods or services on credit and a hirer of goods on hire-purchase; (*emprunteur*)

"buyer" includes a hirer on a retail hire-purchase; (*acheteur*)

"cash price" of any goods or services means the price that would be charged by the seller for the goods or services to a buyer who paid cash for them at the time of purchase or hiring; (*prix au comptant*)

"collection agent" means any person, other than a barrister or solicitor entitled to practise in Nunavut and acting in that capacity, who for reward, collects money owing to others; (*agent de recouvrement*)

"cost of borrowing" means

- (a) where used in connection with a retail sale or hire-purchase of goods or services or both otherwise than on variable credit, the difference between
  - (i) the total amount that the buyer is required to pay in the transaction, including any down payment and the value ascribed in the contract to any trade-in or other allowance to the buyer, if all payments are made as they fall due, and
  - (ii) the total cash price as described in subsection 5(2) or 6(2), as the case may be,
- (b) where used in relation to a loan agreement, the difference between
  - (i) the total amount that the borrower must pay in the transaction, if all payments are made as they fall due, and
  - (ii) the aggregate of the amounts described in paragraphs 24(3)(a) to (d), other than any amount that is declared by section 31 to be part of the cost of borrowing, subject to the adjustment of the aggregate of those amounts that may be required by subsection 25(1) or (2), if applicable,
- (c) where used in relation to a transaction to which subsection 25(3) applies, the difference between
  - (i) the total amount that the borrower is required to pay in the transaction, including any down payment and the value

- ascribed in the agreement to any trade-in or other allowance to the borrower, if all payments are made as they fall due, and
- (ii) the aggregate of the total cash price of the goods or services or both being purchased and the amounts described in paragraphs 25(3)(b) and (c), and
  - (d) where used in relation to variable credit, the charges that the buyer or borrower is required to pay periodically on the unpaid balance from time to time for the privilege of purchasing or borrowing on variable credit; (*frais d'emprunt*)

"Court" means the Nunavut Court of Justice; (*tribunal*)

"credit grantor" means a person lending money or extending credit and includes a seller of goods or services on credit and a person letting goods on hire-purchase; (*fournisseur de crédit*)

"direct seller" means the person who, on behalf of a vendor, makes any offer, solicitation, proposal or approach that is intended to result in a sale to which Part VII applies; (*démarcheur*)

"Director" means the Director of Consumer Services appointed under section 105; (*directeur*)

"goods" means chattels personal other than things in action or money, and includes emblements, industrial growing crops and things attached to or forming part of the land that are agreed to be severed before sale or under the contract of sale, and chattels other than building materials that are to be affixed to land on or after delivery of the land; (*objets*)

"interest adjustment date" means the date by which all advances of a loan are to be completed; (*date de redressement des intérêts*)

"legal rate of interest" means the rate from time to time payable under the *Interest Act* (Canada) on liabilities on which interest is payable but no other rate is fixed; (*taux d'intérêt légal*)

"loan agreement" means a document or memorandum in writing

- (a) evidencing a loan of money,
- (b) made or given as security for a loan of money, or
- (c) made or given as security for a past indebtedness; (*convention de prêt*)

"money lender" means a person who carries on the business of money lending or advertises himself or herself, or holds himself or herself out in any way, as carrying on that business, but does not include a registered pawnbroker; (*prêteur d'argent*)

"retail hire-purchase" of goods means any hiring of goods from a person in the course of his or her business in which

- (a) the hirer is given an option to purchase the goods, or
- (b) it is agreed that on compliance with the terms of the contract the hirer will either become the owner of the goods or will be entitled to keep them indefinitely without any further payment,

but does not include

- (c) a hiring in which the hirer is given an option to purchase the goods exercisable at any time during the hiring and that may be determined by the hirer at any time before the exercise of the option on not more than two months notice without any penalty,
- (d) a hire-purchase of goods by a hirer who himself or herself intends either to sell them or to relet them for hire by others,
- (e) a hire-purchase by a hirer who is a retailer of a vending machine or a bottle cooler to be installed in his or her retail establishment,
- (f) a hire-purchase in which the hirer is a corporation, and
- (g) a hire-purchase of goods the cash price of which exceeds \$7,500; (*location-vente au détail*)

"retail sale" in relation to goods or services or both, means any contract of sale of goods or services or both made by a seller in the course of his or her business except

- (a) a contract of sale of goods that are intended for resale by the buyer in the course of his or her business,
- (b) a contract of sale to a retailer of a vending machine or a bottle cooler to be installed in his or her retail establishment,
- (c) a contract of sale to a corporation, and
- (d) a sale in which the cash price of the goods or services or both exceeds \$7,500; (*vente au détail*)

"sale" includes any transaction by which means the whole or part of the price is paid or satisfied by the exchange of other real or personal property; (*vente*)

"sale of goods" includes any transaction in which goods are sold, whether separately or together with services; (*vente d'objets*)

"sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by others and any transaction in which services are sold, whether separately or together with goods; (*vente de services*)

"seller" includes a person who lets goods on hire by a retail hire-purchase; (*vendeur*)

"services" includes

- (a) work, labour and other personal services,
- (b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical

- culture, funerals, cemetery accommodations and similar things, and
- (c) insurance provided by a person other than the insurer; (*services*)

"time sale" means

- (a) any retail sale of goods or of goods and services under which possession of the goods is to be delivered to the buyer, but the transfer of the property in the goods to the buyer is to take place after the delivery on payment by the buyer of the whole or part of the price and cost of borrowing, whether or not the transfer is also subject to the fulfilment of some other condition,
- (b) any retail hire-purchase of goods, and
- (c) for the purpose of sections 57 to 66, any retail sale of goods or of goods and services in which the seller takes back a chattel mortgage on those goods to secure payment of the whole or part of the price; (*vente à tempérament*)

"time sale agreement" means an agreement evidencing a time sale; (*convention de vente à tempérament*)

"variable credit" means credit made available under an agreement by which means the credit grantor agrees to make credit available to be used from time to time, at the option of the borrower, for the purpose of the purchase from time to time of goods or services and, without limiting the generality of this meaning, includes credit arrangements commonly known as revolving credit accounts, budget accounts, cyclical accounts and other arrangements of a similar nature, but does not include any agreement or arrangement in which there is no cost of borrowing payable by the borrower; (*crédit variable*)

"vendor" means the person who makes on his or her own behalf, or employs others to make on his or her behalf, any offer, solicitation, proposal or approach that is intended to result in a sale to which Part VII applies. (*pollicitant*)  
S.Nu. 2010,c.4,s.10(2),(3).

Determining price and cost of borrowing

2. For the purpose of determining whether

- (a) the cost of borrowing in a sale or hire-purchase exceeds \$10, or
- (b) the cash price of goods or services or both comprised in a sale or hire-purchase exceeds \$7,500,

the following applies:

- (c) the cost of borrowing in all sales and hire-purchases that are part of the same transaction shall be added together,
- (d) the cash price of goods and services comprised in all sales and hire-purchases that are part of the same transaction shall be added together,

- (e) unless the contrary is proved, all sales and hire-purchases made between the same seller and the same buyer on the same day shall be presumed to be part of the same transaction.

## APPLICATION

### Application

**3.** Nothing in this Act applies to any loan made by or any security given to the Federal Business Development Bank, the Farm Credit Corporation (Canada), the Canada Mortgage and Housing Corporation or the Government of Nunavut. S.Nu. 2010,c.4,s.10(3).

### Application of Act to prior transactions

**4.** Except as otherwise expressly provided, this Act does not apply to any sale, mortgage, loan, contract or agreement made before May 1, 1972.

## PART I

### DISCLOSURE OF COST OF BORROWING

#### Application

**5.** (1) This section applies to every retail sale of goods or services or goods and services on credit in which there is any cost of borrowing payable by the buyer except

- (a) a sale made on variable credit; and
- (b) a sale in which the cost of borrowing does not exceed \$10.

#### Contents of writing

(2) Every sale to which this section applies shall be evidenced by a writing, signed by the buyer or his or her agent before or at the time of delivery of the goods or performance of the services, that contains a description of the goods or services and also states

- (a) the cash price of the goods included in the sale;
- (b) the amount of any applicable delivery or installation charge, if not included in the cash price of the goods;
- (c) the cash price of any services included in the sale, including any insurance charges paid by the seller to an insurer on behalf of the buyer on his or her request;
- (d) the registration fee, if any;
- (e) the total cash price, being the aggregate of the amounts mentioned in paragraphs (a) to (d);
- (f) the amount or value of any down payment, trade-in or other allowance made to the buyer;
- (g) the balance of the total cash price, being the difference between the total mentioned in paragraph (e) and the amount mentioned in paragraph (f);

- (h) the total cost of borrowing expressed as one sum in dollars and cents;
- (i) the balance owing, being the aggregate of the balance mentioned in paragraph (g) and the amount mentioned in paragraph (h);
- (j) the details of the manner in which the balance owing is to be paid, as required by section 8 or 10;
- (k) the aggregate of the cost to the buyer, being the total mentioned in paragraph (e) and the amount mentioned in paragraph (h);
- (l) the true annual rate of the cost of borrowing calculated in accordance with section 11 and the regulations expressed as a percentage; and
- (m) the total additional charge, if any, other than court costs, to be paid in the event of default expressed as a rate percentage per year.

#### Application

**6.** (1) This section applies to every retail hire-purchase of goods in which the cost of borrowing exceeds \$10.

#### Contents of writing

(2) Every hire-purchase to which this section applies shall be evidenced by a writing, signed by the hirer or his or her agent before or at the time of delivery of the goods, that contains a description of the goods and also states

- (a) the cash price of the goods included in the hire-purchase;
- (b) the amount of any applicable delivery or installation charge, if not included in the cash price of the goods;
- (c) the cash price of any services included in the hire-purchase, including any insurance charges paid by the seller to an insurer on behalf of the hirer on his or her request;
- (d) the registration fee, if any;
- (e) the total cash price, being the aggregate of the amounts mentioned in paragraphs (a) to (d);
- (f) the amount or value of any down payment, rent paid or to be paid in advance of delivery or on delivery, trade-in or other allowance made to the hirer;
- (g) the balance of the total cash price, being the difference between the total mentioned in paragraph (e) and the amount mentioned in paragraph (f);
- (h) the total cost of borrowing, being the difference between the balances mentioned in paragraphs (i) and (g) expressed as one sum in dollars and cents;
- (i) the balance owing, being the aggregate of rent to be paid by the hirer after delivery of the goods and of all further payments, if any, not included in the rent that the hirer will have to pay in order to purchase or become the owner of the goods;
- (j) the details of the manner in which the balance owing is to be paid, as required by section 8 or 10;

- (k) the aggregate of the cost to the hirer being the total of the amounts mentioned in paragraphs (e) and (h);
- (l) the true annual rate of the cost of borrowing calculated in accordance with section 11 and the regulations expressed as a percentage; and
- (m) the total additional charge, if any, other than court costs, to be paid in the event of default expressed as a rate percentage per year.

#### Copy of agreement

- 7.** (1) As soon as possible after the writing required by section 5 or 6 or by subsection 25(3) is received by the seller or his or her agent, and in any event not later than the time of delivery of the goods or performance of the services, as the case may be, the seller shall give a true copy of the writing to the buyer, but
- (a) if there is more than one buyer, it shall be sufficient to give a copy to one of them; and
  - (b) if the writing was signed by an agent of the buyer, the copy may be given to that agent.

#### Acknowledgement of receipt of writing

(2) The buyer or agent to whom the copy of the writing is given shall, if requested by the seller, acknowledge receipt of the writing and in any case the writing is not binding on the buyer unless a copy of the writing has been given as provided in this Act.

#### Dates of payments

**8.** Subject to section 10, the details required by section 5 or 6 of the manner in which the balance owing is to be paid shall include the date and the amount of each payment to be made, but where the manner in which the balance owing is to be paid consists of or includes a succession of instalments of exactly equal amounts payable monthly or at any other regular periods, it shall be a sufficient statement of that succession of instalments to state them in the following form, with the changes that may be necessary to fit the circumstances of the case:

10 equal consecutive payments of \$10.00 each on the first day of each month commencing on June 1, 2...., and ending on March 1, 2...., totalling \$100.00.

S.Nu. 2010,c.4,s.10(3).

#### Delivery date

- 9.** (1) Subject to section 10, if the writing required by section 5 or 6 is signed before the delivery of the goods or performance of the services, the seller shall deliver the goods or perform the services not later than seven days after the delivery date, which is
- (a) the date for delivery or performance fixed by the writing; or
  - (b) if the date for delivery or performance is not fixed by the writing, the date on which the writing is received by the seller or his or her agent.

#### Late delivery

(2) If the seller does not deliver the goods or perform the services within the time limited by subsection (1), the buyer is entitled to a rebate of part of the cost of borrowing calculated by applying the true annual rate of the cost of borrowing to the amount of the balance owing over the period of the default by the seller.

#### Rights preserved

(3) Nothing in this Act derogates from the buyer his or her right, if any, in the transaction to rescind or cancel for late delivery, failure to perform or otherwise.

#### Where section 9 does not apply

**10.** Where, in any case to which either section 5 or 6 applies, the date of delivery of the goods or performance of the services is uncertain, the date or dates on which the balance owing is to be paid may be described in the writing by reference to the date on which the goods are delivered or services performed, and if that is done section 9 does not apply.

#### Date of calculation of cost of borrowing

**11.** Except as otherwise prescribed, the true annual rate of the cost of borrowing stated in a writing required by section 5 or 6 must be calculated over the period commencing

- (a) where section 9 applies, with the delivery date referred to in section 9; and
- (b) where section 9 does not apply, with the date on which the delivery of the goods or performance of the services is completed.

#### Payments before delivery or service

**12.** For the purposes of paragraphs 5(2)(f) and 6(2)(f), any payment that is made or to be made by the buyer before the delivery of the goods or performance of the services is a down payment, despite that it may be made after the writing is signed.

S.Nu. 2010,c.4,s.10(3).

#### Application

**13.** (1) This section and sections 14 to 23 apply to every retail sale or retail hire-purchase by a resident of Nunavut of goods or services or goods and services made on variable credit and, for the purposes of this section and sections 14 to 23, a buyer who obtains credit by use of a credit card shall, in relation to that credit, be deemed to reside at the address shown on that card.

#### Content of master agreement

(2) Every extension of variable credit by a credit grantor shall be governed by a master agreement that shall be signed by the borrower before the first extension of variable credit to the borrower, and that states

- (a) at what periods payments are to be made by the borrower;
- (b) the amount of the minimum payments that will be required from the borrower, but, if this may vary according to the amount of

- credit extended or outstanding, the method of calculating the minimum payments shall be set out in an intelligible manner;
- (c) the prevailing rate or rates of charges that the borrower will be required to pay periodically for the variable credit extended to the borrower expressed as a percentage or percentages per year of the balance of principal and accrued interest charges outstanding at the commencement of the period; and
  - (d) if the credit charges payable on payments in arrears are to be calculated otherwise than in accordance with paragraph (c), the manner in which those charges are to be calculated and the rate of those charges expressed as a percentage per year on the amount in arrears.

#### Table of charges

(3) Subject to subsection (4), the master agreement shall also contain a table showing the amount in dollars and cents of the monthly charge produced by the applicable rate or rates on outstanding balances, using a sufficiently large number of representative amounts to give a fair representation of the dollars and cents charges applicable to various sizes of outstanding balance.

#### Separate document for charges

(4) At the option of the credit grantor, the table required by subsection (3) may, instead of being included in the master agreement, be embodied in a separate document, which shall be given to the borrower before the borrower signs the master agreement. S.Nu. 2010,c.4,s.10(3).

#### Delivery of master agreement

**14.** The credit grantor shall give a copy of the master agreement to the borrower before the first extension of credit under the master agreement.

#### Several master agreements

**15.** There may be more than one master agreement in force at the same time between a credit grantor and a borrower if

- (a) each agreement relates to a different category of goods or services;  
or
- (b) the borrower has the right to decide under which agreement any purchase shall be made.

#### Governing of variable credit

**16.** Subject to section 15, every extension of variable credit by a credit grantor to a borrower who has signed a master agreement shall be governed by the master agreement signed by the borrower.

#### Copies of master agreement

**17.** A credit grantor shall, on demand, but not more often than once a year, furnish to a borrower a photocopy of any master agreement signed by that borrower that is then in force.

#### Variations in master agreement

**18.** (1) A credit grantor may, by giving written notice of it to the borrower,

- (a) increase the rate or rates of charges payable by the borrower in respect of subsequent purchases, or
- (b) increase the minimum periodic payments payable by the borrower in respect of subsequent purchases,

or both, but, except as otherwise prescribed, no such increase shall affect the obligations of the borrower in respect of his or her then outstanding balance, which shall continue to be governed by the then prevailing terms.

#### Decreasing payments under master agreement

(2) A credit grantor may decrease the rate or rates of charges or the minimum periodic payments payable by a borrower, or both, either in respect of subsequent purchases only or in respect of both his or her then outstanding balance and subsequent purchases.

#### Liability of borrower under master agreement

**19.** Subject to sections 21 and 22, a borrower to whom variable credit has been extended is liable to pay periodic charges for that credit in accordance with paragraph 13(2)(c) and section 18, and unless the borrower defaults in his or her payments, the borrower is not liable to any other cost of borrowing. S.Nu. 2011,c.10,s.1.

#### New master agreement

**20.** A credit grantor may at any time require a borrower to sign a new master agreement as a condition of extending fresh credit, but a refusal by the borrower to sign a new master agreement does not affect the liability of the borrower in regard to credit already extended.

#### Where rate of charges not stated

**21.** The charges under a master agreement shall be calculated at the legal rate of interest on the balance outstanding at the commencement of the period where the master agreement indicates that the borrower is to pay periodic charges for variable credit extended to the borrower but

- (a) does not state any rate for the periodic charges; or
- (b) expresses the rate for the periodic charges otherwise than as a percentage per year of the balance outstanding at the commencement of the period.

Where no master agreement

**22.** Where

- (a) a credit grantor has extended variable credit without a master agreement signed by the borrower, and
- (b) the borrower was aware, at the time of any purchase made on the credit, that the borrower would be required to pay periodic charges for the credit and of the rate, expressed as a percentage per year on the balance outstanding at the commencement of the period, at which those charges will be calculated,

the borrower is liable to pay the credit grantor the amount of those charges calculated at that rate.

Prior agreements

**23.** (1) Every agreement for the extension of variable credit entered into before May 1, 1972, continues in force despite that it does not comply with subsection 13(2) or (3).

Provisions that apply to prior agreements

- (2) Sections 15 to 18 and 20 apply to an agreement referred to in subsection (1).

Provisions that do not apply to prior agreements

(3) Sections 14, 19 and 21 do not apply to an agreement referred to in subsection (1). S.Nu. 2010,c.4,s.10(3).

Definition of "real property"

**24.** (1) In this section, "real property" includes leasehold interests in real property and things attached to or forming part of the land in which the loan is secured.

Application

(2) Subject to section 3, this section applies to every loan of money made by a money lender except

- (a) a loan secured exclusively on real property;
- (b) a loan that exceeds \$7,500;
- (c) a loan to a corporation;
- (d) a loan made by an insurance company to a policy holder under the policy; and
- (e) a loan in which the cost of borrowing does not exceed \$10.

Content of document or memorandum

(3) Every loan to which this section applies shall be evidenced by a document or memorandum in writing signed by the borrower at or before the time the loan is made, which shall set out

- (a) the amount advanced or to be advanced to the borrower himself or herself;
- (b) any insurance charges actually paid or to be paid by the money lender to an insurer on behalf of the borrower on his or her request;

- (c) any registration fee payable on any security taken for the loan;
- (d) any other amount, not being a part of the cost of borrowing, advanced or to be advanced to other persons for the borrower's account showing the name of each of those persons and the amount advanced or to be advanced to each;
- (e) the cost of borrowing expressed as one sum in dollars and cents;
- (f) the total amount to be repaid by the borrower, being the aggregate of the amounts mentioned in paragraphs (a) to (e);
- (g) the details of the manner in which the total amount is to be repaid showing the number of payments, and the amount and date of each;
- (h) the true annual rate of the cost of borrowing calculated as prescribed expressed as a percentage; and
- (i) the total additional charge, if any, other than court costs, to be paid in the event of default expressed as a rate percentage per year.

#### Exemption

(4) The particulars required by paragraph (3)(d) need not be set out in the loan agreement if

- (a) they are contained in a separate document signed by the borrower not later than the time at which the borrower signs the loan agreement;
- (b) the borrower is given a copy of the document referred to in paragraph (a) at the time the borrower signs it; and
- (c) the total of the amounts shown in the document referred to in paragraph (a) is set out in the loan agreement.

#### Refinancing existing indebtedness

**25.** (1) Except as otherwise prescribed, where a borrower rearranges with a credit grantor payment of an existing debt or debts owing to that credit grantor that arose out of a transaction or transactions to which section 5, 6 or 24 or this section, or any combination of them, applied, by an arrangement that has the effect of varying the amount the borrower has to pay or the period over which the borrower has to pay it,

- (a) the transaction shall be evidenced by a document or memorandum in writing signed by the borrower in accordance with section 24 as if the credit grantor were then advancing to the borrower the sum then required to prepay the existing debt or debts without any allowance to the credit grantor under subsection 39(3), and
- (b) the credit grantor shall furnish to the borrower before he or she signs the agreement a written computation of the sum referred to in paragraph (a),

and where more than one existing debt is included in the rearrangement, a separate computation shall be made in respect of each of them.

#### Refinancing combined with new loan

(2) Where a rearrangement of an existing debt or debts under subsection (1) is combined with an additional loan of money by the credit grantor to the borrower, the transaction shall be evidenced by a document or memorandum in writing signed by the borrower at or before the time the additional loan is made in accordance with section 24 as if the credit grantor were then advancing both the amount of the additional loan and the sum then required to prepay the existing indebtedness in accordance with subsection (1), but the loan agreement must show how the total is divided between these two items and the borrower must be given the computation required by subsection (1).

#### Refinancing combined with further purchase

(3) Except as otherwise prescribed, where a borrower wishes to combine the payment of an existing debt or debts with payments for a new purchase from the same credit grantor of goods and services or both to which section 4 is applicable, the transaction shall be evidenced by a writing signed by the borrower before or at the time of delivery of the goods and services that combines the information required to be given by section 5 and subsection (1) by stating

- (a) the information required by paragraphs 5(2)(a) to (g) in respect of the sale of the goods and services,
- (b) the sum required to prepay the existing indebtedness in accordance with subsection (1),
- (c) any registration fee that is payable only in respect of the refinancing of the existing indebtedness,
- (d) the total present debt, being the aggregate of the total cash price of the goods and services and the amounts mentioned in paragraphs (b) and (c),
- (e) the total cost of borrowing expressed as one sum in dollars and cents,
- (f) the balance owing, being the aggregate of the amounts mentioned in paragraphs (d) and (e),
- (g) the details of the manner in which the balance owing is to be paid, as required by section 8,
- (h) the total amount the borrower will be paying to acquire the goods and services and retire the existing indebtedness, being the aggregate of any down payment, trade-in or other allowance to the borrower on the purchase of the goods and services and the balance owing mentioned in paragraph (f),
- (i) the true annual rate of the cost of borrowing calculated in accordance with section 11 and the regulations expressed as a percentage, and
- (j) the total additional charge, if any, other than court costs, to be paid in the event of default expressed as a percentage per year,

and the credit grantor shall also furnish the borrower with a written computation of the sum required to prepay the existing indebtedness as provided by subsection (1).

### Application of payments

(4) In any transaction to which subsection (3) applies, all payments made by the borrower on account of the balance owing shall be applied in payment of

- (a) first, the registration fee mentioned in paragraph (3)(c),
- (b) second, the sum required to prepay the existing indebtedness,
- (c) third, the cost of borrowing, and
- (d) fourth, the balance of the total cash price of the goods and services,

and, when the payments of the borrower have satisfied the requirements of paragraphs (a) and (b), any security held by the credit grantor for the existing indebtedness is discharged and, where the goods being purchased are the subject of a time sale, the whole cost of borrowing is secured on them despite subsection 66(1).

### Prohibition

(5) The combination, as one obligation, of rent on a retail hire-purchase to which section 6 applies with instalment payments on account of an existing indebtedness is prohibited.

### New insurance

(6) In any transaction to which this section applies, where

- (a) any insurance previously charged to the borrower in a transaction from which the existing indebtedness arose is still in force, and
- (b) new insurance is charged to the borrower,

the agreement shall show whether the new insurance is in addition to the existing insurance or is wholly or partly in substitution for it, and in the latter event shall also show the amount of the unearned premium on the insurance being replaced, and the insurance charges to the borrower shall not exceed the net amount payable after credit for the unearned premium. S.Nu. 2010,c.4,s.10(3).

### Dates for periodic payments

**26.** Where the manner in which the total amount is to be repaid consists of or includes a succession of instalments of exactly equal amounts payable monthly or at any other regular periods, it shall be a sufficient statement of that succession of instalments for the purpose of paragraphs 24(3)(g) and 25(3)(g) to state them in the form provided by section 8.

### Loans advanced over period

**27.** Where a loan to which section 24 applies is to be advanced by stages over a period of more than seven days, the loan agreement shall state this and shall

- (a) name the interest adjustment date;
- (b) provide that to the interest adjustment date the only cost of borrowing payable by the borrower shall be interest at the annual rate specified calculated on the amount from time to time advanced, and state when that interest shall be paid;
- (c) exclude the interest referred to in paragraph (b) from both the cost of borrowing and the total amount to be repaid by the borrower;

- (d) state clearly that the interest referred to in paragraph (b) will be in addition to the cost of borrowing and total amount to be repaid shown in the agreement;
- (e) fix as the date of the first repayment to be made by the borrower a date after the interest adjustment date; and
- (f) state as the true annual rate of the cost of borrowing the rate calculated over the period commencing with the interest adjustment date.

#### Advancing loan

**28.** Except as provided by section 27, the full amount of any loan to which section 24 applies shall be advanced not later than seven days after

- (a) the date fixed by the loan agreement, where the date is fixed by the loan agreement, or
- (b) where the date is not fixed by the loan agreement, the date on which the agreement is signed by the borrower,

and the true annual rate of the cost of borrowing shall be calculated over the period commencing with the date fixed by the loan agreement or, if no date is fixed by the loan agreement, with the date on which the agreement is signed by the borrower.

#### Where loan not advanced

**29.** If a credit grantor fails to advance the full amount of a loan before the interest adjustment date or within the time limited for that purpose by section 28, as the case may be, the borrower is entitled to a rebate of part of the cost of borrowing calculated by applying the true annual rate of the cost of borrowing to the amount not so advanced over the period of the default of the credit grantor.

#### Delivery of copy of agreement

**30.** As soon as possible after a loan agreement required by section 24 is received by the credit grantor or his or her agent, and in any event not later than the time of the first advance made by the credit grantor under the loan agreement, the credit grantor shall give a true copy of the loan agreement to the borrower but if there is more than one borrower, it shall be sufficient to give a copy to one of them.

#### Payments on borrower's account

**31.** For the purposes of paragraphs 24(3)(d) and (e), a payment made to another person for the borrower's account is part of the cost of borrowing if it is made to discharge a liability that the borrower would not have incurred if there had been no loan made to the borrower or deemed to be made to the borrower under section 25, as the case may be.

#### Setting out information

**32.** Except as may otherwise be prescribed, if a writing or agreement required by section 5 or 6 or sections 13 to 23, or section 24 or 25 states in an intelligible manner the information required by the applicable section, or by any other provision of this Part, it is not necessary that it should set it out in any particular order, except that in a transaction to

which subsection 15(3) applies, the information mentioned in paragraph 15(3)(a) shall be stated first.

#### Proof of insurance

**33.** (1) A credit grantor shall forward promptly the application for any insurance that is charged to a borrower and does not form part of the cost of borrowing and shall furnish proof of the insurance to the borrower as soon as it is effected.

#### Liability for insurance premium

(2) A borrower is liable to pay to the credit grantor only the premium payable from the time the insurance becomes effective.

#### Incorrect statements

**34.** (1) Except as otherwise provided in the *Interest Act* (Canada) and subject to subsections (2) and (3), if a writing required by section 5 or 6

(a) does not contain a statement of the true annual rate of the cost of borrowing or understates it by more than the margin permitted by the regulations, or

(b) omits or states incorrectly any information required by paragraphs 5(2)(a) to (k), 6(2)(a) to (k) or section 10,

the seller may recover from the buyer no more than the total cash price with simple interest on it, or on so much of it as from time to time remains owing, at the legal rate of interest, and if the buyer has paid the seller more than that amount, the buyer may recover the excess from the seller.

#### Inadvertent mistakes in cost of borrowing

(2) Where paragraph (1)(a) applies, the Court may permit the seller to recover, or to keep, as the case may be, more than the total cash price and simple interest on it at the legal rate of interest if it is satisfied that the omission or misstatement was due to inadvertence but the seller may not, in any case, recover or keep a cost of borrowing that would exceed the rate stated in the writing to be the true annual rate.

#### Inadvertent mistakes in other statements

(3) Where paragraph (1)(b) applies, the Court may permit the seller to recover, or keep, as the case may be, the full amount that the buyer has agreed to pay if it is satisfied that the omission or misstatement was due to inadvertence and the buyer has not been misled as to the amount he or she had to pay by the inadvertence, but where the result of a misstatement is to produce in the writing inconsistencies that make it uncertain how much the buyer has to pay, the seller may not, in any event, recover from the buyer more than the lowest amount that the writing can reasonably be construed to require.

#### Investigation of inadvertent mistakes

(4) Where a seller claims that an omission or misstatement was due to inadvertence, the Court shall not adjudicate on it until the Director has been advised of it and has made any investigation that the Director may consider appropriate.

#### Appearance by Director

(5) Where subsection (4) applies, the Director may attend by counsel at the hearing and adduce such evidence as he or she desires and, if in the result the Court is not satisfied that the omission or misstatement was due to inadvertence, it may order the seller to pay the costs of the Director. S.Nu. 2010,c.4,s.10(3).

#### Understatement of cost of borrowing rate on variable credit

**35.** (1) Except as otherwise provided in the *Interest Act* (Canada), if any master agreement required by sections 13 to 23 understates the true annual rate of the cost of borrowing by more than the margin permitted by the regulations, the borrower is not required to pay charges calculated at any greater rate than the legal rate of interest.

#### Where no master agreement on variable credit

(2) Except as otherwise provided in the *Interest Act* (Canada) or in sections 13 to 23, a credit grantor who extends variable credit in a transaction to which sections 13 to 23 apply otherwise than in pursuance of

- (a) a master agreement that complies with sections 13 to 23, or
- (b) a written agreement made before May 1, 1972,

may not recover from the borrower any cost of borrowing.

#### Restriction on cost of borrowing on variable credit

(3) A credit grantor who has extended variable credit in a transaction to which sections 13 to 23 apply shall not exact or attempt to exact from the borrower payment of any cost of borrowing in excess of the amount permitted by this Act or by the *Interest Act* (Canada).

#### Recovery of excess interest paid

(4) If a credit grantor who has extended variable credit in a transaction to which sections 13 to 23 apply receives from the borrower payment of any cost of borrowing in excess of the amount permitted by this Act or by the *Interest Act* (Canada), the borrower may recover from the credit grantor the amount of the excess.

#### Where no loan agreement or wrong rate

**36.** (1) Except as otherwise provided in the *Interest Act* (Canada), where a loan to which section 24 applies

- (a) is not evidenced by a loan agreement containing the information required by paragraphs 24(3)(a) to (h), or
- (b) is evidenced by a loan agreement that understates the true annual rate of the cost of borrowing by more than the margin permitted by the regulations,

the credit grantor may recover no more than the aggregate of the amount advanced to the borrower himself or herself and any amount properly advanced to any other person for the benefit of the borrower, with interest on that aggregate amount at the legal rate.

### Where refinancing not properly stated

(2) Except as otherwise provided in the *Interest Act* (Canada), where a transaction to which section 24 applies

- (a) is not evidenced by an agreement containing the required information, or
- (b) is evidenced by an agreement that understates the true annual rate of the cost of borrowing by more than the margin permitted by the regulations,

the transaction is voidable at the option of the borrower and if the borrower elects to avoid it, the credit grantor may recover no more than the aggregate of

- (c) the amount properly payable under the terms of the obligation being rearranged, and
- (d) the amount of any additional loan, if subsection 25(2) is applicable, or the total cash price of the goods and services sold to the borrower, if subsection 25(3) is applicable, with interest on it at the legal rate.

### Recovery of excess costs of borrowing

(3) Where a credit grantor in a transaction to which section 24 or 25 applies receives from the borrower payment of any cost of borrowing in excess of the amount permitted by this Act or by the *Interest Act* (Canada), the borrower may recover from the credit grantor the amount of the excess.

### Definition of "advertisement"

**37.** (1) In subsection (2), "advertisement" includes

- (a) a price tag, ticket or notice attached to or displayed near the goods;
- (b) an advertisement in a newspaper or magazine that circulates in Nunavut; and
- (c) a message broadcast by television or radio that can reasonably be expected to be received by members of the public in Nunavut.

### Content of advertisements

(2) No advertisement of goods for retail sale on credit or for retail hire-purchase shall state the monthly or other periodic payments required unless it also states

- (a) the total cash price of the goods;
  - (b) the total to be paid by the credit buyer or hirer; and
  - (c) the true annual rate of the cost of borrowing expressed as a percentage and calculated in accordance with the regulations.
- S.Nu. 2010,c.4,s.10(3).

### Prohibition

**38.** (1) Subject to subsection (2), no person carrying on business in Nunavut shall advertise or cause others to advertise his or her goods in a manner prohibited by subsection 37(2).

### Exception

(2) Where a person also carries on business outside of Nunavut, subsection (1) does not apply to an advertisement of his or her goods that

- (a) is contained in a newspaper or magazine circulating principally in a particular locality outside Nunavut; or
- (b) states expressly that the credit terms offered do not apply in Nunavut.

### Burden of proof

(3) Where an advertisement of the goods of a person carrying on business in Nunavut is

- (a) contained in a newspaper or magazine published outside Nunavut,
- (b) sent by mail from a point outside Nunavut, or
- (c) broadcast from outside Nunavut,

the burden of proof lies on that person to prove that he or she did not cause his or her goods to be so advertised. S.Nu. 2010,c.4,s.10(3).

## PART II

### PREPAYMENT PRIVILEGES

#### Application

**39.** (1) This section applies to every debt that arises out of a transaction to which section 5, 6 or 24 or subsection 25(1), (2) or (3) applies.

#### Prepayment and rebate

(2) A borrower may at any time prepay the whole of the balance then owing on any debt to which this section applies and in so doing is entitled to a rebate equal to the unearned portion of the cost of borrowing calculated in accordance with the regulations, less the allowance permitted to the credit grantor by subsection (3).

#### Allowance to credit grantor

(3) The allowance to the credit grantor on prepayment referred to in subsection (2) shall be 1/2 of the unearned portion of the cost of borrowing, but in no case more than \$10.

#### Deducting rebate from payment

(4) A borrower who is prepaying a debt under this section may deduct the rebate to which he or she is entitled from his or her payment and tender to the grantor the net amount required to effect the prepayment.

#### Statement of prepayment

(5) A credit grantor shall furnish, on request, to any borrower who is entitled under this section to prepay a debt to the credit grantor a statement showing the net amount required to effect the prepayment and how the amount is arrived at.

#### Prepayment of variable credit

**40.** A borrower to whom variable credit has been extended may, at the time when any periodic payment falls due, pay off the whole or any part of the balance owing.

#### Surrender of security

**41.** Where a borrower has prepaid or paid off the whole of a balance owing under section 39 or 40, the credit grantor shall surrender or discharge any security that the credit grantor holds for the indebtedness without further charge to the borrower, except that the credit grantor need not register any document required to effect the surrender or discharge, but may deliver such a document to the borrower who shall bear the registration fee of the document.

### PART III

#### RELIEF AGAINST ACCELERATION AND FORFEITURE

#### Definition of "real property"

**42.** (1) In subsection (2), "real property" includes leasehold interest in real property.

#### Application of Part

(2) This Part applies to any debt owing by a borrower to a credit grantor that is payable by instalments, other than

- (a) a debt secured on real property; and
- (b) a debt that arose out of a sale of real property.

#### Default charges

**43.** (1) No agreement creating or relating to a debt to which this Part applies shall provide for any charge to be paid on any default in payment of an instalment unless it is expressed as an annual rate on the amount in arrears.

#### Restrictions on default charges

(2) If the debt arises out of a transaction to which any provision of Part I applies, the annual rate of default charges shall not exceed the annual rate of the cost of borrowing.

#### Penalty

(3) Where an agreement states the default charge otherwise than as an annual rate on the amount in arrears, or, in a case to which subsection (2) applies, states an annual rate greater than is permitted by that subsection, the credit grantor may not recover any default charge in excess of an amount equal to interest at the legal rate on instalments in arrears.

## Acceleration on default

**44.** (1) Subject to the restrictions set out in subsection (2), any provision in an agreement providing that in the event of default in payment of an instalment, the full balance will or may become immediately due and owing is valid and enforceable.

## Restrictions on acceleration

(2) The restrictions referred to in subsection (1) are as follows:

- (a) if the debt arises out of a sale of goods or of goods and services, or a hire-purchase of goods and the seller has not seized the goods or commenced an action to recover the balance of the debt, the buyer may pay the instalments in arrears with the default charges on them as provided in section 43 and, in that event, payment of the balance shall not be accelerated by reason of any default so remedied;
- (b) if the debt arises out of a sale of goods or of goods and services or a hire-purchase of goods, and the seller is entitled to seize the goods and has seized them, the seller shall proceed in accordance with section 57 or 58, and, if the buyer redeems the goods in accordance with those sections, payment of the balance shall not be accelerated by reason of any default so remedied;
- (c) in any case, the borrower may, at any time before an action is commenced to recover the balance of the debt, pay the instalments then in arrears with the default charges on them as provided by section 43, and in that event payment of the balance shall not be accelerated by reason of any default so remedied;
- (d) where an action has been commenced to recover the balance of the debt, the Court may grant relief against acceleration on the terms that it sees fit;
- (e) where a credit grantor is claiming accelerated payment, and the borrower does not make the payments required to obtain relief under paragraph (a), (b), (c), or is not granted relief under paragraph (d), the credit grantor may not recover more than the aggregate of
  - (i) the amount that the borrower would have had to pay in order to prepay the whole balance of the debt at the time of the default on which the claim for acceleration is based,
  - (ii) interest on the amount referred to in subparagraph (i) from the time of default at the annual rate of the default charges on payments in arrears provided in the agreement or, if no rate is so provided, at the legal rate, and
  - (iii) any expenses actually incurred by the credit grantor as a result of the default and his or her taxable costs of the action, if any.

#### Default after extension

(3) In any case in which a borrower has been granted an extension of time, the time of default referred to in subparagraph (2)(e)(i) is the time when the borrower fails to comply with the terms of the extension.

#### Payments in default

(4) Except where expressly stated, references in this Act to payments in default do not include any payments that have become due by virtue of any provision for the acceleration of payments.

#### Continuance of acceleration provisions

(5) A provision for acceleration of payments on default operates from time to time as and when default occurs and the circumstance that a borrower has been relieved from acceleration in accordance with this section shall not be taken to have exhausted the operation of the provision in respect of subsequent defaults. S.Nu. 2010,c.4,s.10(3).

#### Where other penalties void

**45.** Any provision in an agreement creating or relating to a debt payable by instalments to which this Part applies that imposes on the borrower, as a consequence of default in payment of an instalment, any pecuniary penalty that is not permitted by sections 43 and 44 is void.

#### Damages for breach of obligation

**46.** (1) Where an agreement creating or relating to a debt imposes on the borrower any obligation in addition to the payment of the debt and the cost of borrowing, if any, and the borrower commits a breach of the obligation, the credit grantor may recover from the borrower as damages for the breach the amount of the loss the credit grantor has suffered and the actual expenses the credit grantor has incurred as a result of the breach, but not more.

#### Penalty for breach of obligation

(2) Every provision contained in an agreement creating or relating to a debt that imposes on the borrower a pecuniary penalty, however described, for committing a breach of an obligation in addition to the payment of the debt, imposed on the borrower by the agreement, is void in so far as it would entitle the credit grantor to recover more than the amount permitted by subsection (1), but is effective to prevent the credit grantor from recovering more than the amount of the penalty so specified.

#### Relief against acceleration, seizure and forfeiture

**47.** Where an agreement creating or relating to a debt imposes on the borrower an obligation in addition to the payment of the debt, and provides that, in the event of a breach of it,

- (a) payment of the debt shall be accelerated,
- (b) the credit grantor may seize or take possession of any goods, or
- (c) the interest of the borrower in any goods is or may be forfeited,

the Court may relieve the borrower from the effect of the provision on the terms that it thinks just. S.Nu. 2010,c.4,s.10(3).

#### Absolute discretion of creditor

**48.** (1) Every provision in an agreement creating or relating to a debt that gives or has the effect of giving the credit grantor the right to decide whether any given fact or circumstance exists is void.

#### Powers to preserve security

(2) Despite subsection (1), if the credit grantor has reasonable cause to believe that the security for the debt is in jeopardy, an agreement may contain any or all of the following provisions, namely,

- (a) payment of the debt shall be accelerated,
- (b) the credit grantor may seize or take possession of any goods, and
- (c) the interest of the borrower in any goods is or may be forfeited,

and it is a question of fact for the Court to decide whether the credit grantor has reasonable cause for his or her belief, but if the credit grantor has such cause at the relevant time it is immaterial whether or not the security is actually in jeopardy.

#### Relief against powers

(3) The Court may relieve the borrower from the effect of a provision mentioned in subsection (2) on the terms that it thinks just. S.Nu. 2010,c.4,s.10(3).

#### Granting relief

**49.** The Court may grant relief under sections 47 and 48 at any time, and may do so either in a proceeding commenced by the credit grantor to enforce his or her security or on an application by the borrower, but if the credit grantor gives the borrower written notice that

- (a) specifies the breach complained of, or the fact relied on as giving reasonable cause for the belief of the credit grantor, as the case may be,
- (b) informs the borrower of the right of the borrower to apply for relief, and
- (c) requires the borrower to apply for relief within 20 days,

the right of the borrower to apply for relief expires at the end of those 20 days. S.Nu. 2010,c.4,s.10(3).

#### Return of seized goods where default remedied

**50.** Where a credit grantor seizes any goods and the borrower remedies the default or otherwise obtains relief under this Part, the credit grantor shall return the goods to the borrower on payment by the borrower, in addition to any other payment required by this Part, of the costs of seizure in an amount not exceeding that permitted by the *Seizures Act*.

## PART IV

## TIME SALES

## Content of time sale agreement

**51.** (1) Subject to sections 53 and 54, every time sale shall be evidenced by a time sale agreement in writing signed by the buyer or his or her agent before or at the time of delivery of the goods containing a description of the goods by which they may be readily and easily known and distinguished, and also containing, in type not less than 10 point in size,

- (a) a statement that the property in the goods is not to pass to the buyer on delivery;
- (b) the conditions on which the property in the goods is to pass to the buyer; and
- (c) the events on which the seller may, before the property in the goods has passed to the buyer, repossess the goods.

## Delivery of copy to buyer

(2) The seller shall give a copy of the agreement referred to in subsection (1) to the buyer, or to the agent who signed it, not later than the time of delivery of the goods, but if there is more than one buyer it is sufficient to give a copy to one of them.

## Compliance with other requirements

**52.** Every time sale agreement to which section 5, 6 or subsection 25(3) is applicable shall also contain the information required by those provisions.

## Time sale under master agreement

**53.** Subject to section 54, where a seller extends variable credit under a master agreement that provides that all goods sold under the master agreement are sold on time sales, the buyer need not sign a time sale agreement for any purchase made under that master agreement if

- (a) the master agreement contains, in type not less than 10 point in size, the statements and information required by paragraphs 51(1)(a), (b) and (c); and
- (b) there is delivered to the buyer, or his or her agent, or to one of the buyers, if there is more than one of them, before or at the time of delivery of the goods, a writing that
  - (i) contains a description of the goods by which they may be readily and easily known and distinguished,
  - (ii) states the cash price of the goods, and
  - (iii) indicates that the goods were sold on the terms of the master agreement.

### Serial numbers or distinguishing marks

**54.** Where an article bought on a time sale is one of a series of similar articles that are individually distinguished by a serial number or similar mark and at the time of purchase it is not known which particular article will be the one delivered to the buyer,

- (a) if the article is sold otherwise than on variable credit, the seller may insert the serial number or distinguishing mark in the agreement after it is signed by or on behalf of the buyer, and if this is done after the copy of the agreement required by section 51 has been given to the buyer, the seller shall give a second completed copy of the agreement to the buyer, but the serial number or distinguishing mark shall be inserted in the agreement and the second copy given to the buyer not later than 20 days after delivery of the article; and
- (b) if the article is sold on variable credit, the serial number or distinguishing mark may be omitted from the writing required by section 53 to be given to the buyer, but a copy of the writing containing the number or mark shall be given to the buyer not later than 20 days after delivery of the article.

### Non-compliance with section 51, 53 or 54

**55.** (1) Subject to subsections (2) to (4), a time sale that does not comply with section 51, 53 or 54 takes effect as an immediate sale and the property in the goods passes to the buyer on delivery and the seller has no lien on the goods, but this does not affect the obligation of the buyer to pay for the goods in accordance with the terms of the agreement.

### Partial effect of seller's lien

(2) Where a time sale includes more than one separate article, and the only non-compliance with section 51, 53 or 54 is a failure to give a proper description of one or more of the articles, the reservation of the seller's lien is effective in regard to the articles that are properly described, and subsection (1) applies only to the articles that are not properly described.

### Correction of description by consent

(3) The buyer may at any time consent in writing to the correction of an error or omission in the description of any goods in a time sale agreement, and on receipt of that consent the seller may correct the original agreement accordingly, and for the purposes of this section the agreement shall be deemed to have been originally written as so corrected, except that no such correction shall prejudice any rights in or to the goods that may have been acquired before the date of the correction by any other person claiming through the buyer who does not consent in writing to the correction.

### Correction of description by Court

(4) The Court, on being satisfied that an error or omission in the description of any goods in a time sale agreement was due to inadvertence and that the buyer accepted the goods and was not misled by the error or omission, may order the description in the

original agreement to be deemed to have been originally written as so corrected, but every order shall contain the provisions that the circumstances of the case may require to protect any person who may have acquired in good faith through the buyer a right in or to the goods adverse to the title of the seller that would be prejudiced by the correction.

#### Seller not prejudiced by variations

##### (5) Where

- (a) a variation in a time sale agreement, other than in the description of the goods, is made by agreement in writing between all persons affected by it,
- (b) goods sold on a time sale that have been repossessed by the seller are returned to the buyer under this Act,
- (c) the Court extends the time for payment of the balance owing on a time sale under this Act, or
- (d) a buyer on a time sale who has defaulted obtains any other relief under this Act,

the title of the seller to the goods remains in full force and effect as reserved by the time sale agreement and the remedies of the seller in respect of future defaults by the buyer are not affected as a result of that. S.Nu. 2010,c.4,s.10(3).

#### Chattel mortgage for purchase price

**56.** (1) Where a seller on a retail sale of goods takes back a chattel mortgage on those goods to secure payment of the whole or part of the price, the chattel mortgage shall state clearly and explicitly that it is given for this purpose.

#### Prohibition

(2) No seller shall take a chattel mortgage that does not comply with subsection (1).

#### Rights of buyer on seizure for non-payment

**57.** (1) Where a seller on a time sale has repossessed the goods by reason of the default by the buyer in payment, the seller shall retain them for a period of 20 days after the giving of the notice required by subsection (2), or such longer period of time as may be permitted for redemption under the *Personal Property Security Act*, during which period of time the buyer may

- (a) redeem them and reinstate the time sale agreement on payment of
  - (i) any payments then in default, and
  - (ii) the actual expenses of taking and keeping possession not exceeding the amount allowed by the *Seizures Act*; or
- (b) redeem them on payment of
  - (i) the amount required to satisfy the obligation secured by the time sale agreement, and
  - (ii) the actual expenses of taking and keeping possession not exceeding the amount allowed by the *Seizures Act*.

## Notice of seizure

(2) Within 48 hours after repossessing any goods, the seller shall give written notice to the buyer containing

- (a) a description of the goods;
- (b) a statement that the goods have been repossessed and the date on which the goods were repossessed;
- (c) a statement of the sums actually in arrears, exclusive of the operation of an acceleration clause in the time sale agreement;
- (d) a statement of the amount required to satisfy the obligation secured by the security interest;
- (e) a statement of the amount of the applicable expenses referred to in subparagraphs 57(1)(a)(ii) and (b)(ii) or, where the amount of the expenses has not been determined, a reasonable estimate;
- (f) a statement that the buyer may redeem the goods and reinstate the time sale agreement on payment of the amounts referred to in paragraph (1)(a) or redeem the goods on payment of the amounts referred to in paragraph (1)(b);
- (g) the place where the goods are or are to be kept;
- (h) a statement that any person entitled to receive the notice referred to in subsection 59(6) of the *Personal Property Security Act*, other than the buyer, may redeem the collateral under that Act on payment of the amount due under paragraphs 59(7)(b) and (d) of that Act;
- (i) a statement that unless the goods are redeemed before the sale, they will be disposed of; and
- (j) the date, time and place of any sale by public auction or the place to which tenders may be delivered and the date after which tenders will not be accepted or the date after which any private disposition of the collateral is to be made.

## Resale with consent of buyer

(3) Despite subsection (1), but subject to any right under section 62 of the *Personal Property Security Act*, the seller may resell the goods during the period of time referred to in subsection (1) with the written consent of the buyer given not less than 24 hours after the goods were repossessed.

Section 59 of *Personal Property Security Act*

(4) Where a notice must be given to a buyer under subsection (1) of this section and under subsection 59(6) or (10) of the *Personal Property Security Act*, the notice must contain the information set out in subsection (2) of this section and need not otherwise comply with subsection 59(7) or (11), as the case may be, of the *Personal Property Security Act*. S.N.W.T. 1994,c.8,s.77(2); S.Nu. 2010,c.4,s.10(3).

## Rights of buyer on seizure

- 58.** (1) Where a seller on a time sale has repossessed the goods
- (a) by reason of a breach by the buyer of the time sale agreement other than default in payment, or
  - (b) under a provision in the agreement entitling the seller to repossess the goods if the seller has reasonable cause to believe that his or her security in the goods is in jeopardy,
- the buyer may, within 20 days after giving of the notice required by subsection (2), or such longer period of time as may be permitted for redemption under the *Personal Property Security Act*,
- (c) redeem the goods and reinstate the security agreement by
    - (i) remedying the breach or taking the action required by the seller to ensure the safety of the seller's security on the goods, and
    - (ii) paying the seller's actual expenses of taking and keeping possession, not exceeding the amount allowed by the *Seizures Act*;
  - (d) redeem the goods on payment of
    - (i) the amount required to satisfy the obligation secured by the time sale agreement, and
    - (ii) the seller's actual expenses of taking and keeping possession, not exceeding the amount allowed by the *Seizures Act*; or
  - (e) apply to the Court for relief under sections 47 and 48.

## Notice of seizure

- (2) Within 48 hours after repossessing the goods, the seller shall give written notice to the buyer containing
- (a) a description of the goods;
  - (b) a statement that the goods have been repossessed and the date on which the goods were repossessed;
  - (c) a brief description of the breach complained of and a reference to the provision of the time sale agreement the breach of which resulted in the default or, where the goods were repossessed under paragraph 58(1)(b), the fact relied on as giving reasonable cause for the belief of the seller;
  - (d) a statement informing the buyer of the action that the seller requires the buyer to take to remedy the breach, if it is capable of remedy, or to ensure the safety of the seller's security on the goods, as the case may be;
  - (e) a statement of the amount required to satisfy the obligation secured by the security interest;
  - (f) a statement of the amount of the applicable expenses referred to in subparagraphs (1)(c)(ii) and (1)(d)(ii) or, where the amount of the expenses has not been determined, a reasonable estimate;
  - (g) a statement that the buyer may

- (i) redeem the goods and reinstate the time sale agreement by remedying the breach or taking the requisite action to ensure the safety of the seller's security on the goods and by paying the amount referred to in subparagraph (1)(c)(ii), or
- (ii) redeem the goods on payment of the amounts referred to in paragraph (1)(d), or
- (iii) apply to the Court for relief;
- (h) the place where the goods are or are to be kept;
- (i) a statement that any person entitled to receive the notice referred to in subsection 59(6) of the *Personal Property Security Act*, other than the buyer, may redeem the collateral under that Act on payment of the amount due under paragraphs 59(7)(b) and (d) of that Act;
- (j) a statement that unless the breach is remedied or the safety of the seller's security is ensured, the goods are redeemed or the buyer applies for relief under subsection (1) before the sale, they will be disposed of; and
- (k) the date, time and place of any sale by public auction or the place to which tenders may be delivered and the date after which tenders will not be accepted or the date after which any private disposition of the collateral is to be made.

**(3) Repealed, S.N.W.T. 1994,c.8,s.77(3).**

Power of Court to relieve buyer

(4) Where a buyer applies to the Court for relief under subsection (1), the Court may, if it sees fit, relieve the buyer against the consequences of the repossession by ordering the seller to return the goods to the buyer either unconditionally or subject to the fulfilment by the buyer of the conditions that the Court may see fit to impose.

Costs

(5) Where the Court has ordered the seller to return the goods to the buyer unconditionally, and the Court is of the opinion that

- (a) the breach of the agreement by the buyer did not prejudice the seller, or
- (b) that the seller did not have reasonable cause to believe that his or her security on the goods was in jeopardy,

as the case may be, the Court may order the seller to pay the buyer's costs of the application.

Section 59 of *Personal Property Security Act*

(6) Where a notice must be given to a buyer under subsection (2) of this section and under subsection 59(6) or (10) of the *Personal Property Security Act*, the notice must contain the information set out in subsection (2) of this section and need not otherwise comply with subsection 59(7) or (11), as the case may be, of the *Personal Property Security Act*. S.N.W.T. 1994,c.8,s.77(3),(4),(5); S.Nu. 2010,c.4,s.10(3).

### Reckoning time

**59.** In reckoning the periods of 48 hours set out in sections 57 and 58, Saturdays and holidays shall be excluded.

### Priority of buyer's right to redeem

**59.1.** A buyer may exercise his or her right to redeem goods under section 57 or 58 in priority over anyone else who is entitled to redeem the goods under the *Personal Property Security Act*. S.N.W.T. 1994,c.8,s.77(6).

### Application of sections 57 and 58

**60.** (1) Sections 57 and 58 do not apply to the repossession of goods under this section.

### Leave required for seizure

(2) Where a seller on a time sale would be, but for this section, entitled to repossess any goods, and the balance owing by the buyer on those goods at that time is less than 25% of the cash price of the goods at the time of the sale of the goods, the seller may not repossess the goods without the leave of the Court or the written consent of the buyer given at the time of repossession.

### Notice of application for leave

(3) The seller shall give notice to the buyer of his or her application for leave required under subsection (2), unless

- (a) the buyer cannot be found or is evading service;
- (b) there is reasonable cause to believe that the buyer might hide the goods or otherwise attempt to evade repossession of the goods if the buyer had notice of the application; or
- (c) the Court for any other reason sees fit to dispense with notice, in which event the Court may give leave to repossess on the *ex parte* application of the seller.

### Setting aside *ex parte* order

(4) Where leave to repossess is given *ex parte*, the order giving the leave may be set aside on the application of the buyer initiated not later than

- (a) 20 days after the buyer has notice of the making of the order, or
- (b) 90 days after the goods are repossessed,

whichever is the earlier, and the seller shall at, or as soon as possible after, the time of repossession give to the buyer a copy of the order and a notice in a form approved by the judge who made the order of the rights of the buyer under this subsection.

### Consideration by Court

(5) In deciding whether to grant leave to repossess, or to set aside an order made *ex parte*, the Court shall consider all relevant circumstances, including

- (a) the present value of the goods,
- (b) the amount already paid by the buyer,
- (c) the balance owing by the buyer,

- (d) the reasons for the default by the buyer, and
- (e) the present and likely future financial circumstances of the buyer and of the seller,

and may permit the buyer to keep the goods, or, if they have been repossessed under an order made *ex parte*, to redeem them, on the terms that it sees fit and may extend the time for payment by the buyer of the balance owing, but if it grants an extension, the Court shall require the buyer to pay any additional amount that may be necessary to compensate the seller for the extension. S.N.W.T. 1995,c.11.s.11; S.Nu. 2010,c.4,s.10(3).

#### Delivery of notice and order

**61.** (1) A notice required by subsection 57(2) or 58(2) and the copy of the order and notice required by section 60 may be given to the buyer

- (a) by delivering it personally to the debtor;
- (b) if the goods are in a dwelling at the time of seizure or repossession, by delivering it to any adult who is present at the time of seizure or repossession and appears to reside in the dwelling; or
- (c) by sending it by registered mail addressed to the debtor at his or her last known address, in which case it shall be deemed to be given on the earlier of
  - (i) the day the addressee actually receives it, and
  - (ii) except when postal services are not functioning, the expiration of 10 business days after the date of registration.

#### Where notice late

(2) If a seller fails to give the notice required by section 57 or 58 within the time required, the repossession of the goods is not invalidated, but the time allowed to the buyer to redeem the goods or to apply to the Court is extended until the expiration of 20 days after the day on which the requisite notice is given.

#### Extension of time for redemption

(3) The Court may extend

- (a) the time allowed by section 57 or 58 to a buyer to redeem the goods or apply for relief, and
- (b) the time allowed by subsection 60(4) to a buyer to apply to set aside an *ex parte* order,

but the Court shall not grant the extension unless it is satisfied that the seller will not be prejudiced as a result of that. S.N.W.T. 1994,c.8,s.77(7); S.Nu. 2010,c.4,s.10(3).

#### Protection removed

**62.** (1) Where a buyer has persistently defaulted on his or her obligations under the time sale agreement or master agreement in question, or has deliberately evaded repossession of the goods, the Court, on the application of the seller, may deprive the buyer in whole or in part of the protection of sections 44, 57, 58 and 60.

#### Order when buyer absent

(2) Where the buyer does not appear on the hearing of an application under subsection (1), an order made on the application is not effective until a copy of the order has been served on the buyer in a manner approved by the Court.

#### Substitutional service

(3) Nothing in subsection (2) diminishes the power of the Court to order substitutional service. S.Nu. 2010,c.4,s.10(3).

#### Right of buyer to move or charge goods

**63.** (1) Subject to subsection (2), every provision in a time sale agreement or in a master agreement that prohibits or restricts or has the effect of prohibiting or restricting the buyer from

- (a) removing the goods to any place within Nunavut, or
- (b) charging his or her interest in the goods,

is void.

#### Restriction on moving and charging goods

(2) A time sale agreement or a master agreement may provide that the buyer may not

- (a) remove the goods from any particular place or area, or
- (b) charge his or her interest in the goods,

unless the buyer gives to the seller by registered mail addressed to the seller at the address specified in the agreement at least 10 days before so doing written notice of his or her intention to do so, specifying the place to which the buyer intends to remove the goods, or the person to whom the buyer intends to charge them.

#### Order to protect interests of seller

(3) On receipt of a notice given under subsection (2), the seller, if the seller believes he or she will be prejudiced by the intended action specified in the notice, may apply to the Court, and the Court may make whatever order may seem just to protect the interests of the seller and of the buyer. S.Nu. 2010,c.4,s.10(3).

#### Right to sue after seizure

**64.** (1) Subject to subsection (2), where a seller under a time sale repossesses the goods comprised in the time sale, or any portion of the goods, the right of the seller to recover any balance, whether of the price or of the cost of borrowing or both, owing on the goods is after that limited to his or her lien on the goods and his or her right to repossession and sale of the goods, and no action is after that maintainable by the seller to recover the balance or any part of the balance.

#### Restriction of rights of seller

(2) Where the seller repossesses the goods and

- (a) the buyer subsequently redeems the goods, or

- (b) the goods are returned to the buyer under an order of the Court or as a result of the setting aside of an *ex parte* order under section 60,

the seller is, for the purposes of subsection (1), restored to his or her former position and in the event of any subsequent default by the buyer may proceed as if the goods had not been previously repossessed.

#### Extinguishment of lien on goods

(3) Subject to subsection (4), where a seller on a time sale obtains judgment in an action for the whole or any part of the balance, whether of the price or of the cost of borrowing or both, owing on any goods comprised in the time sale, his or her lien on the goods comprised in that sale is extinguished on the date of the judgment and on that the property in the goods passes to the buyer.

#### Exemption

(4) If an action brought by the seller was for the full amount then owing by virtue of an acceleration provision, and the Court relieves the buyer or hirer from the acceleration, it may, as one of the conditions of granting the relief, exempt the seller either wholly or partially from the operation of subsection (3).

#### Execution of collateral under judgment

(5) Where

- (a) a seller has obtained a judgment for the whole of the balance, and  
(b) the goods comprised in the sale, or any of them, are seized under an execution issued pursuant to the judgment referred to in paragraph (a),

the right of the seller to recover under the judgment, in so far as it is based on that balance, is limited to the amount realized from the sale of the goods so seized, and the judgment, to the extent that it is based on that balance and taxed costs, shall be deemed to be fully paid and satisfied but where the amount realized from the sale of the goods exceeds the amount of the judgment and the costs of execution, the excess shall be paid to the buyer or to subsequent execution creditors.

#### Judgment for part of balance

(6) Where the seller has obtained judgment for only part of the balance, and the goods comprised in the sale, or any of them, are seized under an execution issued pursuant to that judgment, the seizure operates not only to satisfy the judgment as provided by subsection (5), but also to extinguish the right of the seller to maintain any action for the remainder of the balance but in that case, if the amount realized from the sale of the goods exceeds the amount of the judgment and the costs of execution, the excess shall be paid into the Court, and the Court may order it to be paid out in a manner that is just.

#### Exemptions

(7) The Court may exempt the seller either wholly or partially from the operation of subsection (1) or of subsections (5) and (6), as the case may be, where only some of

the goods comprised in a time sale agreement are repossessed by the seller or are seized under the execution, and the reason that the other goods are not repossessed or seized is that the seller or the sheriff or bailiff is unable to find them.

#### Where collateral damaged

(8) Where any of the goods have been destroyed or damaged by the deliberate act or wilful neglect of the buyer, the seller may, despite subsections (1), (5) and (6), recover from the buyer the lesser of

- (a) the balance owing on the agreement or judgment; or
  - (b) the value of the goods destroyed, or of the damage done.
- S.Nu. 2010,c.4,s.10(3).

#### Removal or replacement of collateral

**65.** (1) Where a buyer has removed from any article sold on a time sale an accessory or component that was included in the sale, and has not replaced it by another of a similar kind and value, or has replaced it by one that is itself subject to a lien or charge held by another person, and the article has been repossessed by the seller or seized under an execution issued at the suit of the seller, the seller may, despite section 64, maintain an action to recover the least of

- (a) the value of the accessory or component removed, allowing for depreciation;
- (b) the amount owing on the lien or charge on the replacement held by another person; and
- (c) the amount by which the sum realized by the sale of the goods falls short of the balance owing on the goods, or of the amount of the judgment and costs of execution.

#### Resale of seized collateral

(2) Where a seller has lawfully repossessed goods sold on a time sale, and the buyer has not redeemed them within the time allowed for the purpose, the seller may resell them.

#### Price of resale

(3) A seller who resells goods must act in good faith, and as long as the seller does so, the seller may sell them at any price and on any terms he or she sees fit.

#### Payment of excess

(4) Where the amount realized on the resale of the goods exceeds the balance owing on the goods and the expenses of taking and keeping possession and of resale, the excess shall be paid by the seller to the buyer.

#### Cost of repair

(5) Where a seller has the goods repaired before reselling them, the cost of the repair is part of the expenses of sale.

#### Charge of overhead

(6) Where the seller resells the goods by retail in the ordinary course of his or her business, the seller may charge, as an allowance for the overhead expenses of resale, 20% of the proceeds of sale.

#### Retention in place of resale

(7) Where the seller is unable to resell the goods at a price sufficient to satisfy the balance owing on them and the expenses of taking and keeping possession and of resale, the seller may keep the goods and use them as the seller sees fit.

S.N.W.T. 1995,c.11,s.11; S.Nu. 2010,c.4,s.10(3).

#### Additional collateral prohibited

**66.** (1) No part of the price of any goods comprised in a time sale that is not made on variable credit, or of the cost of borrowing with respect to the price, may be secured on any goods not comprised in that time sale, and any provision or arrangement that purports to do so is void.

#### Excess collateral under variable credit

(2) Every provision in a master agreement relating to variable credit under which the seller may

- (a) acquire title to, possession of, or any rights in, any goods of the buyer, other than goods bought or hired by the buyer under that master agreement, or
- (b) retain any title to, a right to repossess, or any other rights in, any goods bought or hired by the buyer under that master agreement after such article has been paid for in full,

is void.

#### Demand payments

(3) Except with the prior consent of the Director, no time sale agreement shall provide that the balance owing, or any part of it, is payable on demand.

#### Effect of demand payments

(4) A time sale agreement that contravenes subsection (3) takes effect as an immediate sale and the property in the goods passes to the buyer on delivery and the seller has no lien on the goods, but this does not affect the obligation of the buyer to pay for the goods in accordance with the terms of the agreement.

## PART V

## CHATTEL MORTGAGES

## Leave to repossess

**67.** (1) Where

- (a) a mortgagee of goods would, but for this section, be entitled to seize the mortgaged goods, and
- (b) the balance owing by the mortgagor on the mortgage is less than 25% of the total obligation of the mortgagor originally secured by the mortgage,

the mortgagee may not repossess the goods without the leave of the Court.

## Notice of application for leave

(2) A mortgagee of goods shall give notice to the mortgagor of his or her application for leave under subsection (1) unless

- (a) the mortgagor cannot be found, or is evading service,
- (b) there is reasonable cause to believe that the mortgagor might hide the goods or otherwise attempt to evade seizure of the goods if the mortgagor had notice of the application, or
- (c) the Court for any other reason sees fit to dispense with the notice,

in which event the Court may give leave to seize on the *ex parte* application of the mortgagee.

## Setting aside order to seize

(3) Where leave to seize is given *ex parte* under subsection (2), the order giving the leave may be set aside on the application of the mortgagor initiated not later than

- (a) 20 days after the mortgagor has notice of the making of the order,  
or
- (b) 90 days after the goods are seized,

whichever is earlier, and the mortgagee shall at, or as soon as possible after, the time of seizure give to the mortgagor a copy of the order and a notice in a form approved by the judge who made the order of the rights of the mortgagor under this subsection.

## Considerations of Court

(4) In deciding whether to grant leave to seize, or to set aside an order made *ex parte*, the Court shall consider all relevant circumstances, including

- (a) the present value of the goods;
- (b) the amount already paid by the mortgagor;
- (c) the balance owing by the mortgagor;
- (d) the reasons for the default by the mortgagor; and
- (e) the present and likely future financial circumstances of the mortgagor and of the mortgagee.

#### Conditions of leave to seize

(5) Where the Court grants leave to seize, it may order the mortgagee to offer the goods for sale in the manner and on the terms that it sees fit.

#### Extension of time to pay

(6) Where the Court refuses leave to seize, or sets aside an order giving leave made *ex parte*, the Court may extend the time for payment by the mortgagor of the balance owing, but in granting the extension, the Court shall require the mortgagor to pay the additional amount that may be necessary to compensate the mortgagee for the extension. S.Nu. 2010,c.4,s.10(3).

#### Delivery of notice

**68.** (1) The copy of the order and notice required by subsection 67(3) may be given to the mortgagor in the same manner as is provided by section 61 for giving a notice to a buyer.

#### Extension of time to set aside order

(2) The Court may extend the time allowed by subsection 67(3) to a mortgagor to apply to set aside an *ex parte* order, but an extension shall not be granted unless the Court is satisfied that the mortgagee will not be prejudiced as a result of that.

#### Additional rights of mortgagor

(3) The rights of a mortgagor under this section and sections 67 to 69 are in addition to any rights he or she has under sections 47 to 49.

#### Conflict with section 50

(4) If a chattel mortgage is subject to the provisions of section 60, the provisions of that section prevail over any conflicting provisions of this section and sections 67 to 69. S.Nu. 2010,c.4,s.10(3).

#### Where mortgagee not prejudiced

**69.** Where

- (a) a variation in a chattel mortgage, other than in the description of the goods, is made by agreement in writing between all persons affected by the variation and is registered if and as required by the *Personal Property Security Act*,
- (b) goods subject to a chattel mortgage that have been seized by the mortgagee are returned to the mortgagor under this Act,
- (c) the Court extends the time for payment of the balance owing on a chattel mortgage under this Act, or
- (d) a mortgagor of chattels who has defaulted obtains any other relief under this Act,

the mortgagee's security on the goods remains in full force and effect as created by the chattel mortgage and the remedies of the mortgagee in respect of future defaults by the mortgagor are not affected as a result of that. S.N.W.T. 1994,c.8,s.77(8); S.Nu. 2010,c.4,s.10(3).

## PART VI

## STATUTORY WARRANTIES ON RETAIL SALES

## Warranties on sale

**70.** (1) Despite any agreement to the contrary, the following conditions or warranties on the part of the seller are implied in every retail sale of goods and in every retail hire-purchase of goods:

- (a) in the case of an immediate sale, a condition that the seller has the right to sell the goods, or, in the case of a time sale, a condition that the seller has the right to agree to sell or to let on hire the goods, and will have the right to sell them when the property passes to the buyer;
- (b) in the case of an immediate sale, a warranty that the buyer shall have and enjoy quiet possession of the goods, or, in the case of a time sale, a warranty that the buyer, as long as the buyer fulfils his or her obligations under the time sale agreement, shall have and enjoy quiet possession of the goods;
- (c) a warranty that the goods are free from any charge or encumbrance in favour of any third party, except for any such charge or encumbrance that the buyer has specifically agreed in writing to accept;
- (d) a condition that the goods are new and unused unless otherwise described, but in the case of a motor vehicle a description showing that is more than one year old is sufficient to describe it as used;
- (e) a condition that the goods are of merchantable quality, except for the defects that are described;
- (f) a condition that the goods correspond with the description under which they are sold;
- (g) if the goods are sold by sample, a condition that the bulk shall correspond with the sample and that the goods are free from defect that renders them unmerchantable, and that would not be apparent on reasonable examination of the sample, and a condition that the buyer shall have a reasonable examination of the sample, and a condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
- (h) where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the skill or judgment of the seller, and the goods are of a description that it is in the course of the business of the seller to supply, whether the seller is the manufacturer or not, a condition that the goods are reasonably fit for the purpose, but in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

### Statement of conditions

(2) For the purposes of paragraph (1)(e), it is not necessary to specify every defect separately, if the general condition or quality of the goods is stated with reasonable accuracy.

### Statements relating to goods on time sales

#### (3) Any statement

- (a) that the goods are not new and unused,
- (b) of the age of a motor vehicle,
- (c) of defects in the goods, or
- (d) of the general condition or quality of the goods,

shall be a part of the description of the goods for the purposes of sections 5 and 6, subsection 25(3) and sections 51 and 53, and where one or more of them applies, none of those statements has any effect unless it is included in the required description of the goods in the agreement or writing.

### Statements relating to goods on cash sales

(4) Where section 5 or 6, subsection 25(3), or section 51 or 53 does not apply, a statement referred to in subsection (3) has no effect unless it is made in writing and

- (a) is contained in a notice that is readily visible to the buyer at or before the time of the sale and is so displayed as to make it clear that it refers to the goods; or
- (b) is contained in a document that is delivered to the buyer before the buyer accepts the goods.

### Merchantable quality

(5) If the goods are described as used in the manner set out in this Part, there shall be taken into account in deciding whether they are of merchantable quality

- (a) the fact that they are used; and
- (b) the age of the goods as specified in their description, or, if no age is specified, the age of the goods as understood by the buyer at the time of the sale.

S.Nu. 2010,c.4,s.10(3).

### Conditions as to services

**71.** Unless otherwise expressly agreed in writing signed by the buyer, there shall be implied in every retail sale of services a condition on the part of the seller that the services sold shall be performed in a skillful and workmanlike manner.

### Effect on other conditions

**72.** Nothing in this Part excludes or affects any other condition or warranty relating to the goods or services, whether express or implied, as between the buyer and the seller or any person claiming through the seller who would, apart from this Act, be held to be bound as a result of that condition or warranty.

## PART VII

## DIRECT SALES CONTRACTS

## Application of Part

**73.** Subject to section 74, this Part applies to all sales contracts respecting retail sales or retail hire-purchases of goods or services or both entered into by the buyer elsewhere than the usual place of business of the vendor and that result from any offer, solicitation, proposal or approach made by or on behalf of the vendor by word of mouth or by telephone to the buyer at his or her place of residence either

- (a) without any prior request by the buyer; or
- (b) in response to a request made by the buyer if the request was itself solicited by or on behalf of the vendor by any correspondence or circular.

S.N.W.T. 1998,c.21,s.4(2),(3).

## Definitions

**74.** (1) For the purposes of paragraph (2)(f),

"merchant" does not include a person who has a recognized retail store where section 73 is applicable to more than 50% of the goods or service sold by that person in Nunavut; (*marchand*)

"recognized retail store" does not include a dwelling, mail order office, display room, office, repair or service shop, warehouse, studio or any other place of a similar nature despite that the owner or occupant of it is or may be assessed by the municipality for business tax purposes in respect of that place. (*magasin de vente au détail reconnu*)

## Where Part does not apply

(2) This Part does not apply to

- (a) sales where the total cost to the buyer is less than \$100;
- (b) sales or hire-purchases of vehicles propelled by power, other than muscular power, where the weight of each vehicle exceeds 900 kg;
- (c) sales of water, propane gas or fuel petroleum products;
- (d) sales of lumber where the vendor has a place of business in the municipality in which the sale takes place;
- (e) any sale in which the price is expressly solicited as a contribution to a charitable, philanthropic or similar cause and does not purport to be a fair price for the goods or services offered; or
- (f) sales of goods or services by a merchant having a recognized retail store in Nunavut and selling goods or services of a sort or class ordinarily sold at that store, or by a bona fide employee of the merchant.

S.N.W.T. 1998,c.21,s.4(4); S.Nu. 2010,c.4,s.10(3).

### Form and content of sales contract

**75.** Every direct sales contract must be in writing, signed by the parties, and must include

- (a) the prescribed statement of the buyer's right to cancel; and
- (b) the prescribed information.  
S.N.W.T. 1998,c.21,s.4(5).

### Cancellation

**76.** A buyer may, without any reason, cancel a direct sales contract at any time after the day he or she enters into the contract until 10 days after he or she receives a copy of the contract. S.N.W.T. 1998,c.21,s.4(5).

### Additional cancellation rights

**77.** (1) In addition to the right of cancellation under section 76, a buyer may cancel a direct sales contract in the circumstances set out in this section.

### Vendor or direct seller not licensed or sales contract deficient

- (2) A buyer may cancel a direct sales contract within one year after the day the contract is entered into
- (a) if the vendor or direct seller was required to be licensed under this Act and was not licensed at the time the contract was entered into; or
  - (b) if the contract does not conform with section 75.

### Goods not delivered or services not rendered

- (3) A buyer may cancel a direct sales contract within one year after the day the contract is entered into if the vendor
- (a) does not deliver the goods within 30 days of the delivery date specified in the contract or an amended delivery date agreed on by the buyer and the vendor; or
  - (b) does not begin the services within 30 days of the commencement date specified in the contract or an amended commencement date agreed on by the buyer and the vendor.

### Extension of time for delivery or performance

(4) Where, after the period set out in paragraph (3)(a) or (b) has expired, the buyer accepts delivery of the goods or the buyer authorizes the services to begin, the buyer may not cancel the direct sales contract under subsection (3). S.N.W.T. 1998,c.21,s.4(5).

### Other rights or remedies

**77.1.** The rights of the buyer to cancel a direct sales contract under this Part are in addition to and do not derogate from any other legal right or remedy the buyer may have. S.N.W.T. 1998,c.21,s.4(5).

### Cancellation

**77.2.** (1) A direct sales contract is cancelled on the giving of a notice of cancellation in accordance with this section.

### Notice of cancellation

(2) A notice of cancellation may be expressed in any way that indicates the intention of the buyer to cancel the direct sales contract.

### Means of notice

(3) A notice of cancellation may be sent or delivered in accordance with the regulations.

### Date of notice

(4) Where the notice of cancellation is given by a means other than personal delivery, the notice of cancellation is deemed to be given when sent.

### Address for notice

(5) The notice of cancellation may be sent or delivered to the vendor or direct seller to the physical or postal address, telephone or fax number, electronic mail address or other address set out in the direct sales contract.

### Notice to address on record with Government

(6) If the buyer did not receive a copy of the direct sales contract, or if the address of the vendor or direct seller was not set out in the contract, the buyer may send or deliver the notice of cancellation

- (a) to any address of the vendor or direct seller on record with the Government of Nunavut; or
- (b) to an address of the vendor or direct seller known by the buyer.

### If no address

(7) If the buyer is unable to find an address referred to in subsection (5) or (6), the buyer may send or deliver the notice of cancellation to the office of the Government of Nunavut designated by the regulations. S.N.W.T. 1998,c.21,s.4(5); S.N.W.T. 1999,c.6,s.2(3); S.Nu. 2010,c.4,s.10(3).

### Effect of cancellation

**78.** (1) Subject to subsections 79(2), (3) and (4), the cancellation of a direct sales contract under this Part extinguishes every liability or obligation of the buyer under the contract.

### Credit contract

(2) Where credit is extended or arranged by the vendor or direct seller, the credit contract is conditional on the direct sales contract, whether or not the credit contract is a part of or attached to the direct sales contract, and if the direct sales contract is cancelled, that cancellation has the effect of cancelling the credit contract and extinguishes every liability or obligation of the buyer under the credit contract. S.N.W.T. 1998,c.21,s.4(5).

## Duties of vendor on cancellation

- 78.1.** Within 15 days after the cancellation of a direct sales contract, the vendor shall
- (a) repay to the buyer every sum that has already been paid by the buyer or by anyone on behalf of the buyer for or on account of the purchase price, rent or cost of borrowing or otherwise under the contract, whether payment has been made to the vendor or to any other person; and
  - (b) return to the buyer any goods taken as a trade-in, in a condition as good as when originally traded, or, if the vendor is unable to do so, shall pay to the buyer the greater of
    - (i) the market value of the goods when taken, and
    - (ii) the price or value set on the goods in the contract.
- S.N.W.T. 1998,c.21,s.4(5).

## Rights of cancellation

**79.** (1) The right of a buyer to cancel a direct sales contract under this Part is not affected by

- (a) the delivery of the goods to the buyer,
- (b) the use of the goods by the buyer,
- (c) the partial consumption of the goods by the buyer,
- (d) the accidental destruction of or damage to the goods, or
- (e) the partial performance by the vendor of any services,

but the right of a buyer to cancel a contract under this Part is extinguished by

- (f) deliberate destruction of or damage to the goods by the buyer or any member of his or her household, or
- (g) the actual consumption by the buyer of all goods comprised in the contract or the complete performance by the vendor of all services comprised in the contract.

## Where goods not intact

(2) Where goods have been used, partially consumed or accidentally destroyed or damaged by a buyer, or any services have been partially performed by the vendor,

- (a) the vendor may recover from the buyer reasonable compensation for that;
- (b) the right of the vendor to recover compensation does not arise until the vendor has repaid or returned to the buyer all money and goods to which the buyer is entitled; and
- (c) the vendor may not maintain any action for compensation until the right to it has arisen.

## Recovery of payment

(3) A vendor shall not, under subsection (2), recover payment from the buyer more quickly than the vendor would have been entitled to under the direct sales contract, and any judgment in favour of the vendor under subsection (2) may, therefore, be made payable by instalments.

### Buyer's lien on cancellation

(4) A buyer has a lien on all goods delivered to the buyer for all sums payable to the buyer by the vendor, but shall return those goods to the vendor as soon as the lien has been satisfied. S.N.W.T. 1998,c.21,s.4(6).

## PART VIII

### ASSIGNEES, GUARANTORS AND COLLECTION AGENTS

#### Assignment of rights of borrower

**80.** (1) The rights conferred by this Act on a borrower pass to and may be exercised by any person claiming through or under the borrower without any express assignment of those rights, but no such person has any right to receive from a credit grantor any notice required by this Act unless the credit grantor has been made aware of the transfer to that person of the rights of the borrower before the time when that notice has to be given.

#### Reservation of rights

(2) Despite subsection (1), a buyer, when selling or transferring to another person any goods that the buyer has acquired on a credit sale or hire-purchase, may reserve, either expressly or by necessary implication, any rights he or she has against the seller under sections 70 to 72.

#### "borrower" and "buyer"

(3) Where the context so admits, in this Act "borrower" and "buyer" include any person to whom their rights pass under this section.

#### Rights of guarantors

(4) Every provision of this Act that restricts or reduces the amount payable by a borrower, or gives the borrower a right of set-off, restricts or reduces the amount payable by and gives a similar right of set-off to any endorser, surety or guarantor for the borrower, but nothing in this subsection affects any liability to an assignee of a credit grantor on the part of

- (a) the credit grantor himself;
- (b) where the credit grantor is a seller, any manufacturer, wholesaler or distributor of the goods; or
- (c) any person who has guaranteed the performance by the credit grantor of his or her obligations generally.

#### Undertaking of personal liability by assignee

(5) Where goods that were acquired on a time sale or are subject to a chattel mortgage are repossessed or seized, and an assignee of the buyer or mortgagor applies to the Court for relief, the Court, as a condition of granting relief, may require the assignee to undertake to be personally liable for payment of the balance owing to the seller or mortgagee. S.Nu. 2010,c.4,s.10(3); S.Nu. 2012,c.11,s.2.

#### Assignee of credit grantor

**81.** (1) Except as otherwise provided in this Act, the assignee of any rights of a credit grantor in any transaction to which this Act applies has no greater rights than, and is subject to the same obligations, liabilities and duties as, the assignor, and the provisions of this Act apply equally to the assignee.

#### Rights of borrowers against assignees

(2) Despite subsection (1), no borrower may recover from, or be entitled to set off against, an assignee of the credit grantor an amount greater than the balance owing on the contract at the time of the assignment, and, if there have been two or more assignments, no borrower can recover from an assignee who no longer holds the benefit of the contract an amount that exceeds the payments made by the borrower to that assignee.

#### Restrictions apply to assignees

(3) Except as otherwise provided in this Act, all restrictions imposed by this Act on

- (a) the right of a credit grantor to claim immediate payment of the debt, and
  - (b) the right of a seller or mortgagee to repossess or seize goods,
- apply equally to any assignee of the credit grantor, seller or mortgagee and, in the restrictions, "credit grantor", "seller" and "mortgagee" include an assignee of a credit grantor, seller and mortgagee respectively.

#### Effect of cancellation

(4) The cancellation of an agreement by any buyer under Part VII is effective against any assignee of the seller.

#### Recovery under promissory note

(5) If, where subsection 34(1) or 36(1) or (2) applies, the payments to be made by the borrower are secured by a promissory note that is negotiated to an assignee of the credit grantor, and the assignee sues in Nunavut on that note, the borrower or other person sued on the note may recover back from the assignee as a simple contract debt the difference between

- (a) the amount recovered by the assignee on the note; and
- (b) the amount that the assignee could have recovered if the payments had not been secured by the note.

#### Set-off for breach of condition or warranty

(6) Subject to section 82, a breach of any of the conditions or warranties implied by sections 70 to 72 may be set off by the buyer against any claim to the goods or to payment of the price and cost of borrowing or rent or any part of it or of any promissory note given for that purpose made by any assignee of the seller, or by any holder of the promissory note, whether or not the note discloses the purpose for which it was given, or by any person claiming the goods by a title paramount to that of the seller with whose consent, express or implied, the seller has sold or let on hire the goods.

#### Amount of set-off

(7) The amount that may be set off against an assignee or holder of a note under subsection (6) shall not exceed the amount limited by subsection (2), and the amount that may be set off against any person claiming the goods by paramount title shall not exceed the lesser of

- (a) the cash price of the goods; and
- (b) the balance owing as described under section 5 or 6.

#### Documents to follow assignment

(8) Where a credit grantor assigns a promissory note taken in any transaction to which section 5, 6, 24, 25 or 51 applies, the credit grantor shall deliver to the assignee with the promissory note a copy of the document required by that section and the assignee who re-assigns the note shall deliver to his or her assignee a copy of the document. S.Nu. 2010,c.4,s.10(3).

#### Assignee of chattel mortgage

**82.** (1) Where a chattel mortgage to which subsection 56(1) applies does not indicate that it was given to secure payment of the price of the goods or goods and services, any assignee for value of that mortgage who took an assignment without notice that the mortgage was given for that purpose is not affected by any liabilities or restrictions imposed on the seller by Part IV or by sections 70 to 72.

#### Burden of proof

(2) The burden lies on the assignee to prove that he or she took the assignment for value and without notice of the purpose for which the chattel mortgage was given.

#### Where seller not mortgagee

**83.** (1) Where a buyer on a retail sale of goods finances his or her purchase by a chattel mortgage on the goods given to a person other than the seller, the transaction is nevertheless a time sale for the purposes of sections 57 to 66 and a retail sale for the purposes of sections 70 to 72, and the mortgagee is deemed to be an assignee of the seller, if the financing was arranged by the seller, but not otherwise.

#### Disclosure

(2) Any mortgagee who takes a mortgage to which subsection (1) applies shall, on any assignment of the mortgage, disclose that circumstance in writing to the assignee, and any assignee of the mortgagee who is aware of that fact shall disclose it to any person to whom he or she assigns the mortgage.

#### Prohibition

(3) No person shall assign a mortgage without making a disclosure required by subsection (2).

#### Relief of assignee

(4) Any assignee for value of a mortgage to which subsection (1) applies who took an assignment without notice of that circumstance is not affected by any liabilities or restrictions imposed on the seller by Part IV or by sections 70 to 72.

#### Burden of proof

(5) The burden lies on the assignee to prove that he or she took the assignment for value and without notice that subsection (1) applied to it.

#### Exception

(6) Subsection (1) does not apply to a chattel mortgage on a cottage, garage, shed or other building if the money is advanced by the mortgagee to the seller on written instructions from the buyer, given not less than seven days after the signing of the mortgage, that state

- (a) that the building is completed to his or her satisfaction to the extent specified in the instructions and that the mortgagee may advance a stated sum to the seller; or
- (b) that the building is fully or substantially completed to his or her satisfaction and that the mortgagee may advance the balance of the loan to the seller.

#### Dealing with borrower

**83.1.** A credit grantor may only deal with a borrower for payment of a debt under the name in which the debt is lawfully owing or through a licensed collection agent. S.Nu. 2012,c.11,s.3.

#### Amount owing on debt

**83.2.** (1) A credit grantor or collection agent shall not add to the amount owing by the borrower on the debt, any charges made or incurred by a collection agent in respect of the collection of a debt, or incurred by a credit grantor in employing a collection agent to collect a debt.

#### No collection of additional money

(2) A collection agent shall not collect, or attempt to collect, any money in addition to the amount owing on the debt by the borrower. S.Nu. 2012,c.11,s.3.

#### Court proceeding

**83.3.** A collection agent shall not commence or continue any court proceeding for the recovery of a debt in the name of the collection agent unless a credit grantor has, by written instrument, assigned the debt to the collection agent, in good faith and for valuable consideration, and written notice of the assignment has been provided to the borrower. S.Nu. 2012,c.11,s.3.

#### Prescribed practices

**83.4.** (1) A collection agent shall adhere to the prescribed practices in respect of the collection of debts.

Prohibited practices

(2) A collection agent shall not engage in any practice prohibited by this Act or the regulations in the collection of debts. S.Nu. 2012,c.11,s.3.

PART IX

LICENSING

Licensing of vendors

**84.** (1) No person shall make on his or her own behalf or employ others to make on his or her behalf any offer, solicitation, proposal or approach that is intended to result in a sale to which Part VII applies unless he or she is licensed as a vendor under this Act.

Licensing of direct sellers

(2) No person shall on behalf of another person make any offer, solicitation, proposal or approach that is intended to result in a sale to which Part VII applies unless he or she is licensed as a direct seller under this Act.

Licensing of collection agents

**85.** (1) No person shall carry on business as a collection agent without being licensed as a collection agent under this Act.

Employees

(2) A person who is employed by a licensed collection agent does not require a licence to transact business on behalf of his or her employer. S.Nu. 2012,c.11,s.4.

Issuing and renewal of licences

**86.** (1) Subject to sections 87 to 91, the Director shall issue any licence required by this Part to any person who makes application for a licence in the prescribed form and pays the prescribed fee, and, subject to section 92, shall renew a licence on receipt of a renewal application in the prescribed form and of the prescribed renewal fee.

Expiration of licence

(2) Every licence issued under this Act expires on March 31 following its issue unless it is cancelled before that date.

Refusal to issue licence

**87.** (1) The Director may refuse to reinstate or issue a licence as a vendor, direct seller or collection agent

- (a) to a person who has been convicted of an offence under the *Criminal Code* or this Act, or of any other offence committed in Canada that, in the opinion of the Director, involves a dishonest act or intent on the part of the offender;
- (b) to an undischarged bankrupt;

- (c) to a person who within the preceding 10 years has been a bankrupt or has been a director of a corporation that became bankrupt while that person was a director, unless, in each case, the creditors in the bankruptcy have been paid in full;
- (d) to a person whose licence under this Act has been cancelled or is, at the time of application, under suspension; or
- (e) to a corporation, one of whose directors or managers could be refused a licence under paragraph (a), (b), (c) or (d).

#### Direct sellers' licences

- (2) Licences as direct sellers shall be issued only to individuals.

#### Conditions

(3) The Director, when issuing or renewing a licence or by written notice to the licensee at any other time, may impose on a licence conditions and restrictions that the Director considers to be reasonably necessary.

#### Special condition

**88.** (1) In issuing or renewing a licence to a corporation, the Director may make it a condition of the licence that a named individual shall continue to hold the office or position named in the licence.

#### Where licence expires

(2) A licence issued subject to the condition referred to in subsection (1) expires one month after the condition ceases to be fulfilled and a licence that has so expired shall not be renewed, but an application for a new licence to replace an expired licence may be made.

#### Partnership licensed

**89.** (1) Persons who are carrying on business in partnership may join in one application for a licence as a vendor or collection agent and a single licence may be issued to all of them.

#### Name of partnership and partners

(2) A licence issued under subsection (1) shall show both the partnership name and the names of all the partners and, if any change occurs in the composition of the partnership, the licence expires one month after the change occurs.

#### Alteration of partnership

(3) A licence that has expired under subsection (2) shall not be renewed, but an application for a new licence to replace the expired licence may be made, and where the only change is that one or more of the partners named in it have ceased to be partners, the new licence may be granted to the continuing partners for the balance of the year of the old licence, and in that event no fee is payable for the new licence.

#### Change of address

**90.** Every vendor or collection agent licensed under this Act shall notify the Director in writing of any change of address of his or her principal place of business in Nunavut within 14 days after the change. S.Nu. 2010,c.4,s.10(3).

#### Address of licensee

**91.** (1) Every applicant for a licence as a vendor or collection agent shall state in the application an address for service in Nunavut.

#### Service of notice

(2) Any notice given under this Act or the regulations shall for all purposes be deemed to be sufficiently served if delivered or sent by registered mail to the licensee at the address for service stated in his or her application for a licence, unless the licensee has notified the Director in writing of a change of address for service, in which case, the notice shall be sufficiently served if delivered to or sent by registered mail to the licensee at the latest address for service of which the Director has been notified. S.Nu. 2010,c.4,s.10(3).

#### Power to refuse renewal of licence

**92.** (1) The Director may refuse to renew a licence if any event or any change in the directorship or management of a corporation has occurred since the licence was issued or last renewed, and that event or change would give grounds for refusing the issuing of a licence.

#### Duty to refuse renewal of licence

(2) The Director shall refuse to renew a licence if the Director has become aware of any circumstances that would require him or her to refuse to issue a licence to the applicant.

#### Reasons

**93.** (1) Where the Director refuses to issue or to renew a licence, the Director shall state in writing his or her reasons for the refusal.

#### Imposition of conditions or restrictions

(2) Where the Director has imposed a condition or restriction on a licence, the Director shall, on the written request of the licensee, state in writing his or her reasons for imposing the condition or restriction.

#### Assignment of licence

**94.** (1) A licence under this Act is not assignable.

#### Authority of vendor's licence

(2) The holder of a licence as a vendor may carry on a business to which Part VII applies in every respect, except that he or she may not act as a direct seller of another vendor.

#### Authority of direct seller's licence

(3) The holder of a licence as a direct seller may only act as a direct seller for or on behalf of the vendor whose name is specified on his or her licence.

#### Class of transactions

(4) No vendor or direct seller shall, in the course of a business to which Part VII applies, sell or offer for sale or solicit orders for the future delivery of goods or services of any sort or class other than those specified in his or her licence.

#### Function of vendors

(5) Every application for a licence as a direct seller shall be accompanied by a notice given by a licensed vendor, stating that the applicant if issued a licence, is authorized to act as a direct seller representing that vendor.

#### Naming of vendor in direct seller's licence

(6) A licence issued to a direct seller shall specify as the principal of the licensee the vendor who has given the notice accompanying the application for that licence under subsection (5).

#### Direct seller acting for vendor

(7) A direct seller who is the holder of a licence shall be deemed to be authorized by the vendor specified in the licence to act for and on behalf of that vendor.

#### Cancellation of direct seller's licence

(8) Where a direct seller ceases to represent a vendor, that vendor shall without delay give notice in writing to the Director that the direct seller has ceased to represent him or her and the receipt of the notice by the Director shall operate as a cancellation of the licence of the direct seller.

#### Requirement for licence

**95.** No person shall carry on any business or occupation for which a licence under this Act is required without having a licence to do so.

#### Warning of cancellation

**96.** (1) Where the Director has cause to believe that a person who is licensed under this Act, or an employee of a person licensed under this Act, has committed a breach of this Act or the regulations, or of any conditions or restrictions in respect of a licence, the Director may serve a notice on the person, by registered mail, stating:

- (a) the act or omission complained of and the approximate date on which it occurred;
- (b) the section of this Act or the regulations or the conditions or restrictions of licence of which the act or omission referred to in paragraph (a) is a breach; and
- (c) that if the person or an employee of the person commits a further breach of a similar nature, the licence may be cancelled.

### Exception

(2) The Director shall not serve a notice under subsection (1) in any case in which the Director is satisfied that the breach committed was due to

- (a) inadvertence; or
- (b) a bona fide misunderstanding of the requirements of this Act or the regulations.

S.Nu. 2010,c.4,s.10(3); S.Nu. 2012,c.11,s.5.

### Notice of cancellation

**97.** (1) Where a person who is licensed under this Act

- (a) is convicted of an offence under the *Criminal Code* or under this Act or the regulations, or of any other offence committed in Canada, that in the opinion of the Director involves a dishonest act or intent on the part of the offender,
- (b) becomes a bankrupt, or
- (c) having been served with a notice by the Director under section 96 commits, within two years after the date of the notice, a further breach of a similar nature to the one stated in the notice,

the Director may serve on that person by registered mail a notice of cancellation of his or her licence.

### Content of notice

(2) A notice of cancellation of a licence shall state

- (a) the reasons for cancellation; and
- (b) that the licence will be cancelled 14 days after the mailing of the notice unless, within that time, the person licenced appeals to the Court in accordance with section 100 and serves notice of appeal on the Director.

### Cancellation of licence

(3) Unless an appeal is taken under section 100, and notice of that appeal given to the Director within 14 days, the Director shall cancel the licence 14 days after the mailing of the notice under subsection (2) without any further notice.

### Effect of cancellation of vendor's licence

(4) Where the licence of a vendor is suspended or cancelled, the licence of all direct sellers of the vendor also shall be suspended or cancelled, as the case may be.

S.Nu. 2010,c.4,s.10(3); S.Nu. 2012,c.11,s.6.

### Appeal from Director

**98.** (1) An applicant may appeal by originating notice of motion to the Court from the decision of the Director in the following cases and on the following grounds:

- (a) where the Director has refused to issue or to renew a licence, on the ground that the reasons for the refusal as stated by the Director
  - (i) allege some material matter of fact that is not correct, or

- (ii) do not in law constitute a reason for refusing to issue or renew a licence under this Part;
- (b) where the Director has imposed a condition or restriction on a licence, on the ground that the reasons for imposing it as stated by the Director are insufficient to support it;
- (c) where the Director has refused to accept a bond of less than \$5,000 under subsection 102(2), on the ground that the proof furnished to the Director did establish that a bond of a lesser amount would be sufficient;
- (d) where the applicant contends that the amount of the bond required by the Director under subsection 103(1) is excessive, on the ground that it is for a larger amount than is usually required and that the reasons stated by the Director do not justify the requiring of so large a bond.

#### Compliance with order of Court

(2) Where the Court allows an appeal under subsection (1), the Director shall

- (a) issue or renew the licence,
- (b) cancel or modify the condition or restriction, or
- (c) reduce the amount of the required bond,

as the case may be, but until the appeal is decided the decision of the Director that is under appeal is valid and effective, and the applicant must comply with it while the appeal is pending. S.Nu. 2010,c.4,s.10(3).

#### Application to Court respecting section 96 notice

**99.** (1) Where a person who receives a notice under section 96 wishes to contend that the act or omission complained of in the notice is not a breach of the section, or of any conditions or restrictions of the licence, he or she may apply to the Court by originating notice of motion for the determination of the question.

#### Stay of further notices

(2) Until a question before the Court under subsection (1) has been finally determined, the Director shall not

- (a) give a notice of cancellation of the licence under paragraph 97(1)(c) based on the notice given under section 96, or
- (b) serve any further notices on the person in respect of a similar act or omission,

but the Court may, on the application of the Director, issue an interim injunction requiring the person to desist from the actions or course of conduct to which the Director objected. S.Nu. 2010,c.4,s.10(3).

#### Appeal of cancellation

**100.** (1) A person on whom a notice of cancellation under section 97 is served may appeal the cancellation by originating notice of motion to the Court on the grounds that

- (a) any material fact alleged in reasons for the cancellation is not correct;

- (b) the reasons set out in the notice are not sufficient in law to justify cancellation of the licence; or
- (c) if the notice was served under paragraph 97(1)(c), the further breach alleged was due to inadvertence.

#### Time of filing appeal

(2) The notice of motion under subsection (1) must be filed and served on the Director within 14 days after the mailing of the notice under section 97.

#### Where appeal allowed

(3) A notice of cancellation under section 97 is of no effect where the Court allows the appeal.

#### Dismissal of appeal

(4) The Director shall cancel the licence where the Court dismisses the appeal. S.Nu. 2010,c.4,s.10(3).

#### Determination of fact by Court

**101.** (1) The Court shall determine any fact in dispute in the manner that it considers appropriate where an appeal is taken under section 98 or 100.

#### Director as respondent

(2) Every notice of motion appealing from a decision or action of the Director shall be served on the Director and the Director shall be named as the respondent.

#### Substitution of opinion by Court

(3) Where the Director has refused to issue or to renew, or has cancelled a licence on the ground that the applicant or licensee has been convicted of an offence that, in the opinion of the Director, involves a dishonest act or intent on the part of the offender, this opinion is, for the purposes of this Part, a question of law, and the Court may substitute its own opinion for that of the Director. S.Nu. 2010,c.4,s.10(3).

#### Bond for collection agent

**102.** (1) An applicant for the issuing or renewal of a licence as a collection agent shall file with the Director as part of the application a surety bond of not less than \$5,000 in a form acceptable to the Director protecting clients of the applicant against his or her insolvency issued by an assurance or bonding company authorized to carry on business in Nunavut and the licence shall not be granted or renewed until the bond has been filed.

#### Smaller bond

(2) In the case of an application for renewal of a licence, the Director may accept a bond of less than \$5,000 on being furnished with proof acceptable to the Director that a bond of the lesser amount would be sufficient, in view of the volume of the business of the applicant in the preceding 12 months.

#### Change in officers of collection agent

(3) Where a collection agent licensed under this Act is a corporation and a change occurs in the directors or officers of the corporation, the collection agent shall without delay file with the Director the documentary evidence that the Director may require establishing to the satisfaction of the Director that the surety that bonded the collection agent has been notified of the change.

#### Cancellation of bond

(4) Every bond required by this section shall provide that it cannot be cancelled without written notice to the Director.

#### Suspension of licence

(5) When a bond is cancelled, whether by the collection agent or by the surety, the licence of the collection agent is automatically suspended, and remains suspended until the collection agent files with the Director a new bond complying with the requirements of this section.

#### Where bond cancelled

(6) Where the Director has received from a surety notice of intention to cancel a bond of a collection agent who applied to renew a licence, the Director may refuse to renew the licence until a new bond has been filed in accordance with the requirements of this section. S.Nu. 2010,c.4,s.10(3).

#### Bond for vendor

**103.** (1) The applicant for the issuing or renewal of a licence as a vendor shall file with the Director as part of the application a bond in the prescribed form and in the amount that the Director may require.

#### Amount of bond

(2) Where the applicant gives the Director written notice that he or she considers the amount of the bond required by the Director under subsection (1) to be excessive, the Director shall state in writing his or her reasons for requiring a bond of the amount in question.

#### Rights of Government under bond

(3) Despite that the Government of Nunavut has not suffered any loss or damages, every bond filed under subsection (1) shall be construed as being a penal bond and where the bond is forfeited under subsection (4), the amount due and owing as a debt to the Government of Nunavut by the person bound as a result of the bond shall be determined as if the Government of Nunavut suffered such loss or damages as would entitle the Government of Nunavut to be indemnified to the maximum amount of liability prescribed by the bond.

#### Forfeiture of bond

(4) Every bond filed under subsection (1) shall be forfeited on demand of the Director where

- (a) a person in respect of whose conduct the bond is conditioned or any representative, agent or salesperson of that person has been convicted of
  - (i) an offence under this Act or any regulation, or
  - (ii) an offence involving fraud or theft or conspiracy to commit an offence involving fraud or theft under the *Criminal Code*,
- (b) judgment in respect of a claim arising out of a sale to which Part VII applies has been given against the person in respect of whose conduct the bond is conditioned or against any representative, agent or salesperson of that person,
- (c) the person in respect of whose conduct the bond is conditioned commits an act of bankruptcy, whether or not proceedings have been taken under the *Bankruptcy and Insolvency Act* (Canada), or
- (d) a decision has been rendered by the Director in writing stating in effect that after consideration and investigation of a complaint, the Director is satisfied that the person in respect of whose conduct the bond is conditioned or any representative, agent or salesperson of that person
  - (i) has contravened this Act or has failed to comply with any of the terms, conditions or restrictions to which his or her licence is subject or is in breach of contract, and
  - (ii) has departed from Nunavut or being out of Nunavut remains out of Nunavut, or departs from his or her dwelling-house or otherwise absents himself or herself,

and the conviction, judgment, order or decision has become final by reason of lapse of time or of having been confirmed by the highest court to which any appeal may be taken.

#### Sale of collateral to bond

(5) Where a bond secured by the deposit of collateral security with the Director is forfeited under subsection (4), the Director may sell the collateral security at the current market price.

#### Payment of moneys recovered under bond

(6) The Minister may by order direct that any moneys recovered under a bond or realized from the sale of any collateral security be paid over

- (a) to the Clerk of the Nunavut Court of Justice in trust for those persons who may become judgment creditors of the person named in the bond in respect of claims arising out of sales to which Part VII applies, or
- (b) to any trustee, custodian, interim receiver, receiver or liquidator of the person named in the bond,

in accordance with and on the conditions set out in the order, or

- (c) to those persons who may be deemed to be entitled to the moneys by reason of a sale to which Part VII applies made with the person

named in the bond or any representative, agent or salesperson of that person.

#### Refund of surety

(7) Any moneys not expended under the order of the Minister under subsection (6) shall be refunded to the surety or obligor under the bond. S.N.W.T. 1995,c.11,s.11; S.Nu. 2010,c.4,s.10(3).

#### Appeal from decision of Director

**104.** (1) A person who is aggrieved by a decision of the Director under subsection 103(4) or (5) may, within 30 days after the date of the decision, appeal to a judge who may, on hearing the appeal, make such order as may seem fit having regard to all the circumstances.

#### Form of appeal

(2) The appeal shall be by notice of motion and a copy of the notice of motion shall be served on the Director within 30 days after the date of the decision and not less than 10 days before the day on which the motion is returnable. S.Nu. 2010,c.4,s.10(3).

## PART X

### MISCELLANEOUS

#### Director of Consumer Services

**105.** The Minister shall appoint a Director of Consumer Services.

#### Duties of Director

**106.** The duties of the Director under this Act include

- (a) the granting, suspending and revoking of licences in respect of persons required to be licensed under this Act;
- (b) the receiving, recording and investigating of complaints by any person of contraventions of this Act or the regulations and the taking of such action on those complaints as may appear appropriate, including the prosecution of offenders; and
- (c) generally, the supervision of the operations of this Act and the regulations.

#### Agreements waiving benefits

**107.** Every agreement or bargain, oral or written, express or implied, that

- (a) any of the provisions of this Act or the regulations does not apply,
- (b) a benefit or remedy under this Act or the regulations is not available, or
- (c) in any way limits or abrogates, or in effect limits, modifies or abrogates a benefit or remedy under this Act or the regulations,

is void and moneys paid under or by reason of the agreement or bargain are recoverable in the Court. S.Nu. 2010,c.4,s.10(3).

#### Investigation and inspection

**108.** (1) For the purposes of this Act and the regulations, the Director, or a person authorized in writing by the Director, may, at all reasonable times, enter the business premises of any person carrying on business to which this Act applies, and is entitled to have access to and to examine and copy the books of account, accounting records, documents, files, correspondence and other records of that person.

#### Offence

(2) No person shall refuse access, or withhold, conceal, falsify or refuse to produce any of the records referred to in subsection (1).

#### Confidentiality of information

(3) Except for the purposes of a prosecution under this Act or of court proceedings or for the purpose of the administration and enforcement of this Act and the regulations, no person shall, without the consent of the owner,

- (a) knowingly communicate or allow to be communicated to any person any information obtained by or on behalf of the Director under this section; or
- (b) knowingly allow any person to inspect or have access to any copy or extract of any of the records mentioned in subsection (1).

#### Exception

(4) Subsection (3) does not prohibit the Director from divulging any information obtained under subsection (1) to persons charged with the administration of any Act of Canada, a province or territory, that relates to the subject-matter of this Act. S.Nu. 2010,c.4,s.10(3).

#### Actions against Director and others

**109.** No action lies or shall be commenced against the Director or any other officer or employee of the Government of Nunavut to recover any loss or damages alleged to have been suffered as a consequence of any act or omission in connection with the administration or carrying out of this Act or the regulations. S.Nu. 2010,c.4,s.10(3).

#### Prohibition respecting advertising of licence

**110.** No person licensed under this Act shall, directly or indirectly, hold himself or herself out as being licensed, or exhibit to the public any letter, receipt or copy of a letter or receipt received from the Director, or in any way advertise the licence, except to produce the licence on request.

#### Offence and punishment for individual

**111.** (1) Every individual who contravenes or fails or neglects to comply with this Act or the regulations is guilty of an offence and liable on summary conviction, for the first offence, to a fine not exceeding \$1,000 and, for each subsequent offence, to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding three months.

### Offence and punishment for corporation

(2) Every corporation that contravenes or fails or neglects to comply with this Act or the regulations is guilty of an offence and liable on summary conviction, for the first offence, to a fine not exceeding \$2,000 and, for each subsequent offence, to a fine not exceeding \$5,000.

### Regulations

**112.** The Commissioner, on the recommendation of the Minister, may make regulations

- (a) prescribing the form and content of applications for the issuing or renewal of a licence;
- (b) prescribing the form and content of licences and bonds;
- (c) prescribing the fees payable under this Act;
- (d) exempting any class of buyer, seller, vendor, direct seller, collection agent, credit grantor or borrower or any category of transaction from the application of this Act or any provision of this Act;
- (e) prescribing standard forms of contract;
- (e.1) prescribing the statement of the buyer's right to cancel and the information that must be contained in a direct sales contract under section 75;
- (e.2) respecting the methods by which a notice of cancellation may be sent or delivered under subsection 77.2(3);
- (e.3) designating the office to which a buyer may send or deliver a notice of cancellation under subsection 77.2(7);
- (f) prescribing the manner in which the cost of borrowing stated as a percentage shall be calculated, expressed and applied and prescribing the margins of error permissible;
- (g) prescribing the manner in which the unearned portion of the cost of borrowing is to be calculated;
- (g.1) prescribing practices in respect of the collection of debts;
- (g.2) prohibiting practices in respect of the collection of debts; and
- (h) respecting any matter necessary and advisable to carry out effectively the intent and purpose of this Act.

S.N.W.T. 1998,c.21,s.4(7); S.Nu. 2012,c.11,s.7.