

UNEDITED

The Distress Act

being

Chapter 91 of *The Revised Statutes of Saskatchewan, 1953*
(effective February 1, 1954).

FOR HISTORICAL REFERENCE ONLY

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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SCHEDULE

CHAPTER 91

An Act respecting Distress and Extrajudicial Seizure

SHORT TITLE

Short title

1 This Act may be cited as *The Distress Act*.

R.S.S. 1953, c.91, s.1.

Costs of distress

2 No person making a distress for rent, and no person employed in making the distress or doing any act in the course of the distress or for carrying same into effect, shall levy, take or receive any costs in respect of the distress other than such as are set forth in the appropriate part of the first schedule hereto.

R.S.S. 1940, c.83, s.2; R.S.S. 1953, c.91, s.2.

Costs of extrajudicial seizures

3 No person making seizure under the authority of a chattel mortgage, lien note or other extrajudicial process, and no person employed in making seizure or doing any act in the course of the seizure or for carrying the same into effect shall levy, take or receive any costs in respect of the seizure other than such as are set forth in the second schedule hereto.

R.S.S. 1940, c.83, s.3; R.S.S. 1953, c.91, s.3.

Work must be done

4 No person shall make a charge for anything mentioned in either of such schedules unless it has been actually done.

R.S.S. 1940, c.83, s.4; R.S.S. 1953, c.91, s.4.

Penalty

5 If any one offends against any of the provisions of the preceding sections, the person aggrieved thereby may, by notice of motion, summon the offender before the judge of the district court for the judicial district where the offence was committed, sitting in chambers, and the said judge may order the party making the distress or seizure to pay to the person aggrieved a sum not exceeding treble the amount of the money taken contrary to the provisions of this Act, together with the costs of the proceedings.

R.S.S. 1940, c.83, s.5; R.S.S. 1953, c.91, s.5.

Who makes seizure

6(1) No chattels covered by a chattel mortgage shall be seized or sold except by the sheriff of the judicial district within which the chattels are situated or some other person duly authorized by him for the purpose.

Indemnity

(2) The sheriff or person making the seizure may before doing so require:

(a) to be indemnified as to damages and costs in such amount as may be reasonable under the circumstances; and

(b) that the creditor shall advance a sufficient sum to cover all the fees and disbursements shown in the second schedule to this Act save poundage.

R.S.S. 1940, c.83, s.6; R.S.S. 1953, c.91, s.6.

Right to distrain

7 Subject to the provisions of section 8, the right of a mortgagee of land or of a vendor of land under an agreement of sale, or of the assigns of either, to distrain for interest in arrear or principal due upon the mortgage or agreement of sale, shall, notwithstanding anything to the contrary in the mortgage or in any agreement relating to the same, or in the agreement of sale, or in any other agreement relating thereto, be limited to the goods and chattels of the mortgagor or purchaser, or of their respective assigns, and to such of them as are not exempt from seizure under execution.

R.S.S. 1940, c.83, s.7; R.S.S. 1953, c.91, s.7.

Power of mortgagees and vendors to recover rentable value of land

8(1) Subject to the following subsections, a mortgagee of land, or a vendor of land or of land with chattels, may make an application in writing to the tenant or other person occupying the land, or any part thereof, for payment to such mortgagee or vendor of the rent or the rentable value of the land or of such part, to the extent of the interest due, and of all taxes or levies and premiums of insurance payable by the mortgagor or vendee under the mortgage or agreement of sale and paid by the mortgagee or vendor, and of all moneys which the mortgagee or vendor has paid upon or in respect of any prior mortgage or charge upon the land and for payment of which the mortgagor or vendee is liable.

(2) Such rent or rentable value shall, whether or not the mortgagor or vendee has attorned:

(a) be payable to and recoverable by the mortgagee or vendor from the tenant or person liable to pay the same or occupying the land or any part thereof, by any remedy, proceeding or claim available as between a landlord and his tenant or the execution creditors of the tenant or persons in whose favour the restriction mentioned in subsection (1) of section 25 of *The Landlord and Tenant Act* does not apply; or

(b) be recoverable in any court of law in the province.

(3) Subject to the provisions of *The Crop Payments Act*, the right to distrain under this section shall be limited to such goods and chattels as are not exempt from seizure under execution, but no crop or grain shall be deemed to be so exempt by reason of its growing or having been grown upon land free from seizure under or by virtue of execution.

(4) Subject to the provisions of *The Crop Payments Act*, no tenant who is not also liable under the mortgage or agreement of sale shall be liable to pay to the mortgagee or vendor a greater sum than the amount of rent which, at the time of making the application mentioned in subsection (1) and from time to time thereafter, shall be due by such tenant; and any amount so paid shall be held to be *pro tanto* satisfaction of the rent.

(5) A second or subsequent mortgagee may exercise the rights conferred by subsection (1) only with the previous consent in writing of all prior mortgagees, or, in the absence of such consent, only while all moneys, other than original principal, due and payable under prior mortgages and all taxes on the land are satisfied.

(6) A vendor may exercise the rights conferred by subsection (1) with the previous consent in writing of all prior mortgagees and vendors, or, in the absence of such consent, only while all moneys, other than original principal, due and payable under prior mortgages or agreements of sale and all taxes on the land are satisfied.

(7) No mortgagee or vendor shall, when acting under this section, be deemed to be or be subject to the liabilities of a mortgagee in possession.

(8) The provisions of this section apply also to the personal representatives, successors and assigns of any mortgagee or vendor, and apply to mortgages and agreements of sale heretofore or hereafter made.

R.S.S. 1940, c.83, s.8; R.S.S. 1953, c.91, s.8.

Notice of sale

9 Goods distrained for such interest or principal shall not be sold except after such notice as is required to be given by a landlord who sells goods distrained for rent.

R.S.S. 1940, c.83, s.9; R.S.S. 1953, c.91, s.9.

Method of sale of certain agricultural products

10 If:

(a) agricultural products, other than a share of a crop to which *The Crop Payments Act* applies, seized under the authority of a chattel mortgage or other extrajudicial process, are the property of a member of a company or association established for the purpose of carrying on the business of buying, selling and marketing agricultural products on the non-profit co-operative plan; and

(b) such member is under contract to deliver those products to the company or association;

then notwithstanding any statute or law to the contrary the products seized shall be delivered to and sold through the agency of such company or association:

Provided that, where any such products are seized and sold by a mortgagee or vendor of land, and where any portion of the sale price thereof remains unpaid at the date of the issue of an order *nisi* for sale, foreclosure or cancellation, then the receipt of such portion of the sale price, if paid prior to sale or final order for foreclosure or cancellation, shall not, unless otherwise ordered by the court or judge, affect the rights of such mortgagee or vendor to any greater extent than if he had been charged therewith in the order *nisi*; and

Provided further that, subsequent to sale or final order for foreclosure or cancellation, the mortgagee or vendor shall continue, notwithstanding any law or practice to the contrary, to be entitled to receive such portion, and when received it shall, unless otherwise ordered by the court or judge, inure to the sole benefit of the mortgagee or vendor unless and until the mortgagee or vendor shall have received in cash the whole amount of his claim, including all principal, interest, costs and charges whatever.

R.S.S. 1940, c.83, s.10; R.S.S. 1953, c.91, s.10.

Alteration of fees

11 The Lieutenant Governor in Council may amend the schedule of fees to this Act as he may see fit.

R.S.S. 1940, c.83, s.11; R.S.S. 1953, c.91, s.11.

DISTRESS FOR RENT

FIRST SCHEDULE

(Section 2)

PART I

COSTS ON DISTRESS WHERE SUM DEMANDED AND DUE DOES NOT
EXCEED \$100

1	Levying distress	\$	1.00
2	One man keeping possession, per day		3.00
3	If any printed advertisement, not to exceed in all		3.00
4	Catalogues, sale and commission, and delivery of goods—five cents on the dollar of the net proceeds of sale.		
5	Where the amount due is satisfied in whole or in part, after seizure and before sale, three cents on the dollar on the amount realized.		

PART II

COSTS ON DISTRESS WHERE SUM DEMANDED AND DUE EXCEEDS \$100

1	Levying distress	\$	1.50
2	One man keeping possession, per day		3.00
3	All reasonable and necessary disbursements for advertising.		
4	The actual expenses reasonably incurred in removing and keeping the goods distrained or part thereof when such removal is necessary.		
5	Catalogues, sale and commission and delivery of goods, three cents on the dollar.		
6	Where the amount due is satisfied in whole or in part after seizure and before sale, three cents on the dollar on the amount so realized.		
7	Mileage in going to seize, 15 cents per mile one way.		

SECOND SCHEDULE

(Section 3)

COSTS ON SEIZURE UNDER CHATTEL MORTGAGE

1	Receiving, entering and return	\$.50
2	Perusal of chattel mortgage50
3	Warrant to bailiff50
4	Seizure		1.00

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5	Bond from creditor, each.....	.50
6	Bond from debtor, each.....	1.00
7	Possession fee.....	2.50
8	Keeping possession, appraisement, advertising and sale of goods, actual expenses and disbursements.	
9	For mileage, every mile necessarily travelled and sworn to from the place where the warrant is received or the sheriff's office (whichever is nearest) to the place of execution in making seizure or sale of the goods and return, per mile....	.10
10	Poundage, when the sum realized does not exceed \$400, two and one-half per cent; when the sum realized is over \$400, two and one-half per cent on \$400, and one and one-quarter per cent for the balance.	
11	Postage.....	.25

Note:—If the sheriff delegates his power to some one other than his own officer, the sheriff shall be entitled to the fees set out in items 1, 2, 3 and 5 of this schedule.

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