

# CONSOLIDATION OF PERSONAL PROPERTY SECURITY ACT

S.N.W.T. 1994,c.8

In force May 7, 2001: SI-001-2001

(Current to: November 21, 2014)

The following provisions have been deleted for the purposes of this consolidation:  
s.75 to 85 (Consequential Amendments)

## AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

S.N.W.T. 1997,c.15

In force April 1, 1998: SI-006-98

S.N.W.T. 1998,c.5

S.N.W.T. 1999,c.5

## AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2007,c.15,s.177

s.177 in force April 1, 2008: SI-003-2008

S.Nu. 2010,c.15,s.107

s.107 in force September 27, 2010: SI-002-2010

S.Nu. 2011,c.10,s.27

s.27 in force March 10, 2011

S.Nu. 2012,c.16,s.65

s.65 in force April 15, 2013: SI-002-2013

S.Nu. 2013,c.20,s.32

s.32 in force May 16, 2013

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

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.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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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.

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## PERSONAL PROPERTY SECURITY ACT

### PART I

#### INTERPRETATION AND APPLICATION

##### Definitions

**1.** (1) In this Act,

"accessions" means goods that are installed in or affixed to other goods; (*accessions*)

"account"

- (a) means a monetary obligation that is not evidenced by chattel paper or an instrument, whether or not it has been earned by performance,
- (b) does not include investment property; (*compte*)

"advance" means the payment of money, the provision of credit or the giving of value and includes any liability of the debtor to pay interest, credit costs or other charges or costs payable by the debtor in connection with an advance or the enforcement of a security interest securing an advance; (*avance*)

"broker" means a broker as defined in the *Securities Transfer Act*; (*courtier*)

"building" means a structure, erection, mine or work built, constructed or opened on or in land; (*construction*)

"building materials" means materials that are incorporated into a building and includes goods attached to a building so that their removal

- (a) would necessarily involve the dislocation or destruction of some other part of the building and cause substantial damage to the building, apart from the loss of value of the building resulting from the removal, or
- (b) would result in weakening the structure of the building or exposing the building to weather damage or deterioration,

but does not include

- (c) heating, air conditioning or conveyancing devices, or
- (d) machinery installed in a building or on land for use in carrying on an activity in the building or on the land;  
(*matériaux deconstruction*)

"certificated security" means a certificated security as defined in the *Securities Transfer Act*; (*valeur mobilière avec certificat*)

"chattel paper" means one or more writings that evidence both a monetary obligation and a security interest in or lease of specific goods or specific goods and accessions; (*acte mobilier*)

"clearing house" means an organization through which trades in options or standardized futures are cleared; (*chambre de compensation*)

"clearing house option" means an option, other than an option on futures, issued by a clearing house to its participants; (*option de chambre de compensation*)

"collateral" means personal property that is subject to a security interest; (*biens grevés*)

"commercial consignment" means a consignment under which goods are delivered for sale, lease or other disposition to a consignee, who in the ordinary course of the business of the consignee deals in goods of that description, by a consignor who,

- (a) in the ordinary course of the business of the consignor, deals in goods of that description, and
- (b) reserves an interest in the goods after they have been delivered, but does not include an agreement under which goods are delivered
- (c) to an auctioneer for sale, or
- (d) to a consignee for sale, lease or other disposition, if the consignee is generally known to the creditors of the consignee to be selling or leasing goods of others; (*consignation commerciale*)

"consumer goods" means goods that are used or acquired for use primarily for personal, family or household purposes; (*biens de consommation*)

"creditor" includes an assignee for the benefit of creditors, an executor, an administrator or a committee of a creditor; (*créancier*)

"crops" means crops, whether matured or otherwise, and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land, and includes trees only if they are

- (a) being grown as nursery stock,
- (b) being grown for uses other than for the production of fruit or nuts or the production of lumber and wood products, or
- (c) intended to be replanted in another location for the purpose of reforestation; (*récoltes*)

"debtor" means

- (a) a person who owes payment or performance of an obligation secured by a security interest, whether or not that person owns or has rights in the collateral,
- (b) a person who receives goods from another person under a commercial consignment,
- (c) a lessee under a lease for a term of more than one year,



- (d) a transferor of an account or chattel paper,
- (e) in sections 17, 24, 26, 58 and 58.1, subsections 59(14), 61(7), 64(3) and 65(6) to (8), the transferee of the interest of a debtor in the collateral, and
- (f) where a person referred to in paragraph (a) and a person who has rights in the collateral are not the same person and
  - (i) the term is used in a provision dealing with the collateral, the person who has an interest in the collateral,
  - (ii) the term is used in a provision dealing with the obligation, the obligor, and
  - (iii) the context permits, both the owner and the obligor; (*débiteur*)

"default" means

- (a) the failure to pay or otherwise perform, when due, the obligation secured by a security interest, or
- (b) the occurrence of an event or set of circumstances that, under the terms of the security agreement, causes the security interest to become enforceable; (*défaut*)

"document of title" means a writing issued by or addressed to a bailee

- (a) that is in respect of goods in the possession of the bailee that are identified or are fungible portions of an identified mass, and
- (b) in which it is stated that the goods identified in it will be delivered to a named person, or to the transferee of that person, or to bearer or to the order of a named person; (*titre*)

"entitlement holder" means an entitlement holder as defined in the *Securities Transfer Act*; (*titulaire du droit*)

"entitlement order" means an entitlement order as defined in the *Securities Transfer Act*; (*ordre relatif à un droit*)

"equipment" means goods that are held by a debtor other than as inventory or consumer goods; (*matériel*)

"financial asset" means a financial asset as defined in the *Securities Transfer Act*; (*actif financier*)

"financial institution" means a bank, a trust company and a credit union; (*établissement financier*)

"financing change statement" means

- (a) a printed financing change statement in the form authorized by the regulations and required or permitted to be registered under this Act, and

- (b) where the context permits, data authorized by the regulations to be transmitted to an office of the Registry to amend or discharge a registration; (*état de modification de financement*)

"financing statement" means

- (a) a printed financing statement in the form authorized by the regulations and required or permitted to be registered under this Act, and
- (b) where the context permits,
  - (i) data authorized by the regulations to be transmitted to an office of the Registry to effect a registration,
  - (ii) a financing change statement, and
  - (iii) a security agreement registered before the coming into force of this Act; (*état de financement*)

"fixture" does not include building materials; (*accessoire fixe*)

"foreign registered ship" means a self-propelled sea-going vessel used in international seaborne trade for the transport of goods, passengers or both that is 20 or more gross registered tons, and that is registered, other than as a bareboat charter, in the name of the owner, but does not include a vessel registered under the *Canada Shipping Act*; (*navire étranger immatriculé*)

"future advance" means an advance, whether or not made pursuant to an obligation, and includes reasonable costs incurred and expenditures made for the protection, maintenance, preservation or repair of collateral; (*avance future*)

"futures account" means an account maintained by a futures intermediary in which a futures contract is carried for a futures customer; (*compte de contrats à terme*)

"futures contract" means a standardized future or an option on futures, other than a clearing house option, that is

- (a) traded on or subject to the rules of a futures exchange recognized or otherwise regulated by the Superintendent of Securities or by a securities regulatory authority of another province or territory, or
- (b) traded on a foreign futures exchange and carried on the books of a futures intermediary for a futures customer; (*contrat à terme*)

"futures customer" means a person for which a futures intermediary carries a futures contract on its books; (*client de contrats à terme*)

"futures exchange" means an association or organization operated to provide the facilities necessary for the trading of standardized futures or options on futures; (*Bourse de contrats à terme*)

"futures intermediary" means a person that

- (a) is registered as a dealer permitted to trade in futures contracts, whether as principal or agent, under the securities laws or commodity futures laws of a province or territory, or
- (b) is a clearing house recognized or otherwise regulated by the Superintendent of Securities or by a securities regulatory authority of another province or territory;  
(*intermédiaire en contrats à terme*)

"goods" means tangible personal property, fixtures, crops and the unborn young of animals but does not include chattel paper, a document of title, an instrument, investment property, money, trees other than crops until the trees are severed or petroleum, gas or minerals until they are extracted; (*objets*)

"instrument" means

- (a) a bill of exchange, note or cheque within the meaning of the *Bills of Exchange Act* (Canada),
- (b) any other writing that evidences a right to payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, and
- (c) a letter of credit or an advice of credit if the letter of credit or advice of credit states on it that it must be surrendered on claiming payment,

but does not include

- (d) chattel paper, a document of title or investment property, or
- (e) a writing that provides for or creates a mortgage or charge in respect of an interest in land that is specifically identified in the writing; (*effet*)

"intangible" means personal property other than goods, chattel paper, a document of title, an instrument, money or investment property and includes a licence; (*bien meuble incorporel*)

"inventory" means goods that are

- (a) held by a person for sale or lease, or that have been leased by that person as lessor,
- (b) to be furnished or have been furnished under a contract of service,
- (c) raw materials or work in progress, or
- (d) materials used or consumed in a business; (*stock*)

"investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, futures contract or futures account; (*bien de placement*)

"land titles office" means a land titles office established under the *Land Titles Act*; (*bureau des titres de biens-fonds*)

"lease for a term of more than one year" includes

- (a) a lease for an indefinite term including a lease for an indefinite term that is determinable by one or both of the parties not later than one year after the date of its execution,
- (b) a lease initially for a term of one year or less where the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for a period in excess of one year after the day the lessee, with the consent of the lessor, first acquired possession of them, subject to subsection (3),
- (c) a lease for a term of one year or less where
  - (i) the lease provides that it is automatically renewable or that it is renewable at the option of one of the parties or by agreement of the parties for one or more terms, and
  - (ii) the total of the terms, including the original term, may exceed one year,

but does not include

- (d) a lease involving a lessor who is not regularly engaged in the business of leasing goods,
- (e) a lease of household furnishings or appliances as part of a lease of land where the goods are incidental to the use and enjoyment of the land, or
- (f) a lease of prescribed goods, regardless of the length of the lease term; (*bail d'une durée supérieure à un an*)

"licence" means a right, whether or not exclusive, that is transferable by the grantee with or without restriction or the consent of the grantor

- (a) to manufacture, produce, sell, transport or otherwise deal with personal property, or
- (b) to provide services; (*licence*)

"money" means a medium of exchange authorized by or under an Act of the Parliament of Canada or authorized or adopted by a foreign government as part of its currency; (*argent*)

"new value" means value other than an antecedent debt or antecedent liability; (*nouvelle prestation*)

"obligation secured by a security interest" means, when determining the amount payable under a lease that secures payment or performance of an obligation,

- (a) the amount originally agreed to be paid under the lease,
- (b) any other amount payable pursuant to the terms of the lease, and
- (c) any other amount required to be paid by the lessee to obtain ownership of the collateral,

less any amount paid before the determination; (*obligation garantie par une sûreté*)

"option" means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement at or by a time established by the agreement:

- (a) receive an amount of cash determinable by reference to a specified quantity of the underlying interest of the option,
- (b) purchase a specified quantity of the underlying interest of the option,
- (c) sell a specified quantity of the underlying interest of the option;  
(*option*)

"option on futures" means an option the underlying interest of which is a standardized future; (*option sur contrat à terme*)

"pawnbroker" means a person who engages in the business of granting credit to individuals for personal, family or household purposes and who

- (a) takes and perfects security interests in consumer goods by taking possession of those consumer goods, or
- (b) purchases consumer goods under agreements or undertakings, express or implied, that the goods may be repurchased by the seller; (*prêteur sur gage*)

"personal property" means goods, chattel paper, a document of title, an instrument, money, investment property or an intangible; (*bien meuble*)

"prior security interest" means an interest that is created, reserved or provided for by a valid security agreement or other transaction made before the coming into force of this Act and that is a security interest within the meaning of this Act and to which this Act would have applied if it had been in force at the time the security agreement or other transaction was entered into; (*sûreté antérieure*)

"proceeds" means

- (a) identifiable or traceable personal property, fixtures and crops
  - (i) derived directly or indirectly from any dealing with collateral or the proceeds of collateral, and
  - (ii) in which the debtor acquires an interest,
- (b) a right to an insurance payment or any other payment as indemnity or compensation for loss of or damage to the collateral or proceeds of the collateral,
- (c) a payment made in total or partial discharge or redemption of an intangible, chattel paper, an instrument or investment property, or
- (d) rights arising out of, or property collected on, or distributed on account of, collateral that is investment property,

but does not include an animal merely because it is the offspring of an animal that is collateral; (*produit*)

"purchase" means acquiring by sale, lease, discount, assignment, negotiation, mortgage, pledge, lien, issue, reissue, gift or any other consensual transaction creating an interest in personal property; (*achat*)

"purchase money security interest" means

- (a) a security interest taken in collateral, other than investment property, to the extent that it secures all or part of the purchase price of the collateral,
- (b) a security interest taken in collateral, other than investment property, by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, to the extent that the value is applied to acquire such rights,
- (c) the interest of a lessor of goods under a lease for a term of more than one year, and
- (d) the interest of a consignor who delivers goods to a consignee under a commercial consignment,

but does not include a transaction of sale and lease back to the seller and, for the purposes of this clause, "purchase price" and "value" include credit charges or interest payable in respect of the purchase or a loan given to enable the debtor to acquire rights in the collateral; (*sûreté en garantie du prix d'acquisition*)

"receiver" includes a receiver-manager; (*séquestre*)

"Registrar", except in section 49, means the Registrar of the Personal Property Registry appointed under section 42; (*registrateur*)

"Registry" means the Personal Property Registry established under section 42; (*réseau d'enregistrement*)

"secured party" means

- (a) a person who has a security interest,
- (b) a person who holds a security interest for the benefit of another person, and
- (c) the trustee, if a security interest is embodied in a trust indenture; (*créancier garanti*)

"securities account" means a securities account as defined in the *Securities Transfer Act*; (*compte de titres*)

"securities intermediary" means a securities intermediary as defined in the *Securities Transfer Act*; (*intermédiaire en valeurs mobilières*)

"security" means a security as defined in the *Securities Transfer Act*; (*valeur mobilière*)

"security agreement" means an agreement that creates or provides for a security interest and, if the context permits, includes

- (a) an agreement that creates or provides for a prior security interest, and
- (b) a writing that evidences a security agreement; (*contrat de sûreté*)

"security certificate" means a security certificate as defined in the *Securities Transfer Act*; (*certificat de valeur mobilière*)

"security entitlement" means a security entitlement as defined in the *Securities Transfer Act*; (*droit intermédiaire*)

"security interest" means

- (a) an interest in personal property that secures payment or performance of an obligation, but does not include the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of an agent of the seller, unless the parties have otherwise evidenced an intention to create or provide for a security interest in the goods, and
- (b) the interest of
  - (i) a transferee under a transfer of an account or chattel paper,
  - (ii) a person who delivers goods to another person under a commercial consignment, and
  - (iii) a lessor under a lease for a term of more than one year, despite that the interest does not secure payment or performance of an obligation; (*sûreté*)

"security with a clearing agency" means a security

- (a) in the form of a security certificate
  - (i) in bearer form,
  - (ii) endorsed in blank by an appropriate person, or
  - (iii) registered in the name of a clearing agency or its nominee or custodian,that is in the custody of the clearing agency, or
- (b) that is not in the form of a security certificate but that is registered or recorded in the records maintained by or on behalf of the issuer in the name of a clearing agency or its nominee or custodian; (*valeur mobilière détenue par un organisme de compensation*)

"Sheriff" means the Sheriff appointed under the *Judicature Act* and includes a deputy Sheriff and Sheriff's bailiff; (*shérif*)

"specific goods" means goods identified and agreed on at the time a security agreement in respect of those goods is made; (*objets déterminés*)

"standardized future" means an agreement traded on a futures exchange pursuant to standardized conditions contained in the bylaws, rules or regulations of the futures exchange, and cleared and settled by a clearing house, to do one or more of the following at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

- (a) make or take delivery of the underlying interest of the agreement, or
- (b) settle the obligation in cash instead of delivery of the underlying interest; (*contrat à terme normalisé*)

"trust indenture" means a deed, indenture or document, however designated, by the terms of which a person issues or guarantees or provides for the issue or guarantee of debt obligations secured by a security interest and in which another person is appointed as trustee for the holders of the debt obligations issued, guaranteed or provided for under the deed, indenture or document; (*acte de fiducie*)

"uncertificated security" means an uncertificated security as defined in the *Securities Transfer Act*; (*valeur mobilière sans certificat*)

"value" means any consideration sufficient to support a simple contract and includes an antecedent debt or antecedent liability. (*prestation*)

#### Determination of control

(1.1) For the purposes of this Act,

- (a) a secured party has control of a certificated security if the secured party has control in the manner provided for under section 23 of the *Securities Transfer Act*;
- (b) a secured party has control of an uncertificated security if the secured party has control in the manner provided for under section 24 of the *Securities Transfer Act*;
- (c) a secured party has control of a security entitlement if the secured party has control in the manner provided for under section 25 or 26 of the *Securities Transfer Act*;
- (d) a secured party has control of a futures contract if
  - (i) the secured party is the futures intermediary with which the futures contract is carried, or
  - (ii) the futures customer, secured party and futures intermediary have each agreed that the futures intermediary will apply any value distributed on account of the futures contract as directed by the secured party without further consent by the futures customer; and
- (e) a secured party having control of all security entitlements or futures contracts carried in a securities account or futures account has control over the securities account or futures account.



## Objective test for knowledge

(2) For the purposes of this Act,

- (a) an individual knows or has knowledge of information when the information is acquired by the individual under circumstances in which a reasonable person would take cognizance of it;
- (b) a partnership knows or has knowledge of information when the information has come to the attention of one of the general partners or a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it;
- (c) a corporation knows or has knowledge of information when
  - (i) the information has come to the attention of
    - (A) a managing director or officer of the corporation, or
    - (B) a senior employee of the corporation with responsibility for matters to which the information relates,
 under circumstances in which a reasonable person would take cognizance of it; or
  - (ii) the information in writing has been delivered to the registered office of the corporation or attorney for service for the corporation;
- (d) the members of an unincorporated association know or have knowledge of information when the information has come to the attention of
  - (i) a managing director or officer of the association,
  - (ii) a senior employee of the association with responsibility for matters to which the information relates, or
  - (iii) all members,
 under circumstances in which a reasonable person would take cognizance of it; and
- (e) the Government of Nunavut knows or has knowledge of information when the information has come to the attention of a senior employee of the Government of Nunavut with responsibility for matters to which the information relates under circumstances in which a reasonable person would take cognizance of it.

## Lease

(3) A lease referred to in paragraph (b) in the definition "lease for a term of more than one year" does not become a lease for a term of more than one year until the lessee's possession extends for more than one year.

## Time of determination

(4) Unless otherwise provided in this Act, goods are "consumer goods", "inventory" or "equipment" if at the time the security interest in the goods attaches they are "consumer goods" "inventory" or "equipment", as the case may be.

### Tracing

(5) Proceeds are traceable whether or not a fiduciary relationship exists between the person who has a security interest in the proceeds as provided in section 28 and the person who has rights in or has dealt with the proceeds.

**(6) Repealed, S.Nu. 2010,c.15,s.107(2)(c).**

S.Nu. 2010,c.15,s.107(2); S.Nu. 2011,c.10,s.27; S.Nu. 2013,c.20,s.32(2).

### Application of Act

- 2.** (1) Subject to section 3, this Act applies
- (a) to every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral; and
  - (b) for greater certainty and without limiting the generality of paragraph (a), to a chattel mortgage, conditional sale, floating charge, pledge, trust indenture, trust receipt, assignment, consignment, lease, trust and transfer of chattel paper where they secure payment or performance of an obligation.

### *Idem*

(2) Subject to sections 3 and 55, this Act applies to a transfer of an account or chattel paper, a lease for a term of more than one year and a commercial consignment that does not secure payment or performance of an obligation.

### Non-application of Act

- 3.** Despite section 2 and except as otherwise provided in this Act, this Act does not apply to
- (a) a lien, charge or other interest given by or under a statute or rule of law;
  - (a.1) any amount due to the Workers' Safety and Compensation Commission by an employer under the *Workers' Compensation Act*;
  - (b) the creation or transfer of an interest or claim in or under a policy of insurance except the transfer of a right to money or other value payable under a policy of insurance as indemnity or compensation for loss of or damage to collateral;
  - (b.1) a transfer of an interest in or claim in or under a contract of annuity, other than a contract of annuity held by a securities intermediary for another person in a securities account;
  - (c) the creation or transfer of an interest in present or future wages, salary, pay, commission or any other compensation for labour or personal services other than professional services;
  - (d) a transfer of an unearned right to payment under a contract to a transferee who is to perform the obligations of the transferor under the contract;

- (e) the creation or transfer of an interest in land including a lease;
- (f) the creation or transfer of a right to payment that arises in connection with an interest in or a lease of land other than
  - (i) a security interest in rents as defined in subsection 37.1(1), or
  - (ii) a right to payment evidenced by investment property or an instrument;
- (g) a sale of accounts or chattel paper as part of a sale of a business out of which they arose unless the vendor remains in apparent control of the business after the sale;
- (h) a transfer of accounts made solely to facilitate the collection of accounts for the transferor;
- (i) the creation or transfer of a right to damages in tort;
- (j) an assignment for the general benefit of creditors made pursuant to an Act of the Parliament of Canada relating to insolvency; or
- (k) a security agreement governed by an Act of the Parliament of Canada that deals with the rights of parties to the agreement or the rights of third parties affected by a security interest created by the agreement, including but without limiting the generality of the foregoing,
  - (i) any agreement governed by Part VIII of the *Bank Act* (Canada), and
  - (ii) a mortgage under the *Canada Shipping Act*.  
S.Nu. 2007,c.15,s.177; S.Nu. 2010,c.15,s.107(3);  
S.Nu. 2013,c.20,s.32(2).

#### Government bound

**4.** The Government of Nunavut and its agents are bound by this Act and the regulations. S.Nu. 2013,c.20,s.32(2).

#### Applicable law respecting validity, perfection

**5.** (1) Subject to sections 6 and 7, the validity of

- (a) a security interest in goods, or
- (b) a possessory security interest in an instrument, a negotiable document of title, money or chattel paper,

is governed by the law of the jurisdiction where the collateral is situated when the security interest attaches.

#### Collateral situated in jurisdiction

(1.1) Except as otherwise provided in sections 6 and 7, while the collateral is situated in a jurisdiction, perfection, the effect of perfection or non-perfection, and the priority of a security interest described in subsection (1), shall be governed by the law of that jurisdiction.

#### Situs of security with a clearing agency

(2) For the purposes of subsection (1), a security with a clearing agency is situated where the records of the clearing agency are kept.

#### Perfection when goods brought into Nunavut

(3) A security interest in goods perfected under the law of the jurisdiction in which the goods are situated at the time the security interest attaches but before the goods are brought into Nunavut continues perfected in Nunavut if it is perfected in Nunavut

- (a) not later than 60 days after the day the goods are brought into Nunavut,
- (b) not later than 15 days after the day the secured party knows that the goods have been brought into Nunavut, or
- (c) before perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached,

whichever first occurs, but the security interest is subordinate to the interest of a buyer or lessee of the goods who acquires the interest without knowledge of the security interest and before it is perfected in Nunavut under section 24 or 25.

#### Perfection by other means

(4) A security interest that is not perfected as provided in subsection (3) may be otherwise perfected in Nunavut under this Act.

#### Perfection when goods not previously perfected

(5) Where a security interest referred to in subsection (1) is not perfected under the law of the jurisdiction in which the collateral was situated at the time the security interest attached and before the collateral was brought into Nunavut, it may be perfected under this Act. S.Nu. 2010,c.15,s.107(4); S.Nu 2013,c.20,s.32(2).

#### Applicable law where goods to be removed from jurisdiction

**6.** (1) Subject to section 7, the validity, perfection and effect of perfection or non-perfection and priority of a security interest is governed by the law of the other jurisdiction where

- (a) the parties to a security agreement that creates the security interest in goods in one jurisdiction understand at the time the security interest attaches that the goods will be kept in the other jurisdiction; and
- (b) the goods are removed to the other jurisdiction, for purposes other than transportation through the other jurisdiction, not later than 30 days after the security interest attaches.

#### Application of subsection 5(3)

(2) If the other jurisdiction referred to in subsection (1) is not Nunavut and the goods are later brought into Nunavut, the security interest in the goods is deemed to be a security interest to which subsection 5(3) applies if it was perfected under the law of the jurisdiction to which the goods were removed. S.Nu. 2010,c.15,s.107(5); S.Nu. 2013,c.20,s.32(2).

## Location of debtor

7. (1) For the purposes of this section, a debtor is located at
- (a) the place of business, if any, of the debtor;
  - (b) the chief executive office of the debtor, if the debtor has more than one place of business; or
  - (c) the principal residence of the debtor, if the debtor has no place of business.

## Applicable law for mobile goods, intangibles

- (2) The validity, perfection and effect of perfection or non-perfection of
- (a) a security interest in an intangible or in goods, other than a foreign registered ship, that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or are inventory leased or held for lease by a debtor to others, and
  - (b) a non-possessory security interest in an instrument, a negotiable document of title, money and chattel paper,
- is governed by the law, including the conflict of law rules, of the jurisdiction where the debtor is located when the security interest attaches.

## Perfection continues in Nunavut

- (3) Where a debtor relocates to another jurisdiction or transfers an interest in collateral to a person located in another jurisdiction, a security interest perfected in accordance with the applicable law as determined pursuant to subsection (2) continues perfected in Nunavut if it is perfected in the other jurisdiction
- (a) not later than 60 days after the day the debtor relocates or transfers an interest in the collateral to a person located in the other jurisdiction,
  - (b) not later than 15 days after the day the secured party has knowledge that the debtor has relocated or transferred an interest in the collateral to a person located in the other jurisdiction, or
  - (c) prior to the day that perfection ceases under the law of the first jurisdiction,
- whichever first occurs.

## Where no provision for public registration in governing law

- (4) If the law governing the perfection of a security interest referred to in subsection (2) or (3) does not provide for public registration or recording of the security interest or a notice relating to it and the collateral is not in the possession of the secured party, the security interest is subordinate to
- (a) an interest in an account payable in Nunavut, or
  - (b) an interest in goods, an instrument, a negotiable document of title, money or chattel paper acquired when the collateral was situated in Nunavut,
- unless it is perfected under this Act before the interest referred to in paragraph (a) or (b) arises.

## Perfection of subsection (4) interest

(5) A security interest referred to in subsection (4) may be otherwise perfected under this Act.

## Applicable law for foreign registered ship

(6) The validity, perfection and effect of perfection or non-perfection of a security interest in a foreign registered ship is governed by the law of the jurisdiction where the ship is registered at the time the security interest attaches.

## Applicable law for minerals, account from sale of minerals

(7) Despite section 6 and subsection (2), the validity, perfection and effect of perfection or non-perfection of a security interest in minerals or in an account resulting from the sale of the minerals at the minehead

- (a) that is provided for in a security agreement executed before the minerals are extracted, and
- (b) that attaches to the minerals on extraction or attaches to an account on sale of the minerals,

is governed by the law of the jurisdiction in which the minehead is located.

## "minerals" defined

(8) For the purposes of subsection (7), "minerals" includes petroleum and gas and "minehead" includes wellhead. S.Nu. 2010,c.15,s.107(6); S.Nu. 2013,c.20,s.32(2).

## Conflict of laws, validity of security interest in investment property

**7.1.** (1) The validity of a security interest in investment property is governed by the law, at the time the security interest attaches,

- (a) of the jurisdiction where the certificate is located, if the collateral is a certificated security;
- (b) of the issuer's jurisdiction, if the collateral is an uncertificated security;
- (c) of the securities intermediary's jurisdiction, if the collateral is a security entitlement or a securities account; or
- (d) of the futures intermediary's jurisdiction, if the collateral is a futures contract or a futures account.

## Perfection, non-perfection and priority of security interest in investment property

(2) Except as otherwise provided in subsection (5), perfection, the effect of perfection or non-perfection and the priority of a security interest in investment property is governed by the law

- (a) of the jurisdiction in which the certificate is located, if the collateral is a certificated security;
- (b) of the issuer's jurisdiction, if the collateral is an uncertificated security;

- (c) of the securities intermediary's jurisdiction, if the collateral is a security entitlement or a securities account; or
- (d) of the futures intermediary's jurisdiction, if the collateral is a futures contract or a futures account.

#### Determining jurisdiction

- (3) For the purposes of this section,
- (a) the location of a debtor is determined by subsection 7(1);
  - (b) the issuer's jurisdiction is determined by subsection 44(5) of the *Securities Transfer Act*; and
  - (c) the securities intermediary's jurisdiction is determined by subsection 45(2) of the *Securities Transfer Act*.

#### Determining futures intermediary's jurisdiction

(4) For the purposes of this section, the following rules determine a futures intermediary's jurisdiction:

- (a) if an agreement between the futures intermediary and futures customer governing the futures account expressly provides that a particular jurisdiction is the futures intermediary's jurisdiction for purposes of the law of that jurisdiction, this Act or any provision of this Act, the jurisdiction expressly provided for is the futures intermediary's jurisdiction;
- (b) if paragraph (a) does not apply and an agreement between the futures intermediary and futures customer governing the futures account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the futures intermediary's jurisdiction;
- (c) if neither paragraph (a) nor (b) applies and an agreement between the futures intermediary and futures customer governing the futures account expressly provides that the futures account is maintained at an office in a particular jurisdiction, that jurisdiction is the futures intermediary's jurisdiction;
- (d) if paragraphs (a), (b) and (c) do not apply, the futures intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the futures customer's account is located;
- (e) if none of the preceding paragraphs applies, the futures intermediary's jurisdiction is the jurisdiction in which the chief executive office of the futures intermediary is located.

#### Matters governed by law of debtor's jurisdiction

- (5) The law of the jurisdiction in which the debtor is located governs
- (a) perfection of a security interest in investment property by registration;
  - (b) perfection of a security interest in investment property granted by a broker or securities intermediary where the secured party relies on attachment of the security interest as perfection; and

- (c) perfection of a security interest in a futures contract or futures account granted by a futures intermediary where the secured party relies on attachment of the security interest as perfection.

#### Duration of perfection under law of debtor's jurisdiction

(6) A security interest perfected under the law of the jurisdiction designated in subsection (5) remains perfected until the earliest of

- (a) 60 days after the day the debtor relocates to another jurisdiction;
- (b) 15 days after the day the secured party knows the debtor has relocated to another jurisdiction; and
- (c) the day that perfection ceases under the previously applicable law.

#### Duration of perfection under law of issuer's jurisdiction

(7) A security interest in investment property that is perfected under the law of the issuer's jurisdiction, the securities intermediary's jurisdiction or the futures intermediary's jurisdiction, as applicable, remains perfected until the earliest of

- (a) 60 days after a change of the applicable jurisdiction to another jurisdiction;
- (b) 15 days after the day the secured party knows of the change of the applicable jurisdiction to another jurisdiction; and
- (c) the day that perfection ceases under the previously applicable law.

S.Nu. 2010,c.15,s.107(7).

#### Applicable law respecting substance and procedure

- 8.** (1) Despite sections 5, 6, 7 and 7.1,
- (a) procedural issues involved in the enforcement of the rights of a secured party against collateral are governed by the law of the jurisdiction in which the enforcement rights are exercised; and
  - (b) substantive issues involved in the enforcement of the rights of a secured party against collateral are governed by the proper law of the contract between the secured party and the debtor.

#### Applicable law respecting perfection

(2) For the purposes of sections 5, 6, 7 and 7.1, a security interest is perfected under the law of a jurisdiction if the secured party has complied with the law of the jurisdiction with respect to the creation and continuance of a security interest with the result that the security interest has a status in relation to any other secured party, buyer and judgment creditor and a trustee in bankruptcy of the debtor similar to that of an equivalent security interest created and perfected under this Act.

S.Nu. 2010,c.15,s.107(8); S.Nu. 2013,c.20,s.32(2).



## Law of jurisdiction

**8.1.** For the purposes of sections 5 to 8, a reference to the law of a jurisdiction means the internal law of that jurisdiction excluding its conflict of law rules.

S.Nu. 2010,c.15,s.107(9).

## PART II

## VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

## Effectiveness of security agreement

**9.** Subject to this or any other Act, a security agreement is effective according to its terms.

## Security interest in account or chattel paper

**9.1.** An account debtor as defined in subsection 41(1) may take a security interest in the account or chattel paper under which the account debtor is obligated.

## Enforceability of security interest

**10.** (1) Subject to subsection (2) and section 12.1, a security interest is only enforceable against a third party if

- (a) the collateral is not a certificated security and is in the possession of the secured party;
- (b) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 68 of the *Securities Transfer Act* pursuant to the debtor's security agreement;
- (c) the collateral is investment property and the secured party has control under subsection 1(1.1) pursuant to the debtor's security agreement; or
- (d) the debtor has signed a security agreement that contains
  - (i) a description of the collateral by item or kind or by reference to one or more of the following:
    - (A) crops,
    - (B) goods,
    - (C) chattel paper,
    - (D) investment property,
    - (E) documents of title,
    - (F) instruments,
    - (G) money,
    - (H) intangibles,
  - (ii) a description of collateral that is a security entitlement, securities account or futures account, if it describes the collateral by those terms or as "investment property" or if it describes the underlying financial asset or futures contract,

- (iii) a statement that a security interest is taken in all of the present and after-acquired personal property of the debtor, or
- (iv) a statement that a security interest is taken in all of the present and after-acquired personal property of the debtor except specified items or kinds of personal property or except personal property described by reference to one or more of the following:
  - (A) crops,
  - (B) goods,
  - (C) chattel paper,
  - (D) investment property,
  - (E) documents of title,
  - (F) instruments,
  - (G) money,
  - (H) intangibles.

#### Secured party deemed not in possession

(2) For the purposes of paragraph (1)(a), a secured party is deemed not to be in possession of collateral that is in the apparent possession or control of the debtor or an agent of the debtor.

#### Description of consumer goods

(3) A description is inadequate for the purposes of paragraph (1)(d) if it describes the collateral as consumer goods or equipment without further reference to the item or kind of collateral.

#### Description of inventory

(4) A description of collateral as inventory is adequate for the purposes of paragraph (1)(d) only while it is held by the debtor as inventory.

#### Description of proceeds

(5) A security interest in proceeds is enforceable against a third party whether or not the security agreement contains a description of the proceeds.

S.Nu. 2010,c.15,s.107(10).

#### Delivery of copy of security agreement to debtor

**11.** Where a security agreement is in writing, the secured party shall deliver a copy of the security agreement to the debtor not later than 10 days after the execution of the security agreement and, if the secured party fails to do so after a request by the debtor, the Nunavut Court of Justice may, on application by the debtor, make an order for the delivery of a copy to the debtor. S.Nu. 2013,c.20,s.32(2).

#### Attachment of security interest

**12.** (1) A security interest, including a security interest in the nature of a floating charge, attaches when

- (a) value is given,
- (b) the debtor has rights in the collateral or power to transfer rights in the collateral to a secured party, and
- (c) except for the purpose of enforcing rights as between the parties to the security agreement, the security interest becomes enforceable within the meaning of section 10,

unless the parties specifically agree in writing to postpone the time of attachment, in which case the security interest attaches at the time specified in the agreement.

#### Attachment under lease or commercial consignment

(2) For the purposes of paragraph (1)(b) and without limiting other rights, if any, that the debtor may have, a lessee under a lease for a term of more than one year or a consignee under a commercial consignment has rights in the goods when the lessee or consignee obtains possession of them pursuant to the lease or consignment.

#### When debtor's rights arise

- (3) For the purposes of paragraph (1)(b), a debtor has no rights in
- (a) crops until they become growing crops;
  - (b) the young of animals until they are conceived;
  - (c) petroleum, gas or minerals until they are extracted; or
  - (d) trees, other than crops, until they are severed.

#### Attachment in securities account

(4) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

#### Attachment in futures account

(5) The attachment of a security interest in a futures account is also attachment of a security interest in the futures contracts carried in the futures account. S.Nu. 2010,c.15,s.107(11).

#### Attachment of security interest in favour of securities intermediary

**12.1.** (1) A security interest in favour of a securities intermediary attaches to a person's security entitlement if

- (a) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and
- (b) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

#### Effect of security interest

(2) The security interest described in subsection (1) secures the person's obligation to pay for the financial asset.

#### Attachment of security interest to security or other financial asset

(3) A security interest in favour of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if

- (a) the security or other financial asset is
  - (i) in the ordinary course of business transferred by delivery with any necessary endorsement or assignment, and
  - (ii) delivered under an agreement between persons in the business of dealing with such securities or financial assets; and
- (b) the agreement calls for delivery against payment.

#### Effect of security interest

(4) The security interest described in subsection (3) secures the obligation to make payment for the delivery. S.Nu. 2010,c.15,s.107(12).

#### After-acquired property

**13.** (1) Subject to section 12 and subsection (2), where a security agreement provides for a security interest in after-acquired property, the security interest attaches in accordance with section 12 without specific appropriation by the debtor.

#### When security interest does not attach to after-acquired property

- (2) A security interest does not attach to after-acquired property that is
- (a) a crop that becomes a growing crop more than one year after the security agreement has been entered into, except that a security interest in a crop that is given in conjunction with a lease, agreement for sale or mortgage of land may, if the parties so agree, attach to a crop to be grown on the land concerned during the term of the lease, agreement for sale or mortgage; or
  - (b) consumer goods other than accessions, unless the security interest is a purchase money security interest or a security interest in collateral obtained by the debtor as replacement for collateral described in the security agreement.

#### Future advances

**14.** (1) A security agreement may provide for future advances.

#### When obligation to advance not binding

(2) Unless the parties otherwise agree, an obligation to a debtor to make future advances is not binding on a secured party if the collateral is seized, attached, charged or made subject to an equitable execution, under circumstances described in subparagraphs 20(1)(a)(i) and (ii), and the secured party has knowledge of this fact before making the advances.

#### Application of sale of goods law

**15.** Where a seller retains a purchase money security interest in goods, the law relating to contracts of sale, including a disclaimer, limitation or modification of the performance obligations of the seller with respect to the goods, governs the sale.

#### Acceleration of payment or performance

**16.** Where a security agreement provides that a secured party may accelerate payment or performance by the debtor if the secured party considers that he or she is insecure or that the collateral is in jeopardy, the provision shall be construed to mean that the secured party has the right to accelerate payment or performance only if the secured party in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance is or is about to be impaired or that the collateral is or is about to be placed in jeopardy.

#### "secured party" defined

**17.** (1) In this section, "secured party" includes a receiver.

#### Rights and obligations of secured party in possession of collateral

(2) A secured party shall use reasonable care in the custody and preservation of collateral in the possession of the secured party and, unless the parties otherwise agree, in the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against other persons.

#### *Idem*

(3) Unless the parties otherwise agree, where collateral is in the possession of a secured party,

- (a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in obtaining and maintaining possession of the collateral, are chargeable to the debtor and are secured by the collateral;
- (b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;
- (c) the secured party may hold as additional security any increase or profit, except money, resulting from the collateral and where the increase or profit is received by the secured party in the form of money, shall, immediately on receipt of the money, either apply

- the money in reduction of the obligation secured by the security interest or pay the money to the debtor; and
- (d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled.

#### Use of collateral by secured party

- (4) Subject to subsection (2), a secured party may use the collateral
  - (a) in the manner and to the extent provided in the security agreement;
  - (b) for the purpose of preserving the collateral or its value; or
  - (c) in accordance with an order of the Nunavut Court of Justice. S.Nu. 2010,c.15,s.107(13); S.Nu. 2013,c.20,s.32(2).

#### Rights of secured party, investment property as collateral

- 17.1.** (1) Unless otherwise agreed by the parties and despite section 17, a secured party having control under subsection 1(1.1) of investment property as collateral
- (a) may hold as additional security any proceeds received from the collateral;
  - (b) shall either apply money or funds received from the collateral to reduce the secured obligation or remit such money or funds to the debtor; and
  - (c) may create a security interest in the collateral.

#### Rights of secured party with control of investment property

(2) Despite subsection (1) and section 17, a secured party having control under subsection 1(1.1) of investment property as collateral may sell, transfer, use or otherwise deal with the collateral in the manner and to the extent provided in the security agreement. S.Nu. 2010,c.15,c.107(14).

#### Demand for information

- 18.** (1) The debtor, a creditor, a Sheriff, a person with an interest in personal property of the debtor or an authorized representative of any of them may, by a demand in writing containing an address for reply and delivered to the secured party
- (a) at the most recent address of the secured party set out in a registered financing statement containing a description of personal property of the debtor, or
  - (b) at the current address of the secured party, if known by the person who makes the demand,

require the secured party to send or make available the information specified in subsection (2) to the person making the demand or, if the demand is made by the debtor, to any person at an address specified by the debtor.

#### Information that may be demanded

- (2) The information that may be demanded under subsection (1) may be for one or more of the following:
- (a) a copy of a security agreement providing for a security interest held by the secured party in the personal property of the debtor;

- (b) a statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness, as of the date specified in the demand;
- (c) a written approval or correction of an itemized list of personal property attached to the demand indicating the items that are collateral as of the date specified in the demand;
- (d) a written approval or correction of the amount of indebtedness and of the terms of payment of the indebtedness, as of the date specified in the demand;
- (e) sufficient information as to a place where a person entitled to make a demand under subsection (1) may inspect the security agreement or a copy of it.

#### Information available

(3) A person with an interest in personal property of the debtor is entitled to make a demand under subsection (1) only with respect to a security agreement providing for a security interest in the property in which the person has an interest.

#### Inspection of security agreement

(4) On the demand of a person entitled to receive a copy of the security agreement under subsection (1), the secured party shall permit the person to inspect the security agreement or a copy of it during normal business hours at the place referred to in paragraph (2)(e).

#### Form of response from secured party

(5) Where a demand is made under subsection (1) for information referred to in paragraph (2)(c) and the secured party claims a security interest in all the personal property of the debtor, in all the property of the debtor other than a specified kind or item of property or in all of a specified kind of property of the debtor, the secured party may indicate this in lieu of approving or correcting the itemized list of the property.

#### Time for response

(6) The secured party, other than a trustee under a trust indenture, shall comply with a demand made under subsection (1) not later than 10 days after the demand is made.

#### Time for response by trustee

(7) A secured party who is a trustee under a trust indenture shall comply with a demand made under subsection (1) not later than 25 days after the demand is made.

#### Application to Court where failure to comply

(8) Where, without reasonable excuse, a secured party fails to comply with a demand made under subsection (1) within the time specified or the reply to a demand made under subsection (1) is incomplete or incorrect or the secured party does not permit an inspection in accordance with subsection (4), the person making the demand or wishing to inspect, in addition to any other remedy provided by this Act, may apply to the Nunavut Court of Justice for an order requiring the secured party to comply with the demand or to permit an inspection, as the case may be.

#### Disclosure of name of successor in interest

(9) Where a person receiving a demand made under subsection (1) or (4) no longer has an interest in the obligation or property of the debtor that is the subject of the demand, that person shall, not later than 10 days after receiving the demand, disclose the name and address of the immediate successor in interest and, if known, the latest successor in interest.

#### Application to Court where failure to disclose

(10) Where, without reasonable excuse, a person receiving a demand made under subsection (1) or (4) fails to comply with subsection (9), the person making the demand, in addition to any other remedy provided in this Act, may apply to the Nunavut Court of Justice for an order requiring the person to whom the demand was made to comply with subsection (9).

#### Order to comply or disclose

(11) On application under subsection (8) or (10), the Nunavut Court of Justice may order

- (a) the secured party referred to in subsection (8) to comply with the demand or permit an inspection, referred to in that subsection; or
- (b) in the case of an application under subsection (10), the person referred to in subsection (9) to disclose the information referred to in that subsection.

#### Order to ensure compliance

(12) On an application under subsection (8) or (10) or on a separate application, the Nunavut Court of Justice may make

- (a) any order it considers necessary to ensure compliance with an order made under subsection (11); and
- (b) in the case of an application under subsection (8), an order that, in the event of non-compliance with an order made under paragraph (11)(a), the security interest of the secured party, with respect to which the demand was made or the inspection was sought, is unperfected or extinguished and that any related registration be discharged.



#### Order to exempt or to extend time

(13) On an application under subsection (8) or (10) or on an application of the secured party referred to in subsection (8) or the person referred to in subsection (9), the Nunavut Court of Justice, subject to subsection 65(5), may

- (a) exempt the secured party or person receiving the demand in whole or in part from complying with subsection (1) or (9), other than with respect to a demand made by the debtor; or
- (b) extend the time for compliance.

#### Secured party estopped

(14) For the purposes of this Act, a secured party who has replied to a demand made under subsection (1) is estopped, as against the person making the demand and any other person who can reasonably be expected to rely on the reply, to the extent that the person making the demand or the other person, as the case may be, relied on the reply, from denying

- (a) the accuracy of the information referred to in paragraph (2)(b), (c) or (d) and contained in the reply to the demand; and
- (b) that the copy of the security agreement referred to in paragraph (2)(a) that is provided in response to a demand under subsection (1) is a true copy of the security agreement required to be provided.

#### Successor in interest estopped

(15) For the purposes of this Act, a successor in interest referred to in subsection (9) is estopped, as against a person making a demand under subsection (1) and any other person who can reasonably be expected to rely on the reply to the demand, to the extent that the person making the demand or the other person, as the case may be, relied on the reply, from denying

- (a) the accuracy of the information referred to in paragraph (2)(b), (c) or (d) and contained in the reply to the demand; and
- (b) that the copy of the security agreement referred to in paragraph (2)(a) that is provided in response to a demand under subsection (1) is a true copy of the security agreement required to be provided.

#### Successor in interest not estopped

(16) A successor in interest referred to in subsection (9) is not estopped under subsection (15) where

- (a) the person making the demand knows, at the time the person relied on the reply to the demand, the identity and address of the successor in interest; or
- (b) prior to the demand, a financing change statement has been registered in accordance with section 45 disclosing the successor in interest as the secured party.

#### Fee may be levied

(17) The person to whom a demand is made under this section may require payment in advance of a fee not exceeding the amount prescribed for each demand, but the debtor is entitled to a reply without payment of a fee once every six months.

#### Secured party may rely on statement in demand

(18) A secured party who receives a demand that purports to be made by a person entitled to make it under subsection (1) may act as if the person is, in fact, entitled to make the demand unless the secured party knows that the person is not entitled to make it. S.Nu. 2013,c.20,s.32(2).

### PART III

#### PERFECTION AND PRIORITIES

##### Perfection of security interest

**19.** A security interest is perfected when it has attached and every other step required for perfection under this Act is completed, regardless of the order of occurrence.

##### Perfection of security interest in securities account

**19.1.** (1) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

##### Perfection of security interest in futures account

(2) Perfection of a security interest in a futures account also perfects a security interest in the futures contracts carried in the futures account.  
S.Nu. 2010,c.15,s.107(15).

##### Perfection on attachment, delivery of financial asset

**19.2.** (1) A security interest arising in the delivery of a financial asset under subsection 12.1(3) is perfected when it attaches.

##### Perfection on attachment, investment property

(2) A security interest in investment property created by a broker or securities intermediary is perfected when it attaches.

##### Perfection on attachment, futures contract or account

(3) A security interest in a futures contract or a futures account created by a futures intermediary is perfected when it attaches. S.Nu. 2010,c.15,s.107(15).

##### Priority of unperfected security interests

**20.** (1) A security interest

- (a) in collateral is subordinate to the interest of
  - (i) a person who causes the collateral to be seized under legal process to enforce a judgment including execution,

- attachment or garnishment, or who has obtained a charging order or equitable execution affecting or relating to the collateral,
- (ii) a Sheriff who has seized or has obtained a right to collateral under the *Seizures Act* or *Creditors Relief Act*,
  - (iii) persons entitled to participate in the distribution of property seized under legal process, or its proceeds, as provided in the *Creditors Relief Act*, and
  - (iv) a representative of creditors, but only for the purposes of enforcing the rights of persons referred to in subparagraph (i),
- if the security interest is unperfected at the time
- (v) the interest of the person referred to in subparagraph (i), (ii) or (iv) arises, or
  - (vi) a person referred to in subparagraph (iii) delivers a writ of execution to the Sheriff under the *Creditors Relief Act* or, where the person has a support order, the order is filed with the Sheriff under the *Family Support Orders Enforcement Act*;
- (b) in collateral is not effective against a trustee in bankruptcy if the security interest is unperfected at the date of bankruptcy or against a liquidator appointed under the *Winding-up Act* (Canada) if the security interest is unperfected at the date that the winding-up order is made;
  - (c) in goods, chattel paper, a document of title, an instrument, an intangible or money is subordinate to the interest of a transferee
    - (i) who acquires the interest under a transaction that is not a security agreement,
    - (ii) who gives value, and
    - (iii) who acquires the interest without knowledge of the security interest before the security interest is perfected.

#### Knowledge where acquisition in ordinary course of business

(2) For the purposes of paragraph (1)(c), a purchaser of an instrument or a security or a holder of a negotiable document of title who acquired the instrument, security or document of title in a transaction that was entered into in the ordinary course of the transferor's business has knowledge of the security interest only if the purchaser or holder acquired the security interest with knowledge that the transaction violates the terms of the security agreement that creates or provides for the security interest. S.Nu. 2010,c.15,s.107(16); S.Nu. 2012,c.16,s.65.

#### Measure of damages

**21.** Where the interest of a lessor under a lease for a term of more than one year or of a consignor under a commercial consignment is not effective against a person referred to in paragraph 20(1)(a) or against a trustee in bankruptcy or a liquidator under paragraph 20(1)(b), the lessor or consignor is deemed as against the lessee or consignee,

as the case may be, to have suffered immediately before the seizure of the leased or consigned goods or the date of bankruptcy or winding-up order, damages in an amount equal to

- (a) the value of the leased or consigned goods at the date of the seizure, bankruptcy or winding-up order; and
- (b) the amount of loss, other than that referred to in paragraph (a), resulting from the termination of the lease or consignment.

Priority of purchase money security interests

**22.** (1) A purchase money security interest in

- (a) collateral, other than an intangible, that is perfected not later than 15 days after the day
  - (i) the debtor obtains possession of the collateral, or
  - (ii) a third party, at the request of the debtor, obtains possession of the collateral,
 whichever first occurs, or
- (b) an intangible that is perfected not later than 15 days after the day the security interest attaches,

has priority over the interest of persons mentioned in paragraphs 20(1)(a) and (b).

Meaning of possession

(2) For the purposes of this section, where goods are shipped by common carrier to a debtor or to a third party designated by the debtor, the debtor does not obtain possession of the goods until either the debtor or the third party obtains actual possession of the goods or a document of title to the goods.

Continuity of perfection

**23.** (1) If a security interest is perfected under this Act and is again perfected in some other way under this Act without an intermediate period when it is unperfected, the security interest is continuously perfected for the purposes of this Act.

Priority when security interest transferred

(2) A transferee of a security interest has the same priority with respect to perfection of the security interest as the transferor had at the time of the transfer.

Perfection by possession

**24.** (1) Except where possession is a result of seizure or repossession and subject to section 19, possession of the collateral by the secured party, or on behalf of the secured party by another person, perfects a security interest in

- (a) chattel paper;
- (b) goods;
- (c) an instrument;
- (d) **repealed, S.Nu. 2010,c.15,s.107(17)(a);**
- (e) a negotiable document of title; and
- (f) money.

**Meaning of possession**

(2) For the purposes of subsection (1), a secured party does not have possession of collateral that is in the actual or apparent possession or control of the debtor or an agent of the debtor.

**Perfection of certificated security by delivery**

(3) Subject to section 19, a secured party may perfect a security interest in a certificated security by taking delivery of the certificated security under section 68 of the *Securities Transfer Act*.

**Perfection of certificated security in registered form**

(4) Subject to section 19, a security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 68 of the *Securities Transfer Act* and remains perfected by delivery until the debtor obtains possession of the security certificate. S.Nu. 2010,c.15,s.107(17).

**Perfection of security interest in investment property**

**24.1.** (1) Subject to section 19, a security interest in investment property may be perfected by control of the collateral under subsection 1(1.1).

**Duration of perfection**

(2) Subject to section 19, a security interest in investment property is perfected by control under subsection 1(1.1) from the time the secured party obtains control and remains perfected by control until

- (a) the secured party does not have control; and
- (b) one of the following occurs:
  - (i) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate,
  - (ii) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner, or
  - (iii) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

S.Nu. 2010,c.15,s.107(18).

**Perfection by registration**

**25.** Subject to section 19, registration of a financing statement perfects a security interest in collateral.

**Temporary perfection**

- 26.** (1) Despite section 10, a security interest perfected as described in section 24 in
- (a) an instrument or a certificated security that a secured party delivers to the debtor for the purpose of
    - (i) sale or exchange,
    - (ii) presentation, collection or renewal, or
    - (iii) registration of a transfer, or

- (b) a negotiable document of title or in goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for the purpose of
  - (i) sale or exchange,
  - (ii) loading, unloading, storing, shipping or trans-shipping, or
  - (iii) manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange,

remains perfected for the first 15 days after the collateral comes under the control of the debtor.

#### Expiry of temporary extension

(2) After the expiration of the 15 days referred to in subsection (1), a security interest referred to in this section is subject to the provisions of this Act relating to the perfection of a security interest. S.Nu. 2010,c.15,s.107(19); S.Nu. 2013,c.20,s.32(2).

#### Perfection where goods in possession of bailee

**27.** (1) Subject to section 19, a security interest in goods in the possession of a bailee is perfected by

- (a) the issuance of a document of title by the bailee in the name of the secured party;
- (b) the perfection of a security interest in a negotiable document of title to the goods where the bailee has issued one;
- (c) the possession on behalf of the secured party as described in section 24; or
- (d) the registration of a financing statement relating to the goods.

#### Security interest in goods

(2) The issuance of a negotiable document of title covering goods does not preclude any other security interest in the goods from arising during the period that the negotiable document of title is outstanding.

#### Priority of security interest in negotiable document of title

(3) A perfected security interest in a negotiable document of title covering goods takes priority over a security interest in goods otherwise perfected after the goods become covered by the negotiable document of title.

#### Security interest in proceeds

**28.** (1) Subject to the other provisions of this Act, where collateral is dealt with or otherwise gives rise to proceeds, the security interest

- (a) continues in the collateral unless the secured party expressly or impliedly authorizes the dealing, and
- (b) extends to the proceeds,

but where the secured party enforces a security interest against both the collateral and the proceeds, the amount secured by the security interest in the collateral and the proceeds is limited to the market value of the collateral at the date the collateral is dealt with.

#### Limitation for investment property

(1.1) The limitation of the amount secured by a security interest as provided in subsection (1) does not apply if the collateral is investment property.

#### Continuity of perfection

(2) A security interest in proceeds is a continuously perfected security interest if the interest in the original collateral is perfected by registration of a financing statement that

- (a) contains a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind;
- (b) covers the original collateral, if the proceeds are of a kind that are within the description of the original collateral; or
- (c) covers the original collateral, if the proceeds consist of money, cheques or deposit accounts in a financial institution.

#### Temporary perfection

(3) Where the security interest in the original collateral is perfected other than in a manner referred to in subsection (2), the security interest in the proceeds is a continuously perfected security interest but becomes unperfected on the expiration of 15 days after the security interest in the original collateral attaches to the proceeds, unless the security interest in the proceeds is otherwise perfected by any of the methods and under the circumstances set out in this Act for original collateral of the same kind.  
S.Nu. 2010,c.15,s.107(20).

#### Security interest in returned or repossessed goods

**29.** (1) Where a debtor sells or leases goods that are subject to a security interest under circumstances in which the buyer or lessee takes free of the security interest under paragraph 28(1)(a) or section 30, the security interest reattaches to the goods if

- (a) the goods are returned to or seized or repossessed by the debtor or by a transferee of chattel paper created by the sale or lease; and
- (b) the obligation secured by the security interest remains unpaid or unperformed.

#### Perfection and time of registration or perfection

(2) Where a security interest reattaches under subsection (1), the perfection of the security interest and the time of registration or perfection are determined as if the goods had not been sold or leased, if the security interest was perfected by registration at the time of the sale or lease and the registration is effective at the time of the return, seizure or repossession.

### Security interest of transferee of account or chattel paper

- (3) Where a sale or lease of goods creates an account or chattel paper and
- (a) the account or chattel paper is transferred, and
  - (b) the goods are returned to or seized or repossessed by the seller or lessor or the transferee of the chattel paper,

the transferee of the account or chattel paper has a security interest in the goods that attaches when the goods are returned, seized or repossessed.

### Temporary perfection

(4) A security interest in goods arising under subsection (3) is perfected if the security interest in the account or chattel paper was perfected at the time of the return, seizure or repossession, but becomes unperfected on the expiration of 15 days after the return, seizure or repossession unless the transferee registers a financing statement relating to the security interest or takes possession of the goods by seizure, repossession or otherwise before the expiration of that period.

### Priority of transferee of account

(5) A security interest in goods that a transferee of an account has under subsection (3) is subordinate to a perfected security interest arising under subsection (1) and to a security interest of a transferee of chattel paper arising under subsection (3).

### Priority of transferee of chattel paper

(6) A security interest in goods that a transferee of chattel paper has under subsection (3) has priority over

- (a) a security interest in the goods reattaching under subsection (1), and
- (b) a security interest in the goods as after-acquired property that attaches on the return, seizure or repossession of the goods,

if the transferee of the chattel paper would have priority under subsection 31(6) as to the chattel paper over a security interest in the chattel paper claimed by the holder of the security interest in the goods.

### Priority of security interest in goods given by buyer or lessee

(7) A security interest in goods given by a buyer or lessee of the goods referred to in subsection (1) that attaches while the goods are in the possession of the buyer, lessee or debtor and that is perfected when the goods are returned, seized or repossessed has priority over a security interest in the goods arising under this section.

### Definitions

**30.** (1) For the purposes of this section,

"buyer of goods" includes a person who obtains vested rights in goods pursuant to a contract to which the person is a party, as a consequence of the goods becoming a fixture or accession to property in which the person has an interest; (*acheteur d'objets*)



"ordinary course of business of the seller" includes the supply of goods in the ordinary course of business as part of a contract for services and materials; (*cours normal des affaires du vendeur*)

"seller" includes a person who supplies goods that become a fixture or accession pursuant to a contract with a buyer of goods or pursuant to a contract with a person who is party to a contract with a buyer of goods. (*vendeur*)

Goods sold or leased in ordinary course of business

(2) A buyer or lessee of goods sold or leased in the ordinary course of business of the seller or lessor takes free of any perfected or unperfected security interest given by the seller or lessor or arising under section 28 or 29, whether or not the buyer or lessee knows of it, unless the buyer or lessee also knows that the sale or lease constitutes a breach of the security agreement under which the security interest was created.

Priority of buyer or lessee of consumer goods

(3) A buyer or lessee of goods that are acquired as consumer goods takes free of a perfected or unperfected security interest in the goods if the buyer or lessee

- (a) gave value for the interest acquired; and
- (b) bought or leased the goods without knowledge of the security interest.

Where subsection (3) does not apply

(4) Subsection (3) does not apply to a security interest in

- (a) a fixture; or
- (b) goods, the purchase price of which exceeds \$1,000 or, in the case of a lease, the market value of which exceeds \$1,000.

Priority where temporary perfection

(5) A buyer or lessee of goods takes free of a security interest that is temporarily perfected by subsection 26(1), 28(3) or 29(4) or a security interest the perfection of which is continued under section 51 during any of the 15-day periods referred to in those subsections or section 51, if the buyer or lessee

- (a) gave value for the interest acquired; and
- (b) bought or leased the goods without knowledge of the security interest.

Priority where sale or lease

(6) Where goods are sold or leased, the buyer or lessee takes free from any security interest in the goods perfected under section 25 if

- (a) the buyer or lessee bought or leased the goods without knowledge of the security interest; and
- (b) the goods were not described by serial number in the registration relating to the security interest.

**Application of subsection (6)**

(7) Subsection (6) applies only to goods that are equipment and are of a kind prescribed as serial numbered goods.

**Sale**

(8) A sale referred to in subsection (2), (3), (5) or (6) may be for cash, by exchange for other property or on credit, and includes delivering goods or a document of title under a pre-existing contract for sale but does not include a transfer as security for, or in total or partial satisfaction of, a money debt or past liability.

**Lease**

(9) A lease referred to in subsection (2), (3), (5) or (6) may be for cash, by exchange for other property or on credit.

**Acquiring security free from security interest**

**30.1.** (1) A purchaser of a security, other than a secured party, who

- (a) gives value,
- (b) does not know that the transaction constitutes a breach of a security agreement granting a security interest in the security to a secured party that does not have control of the security, and
- (c) obtains control of the security,

acquires the security free from the security interest.

**No requirement to determine certain facts**

(2) A purchaser referred to in subsection (1) is not required to determine whether a security interest has been granted in the security or whether the transaction constitutes a breach of a security agreement.

**No action against purchaser for value without notice of breach**

(3) An action based on a security agreement creating a security interest in a financial asset, however framed, may not be brought against a person who acquires a security entitlement under section 95 of the *Securities Transfer Act* for value and who did not know that there has been a breach of the security agreement.

**No requirement to determine certain facts**

(4) A person who acquires a security entitlement under section 95 of the *Securities Transfer Act* is not required to determine whether a security interest has been granted in a financial asset or whether there has been a breach of the security agreement.

**No action against subsequent purchaser**

(5) If an action based on a security agreement creating a security interest in a financial asset could not be brought against an entitlement holder under subsection (3), it may not be brought against a person who purchases a security entitlement, or an interest in it, from the entitlement holder. S.Nu. 2010,c.15,s.107(21).

### Priority of holder of money

- 31.** (1) A holder of money has priority over a security interest in it perfected as described in section 25 or temporarily perfected by subsection 28(3) if the holder
- (a) acquired the money without knowledge that it is subject to a security interest; or
  - (b) is a holder for value, whether or not the holder acquired the money without knowledge that it is subject to a security interest.

### Priority where debtor initiated payment

(2) A creditor who receives payment of a debt owing by a debtor through a debtor-initiated payment has priority over a security interest in the funds paid, the intangible that was the source of the payment and any instrument used to effect the payment, whether or not the creditor has knowledge of the security interest at the time of the payment.

### "debtor-initiated payment" defined

(2.1) In subsection (2), "debtor-initiated payment" means a payment made by the debtor through the use of

- (a) an instrument or an electronic funds transfer; or
- (b) a debit, a transfer order, an authorization or a similar written payment mechanism executed by the debtor when the payment is made.

### Priority of purchaser of instrument or security

(3) A purchaser of an instrument has priority over a security interest in the instrument or security perfected under section 25 or temporarily perfected under subsection 26(1) or 28(3) if the purchaser

- (a) gave value for the instrument;
- (b) acquired the instrument without knowledge that it is subject to a security interest; and
- (c) took possession of the instrument.

### Priority of holder of negotiable instrument

(4) A holder to whom a negotiable document of title is negotiated has priority over a security interest in the document of title that is perfected under section 25 or temporarily perfected under subsection 26(1) or 28(3) if the holder

- (a) gave value for the document of title; and
- (b) acquired the document of title without knowledge that it is subject to a security interest.

### Knowledge of purchaser

(5) For the purposes of subsections (3) and (4), a purchaser of an instrument or a holder of a negotiable document of title who acquired it under a transaction entered into in the ordinary course of business of the purchaser or holder has knowledge only if the purchaser or holder acquired the interest with knowledge that the transaction violates the terms of the security agreement creating or providing for the security interest.

#### Priority of purchaser of chattel paper

(6) A purchaser of chattel paper who takes possession of it for new value and in the ordinary course of business of the purchaser has priority over any security interest in the chattel paper that

- (a) was perfected under section 25, if the purchaser does not have knowledge at the time of taking possession that the chattel paper is subject to a security interest; or
  - (b) has attached to proceeds of inventory under section 28, whatever the extent of the purchaser's knowledge.
- S.Nu. 2010,c.15,s.107(22).

#### Rights of protected purchaser

**31.1.** (1) This Act does not limit the rights of a protected purchaser of a security under the *Securities Transfer Act*.

#### Priority of protected purchaser's interest

(2) The interest of a protected purchaser of a security under the *Securities Transfer Act* takes priority over an earlier security interest, even if perfected, to the extent provided in that Act.

#### Rights under *Securities Transfer Act*

(3) This Act does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under the *Securities Transfer Act*. S.Nu. 2010,c.15,s.107(23).

#### Priority of liens

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

#### "transfer" defined

**33.** (1) For the purposes of this section, "transfer" includes a transfer under proceedings to enforce a judgment, a sale and the creation of a security interest.

#### Transfer of debtor's rights in collateral

(2) The rights of a debtor in collateral may be transferred consensually or by operation of law despite a provision in the security agreement that prohibits a transfer or states that a transfer constitutes default, but a transfer by the debtor does not prejudice the rights of the secured party under the agreement or otherwise, including the right to treat a prohibited transfer as an act of default. S.Nu. 2013,c.20,s.32(2)

### Definitions

**34.** (1) In this section, "non-proceeds security interest" or "non-proceeds purchase money security interest" means a security interest or purchase money security interest, as the case may be, in original collateral.

### Priority of purchase money security interest

(2) Subject to subsections 28(2) and (3) and subsection (6) of this section, a purchase money security interest in

- (a) collateral or its proceeds, other than intangibles or inventory, that is perfected not later than 15 days after the day the debtor obtains possession of the collateral or the day another person at the request of the debtor obtains possession of the collateral, whichever first occurs, or
- (b) an intangible or its proceeds that is perfected not later than 15 days after the day the security interest in the intangible attaches,

has priority over any other security interest in the same collateral given by the same debtor.

### Priority of purchase money security interest in inventory

(3) Subject to subsections 28(2) and (3) and subsection (6) of this section, a purchase money security interest in inventory or its proceeds has priority over any other security interest in the same collateral given by the same debtor if

- (a) the purchase money security interest in the inventory is perfected at the time the debtor obtains possession of the collateral or the time another person at the request of the debtor obtains possession of the collateral, whichever first occurs;
- (b) the secured party gives a notice to any other secured party who, before the time of registration of the purchase money security interest, registered a financing statement containing a description that includes the same item or kind of collateral;
- (c) the notice referred to in paragraph (b) states that the person giving the notice expects to acquire a purchase money security interest in inventory of the debtor, and describes the inventory by item or kind; and
- (d) the notice is given before the debtor obtains possession of the collateral or before another person at the request of the debtor obtains possession of the collateral, whichever first occurs.

### Service of notice

(4) A notice referred to in subsection (3) may be given in accordance with section 68 or by registered mail addressed to the address of the person to be notified as it appears in the financing statement referred to in paragraph (3)(b).

#### Priority of purchase money security interest

(5) Subject to subsections 28(2) and (3), a purchase money security interest in goods and their proceeds, taken by a seller, lessor or consignor of the collateral, that is perfected

- (a) in the case of inventory, on the day a debtor obtains possession of the collateral or the day another person at the request of the debtor obtains possession of the collateral, whichever first occurs; and
- (b) in the case of collateral other than inventory, no later than 15 days after a debtor obtains possession of the collateral or after another person at the request of the debtor obtains possession of the collateral, whichever first occurs, has priority over any other purchase money security interest in the same collateral given by the same debtor.

#### Priority of non-proceeds security interest in accounts

(6) A non-proceeds security interest in accounts given for new value has priority over a purchase money security interest in the accounts as proceeds of inventory if a financing statement relating to the non-proceeds security interest in the accounts is registered before the purchase money security interest is perfected or a financing statement relating to it is registered.

#### Where subsection (6) does not apply

(6.1) Subsection (6) does not apply to an account in the form of a deposit with a deposit-taking institution.

#### Priority of non-proceeds purchase money security interest

(7) A non-proceeds purchase money security interest has priority over a purchase money security interest in the same collateral or proceeds if the non-proceeds purchase money security interest is perfected

- (a) in the case of inventory, on the day a debtor obtains possession of the collateral or the day another person at the request of the debtor obtains possession of the collateral, whichever first occurs, and
- (b) in the case of collateral other than inventory, not later than 15 days after a debtor obtains possession of the collateral or after another person at the request of the debtor obtains possession of the collateral, whichever first occurs.

#### Possession where goods shipped by common carrier

(8) For the purposes of this section, where goods are shipped by common carrier to a debtor or to a person designated by a debtor, the debtor is deemed not to have obtained possession of the goods until either the debtor or the person designated by the debtor has obtained actual possession of the goods or a document of title to the goods.

Where purchase money security interest in proceeds does not continue

(9) A purchase money security interest in collateral does not extend to or continue in the proceeds of the collateral after the obligation to pay all or part of the purchase price of the collateral or to repay value given to enable the debtor to acquire rights in the collateral has been discharged.

Priority of security interest in crops

(10) A perfected security interest in crops or their proceeds given for value to enable a debtor to produce or harvest the crops and given while the crops are growing crops or during a period of six months immediately prior to the time when the crops become growing crops has priority over any other security interest in the same collateral given by the same debtor.

Priority of security interest in animals

(11) A perfected security interest in animals or their proceeds given for value to enable the debtor to acquire food, drugs or hormones to be fed to or placed in the animals has priority over any other security interest in the same collateral given by the same debtor other than a perfected purchase money security interest.

Residual priority rules

**35.** (1) Where this Act provides no other method for determining priority between security interests,

- (a) priority between conflicting perfected security interests in the same collateral is determined by the order in which the following occurred:
  - (i) the registration of a financing statement without regard to the date of attachment of the security interest,
  - (ii) possession of the collateral as described in section 24 without regard to the date of attachment of the security interest, or
  - (iii) perfection under section 5, 7, 7.1, 26, 29 or 73;
- (b) a perfected security interest has priority over an unperfected security interest; and
- (c) priority between conflicting unperfected security interests is determined by the order of attachment of the security interests.

Method where continuous perfection

(2) For the purposes of subsection (1), a continuously perfected security interest is to be treated at all times as perfected by the method by which it was originally perfected.

Time of registration, possession or perfection of proceeds

(3) For the purposes of subsection (1), but subject to subsections 28(2) and (3), the time of registration, possession or perfection of a security interest in original collateral is also the time of registration, possession or perfection of its proceeds.

#### Registration where serial numbered goods

(4) A security interest in goods that are equipment and are of a kind prescribed as serial numbered goods is not registered or perfected by registration for the purposes of subsection 34(2) or subsection (1), (7) or (8) of this section unless a financing statement relating to the security interest and containing a description of the goods by serial number is registered.

#### Priority of advances

(5) Subject to subsection (6), the priority which a security interest has under subsection (1) applies to all advances, including future advances.

#### Priority of unsecured creditors

(6) A perfected security interest has priority over the interests of persons referred to in paragraph 20(1)(a) only to the extent of

- (a) advances made before the interests of such persons arise, or made before the Sheriff seizes the collateral or obtains a right to it under the *Seizures Act* or *Creditors Relief Act*;
- (b) advances made before the secured party acquires knowledge of
  - (i) the interests of such persons,
  - (ii) seizure of the collateral by the Sheriff, or
  - (iii) an order giving the Sheriff rights to the collateral;
- (c) advances made pursuant to
  - (i) a statutory requirement, or
  - (ii) a legally binding obligation owing to a person other than the debtor and entered into by the secured party before the secured party acquires the knowledge of the interests, seizure or order referred to in paragraph (b); and
- (d) reasonable costs and expenses incurred by the secured party for the protection, preservation, maintenance or repair of the collateral.

#### Lapse of registration

(7) Where registration of a security interest lapses as a result of a failure to renew the registration or where a registration is discharged without authorization or in error and the secured party re-registers the security interest within 30 days after the lapse or discharge, the lapse or discharge does not affect the priority status of the security interest in relation to a competing perfected security interest that, immediately prior to the lapse or discharge, had a subordinate priority status, except to the extent that such competing security interest secures advances made or contracted for after the lapse or discharge and prior to the re-registration.

#### Priority of security interest where debtor transfers interest

(8) Where a debtor transfers an interest in collateral that at the time of the transfer is subject to a perfected security interest, that security interest has priority over any other security interest granted by the transferee before the transfer except to the extent that the security interest granted by the transferee secures advances made or contracted for



- (a) after the expiry of 15 days from the day the secured party who holds the security interest in the transferred collateral has knowledge of the information required to register a financing change statement showing the transferee as the new debtor; and
- (b) before the secured party amends the registration to disclose the name of the transferee as the new debtor or takes possession of the collateral.

Where subsection (8) does not apply

(9) Subsection (8) does not apply where the transferee acquires the interest of the debtor free from the security interest granted by the debtor.

S.N.W.T. 1999,c.5,Sch.C,s.2; S.Nu. 2010,c.15,s.107(24).

Priority among conflicting security interests

**35.1.** (1) The rules in this section govern priority among conflicting security interests in the same investment property.

Secured party with control

(2) A security interest of a secured party having control of investment property under subsection 1(1.1) has priority over a security interest of a secured party that does not have control of the investment property.

Certificated security perfected by delivery

(3) A security interest in a certificated security in registered form that is perfected by taking delivery under subsection 24(3) and not by control under section 24.1 has priority over a conflicting security interest perfected by a method other than control.

Rank by priority in time

(4) Except as otherwise provided in subsections (5) and (6), conflicting security interests of secured parties each of which has control under subsection 1(1.1) rank according to priority in time

- (a) if the collateral is a security, obtaining control;
- (b) if the collateral is a security entitlement carried in a securities account,
  - (i) the secured party's becoming the person for which the securities account is maintained, if the secured party obtained control under paragraph 25(1)(a) of the *Securities Transfer Act*,
  - (ii) the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account, if the secured party obtained control under paragraph 25(1)(b) of the *Securities Transfer Act*, or

- (iii) if the secured party obtained control through another person under paragraph 25(1)(c) of the *Securities Transfer Act*, when the other person obtained control; and
- (c) if the collateral is a futures contract carried with a futures intermediary, the satisfaction of the requirement for control specified in subparagraph 1(1.1)(d)(ii) with respect to futures contracts carried or to be carried with the futures intermediary.

#### Securities intermediary

(5) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

#### Futures intermediary

(6) A security interest held by a futures intermediary in a futures contract or a futures account maintained with the futures intermediary has priority over a conflicting security interest held by another secured party.

#### Interests granted by broker, intermediary

(7) Conflicting security interests granted by a broker, securities intermediary or futures intermediary that are perfected without control under subsection 1(1.1) rank equally.

#### Priority determined by section 35

(8) In any case not provided for by subsections (2) to (7), priority among conflicting security interests in investment property is governed by section 35. S.Nu. 2010,c.15,s.107(25).

#### "secured party" defined

**36.** (1) In this section, "secured party" includes a receiver.

#### Application of section

(2) Subject to the regulations, this section applies only with respect to land for which a certificate of title has been issued under the *Land Titles Act*.

#### Priority of security interest in goods before becoming fixtures

(3) Except as provided in this section and in section 30, a security interest in goods that attaches before or at the time the goods become fixtures has priority with respect to the goods over a claim to the goods made by a person with an interest in the land.

#### Where security interest subordinate

(4) A security interest referred to in subsection (3) is subordinate to the interest of a person who, without fraud and before the security interest is registered in accordance with section 49,

- (a) acquires for value an interest in the land after the goods become fixtures, including an assignee for value of a person with an interest in the land at the time the goods become fixtures;
- (b) has a registered mortgage on the land and, after the goods become fixtures,
  - (i) makes an advance under the mortgage, but only with respect to the advance, or
  - (ii) obtains, in a foreclosure action, an order *nisi* for sale or foreclosure or, where no order *nisi* is made, an order confirming sale and vesting title or an order for foreclosure; or
- (c) obtains a vesting order with respect to the land after the goods become fixtures.

#### Priority of security interest in goods after goods become fixtures

(5) A security interest in goods that attaches after the goods become fixtures is subordinate to the interest of a person who

- (a) has an interest in the land at the time the goods become fixtures and who
  - (i) has not consented to the security interest,
  - (ii) has not disclaimed an interest in the goods or fixtures,
  - (iii) has not entered into an agreement under which the person is entitled to remove the goods, and
  - (iv) is not otherwise precluded from preventing the debtor from removing the goods; or
- (b) acquires an interest in the land after the goods become fixtures, if the interest is acquired without fraud and before the security interest in the goods is registered in accordance with section 49.

#### When security interest in fixtures subordinate

(6) A security interest referred to in subsection (3) or (5) is subordinate to the interest of a creditor of the debtor who causes to be registered a writ of execution, judgment, order, certificate or similar instrument authorized to be registered under an Act in the appropriate land titles office after the goods become fixtures and before the security interest is registered in accordance with section 49.

#### Priority of purchase money security interest

(7) The interest of a creditor referred to in subsection (6) does not take priority over a purchase money security interest in goods in respect of which a notice is filed in accordance with section 49 not later than 15 days after the goods are affixed to the land.

### Removal of goods

(8) A secured party who, under this Act, has the right to remove goods from land shall exercise the right of removal in a manner that

- (a) causes no greater damage or injury to the land or to other property situated on it than is necessarily incidental to the removal of the goods; and
- (b) puts the occupier of the land to no greater inconvenience than is necessarily incidental to the removal of the goods.

### Reimbursement for damages

(9) A person, other than the debtor, who has an interest in the land at the time the goods subject to the security interest are affixed to the land is entitled to reimbursement for any damages to his or her interest in the land caused during the removal of the goods, but that person is not entitled to reimbursement for reduction in the value of the land caused by the absence of the goods removed or by the necessity of replacement.

### Refusal of permission

(10) A person entitled to reimbursement under subsection (9) may refuse permission to remove the goods until the secured party gives adequate security for reimbursement.

### Application to Court

(11) On application by a secured party, the Nunavut Court of Justice may make any one or more of the following orders:

- (a) an order determining the person entitled to reimbursement under this section;
- (b) an order determining the amount and kind of security to be provided by the secured party;
- (c) an order stating the depository for the security;
- (d) an order authorizing the removal of the goods without the provision of security for reimbursement under subsection (10).

### Retention of goods until payment

(12) A person who has an interest in the land that is subordinate to a security interest under this section may, before the goods are removed from the land by the secured party who has the security interest, retain the goods on payment to the secured party of the lesser of

- (a) the amount secured by the security interest having priority over the interest in land; and
- (b) the market value of the goods if they were removed.

### Notice of intention to remove

(13) Where a secured party has a right to remove goods from land and intends to do so, he or she shall give to each person who appears by the records of the land titles office to have an interest in the land a notice of intention to remove the goods.

### Contents of notice

- (14) A notice referred to in subsection (13) must contain
- (a) the name and address of the secured party;
  - (b) a description of the goods to be removed;
  - (c) a statement of the amount required to satisfy the obligation secured by the security interest;
  - (d) the market value of the goods;
  - (e) a description of the land to which the goods are affixed; and
  - (f) a statement of intention to remove the goods unless the amount referred to in subsection (12) is paid on or before a specified date that is not less than 15 days after the notice is given in accordance with subsection (15).

### Service of notice

(15) A notice referred to in subsection (13) must be given at least 15 days before removal of the goods and may be given in accordance with section 68 or by registered mail addressed to the post office address of the person to be notified as it appears in the records of the land titles office.

### Application to Court

(16) A person entitled to receive a notice under subsection (13) may apply to the Nunavut Court of Justice for an order postponing removal of the goods from the land. S.Nu. 2013,c.20,s.32(2).

### "secured party" defined

**37.** (1) In this section, "secured party" includes a receiver.

### Application of section

(2) Subject to the regulations, this section applies only with respect to land for which a certificate of title has been issued under the *Land Titles Act*.

### Priority of security interest in crops

(3) Except as provided in this section, a security interest in growing crops has priority with respect to the crops over an interest in the crops claimed by a person with an interest in the land.

### Where security interest subordinate

(4) A security interest in growing crops is subordinate to the interest of a person who, without fraud and before the security interest is registered in accordance with section 49,

- (a) acquires for value an interest in the land while the crops are growing crops, including a person who is an assignee for value of the interest of a person with an interest in the land while the crops are growing crops;
- (b) has a registered mortgage on the land and who, after the crops become growing crops,

- (i) makes an advance under the mortgage, but only with respect to the advance, or
- (ii) obtains, in a foreclosure action, an order *nisi* for sale or foreclosure or, where no order *nisi* is made, an order confirming sale and vesting title or an order for foreclosure; or
- (c) obtains a vesting order with respect to the land after the crops become growing crops.

#### When security interest in crops subordinate

(5) A security interest in growing crops is subordinate to the interest of a creditor of the debtor who causes to be registered a writ of execution, judgment, order, certificate or similar instrument authorized to be registered under an Act in the appropriate land titles office before the security interest is registered in accordance with section 49.

#### Interest of creditor

(6) The interest of a creditor referred to in subsection (5) does not take priority over a purchase money security interest in the crops or a security interest in the crops referred to in subsection 34(10) where the purchase money security interest or the security interest in crops is registered in accordance with section 49 not later than 15 days after the time the security interest in the crops attaches.

#### Seizure and removal of crops

(7) Subsections 36(8) to (16) apply, with such modifications as the circumstances require, to seizure and removal of growing crops from the land.

#### Definitions

**37.1.** (1) In this section,

"rents" means the amounts payable or to be paid under a lease of land, an easement or an agreement recognized by statute to be an easement; (*loyers*)

"secured party" includes a receiver. (*créancier garanti*)

#### Application of section

(2) Subject to the regulations, this section applies only with respect to land for which a certificate of title has been issued under the *Land Titles Act*.

#### Priority of security interest in rents

(3) Except as provided in this section, a security interest in rents has priority with respect to the rents over a claim to the rents made by a person with an interest in the land.

#### Where security interest subordinate

(4) A security interest in rents is subordinate to the interest of a person who, without fraud, after the security interest in rents attaches and before the security interest is registered in accordance with section 49,

- (a) acquires for value an interest in the land;
- (b) has a registered mortgage on the land and
  - (i) makes an advance under the mortgage, but only with respect to the advance, or
  - (ii) obtains, in a foreclosure action, an order *nisi* for sale or foreclosure or, where no order *nisi* is made, an order confirming sale and vesting title or an order for foreclosure;
 or
- (c) obtains a vesting order with respect to the land.

*Idem*

(5) A security interest in rents is subordinate to the interest of a person who has an interest in the land at the time the security interest in rents attaches and who

- (a) has not consented to the security interest;
- (b) has not disclaimed an interest in the rents; and
- (c) has not entered into an agreement under which the person with the security interest in rents is entitled to the rents.

Priority of writ of execution, etc.

(6) A security interest in rents is subordinate to the interest of a creditor of the debtor who causes to be registered a writ of execution, judgment, order, certificate or similar instrument authorized to be registered under an Act in the appropriate land titles office before the security interest is registered in accordance with section 49.

Priority of purchase money security interest

(7) The interest of a creditor referred to in subsection (6) does not take priority over a purchase money security interest in rents in respect of which a notice is filed in accordance with section 49 not later than 15 days after the purchase money security interest attaches.

## Definitions

**38.** (1) In this section,

"other goods" means goods to which an accession is installed or fixed; (*autres objets*)

"the whole" means an accession and the goods to which the accession is installed or affixed; (*le tout*)

"secured party" includes a receiver. (*créancier garanti*)

Priority of security interest in goods before becoming accession

(2) Except as provided in this section and section 30, a security interest in goods that attaches before or at the time the goods become an accession has priority with respect to the goods over a claim to the goods as an accession made by a person with an interest in the whole.

#### Priority of security interest in the whole after goods become accession

(3) A security interest referred to in subsection (2) is subordinate to the interest of a person who, without knowledge of the security interest in the accession and before it is perfected, after the goods become an accession,

- (a) acquires for value an interest in the whole, including an assignee for value of a person with an interest in the whole at the time the goods become an accession; or
- (b) has a security interest taken and perfected in the whole and who
  - (i) makes an advance under a security agreement, but only with respect to the advance, or
  - (ii) acquires the right to retain the whole in satisfaction of the obligation secured by the security interest.

#### Priority of security interest in goods after becoming accession

(4) A security interest in goods that attaches after the goods become an accession is subordinate to the interest of a person who

- (a) has an interest in the goods to which the accession is installed or affixed at the time the goods become an accession and who
  - (i) has not consented to the security interest,
  - (ii) has not disclaimed an interest in the goods or accession,
  - (iii) has not entered into an agreement under which the person is entitled to remove the accession, and
  - (iv) is not otherwise precluded from preventing the debtor from removing the accession; or
- (b) acquires an interest in the whole after the goods become an accession, if such interest is acquired without knowledge of the security interest in the accession and before the security interest in the accession is perfected.

#### When security interest on accession subordinate

(5) A security interest referred to in subsection (2) or (4) is subordinate to the interest of a creditor or a Sheriff who has seized or caused the whole to be seized under legal process to enforce a judgment, if the seizure occurs under circumstances referred to in section 20 and if the security interest is not perfected at the time of seizure.

#### Priority of purchase money security interest

(6) The interest of a creditor or a Sheriff referred to in subsection (5) does not take priority over a purchase money security interest in goods that is perfected not later than 15 days after the goods become an accession.

#### Removal of accession goods

(7) A secured party who, under this Act, has the right to remove an accession from the whole shall exercise this right of removal in a manner that

- (a) causes no greater damage or injury to the whole or the goods to which the accession is installed or affixed than is necessarily incidental to the removal of the accession; and



- (b) puts the person in possession of the whole to no greater inconvenience than is necessarily incidental to the removal of the accession.

#### Reimbursement for damages

(8) A person, other than the debtor, who has an interest in the whole at the time the goods become an accession is entitled to reimbursement for any damages to his or her interest in the whole caused during the removal of the accession, but is not entitled to reimbursement for reduction in the value of the whole caused by the absence of the accession or by the necessity of replacement.

#### Refusal of permission

(9) The person entitled to reimbursement under subsection (8) may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement.

#### Application to Court

(10) On application by the secured party, the Nunavut Court of Justice may make one or more of the following orders:

- (a) an order determining the person entitled to reimbursement under this section;
- (b) an order determining the amount and kind of security to be provided by the secured party;
- (c) an order stating the depository for the security;
- (d) an order authorizing the removal of the accession without the provision of security for reimbursement under subsection (9).

#### Retention of goods until payment

(11) A person who has an interest in the whole that is subordinate to a security interest under this section may, before the accession has been removed from the whole by the secured party, retain the accession on payment to the secured party of the lesser of

- (a) the amount secured by the security interest entitled to priority; and
- (b) the market value of the accession if it were removed.

#### Notice of intention to remove

(12) A secured party who has a right to remove the accession from the whole shall give a notice of intention to remove the accession

- (a) to each person who is known by the secured party to have an interest in the other goods or in the whole; and
- (b) to each person who has registered a financing statement
  - (i) using the name of the debtor and referring to the other goods, or
  - (ii) according to the serial number of the other goods where the other goods are of a kind prescribed as serial number goods.

### Contents of notice of intention

- (13) The notice of intention referred to in subsection (12) must contain
- (a) the name and address of the secured party;
  - (b) a description of the accession to be removed;
  - (c) a statement of the amount required to satisfy the obligation secured by the security interest;
  - (d) the market value of the accession;
  - (e) a description of the goods to which the accession is installed or affixed; and
  - (f) a statement of intention to remove the accession unless the amount referred to in subsection (11) is paid on or before a specified date that is not less than 15 days after the notice is given in accordance with subsection (14).

### Service of notice

(14) A notice referred to in subsection (12) must be given at least 15 days before removal of the accession and may be given in accordance with section 68 or by registered mail addressed to the address of the person to be notified as it appears on the financing statement.

### Application to Court

(15) On application by a person entitled to receive a notice under subsection (12), the Nunavut Court of Justice may make an order postponing removal of the accession. S.Nu. 2013,c.20,s.32(2).

### Processed or commingled goods

**39.** (1) A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass.

### Pro-rata share in product or mass

(2) Subject to subsections (4) and (6), where more than one perfected security interest continues in the same product or mass under subsection (1) and each was a security interest in separate goods, the security interests are continued in the product or mass according to the ratio that the obligation secured by each security interest bears to the sum of the obligations secured by all security interests.

### Perfection of security interest

(3) For the purposes of section 35, perfection of a security interest in goods that subsequently become part of a product or mass shall also be treated as perfection of the security interest in the product or mass.

### Value of obligation secured

(4) For the purposes of subsection (2), the obligation secured by a security interest may not exceed the market value of the goods on the day on which the goods become part of the product or mass.

#### Priority limited in value

(5) Where a perfected security interest continues in the product or mass under subsection (1), any priority the perfected security interest has over a perfected security interest in the product or mass is limited to the market value of the goods on the day on which they become part of the product or mass.

#### Priority of purchase money security interest

(6) A perfected purchase money security interest in goods that continues in the product or mass has priority over a non-purchase money security interest

- (a) in the goods that continues in the product or mass under subsection (1);
- (b) in the product or mass, other than as inventory, given by the same debtor; and
- (c) in the product or mass as inventory given by the same debtor if
  - (i) the secured party with the purchase money security interest gives a notice to the secured party with the non-purchase money security interest in the product or mass who registered a financing statement containing a description of collateral that includes the product or mass before the identity of the goods is lost in the product or mass,
  - (ii) the notice contains a statement that the person giving the notice has acquired or expects to acquire a purchase money security interest in goods supplied to the debtor as inventory, and
  - (iii) the notice is given before the identity of the goods is lost in the product or mass.

#### Service of notice

(7) A notice referred to in paragraph (6)(c) may be given in accordance with section 68 or by registered mail addressed to the address of the person to be notified as it appears in the financing statement referred to in paragraph (6)(c).

#### Non-application of section

(8) This section does not apply to a security interest in an accession to which section 38 applies.

#### Subordination of security interests

**40.** (1) A secured party may, in a security agreement or otherwise, subordinate the security interest of the secured party to any other interest, and such subordination is effective according to its terms between the parties and may be enforced by a third party if the third party is the person or one of a class of persons for whose benefit the subordination was intended.

### Where agreement to subordinate does not create security interest

(2) An agreement or undertaking to postpone or subordinate the following does not, by virtue of the postponement or subordination alone, create a security interest:

- (a) the right of a person to performance of all or any part of an obligation to the right of another person to the performance of all or any part of another obligation of the same debtor;
- (b) all or any part of the rights of a secured party pursuant to a security agreement to all or any part of the rights of another secured party pursuant to another security agreement with the same debtor.

### Definitions

**41.** (1) In this section,

"account debtor" means a person who is obligated under an intangible or chattel paper;  
(*débiteur d'un compte*)

"assignee" includes a secured party and a receiver. (*cessionnaire*)

### Priority of assignee of intangible or chattel paper

(2) Unless an account debtor has made an enforceable agreement not to assert any defence or claim arising out of a contract, the rights of an assignee of the intangible or chattel paper are subject to

- (a) the terms of the contract between the account debtor and the assignor and any defence or claim arising out of
  - (i) the contract, or
  - (ii) a contract closely connected to the contract, where the account debtor meets the requirements for an equitable set-off; and
- (b) any other defence or claim of the account debtor against the assignor that arises before the account debtor acquires knowledge of the assignment.

### Modification of contract

(3) A modification of or substitution for a contract, made in good faith and in accordance with reasonable commercial standards and without material adverse effect on the rights of the assignee under the contract or on the ability of the assignor to perform the contract is effective against the assignee unless the account debtor has otherwise agreed.

### Application of subsection (3)

(4) Subsection (3) applies

- (a) to the extent that an assigned right to payment arising out of the contract has not been earned by performance of the obligations under the contract; and
- (b) despite that there has been notice of the assignment to the account debtor.

### Rights of assignee

(5) Where a contract has been modified or substituted in the manner referred to in subsection (3), the assignee obtains rights that correspond to the rights of the assignor pursuant to the substituted or modified contract.

### Application of subsections (3) to (5) where agreement

(6) Nothing in subsections (3) to (5) affects the validity of a term in an assignment agreement that provides that a modification or substitution referred to in those subsections is a breach of contract by the assignor.

### Payment by account debtor

(7) Where collateral that is either an intangible or chattel paper is assigned, the account debtor may make payments under the contract to the assignor

- (a) before the account debtor receives a notice that
  - (i) states that the amount payable or to become payable under the contract has been assigned and payment is to be made to the assignee, and
  - (ii) identifies the contract under which the amount payable is to become payable; or
- (b) after the account debtor requests the assignee to furnish proof of the assignment and the assignee fails to furnish such proof within 15 days after the date of the request.

### Discharge of obligation

(8) Payment by an account debtor to an assignee pursuant to a notice referred to in paragraph (7)(a) discharges the obligation of the account debtor to the extent of the payment.

### Effect of restriction on assignment

(9) A term in a contract between an account debtor and an assignor that prohibits or restricts assignment of the whole of the account or chattel paper for money due or to become due is binding on the assignor, but only to the extent of making the assignor liable in damages for breach of contract, and is unenforceable against third parties. S.Nu. 2013,c.20,s.32(2).

## PART IV

### REGISTRATION

#### Personal Property Registry

**42.** (1) There shall be a registry known as the Personal Property Registry for the purpose of registrations under this Act and registrations under any other Act that permits or requires registrations to be made in the Registry.

Registration under other Act or regulations

- (2) Where another Act permits or requires registration in the Registry,
- (a) the registration must be in accordance with the regulations; and
  - (b) this Part applies to the registration unless the regulations otherwise provide.

Registrar

(3) The Minister may appoint an individual as Registrar of the Personal Property Registry.

Seal of office

(4) The Registrar may have a seal of office in the form prescribed.

Deputy Registrars

(5) The Minister may appoint one or more individuals as Deputy Registrar and may specify the powers and duties of the Deputy Registrars.

Duties of Registrar

(6) The Registrar shall direct and supervise the operation of the Registry.

Suspension of services

(7) When it is not practical, in the opinion of the Registrar, to provide access to the Registry or to provide one or more Registry services, the Registrar may refuse access to the Registry or otherwise suspend one or more of its services.

S.N.W.T. 1999,c.5,Sch.C,s.1(1)(b),3.

Place of registration

**43.** (1) A person may register a financing statement in the Registry at an office of the Registry in accordance with the regulations.

Agreement for alternative access to the Registry

(1.1) The Registrar may enter into an agreement with any person to provide access to the Registry on the terms and conditions that the Registrar considers advisable.

Alternative access to the Registry

(1.2) A person who has entered into an agreement with the Registrar under subsection (1.1) may register a financing statement in the Registry in accordance with the agreement and the regulations.

Effective time of registration

(2) Registration of a financing statement is effective from the time that a registration number, date and time is assigned to the registration in the Registry.

#### Payment of fees

(3) The Registrar may refuse to register a financing statement or to issue a search result under this Part until such fees as are prescribed in respect of registrations or searches, as the case may be, have been paid or arrangements for the payment of fees have been made.

#### Time for registration

(4) A financing statement may be registered before a security agreement is made and before a security interest attaches.

#### Reference to security agreements

(5) A financing statement may relate to more than one security agreement.

#### Defect, irregularity, omission or error in financing statement

(6) The validity of the registration of a financing statement is not affected by a defect, irregularity, omission or error in the financing statement or in its registration unless the defect, irregularity, omission or error is seriously misleading.

#### Where registration invalid

(7) Subject to subsection (9), where one or more debtors are required to be disclosed in a financing statement or where collateral is consumer goods of a kind that is prescribed as serial number goods, the registration is invalid if there is a seriously misleading defect, irregularity, omission or error in

- (a) the disclosure of any debtor, other than a debtor who does not own or have rights in the collateral; or
- (b) the serial number of the collateral.

#### Proof person actually misled

(8) Nothing in subsection (6) or (7) requires, as a condition to a finding that a defect, irregularity, omission or error is seriously misleading, proof that anyone was actually misled by it.

#### Failure to provide description

(9) Failure to provide a description in a financing statement in relation to any item or kind of collateral does not affect the validity of the registration with respect to other collateral.

#### Rejection of financing statement

(10) Despite anything in this Part, the Registrar may reject a financing statement when, in the opinion of the Registrar, it does not comply with this Act or the regulations or any other Act or regulations under which registration of a financing statement is authorized.

#### Reasons to be given

(11) Where the Registrar rejects a financing statement under subsection (10), the Registrar shall specify how the financing statement does not comply with an Act or regulations.

#### Alternative means of rejecting documents

(11.1) The Registrar shall determine how to give effect to subsections (10) and (11) where the Registrar has entered into an agreement under subsection (1.1).

#### Copy to be provided to debtor

(12) Unless a person entitled to a copy waives in writing the right to receive it, the secured party or person named as a secured party in a financing statement shall give to each person named as a debtor in the financing statement

- (a) a printed copy of the financing statement, not later than 30 days after it is registered; or
- (b) a copy of the statement used by the Registry to confirm registration, not later than 30 days after the statement is issued.  
S.N.W.T. 1999,c.5,Sch.C,s.4; S.Nu. 2013,c.20,s.32(2).

#### Time registration effective

**44.** (1) Subject to the regulations, a registration under this Act is effective for the period of time indicated in the financing statement by which the registration was effected or amended.

#### Renewal of registration

(2) A registration may be renewed by registering a financing change statement before the registration expires and, subject to the regulations, the period of time for which the registration is effective is extended by the renewal period indicated in the financing change statement.

#### Amendment of registration

(3) An amendment to a registration may be effected by registering a financing change statement during the period that the registration is effective, and the amendment is effective from the time when the financing change statement is registered to the expiry of the registration being amended.

#### Financing change statement

(4) When an amendment of a registration is not otherwise provided for in this Part, a financing change statement may be registered to amend the registration.

#### Registration of financing change statement

**45.** (1) Where a secured party with a registered security interest transfers the security interest or a part of it, a financing change statement disclosing the transferee as the secured party may be registered.



#### Part of interest transferred

(2) Where a financing change statement is registered under subsection (1) and an interest in part, but not all, of the collateral is transferred, the financing change statement must contain a description of the collateral in which the interest is transferred.

#### Registration by transferee where security interest not perfected

(3) Where a secured party transfers an interest in collateral and the security interest of the secured party has not been perfected by registration, a financing statement may be registered in which the transferee is disclosed as the secured party.

#### Registration of transfer

(4) A financing change statement disclosing a transfer of a security interest may be registered before or after the transfer.

#### Effect of registration

(5) After registration of a financing change statement disclosing a transfer of a security interest, the transferee is the secured party for the purposes of this Part.

#### Registration where subordination of security interest

(6) Where a security interest has been subordinated by the secured party to the interest of another person, a financing change statement may be registered to disclose the subordination at any time during the period that the registration of the subordinated security interest is effective.

#### Reproduction of registered financing statement

**46.** (1) Where a document is registered in the Registry, the Registrar may have the document reproduced by any means he or she considers appropriate and the reproduction shall be for all purposes deemed to be the document reproduced.

#### Removal of information in Registry

- (2) Information in a registration may be removed from the records of the Registry
- (a) when the registration is no longer effective or is superseded under section 73;
  - (b) on the registration of a financing change statement discharging or partially discharging the registration; or
  - (c) on receipt of an order of the Nunavut Court of Justice compelling the discharge or partial discharge of the registration.  
S.N.W.T. 1999,c.5,Sch.C,s.5; S.Nu. 2013,c.20,s.32(2).

#### Registration not constructive notice

**47.** Registration of a financing statement in the Registry is not constructive notice or knowledge of its existence or contents to any person.

## Request for searches

- 48.** (1) A person may request one or more of the following:
- (a) a search according to the name of a debtor and the issue of a search result;
  - (b) a search according to the serial number of goods of a kind prescribed to be serial number goods and the issue of a search result;
  - (c) a search according to a registration number and the issue of a search result;
  - (d) a printed result of a search referred to in paragraphs (a) to (c);
  - (e) a copy or certified copy reproduced on paper of any registered document;
  - (f) a search according to criteria other than those set out in paragraphs (a) to (c), where the regulations so provide.

## Method of obtaining search result

- (1.1) A person may search the records of the Registry and obtain a search result
- (a) at an office of the Registry; or
  - (b) in accordance with an agreement entered into with the Registrar under subsection 43(1.1).

## Proof of contents of printed search result

- (2) A printed search result that purports to be issued by the Registrar or Registry is admissible in evidence and, in the absence of evidence to the contrary, is proof of its contents, including
- (a) the date and time of registration of a financing statement to which the search result refers; and
  - (b) the order of registration of the financing statement as indicated by the registration number and date and time.

## Proof of registered document

(3) A copy of a registered financing statement or other registered document that purports to be certified by the Registrar or Registry is admissible in evidence as a true copy of the statement or document without proof of the office or signature of the person appearing to have signed it. S.N.W.T. 1999,c.5,Sch.C,s.6.

## Definitions

**49.** (1) In this section,

"debtor" includes any person named in a notice under this section as a debtor; (*débiteur*)

"Registrar" means a Registrar as defined in the *Land Titles Act*; (*registrateur*)

"secured party" includes any person named in a notice under this section as a secured party. (*créancier garanti*)

### Registration of security interest in fixture or growing crop

(2) A security interest in a fixture referred to in section 36, a security interest in growing crops referred to in section 37 and a security interest in rents referred to in section 37.1 may be registered by submitting a notice in the prescribed form to the land titles office for the registration district in which the land affected by the security interest is located.

### Memorandum of notice

(3) The Registrar of the land titles office to which a notice referred to in subsection (2) is submitted shall make a memorandum of the notice on the certificate of title in respect of the parcel of land to which the notice relates.

### Registration of renewal, amendment, transfer, discharge or subordination

(4) If a notice is registered in a land titles office under subsection (2) and the registration of the notice has not expired, a notice, in the prescribed form, of a renewal, amendment, transfer or discharge of the security interest to which the original notice relates or a notice, in the prescribed form, of a subordination of the security interest to another interest may be registered in the land titles office in accordance with the regulations and, on its being registered, the Registrar of the land titles office shall make a memorandum of it on the proper certificate of title.

### Rules for registration

(5) Subsections 43(4), (5), (6), (8), (9) and (12) and sections 44 and 45 apply to a notice registered under this section with such modifications as the circumstances require.

### Removal of registration of notice

(6) If a notice registered under this section expires or where the Registrar is satisfied the notice is discharged, the Registrar of the land titles office in which it was registered shall remove the registration of the notice in relation to the security interest and of any other notice that relates to the same security interest.

### Written demand to secured party

- (7) Where a notice is registered under this section and
- (a) all the obligations under the security agreement to which the notice relates have been performed,
  - (b) the secured party has agreed to release all or part of the collateral described in the notice,
  - (c) the description of the collateral contained in the notice includes an item of property that is not collateral under a security agreement between the secured party and the debtor,
  - (d) no security agreement exists between the secured party and the debtor, or
  - (e) the collateral described in the notice is not affixed to the land to which the notice relates,

the debtor named in the notice and any person who has a registered interest in the land may, by a demand in writing containing an address for reply and delivered to the secured party, require the secured party to submit for registration a document referred to in subsection (8).

#### Contents of demand

(8) A demand referred to in subsection (7) may require that the secured party, not later than 30 days after the demand is made, submit for registration

- (a) a notice in the prescribed form
  - (i) discharging the registration of the notice, in a case falling within paragraph (7)(a), (d) or (e),
  - (ii) amending or discharging the registration of the notice to reflect the terms of the agreement, in a case falling within paragraph (7)(b), or
  - (iii) amending the description of the collateral on the notice to exclude items or kinds of property that are not collateral under a security agreement between the secured party and the debtor, in a case falling within paragraph (7)(c); or
- (b) an order of the Nunavut Court of Justice confirming that the registration need not be amended or discharged.

#### Failure to comply

(9) Where a secured party fails to comply with a demand referred to in subsection (7), the person making the demand may submit for registration the notice referred to in paragraph (8)(a) and the Registrar of the land titles office shall amend or discharge the registration in accordance with such notice on receiving satisfactory proof that the demand was delivered to the secured party in accordance with subsection (10).

#### Service of demand

(10) The demand referred to in subsection (7) may be delivered in accordance with section 68 or by registered mail addressed to the address of the secured party set out in the notice registered under subsection (2).

#### Order of Court

(11) On application to the Nunavut Court of Justice by the secured party, the Nunavut Court of Justice may order that the registration of the notice under subsection (2)

- (a) be maintained on such conditions and for such period of time as the Court may specify but no such period may be longer than the period of time indicated in the financing statement by which the registration was effected or amended; or
- (b) be discharged or amended.

### Security interest in indenture

(12) Subsection (9) does not apply to a registration of a security interest provided for in a trust indenture if the notice by which the security interest was registered indicates that the security agreement providing for the security interest is a trust indenture.

### Application to Court

(13) Where registration relates to a security interest created under a trust indenture and the secured party fails to amend or discharge the registration as required by a demand made under subsection (7), the Nunavut Court of Justice, on the application of the person who made the demand, may make an order directing that the registration be amended or discharged.

### Charge for compliance with demand

(14) No amount shall be charged by a secured party for compliance with a demand made under subsection (7), unless the parties, before the demand is made, agree that an amount may be charged. S.Nu. 2013,c.20,s.32(2).

### Definitions

**50.** (1) In this section,

"debtor" includes any person named in a registered financing statement as a debtor;  
(*débiteur*)

"secured party" includes any person named in a registered financing statement as a secured party. (*créancier garanti*)

### Discharge where consumer goods

(2) Where a registration relates exclusively to a security interest in consumer goods, the secured party shall discharge the registration not later than 30 days after all obligations under the security agreement creating the security interest are performed, unless prior to the expiry of that 30-day period the registration lapses.

### Demand to secured party

- (3) Where a financing statement is registered and
- (a) all the obligations under the security agreement to which it relates have been performed,
  - (b) the secured party has agreed to release all or part of the collateral described in the financing statement,
  - (c) the description of the collateral contained in the financing statement includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor or does not distinguish between original collateral and proceeds, or
  - (d) no security agreement exists between the secured party and the debtor,

the debtor or any person with an interest in property that falls within the description of the collateral on the financing statement may, by a demand in writing containing an address for reply and delivered to the secured party, require the secured party to submit for registration a document referred to in subsection (4).

#### Contents of demand

(4) A demand referred to in subsection (3) may require that the secured party, not later than 30 days after the demand is given, submit for registration

- (a) a financing change statement
  - (i) discharging the registration, in a case falling within paragraph (3)(a) or (d),
  - (ii) amending or discharging the registration to reflect the terms of the agreement, in a case falling within paragraph (3)(b), or
  - (iii) amending the description of the collateral in the registration to exclude items or kinds of property that are not collateral under a security agreement between the secured party and the debtor or to identify items or kinds of property as original collateral or proceeds, in a case falling within paragraph (3)(c); or
- (b) an order of the Nunavut Court of Justice confirming that the registration need not be amended or discharged.

#### Failure to comply

(5) Where a secured party fails to comply with a demand referred to in subsection (3), the person making the demand may register the financing change statement referred to in paragraph (4)(a) on providing to the Registrar satisfactory proof that the demand was delivered to the secured party in accordance with subsection (6).

#### Service of demand

(6) The demand referred to in subsection (3) may be delivered in accordance with section 68 or by registered mail addressed to the address of the secured party set out in the financing statement.

#### Order of Court

(7) On application to the Nunavut Court of Justice by the secured party, the Nunavut Court of Justice may order that the registration

- (a) be maintained on such conditions and for such period of time as the Court may specify but no such period may be longer than the period of time indicated in the financing statement by which the registration was effected or amended; or
- (b) be discharged or amended.

#### Security interest in trust indenture

(8) Subsection (5) does not apply to a registration of a security interest provided for in a trust indenture if the financing statement by which the security interest was registered indicates that the security agreement providing for the security interest is a trust indenture.

#### Failure to amend where trust indenture

(9) Where registration relates to a security interest created under a trust indenture and the secured party fails to amend or discharge the registration as required by subsection (4), the person making the demand may apply to the Nunavut Court of Justice for an order directing that the registration be amended or discharged.

#### Charge for compliance with demand

(10) No amount shall be charged by a secured party for compliance with a demand made under subsection (3), unless the parties, before the demand is made, agree that an amount may be charged.

#### No outstanding secured obligation

(11) Where there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations or otherwise give value, a secured party having control of investment property under paragraph 25(1)(b) of the *Securities Transfer Act* or subparagraph 1(1.1)(d)(ii) shall, within 10 days after receipt of a written demand by the debtor, send to the securities intermediary or futures intermediary with which the security entitlement or futures contract is maintained, a written record that releases the securities intermediary or futures intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party.  
S.Nu. 2010,c.15,s.107(26); S.Nu. 2013,c.20,s.32(2).

#### Transfer of debtor's interest in collateral where prior consent of secured party

**51.** (1) Where a security interest has been perfected by registration and all or part of the interest of the debtor in the collateral is transferred by the debtor with the prior consent of the secured party, the security interest in the transferred collateral is subordinate to

- (a) an interest, other than a security interest in the transferred collateral, arising during the period from the expiry of the fifteenth day after the transfer to, but not including, the day the secured party amends the registration to disclose the name of the transferee of the interest in the collateral as the new debtor or takes possession of the collateral;
- (b) a perfected security interest in the transferred collateral registered or perfected in the period referred to in paragraph (a); and
- (c) a perfected security interest in the transferred collateral registered or perfected after the transfer and before the expiry of the fifteenth day after the transfer if, before the expiry of the 15 days,

- (i) the registration of the security interest first referred to in this subsection is not amended to disclose the transferee of the interest in the collateral as the new debtor, or
- (ii) the secured party does not take possession of the collateral.

#### Transfer of debtor's interest or change of debtor's name

(2) Where a security interest is perfected by registration and

- (a) all or part of the interest of the debtor in the collateral is transferred by the debtor and the secured party has knowledge of information required to register a financing statement disclosing the transferee as the new debtor, or
- (b) there has been a change in the name of the debtor and the secured party has knowledge of the new name of the debtor,

the security interest in the transferred collateral, where paragraph (a) applies, and in the collateral where paragraph (b) applies, is subordinate to

- (c) an interest, other than a security interest in the collateral, arising during the period from the expiry of the fifteenth day after the secured party has knowledge of the information referred to in paragraph (a) or the new name of the debtor, as the case may be, to, but not including, the day the secured party amends the registration to disclose the name of the transferee as the debtor, or to indicate the new name of the debtor, as the case may be, or takes possession of the collateral,
- (d) a perfected security interest in the collateral registered or perfected in the period referred to in paragraph (c), or
- (e) a perfected security interest in the collateral registered or perfected after the secured party has knowledge of the information referred to in paragraph (a) or the new name of the debtor, as the case may be, and before the expiry of the fifteenth day referred to in paragraph (c), if, before the expiry of the 15 days,
  - (i) the registration of the security interest first referred to in this subsection is not amended to disclose the transferee of the collateral as the new debtor or disclose the new name of the debtor, as the case may be, or
  - (ii) the secured party does not take possession of the collateral.

#### Effect on prior security interest

(3) This section does not have the effect of subordinating a prior security interest created under prior registration law deemed, by or under section 73, to be registered under this Act.

#### Transfer of interest without consent of secured party

(4) Where the interest of the debtor in all or part of the collateral is transferred without the consent of the secured party and there are one or more subsequent transfers of the collateral without the consent of the secured party before the secured party acquires knowledge of the name of the most recent transferee, the secured party shall be deemed



to have complied with subsection (2) if the secured party registers a financing statement not later than 15 days after acquiring knowledge of

- (a) the name of the most recent transferee who has possession of the collateral, and
- (b) the information required to register a financing change statement, and the secured party need not register financing change statements with respect to any intermediate transferee.

#### Registration under section 49

(5) This section does not apply to a registration made at the land titles office under section 49.

#### Recovery of loss caused by error in Registry

**52.** (1) A person may bring an action against the Registrar to recover loss or damage suffered by that person that resulted from

- (a) his or her reliance on a printed search result that is incorrect because of an error or omission arising out of the operation of the Registry; or
- (b) subject to subsections 43(3) and (10), an error or omission of the Registrar relating to the registration of a printed financing statement submitted for registration.

#### Limitation on liability

(1.1) The Commissioner and the Government of Nunavut are not liable, directly or indirectly, for loss or damage suffered by a person because of

- (a) oral advice given by an agent or employee of the Government of Nunavut with respect to this Act, the regulations or the operation of the Registry, unless the person who brings the action proves that the agent or employee was not acting in good faith; or
- (b) a failure to register, or to register correctly, a financing statement in the form of electronic data that is transmitted to the Registry for the purpose of effecting a registration.

#### Limitation period

(2) No action for damages under this section or section 53 lies against the Registrar unless it is commenced not later than

- (a) one year after the person entitled to bring the action first had knowledge of the loss or damage; or
- (b) six years after the day the printed search result was issued or the financing statement was submitted for registration, as the case may be.

#### Request for search result necessary

(3) No action under this section may be brought by a person who relied on a search result unless that person or an agent or partner of that person requested the search result.

#### No action except as provided

(4) Despite any other Act, no action may be brought against the Commissioner or Government of Nunavut, the Registrar or an officer or employee of the Registry for any error or omission of the Registrar or the officer or employee in respect of the discharge or purported discharge of any duty or function under this Act, the regulations or under any other Act except as provided in this section and in section 53. S.Nu. 2013,c.20,s.32(2).

#### Recovery of loss under trust indenture

**53.** (1) An action for recovery of damages under section 52 brought by a trustee under a trust indenture or by a person with an interest in a trust indenture shall be brought on behalf of all persons with interests in the trust indenture and the judgment in the action, except to the extent that it provides for a subsequent determination of the amount of damages suffered by each person, constitutes a judgment between each person and the Registrar in respect of each error or omission.

#### Proof of reliance by each person with interest

(2) In an action brought by a trustee under a trust indenture or by a person with an interest in a trust indenture, proof that each person relied on the search result is not necessary if it is established that the trustee relied on the search result, but no person is entitled to recover damages under this section if the person knew at the time of acquisition of an interest in the collateral that the search result relied on by the trustee was incorrect.

#### Order of Court regarding notice

(3) In proceedings under this section, the Nunavut Court of Justice may make any order that it considers appropriate in order to give notice to persons with interests in the trust indenture.

#### Order of Court for payment

(4) Subject to subsection 54(1), the Nunavut Court of Justice may order payment of all or a portion of the damages awarded to identified persons with interests in a trust indenture at any time after judgment and the obligation of the Registrar to satisfy the judgment is satisfied to the extent that payment is so made. S.Nu. 2013,c.20,s.32(2).

#### Limit on amount recoverable

**54.** (1) The total amount recoverable in a single action under section 52 and the total amount recoverable for all claims in a single action under section 53 shall not exceed the amount prescribed.

#### Subrogation

(2) Where damages are paid to a claimant under section 52 or 53, the Government of the Northwest Territories is subrogated to the rights of the claimant against any person indebted to the claimant whose debt to the claimant was the basis of the loss or damage in respect of which the claim was paid.

#### Effect of subrogation on priority

(3) Where the claimant recovers under section 52 or 53 an amount less than the value of the interest the claimant would have had if the error or omission had not occurred, the right of subrogation under subsection (2) does not prejudice the right of the claimant to recover in priority to the Government of the Northwest Territories an amount equal to the difference between the amount paid to the claimant and the value of the interest the claimant would have had if the error or omission had not occurred.

#### Payment of claim where no action

(4) The Comptroller General may, without an action being brought, pay the amount of a claim against the Registrar when authorized to do so by the Minister on the report of the Registrar setting out the facts and the opinion of the Registrar that the claim is just and reasonable.

#### Payment from Consolidated Revenue Fund

(5) When an award of damages has been made in favour of a claimant and the time for appeal has expired, or when an appeal is taken and disposed of in whole or in part in favour of the claimant, the Comptroller General shall authorize payment out of the Consolidated Revenue Fund, subject to subsection (1), of the amount specified in the judgment.

## PART V

### RIGHTS AND REMEDIES ON DEFAULT

#### Where Part does not apply

- 55.** (1) This Part does not apply to
- (a) a transaction referred to in subsection 2(2); or
  - (b) a transaction between a pledgor and a pawnbroker.

#### Rights and remedies cumulative

- (2) The rights and remedies referred to in this Part are cumulative.

#### Definition of "secured party"

- (3) In this section, "secured party" includes a receiver.

#### Choice of procedure

- (4) Subject to any other Act or rule of law to the contrary, where the same obligation is secured by an interest in land and a security interest to which this Act applies, the secured party may
- (a) proceed under this Part as to the personal property; or
  - (b) proceed as to both the land and the personal property in which case
    - (i) the rights, remedies and duties of the secured party in respect of the land apply to the personal property with such

- modifications as the circumstances require as if the personal property were land, and
- (ii) sections 63 and 64 apply to the personal property but this Part does not otherwise apply.

#### Rights of other secured parties

(5) Paragraph (4)(b) does not limit the rights of a secured party who has a security interest in the personal property taken before or after the security interest mentioned in subsection (4).

#### *Idem*

- (6) A secured party referred to in subsection (5)
  - (a) has standing in proceedings taken in accordance with paragraph (4)(b), and
  - (b) may apply to the Nunavut Court of Justice for the conduct of a judicially supervised sale under paragraph (4)(b) and the Nunavut Court of Justice may grant the application.

#### Allocation of price to land and personal property

(7) For the purpose of distributing the amount received from the sale of the land and personal property where the purchase price is not allocated to the land and the personal property separately, the amount of the purchase price that is attributable to the sale of the personal property is that proportion of the total price that the market value of the personal property at the time of the sale bears to the market value of the land and the personal property.

#### No merger

(8) A security interest does not merge merely because a secured party has reduced the claim to judgment. S.Nu. 2013,c.20,s.32(2).

#### "secured party" defined

**56.** (1) In this section, "secured party" includes a receiver.

#### Rights and remedies

- (2) Where the debtor is in default under a security agreement
  - (a) except as provided by subsection (3), the secured party has against the debtor only
    - (i) the rights and remedies provided in the security agreement,
    - (ii) the rights, remedies and obligations provided in this Part and sections 36, 37, 37.1 and 38, and
    - (iii) when in possession or control of the collateral, the rights, remedies and obligations provided in sections 17 and 17.1; and
  - (b) the debtor has against the secured party
    - (i) the rights and remedies provided in the security agreement,

- (ii) the rights and remedies provided by any other Act or rule of law not inconsistent with this Act, and
- (iii) the rights and remedies provided in this Part and in sections 17 and 17.1.

#### Limitation on waiver of rights

(3) Except as provided in sections 17, 17.1, 59, 60 and 62, no provision of sections 17, 17.1 or 58 to 65, to the extent that it gives rights to the debtor or imposes obligations on the secured party, can be waived or varied by agreement or otherwise. S.Nu. 2010,c.15,s.107(27).

#### "secured party" defined

**57.** (1) In this section, "secured party" includes a receiver.

#### Collection of payments

(2) Where a debtor is in default under a security agreement, a secured party is entitled

- (a) if the debtor has assigned an intangible, chattel paper, instrument or security to the secured party, to notify the assignee on the intangible or chattel paper or the obligor on the instrument or security to make payment to the secured party whether or not the assignor was making collections on the collateral before the notification;
- (b) to take control of any proceeds to which the secured party is entitled under section 28; and
- (c) to apply any security in the form of a debt obligation, money, account or instrument taken as collateral to the satisfaction of the obligation secured by the security interest.

#### Deduction for expenses

(3) A secured party may deduct reasonable expenses of collection from money held as collateral or an amount collected from a debtor on an intangible or chattel paper or from an obligor under an instrument or security.

#### Notice to debtor

(4) A secured party who enforces a security interest in an intangible, security, chattel paper or instrument under paragraph (2)(a) or (b) shall give notice to the debtor not later than 15 days after doing so.

#### "secured party" defined

**58.** (1) In this section, "secured party" includes a receiver.

#### Right of seizure or repossession

(2) Subject to sections 36, 37, 37.1 and 38 and subsection (3) of this section, on default under a security agreement

- (a) the secured party has, unless otherwise agreed, the right to take possession of the collateral or otherwise enforce the security agreement by any method permitted by law;
- (b) where the collateral is goods of a kind that cannot be readily moved from the debtor's premises or of a kind for which adequate storage facilities are not readily available, the collateral may be seized without removing it from the debtor's premises in any manner by which a Sheriff may seize without removal, if the interest of the secured party is perfected by registration;
- (c) where paragraph (b) applies, the secured party may dispose of collateral on the debtor's premises but, in doing so, shall cause the person in possession of the premises no greater inconvenience or cost than is necessarily incidental to the disposal; and
- (d) if the collateral is a document of title, the secured party may proceed either as to the document of title or as to the goods covered by it, and a method of enforcement that is available with respect to the document of title is also available, with all necessary modifications, with respect to the goods covered by it.

#### Persons authorized to seize

(3) Subject to an order made under section 63, seizure of property to enforce rights under a security agreement, other than seizure by a receiver, shall be made only by the Sheriff or a person authorized in writing to do so by the Sheriff.

#### "Sheriff" defined

(4) In subsections (5) to (19), "Sheriff" includes a person authorized to seize property under subsection (3).

#### Warrant to seize

(5) No seizure shall be made unless the secured party or the agent of the secured party has executed and delivered to the Sheriff a warrant in the prescribed form.

#### Security

(6) Where a warrant is delivered for execution, the Sheriff may refuse to make or continue a seizure unless he or she has been provided with the security he or she considers reasonably sufficient to indemnify him or her in respect of his or her fees, charges and expenses and any claims for damages, including claims by the debtor or a third party, in respect of the seizure and anything done in relation to the seizure.

#### Assignment of bond

(7) Where a bond of indemnity is provided under subsection (6), the bond is assignable to any person, other than the debtor, who claims an interest in the property seized and must contain a condition that the persons executing the bond are liable for the damages, costs and expenses

- (a) that the Sheriff or a person claiming an interest in the property might incur by reason of the seizure and any subsequent proceedings including interpleader proceedings, if any; and
- (b) that are not recovered from any other persons who are liable for the payment of those damages, costs and expenses.

#### Reference to judge of Nunavut Court of Justice

(8) Where a difference arises as to the bond to be provided pursuant to subsection (6), the Sheriff shall, on the request of the creditor, refer the matter to a judge of the Nunavut Court of Justice for determination.

#### Seizure

- (9) To make a seizure of property, the Sheriff may
- (a) take physical possession of the property;
  - (b) give to the debtor or the person in possession of the collateral a notice of seizure in the prescribed form;
  - (c) post in a conspicuous place on the premises on which the property is located at the time of seizure a notice of seizure in the prescribed form; or
  - (d) in the case of property in the form of goods, affix to the goods a sticker in the prescribed form.

#### Seizure of licence

(9.1) Where the collateral is a licence, the Sheriff may seize the collateral by giving notice to the debtor and to the grantor, or where there is a successor to the grantor, to the successor of the grantor.

#### Continuing seizure

(10) A seizure by the Sheriff made under subsection (9) or (9.1) continues until possession of the property is surrendered to the secured party, or the agent of the secured party, or the seizure is released.

#### Entry into buildings to effect seizure

(11) For the purpose of making a seizure of property or obtaining the possession of property that has previously been seized, the Sheriff may, where it is not possible otherwise to effect the seizure or to obtain possession of the goods previously seized, either by himself or herself or with the assistance of the persons that he or she may request, break open the door of any building, other than a private dwelling-house, in which the property liable to seizure are contained and, on the order of a judge of the Nunavut Court of Justice, may similarly break open the door of a private dwelling-house.

#### Where entry effected

(12) Where a building or dwelling-house is broken into under subsection (11), the person so doing shall ensure that the building or dwelling-house is properly secured after the property has been seized or possession has been obtained.

#### Appointment of bailee by Sheriff

(13) The Sheriff may, at any time after making a seizure, appoint the debtor or some other person in possession of the property seized as bailee of the Sheriff, where the debtor or such other person executes a written undertaking in the prescribed form to hold the property as bailee for the Sheriff and to deliver up possession of the property to the Sheriff on demand, and property held by a bailee is deemed to be held under seizure by the Sheriff.

#### Delivery of list of property

(14) Where a seizure is made, the Sheriff shall, on the written request of a person who has reasonable grounds to believe that he or she has an interest in or a right to property seized by the Sheriff, deliver to such person a list of items of property seized that fall within the general description of property in or to which such person claims to have an interest or right.

#### Surrender of possession

(15) Where a seizure is made, the Sheriff may surrender possession or the right of possession of the property seized to the secured party or to a person designated in writing by the secured party.

#### Notice of proposed release

(16) The Sheriff may, before or after seizure of property, give to the secured party named in the warrant under which the seizure was made a notice stating that the seizure shall be released on a date specified in the notice unless before that date the secured party takes possession of the property seized.

#### Release of seizure

(17) If the person to whom the notice is given under subsection (16) does not take possession of the property referred to in the notice on or before the date specified, the Sheriff may release the seizure.

#### No liability

(18) After possession of the property is surrendered under subsection (15) or seizure is released under subsection (17), the Sheriff is not liable for any loss or damage to the property or for any unlawful interference with the rights of the debtor or any other person who has an interest in or a right to the property that occurs after the surrender or release.

#### Effect of seizure

(19) A seizure made under this section does not affect the interest of a person who, under this Act or under any other law, has priority over the rights of the secured party. S.N.W.T. 1998,c.5,s.26(2); S.Nu. 2013,c.20,s.32(2).



"mobile home" defined

**58.1.** (1) In this section, "mobile home" means

- (a) a vacation trailer or house trailer; or
- (b) a structure, whether ordinarily equipped with wheels or not, that is constructed or manufactured to be moved from one point to another by being towed or carried and to provide living accommodation for one or more persons.

Application for order

(2) Where a mobile home is seized to enforce a security agreement, if

- (a) the mobile home is occupied by the debtor or any other person, and
- (b) the occupant fails, on demand, to deliver up possession of the mobile home,

the person who has authorized the seizure or a receiver, on notice of motion to the occupant, may apply to a judge of the Nunavut Court of Justice who may make an order directing the occupant to deliver up possession of the mobile home.

Contents of order

(3) The order referred to in subsection (2) must provide that

- (a) if the occupant fails to deliver up possession of the mobile home within the time specified in the order, the Sheriff shall eject and remove the occupant together with all goods and chattels the occupant may have in the mobile home; and
- (b) if it is not possible otherwise to obtain possession, the person charged with the execution of the order may, either by himself or herself or with the assistance of the persons that he or she may request, break open the door of the mobile home.

Authority to possess

(4) On there being filed with the Sheriff an affidavit

- (a) showing service of the order referred to in subsection (2) on the occupant, and
- (b) stating that the occupant has failed to deliver up possession of the mobile home as required by the order,

the Sheriff shall, with the assistance that he or she may require, proceed without delay to obtain possession of the mobile home as authorized by the order.

S.Nu. 2013,c.20,s.32(2).

"secured party" defined

**59.** (1) In subsections (2), (5), (14) and (16), "secured party" includes a receiver.

Disposition of collateral by secured party

(2) After seizing or repossessing the collateral, a secured party may dispose of it in its existing condition or after repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to

- (a) the reasonable expenses of seizing, repossessing, holding, repairing, processing or preparing for disposition and disposing of the collateral and any other reasonable expenses incurred by the secured party, and
  - (b) the satisfaction of the obligations secured by the security interest of the secured party disposing of the collateral,
- and any surplus shall be dealt with in accordance with section 60.

#### Method of disposal

- (3) Collateral may be disposed of
- (a) by private sale;
  - (b) by public sale, including a public auction and sale by closed or open tender;
  - (c) as a whole or in parts or in commercial units; or
  - (d) if the security agreement so provides, by lease.

#### Deferral of payment

(4) Where the security agreement so provides, the payment for the collateral being disposed of may be deferred.

#### Delay of disposition

- (5) The secured party may delay disposition of all or part of the collateral.

#### Disposal of licence

(5.1) Despite any other provision of this Part, where the collateral is a licence, it may be disposed of only in accordance with the terms and conditions under which the licence was granted or that otherwise pertain to it.

#### Notice of disposition by secured party

- (6) Not less than 20 days prior to disposition of the collateral, the secured party shall give a notice to
- (a) the debtor and any other person who is known by the secured party to be an owner of the collateral;
  - (b) a person with a security interest in the collateral whose security interest is subordinate to that of the secured party where
    - (i) prior to the day on which the notice is given to the debtor, the person has registered a financing statement according to the name of the debtor or according to the serial number of the collateral in the case of goods of a kind prescribed as serial number goods, or
    - (ii) the security interest is perfected by possession at the time the secured party seized or repossessed the collateral;

- (c) a creditor whose interest in the collateral is subordinate to that of the secured party where, prior to the day on which notice is given to the debtor, the creditor has registered a financing statement according to the name of the debtor or according to the serial number of the collateral in the case of goods of a kind prescribed as serial number goods; and
- (d) any other person with an interest in the collateral who has given a written notice to the secured party of the interest of that person in the collateral prior to the day on which the notice of disposition is given to the debtor.

#### Contents of notice

(7) The notice referred to in subsection (6) must contain

- (a) a description of the collateral;
- (b) a statement of the amount required to satisfy the obligation secured by the security interest;
- (c) a statement of the sums actually in arrears, exclusive of the operation of an acceleration clause in the security agreement, and a brief description of any default, other than non-payment, and a reference to the provision of the security agreement the breach of which resulted in the default;
- (d) a statement of the amount of the applicable expenses referred to in paragraph (2)(a) or, where the amount of the expenses has not been determined, a reasonable estimate;
- (e) a statement that, on payment of the amount due under paragraphs (b) and (d), any person entitled to receive the notice may redeem the collateral;
- (f) a statement that, on payment of the sums in arrears, exclusive of the operation of any acceleration clause in the security agreement, or the curing of any other default, as the case may be, together with the amount due under paragraph (2)(a), the debtor may reinstate the security agreement;
- (g) a statement that unless the collateral is redeemed or the security agreement is reinstated, it will be disposed of and the debtor may be liable for a deficiency; and
- (h) 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.

#### Information not required

(8) Where the notice required in subsection (6) is given to a person other than the debtor, it need not contain the information specified in paragraphs (7)(c), (f) and (g) and, where the debtor is not entitled to reinstate the security agreement, the notice to the debtor need not contain the information specified in paragraphs (7)(c) and (f).

#### No reference to liability for deficiency

(9) A statement referred to in paragraph (7)(g) must not contain a reference to any liability on the part of the debtor to pay a deficiency if, under any Act or rule of law, the secured party does not have the right to collect the deficiency from the debtor.

#### Notice of disposition by receiver

(10) Not less than 20 days prior to the disposition of the collateral, a receiver shall give a notice to

- (a) the debtor and, where the debtor is a corporation, a director of the corporation;
- (b) any other person who is known by the receiver or the secured party to be an owner of the collateral;
- (c) a person referred to in paragraph (6)(b);
- (d) a creditor referred to in paragraph (6)(c); and
- (e) any other person with an interest in the collateral who has given a written notice to the receiver of that interest prior to the date that the notice of disposition is given to the debtor.

#### Contents of notice

(11) The notice referred to in subsection (10) must contain

- (a) a description of the collateral;
- (b) a statement that unless the collateral is redeemed it will be disposed of; and
- (c) 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 after which any private disposition of the collateral is to be made.

#### Service of notice

(12) The notice required in subsection (6) or (10) may be given or delivered in accordance with section 68 or, where it is to be given or delivered to a person who has registered a financing statement, by registered mail addressed to the address of the person to whom it is to be given or delivered as it appears on the financing statement.

#### Purchase by secured party

(13) The secured party may purchase the collateral or any part of it only at a public sale, as referred to in paragraph (3)(b), and only for a price that bears a reasonable relationship to the market value of the collateral.

#### Interest of purchaser

(14) When a secured party disposes of collateral to a purchaser who acquires the interest for value and in good faith and who takes possession of it, the purchaser acquires the collateral free from

- (a) the interest of the debtor,
- (b) an interest subordinate to that of the debtor, and

(c) an interest subordinate to that of the secured party, whether or not the requirements of this section have been complied with by the secured party, and all obligations secured by the subordinate interests are, as regards the purchaser, deemed to be performed for the purposes of paragraphs 49(7)(a) and 50(3)(a).

#### No effect on rights where deemed registered

(15) Subsection (14) does not apply so as to affect the rights of a person with a security interest deemed to be registered under section 73 who has not been given a notice under this section.

#### Effect of transfer where guarantee, endorsement, etc.

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

#### Circumstances when notice not required

(17) The notice referred to in subsection (6) or (10) is not required where

- (a) the collateral is perishable;
- (b) the secured party believes on reasonable grounds that the collateral will decline substantially in value if not disposed of immediately after default;
- (c) the cost of care and storage of the collateral is disproportionately large relative to its value;
- (d) the collateral is of a type that is to be disposed of by sale on an organized market that handles large volumes of transactions between many sellers and many buyers;
- (e) the collateral is money, other than a medium of exchange authorized by or under an Act of the Parliament of Canada;
- (f) the Nunavut Court of Justice on *ex parte* application is satisfied that a notice is not required; or
- (g) after default, each person entitled to receive the notice consents to the disposition of the collateral without notice.

S.Nu. 2013,c.20,s.32(2).

#### "secured party" defined

**60.** (1) In this section, "secured party" includes a receiver.

#### Distribution of proceeds of disposition

(2) Where a security agreement secures an indebtedness and the secured party has dealt with the collateral under section 57 or has disposed of it in accordance with section 59 or otherwise, any surplus shall, unless otherwise provided by law or by the agreement of all interested parties, be accounted for and paid, in the following order, to

- (a) a person who has a subordinate security interest in the collateral
  - (i) and who has, prior to the distribution of the proceeds, registered a financing statement using the name of the debtor or according to the serial number of the collateral in the case of goods of a kind prescribed as serial number goods, or
  - (ii) whose security interest was perfected by possession at the time the collateral was seized,
- (b) any other person with an interest in the surplus, if the other person has given a written notice of that interest to the secured party prior to the distribution, and
- (c) the debtor or any other person who is known by the secured party to be an owner of the collateral,

but the priority of claim of any person referred to in paragraph (a), (b) or (c) is not prejudiced by payment to anyone under this section.

#### Written accounting

(3) The secured party shall give to a person referred to in subsection (2) a written accounting, within 30 days after receipt of a written request for such an accounting, of

- (a) the amount received from the disposition of collateral under section 59 or otherwise or the amount collected under section 57;
- (b) the manner in which the collateral was disposed of;
- (c) the amount of expenses as provided in sections 17, 57 and 59;
- (d) the distribution of the amount received from the disposition or collection; and
- (e) the amount of any surplus.

#### Surplus paid into Court

(4) Where there is a question as to who is entitled to receive payment under subsection (2), the secured party may pay the surplus into the Nunavut Court of Justice and the surplus shall not be paid out except on an application under section 66 by a person claiming an entitlement to it.

#### Deficiency

(5) Unless otherwise agreed or otherwise provided in this or any other Act, the debtor is liable to pay to the secured party any deficiency. S.Nu. 2013,c.20,s.32(2).

#### Proposal to take collateral in satisfaction of obligation secured

**61.** (1) After default by the debtor, the secured party may propose to take the collateral in satisfaction of the obligation secured by it, and shall give notice of the proposal to

- (a) the debtor and any other person who is known by the secured party to be an owner of the collateral;
- (b) a person with a security interest in the collateral whose interest is subordinate to that of the secured party where

- (i) prior to the day on which notice is given to the debtor, the person has registered a financing statement using the name of the debtor or according to serial number of the collateral in the case of goods of a kind prescribed as serial number goods, or
- (ii) the security interest is perfected by possession at the time the secured party seized or repossessed the collateral;
- (c) a creditor whose interest in the collateral is subordinate to that of the secured party where, prior to the day on which notice is given to the debtor, the creditor has registered a financing statement according to the name of the debtor or according to serial number of the collateral in the case of goods of a kind prescribed as serial number goods; and
- (d) any other person with an interest in the collateral who has given a written notice to the secured party of that interest prior to the day on which the notice is given to the debtor.

#### Notice of objection

(2) If any person, who is entitled to a notice under subsection (1) and whose interest in the collateral would be adversely affected by the proposal of the secured party, gives to the secured party a notice of objection within 15 days after the notice under subsection (1) is given, the secured party shall dispose of the collateral in accordance with section 59.

#### Rights of secured party where no notice of objection

(3) If no notice of objection is given, the secured party is, at the expiration of the 15-day period or periods referred to in subsection (2), deemed to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it, and is entitled to hold or dispose of the collateral free from all rights and interests of the debtor and any other person entitled to receive notice under

- (a) paragraph (1)(b) or (c), or
- (b) paragraph (1)(d), where the person's interest is subordinate to that of the secured party,

who has been given the notice and all obligations secured by such interests are deemed performed for the purposes of paragraphs 49(7)(a) and 50(3)(a).

#### Service of notice

(4) The notice required under subsection (1) may be given or delivered in accordance with section 68 or, if it is to be given or delivered to a person who has registered a financing statement, by registered mail addressed to the address of the person to whom it is to be given as it appears on the financing statement.

### Proof of interest

(5) The secured party may request that any person referred to in subsection (1), other than the debtor, furnish proof of the interest of that person and, unless the person furnishes proof not later than 10 days after the request of the secured party, the secured party may proceed as if no objection were received from the person.

### Application to Court

(6) On application by a secured party, the Nunavut Court of Justice may determine that an objection to the proposal of a secured party is ineffective on the ground that

- (a) the person made the objection for a purpose other than the protection of an interest in the collateral or proceeds of a disposition of the collateral; or
- (b) the market value of the collateral is less than the total amount owing to the secured party and the costs of disposition.

### Interest of purchaser

(7) Where a secured party disposes of the collateral to a purchaser who acquires an interest in the collateral for value and in good faith and who takes possession of it, the purchaser acquires the collateral free from

- (a) the interest of the debtor,
- (b) any interest subordinate to that of the debtor,
- (c) any interest subordinate to that of the secured party,

whether or not the requirements of this section have been complied with by the secured party, and all obligations secured by the subordinate interest are deemed to be performed for the purposes of paragraphs 49(7)(a) and 50(3)(a).

### No effect on rights where deemed registered

(8) Subsection (7) does not apply so as to affect the rights of a person with a security interest deemed to be registered under section 73 who has not received a notice under this section. S.Nu. 2013,c.20,s.32(2).

### Right of redemption

**62.** (1) At any time before the secured party has disposed of the collateral or contracted for disposition under section 59 or before the secured party is deemed to have irrevocably elected to retain the collateral under section 61, any person entitled to receive a notice of disposition under subsection 59(6) or (10) may, unless that person otherwise agrees in writing after default, redeem the collateral by



- (a) tendering payment of the monetary obligations secured by the collateral together with a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing and preparing the collateral for disposition, if such expenses have actually been incurred by the secured party, and any other reasonable expenses incurred by the secured party in enforcing the security agreement; and
- (b) agreeing to fulfill any other obligations secured by the collateral.

#### Right of reinstatement

(2) At any time before the secured party has disposed of the collateral or contracted for disposition under section 59 or before the secured party is deemed to have irrevocably elected to retain the collateral under section 61, the debtor, other than a guarantor or indemnitor, may, unless the debtor has otherwise agreed in writing after default, reinstate the security agreement by paying the sums actually in arrears, exclusive of the operation of an acceleration clause in the security agreement, and by curing any other default by reason of which the secured party intends to dispose of the collateral together with a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing and preparing the collateral for disposition if such expenses have actually been incurred by the secured party, and any other reasonable expenses incurred by the secured party in enforcing the security agreement.

#### Limit on right of reinstatement

- (3) Unless otherwise agreed, the debtor is not entitled to reinstate a security agreement
- (a) more than twice, if the security agreement provides for payment in full by the debtor not later than 12 months after the day value was given by the secured party; or
  - (b) more than twice in each year, if the security agreement provides for payment by the debtor during a period of time in excess of one year after the day value was given by the secured party.

#### "secured party" defined

**63.** (1) In this section, "secured party" includes a receiver.

#### Powers of Court

- (2) On application by a debtor, a creditor of a debtor, a secured party, a Sheriff or any person with an interest in the collateral, the Nunavut Court of Justice may
- (a) make any order, including a binding declaration of a right and injunctive relief, that is necessary to ensure compliance with this Part or sections 17, 36, 37, 37.1 and 38;
  - (b) give directions to any person regarding the exercise of rights or the discharge of obligations under this Part or sections 17, 36, 37, 37.1 and 38;

- (c) relieve a person from compliance with the requirements of this Part or sections 17, 36, 37, 37.1 and 38;
  - (d) stay enforcement of rights provided in this Part or sections 17, 36, 37, 37.1 and 38; and
  - (e) make any order, including a binding declaration of right and injunctive relief, that is necessary to ensure protection of the interests of any person in the collateral.
- S.Nu. 2013,c.20,s.32(2).

#### Appointment of receiver

**64.** (1) A security agreement may provide for the appointment of a receiver and, except as provided in this or any other Act, the rights and duties of the receiver.

#### Duties of receiver

(2) A receiver shall

- (a) take the collateral into his or her custody and control in accordance with the security agreement or order under which the receiver is appointed but, unless appointed a receiver-manager or unless the Nunavut Court of Justice orders otherwise, shall not carry on the business of the debtor;
- (b) open and maintain, in the name of the receiver as receiver, one or more accounts at a bank, credit union or other institution licensed to accept deposits in Nunavut for the deposit of all money coming under the control of the receiver as receiver;
- (c) keep records, in accordance with generally accepted accounting practices, of all receipts, expenditures and transactions involving collateral or other property of the debtor;
- (d) prepare, at least once in every six-month period after the date of the receiver's appointment, financial statements of the administration of the receiver containing the prescribed information;
- (e) indicate on every business letter, invoice, contract or similar document used or executed in connection with the receivership that the receiver is acting as a receiver; and
- (f) on completion of the duties of the receiver, prepare a final account of the administration containing the prescribed information.

#### Inspection of records

(3) The debtor or, where the debtor is a corporation, a director of the debtor, or the authorized representative of the debtor, may, by a demand in writing delivered to the receiver, require the receiver to make available for inspection the records referred to in paragraph (2)(c) during regular business hours at the place of business of the receiver in Nunavut.

#### Inspection and provision of copies

(4) The debtor or, where the debtor is a corporation, a director of the debtor, a Sheriff or a person with an interest in the collateral in the custody or control of the receiver, or the authorized representative of the debtor, Sheriff or person, may, by a demand in writing delivered to the receiver, require the receiver to provide copies of the financial statements referred to in paragraph (2)(d) or the final account referred to in paragraph (2)(f) or to make them available for inspection during regular business hours at the place of business of the receiver in Nunavut.

#### Time for compliance

(5) The receiver shall comply with a demand referred to in subsection (3) or (4) not later than 10 days after the day the demand is received.

#### Fee may be levied

(6) The receiver may require the payment in advance of a fee in the amount prescribed for each demand, but the Sheriff and the debtor, or in the case of an incorporated debtor a director of the debtor, are entitled to inspect or to receive a copy of the financial statements and final account without charge.

#### Application to Court

- (7) On application by an interested person, the Nunavut Court of Justice may
- (a) appoint a receiver;
  - (b) remove, replace or discharge a receiver, whether appointed by the Nunavut Court of Justice or under a security agreement;
  - (c) give directions on any matter relating to the duties of a receiver;
  - (d) approve the accounts and fix the remuneration of a receiver;
  - (e) despite anything contained in a security agreement or other document providing for the appointment of a receiver, make an order requiring a receiver or a person by or on behalf of whom the receiver is appointed to make good a default in connection with the receiver's custody, management or disposition of the collateral of the debtor or to relieve the person from any default or failure to comply with this Part; and
  - (f) exercise with respect to a receiver appointed under a security agreement the jurisdiction that it has over receivers appointed by the Nunavut Court of Justice.

#### Jurisdiction of Court

(8) The powers referred to in subsection (7) and in section 63 are in addition to any other powers the Nunavut Court of Justice may exercise in its jurisdiction over receivers.

### Compliance with other requirements

(9) Unless the Nunavut Court of Justice orders otherwise, a receiver is required to comply with sections 59 and 60 only when the receiver deals with collateral other than in the course of operating the business of a debtor. S.N.W.T. 1998,c.5,s.26(3); S.Nu. 2013,c.20,s.32(2).

## PART VI

### MISCELLANEOUS

#### "secured party" defined

**65.** (1) In this section, "secured party" includes a receiver.

#### Supplementary law

(2) The principles of the common law, equity and the law merchant, except in so far as they are inconsistent with the provisions of this Act, supplement this Act and continue to apply.

#### Proper exercise of rights, duties and obligations

(3) All rights, duties or obligations arising under a security agreement, this Act or any other law applicable under subsection (2) shall be exercised or discharged in good faith and in a commercially reasonable manner.

#### Bad faith

(4) A person does not act in bad faith merely because the person acts with knowledge of the interest of some other person.

#### Right to recover loss or damage

(5) If a person fails, without reasonable excuse, to discharge any duty or obligation imposed on the person by this Act, the person to whom the duty or obligation is owed has a right to recover loss or damage that was reasonably foreseeable as liable to result from the failure.

#### Deemed damages

(6) Where a secured party, without reasonable excuse, fails to comply with obligations set out in

(a) subsection 43(12), section 49 or 50, or

(b) section 17, 18, 59, 60 or 61 and the collateral is consumer goods, the debtor or, in a case of non-compliance with subsection 43(12), section 49 or 50, the person named as debtor in a registration, is deemed to have suffered damages not less than the amount prescribed.

#### Defence of non-compliance

(7) In an action for a deficiency, the debtor may raise as a defence the failure on the part of the secured party to comply with obligations set out in section 17, 18, 59 or 60, but non-compliance limits the right to the deficiency only to the extent that it has affected the ability of the debtor to protect the interest of the debtor in the collateral or has made the accurate determination of the deficiency impracticable.

#### Onus of proof

(8) Where a secured party fails to comply with obligations in section 17, 18, 59 or 60, the onus is on the secured party to show that the failure

- (a) where the collateral is consumer goods, did not affect the ability of the debtor to protect the interest of the debtor in the collateral by redemption or reinstatement of the security agreement, or otherwise; and
- (b) did not make the accurate determination of the deficiency impracticable.

#### Provisions in security agreement inconsistent with Act

(9) Except as otherwise provided in this Act, any provision in a security agreement or any other agreement that purports to exclude any duty or onus imposed by this Act or purports to limit the liability of or the amount of damages recoverable from a person who has failed to discharge any duty or obligation imposed by this Act is void.

#### Discharge or amendment without authorization

(10) A person who causes the Registrar of a land titles office to amend or discharge a registration under subsection 49(9) or registers a financing change statement under subsection 50(5) and who is not authorized to do so by the secured party, section 49 or 50, the regulations or an order of the Nunavut Court of Justice is liable to the secured party for loss or damage suffered by the secured party.

S.Nu. 2013,c.20,s.32(2).

#### Application to Court

- 66.** (1) On application of an interested person, the Nunavut Court of Justice may
- (a) make an order determining questions of priority or entitlement to collateral; or
  - (b) direct an action to be brought or an issue to be tried.

#### Originating notice

(2) An application under this Act may be made by originating notice unless it is further to proceedings that have been commenced.

#### Notice

(3) Where a provision of this Act providing for an application to the Nunavut Court of Justice does not specify the persons to whom notice must be given, notice must be given to all persons whose rights may be affected unless the Court otherwise directs.

## Appeal

(4) An appeal lies to the Court of Appeal from an order, judgment or direction of the Nunavut Court of Justice made under this Act. S.Nu. 2013,c.20,s.32(2).

## Extension of time

**67.** Where in section 11, subsections 36(15), 38(14) and 43(12) and Part V an act or thing must be done not later than or before a set time, the Nunavut Court of Justice, on application made before or after the time has expired, may extend or abridge, conditionally or otherwise, the time for compliance. S.Nu. 2013,c.20,s.32(2).

## Service of notices and demands

**68.** (1) A notice or demand, other than a demand under section 18 or a copy of a financing statement or statement used by the Registry to confirm registration referred to in subsection 43(12), may be made, given or delivered

- (a) to an individual, by leaving it with the individual or by sending it by registered mail addressed to
  - (i) the individual at the residence of the individual, or
  - (ii) where the individual is the sole proprietor of a business, the name of the individual at the address of the business;
- (b) to a partnership
  - (i) by leaving it with
    - (A) one or more of the general partners, or
    - (B) any person having, at the time the notice is given, control or management of the partnership business, or
  - (ii) by registered mail addressed to
    - (A) the partnership,
    - (B) one or more of the general partners, or
    - (C) any person having, at the time the notice is given, control the management of the partnership business, at the address of the partnership business;
- (c) to a corporation other than a municipal corporation
  - (i) by leaving it with an officer or director of the corporation or person in charge of any office or place of business of the corporation,
  - (ii) by leaving it at or by sending it by registered mail addressed to the registered or head office of the corporation, or
  - (iii) where the corporation has its registered or head office outside Nunavut, by leaving it with or by sending it by registered mail addressed to the attorney for service for the corporation;
- (d) to a municipal corporation by leaving it with, or by sending it by registered mail addressed to, the principal office of the corporation or to the senior administrative officer of the corporation; and

- (e) to an association
  - (i) by leaving it with an officer of the association, or
  - (ii) by sending it by registered mail addressed to an officer of the association at the address of the officer.

#### Notice served by registered mail

(2) A document referred to in subsection (1) that is sent by registered mail is deemed to be made, given or delivered on the earlier of

- (a) the day the addressee actually receives the document; and
- (b) except when postal services are not functioning, the expiration of 10 business days after the date of registration.

S.Nu. 2013,c.20,s.32(2).

#### Conflict with consumer protection legislation

**69.** (1) If there is a conflict between a provision of this Act and a provision of the *Consumer Protection Act* or a provision for the protection of consumers in any other Act, the provision of the *Consumer Protection Act* or for the protection of consumers in the other Act prevails.

#### Conflict with legislation in general

(2) Except as otherwise provided in this or any other Act, where there is a conflict between a provision of this Act and a provision of any Act other than those referred to in subsection (1), the provision of this Act prevails.

#### References to other Acts, etc.

**70.** (1) A reference in any Act, regulation, agreement or document to the *Assignment of Book Debts Act*, the *Bills of Sale Act*, the *Business Corporations Act*, the *Companies Act*, the *Conditional Sales Act* or the *Corporation Securities Registration Act* that relates to a security interest is deemed to be a reference to this Act or to the corresponding provisions of this Act.

#### References to chattel mortgage, lien note, etc.

(2) A reference in any Act, regulation, agreement or document to a chattel mortgage, lien note, conditional sales contract, floating charge, pledge or assignment of book debts or to any other agreement which under this Act is a security agreement is deemed to be a reference to the corresponding kind of security agreement under this Act. S.N.W.T. 1999,c.5,Sch.C,s.7.

## REGULATIONS

#### Regulations

**71.** (1) The Commissioner, on the recommendation of the Minister, may make regulations

- (a) prescribing the kinds of goods the leases of which are not within the scope of the Act;

- (b) prescribing the location and hours of business of the offices of the Registrar or any of them;
- (c) respecting the Registry and the duties of the Registrar, including the transition from any prior registry system to the system established by this Act;
- (c.1) respecting any matter relating to an agreement entered into by the Registrar under subsection 43(1.1), including the rights and obligations of the parties to such an agreement;
- (d) prescribing the seal of office of the Registrar;
- (e) respecting the payment of fees, the amount of fees or a manner of calculating the amount of fees and the manner of payment of them, including fees respecting filings in the Personal Property Registry authorized by another enactment;
- (f) respecting the time, place and all other matters pertaining to the registration of documents or electronic data that may be or are required to be entered in the Registry to effect, renew, discharge or otherwise amend a registration authorized by this Act or any other Act, including the use of forms provided by the Registrar or the Territorial Printer;
- (f.1) respecting the application of any provision of this Act to the registration of interests or notices authorized by any other Act to be registered in the Registry;
- (g) respecting the application of Part IV to interests that are permitted or required to be registered in the Registry by or under other Acts;
- (h) respecting
  - (i) the form, content and manner of use of financing statements and financing change statements,
  - (ii) the form, content and manner of use of notices referred to in this Act, including notices registered under section 49 in a land titles office, and of notices referred to in any other enactment that may be filed in the Personal Property Registry,
  - (iii) the manner in which collateral, including proceeds, is to be described in financing statements, and
  - (iv) what kinds of goods may be described in part by serial number and what kinds of goods must be described in part by serial number;
- (i) defining "serial number goods" for the purposes of this Act and the regulations;
- (j) respecting the time, place and all other matters pertaining to searches of the records in the Registry and the method of disclosure of registered information including the form of a search result;
- (j.1) authorizing searches according to criteria other than those set out in paragraphs 48(1)(a) to (c);



- (k) defining "search result" for the purposes of this Act and the regulations;
- (l) respecting any matters relating to the form, use and manner of obtaining or sending a printed or electronic verification statement or notice of a registration;
- (m) permitting the Registrar to amend a registration that contains an error caused by an act of the Registrar or Registry employees and prescribing the limits of the amendments;
- (n) respecting abbreviations, expansions or symbols that may be used in a financing statement, financing change statement or other form, notice, data or document used in connection with the registration of security interests or the disclosure of information in the Registry;
- (o) respecting the period of time during which a registration in the Registry or under section 49 is to be effective and the manner in which the period of time is to be indicated;
- (p) prescribing the maximum amounts of compensation payable or recoverable under sections 52 and 53;
- (q) authorizing the Registrar to make arrangements providing for the deferred payment of fees and charges and prescribing conditions that must be met if the arrangements are to be made available or continue to be made available to particular persons;
- (r) prescribing the amount of any fee to which a secured party or person named as a secured party in a financing statement is entitled under subsections 18(17) and 64(6);
- (s) prescribing the form for the financial statements and final account of the administration of a receiver;
- (t) prescribing the amount of damages the debtor or a person named as debtor is deemed to have suffered under subsection 65(6);
- (u) respecting the application of sections 36, 37 and 37.1, or any parts of them, to land for which a certificate of title has not been issued under the *Land Titles Act*, the place at which a registration must be made and the manner of registration;
- (v) prescribing any matter required or authorized by this Act to be prescribed; and
- (w) respecting any other matter that the Commissioner considers necessary or advisable for carrying out the purposes and provisions of this Act.

#### Application of regulations

(2) Regulations made under this section may be in respect of different persons, transactions, classes of persons or classes of transactions.

S.N.W.T. 1999,c.5,Sch.C,s.1(1)(c),(d),8.

## PRIOR LAW

"prior law" defined

**72.** (1) In this section and section 73, "prior law" means the law in force immediately before the coming into force of this Act.

Application of Act to security agreements made before or after Act comes into force

(2) This Act applies

- (a) to every security agreement made after this Act comes into force, including an agreement that renews, extends or consolidates an agreement made before this Act comes into force;
- (b) to every security agreement made before this Act comes into force that has not been validly terminated in accordance with prior law before this Act comes into force;
- (c) subject to subsections (4) and (5), to every prior security interest that is not enforced or otherwise validly terminated in accordance with prior law before this Act comes into force; and
- (d) to a receiver appointed before or after this Act comes into force.

Application of sections 10 and 11

(3) Sections 10 and 11 do not apply to a security agreement referred to in paragraph (2)(b).

Governing law where prior security interest

(4) The validity of a prior security interest is governed by prior law.

Determination of priorities where prior security or third party interest

(5) The order of priorities

- (a) between security interests is determined by prior law if all the competing security interests arose under security agreements entered into before this Act comes into force; and
- (b) between a security interest and the interest of a third party is determined by prior law if the third party interest arose before this Act comes into force and the security interest arose under a security agreement entered into before this Act comes into force.

"prior registration law" defined

**73.** (1) In this section, "prior registration law" means the *Assignment of Book Debts Act*, the *Bills of Sale Act*, the *Business Corporations Act*, the *Conditional Sales Act* and the *Corporation Securities Registration Act* as they existed immediately before the coming into force of this Act.

Unexpired registration of prior security interest

(2) Except as otherwise provided in this section, a registration or filing of a prior security interest that, on the day this section comes into force, has not expired under a prior registration law is deemed to be a registration under this Act and the security

interest is deemed to be perfected under this Act and, subject to this Act, the registration and perfected status of the security interest continues for the unexpired portion of the filing or registration, as the case may be, and may be further continued by registration under this Act if the security interest could have been perfected by registration if it had attached after this section came into force.

#### Bill of sale not evidencing mortgage

(3) A bill of sale that does not evidence a mortgage of chattels and that, on the day this section comes into force, is covered by a registration under the *Bills of Sale Act* is deemed to be registered in the Registry for the purposes of subsection 27(1.1) of the *Sale of Goods Act* and subsection 8(2) of the *Factors Act* and the registration ceases to be effective three years after the day this section comes into force unless it is continued by registration in the Registry before that day.

#### Bill of sale where grantee is Commissioner

(4) A bill of sale in which the grantee is the Commissioner, on behalf of Her Majesty, is deemed to have been registered and any security interest that is created or provided for in the bill of sale is deemed to have been perfected under this Act and the registration and any perfected status cease to be effective three years after the day this section comes into force, but may be further continued by registration under this Act if a security interest is created or provided for in the bill of sale and that security interest could have been perfected by registration if it had attached after this section comes into force.

#### Bill of sale where grantee is Her Majesty

(5) A bill of sale in which the grantee is Her Majesty is deemed to have been registered under this Act and the registration ceases to be effective three years after the day this section comes into force, but may be further continued by registration under this Act if a security interest is created or provided for in the bill of sale and that security interest could have been perfected by registration if it had attached after this section comes into force.

#### Expiry of prior registration

(6) A prior security interest registered under the *Business Corporations Act* or the *Corporation Securities Registration Act* is deemed to have been registered and perfected under this Act and the registration and perfected status of the interest cease to be effective three years after the day this section comes into force, but may be further continued by registration under this Act if the security interest could have been perfected by registration if it had attached after this section comes into force.

#### Status of security interest perfected under prior law without registration

(7) A prior security interest that under prior law had the status of a perfected security interest without filing or registration and without the secured party taking possession of the collateral is perfected under this Act as of the day the security interest was created and that perfection continues for three years after the day this section comes into force, after which day it becomes unperfected unless it is a security interest that could have been perfected under this Act if it had arisen after this section comes into force and it is otherwise perfected under this Act.

#### Time of perfection under prior law

(8) For the purposes of this Act, a security interest was perfected under prior law when the secured party complied with the prior law with respect to the creation and continuation of the security interest and the security interest has the status, in relation to the interest of other secured parties, buyers, judgment creditors or a trustee in bankruptcy of the debtor, similar to that of an equivalent security interest created and perfected under this Act.

#### Perfection of security interest in form of assignment of accounts

(9) A prior security interest in the form of an assignment of accounts of an existing or future debt to which the *Assignment of Book Debts Act* did not apply

- (a) is deemed perfected for the purposes of paragraphs 20(1)(a) and (b), and
- (b) is perfected under this Act for all other purposes as of the day notice of the assignment is given to the account debtor as defined in subsection 41(1),

and that perfection continues for three years after the day this section comes into force, after which it becomes unperfected unless it is otherwise perfected under this Act.

#### Perfection under Act when no registration, perfection under prior law

(10) A prior security interest that, when this Act comes into force, could have been, but was not, filed or registered under prior registration law or perfected under prior law through possession of the collateral by the secured party may, if it is a security interest that could have been perfected by registration or possession under this Act if it had arisen after this section comes into force, be perfected by registration or possession in accordance with this Act.

#### Perfection by possession

(11) A prior security interest that, under this Act, may be perfected by the secured party taking possession of the collateral is perfected for the purposes of this Act when possession of the collateral is taken as described in section 24, whether the possession was taken before or after this section comes into force and despite that under prior law the security interest could not be perfected by taking possession of the collateral.

#### Perfection where registration or possession no longer required

(12) A prior security interest that, on the day this section comes into force, was covered by an unexpired filing or registration under prior registration law and that would have been perfected under this Act without registration or the secured party taking possession of the collateral if it had arisen after this section comes into force remains perfected under this Act.

#### Perfection where may now perfect without registration

(13) A prior security interest that, on the day this section comes into force, could have been, but was not, covered by a filing or registration under prior registration law and that, under this Act, may be perfected without registration or the secured party taking possession of the collateral, is perfected under this Act if all of the conditions for perfection of such a security interest are met.

#### Continuation of status

(14) Where the perfection of a prior security interest that is deemed registered or perfected under this section is continued by registration under this Act, the registration under this Act

- (a) continues any registration or perfected status under prior registration law for the purposes of subsection 72(5); and
- (b) supersedes any registration under prior law.

#### Effect of repeal

(15) Despite the repeal of the *Assignment of Book Debts Act*, the *Bills of Sale Act*, sections 93.1 to 93.8 of the *Business Corporations Act*, the *Conditional Sales Act* and the *Corporation Securities Registration Act*, those Acts and sections continue in force, as if they had not been repealed, to the extent necessary to give effect to this section and section 72. S.N.W.T. 1999,c.5,Sch.C,s.9; S.Nu. 2013,c.20,s.32(2).

### TRANSITIONAL – SECURITIES TRANSFER ACT

#### Prior actions or proceedings

**74.** (1) The provisions of the *Securities Transfer Act*, including amendments made to this Act by section 107 of that Act, do not affect an action or proceeding commenced before the coming into force of this section.

#### Perfection of security interest

(2) No further action is required to continue perfection of a security interest in a security, if

- (a) the security interest in the security was a perfected security interest immediately before the coming into force of this section; and
- (b) the action by which the security interest was perfected would suffice to perfect the security interest under this Act.

**Perfection period**

(3) A security interest in a security remains perfected for a period of four months after the coming into force of this section, and continues to be perfected after that four-month period, where appropriate action to perfect the security interest under this Act is taken within that period, if

- (a) the security interest in the security was a perfected security interest immediately before the coming into force of this section; but
- (b) the action by which the security interest was perfected would not suffice to perfect the security interest under this Act.

**Registration of financing statement or financing change**

(4) A financing statement or financing change statement may be registered within the four-month period referred to in subsection (3) to continue that perfection or after that four-month period to perfect the security interest, if

- (a) the security interest was a perfected security interest immediately before the coming into force of this section; and
- (b) the security interest can be perfected by registration under this Act. S.Nu. 2010,c,15,s.107(28).

**Note**

**The following provisions have been deleted for the purposes of this consolidation:  
s.75 to 85 (Consequential Amendments)**

**REPEAL**

- 86. The *Assignment of Book Debts Act* is repealed.**
- 87. The *Bills of Sale Act* is repealed.**
- 88. The *Conditional Sales Act* is repealed.**
- 89. The *Corporation Securities Registration Act* is repealed.**
- 90. The *Document Registry Act* is repealed.**

**COMMENCEMENT****Commencement**

**91. This Act or any portion of this Act comes into force on a day or days to be fixed by order of the Commissioner.**

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