

**Reprint**  
**as at 1 January 2008**

**Distress and Replevin Act 1908**

Public Act 1908 No 47  
Date of assent 4 August 1908

Distress and Replevin Act 1908: repealed, on 1 January 2008, by section 366(b) of the Property Law Act 2007 (2007 No 91).

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

**This Act is administered in the Ministry of Justice**

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**An Act to consolidate certain enactments of the General Assembly relating to distress and replevin**

**1 Short Title, etc**

- (1) The Short Title of this Act is the Distress and Replevin Act 1908.

- (2) This Act is a consolidation of the enactments mentioned in Schedule 1 hereto.
- (3) All matters and proceedings commenced under any of the said enactments, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

## **2 Interpretation**

In this Act, if not inconsistent with the context,—

**Chattels** includes “goods”

**Stock** means and includes horses, cattle, sheep, and pigs.

Compare: 1885 No 23 s 10

## **Distress**

### **3 Distress only on chattels of tenant or person in possession. Distress on agisted stock**

- (1) No person shall distrain or levy, for rent due in respect of any messuages or lands, the chattels (other than agisted stock) of any person save and except of the tenant or person in possession of the premises in respect of which such rent has accrued due.
- (2) No person shall distrain or levy for rent upon stock not the property of the tenant or person in possession, agisted on the land in respect of which such rent is due, for a greater sum than the amount due for the agistment of such stock on the said land at the time such distress or levy is made.

Compare: 1885 No 23 ss 3, 6

### **4 Chattels subject to security interest property of tenant or person in possession in certain circumstances**

- (1) This section applies to chattels subject to a security interest that are the property of any tenant or person in possession of any messuages or lands.
- (2) The following chattels to which this section applies are deemed, for the purposes of distress for rent, not to be the property of the tenant or person in possession of the messuages or lands:
  - (a) any motor vehicles:

- (b) the chattels that are the property of the tenant, if the tenant is a company or a society incorporated under the Incorporated Societies Act 1908:
  - (c) the chattels that are the property of the person in possession of the messuages or lands, if the person is a company or a society incorporated under the Incorporated Societies Act 1908.
- (3) All other chattels to which this section applies are deemed, for the purposes of distress for rent, to be the property of the tenant or person in possession of the messuages or lands if the chattels are found in or on the messuages or lands in respect of which the rent is due at the time the distraint for the rent is made.
- (4) In this section,—

**company** means—

- (a) a company within the meaning of section 2(1) of the Companies Act 1993:
- (b) an overseas company required, or deemed, to be registered under Part 18 of the Companies Act 1993

**motor vehicle** has the same meaning as in section 57 of the Personal Property Securities Act 1999

**security interest** has the same meaning as in section 17 of the Personal Property Securities Act 1999.

A reference to the “Chattels Transfer Act 1924” was substituted, as from 1 January 1925, for a reference to the “Chattels Transfer Act 1908” by section 60 Chattels Transfer Act 1924 (1924 No 49).

Section 4 was substituted, as from 15 April 2004, by section 3 Distress and Replevin Amendment Act 2004 (2004 No 26).

## 5 Exemption of furniture, etc

The necessary tools of trade of any person to the value of \$100, and his necessary household furniture and effects (including his personal and family clothing) to the value of \$300, are hereby declared to be absolutely exempted from being seized, sold, or disposed of under any distress for rent.

The original section 5 was substituted, as from 4 September 1950, by section 2 Distress and Replevin Amendment Act 1950 (1950 No 17).

This section was further substituted, as from 23 November 1967, by section 2 Distress and Replevin Amendment Act 1967 (1967 No 69).

- 6 No distress for rent on stock trespassing**  
No person shall distrain for rent any stock that may be trespassing upon any land.  
Compare: 1885 No 23 s 8
- 7 No distress for more than 12 months' rent**  
No person shall be entitled to distrain at any one time for more than 12 months' rent, nor be entitled to successive distresses for rent in arrear at the time of any distress taken.  
Compare: 1885 No 23 s 9
- 8 Distress to be made in person or by agent authorised by warrant in writing**  
No person to whom any rent is due or to whom a power of distress is given, whether by deed or other instrument or by law, shall seize and take any chattels as a distress for arrears of rent unless such distress is made by such person, or by his agent or bailiff duly authorised by a warrant of distress, in the form or to the effect set forth in Schedule 2 hereto, signed by such person or by his agent thereunto by him duly authorised.  
Compare: 1868 No 25 s 2
- 9 Signature of marksman to be attested**  
If the person giving such warrant of distress is unable to write his name, his signature by mark thereunto shall be attested by a Justice or by a solicitor of the High Court.  
Compare: 1868 No 25 s 3  
The words "High Court" were substituted, as from 1 April 1980, for the words "Supreme Court" pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).
- 10 Copy of warrant of distress to be delivered**  
Where such distress is made by an agent or bailiff he shall, at the time of making the distress, deliver to the tenant or person in possession of the premises if at the premises, or, if absent, then to some person resident at or near to the premises for such tenant or person in possession, a true copy of the warrant of distress, and if there is no person resident at or near to such premises to whom such copy can be delivered, the agent or

bailiff shall deliver the same to such tenant or person in possession, if demanded, at any time within 30 days next after the distress has been made.

Compare: 1868 No 25 s 4

**11 Inventory and bill of charges to be made and delivered**

The person making the distress shall forthwith make out and sign an inventory, in the form or to the effect set forth in Schedule 3 hereto, of the chattels distrained, and also a bill of the charges then claimed on account of the distress, and shall thereupon deliver such inventory and bill of charges in the like manner as is hereinbefore directed with regard to the warrant of distress.

Compare: 1868 No 25 s 5

**12 No appraisalment necessary. Charges for distress**

No appraisalment of any chattels distrained shall be necessary to the validity of any distress or sale thereof, and no charges except such as are set forth in Schedule 4 hereto shall be made or demanded, or shall be payable in respect of any distress.

Compare: 1868 No 25 s 6

**13 Chattels taken may be impounded on the premises or removed**

The person distraining any chattels may impound or otherwise secure the same upon the premises where the same are taken, or may, at any time within 5 days after the distress, remove them to some one convenient place not more than 3 miles from the premises where they were taken, and may there impound or otherwise secure the same.

Compare: 1868 No 25 s 7

**14 Notice of removal to be given to tenant**

- (1) In every case of such removal the person distraining shall, within 24 hours after such removal, give notice in writing to the tenant or person in possession of the premises of the removal of the chattels, and of the place to which they have been removed.

- (2) Such notice may either be given to such tenant or person in possession or, if he is absent, may be left with some person at the place from which the chattels have been removed.

Compare: 1868 No 25 s 8

## **Replevin**

### **15 Writ of replevin**

- (1) Where an action of replevin is commenced in the High Court the plaintiff may sue out of such Court a writ, to be called a “writ of replevin”, directed to the Sheriff of the Court whose office is nearest by the most convenient route to the place where the chattels are under distress, requiring him to replevy the same; and the said Court or any Judge thereof is hereby authorised to issue such writ.
- (2) Every such writ shall be in the form in Schedule 5 hereto, and shall have the same effect as any process or proceedings for such purpose heretofore in use.
- (3) The Sheriff, upon security being given to him as hereinafter provided, shall execute such writ, and return the same, with a correct and proper statement endorsed thereon of the manner in which it has been executed or the cause why it has not been executed, to the said Court within a reasonable time after the delivery of the writ to him.

Compare: 1868 No 25 s 9

Subsection (1) was amended, as from 1 April 1973, by section 18(3) Judicature Amendment Act 1972 (1972 No 130) by substituting the words “Court whose office is nearest by the most convenient route to the place where” for the words “Sheriff’s district in which”. See Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

The words “High Court” in subsection (1) were substituted for the words “Supreme Court”, as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

### **16 To prevent vexatious replevins and to provide for the assignment of replevin bonds**

- (1) Every Sheriff or other officer having authority to grant replevins may and shall in every replevin of a distress take, in his own name, from the plaintiff and 2 responsible persons as sureties a bond in double the value of the chattels distrained,

and with respect to such bond the following provisions shall apply:

- (a) Such value shall be ascertained by the oath of one or more credible witnesses not interested in the chattels or distress:
  - (b) The person granting the replevin is hereby authorised and required to administer such oath:
  - (c) The bond shall be conditioned for prosecuting the action with effect and without delay, and for paying such sum as the Court awards.
- (2) The Sheriff or other officer taking the bond shall, at the request and costs of the defendant, assign it to the defendant by endorsing the same and attesting it under his hand and seal in the presence of 2 or more credible witnesses.
  - (3) If the bond so taken and assigned is forfeited, the defendant may bring an action and recover thereupon in his own name; and the Court where such action is brought may, by a rule of the Court, give such relief to the parties upon the bond as may be agreeable to justice and reason, and such rule shall have the nature and effect of a defeasance to the bond.

Compare: 1868 No 25 s 10

#### **17 Replevin by Justices in certain cases**

- (1) If any distress is made at any place distant more than 20 miles from the office of the Sheriff by whom the same was made, any Justice may grant replevin of the chattels distrained in the same manner and subject to the same conditions as any Sheriff may grant the same.
- (2) Such Justice shall take, in his own name, from the person desiring to replevy and 2 responsible persons as sureties such a bond as a Sheriff is required to take.
- (3) The Justice taking such bond may assign the same in the manner in which a Sheriff may assign a replevin bond, and such bond may be sued on in like manner as a replevin bond taken by a Sheriff.
- (4) No such Justice shall be liable in any action for taking any insufficient security if he acted *bona fide* and with reasonable care and caution.

Compare: 1868 No 25 s 11

Subsection (1) was amended, as from 1 April 1973, by section 18(3) Judicature Amendment Act 1972 (1972 No 130) by substituting the words “by whom” for the words “of the Sheriff’s district in which”. *See* Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

## **General**

### **18 Sale**

Where chattels are distrained, and the tenant or person in possession of the premises does not within 5 days next after the distress replevy the same according to law, the person distraining may, after the expiration of the said 5 days, cause such chattels to be sold by public auction either by a duly licensed auctioneer or by a bailiff of the Sheriff or of a District Court.

Compare: 1868 No 25 s 12

This section was amended, as from 29 September 1925, by section 3 District Courts Abolition Act 1925 (1925 No 19) by omitting the words “District Court or”.

### **19 Appropriation of proceeds of sale**

- (1) The money arising from such sale shall be applied—first, in satisfaction of the charges of making the distress and sale; secondly, in satisfaction of the distress; and the overplus, if any, shall be forthwith paid to the said tenant or person.
- (2) The person causing the distress to be made shall deliver to the said tenant or person in possession, if demanded at any time within 30 days from the time of the sale, a true account in writing of such sale.

Compare: 1868 No 25 s 13

### **20 Liberty of ingress, egress, and regress to and from premises**

At the time appointed for any such sale any person shall have full liberty of ingress, egress, and regress into and out of the premises where such chattels are impounded or otherwise secured, in order to view or buy and remove any part thereof, without being liable as a trespasser.

Compare: 1868 No 25 s 14

**21 Distress not unlawful for any irregularity**

Where any distress is made for any rent or sum justly due, and any irregularity or unlawful act is afterwards done by the person causing the distress to be made, his agent or bailiff, the distress shall not be deemed unlawful nor the distrainer a trespasser *ab initio*, but the party aggrieved may by action recover satisfaction for the damage, and if he recovers he shall have full costs.

Compare: 1868 No 25 s 15

**22 Tenant not to recover if tender of amends is made**

The party aggrieved as aforesaid shall not recover in any action for any such unlawful act or irregularity as aforesaid if tender of amends is made by the party distraining or by his agent before action brought.

Compare: 1868 No 25 s 16

**23 Misconduct of agent or bailiff**

Every person is liable to a fine not exceeding \$100 who—

- (a) Distrains as bailiff or agent without having obtained a warrant as hereinbefore prescribed, or, having distrained as bailiff or agent, wilfully neglects or refuses to deliver a copy of the warrant as hereinbefore required; or
- (b) Having distrained, wilfully neglects or refuses to make out, sign, and deliver the inventory or bill of charges, or to deliver the notices, or make out and deliver the account of the sale, as hereinbefore required, or retains, takes, or receives any other or greater charges than those specified in Schedule 4 hereto.

Compare: 1868 No 25 s 17

**24 Recovery of fines**

All fines incurred under this Act may be recovered in a summary manner under the provisions of the Summary Proceedings Act 1957.

Compare: 1868 No 25 ss 13, 17

A reference to the “Justices of the Peace Act 1927” was substituted, as from 1 January 1928, for a reference to the “Justices of the Peace Act 1908” by section

390 Justices of the Peace Act 1927 (1927 No 37). That reference was in turn substituted, as from 1 April 1958, for a reference to the “Summary Proceedings Act 1957” by section 214(1) Summary Proceedings Act 1957 (1957 No 87).

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**Schedule 1**

Section 1(2)

**Enactments consolidated**

- 1868, No 25—The Distress and Replevin Act 1868.
  - 1885, No 23—The Distress Act 1885.
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**Schedule 2**

Section 8

**Under the Distress and Replevin Act 1908**

**Warrant to distrain**

I, AB, of \_\_\_\_\_, do hereby authorise you, CD, of \_\_\_\_\_, to distrain the chattels in the dwellinghouse [*or* in and upon the farm land and premises] of EF, situate at \_\_\_\_\_, for \$ \_\_\_\_\_, being the amount of \_\_\_\_\_ due to me for the same on the \_\_\_\_\_ day of \_\_\_\_\_ last [*or* instant], and to proceed thereon for the recovery of the said \_\_\_\_\_ as the law directs.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.  
AB  
[*or* by his duly authorised agent, GH].

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**Schedule 3**

Section 11

**Under the Distress and Replevin Act 1908**

**Inventory**

TAKE notice that I (as agent or bailiff of \_\_\_\_\_) have this day distrained the following chattels in the dwellinghouse [*or* in and upon the farm land and premises] of EF, situate at \_\_\_\_\_, for \$ \_\_\_\_\_, being the amount of \_\_\_\_\_ due to \_\_\_\_\_ for the same on the \_\_\_\_\_ day of \_\_\_\_\_ last [*or* instant]: And take notice that unless the above sums and charges claimed in respect of the distress are paid within five days the chattels taken will be sold.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ CD, Bailiff.  
[*Then enumerate the chattels at full length.*]

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**Schedule 4** Section 12  
**Under the Distress and Replevin Act 1908**

Charges of Distress

COSTS of levy made by an agent or bailiff under the authority of a warrant to distrain according to the following scale:

Where the sum distrained for is more than \$4 and less than \$20	0.50
Where such sum is not less than \$20 and less than \$100	1.00
Where such sum is \$100 or upwards	2.00
Man in possession, per diem	0.40

Charges of auctioneer or bailiff conducting sale not exceeding 5 percent. If advertisements are required by the person whose chattels are distrained the money actually paid for their insertion shall be charged.

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**Schedule 5** Section 15(2)

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, New Zealand and Her Other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, to the Sheriff of \_\_\_\_\_, Greeting: Whereas one AB has lately in our High Court at \_\_\_\_\_ commenced his action against CD, of [*etc, as in the writ of summons*], and intends to prosecute the same against him for a return of certain chattels of the said AB, which the said CD hath taken and unjustly detains: We do therefore command you that you do forthwith cause to be replevied to the said AB the said chattels if they are found by you, and in what manner you have executed this writ make appear to our said Court immediately after the execution hereof and have there then this writ.

Witness \_\_\_\_\_ at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ one thousand nine hundred and \_\_\_\_\_.

This Schedule was amended, as from 20 April 1953, by section 2 Royal Titles Act 1953 (1953 No 2) by amending the wording of the Royal Title. The Royal Titles Act 1953 was repealed, as from 6 February 1974, by section 4 Royal Titles Act 1974 (1974 No 1), section 2 of which states amended wording of the Royal Title, but there has been no formal amendment of the Royal Title to be used in this Act.

This Schedule was further amended, as from 1 April 1973, by section 18(3) Judicature Amendment Act 1972 (1972 No 130) by substituting the words “by you” for the words “in your bailiwick”. See Judicature Amendment Act Commencement Order 1973 (SR 1973/36).

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## Property Law Act 2007

Public Act 2007 No 91  
Date of assent 2007-10-04  
Commencement see section 2

### 1 Title

This Act is the Property Law Act 2007.

### 2 Commencement

This Act comes into force on 1 January 2008.

## Part 7

### Miscellaneous provisions

*District Courts' jurisdiction, regulations,  
consequential amendments, repeals, etc, and  
savings and transitional provisions*

### 367 Existing matters, proceedings, and instruments

- (1) Matters or proceedings may be continued, completed, and enforced under a provision of this Act that, with or without modification, replaces, or corresponds to, an enactment referred to in section 365 or 366, if those matters or proceedings were—
  - (a) commenced under the enactment referred to in section 365 or 366; and
  - (b) pending or in progress immediately before 1 January 2008.
- (2) A period of time within which a thing must be done and that, immediately before 1 January 2008, was running for the purposes of an enactment referred to in section 365 or 366 continues to run for the purposes of any corresponding or replacement provision of this Act as though that thing were required to be done under this Act, but not so as to extend or reduce a period of time that began to run before 1 January 2008.
- (3) No alteration in the law made by this Act affects—
  - (a) a right, interest, title, immunity, or duty, or a status or capacity, existing under the law so altered and immediately before 1 January 2008; or
  - (b) the validity, invalidity, effect, or consequences of—

- (i) an instrument of the kind to which this Act applies and that came into operation before 1 January 2008; or
  - (ii) anything done or suffered before that date.
- (4) All instruments of the kind to which this Act applies and that came into operation before 1 January 2008 must, to give effect to subsection (3), be read and construed as if the law existing immediately before 1 January 2008 continued to have effect, and must be given only the effect and consequences that they would have had under that law.
- (5) Covenants implied by the Property Law Act 1952, or by section 96 or 98 of the Land Transfer Act 1952, into instruments that came into operation before 1 January 2008 are not affected by sections 364 and 366(c), and continue as if that Act, and those sections, had not been repealed.
- (6) Covenants, conditions, terms, or powers implied by sections 105 to 107 of the Property Law Act 1952 into leases that came into operation before 1 January 2008 are not affected by section 366(c), and continue as if that Act had not been repealed.
- (7) Subsections (5) and (6) do not limit subsections (3) and (4); but subsections (1) to (6) are subject to express provision to the contrary in this Act or any other enactment.
- (8) Nothing in section 365 or this section limits or affects the application of the Interpretation Act 1999.  
Compare: 1952 No 51 s 155(3)-(7)

**368 Distraint may be completed**

The levying of any distress for rent or other amounts payable under a lease of land or for a rentcharge that has lawfully been commenced, but not completed, before 1 January 2008 may be continued and completed in all respects on and after that date as if—

- (a) section 366(b) had not repealed the Distress and Replevin Act 1908; or
  - (b) this Act had not repealed any other enactment concerning the levying of the distress.
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**Contents**

- 1 General
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**Notes****1 General**

This is an eprint of the Distress and Replevin Act 1908. It incorporates all the amendments to the Distress and Replevin Act 1908 as at 1 January 2008. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

**2 About this eprint**

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

**3 List of amendments incorporated in this eprint (most recent first)**

Property Law Act 2007 (2007 No 91): section 366(b)

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