

Warehouse Receipts Act, R.S.A. 2000, c. W-1

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WAREHOUSE RECEIPTS ACT

Chapter W-1

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “action” includes counterclaim and set-off;
- (b) “fungible goods” means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit;

- (c) “goods” includes all chattels personal, but does not include things in action and money;
- (d) “holder” means
 - (i) as applied to a negotiable receipt, a person who has possession of the receipt and a right of property in it, and
 - (ii) as applied to a non-negotiable receipt, a person named in it as the person to whom the goods are to be delivered or the person’s transferee;
- (e) “negotiable receipt” means a receipt in which it is stated that the goods specified in it will be delivered to bearer or to the order of a named person;
- (f) “non-negotiable receipt” means a receipt in which it is stated that the goods specified in it will be delivered to the holder of it;
- (g) “purchase” includes taking as mortgagee or as pledgee;
- (h) “purchaser” includes mortgagee and pledgee;
- (i) “receipt” means a warehouse receipt;
- (j) “warehouse receipt” means an acknowledgment in writing by a warehouseman of the receipt for storage of goods not the warehouseman’s own;
- (k) “warehouseman” means a person who receives goods for storage for reward.

RSA 1980 cW-2 s1

Application of Act

2(1) Nothing in this Act 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* (Canada) or any railway or express company within the jurisdiction of the Parliament of Canada.

(2) This Act does not apply to receipts made and delivered before the first day of April, 1949.

RSA 1980 cW-2 s2

Contents of receipt

3(1) A receipt must 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 issue of the receipt;
- (d) a statement either
 - (i) that the goods received will be delivered to the holder of the receipt, 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) the description of the goods or of the packages containing them;
- (g) the signature of the warehouseman or the warehouseman’s 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) When a warehouseman omits from a negotiable receipt any of the particulars set out in subsection (1), the warehouseman is liable for the damage caused by the omission.

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

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

- (a) is not contrary to this Act, and
- (b) does not impair the warehouseman’s 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 the goods in similar circumstances.

(5) Subject to this Act, a warehouse receipt issued by a warehouseman, when delivered to the owner or bailor of the goods or mailed to the owner or bailor at the owner’s or bailor’s address last known to the warehouseman, constitutes the contract between the owner or bailor and the warehouseman.

(6) Notwithstanding subsection (5), the owner or bailor may, within 20 days after delivery or mailing, notify the warehouser in writing that the owner or bailor does not accept the contract and, on doing so, the owner or bailor shall, subject to the warehouser's lien for charges, remove the goods deposited with the warehouser, and if that notice is not given then the warehouse receipt so delivered or mailed constitutes the contract between the owner or bailor and the warehouser.

RSA 1980 cW-2 s3

Negotiability of receipt

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

RSA 1980 cW-2 s4

Duplicate receipt in case of loss

5(1) No more than one receipt shall be issued in respect of the same goods except in 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".

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

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

RSA 1980 cW-2 s5

Non-negotiable receipt

6(1) A warehouser who issues a non-negotiable receipt shall cause to be plainly marked on its face the words "non-negotiable" or "not negotiable".

(2) If a warehouser fails to comply with subsection (1), a holder of the receipt who purchases it for valuable consideration believing it to be negotiable may, at the holder's option, treat the receipt as vesting in the holder all rights attaching to a negotiable receipt and imposing on the warehouser the same liabilities the warehouser would have incurred had the receipt been negotiable, and the warehouser is liable accordingly.

RSA 1980 cW-2 s6

Delivery of goods

7(1) A warehouser, in the absence of lawful excuse, shall deliver the goods referred to in the receipt

- (a) in the case of a negotiable receipt, to the bearer of it on demand made by the bearer and on the bearer
 - (i) satisfying the warehouser's lien,
 - (ii) surrendering the receipt with any endorsements 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 of it on the holder
 - (i) satisfying the warehouser's lien, and
 - (ii) acknowledging in writing the delivery of the goods.

(2) If a warehouser refuses or fails to deliver the goods in compliance with subsection (1), the burden is on the warehouser to establish the existence of a lawful excuse for that refusal or failure.

RSA 1980 cW-2 s7

Delivery to holder of negotiable receipt

8 When a person is in possession of a negotiable receipt that has been duly endorsed to the person or endorsed in blank, or by the terms of which the goods are deliverable to the person or the person's order or to bearer, if delivery is made in good faith and without notice of any defect in the title of that person, the warehouser is justified in delivering the goods to that person.

RSA 1980 cW-2 s8

Liability for failure to deliver goods

9(1) Except as provided in section 19, if a warehouser delivers goods for which the warehouser has issued a negotiable receipt and fails to take up and cancel the receipt, the warehouser is liable to any person who purchases the receipt in good faith and for valuable consideration for the failure to deliver the goods, whether the purchaser acquired title to the receipt before or after delivery of the goods by the warehouser.

(2) Except as provided in section 19, if a warehouser delivers part of the goods for which the warehouser has issued a negotiable receipt and fails to take up and cancel the receipt or to place plainly on the receipt a statement of the goods or packages that have been delivered, the warehouser is liable to any person who purchases the receipt in good faith and for valuable consideration for the failure to deliver all the goods specified in the receipt, whether the purchaser acquired title to the receipt before or after delivery of any portion of the goods by the warehouser.

RSA 1980 cW-2 s9

Lost or destroyed receipt

10(1) When a negotiable receipt has been lost or destroyed, a judge of the Court of Queen's Bench

- (a) on application after notice to the warehouser by the person lawfully entitled to possession of the goods, and
- (b) on satisfactory proof of the loss or destruction,

may order the delivery of the goods on the giving of a bond, with sufficient sureties to be approved in accordance with the practice of the Court, to indemnify the warehouser against any liability, cost or expense the warehouser may be under or be put to by reason of the original receipt remaining outstanding.

(2) In any such case the warehouser is entitled to the warehouser's costs of the application.

RSA 1980 cW-2 s10

Determination of validity of claim

11 When a warehouser has information that a person other than the holder of a receipt claims to be the owner of or entitled to the goods, the warehouser may refuse to deliver the goods until the warehouser has had a reasonable time of not more than 10 days

- (a) to ascertain the validity of the adverse claim, or
- (b) to commence interpleader proceedings.

RSA 1980 cW-2 s11

Negotiable receipt conclusive proof

12 A negotiable receipt in the hands of a holder who has purchased it for valuable consideration is, as against the warehouser and a person signing it on the warehouser's behalf, conclusive proof of the receipt by the warehouser of the goods described in it, notwithstanding that the goods or some part of them might not have been so received, unless the holder of the negotiable receipt has actual notice at the time of receiving the receipt that the goods have not in fact been received.

RSA 1980 cW-2 s12

Goods described in receipt by certain marks, etc.

13(1) When 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 clause (a), (b) or (c), the statement does not impose any liability on the warehouser in respect of the nature, kind or quality of the goods.

(2) A statement referred to in subsection (1) shall be deemed to be a representation by the warehouser either

- (a) that the marks or labels were in fact on the goods or packages,
- (b) that the goods were in fact described by the depositor as stated, or
- (c) 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.

RSA 1980 cW-2 s13

Liability for care of goods

14 A warehouser is liable for loss of or injury to goods caused by the warehouser's 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 the goods in similar circumstances.

RSA 1980 cW-2 s14

Commingled goods

15 When authorized by agreement or by custom, a warehouser may mingle fungible goods with other goods of the same kind and grade, and in that case the holder of the receipts for the mingled goods owns the entire mass in common, and each holder is entitled to such proportion of it as the quantity shown by the holder's receipt to have been deposited bears to the whole.

RSA 1980 cW-2 s15

No levy under writ proceedings while in warehouse

16 When goods are deliverable to a warehouser 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 afterwards, while in the possession of the warehouser, be levied pursuant to writ proceedings under the *Civil Enforcement Act* unless the receipt is first surrendered to the warehouser.

RSA 1980 cW-2 s16;1994 cC-10.5 s160

Warehouser has no lien unless stated in receipt

17 When a negotiable receipt is issued for goods, the warehouser 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.

RSA 1980 cW-2 s17

Perishable goods, etc.

18(1) When goods are of a perishable nature, or by keeping will deteriorate greatly in value, or injure other property, the warehouser 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 warehouser or if not known to the warehouser then to the depositor, requiring the holder to satisfy the lien on the goods and to remove them from the warehouse.

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

(3) On the failure of the person to whom notice is to be given to satisfy the lien and remove the goods within the time specified in the notice, the warehouser may sell the goods at public or private sale without advertising.

(4) If the warehouser after a reasonable effort is unable to sell the goods, the warehouser may dispose of them in any manner the warehouser thinks fit, and the warehouser incurs no liability by reason of disposing of them.

(5) The warehouser shall, from the proceeds of any sale made pursuant to this section, satisfy the warehouser's lien and shall hold the balance in trust for the holder of the receipt.

RSA 1980 cW-2 s18

Effect of sale

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

RSA 1980 cW-2 s19

Negotiation of negotiable receipt

20(1) A negotiable receipt may be negotiated by delivery in either of the following cases:

- (a) when, by the terms of the receipt, the warehouser undertakes to deliver the goods to the bearer;
- (b) when, by the terms of the receipt, the warehouser undertakes to deliver the goods to the order of a named person, and that person or a subsequent endorsee has endorsed it in blank or to bearer.

(2) When, by the terms of a negotiable receipt, the goods are deliverable to bearer or when a negotiable receipt has been endorsed in blank or to bearer, the receipt may be negotiated by the bearer endorsing it to a named person, and in that case the receipt shall afterwards be negotiated by the endorsement of the endorsee or a subsequent endorsee, or by delivery if it is again endorsed in blank or to bearer.

(3) When, 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 endorsement of that person.

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

RSA 1980 cW-2 s20

Transfer of goods covered by non-negotiable receipt

21 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 warehouser until the warehouser is notified in writing of it.

RSA 1980 cW-2 s21

Rights of person to whom goods transferred

22(1) A person to whom the goods covered by a non-negotiable receipt are transferred acquires, as against the transferor,

- (a) the title to the goods, and
- (b) the right to deposit with the warehouser the transfer or duplicate of it or to give notice in writing to the warehouser of the transfer.

(2) The transferee acquires the benefit of the obligation of the warehouser to hold possession of the goods for the transferee according to the terms of the receipt

- (a) on deposit of the transfer of the goods, or
- (b) on giving notice in writing of the transfer and on the warehouser having a reasonable opportunity of verifying the transfer.

RSA 1980 cW-2 s22

Rights of person having negotiable receipt

23 A person to whom a negotiable receipt is negotiated acquires

- (a) such title to the goods as the person negotiating the receipt to the person 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 warehouse to hold possession of the goods for the person according to the terms of the receipt as fully as if the warehouse had contracted directly with the person.

RSA 1980 cW-2 s23

Transfer of negotiable receipt

24 When a negotiable receipt is transferred for valuable consideration by delivery and the endorsement of the transferor is essential for negotiation,

- (a) the transferee acquires a right against the transferor to compel the transferor to endorse the receipt unless a contrary intention appears, and
- (b) the negotiation takes effect as of the time when the endorsement is made.

RSA 1980 cW-2 s24

Warranties on negotiation of receipt

25 A person who for valuable consideration negotiates or transfers a receipt by endorsement 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 the person has a legal right to negotiate or transfer it,
- (c) that the person has no knowledge of any fact that would impair the validity of the receipt, and
- (d) that the person has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose whenever those warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented by it.

RSA 1980 cW-2 s25

Liability of endorser

26 The endorsement of a receipt does not make the endorser liable for any failure on the part of the warehouse or previous endorsers of the receipt to fulfil their respective obligations.

RSA 1980 cW-2 s26

Validity of negotiation of receipt

27 The validity of the negotiation of a receipt is not impaired by the fact

- (a) that the negotiation was a breach of duty on the part of the person making the negotiation, or
- (b) that the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to that person,

if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value for it without notice of the breach of duty, or fraud, mistake or duress.

RSA 1980 cW-2 s27

Subsequent negotiation

28 When a person

- (a) having sold, mortgaged or pledged goods that are in a warehouse and for which a negotiable receipt has been issued, or
- (b) having sold, mortgaged or pledged a negotiable receipt representing goods,

continues in possession of the negotiable receipt, the subsequent negotiation of it by that person under a sale or other disposition of it to a person receiving it in good faith, for valuable consideration and without notice of the previous sale, mortgage or pledge, has the same effect as if a previous purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

RSA 1980 cW-2 s28

Negotiation of receipt defeats lien of seller of goods

29(1) When a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transit 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 warehouse who issued the receipt of the seller's claim to a lien or right of stoppage in transit.

(2) The warehouse shall not deliver the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

RSA 1980 cW-2 s29

