

# CONSOLIDATION OF SEIZURES ACT

R.S.N.W.T. 1988,c.S-6

(Current to: March 5, 2013)

## AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

R.S.N.W.T. 1988,c.8(Supp.)

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S.N.W.T. 1994,c.8,s.84 (as amended by S.N.W.T. 1999,c.5,Sch.C,Pt.I,s.1(3)(d))

s.84 in force May 7, 2001: SI-001-2001

S.N.W.T. 1995,c.11

S.N.W.T. 1996,c.19

In force April 1, 1998: SI-005-98

S.N.W.T. 1998,c.24

## AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:

S.N.W.T. 1998,c.34

In force April 1, 1999

## AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2010,c.15,s.108

s.108 in force September 27, 2010: SI-002-2010

S.Nu. 2011,c.10,s.32

s.32 in force March 10, 2011

S.Nu. 2012,c.16,s.68

s.68 NIF

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.

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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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## SEIZURES ACT

### INTERPRETATION

#### Definitions

1. In this Act,

"creditor" means,

- (a) in relation to a writ of execution, the person entitled to enforce by execution the payment of money payable pursuant to any judgment or order that is enforceable by execution, and
- (b) in relation to a distress, the person who has the power of distress; (*créancier*)

"debtor" means,

- (a) in relation to a writ of execution, the person liable for the payment of money under a writ of execution, and
- (b) in relation to a distress, the person who is liable for the payment of money or the delivery up of goods or chattels, which payment or delivery up is enforceable by distress or proceedings in the nature of distress; (*débiteur*)

"distress" means any act or thing done in the exercise of a power of distress; (*saisie-gagerie*)

"judge" means a judge of the Nunavut Court of Justice; (*juge*)

"judgment creditor" means the person entitled to receive money payable under a judgment or order of the Nunavut Court of Justice; (*créancier judiciaire*)

"judgment debtor" means the person liable for the payment of money payable under a judgment or order of the Nunavut Court of Justice; (*débiteur judiciaire*)

"notice of objection" means a notice of objection to seizure as prescribed; (*avis d'opposition*)

"personal property" means personal property as defined in the *Personal Property Security Act*; (*meubles*)

"power of distress" means the right of a person to enforce the payment of a claim against another person by means of taking a personal chattel out of the possession of that other person otherwise than by the authority of a writ of execution; (*droit de saisie-gagerie*)

"purchase money security interest" means

- (a) a security interest taken in personal property to the extent that it secures all or part of the purchase price of the personal property, and
- (b) a security interest taken in personal property by a person who gives value for the purpose of enabling the debtor to acquire rights in the personal property, to the extent that the value is applied to acquire such rights,

but does not include a transaction of sale and lease back to the seller and, for the purposes of this definition, "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 personal property; (*sûreté en garantie du prix d'acquisition*)

"registered" means, in connection with a security interest or a writ of execution, registered in the Registry under the *Personal Property Security Act* and the regulations made under that Act; (*enregistré*)

"Registry" means the Personal Property Registry established by the *Personal Property Security Act*; (*réseau d'enregistrement*)

"security interest" means an interest in goods, as defined in the *Personal Property Security Act*, that secures payment or performance of an obligation; (*sûreté*)

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

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

"writ of execution" includes a writ of attachment. (*bref d'exécution*)  
 S.N.W.T. 1998,c.34,Sch.C,s.32(2); S.N.W.T. 1994,c.8,s.84(2);  
 S.Nu. 2011,c.10,s.32(2),(5).

## APPLICATION

### Application of Act

2. (1) This Act applies to
- (a) a power to enforce the payment of money payable under an order made under the *Wages Recovery Act*; and
  - (b) a certificate of tax arrears that has been ordered to be filed as an order or judgment under the *Property Assessment and Taxation Act*.

## Non-application of Act

(2) This Act does not apply to a power of distress

- (a) under an agreement that creates or provides for a security interest to which the *Personal Property Security Act* applies except as provided by this Act or the *Personal Property Security Act*;
- (b) for the recovery or enforcement of payment of taxes or to a distress under taxes; or
- (c) subject to subsection (1), to enforce the payment of money payable under a conviction or order of a justice made under an Act of Nunavut, an Act of Canada or a by-law having the force of law in the Territories, or to a distress under such an Act or by-law. S.N.W.T. 1998,c.34,Sch.C,s.32(3); S.N.W.T. 1994,c.8,s.84(3); S.Nu. 2011,c.10,s.32(5).

## PROPERTY GENERALLY

## Binding effect of writ of execution

**3.** (1) A writ of execution binds the goods of the judgment debtor that are situated in Nunavut from the time of delivery of the writ of execution to the Sheriff, but not so as to prejudice

- (a) the title to the goods acquired by a person in good faith and for value, unless that person had, at the time when that person acquired his or her title, notice that the writ of execution had been delivered to the Sheriff and remained in the hands of the Sheriff unsatisfied or unless the writ was registered before the title was acquired;
- (b) subject to paragraph 20(1)(a) and subsection 35(6) of the *Personal Property Security Act*, the interest of a person who has a security interest, unless the writ is registered before the interest is perfected under the *Personal Property Security Act*; or
- (c) subject to paragraph 20(1)(a) and subsection 35(6) of the *Personal Property Security Act*, a purchase money security interest in the goods that is perfected after the writ is registered, but not later than 15 days after the day
  - (i) the debtor obtains possession of the goods, or
  - (ii) a third party, at the request of the debtor, obtains possession of the goods,
 whichever first occurs.

## Limit on effect of subsection (1)

(2) Nothing in paragraph (1)(a) affects an interest in goods acquired in good faith for value by any person under a transaction that was in the ordinary course of business of the judgment debtor, whether or not the writ of execution was registered or the person had notice that the writ had been delivered to the Sheriff and remained in the hands of the Sheriff unsatisfied.

## Consumer goods

(3) Nothing in subsection (1) affects an interest in goods acquired as consumer goods, as defined in the *Personal Property Security Act*, by a buyer or lessee who

- (a) gave new value, as defined in the *Personal Property Security Act*, for the interest acquired; and
- (b) bought or leased the goods without knowledge that the writ of execution had been delivered to the Sheriff and remained in the hands of the Sheriff unsatisfied and without knowledge of the registration of the writ.

## Non-application of subsection (3)

(4) Subsection (3) does not apply to an interest acquired in

- (a) a fixture; or
- (b) goods, the purchase price of which exceeds \$1000 or, in the case of a lease, the market value of which exceeds \$1000.  
S.N.W.T. 1994,c.8,s.84(4); S.Nu. 2011,c.10,s.32(5).

## Power to seize and sell

**4.** (1) The Sheriff may, by virtue of a writ of execution, seize and sell

- (a) any equitable or other right, property, estate or interest of the debtor in or in respect of any goods or other personal property and any equity of redemption of the debtor in respect of the goods or other personal property; and
- (b) any leasehold interests in land and any other chattels real that are the property of the debtor.

## Vesting on sale

(2) Where the Sheriff makes a sale referred to in subsection (1), every equitable or other right, property, estate, interest or equity of redemption that the debtor had or was entitled to at the time of the seizure of it under writ of execution vests in the purchaser.  
S.Nu. 2011,c.10,s.32(5).

## Registration

**4.1.** The interest of a judgment creditor pursuant to a writ of execution may be registered in the Registry. S.N.W.T. 1994,c.8,s.84(5).

## MONEY AND SECURITIES

## Seizure of money and securities

**5.** (1) The Sheriff may, by virtue of a writ of execution, seize

- (a) any money or bank notes belonging to a debtor including
  - (i) any surplus of a former execution against the debtor, and
  - (ii) any moneys levied under a writ of execution issued on a judgment or order in favour of the debtor; and

- (b) any cheques, bills of exchange, promissory notes, bonds, mortgages or other securities for money belonging to the person against whom the execution has been issued.

#### Power of Sheriff to hold securities

(2) The Sheriff may hold the cheques, bills of exchange, promissory notes, bonds, mortgages or other securities referred to in subsection (1) as security for the amount directed to be levied or so much of that as has not been otherwise levied or raised and

- (a) subject to the *Creditors Relief Act*, may pay and assign the securities to the creditor at the sum actually due on and secured by them if the creditor will accept them as money collected; or
- (b) may sue in his or her own name for the recovery of the sums secured by them, and for the enforcement of the security.

#### Assignment

(3) On notice to the debtor, the assignment referred to in paragraph (2)(a) vests in the creditor all the rights that are capable of assignment in respect of the securities.

#### Discharge of Sheriff

(4) The transfer by the Sheriff to the creditor of the property mentioned in this section discharges the Sheriff to the extent of the amount due on the property and secured by the property.

#### Discharge on payment

(5) Payment to the Sheriff by the person liable under any of the securities mentioned in this section and seized in execution by the Sheriff discharges the person liable from his or her liability in respect of the securities to the extent of the payment.

#### Moneys payable to persons entitled

(6) Subject to the *Creditors Relief Act*, moneys realized by the Sheriff under a writ of execution in respect of any of the proper costs, charges, expenses, fees and poundages of the Sheriff, are payable to the person entitled to the money under the *Creditors Relief Act* to the extent to which the person is so entitled, and any surplus that remains must be paid to the debtor or other person lawfully entitled to receive it.

#### Non-application of section

(7) This section does not apply to the interest of a debtor in a security or security entitlement described in section 6. S.Nu. 2010,c.15,s.108(2); S.Nu. 2011,c.10,s.32(3).

## SHARES AND DIVIDENDS

#### Definitions

**6.** (1) In this section and sections 7 and 8, "endorsement", "entitlement order", "instruction", "issuer", "securities intermediary", "security" and "security entitlement" have the same meaning as in the *Securities Transfer Act*.

### Seizure of debtor's interest in securities or security entitlements

(2) The interest of a debtor in a security or security entitlement may be seized by the Sheriff in accordance with sections 47 to 51 of the *Securities Transfer Act*.

### When seizure becomes effective

(3) If a seizure under subsection (2) is by notice to an issuer or securities intermediary, the seizure becomes effective when the issuer or securities intermediary has had a reasonable opportunity to act on the seizure, having regard to the time and manner of receipt of notice.

### Seizure includes dividends and other rights

(4) Every seizure under subsection (2) and sale made by the Sheriff includes all dividends, distributions, interest and other rights to payment with respect to

- (a) the security, if issued by an issuer incorporated or otherwise organized under the laws of Nunavut; or
- (b) the security entitlement.

### Payments prohibited after seizure

(5) After a seizure under subsection (2) becomes effective, the issuer or securities intermediary shall not pay the dividends, distributions or interest or give effect to other rights to payment to or on behalf of anyone except the Sheriff or a person who acquires or takes the security or security entitlement from the Sheriff.

**(6) Repealed, S.Nu. 2010,c.15,s.108(3).**

**(7) Repealed, S.Nu. 2010,c.15,s.108(3).**

**(8) Repealed, S.Nu. 2010,c.15,s.108(3).**

**(9) Repealed, S.Nu. 2010,c.15,s.108(3).**  
S.Nu. 2010,c.15,s.108(3)

### Sheriff may deal with seized interest in securities or security entitlements

**7.** (1) If a debtor's interest in a security or security entitlement is seized by the Sheriff,

- (a) the Sheriff is deemed to be the appropriate person under the Securities Transfer Act for the purposes of dealing with or disposing of the seized property; and
- (b) the debtor is not, for the duration of the seizure, the appropriate person under that Act for the purposes of dealing with or disposing of the seized property.

### Sheriff's dealing with seized interests

(2) On seizure of a debtor's interest in a security or a security entitlement, the Sheriff may

- (a) do anything that would otherwise have to be done by the debtor; or
- (b) execute or endorse any document that would otherwise have to be executed or endorsed by the debtor.

### Certificate of Sheriff's authority

(3) On making or originating an endorsement, instruction or entitlement order as the appropriate person under subsection (1), the Sheriff shall provide the issuer or securities intermediary with a certificate stating that he or she has the authority under this Act to make that endorsement, instruction or entitlement order, and any subsequent endorsements, instructions and entitlement orders, with respect to the same execution debt. S.Nu. 2010,c.15,s.108(3).

### Definition of "seized security"

**8.** (1) In this section, "seized security" means the interest of a debtor in a security that is seized.

### Application

(2) This section applies if

- (a) the interest of a debtor in a security is seized by the Sheriff; and
- (b) Nunavut is the jurisdiction that governs the validity of the security under section 44 of the *Securities Transfer Act*.

### Sheriff bound by restriction

(3) Subject to subsection (5), if the transfer of seized security is restricted by the terms of the security, the Sheriff is bound by a restriction imposed by the issuer or a unanimous shareholder agreement governed by the laws of Nunavut.

### Person entitled to acquire or redeem security

(4) Subject to subsection (5), if a person would otherwise be entitled to acquire or redeem seized security for a predetermined price or at a price fixed by reference to a predetermined formula, that person is entitled to acquire or redeem the security.

### Court orders on application

(5) On application by the Sheriff or any interested person, if the Nunavut Court of Justice considers that a restriction on the transfer of seized security or a person's entitlement to acquire or redeem seized security was made with intent to defeat, hinder, delay or defraud creditors or others, the Court may make any order that the Court considers appropriate regarding the seized security, including an order doing one or more of the following:

- (a) directing the method or terms of sale of the seized security, or the method of realizing the value of the seized security other than through a sale;

- (b) directing the issuer to pay dividends, distributions or interest to the Sheriff even though the Sheriff is not the registered owner of the security;
- (c) directing the issuer to register the transfer of the seized security to a person despite
  - (i) a restriction on the transfer of the security described in subsection (3), or
  - (ii) the entitlement of another person to acquire or redeem the security described in subsection (4);
- (d) directing that all or part of a unanimous shareholder agreement does not apply to a person who acquires or takes seized security from the Sheriff;
- (e) directing that the issuer be dissolved and its proceeds disposed of according to law.

#### Application under *Business Corporations Act*

(6) The Sheriff may bring an application under section 243 of the *Business Corporations Act* as if he or she were a complainant within the meaning of that section, whether or not an application is brought under subsection (5).

#### Joining applications

(7) An application under subsection (5) may be joined with an application for an oppression remedy brought under section 243 of the *Business Corporations Act*.

#### Transferee deemed party to unanimous shareholder agreement

(8) Unless otherwise ordered by the Nunavut Court of Justice under subsection (5), a person who acquires or takes a seized security from the Sheriff is deemed to be a party to any unanimous shareholder agreement regarding the management of the business and affairs of the issuer or the exercise of voting rights attached to the seized security to which the debtor was a party at the time of the seizure, if the unanimous shareholder agreement contains provisions intended to preclude the debtor from transferring the security except to a person who agrees to be a party to that unanimous shareholder agreement.

#### Person acquiring seized security not liable

(9) Despite subsection (8) and any provision in a unanimous shareholder agreement to the contrary, a person who acquires or takes a seized security from the Sheriff is not liable to make any financial contribution to the corporation or to provide any guarantee or indemnity of the corporation's debts or obligations.  
S.N.W.T. 1996,c.19,Sch.,s.11; S.N.W.T. 1998,c.24,s.28(2); S.Nu. 2010,c.15,s.108(3).

## MORTGAGES AND ENCUMBRANCES

### Seizure of mortgage

**9.** (1) The Sheriff, where charged with the execution of a writ of execution, may seize under the writ any registered mortgage of or encumbrance on or security interest in lands or chattels of which the debtor is the owner, by delivering a notice in writing of the seizure to the proper officer in the office in which the mortgage or encumbrance is registered.

### Charging of mortgage

(2) No mortgage, encumbrance or security interest is affected or charged by a writ of execution until delivery of the notice referred to in subsection (1).

### Duty on receipt of notice

(3) On receipt of a notice referred to in subsection (1) by the proper officer, that officer shall make an entry of the receipt of the notice in the register or other book in which the mortgage, encumbrance or security interest is registered.

### Requirement for notice

(4) No person who is liable to pay money under a mortgage, encumbrance or security interest seized under this section is affected by the seizure of the mortgage, encumbrance or security interest until

- (a) notice in writing of the seizure has been served on him or her personally; or
- (b) the person has otherwise acquired actual knowledge of the seizure.

### Payments after notice

(5) Payments made by the person referred to in subsection (4) to the debtor after service of the notice of the seizure are of no effect as against the Sheriff and the creditor. S.N.W.T. 1994,c.8,s.84(6),(7).

### Order of sale

**10.** No mortgage or other security for money seized under a writ of execution shall be sold except on the order of a judge and then only on the conditions that the judge considers proper. S.Nu. 2011,c.10,s.32(5).

## GOODS AND CHATTELS

### Seizure of goods and chattels

**11.** The Sheriff, by a writ of execution, may seize the goods and chattels of the debtor or any interest of the debtor in them. S.N.W.T. 1998,c.24,s.28(3).

## SALE GENERALLY

### Sale of personal property

**12.** (1) Personal property taken in execution under a writ of execution or by virtue of a power of distress and not specifically mentioned in this Act shall, unless a judge otherwise orders, be offered for sale by public auction or by tender.

### Notice of auction or sale by tender

(2) Notice of a public auction or sale by tender must be sent by registered mail to the creditor and debtor at their last known post office addresses at least 14 days before the public auction or sale by tender.

### Method of giving notice

(3) A public notice describing the property to be sold and stating the day, time and place of a public auction or sale by tender must

- (a) be posted for a period of at least 10 days before the auction or sale in the office of the Sheriff and, if the Sheriff directs, in any other places in the locality of the place where the auction or sale is to be held; and
- (b) if the Sheriff directs and in accordance with the directions of the Sheriff, be advertised by publication in a newspaper circulating in the locality of the place where the auction or sale is to be held.  
S.Nu. 2011,c.10,s.32(5).

## SALE OF LAND

### Sale of land under writ of execution

**13.** (1) No sale of land shall, unless a judge otherwise orders, be made under a writ of execution

- (a) until after a return *nulla bona* in whole or in part; and
- (b) until after the expiration of one year from the date of the receipt of a copy of the writ of execution by the Registrar of Land Titles for the registration district in which the land is located.

### Requirement for notice

(2) No land shall be sold under a writ of execution until after the giving of the notice of the sale by advertising or otherwise that may be directed by a judge.

### Adjournment of sale

(3) Where at a sale by auction held by the Sheriff of land taken in execution

- (a) there are no bidders, or
- (b) the Sheriff receives for the land no bid that the Sheriff considers sufficient,

the Sheriff may adjourn the sale to a date to be subsequently fixed by the Sheriff and either to the same or a different place and, in any other case, notice of the adjourned sale shall be given in the manner set out in section 12.

#### Advertising expenses

(4) Where the amount authorized to be made and levied under a writ of execution is made and levied under the writ out of goods and chattels, the person issuing the writ is not entitled to the expenses of any advertising of land under the writ.  
R.S.N.W.T. 1988,c.8(Supp.),s.248; S.Nu. 2011,c.10,s.32(5).

### AGENT OF SHERIFF AND INVENTORY

#### Appointment of agent by Sheriff

**14.** The Sheriff may, at any time after making a seizure of goods under a writ of execution or by virtue of a power of distress, appoint the debtor or some other person as agent of the Sheriff to hold and keep the goods so seized for and on behalf of the Sheriff, where the debtor or other person signs an undertaking to hold the goods seized as bailee for the Sheriff and to deliver up the possession of the goods to the Sheriff on demand.

#### Delivery of inventory to owner

**15.** Where goods or chattels are seized, the Sheriff shall on request deliver to the person who is the owner of the goods or who is at the time of seizure in possession of the goods, or to the agent or employee of the person, an inventory of the goods seized before they are removed from the premises on which they have been seized.

### DISTRESS

#### Persons authorized to make distress

**16.** Unless it is otherwise ordered by a court or judge, no distress shall be made, taken, levied, executed or carried into effect except

- (a) by the Sheriff or a person authorized in writing to do so by the Sheriff; and
- (b) in the case of a distress for rent, between the hours of 8 a.m. and 8 p.m.

#### Distress for rent

**17.** (1) No landlord shall distrain for rent on goods and chattels that are the property of any person except the tenant or person who is liable for the rent, although the goods and chattels are found on the premises.

#### Exception

(2) Subsection (1) does not apply

- (a) in favour of a person claiming title under or by virtue of an execution against the tenant;
- (a.1) subject to paragraph (b), in favour of a person whose title is derived by purchase, gift, transfer or assignment from the tenant, whether absolute or in trust or by way of mortgage or otherwise;
- (b) in favour of a person who has a security interest in goods on the premises other than a person who has a purchase money security

interest in the goods as original collateral, as defined in the *Personal Property Security Act*, or as proceeds, as defined in the *Personal Property Security Act*;

- (c) where goods have been exchanged between two tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the landlord; or
  - (d) where the property is claimed by the spouse or any dependant or relative of the tenant where the spouse, dependant or relative lives on the premises as a member of the family of the tenant.
- S.N.W.T. 1994,c.8,s.84(8).

#### Distress for interest on mortgage

**18.** (1) The right of a mortgagee of land or his or her assigns to distrain for interest in arrears or principal due on a mortgage is, despite anything stated to the contrary in the mortgage or in any agreement relating to the mortgage, limited

- (a) to the goods and chattels of the mortgagor or his or her assigns; and
- (b) only to the goods and chattels that are not exempt from seizure under execution.

#### Interpleader rules

(2) The Rules of the Nunavut Court of Justice applicable to interpleader by the Sheriff apply to procedure by the Sheriff under this section.

#### Right to interpleader

(3) The right of the Sheriff to interpleader relief under the Rules of the Nunavut Court of Justice is not affected by the fact that the Sheriff has been provided with any security that the Sheriff is permitted to require under this Act. S.Nu. 2011,c.10,s.32(5).

#### Distress warrant

**19.** (1) No distress shall be made and no levy shall be made under a distress unless the person entitled to cause the distress and levy to be made or his or her duly authorized agent has executed and delivered to a person authorized by this Act to make and levy a distress a proper warrant in that behalf.

#### Security

(2) No person to whom a distress warrant is delivered for execution is bound to proceed on it unless the person has been provided with the security that the person considers to be reasonably sufficient to indemnify the person in respect of his or her fees, charges and expenses, and any claims for damages in respect of the distress and levy, and anything done in relation to that.

## Definitions

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

"agreement" means an agreement that creates or provides for a purchase money security interest, as defined in the *Personal Property Security Act*; (*contrat*)

"creditor" means the person who has a power of distress under an agreement; (*créancier*)

"debtor" means the person who, under an agreement, is liable for the payment of money or the delivery up of goods or chattels, if the payment of the money or the delivery up of the goods or chattels is enforceable by distress or by proceedings in the nature of distress. (*débiteur*)

## Examination of debtor

(2) At any time after a distress, a creditor may, on the order of a judge, examine on oath

- (a) the debtor in respect of whom the distress was made, or
- (b) any other person whom the creditor, on reasonable grounds, believes to be in possession of or to have knowledge respecting the whereabouts of any goods or chattels that comprise the security of the creditor under the agreement mortgage,

before the Clerk of the Nunavut Court of Justice, or before any other person named in the order, as to the whereabouts of the goods and chattels that comprise the security of the creditor under the agreement mortgage.

## Rules of the Nunavut Court of Justice

(3) In an examination under this section, the Rules of the Nunavut Court of Justice apply, with such modifications as the circumstances require, as if the examination of the debtor under this section were an examination of a judgment debtor under the Rules of the Nunavut Court of Justice. S.N.W.T. 1994,c.8,s.84(9),(10),(11); S.Nu. 2011,c.10,s.32(5).

## ENTRY AND NOTICE

## Entry into buildings to effect seizure

**21.** (1) For the purpose of

- (a) effecting a seizure of goods and chattels authorized by a writ of execution or a distress warrant, or
- (b) obtaining the possession of any goods that have previously been seized,

the person lawfully charged with the execution of the writ of execution or distress warrant 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 goods and chattels liable to seizure are contained, and on the order of a judge may similarly break open the door of a private dwelling-house.

#### Where entry effected

(2) Where a building or dwelling-house is broken into under subsection (1), the person so doing shall ensure that the building or dwelling-house is properly secured after possession of goods has been effected. S.Nu. 2011,c.10,s.32(5).

#### Definition of "mobile home"

- 22.** (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 an occupant fails, on demand, to deliver up possession of a mobile home seized under a writ of execution or a distress warrant, the creditor may apply, on notice of motion to the occupant, to a judge of the Nunavut Court of Justice for 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 or the Sheriff's bailiff 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. 2011,c.10,s.32(4).

#### Effecting seizure

- 23.** (1) In order to effect the seizure of goods or chattels under a writ of execution or by virtue of a power of distress, the person duly authorized to effect the seizure shall
- (a) serve on the debtor, and if there is more than one debtor, on each one of them, or on an adult member of the household of the debtor,

- (b) attach to the goods to be seized or some or all or them, or
- (c) post up on a conspicuous place on the premises on which the goods or some part of them are located at the time of seizure,

a notice of seizure in the prescribed form and a notice of objection to seizure in the prescribed form.

#### Length of seizure

- (2) A seizure made under this Act shall be deemed to be a continuing seizure
  - (a) until such time as the Sheriff by notice in writing releases the seizure; or
  - (b) until the goods or property under seizure have been sold.

#### Sticker

(3) Where, in the opinion of the person authorized to effect a seizure, any particular goods or chattels are not readily distinguishable and identifiable from other similar goods or chattels, the person so authorized may affix to the goods or chattels a sticker in the prescribed form.

#### Contents of sticker

- (4) The sticker referred to in subsection (3) must
  - (a) briefly describe the article to which it is attached; and
  - (b) be signed by the Sheriff or other person authorized to effect the seizure.

### PROCEDURE RELATING TO SALE

#### Procedure

**24.** (1) The notice of seizure referred to in subsection 23(1) must bear a heading in red letters and larger type than the body of the document, "NOTICE OF SEIZURE OF GOODS", and the names of the debtor and creditor must be inserted in the notice before the seizure is made.

#### Notice of objection

(2) A notice of objection must contain the respective names and, where possible, the addresses of the creditor and debtor and shall be accompanied by a sufficiently stamped envelope addressed to the Sheriff.

#### Objection to removal and sale

**25.** Where a person who is liable for the payment of a debt for which seizure is made, objects to the removal and sale of the goods seized, the person shall sign a notice of objection and within 14 days of the date after the seizure cause it to be delivered to the Sheriff but the absence of the signature or the post office address of the debtor does not invalidate a duly made notice of objection.

### Disposal of seized goods

**26.** Where no notice of objection is received by the Sheriff within 14 days after a seizure of goods, the goods seized may be disposed of according to law.

### Application for order to remove and sell

**27.** (1) Where the Sheriff receives a notice of objection pursuant to section 25, the Sheriff shall immediately notify the creditor and upon that the creditor may apply to a judge for an order for the removal and sale or for the removal or the sale of the property seized or any part of it.

### Contents of application

(2) Where a creditor applies under subsection (1), the application shall, as far as is reasonably possible, specify and describe the particular property in respect of which the order is sought.

### Notice

(3) Seven days notice of an application referred to in subsection (1), or such other notice as the judge may direct, must be given to the debtor.

### Summary disposal

(4) Every application referred to in subsection (1) must be dealt with in a summary manner and may be adjourned from time to time. S.Nu. 2011,c.10,s.32(5).

### Order

**28.** (1) On the hearing of an application referred to in subsection 27(1), the evidence may be taken either orally or by affidavit as the judge may direct, and the judge may

- (a) either refuse the application, or make an order for the removal or sale of the goods or both;
- (b) **repealed, S.N.W.T. 1994,c.8,s.84(12);**
- (c) make an order on the terms and conditions as to costs that the judge determines;
- (d) by the same order, or on the application of the debtor by a subsequent order, suspend the operation of the order pending the payment of the debt by the instalments that the judge may fix, or require security for the performance of the conditions that the judge may impose; and
- (e) order the release of all or any part of the goods seized.

### Sale directions

(2) Where the judge orders a sale, the judge may give directions as to the manner, time and place of the sale and any other directions that to the judge seem proper and convenient, and may give leave to any party to bid or submit a tender at the sale.

### Description of property

(3) An order made under this section shall, as far as is reasonably possible, specify and describe the particular property in respect of which the order is made.

### Disputes

(4) Where, on the hearing of an application under this section, it is made to appear that there is a dispute as to

- (a) the right to make a seizure,
- (b) the amount payable in respect of the seizure, or
- (c) the ownership of the goods seized,

the judge may proceed to hear and determine the dispute in a summary manner on notice to the persons that the judge may direct and on evidence given either orally or by affidavit that the judge considers proper.

### Appeal

(5) No appeal lies from an order of a judge under this section or section 27 except where the indebtedness in question exceeds \$200. S.N.W.T. 1994,c.8,s.84(12); S.Nu. 2011,c.10,s.32(5).

### Where no notice of objection received

**29.** (1) Where no notice of objection is received by the Sheriff within 14 days after the seizure of goods

- (a) the Sheriff may, on the instructions of the creditor, proceed to sell the goods seized in the manner set out in this Act;
- (b) if the creditor is entitled to do so, the creditor may sell the goods seized or cause the goods to be sold by a person other than the Sheriff, either by public auction, sale by tender or private sale, on giving to the debtor five days notice in writing of the intention of the creditor to exercise his or her rights to do so; or
- (c) on the application to the Sheriff by the debtor stating that in the opinion of the debtor the value of the goods seized is greater than the amount of the claim of the creditor and costs, the Sheriff, if the Sheriff is satisfied that it is proper in the circumstances to do so, may direct that the goods seized be sold only subject to the approval of the Sheriff, and in that event no sale of the goods shall be made by the creditor until the approval of the Sheriff has been obtained and the proceeds of the sale shall be paid to the Sheriff to be dealt with by the Sheriff according to law.

### Where goods delivered to creditor

(2) Where goods under seizure are delivered into the possession of a creditor for the purposes of sale under paragraph (1)(b), the Sheriff is relieved of all further responsibility in respect of the goods.

### Duties of creditor

(3) Where the creditor makes or effects a sale under paragraph (1)(b), the creditor shall,

- (a) within 30 days after the sale, file with the Sheriff a statutory declaration setting out

- (i) the particulars of the sale,
  - (ii) the amount realized by the sale, and
  - (iii) the necessary and proper disbursements and fees in connection with the sale, which disbursements shall not exceed those that the Sheriff would have been entitled to charge if the sale had been effected by the Sheriff; and
- (b) immediately after the sale, where
- (i) the proceeds of the sale exceed the amount for which the seizure was made together with the disbursements, or
  - (ii) the amount for which the seizure was made together with the disbursements is realized by the sale of a part only of the goods seized,

deliver the excess proceeds and any goods unsold to the Sheriff for delivery to the persons lawfully entitled to them.

#### Disposal of goods seized by Sheriff

- 30.** (1) Despite anything in this Act, where the Sheriff
- (a) has lawfully seized goods under a writ of execution or by virtue of a power of distress, and
  - (b) believes that it is necessary or advisable that the goods be taken by the Sheriff and removed,

the Sheriff may make the removal and disposition of the goods that the Sheriff considers necessary without an order.

#### Sale of perishables

(2) Where any of the goods lawfully seized are of a perishable nature, the Sheriff may sell the goods in any manner that the Sheriff considers proper without an order, and the proceeds of the sale shall take the place of and be dealt with as if the proceeds were the goods so sold. S.Nu. 2011,c.10,s.32(5).

#### Adjournment of sale

- 31.** (1) Where property taken in execution or by virtue of a power of distress is offered for sale by auction or tender and
- (a) there are no bids or tenders made for the property or any part of it, or
  - (b) the bids or tenders made are, in the opinion of the Sheriff, inadequate having regard to the value of the property taken in execution or under the power of distress and offered for sale,

the Sheriff may adjourn the sale.

#### Notice

- (2) Where an adjournment of the sale referred to in subsection (1) is
- (a) for a period of more than seven days, or
  - (b) to a different place,
- the Sheriff shall give five days notice of the adjourned sale in the manner set out in section 12.

*Idem*

(3) Where the sale referred to in subsection (1) has been adjourned *sine die*, the Sheriff shall give notice of the adjourned sale in the manner set out in section 12.

## Sale by private contract

**32.** Where goods or chattels taken in execution or by virtue of a power of distress have been offered for sale and remain unsold, the Sheriff may, without a writ of *venditioni exponas*, sell the goods by private contract to the creditor or to any other person if the price offered for the property is, in the opinion of the Sheriff, a fair and reasonable price having regard to all the circumstances.

## Application for order to restrain proceedings by creditor

**33.** (1) The debtor or any person claiming an interest in goods or chattels seized in execution or by virtue of a power of distress may, at any time after the seizure and before the goods or chattels have been sold, apply to a judge on four days notice to the creditor or other notice to the creditor that the judge may direct, for an order restraining the creditor from proceeding to remove or sell or remove and sell all or any of the goods or chattels seized.

## Refusal of application

(2) A judge may

- (a) refuse the application referred to in subsection (1); or
- (b) where the judge is satisfied that it is proper and convenient in the circumstances to do so,
  - (i) grant the application in whole or in part subject to any conditions that the judge considers proper, and
  - (ii) order that the seizure be released and that the goods or chattels seized be disposed of in the manner that the judge considers proper in the circumstances.

S.Nu. 2011,c.10,s.32(5).

## Costs against debtor

**34.** Where a creditor claims under a bill of sale, an agreement that creates or provides for a purchase money security interest, as defined in the *Personal Property Security Act* or lien note or for rent proceeds concurrently by way of distress and by way of action in a court for the recovery of the indebtedness, no costs or other disbursements shall be allowed in the action against the debtor except on the order of a judge and on the notice that the judge may direct. S.N.W.T. 1994,c.8,s.84(13).

## Sale of goods without warranty of title

**35.** Where the Sheriff sells goods or chattels under execution or power of distress, the sale shall be without warranty of title and the purchaser, on paying the purchase price, acquires as a result of that the precise interest and no more in the goods or chattels that are lawfully sold under the writ of execution or power of distress.

### Service of notices by mail

**36.** (1) Except as otherwise provided in this Act, a notice required to be served on a person pursuant to this Act may be served by sending the notice by registered mail to the person at his or her last known post office address.

### Affidavit of service

(2) A notice referred to in subsection (1) shall be deemed to have been duly served on proof being made by affidavit stating

- (a) that the notice was sent by registered mail to the person to be served at his or her last known post office address;
- (b) the date and place of mailing of the registered letter; and
- (c) the date at which the registered letter would, in the ordinary course of mail, reach its destination.

### Date of service

(3) The date on which a registered letter would, in the ordinary course of mail, reach its destination shall be deemed to be the date of service of the notice referred to in subsection (1).

### *Creditors Relief Act*

**37.** (1) The *Creditors Relief Act* does not apply to the proceeds of sale of property seized and sold otherwise than under a writ of execution.

### Surplus money

(2) Despite subsection (1), where a chattel has been seized and sold in the exercise of a power of distress to which this Act applies, any surplus money remaining in the hands of the Sheriff after the Sheriff has

- (a) paid in full the claim of the person who exercised the power of distress, and
- (b) deducted the fees and expenses of the Sheriff and any claims for damages in respect of the distress and levy,

shall be deemed to be the proceeds of property seized and sold under a writ of execution and to have been attached on behalf of all creditors who are entitled by the *Creditors Relief Act* to share in any money received by the Sheriff by reason of a seizure or attachment.

### Exemption

(3) Subsection (2) does not apply to goods or chattels seized and sold under a power of distress that are exempt from seizure under the *Exemptions Act*, and the surplus money remaining in the hands of the Sheriff shall be paid to the person from whom the goods or chattels were seized. S.Nu. 2011,c.10,s.32(5).

## BOND OF INDEMNITY

Seizure of property not in possession of debtor

**38.** (1) The Sheriff is not under a duty to seize property that is in the possession of a person, other than the debtor, who claims any interest in the property or right to the property unless the creditor

- (a) delivers to the Sheriff in writing
  - (i) instructions to seize the property, and
  - (ii) a description of the property to be seized that will enable the Sheriff to identify it; and
- (b) provides the Sheriff with a good and sufficient bond of indemnity to the satisfaction of the Sheriff.

Exception

(2) Despite subsection (1), no bond of indemnity is required where the Maintenance Enforcement Administrator instructs the Sheriff to seize property in order to enforce a maintenance order pursuant to the *Maintenance Orders Enforcement Act*.

Assignment of bond

(3) A bond taken by the Sheriff pursuant to this section 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

(4) Where a difference arises as to the bond to be provided pursuant to this section, the Sheriff shall, on the request of the creditor, refer the matter to a judge for determination. S.Nu. 2011,c.10,s.32(5).

**Note:** On a day to be fixed by order of the Commissioner, subsection 38(2) is repealed and the following is substituted:

(2) Despite subsection (1), no bond of indemnity is required where the Family Support Manager instructs the Sheriff to seize property in order to enforce a support order pursuant to the *Family Support Orders Enforcement Act*.

See S.Nu. 2012,c.16,s.68.

## APPLICATIONS TO JUDGE OF NUNAVUT COURT OF JUSTICE

## Application for directions

**39.** (1) The Sheriff may on his or her own motion apply to a judge for direction where the Sheriff has any doubt as to the exercise by the Sheriff of any power, duty or authority conferred or imposed on the Sheriff by this Act.

*Idem*

(2) At any time after a distress, the creditor or debtor may on his or her motion apply to a judge for directions with respect to the exercise or intended exercise by the Sheriff of any of the powers or duties conferred on the Sheriff by this Act.

## Order

(3) On an application made under subsection (1) or (2), the judge may

- (a) on the notice to the parties that the judge considers proper, and
- (b) after hearing the evidence that the judge considers necessary,

make an order giving directions not inconsistent with this Act that the judge considers proper and convenient.

## Immunity

(4) No action or proceeding lies against the Sheriff for anything done under or in conformity with any directions given under subsection (3). S.Nu. 2011,c.10,s.32(5).

## Notice of intention to release seizure

**40.** (1) The Sheriff may, at any time after a seizure under a writ of execution or a power of distress has been in effect for six months, serve on

- (a) the party who instructed the seizure, or
- (b) in the case of a seizure under a writ of execution, all persons having subsisting writs of execution in the hands of the Sheriff,

a notice in writing informing each person so served that, on the expiration of a period of 60 days after the date of service of the notice, the Sheriff intends to release the seizure unless before that time application is made to a judge for an order continuing the seizure.

## Release

(2) The Sheriff may release the seizure where no application is made under subsection (1).

## Notice

(3) An application referred to in subsection (1) may be made *ex parte* or on the notice that a judge may direct, but in every case the applicant must serve the Sheriff with notice of the application.

## Order to release

(4) A judge may, on hearing the application referred to in subsection (1), make an order providing for the release of or the continuation of the seizure on the terms including costs that the judge considers proper.

## Date of service

(5) For the purposes of subsection (1), the date of service shall, where service is made by ordinary mail, be deemed to be the date on which the notice would have arrived at the last known address of the person served in the ordinary course of delivery, if the notice is in fact addressed to the last known address of that person and placed in the mail. S.Nu. 2011,c.10,s.32(5).

## OFFENCES AND PUNISHMENT

## Unauthorized seizure or distress

**41.** Every person who

- (a) in contravention of this Act and under a power of distress, makes a seizure or levies a distress or does any act for the purpose of carrying a seizure or levy into effect, or
- (b) by means of threats of seizure or sale obtains or takes or receives from a person goods or chattels or the proceeds of goods or chattels when he or she is not at that time fully authorized to make a seizure or levy a distress in respect of the goods or chattels,

is guilty of an offence and liable on summary conviction,

- (c) if an individual,
  - (i) for the first offence, to a fine not exceeding \$500 and, in default of payment, to imprisonment for a term not exceeding six months, and
  - (ii) for each subsequent offence, to imprisonment without the option of a fine for a term not exceeding six months, and
- (d) if a corporation, to a fine not exceeding \$500.

## Non-delivery of goods or chattels

**42.** (1) Every person who

- (a) is under a duty to deliver to the Sheriff goods or chattels that have been seized by the Sheriff, and
- (b) defaults in delivering the goods or chattels to the Sheriff within a reasonable time after being required to do so by the Sheriff,

is liable to attachment on application to a judge and may be proceeded against as for a civil contempt of court.

## Application procedure

(2) An application under subsection (1) must be made on notice of motion by the person on whose behalf the goods or chattels were seized by the Sheriff.

S.Nu. 2011,c.10,s.32(5).

## Contravention of subsection 29(3)

**43.** Every person who contravenes subsection 29(3) is guilty of an offence and liable on summary conviction,

- (a) if an individual, to a fine not exceeding \$300 and, in default of payment, to imprisonment for a term not exceeding six months; and
- (b) if a corporation, to a fine not exceeding \$500.

## Stickers on articles

**44.** Every person who

- (a) removes, transfers, defaces or otherwise interferes with a sticker affixed to an article pursuant to subsection 23(3), or
- (b) removes or interferes with an article to which a sticker has been affixed pursuant to subsection 23(3),

is guilty of an offence and liable on summary conviction to a fine not exceeding \$200 or, in default of payment, to imprisonment for a term not exceeding 60 days or to both.

## REGULATIONS

## Regulations

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

- (a) governing the procedure to be followed under this Act that is not inconsistent with this Act;
- (b) prescribing the form of the notice of seizure and notice of objection to seizure referred to in subsection 23(1);
- (c) prescribing forms to be used in proceedings authorized by this Act;
- (d) prescribing a tariff of fees, costs and charges for services rendered by the Clerk of the Nunavut Court of Justice and the Sheriff pursuant to this Act; and
- (e) prescribing the form of the sticker referred to in subsection 23(3).  
S.Nu. 2011,c.10,s.32(5).