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INTRODUCTION OF THE ACT

This act came into force on 1 July 1998 and was amended by the Credit (Repossession) Amendment Act 1999. It affects the way people are owed money on consumer goods subject to certain kinds of security agreements and how they are able to recover their debts by repossessing those goods.

WHAT IS THE EFFECT OF THE ACT?

The provisions of the Hire Purchase Act relating to the taking of consumer goods are now governed by the rules as set out in the Act.

The Act applies to all hire purchase agreements entered into before the commencement of the Act provided that it does not apply to any repossession which is commenced before the commencement of the Act.

Consumer goods are those used or acquired for use primarily for personal, domestic or household purposes. The Act also applies to consumer goods that are installed in, or are fixed to other consumer goods.

CAN WE GET OUT OF THE ACT?

No, the Act is a code and cannot be contracted out of. The Act also binds the Crown.

SECURITY AGREEMENTS TO WHICH ACT APPLIES

No, the Act does not give a creditor the right to take possession of consumer goods. That right must still be included within the security documentation which is signed between the creditor and the debtor.

WHAT NEEDS TO BE DONE BEFORE REPOSSESSION OF CONSUMER GOODS?

- The debtor must first be in default under the terms of the agreement.
- Notice must be given to the debtor and any guarantor in the form headed Pre-possession Notice.
- The only case in which a Pre-possession Notice need not be served is where the creditor has reasonable grounds to believe that the goods have been or will be destroyed, damaged, endangered, disassembled, removed, or concealed contrary to the provisions of the agreement. Please remember that the onus of proving those grounds lies with the creditor.
- The creditor must not take possession of the goods until the period set out in the Pre-possession Notice has expired.

WHAT HAPPENS IF THE CREDITOR DOES NOT FOLLOW THE RULES SET OUT BEFORE TAKING POSSESSION OF THE CONSUMER GOODS?

A creditor can be fined up to \$3,000.00 and the debtor can be granted relief on such terms as the Court may think fit.

HOW DOES THE CREDITOR ENTER TO REPOSSESS THE GOODS?

- The Act does not give creditors the right to enter. This must be in the documentation.
- A creditor must not enter premises in a manner that is unreasonable.
- If the premises are residential premises then the creditor must enter during the hours of 6.00 am to 9.00 pm on Mondays to Saturdays and at no time on Sundays or public holidays.

CAN ANYBODY ENTER ON BEHALF OF THE CREDITOR?

- The creditor may give an agent authority and that authority must be shown to the debtor.
- Certain people with criminal records cannot act as agents.

At the expiry of the 15 days the creditor must however offer the goods for sale unless the debtor reinstates the agreement or introduces a buyer who completes the purchase, settles the agreement or as the Court determines otherwise.

WHAT NEEDS TO BE PRODUCED ON ENTRY?

The creditor or the creditor's agent needs to produce to the debtor a copy of the Pre-possession Notice and a copy of the agent's authority to act on behalf of the creditor. If the occupier of the premises is not present when the goods are taken then a notice must be left specifying:

- That the premises have been entered; and
- That possession has been taken of the goods and an inventory of those goods.

WHAT HAPPENS AFTER THE CONSUMER GOODS HAVE BEEN TAKEN?

Within 21 days of taking possession of the goods the creditor must serve a Post-Possession Notice. If the notice is not served then the creditor will bear its own costs for taking of possession and is not entitled to recover those costs.

WHAT CAN YOU THEN DO WITH THE CONSUMER GOODS?

A creditor cannot without the written consent of the debtor obtained after repossession sell or dispose of the goods until after the expiry of 15 days from the date of the service of the Post-possession Notice. If the creditor does sell within that period then the creditor's ability to recover is reduced.

HOW MUST THE SALE BE CONDUCTED?

The sale can be by auction, public tender or private sale but the creditor must use its best endeavours to obtain the best price. At any time up until the sale the debtor can reinstate the agreement by paying the relevant amount and the debtor can also introduce a buyer.

WHAT HAPPENS IF THE CONSUMER GOODS ARE NOT SOLD WITHIN THAT PERIOD?

If the goods have not been sold within three months the debtor may require the goods to be sold.

WHAT DOES THE CREDITOR NEED TO DO AFTER THE SALE?

When the goods have been sold, the creditor must within 10 days after sale, give the debtor a statement of account in writing showing:

- The amount of gross proceeds of sale;
- The amount of the costs and expenses of and incidental to the sale;
- The amount required to settle the agreement; and

- The balance owing either by the creditor or the debtor as the case may be.

If there is a shortfall then the creditor can only recover that amount.

SUMMARY

This booklet has been designed to be a user friendly summary of the Credit (Repossession) Act. There are a number of other specific issues that are not dealt with in this guide. We recommend that you contact your lawyer before taking any action pursuant to the Act and we would be happy to design a procedure for you if this would be of assistance.

Our team members with an interest in the Act are:

- Paul Franklin
- Catherine Chetwin

Please call this office if you would like further information on any guides prepared by this firm. Copies are also available from our website.

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