

**Reprint
as at 1 June 2005**



Credit (Repossession) Act 1997

Public Act 1997 No 85
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Commencement see section 1(2)

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Note

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

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

This Act is administered by the Ministry of Consumer Affairs.

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An Act to govern the taking of possession of consumer goods by a creditor under a security agreement

Title: substituted, on 1 May 2002, by section 2 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

1 Short Title and commencement

- (1) This Act may be cited as the Credit (Repossession) Act 1997.
- (2) This Act comes into force on 1 July 1998.

**Part 1
Preliminary**

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—
 - advance** means—
 - (a) money provided by the creditor under the security agreement to the debtor or to another person to the order of the debtor:
 - (b) a pre-existing monetary obligation of the debtor that is paid, discharged, or consolidated by the creditor under the security agreement:
 - (c) the cash price of any consumer goods (if there is an agreement to sell the consumer goods or the debtor has an option to purchase the consumer goods):
 - (d) in relation to a security agreement that secures the obligations of the debtor as guarantor under a guarantee, the amount of the debtor’s liability under that guarantee

cash price, in relation to consumer goods sold, means—

- (a) the lowest price at which a person could have purchased those consumer goods from the creditor on the basis of payment in full at the time the agreement was made; or
- (b) if there is no such price, the fair market value of those consumer goods at the time the agreement was made

consumer goods means goods that are used or acquired for use primarily for personal, domestic, or household purposes

court means the High Court or a District Court that has jurisdiction under section 39 or a Disputes Tribunal that has jurisdiction under section 40

creditor—

- (a) means,—
 - (i) in relation to a secured credit sale agreement, the person disposing of the goods under the agreement and, if the rights of that person are transferred by assignment or by operation of law, includes the person for the time being entitled to those rights:
 - (ii) in relation to a security interest, the secured party within the meaning of section 16 of the Personal Property Securities Act 1999; and
 - (iii) *[Repealed]*
- (b) includes, if the rights of such a person are transferred by assignment (whether absolutely or by way of mortgage) or operation of law, the person for the time being entitled to those rights

creditor's agent means a person authorised by a creditor to take possession of consumer goods on behalf of the creditor, and includes such a person who is an employee of the creditor

debtor—

- (a) means,—
 - (i) in relation to a secured credit sale agreement, the person to whom goods are disposed of under the agreement and, if the rights of that person are transferred by assignment or by operation of law, includes the person for the time being entitled to those rights:

- (ii) in relation to a security interest, the debtor within the meaning of section 16 of the Personal Property Securities Act 1999; and
- (iii) *[Repealed]*
- (b) includes, if the rights of such a person are transferred by assignment (whether absolutely or by way of mortgage) or operation of law, the person for the time being entitled to those rights

default means 1 or more breaches of a security agreement by the debtor sufficient, according to the terms of the agreement, to give rise to the creditor's right to take possession of the consumer goods

goods means any personal chattels (other than money or things in action) comprised in or subject to a security agreement

guarantor,—

- (a) for the purposes of the definition of advance, means a person who guarantees the performance of another person's obligations under a contract, or who indemnifies a creditor against loss which he or she may incur in respect of a contract, or who assumes liability for performing the obligations of another person under a contract:
- (b) for the other purposes of this Act,—
 - (i) means a person who guarantees the performance of a debtor's obligations under a security agreement, or who indemnifies a creditor against loss which he or she may incur in respect of a security agreement, or who assumes liability for performing the obligations of a debtor under a security agreement; but
 - (ii) does not include a person who is the vendor of the consumer goods comprised in or subject to a security agreement:
 - (iii) does not include a person who executes or enters into a guarantee in the ordinary course of a business carried on by him or her,—

and **guarantee** has a corresponding meaning

holiday has the same meaning as in section 4 of the Acts Interpretation Act 1924

pay includes tender

post-possession notice means a notice under section 21

pre-possession notice means a notice under section 9

residential premises means a building, or part of a building, that is a house, flat, townhouse, home unit, or similar dwelling erected, or currently used, primarily and principally as a residence, and includes any land, improvements, or appurtenances belonging to the dwelling or usually enjoyed with it

secured credit sale agreement means an agreement for the sale of consumer goods under which payment of the whole or a part of the purchase price is deferred and a security interest in the consumer goods is created or provided for to secure the payment of the whole or a part of the purchase price; and includes a lease for consumer goods that is treated as a credit sale under section 16 of the Credit Contracts and Consumer Finance Act 2003

security agreement or **agreement** has the same meaning as in section 16 of the Personal Property Securities Act 1999

security interest has the same meaning as in section 17 of the Personal Property Securities Act 1999; but excludes—

- (a) an interest in personal property created or provided for by a transfer of an account receivable or chattel paper, a lease for a term of more than 1 year, or a commercial consignment;
 - (b) any security interest created by a company within the meaning of section 2(1) of the Companies Act 1993 or by a society registered under the Industrial and Provident Societies Act 1908.
- (2) For the purposes of this Act, the determination of whether goods are consumer goods is to be made by the debtor as at the time when the security interest in the goods attached within the meaning of the Personal Property Securities Act 1999.

Section 2(1) **advance**: inserted, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 2(1) **amount of credit**: repealed, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 2(1) **cash price**: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **cash price** paragraph (a): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **cash price** paragraph (b): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **consumer goods**: inserted, on 1 May 2002, by section 3(1) of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **credit agreement**: repealed, on 1 May 2002, by section 3(2) of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **creditor** paragraph (a)(i): substituted, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 2(1) **creditor** paragraph (a)(ii): substituted, on 1 May 2002, by section 3(3) of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **creditor** paragraph (a)(iii): repealed, on 1 May 2002, by section 3(3) of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **creditor's agent**: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **debtor** paragraph (a)(i): substituted, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 2(1) **debtor** paragraph (a)(ii): substituted, on 1 May 2002, by section 3(4) of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **debtor** paragraph (a)(iii): repealed, on 1 May 2002, by section 3(4) of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **default**: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **goods**: substituted, on 1 May 2002, by section 3(5) of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **guarantor** paragraph (a): amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 2(1) **guarantor** paragraph (b)(i): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **guarantor** paragraph (b)(ii): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **hire purchase agreement**: repealed, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 2(1) **instrument by way of security**: repealed, on 1 May 2002, by section 3(6) of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **net balance due**: repealed, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 2(1) **secured credit sale agreement**: inserted, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 2(1) **security agreement or agreement**: inserted, on 1 May 2002, by section 3(7) of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(1) **security interest**: substituted, on 1 May 2002, by section 3(8) of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 2(2): added, on 1 May 2002, by section 3(9) of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

3 Act binds the Crown

This Act binds the Crown.

4 Purpose of this Act

The purpose of this Act is to set out the rules that apply when a creditor takes possession of consumer goods under a security agreement to which this Act applies.

Section 4: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

5 Security agreements to which Act applies

- (1) This Act applies to a security agreement—
 - (a) that creates or provides for a security interest in consumer goods; and
 - (b) that is entered into on or after the date of commencement of the Credit (Repossession) Amendment Act 1999.
- (2) This Act applies whether or not a financing statement has been registered under the Personal Property Securities Act 1999 in respect of the security interest.
- (3) This Act also applies as provided in section 51.

Section 5: substituted, on 1 May 2002, by section 4 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

6 Act applies where creditor already has right to take possession, etc

- (1) This Act applies where a creditor has a right to take possession of consumer goods, or to enter premises, or to enter premises when an occupier is not present, under, or in any way in connection with, a security agreement or by virtue of the creditor's property in the consumer goods.
- (2) This Act does not confer a right to take possession of consumer goods, or a right to enter premises, or a right to enter premises when an occupier is not present.
- (3) This Act is to be read subject to subsection (2).

Section 6(1): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 6(2): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Part 2

Rules that apply before possession of goods is taken

7 Circumstances in which creditor can take possession

- (1) A creditor must not take possession of consumer goods unless—
 - (a) the debtor is in default under the security agreement; or
 - (b) the consumer goods are at risk.
- (2) In this section and section 8, consumer goods are **at risk** if the creditor has reasonable grounds to believe that the consumer goods have been or will be destroyed, damaged, endangered, disassembled, removed, or concealed contrary to the provisions of the agreement; but the onus of proving the existence of those grounds is on the creditor.

Compare: 1971 No 147 s 26(1)(a)

Section 7(1): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 7(1)(a): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 7(1)(b): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 7(2): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

8 Notice to be given to debtor and guarantor before taking possession of consumer goods

- (1) A creditor must serve a pre-possession notice on the debtor, and on every guarantor of the debtor, before taking possession of consumer goods.
- (2) This section does not apply if the consumer goods are at risk within the meaning of section 7(2).

Compare: 1971 No 147 s 26(1)(b), (4)

Section 8 heading: amended, on 1 May 2002, pursuant to section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 8(1): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 8(2): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

9 Form of pre-possession notice

Every pre-possession notice must be in writing in the form set out in Schedule 1,—

- (a) specifying the nature of the default; and
- (b) requiring the debtor to remedy the default (if it is capable of being remedied) within the period specified in the notice (being a period of not less than 15 days after service of the notice on the debtor).

Compare: 1971 No 147 s 26(1)(b)

10 Creditor must allow time to remedy default

A creditor must not take possession of consumer goods in respect of which a pre-possession notice has been given unless—

- (a) the period for remedying the default specified in the notice has expired; and
- (b) the debtor has failed, within that period, to remedy the default complained of in so far as it is capable of being remedied.

Compare: 1971 No 147 s 26(1)(c)

Section 10: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

11 Offences against this Part

Every person who contravenes any of sections 7 to 10 commits an offence and is liable on conviction to a fine not exceeding \$3,000.

Compare: 1971 No 147 s 26(5)

12 Debtor may apply to court for relief

A debtor may apply to a court for relief if—

- (a) a creditor serves a pre-possession notice on the debtor;
or
- (b) a creditor has taken possession of the consumer goods,—

in contravention of this Act.

Compare: 1971 No 147 s 26(2)

Section 12(b): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

13 Court may grant relief

- (1) The court may, having regard to—
 - (a) the conduct of the parties; and
 - (b) the nature of the default; and
 - (c) such other matters as it thinks proper,—
grant such relief to a debtor who applies under section 12 as is reasonable, whether or not the granting of the relief involves a variation in the terms of the security agreement.
- (2) The court may grant relief on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise as the court, in the circumstances of each case, thinks fit.
- (3) However, where the court determines that any application is vexatious, it must order—
 - (a) that the debtor pay to the creditor the full costs (including reasonable costs incurred between solicitor and client), fees, and other reasonable expenses incurred by the creditor in connection with the application; and
 - (b) that section 23(1) and section 30 do not apply in respect of the goods.

Compare: 1971 No 147 s 26(2), (3)

Section 13(1): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Part 3 Right of entry

14 Creditor must not enter premises in unreasonable manner

A creditor or a creditor's agent must not exercise a right to enter premises in a manner that is unreasonable.

Compare: 1971 No 147 s 27(1)

15 Creditor must not enter residential premises at prohibited time

- (1) The following are prohibited times for the purposes of this section:
 - (a) outside the hours of 6 am to 9 pm on Mondays to Saturdays; or
 - (b) any time on a Sunday; or
 - (c) any time on a holiday.
- (2) A creditor or a creditor's agent must not exercise a right to enter residential premises at a prohibited time unless the debtor consents in writing to the entry of those premises at a prohibited time.
- (3) The consent is not valid unless it is given—
 - (a) after the default has occurred; and
 - (b) before the creditor or creditor's agent arrives at the premises with a view to taking possession of the consumer goods.
- (4) The consent is not valid if the creditor or creditor's agent seeks it in person at a prohibited time at any residential premises.

Section 15(3)(b): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

16 Certain persons disqualified from taking possession of consumer goods

- (1) The following are disqualified persons for the purposes of this section:
 - (a) any person who has been convicted within the preceding 5 years of any offence involving violence against the person, or of any crime involving dishonesty within the meaning of section 2 of the Crimes Act 1961;
 - (b) any person on whom there has been imposed, at any time, a sentence of imprisonment for a term of 10 years or more or a sentence of imprisonment for life;
 - (c) any person who has been released from a prison within the preceding year.
- (2) Every disqualified person commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000, who, being a creditor or a creditor's agent,—

- (a) enters, or attempts to enter, any premises for the purpose of taking possession of any consumer goods or for any other purpose in connection with any consumer goods; or
 - (b) takes, or attempts to take, possession of any consumer goods.
- (3) Any creditor or creditor's agent who enters, or attempts to enter premises, is, for the purpose of this section, presumed, in the absence of evidence to the contrary, to be entering for the purpose of taking possession of consumer goods or for another purpose in connection with consumer goods.

Section 16 heading: amended, on 1 May 2002, pursuant to section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 16(1)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 16(2)(a): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 16(2)(b): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 16(3): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

17 Documents to be produced on entry

Every creditor or creditor's agent who exercises a right of entry of premises must, on first entering the premises if anyone is present, and, if requested, at any subsequent time, produce—

- (a) a copy of the pre-possession notice (unless one was not required under section 8(2)); and
- (b) in the case of a creditor's agent, evidence reasonably capable of establishing the person's authority to take possession of the consumer goods on behalf of the creditor; and
- (c) in the case of an entry outside the hours specified in section 15, the debtor's written consent to the exercise of the right of entry.

Section 17(b): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

18 Entry if occupier not present

- (1) This section applies if a creditor or creditor's agent enters premises for the purpose of taking possession of consumer goods, or for any other purpose in connection with consumer goods, when the occupier of the premises is not present.
- (2) The creditor or creditor's agent must, before leaving the premises, leave a notice in writing in a prominent place—
 - (a) specifying that the premises have been entered and the date of entry; and
 - (b) containing an inventory of any consumer goods of which possession has been taken; and
 - (c) accompanied by a copy of the documents referred to in section 17(a) to (c).
- (3) The creditor or creditor's agent must take such steps as are reasonably practicable to ensure that the premises are not left obviously open.

Section 18(1): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 18(2)(b): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

19 Offence to obstruct taking possession of consumer goods

Every person commits an offence against this Act, and is liable on summary conviction to a fine not exceeding \$10,000 who wilfully and forcibly obstructs a creditor or a creditor's agent who is lawfully exercising any power to take possession of consumer goods.

Compare: 1971 No 147 s 26(6)

Section 19 heading: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 19: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Part 3A
Rules that apply in relation to taking
possession of accessions

Part 3A: inserted, on 1 May 2002, by section 5 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

19A Interpretation

In this Part, unless the context otherwise requires,—

accession means consumer goods that are installed in, or affixed to, other consumer goods

other goods means consumer goods in which an accession is installed or to which the accession is affixed

whole means an accession and the consumer goods in which the accession is installed or to which the accession is affixed.

Section 19A: inserted, on 1 May 2002, by section 5 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

19B Creditor must not damage consumer goods when removing accession

A creditor who is entitled to take possession of an accession under this Act must remove the accession from the whole in a manner that causes no greater damage to the other goods or that puts the person in possession of the whole to no greater inconvenience than is necessarily incidental to the removal of the accession.

Compare: Personal Property Security Act 1993 s 38(7) (Saskatchewan)

Section 19B: inserted, on 1 May 2002, by section 5 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

19C Person with interest in other goods entitled to reimbursement for damage caused by removal of accession

- (1) A person, other than the debtor, who has an interest in the other goods at the time the goods become an accession is entitled to reimbursement for any damage to that person's interest in the other goods caused by the removal of the accession.
- (2) Any reimbursement payable under subsection (1) does not include reimbursement for a reduction in the value of the property caused by the absence of the accession or by the necessity of the replacement of the accession.

Compare: Personal Property Security Act 1993 s 38(8) (Saskatchewan)

Section 19C: inserted, on 1 May 2002, by section 5 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

19D Person entitled to reimbursement may refuse permission to remove accession

A person entitled to reimbursement under section 19C may refuse permission to remove the accession until the creditor has given adequate security for the reimbursement.

Compare: Personal Property Security Act 1993 s 38(9) (Saskatchewan)

Section 19D: inserted, on 1 May 2002, by section 5 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

19E Secured party may apply to court for order in respect of removal of accession

The court may, on an application made by a creditor, make an order—

- (a) determining who is entitled to reimbursement under section 19C:
- (b) determining the amount and kind of security to be provided by the creditor:
- (c) prescribing the amount and kind of security to be provided by the creditor:
- (d) prescribing the depository for the security:
- (e) dispensing with the need for the permission of any or all persons entitled to reimbursement under section 19C.

Compare: Personal Property Security Act 1993 s 38(10) (Saskatchewan)

Section 19E: inserted, on 1 May 2002, by section 5 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

19F Secured party must give notice of removal of accession

(1) The creditor who is entitled to remove the accession from the whole must give notice of the creditor's intention to remove the accession to each of the following persons:

- (a) a person who is known by the creditor to have an interest in the other goods or in the whole:
- (b) a person who has registered a financing statement in the name of the debtor and referring to the other goods:
- (c) a person who has registered a financing statement containing the serial number of the other goods as required or authorised by regulations made under the Personal Property Securities Act 1999, if any.

- (2) The notice referred to in subsection (1) must be given not less than 10 working days before the removal of the accession and must contain—
- (a) the name and address of the creditor; and
 - (b) a description of the goods to be removed; and
 - (c) a description of the other goods; and
 - (d) the amount due to the creditor and the value of the accession if the accession were removed from the other goods; and
 - (e) a statement of intention to remove the accession, unless the lesser of the amount secured or the value of the accession is paid on or before a specified date that is not less than 10 working days after the notice is given.
- (3) This section does not apply if—
- (a) the creditor believes on reasonable grounds that the consumer goods will decline substantially in value if they are not disposed of immediately after default; or
 - (b) the cost of care and storage of the consumer goods is disproportionately large in relation to their value; or
 - (c) for any other reason, a court on an *ex parte* application is satisfied that a notice is not required.

Compare: Personal Property Security Act 1993 s 38(12), (13) (Saskatchewan)
Section 19F: inserted, on 1 May 2002, by section 5 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

19G When person with interest in whole may retain accession

A person, other than the debtor, who has an interest in the whole that under this Act is subordinate to a security interest in the accession may retain the accession on payment to the creditor with a security interest that has priority over all other security interests in the accession of the lesser of—

- (a) the amount due to the creditor; or
- (b) the value of the accession if the accession were removed from the other goods.

Section 19G: inserted, on 1 May 2002, by section 5 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

19H Court may make order concerning removal of accession

The court may, on the application of a person entitled to receive a notice under section 19F, make an order—

- (a) postponing the removal of the accession:
- (b) determining the amount payable to the creditor under section 19G for the retention of the accession.

Compare: Personal Property Security Act 1993 s 38(15) (Saskatchewan)

Section 19H: inserted, on 1 May 2002, by section 5 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Part 4

**Rules that apply after possession of goods
is taken**

**20 Notice to be given to debtor and guarantor after taking
possession of consumer goods**

A creditor must serve a post-possession notice on the debtor, and on every guarantor of the debtor, within 21 days of taking possession of consumer goods.

Compare: 1971 No 147 s 28(1)

Section 20 heading: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 20: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

21 Form of post-possession notice

Every post-possession notice must be in writing in the form set out in Schedule 2.

Compare: 1971 No 147 s 28(1)

21A Notice of sale of consumer goods to other creditors

- (1) A creditor who intends to sell consumer goods must, in addition to any other notices that the creditor must give under this Act, give notice to the following persons, within 21 days of taking possession of consumer goods:

- (a) any person who has registered a financing statement in respect of the consumer goods that is effective at the time the creditor took possession of the consumer goods:

- (b) any other person that has given the creditor notice that that person claims an interest in the consumer goods.
- (2) Subsection (1) does not apply if—
- (a) the consumer goods may perish within 21 days of the creditor taking possession; or
 - (b) the creditor believes on reasonable grounds that the consumer goods will decline substantially in value if they are not disposed of immediately after default; or
 - (c) the cost of care and storage of the consumer goods is disproportionately large in relation to their value; or
 - (d) for any other reason, a court on an *ex parte* application is satisfied that a notice is not required.

Compare: Personal Property Security Act 1993 s 59(6), (16) (Saskatchewan)

Section 21A: inserted, on 1 May 2002, by section 6 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

22 Consequences of not giving post-possession notice

If a post-possession notice is not served as required by this Act,—

- (a) the costs of taking possession of the consumer goods must be borne by the creditor; and
- (b) the creditor is not entitled to recover those costs from the debtor or the guarantor.

Compare: 1971 No 147 s 28(2)

Section 22(a): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

23 Creditor must not sell consumer goods until 15 days after post-possession notice

- (1) Where a creditor has taken possession of any consumer goods, the creditor must not, without the consent in writing of the debtor obtained after possession of the consumer goods has been taken, sell or dispose of the consumer goods or part with possession of the consumer goods (except for the purposes of storage or repair) until after the expiry of 15 days from the date of service of the post-possession notice on the debtor.
- (2) This section applies except as provided in an order under section 13(3) (vexatious applications).

Compare: 1971 No 147 s 28(3)

Section 23 heading: amended, on 1 May 2002, pursuant to section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 23(1): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

24 Consequences of selling within 15 days of post-possession notice

If the creditor contravenes section 23,—

- (a) the liability of the debtor for anything other than—
 - (i) the advance under the security agreement; or
 - (ii) where the agreement secures the performance of some obligation other than the payment of money, the performance of that obligation,—is extinguished; and
- (b) the creditor must repay any money already paid to the creditor by any person on account of, or in satisfaction of, any amount in respect of which liability is extinguished by paragraph (a).

Compare: 1971 No 147 s 28(4)

Section 24(a)(i): amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 24(a)(i): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

25 Creditor must sell consumer goods 15 days after post-possession notice

- (1) The creditor must offer the consumer goods for sale after the expiration of 15 days from the date of service of the post-possession notice on the debtor.
- (2) This section does not apply if—
 - (a) the debtor reinstates the agreement under section 28; or
 - (b) the debtor introduces a buyer under section 30 and the buyer completes the purchase of the consumer goods; or
 - (c) the debtor settles the agreement under section 31; or
 - (d) the court determines otherwise in an order under section 13(3) (vexatious applications).

Compare: 1971 No 147 s 28(5)

Section 25 heading: amended, on 1 May 2002, pursuant to section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 25(1): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 25(2)(b): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

26 Rules relating to sale by creditor

- (1) Any sale by a creditor may be by auction or public tender or a private sale but, in any case, the creditor must ensure that every aspect of the sale, including the manner, time, place, and terms, is commercially reasonable and, in particular, must use all reasonable efforts to obtain the best price.
- (2) Unless the consumer goods are perishable or threaten to decline speedily in value, the creditor must give the debtor reasonable notice of—
 - (a) the time and place of any proposed offering of the consumer goods for sale by public auction, and of the existence and amount of any reserve price:
 - (b) any proposed offering of the consumer goods for sale by public tender.
- (3) The creditor and the debtor are each entitled to bid at any public auction or, where the consumer goods are offered for sale by public tender, to submit tenders, as the case may require, and if the creditor is the successful bidder or tenderer, the consumer goods, for the purposes of this Act, are deemed to have been sold for the amount of the creditor's bid or tender.
- (4) The onus of proving that the consumer goods have been sold in accordance with this section is on the creditor.
- (5) Subsection (1) does not apply if—
 - (a) the debtor introduces a buyer under section 30 and the buyer completes the purchase of the consumer goods; or
 - (b) the debtor forces sale under section 32.

Compare: 1971 No 147 s 28(6)–(9)

Section 26(2): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 26(2)(a): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 26(2)(b): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 26(3): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 26(4): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 26(5)(a): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

27 Debtor may obtain valuation of consumer goods before sale

- (1) The debtor is entitled to obtain, at the debtor's expense, 1 valuation of the consumer goods as at the time possession was taken by the creditor.
- (2) The rules relating to valuations are as follows:
 - (a) the valuation may take place at any time after the creditor takes possession of the consumer goods, but before the creditor sells or agrees to sell the consumer goods in accordance with this Act:
 - (b) the debtor must request access to the consumer goods by giving reasonable notice to the creditor:
 - (c) the creditor must permit the debtor's valuer such access to the consumer goods as is reasonably necessary to enable the valuation of the consumer goods to take place:
 - (d) the debtor's valuer must carry out the valuation at a reasonable time:
 - (e) the debtor's valuer has no right to remove the consumer goods unless the creditor gives consent to the removal:
 - (f) the debtor may accompany his or her valuer when the valuation takes place.

Section 27 heading: amended, on 1 May 2002, pursuant to section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 27(1): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 27(2)(a): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 27(2)(b): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 27(2)(c): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 27(2)(e): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

28 Debtor's right to reinstate agreement

- (1) The debtor may, at any time after the creditor has taken possession of the consumer goods and at any time before the creditor sells or agrees to sell the consumer goods in accordance with this Act, reinstate the agreement by—
- (a) paying to the creditor the amount required to reinstate the agreement or, where the agreement secures the performance of an obligation other than the payment of money, performing any accrued obligations; and
 - (b) remedying any default in so far as it is capable of being remedied.
- (2) In this section,—
- (a) the **amount required to reinstate the agreement** means the aggregate of—
 - (i) any amounts which have fallen due for payment under the security agreement and have not been paid, including, without limitation, interest and other charges, but excluding, where the agreement provides that the total advance falls due for payment immediately on the debtor's default, that part of the advance which would not have fallen due but for that provision; and
 - (ii) the reasonable costs and expenses of the creditor of and incidental to taking possession of, holding, storing, repairing, maintaining, valuing, and preparing for the sale of, the consumer goods and of returning them to the order of the debtor; and
 - (iii) the costs reasonably and actually incurred by the creditor in doing any act, matter, or thing necessary to remedy any default by the debtor:
 - (b) **accrued obligations** means any obligations which have fallen due for performance under the security agreement and have not been performed.
- (3) This section applies except as provided in an order under section 13(3) (vexatious applications).

Compare: 1971 No 147 s 29(1)(a), (2)

Section 28(1): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 28(2)(a)(i): amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 28(2)(a)(i): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 28(2)(a)(ii): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 28(2)(b): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

29 Consequences of reinstating agreement

- (1) Where the right to reinstate the agreement is exercised under section 28,—
- (a) upon the receipt of the required amount, or confirmation of the performance of the accrued obligations and the default being remedied, the creditor must forthwith return the consumer goods to the debtor; and
 - (b) the debtor is deemed to receive and hold the returned consumer goods pursuant to the terms of the security agreement as if the default had not occurred and the creditor had not taken possession of the consumer goods.
- (2) Where the consumer goods are returned to the debtor pursuant to subsection (1)(a) and a particular default has not been remedied, the creditor does not have any right, arising out of that default, to take possession of the consumer goods unless,—
- (a) by notice in writing served on the debtor at the time of the return of the consumer goods, the creditor specifies the default and requires it to be remedied; and
 - (b) the debtor fails to remedy the default within a period to be specified in the notice (being a period of not less than 14 days after the service of the notice on the debtor).

Compare: 1971 No 147 s 29(1)(a), (3)

Section 29(1)(a): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 29(1)(b): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 29(2): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 29(2)(a): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

30 Debtor's right to introduce buyer

- (1) The debtor may, at any time after the creditor has taken possession of the consumer goods and at any time before the creditor sells or agrees to sell the consumer goods in accordance with this Act, require the creditor to sell the consumer goods to any person introduced by the debtor who is prepared to purchase the consumer goods for cash at a price not less than the estimated value of the consumer goods set out in the post-possession notice served on the debtor.
- (2) This right may be exercised by giving to the creditor a notice in writing signed by the debtor, or his or her agent.
- (3) This section applies except as provided in an order under section 13(3) (vexatious applications).

Compare: 1971 No 147 s 29(1)(b)

Section 30(1): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

31 Debtor's right to settle agreement

- (1) The debtor may, at any time after the creditor has taken possession of the consumer goods and at any time before the creditor sells or agrees to sell the consumer goods in accordance with this Act, settle the debtor's obligations under the security agreement—
 - (a) by paying to the creditor the amount required to settle the agreement; or
 - (b) where the agreement secures the performance of an obligation other than the payment of money, by performing that obligation.
- (2) In this section, **the amount required to settle the agreement**—
 - (a) means the balance of the advance outstanding, together with any interest and charges payable under the agreement; and
 - (b) *[Repealed]*
 - (c) includes the reasonable costs and expenses of the creditor of and incidental to taking possession of, holding, storing, repairing, maintaining, valuing, and preparing the sale of, the consumer goods and of returning them to the order of the debtor; and

- (d) includes the costs reasonably and actually incurred by the creditor in doing any act, matter, or thing necessary to remedy any default by the debtor.
- (3) Where the right to settle the agreement is exercised,—
 - (a) upon the receipt of that amount, or confirmation of the performance of that obligation, the creditor must forthwith return the consumer goods to the debtor; and
 - (b) the agreement terminates, with the rights and obligations of the parties to it satisfied.

Compare: 1971 No 147 s 30

Section 31(1): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 31(2)(a): substituted, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 31(2)(b): repealed, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 31(2)(c): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 31(3)(a): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

32 Debtor's right to force sale

- (1) If the consumer goods have not been sold within 3 months, the debtor may either—
 - (a) apply to the court for an order directing the sale of the consumer goods, within such time and upon such conditions as the court thinks fit; or
 - (b) require the creditor to put the consumer goods up for sale by public auction.
- (2) The period of 3 months commences with the date on which the creditor takes possession of the consumer goods.
- (3) Upon application under this section, the court may make such order as it thinks fit.
- (4) The following rules apply to a sale required under subsection (1)(b):
 - (a) the debtor must require the sale by notice in writing to the creditor, signed by the debtor or the debtor's agent; and
 - (b) the auction must be held within 2 months after the date that notice is given; and

- (c) the auction must be in such manner as may be agreed between the creditor and the debtor, and, failing agreement, in such manner as may be approved by a Registrar of the District Court; and
- (d) the creditor must give the debtor reasonable notice of the time and place of the auction; and
- (e) the creditor and the debtor are each entitled to bid at the auction; and
- (f) there must be no reserve price.

Compare: 1971 No 147 s 31

Section 32(1): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 32(1)(a): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 32(1)(b): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 32(2): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

32A Disposal of consumer goods to purchaser for value and in good faith

- (1) A purchaser for value and in good faith who takes possession of consumer goods sold by a creditor takes the consumer goods free from the following interests:
 - (a) the interest of the debtor:
 - (b) any interest subordinate to that of the debtor:
 - (c) any interest subordinate to that of the creditor.
- (2) Subsection (1) applies whether or not registrations relating to security interests that are subordinate to the security interest of the creditor selling the consumer goods have been removed from the register.

Compare: Personal Property Security Act 1993 s 61(7) (Saskatchewan)

Section 32A: inserted, on 1 May 2002, by section 7 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

32B Extinguishment of subordinate security interests on sale

If consumer goods have been sold under section 26 or section 32, all security interests in the consumer goods and their proceeds that are subordinate to the security interest of the creditor

who sold the consumer goods are extinguished on the sale of the consumer goods.

Section 32B: inserted, on 1 May 2002, by section 7 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

33 Creditor to give statement of account to debtor

Where consumer goods are sold pursuant to section 26 or section 32, the creditor must, within 10 days after the sale of the consumer goods, give the debtor and the persons referred to in section 21A(1) a statement of account in writing, showing—

- (a) the amount of the gross proceeds of sale:
- (b) the amount of the costs and expenses of and incidental to the sale:
- (c) the amount required to settle the agreement under section 31 as at the date of the sale:
- (d) the balance owing by the creditor to the debtor, or by the debtor to the creditor, as the case may be.

Compare: 1971 No 147 s 32

Section 33: amended, on 1 May 2002, by section 8 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 33: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

34 Distribution of surplus

(1) If a creditor has sold consumer goods under section 26 or section 32, the creditor must pay the following persons the amount of any surplus by satisfying the claims of those persons in the following order:

- (a) any person who has registered a financing statement in the name of the debtor over the consumer goods that are sold where—
 - (i) the registration was effective immediately before the consumer goods were sold; and
 - (ii) the security interest relating to that registration was subordinate to the security interest of the creditor who sold the consumer goods:
- (b) any other person who has given the creditor notice that that person claims an interest in the consumer goods that are sold and in respect of which the creditor is satisfied

that that person has a legally enforceable interest in the consumer goods:

- (c) the debtor.
- (2) The security interests to which subsection (1)(a) applies must be paid in the order of their priority as determined by Part 7 or Part 8 of the Personal Property Securities Act 1999.
- (3) Subsection (1) applies despite the extinguishment of a security interest under section 32B.

Compare: Personal Property Security Act 1993 s 60(2) (Saskatchewan)

Section 34: substituted, on 1 May 2002, by section 9 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

34A Surplus may be paid into court

- (1) The creditor may pay the surplus into court if there is a question as to who is entitled to receive payment under section 34.
- (2) The surplus may be paid out only on an application by a person claiming an entitlement to the surplus.

Compare: Personal Property Security Act 1993 s 60(4) (Saskatchewan)

Section 34A: inserted, on 1 May 2002, by section 9 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

34B Debtor's, etc, right to recover surplus

The persons referred to in section 34 are entitled to recover the amount of any surplus from the creditor.

Section 34B: inserted, on 1 May 2002, by section 9 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

35 Limit on creditor's right to recover from debtor

If the net proceeds of sale are less than the amount required to settle the agreement under section 31 as at the date of the sale, the creditor is not entitled to recover more than the balance left after deducting those proceeds from that amount (whether under a judgment or otherwise).

Compare: 1971 No 147 s 34

36 Court may vary existing judgments or orders when consumer goods are repossessed

In any legal proceedings in relation to a security agreement, after the creditor has taken possession of the consumer goods,

the court before which such proceedings are brought may vary or discharge any judgment or order of any court (whether a District Court or not) against the debtor for recovery of money so far as is necessary to give effect to the provisions of sections 34 and 35.

Compare: 1971 No 147 s 35

Section 36 heading: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 36: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

36A Voluntary return of goods

- (1) A secured credit sale agreement is terminated by the return of the consumer goods comprised in the agreement if they are returned—
 - (a) in accordance with any term of the agreement that permits the debtor to return the goods and terminate the agreement; or
 - (b) by the debtor for the purpose of terminating the agreement and the creditor agrees to the termination of the agreement.
- (2) Subject to section 36B, if a secured credit sale agreement is terminated under subsection (1), the rights and liabilities of the creditor and the debtor are to be determined as if the consumer goods had been repossessed by the creditor on the date that they were returned by the debtor.
- (3) Nothing in this section or section 36B limits or affects any right that the debtor has apart from this section to terminate a secured credit sale agreement.

Compare: 1971 No 147 s 24(1), (2), (7)

Section 36A: inserted, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

36B Various effects of voluntary return of goods

- (1) If a secured credit sale agreement fixes or provides for the fixing of the amount (if any) to be paid by the debtor in the case of the voluntary termination of the agreement by the debtor, the amount (if any) that the creditor is entitled to recover from the debtor must not exceed that amount.

- (2) The creditor must, unless the creditor elects to regard the goods as still having a value that is not less than 80% of the cash price, sell the consumer goods in accordance with section 26, and sections 33 to 35 apply accordingly with any modifications that are necessary.
- (3) If the creditor elects to regard the goods as having a value that is not less than 80% of the cash price, the creditor must, within 14 days of the termination of the agreement, serve on the debtor a statement in accordance with section 33, which must set out, instead of the items mentioned in section 33(a) and (b), the value which the creditor attributes to the consumer goods.
- (4) Except to the extent that sections 7 to 36 are specifically applied by this section or need to be applied in order to determine whether, following the termination of a secured credit sale agreement as provided in section 36A, there is a balance owing by the creditor to the debtor or by the debtor to the creditor, nothing in those sections (other than section 34(2)), applies to the voluntary return to the creditor by the debtor of the consumer goods comprised in a secured credit sale agreement if that return results in the termination of the agreement as provided in section 36A.
- (5) The provisions of this section and of sections 7 to 36 do not apply to the consumer goods comprised in any secured credit sale agreement if the parties to that agreement subsequently enter into a written agreement for the voluntary return of those goods which excludes those provisions, and the debtor has had, before making the agreement for the voluntary return of the goods, professional and independent advice as to the legal implications of that agreement.

Compare: 1971 No 147 s 24(3)–(6)

Section 36B: inserted, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Part 5

Miscellaneous provisions

37 Power of court to extend times

Any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of any proceedings may, on an application made to the court (either before or after the expiration of that time but after notice to the other party to the agreement), be extended by that court for such further period, and upon such conditions, as the court thinks fit.

Compare: 1971 No 147 s 45

38 Service of notices

- (1) Any notice or other document required or authorised by this Act to be served on or given to any person must be in writing and is sufficiently served or given if—
 - (a) it is delivered to that person; or
 - (b) it is left at that person's usual or last known place of abode or business or at an address specified for that purpose in the agreement; or
 - (c) it is posted in a letter addressed to that person by name at that place of abode or business or address.
- (2) If the person is absent from New Zealand, the notice or other document may be served on or given to the person's agent in New Zealand.
- (3) If the person is deceased, it may be served on or given to the person's personal representatives.
- (4) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the notice or other document must be served or given in such manner as may be directed by an order of the court.
- (5) If any such notice or other document is sent to any person by registered letter, it is deemed to have been delivered to the person on the fourth day after the day on which it was posted, and in proving the delivery it is sufficient to prove that the letter was properly addressed and posted.

- (6) Notwithstanding anything in the foregoing provisions of this section, the court may in any case make an order directing the manner in which any notice or other document is to be served or given, or dispensing with the service or giving thereof.
- (7) This section does not apply to notices or other documents served or given in any proceedings in any court.

Compare: 1971 No 147 s 46

39 Jurisdiction of District Courts

A District Court has jurisdiction to exercise any of the powers conferred by any of the provisions of this Act in any case where—

- (a) the occasion for the exercise of the power arises in the course of any civil proceedings properly before the court; or
- (b) the total amount in respect of which an order of the court is sought is not more than \$200,000; or
- (c) the parties agree, in accordance with section 37 of the District Courts Act 1947, that a District Court has jurisdiction to hear and determine the application.

Compare: 1971 No 147 s 47

40 Jurisdiction of Disputes Tribunals

- (1) A Disputes Tribunal established under the Disputes Tribunals Act 1988 has jurisdiction to exercise the powers conferred on a court by any of the provisions of this Act in any case where, subject to this section, the total amount in respect of which an order of the Tribunal is sought is not more than \$3,000.
- (2) Subject to this section, an order of a Disputes Tribunal under any of the provisions of this Act must not—
 - (a) require a person to pay an amount exceeding \$3,000;
 - (b) declare a person not liable to another for an amount exceeding \$3,000;
 - (c) vest any consumer goods exceeding \$3,000 in value in any person;
 - (d) direct the transfer or assignment or delivery of possession of consumer goods the value of which exceeds \$3,000,—

and an order of a Tribunal that exceeds any such restriction is entirely of no effect.

- (3) Where, in respect of any proceedings properly before a Disputes Tribunal, the jurisdiction of the Tribunal has been extended under an agreement made pursuant to section 13 of the Disputes Tribunals Act 1988, subsections (1) and (2) of this section are to be read as if every reference in those subsections to \$3,000 were a reference to \$5,000.
- (4) Any reference in this section to \$3,000 is, if a greater amount is from time to time specified in section 10 of the Disputes Tribunals Act 1988, to be read as a reference to that greater amount.
- (5) The reference in subsection (3) of this section to \$5,000 is, if a greater amount is from time to time specified in section 13 of the Disputes Tribunals Act 1988, to be read as a reference to that greater amount.

Compare: 1971 No 147 s 47A

Section 40(2)(c): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Section 40(2)(d): amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

41 Offences to be punishable on summary conviction

- (1) Every offence against this Act is punishable on summary conviction.
- (2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act may be laid at any time within 2 years after the time when the matter of the information arose.

Compare: 1971 No 147 s 49

42 No contracting out

- (1) The provisions of this Act have effect despite any provision to the contrary in any security agreement.
- (2) Section 56 of the Sale of Goods Act 1908 is to be read subject to the provisions of this section.
- (3) Every creditor commits an offence against section 13(i) of the Fair Trading Act 1986 who purports to contract out of any provision of this Act.

Section 42: substituted, on 1 May 2002, by section 10 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

43 Application of law relating to illegal contracts

The fact that an act which contravenes any of the provisions of this Act has been committed in the course of the performance of any contract does not—

- (a) make that contract illegal; or
- (b) except as expressly provided in this Act, make that contract or any provision of that contract unenforceable or of no effect.

Compare: 1971 No 147 s 52

44 Power to amend forms

The Governor-General may from time to time, by Order in Council, add to or omit anything from any form in a schedule of this Act, or otherwise amend any such form, or revoke any schedule and substitute a new one.

Part 6

Amendments to other enactments

45 Amendments to Chattels Transfer Act 1924

[Repealed]

Section 45: repealed, on 1 May 2002, by section 192(1) of the Personal Property Securities Act 1999 (1999 No 126).

46 Amendment to Insolvency Act 1967

Amendment(s) incorporated in the Act(s).

47 Amendments to Hire Purchase Act 1971

[Repealed]

Section 47: repealed, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

48 Amendment to Credit Contracts Act 1981

[Repealed]

Section 48: repealed, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

49 Amendment to Disputes Tribunals Act 1988

Amendment(s) incorporated in the Act(s).

50 Amendments to Income Tax Act 1994

[Repealed]

Section 50: repealed, on 1 April 2005 (effective for 2005–06 tax year and later), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

51 Transitional provision relating to existing hire purchase agreements

- (1) This Act also applies to any hire purchase agreement entered into before the commencement of this Act.
 - (2) However, this Act does not apply to any repossession commenced before the commencement of this Act, and the Hire Purchase Act 1971 continues to apply as if this Act had not been passed.
 - (3) A repossession is deemed to have commenced if a notice has been served under section 26 of the Hire Purchase Act 1971 or possession of goods has been taken in contravention of that section.
-

Schedule 1

Pre-possession notice

s 9

Section 9, Credit (Repossession) Act 1997

To: *[full name of debtor]*

[address]

This is about your *[describe goods]*, which is subject to a security agreement with *[full name of creditor]*. The agreement is dated

This is to notify you that—

- you are in default under that security agreement; and
- the default consists of *[specify the nature of the default]*.

You must, within * days after the service of this notice on you,—

- pay \$..... to *[name and address to which payment must be made]*. That amount is made up as follows:
[show how the arrears are made up];† or
- *[describe obligation to be performed];†* **and**
- remedy other breaches of the agreement by *[describe the actions that the debtor must take to remedy the default (in so far as it is capable of being remedied)]*.

If you do not comply with these requirements within * days after the service of this notice on you, *[full name of creditor]* **intends to take possession** of the *[describe goods]*.

Dated this: *[date]*

.....
[Creditor's signature]

This notice is given by *[full name and address of creditor]*, as creditor under the security agreement.

*Insert number of days not being less than 15.

†Delete whichever is inapplicable.

Note: *Where this notice is sent to a guarantor it must be endorsed at the top of the notice as follows—*

This notice is sent to you as guarantor of

As guarantor you have certain rights and obligations and you should seek advice at once.

Reprinted as at
1 June 2005

Credit (Repossession) Act 1997

Schedule 1

Schedule 1: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Schedule 2

s 21

Post-possession notice*Section 21, Credit (Repossession) Act 1997***To:** [full name of debtor]

[address]

This is about your [*describe goods*], which is subject to a security agreement with [*full name of creditor*]. The agreement is dated

This is to notify you that—

- the [*describe goods*] was repossessed on [*date*]
- you will be entitled to get it back if, within 15 days, you **either** reinstate **or** settle the agreement.

Reinstate means to resume the agreement by paying the arrears of instalments owing (plus costs) and remedying other breaches of the agreement.

Settle means to completely pay off (*or* perform), and finish, the agreement.

- To reinstate the agreement, you must—
 - pay the amount required to reinstate the agreement; and
 - remedy other breaches of the agreement by [*describe the actions that the debtor must take to remedy the default (in so far as it is capable of being remedied)*].

The creditor's estimate of the amount you must pay to reinstate the agreement is—

arrears of instalments (including interest and other charges)	\$
repossession costs	\$
costs of holding, storage, repairs, or maintenance	\$
costs of valuing and preparing goods for sale	\$
cost of re-delivery	\$
costs of remedying breaches of agreement	\$
total	\$

- To settle the agreement, you must—

- pay the amount required to settle the agreement; or
- [*describe obligation to be performed*].

The creditor's estimate of the amount required to settle the agreement is—

balance of the advance outstanding, (together with interest and charges payable under the agreement)*	\$
add costs of valuing and preparing goods for sale	\$
add repossession costs	\$
add costs of holding, storage, repairs, or maintenance	\$
add costs of re-delivery	\$
add costs of remedying breaches of agreement	\$
total	\$

If you don't reinstate or settle the agreement—

- the creditor is required to sell the goods:
- you will be liable for the creditor's loss unless the net proceeds of the sale of the goods is enough to cover your liability:
- you will be entitled to a refund if the net proceeds of the sale of the goods is more than enough to cover your liability.

The creditor's estimate of the value of the goods repossessed is \$.....

Notes

- 1 You have the right to apply to a court for relief if a creditor has served a pre-possession notice on you or has taken possession of goods in contravention of the Act. In most cases, the application can be made to a Disputes Tribunal.
- 2 You may, at any time until the creditor sells or agrees to sell the goods, reinstate the agreement or introduce a cash buyer who will pay not less than the creditor's estimate of the value of the goods, ie, † Within a period of 15 days after service of this notice, the vendor may not dispose of the goods without your written consent.

- 3 You may, at any time before the creditor sells or agrees to sell the goods, settle the agreement.
- 4 The creditor is not obliged to sell the goods by public auction or public tender, but if the creditor does, you are entitled to reasonable notice of—
- the time and place of any proposed offering of the goods for sale by public auction, and of the existence and amount of any reserve price:
 - any proposed offering of the goods for sale by public tender. This does not apply if the goods are perishable or threaten to decline speedily in value.
- 5 You are entitled, at any time after the creditor takes possession of the goods but before the creditor sells or agrees to sell the goods, to obtain a valuation of the goods at your expense. The creditor must give you or your valuer access to the goods to enable the valuation to be completed.
- 6 At any offering of the goods for sale by public auction or public tender, you are entitled to bid or tender for them.
- 7 If the creditor does not sell the goods within 3 months of taking possession, you may—
- apply to the court for an order directing the sale of the goods; or
 - require the creditor to put them up for sale by public auction without reserve.
- 8 Within 10 days after the sale of the goods, whether by auction or otherwise, the creditor is required to give you a statement of account which will show whether you are entitled to a refund or whether you are still indebted to the creditor in respect of the security agreement.
- 9 If you are entitled to a refund and the creditor does not pay it to you, you must, if you wish to recover it, sue the creditor within 6 months after you are given the statement of account.

Do not delay

Action to enforce your rights should be taken at once. At the end of **15 days** after the service of this notice, the creditor is free to sell the goods, if you have not reinstated or settled the agreement or intro-

duced a cash buyer who will pay not less than the creditor's estimate of the value of the goods.

If you are in doubt about what you should do, you should seek advice at once.

Notes:

1 *Where this notice is sent to a guarantor it must be endorsed at the top of the notice as follows—*

This notice is sent to you as guarantor of

As guarantor you have certain rights and obligations and you should seek advice at once.

2 *If the court has already made an order relating to the repossession of the goods under section 13(3) of the Act, then this notice must be amended to delete the rights that the court has ordered are not to apply.*

*Delete whichever is inapplicable.

†Insert creditor's estimate of value.

Schedule 2: amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Schedule 2: amended, on 1 May 2002, by section 11 of the Credit (Repossession) Amendment Act 1999 (1999 No 127).

Contents

- 1 General
 - 2 Status of reprints
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 - 5 List of amendments incorporated in this reprint (most recent first)
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Notes**1 General**

This is a reprint of the Credit (Repossession) Act 1997. The reprint incorporates all the amendments to the Act as at 1 June 2005, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint (most recent first)*

Corrections Act 2004 (2004 No 50): section 206

Income Tax Act 2004 (2004 No 35): section YA 2

Credit Contracts and Consumer Finance Act 2003 (2003 No 52): section 139

Credit (Repossession) Amendment Act 1999 (1999 No 127)

Personal Property Securities Act 1999 (1999 No 126): section 192(1)
