

Warehouse Receipts Act, R.S.N.S. 1989, c. 498

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Warehouse Receipts Act

CHAPTER 498

OF THE

REVISED STATUTES, 1989

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Warehouse Receipts Act

Short title

1 This Act may be cited as the *Warehouse Receipts Act*.

Interpretation

2 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 other than things in action and money;

(d) "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;

(e) "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;

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

(g) "purchase" includes to take 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 a storage of goods not his own;

(k) "warehouseman" means a person who received goods for storage for reward. R.S., c. 333, s. 1.

Content of warehouse receipt

3 (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 issue of the receipt;

(d) a statement either

(i) that the goods 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; and

(h) a statement of the amount of any advance made and of any liability incurred for which the warehouseman claims a lien.

Liability where omission of particulars in receipt

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

Omission does not invalidate receipt

(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.

Additional terms in receipt

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

(a) is not contrary to 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.

Delivered receipt is contract

(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 him at his address last known to the warehouseman, shall constitute the contract between the owner or bailor and the warehouseman, provided that the owner or bailor may, within twenty days after such delivery or mailing, notify the warehouseman in writing that he does not accept such 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 said warehouse receipt so delivered or mailed shall constitute the contract. R.S., c. 333, s. 2.

Words in receipt that limit negotiability are void

4 Words in a negotiable receipt limiting its negotiability shall be void. R.S., c. 333, s. 3.

Only one receipt unless loss or destruction of receipt

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".

Liability where failure to comply with subsection (1)

(2) A warehouseman shall be 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 be after the delivery of the goods by the warehouseman to the holder of the original receipt.

Duplicate receipt to be accurate copy

(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. 333, s. 4.

Duty to plainly mark non-negotiable receipt

6 (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".

Failure to comply with subsection (1)

(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 shall be liable accordingly. R.S., c. 333, s. 5.

Duty of warehouseman to deliver goods

7 (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 endorsements 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.

Burden of justifying failure to deliver

(2) Where a warehouseman refuses or fails to deliver the goods in compliance with subsection (1), the burden shall be upon the warehouseman to establish the existence of a lawful excuse for his refusal or failure. R.S., c. 333, s. 6.

Delivery to person possessing negotiable receipt

8 Where a person is in possession of a negotiable receipt that has been duly endorsed to him or endorsed 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. 333, s. 7.

Failure to cancel receipt once goods delivered

9 (1) Except as provided in Section 19, where a warehouseman delivers goods for which he has issued a negotiable receipt and fails to take up and cancel the receipt, he shall be 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.

Failure to mark on receipt that goods partly delivered

(2) Except as provided in Section 19, where a warehouseman delivers part of the goods for which he has issued a negotiable receipt and fails either to take up and cancel the receipt or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable, for failure to deliver all the goods specified in the receipt, to anyone 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. 333, s. 8.

Order to deliver where receipt lost or destroyed

10 Where a negotiable receipt has been lost or destroyed, a judge of the Supreme Court or county court, 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 the 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 put under or be put to by reason of the original receipt remaining outstanding, and the warehouseman shall be entitled to his costs of the application. R.S., c. 333, s. 9.

Right to refuse to deliver where adverse claim

11 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. 333, s. 10.

Receipt is evidence

12 A negotiable receipt shall, in the hands of a holder who has purchased it for valuable consideration, be 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. 333, s. 11.

Description of goods in receipt deemed representation

13 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 clause (a), (b) or (c), the statement shall 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. 333, s. 12.

Standard of care of warehouseman

14 A warehouseman shall be 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. 333, s. 13.

Mingling of fungible goods with other goods

15 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 shall own the entire mass in common and each holder shall be entitled to such proportion thereof as the quantity shown by his receipt to have been deposited bears to the whole. R.S., c. 333, s. 14.

Condition for levy on stored goods delivered by owner

16 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. 333, s. 15.

Charges for which lien arises

17 Where a negotiable receipt is issued for goods, the warehouseman shall have 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. 333, s. 16.

Removal of perishable goods or sale

18 (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.

Service of notice to remove perishable goods

(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 persons last known place of address and the notice shall be deemed to be given on the day following the mailing.

Inability to sell perishable goods

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

Proceeds of sale

(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. 333, s. 17.

No liability for non-delivery after lawful sale

19 Where goods have been lawfully sold to satisfy a warehousemans lien, or have been lawfully sold or disposed of pursuant to Section 18, the warehouseman shall not be liable for failure to deliver the goods to the holder of the receipt. R.S., c. 333, s. 18.

Negotiation of receipt by delivery

20 (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 endorsee has endorsed it in blank or to bearer.

Negotiation of receipt by endorsement

(2) Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been endorsed in blank or to bearer, the receipt may be negotiated by the bearer endorsing the same to a named person, and in that case the receipt shall thereafter 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.

Negotiation of receipt by named person

(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 endorsement of that person.

Forms of endorsement

(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. R.S., c. 333, s. 19.

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 shall not affect or bind the warehouseman until he is notified in writing thereof. R.S., c. 333, s. 20.

Title and right of transferee

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 warehouseman the transfer or duplicate thereof or to give notice in writing to the warehouseman of the transfer.

Benefit of obligation of warehouseman

(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. 333, s. 21.

Title and benefit to person to whom receipt negotiated

23 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. 333, s. 22.

Right to compel endorsement by transferor

24 Where a negotiable receipt is transferred for valuable consideration by delivery, and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to endorse the receipt, unless a contrary intention appears, and the negotiation shall take effect as of the time when the endorsement is made. R.S., c. 333, s. 23.

Warranty of negotiator or transferor 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 that

(a) the receipt is genuine;

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

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

(d) 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. 333, s. 24.

Liability of endorser

26 The endorsement of a receipt shall not make the endorser liable for any failure on the part of the warehouseman or previous endorsers of the receipt to fulfil their respective obligations. R.S., c. 333, s. 25.

Holder in good faith and for value

27 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, mistakes 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. 333, s. 26.

Negotiation of receipt after goods parted with

28 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. 333, s. 27.

Effect of negotiated receipt on lien of seller

29 Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage *in transitu*, shall defeat the rights of a purchaser for value in good faith to whom the receipt has been negotiated, whether the negotiation be 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. 333, s. 28.

Exemption from Act

30 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* or any railway or express company within the jurisdiction of the Parliament of Canada. R.S., c. 333, s. 29.

Act does not apply

31 This Act shall not apply to the storage of furs, garments and home furnishings, other than furniture which is ordinarily used by the person placing them in storage or a member of his family or household, until a day to be named by the Governor in Council by proclamation. R.S., c. 333, s. 31.

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