

Warehouse Receipts Act, R.S.N.B. 1973, c. W-3

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CHAPTER W-3

Warehouse Receipts Act

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1 In this Act

"action" includes counterclaim and set-off;

"fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit;

"goods" includes all chattels personal other than things in action and money;

"holder" as applied to a negotiable receipt, means a person who has possession of the receipt and a right of property therein, and, as applied to a non-negotiable receipt, means a person named therein as the person to whom the goods are to be delivered or his transferee;

"negotiable receipt" means a receipt in which it is stated that the goods therein specified will be delivered to bearer or to the order of a named person;

"non-negotiable receipt" means a receipt in which it is stated that the goods therein specified will be delivered to the holder thereof;

"purchaser" includes mortgagee and pledgee;

"receipt" means a warehouse receipt;

"to purchase" includes to take as mortgagee or pledgee;

"warehouse receipt" means an acknowledgement in writing by a warehouseman of the receipt for storage of goods not his own;

"warehouseman" means a person who receives goods for storage for reward.

R.S., c.246, s.1.

2(1) A receipt shall contain the following particulars:

- (a) the location of the warehouse or other place where the goods are stored;
- (b) the name of the person by whom or on whose behalf the goods are deposited;
- (c) the date of the issue of the receipt;
- (d) a statement either:
 - (i) that the goods received will be delivered to the holder thereof, or
 - (ii) that the goods will be delivered to bearer or to the order of a named person;
- (e) the rate of storage charges;
- (f) a description of the goods or of the packages containing them;
- (g) the signature of the warehouseman or his authorized agent;
- (h) a statement of the amount of any advance made and of any liability incurred for which the warehouseman claims a lien.

2(2) Where a warehouseman omits from a negotiable receipt any of the particulars set forth in subsection (1) he is liable for damage caused by the omission.

2(3) No receipt shall by reason of the omission of any of the particulars set forth in subsection (1) be deemed not to be a warehouse receipt.

2(4) A warehouseman may insert in a receipt, issued by him, any other term or condition that

- (a) is not contrary to any provision of this Act, and
- (b) does not impair his obligation to exercise such care and diligence in regard to the goods as a careful and vigilant owner of similar goods would exercise in the custody of them in similar circumstances.

2(5) Subject to the provisions of this Act, a warehouse receipt issued by a warehouseman, when delivered to the owner or bailor of the goods or mailed to him at his address last known to the warehouseman, constitutes the contract between the owner or bailor and the warehouseman; but the owner or bailor may within twenty days after such delivery or mailing notify the warehouseman in writing that he does not accept the contract and thereupon he shall remove the goods deposited subject to the warehouseman's lien for charges and if such notice is not given then the warehouse receipt so delivered or mailed constitutes the contract.

R.S., c.246, s.2.

3 Words in a negotiable receipt limiting its negotiability are void.

R.S., c.246, s.3.

4(1) No more than one receipt shall be issued in respect of the same goods except in the case of a lost or destroyed receipt, in which case the new receipt, if one is given, shall bear the same date as the original, and shall be plainly marked on its face "duplicate."

4(2) A warehouseman is liable for all damage caused by his failure to observe the provisions of subsection (1) to any person who purchases the subsequent receipt for valuable consideration, believing it to be an original, even though the purchase occurs after the delivery of the goods by the warehouseman to the holder of the original receipt.

4(3) A receipt upon the face of which the word "duplicate" is plainly marked is a representation and warranty by the warehouseman that it is an accurate copy of a receipt properly issued and uncanceled at the date of the issue of the duplicate.

R.S., c.246, s.4.

5(1) A warehouseman who issues a non-negotiable receipt shall cause to be plainly marked upon its face the words "non-negotiable" or "not negotiable."

5(2) Where a warehouseman fails to comply with subsection (1), a holder of the receipt who purchases it for valuable consideration believing it to be negotiable may, at his option, treat the receipt as vesting in him all rights attaching to a negotiable receipt and imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable, and the warehouseman is liable accordingly.

R.S., c.246, s.5.

6(1) A warehouseman, in the absence of lawful excuse, shall deliver the goods referred to therein:

(a) in the case of a negotiable receipt, to the bearer thereof upon demand made by the bearer, and upon the bearer

(i) satisfying the warehouseman's lien,

(ii) surrendering the receipt with such indorsements as are necessary for the negotiation of the receipt, and

(iii) acknowledging in writing the delivery of the goods; and

(b) in the case of a non-negotiable receipt, to the holder thereof upon the holder

(i) satisfying the warehouseman's lien, and

(ii) acknowledging in writing the delivery of the goods.

6(2) Where a warehouseman refuses or fails to deliver the goods in compliance with subsection (1), the burden is upon the warehouseman to establish the existence of a lawful excuse for his refusal or failure.

R.S., c.246, s.6; 1987, c.6, s.118.

7 Where a person is in possession of a negotiable receipt that has been duly indorsed to him or indorsed in blank, or by the terms of which the goods are deliverable to him or his order or to bearer, if delivery is made in good faith and without notice of any defect in the title of that person the warehouseman is justified in delivering the goods to that person.

R.S., c.246, s.7.

8(1) Except as provided in section 18, where a warehouseman delivers goods for which he has issued a negotiable receipt and fails to take up and cancel the receipt, he is liable, for failure to deliver the goods, to anyone who purchases the receipt in good faith and for valuable consideration, whether he acquired title to the receipt before or after delivery of the goods by the warehouseman.

8(2) Except as provided in section 18, where a warehouseman delivers part of the goods for which he has issued a negotiable receipt and fails to take up and cancel the receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he is liable, for failure to deliver all the goods specified in the receipt, to any one who purchases the receipt in good faith and for valuable consideration, whether the purchaser acquired title to the receipt before or after the delivery of any portion of the goods.

R.S., c.246, s.8.

9 Where a negotiable receipt has been lost or destroyed a judge of The Court of Queen's Bench of New Brunswick, upon application after notice to the warehouseman by the person lawfully entitled to possession of the goods, may upon satisfactory proof of such loss or destruction order the delivery of goods upon the giving of a bond with sufficient sureties to be approved in accordance with the practice of the court to indemnify the warehouseman against any liability, cost or expense he may be under or be put to by reason of the original receipt remaining outstanding; and the warehouseman is entitled to his costs of the application.

R.S., c.246, s.9; 1979, c.41, s.127.

10 Where a warehouseman has information that a person other than the holder of a receipt claims to be the owner of or entitled to the goods he may refuse to deliver the goods until he has had a reasonable time, not exceeding ten days, to ascertain the validity of the adverse claim or to commence interpleader proceedings.

R.S., c.246, s.10.

11 A negotiable receipt, in the hands of a holder who purchased it for valuable consideration, is conclusive evidence of the receipt by the warehouseman of the goods therein described as against the warehouseman and any person signing the same on his behalf, notwithstanding that the goods or some part thereof may not have been so received, unless the holder of the negotiable receipt has actual notice at the time of receiving same that the goods have not in fact been received.

R.S., c.246, s.11.

12 Where goods are described in a receipt merely by a statement

(a) of certain marks or labels on the goods or on the packages containing them,

(b) that the goods are said by the depositor to be goods of a certain kind, or

(c) that the packages containing the goods are said by the depositor to contain goods of a certain kind,

or by a statement of import similar to that of paragraph (a), (b) or (c) the statement does not impose any liability on the warehouseman in respect of the nature, kind or quality of the goods, but shall be deemed to be a representation by the warehouseman either that the marks or labels were in fact on the goods or packages or that the goods were in fact described by the depositor as stated, or that the packages containing the goods were in fact described by the depositor as containing goods of a certain kind, as the case may be.

R.S., c.246, s.12.

13 A warehouseman is liable for loss of or injury to goods caused by his failure to exercise such care and diligence in regard to them as a careful and vigilant owner of similar goods would exercise in the custody of them in similar circumstances.

R.S., c.246, s.13.

14 Where authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade; and in that case the holders of the receipts for the mingled goods own the entire mass in common, and each holder is entitled to such proportion thereof as the quantity shown by his receipt to have been deposited bears to the whole.

R.S., c.246, s.14.

15 Where goods are delivered to a warehouseman by the owner or person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter while in the possession of the warehouseman be levied under an execution, unless the receipt is first surrendered to the warehouseman.

R.S., c.246, s.15.

16 Where a negotiable receipt is issued for goods, the warehouseman has no lien on the goods, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed.

R.S., c.246, s.16.

17(1) Where goods are of a perishable nature, or by keeping will deteriorate greatly in value or injure other property, the warehouseman may give such notice as is reasonable and possible under the circumstances to the holder of the receipt for the goods if the name and address of the holder is known to the warehouseman or if not known to him then to the depositor, requiring him to satisfy the lien upon the goods, and to remove them from the warehouse; and on the failure of such person to satisfy the lien and remove the goods within the time specified in the notice, the warehouseman may sell the goods at public or private sale without advertising.

17(2) The notice referred to in subsection (1) may be given by sending it by registered letter post addressed to the person to whom it is to be given at the person's latest known place of address and the notice shall be deemed to be given on the day following the mailing.

17(3) If the warehouseman after a reasonable effort is unable to sell the goods, he may dispose of them in any manner he thinks fit, and incurs no liability by reason thereof.

17(4) The warehouseman shall from the proceeds of any sale made pursuant to this section, satisfy his lien and shall hold the balance in trust for the holder of the receipt.

R.S., c.246, s.17.

18 Where goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of pursuant to the provisions of section 17, the warehouseman is not liable for failure to deliver the goods to the holder of the receipt.

R.S., c.246, s.18.

19(1) A negotiable receipt may be negotiated by delivery in either of the following cases:

(a) where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a named person, and that person or a subsequent indorsee has indorsed it in blank or to bearer.

19(2) Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt is indorsed in blank or to bearer the receipt may be negotiated by the bearer indorsing it to a named person, and in that case the receipt shall thereafter be negotiated by the indorsement of the indorsee or a subsequent indorsee, or by delivery if it is again indorsed in blank or to bearer.

19(3) Where, by the terms of a negotiable receipt, the goods are deliverable to the order of a named person, the receipt may be negotiated by the indorsement of that person.

19(4) An indorsement pursuant to subsection (3) may be in blank, to bearer or to a named person, and if the indorsement is to a named person the receipt may be again negotiated by indorsement in blank, to bearer or to another named person and subsequent negotiation may be made in like manner.

R.S., c.246, s.19.

20 The goods covered by a non-negotiable receipt may be transferred by the holder by delivery to a purchaser or donee of the goods of a transfer in writing executed by the holder, but the transfer does not affect or bind the warehouseman until he is notified in writing thereof.

R.S., c.246, s.20.

21(1) A person, to whom the goods covered by a non-negotiable receipt are transferred, acquires as against the transferor,

(a) title to the goods, and

(b) the right to deposit with the warehouseman the transfer or duplicate thereof or to give notice in writing to the warehouseman of the transfer.

21(2) The transferee acquires the benefit of the obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt upon

(a) deposit of the transfer of the goods, or

(b) giving notice in writing of the transfer and upon the warehouseman having a reasonable opportunity of verifying the transfer.

R.S., c.246, s.21.

22 A person to whom a negotiable receipt is duly negotiated acquires

(a) such title to the goods as the person negotiating the receipt to him had or had ability to transfer to a purchaser in good faith for valuable consideration, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to transfer to a purchaser in good faith for valuable consideration, and

(b) the benefit of the obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

R.S., c.246, s.22; 1987, c.6, s.118.

23 Where a negotiable receipt is transferred for valuable consideration by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the

receipt, unless a contrary intention appears, and the negotiation takes effect as of the time when the indorsement is made.

R.S., c.246, s.23.

24 A person who for valuable consideration negotiates or transfers a receipt by indorsement or delivery, including one who assigns for valuable consideration a claim secured by a receipt, unless a contrary intention appears, warrants:

(a) that the receipt is genuine,

(b) that he has a legal right to negotiate or transfer it,

(c) that he has no knowledge of any fact that would impair the validity of the receipt, and

(d) that he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

R.S., c.246, s.24.

25 The indorsement of a receipt does not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfil their respective obligations.

R.S., c.246, s.25.

26 The validity of the negotiation of a receipt is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor without notice of the breach of duty, or fraud, mistake or duress.

R.S., c.246, s.26.

27 Where a person having sold, mortgaged or pledged goods that are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged a negotiable receipt representing goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for valuable consideration and without notice of the previous sale, mortgage or pledge, shall have the same effect as if a previous purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

R.S., c.246, s.27.

28 Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage *in transitu* defeats the rights of a purchaser for value in good faith to whom the receipt has been negotiated, whether the negotiation is prior or subsequent to the notification to the warehouseman who issued the receipt of the seller's claim to a lien or right of stoppage *in transitu*, and the warehouseman shall not deliver the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

R.S., c.246, s.28.

29 Nothing herein contained shall be deemed to include or apply to the manager or operator of a grain elevator as "manager" and "operator" are defined by the *Canada Grain Act*, chapter G-16 of the Revised Statutes of Canada, 1970, or to any railway or express company within the jurisdiction of the Parliament of Canada.

R.S., c.246, s.29.

30 The provisions of this Act do not apply to receipts made and delivered prior to the twenty-fifth day of April, 1947.

R.S., c.246, s.30.

N.B. This Act is consolidated to March 21, 2005.

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