

CONSOLIDATION OF FACTORS ACT
R.S.N.W.T. 1988,c.F-1

(Current to: June 22, 2007)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

S.N.W.T. 1994,c.8,s.78 (as amended by S.N.W.T. 1999,c.5,Sch.C,s.1(3)(a))
s.78 in force May 7, 2001: SI-001-2001

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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FACTORS ACT

INTERPRETATION

Definitions

1. (1) In this Act,

"document of title" includes a bill of lading, dock warrant, warehouse keeper's certificate or warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize by endorsement or delivery the possessor of the document to transfer or receive goods represented by that document; (*titre représentatif des marchandises*)

"goods" includes wares and merchandise; (*marchandises*)

"mercantile agent" means a mercantile agent having, in the customary course of his or her business as a mercantile agent, authority to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods; (*agent de commerce*)

"pledge" includes a contract pledging or giving a lien or security on goods whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability. (*gage*)

"Registry" means the Personal Property Registry established by the *Personal Property Security Act*; (*réseau d'enregistrement*)

"security agreement" means a security agreement as defined in the *Personal Property Security Act*; (*contrat de sûreté*)

"security interest" means a security interest as defined in the *Personal Property Security Act*; (*sûreté*)

Deemed possession

(2) A person shall be deemed to be in possession of goods or of the documents of title to goods where the goods or documents are in the actual custody of the person or are held by any other person subject to his or her control or for the person or in his or her behalf. S.N.W.T. 1994,c.8,s.78(2).

DISPOSITIONS BY MERCANTILE AGENTS

Powers of mercantile agents respecting disposition of goods

2. (1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge or other disposition of the goods made by the mercantile agent when acting in the ordinary course of business of a mercantile agent is, subject to this Act, as valid as if the mercantile agent were expressly

authorized by the owner of the goods to make the disposition, if the person taking under the disposition acts in good faith and does not have, at the time of the disposition, notice that the person making the disposition does not have the authority to make the disposition.

Disposition where consent has been determined

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge or other disposition that would have been valid if the consent had continued, is valid notwithstanding the determination of the consent, if the person taking under the disposition does not have at the time of the disposition notice that the consent has been determined.

Possession of documents

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his or her being or having been, with the consent of the owner, in possession of the goods represented by those documents or of any other documents of title to the goods, his or her possession of the first-mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner.

Presumption

(4) For the purposes of this Act, the consent of the owner shall be presumed in the absence of evidence to the contrary.

Effect of pledge of documents of title

3. A pledge of the documents of title to goods shall be deemed to be a pledge of the goods.

Pledge for prior debt

4. Where a mercantile agent pledges goods as security for a debt or liability due from the pledger to the pledgee before the time of the pledge, the pledgee acquires no further right to the goods than could have been enforced by the pledger at the time of the pledge.

Rights acquired by exchange of goods or documents

5. The consideration necessary for the validity of a sale, pledge or other disposition of goods in pursuance of this Act may be either a payment in cash or the delivery or transfer of other goods or of a document of title to goods or of a negotiable security or any other valuable consideration, but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods or of a document of title to goods or of a negotiable security, the pledgee acquires no right or interest in the goods so pledged in excess of the value of the goods, documents or security when so delivered or transferred in exchange.

Application of sections 2 to 5

5.1. Sections 2 to 5 do not apply to a consignment to which the *Personal Property Security Act* applies. S.N.W.T. 1994,c.8,s.78(3).

Agreements through clerks and others

6. For the purposes of this Act, an agreement made with a mercantile agent through a clerk or other person authorized in the ordinary course of business to make contracts of sale or pledge on behalf of the mercantile agent shall be deemed to be an agreement with the mercantile agent.

Consignors and consignees

7. (1) Where the owner of goods

(a) has given possession of the goods to another person for the purpose of consignment or sale, or

(b) has shipped the goods in the name of another person,

and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee, in respect of advances made to or for the use of that person, has the same lien on the goods as if that person were the owner of the goods and may transfer the lien to another person.

Effect of subsection (1)

(2) Nothing in subsection (1) limits or affects the validity of a sale, pledge or disposition by a mercantile agent.

DISPOSITIONS BY BUYERS AND SELLERS OF GOODS

Disposition by seller remaining in possession

8. (1) Where a person having sold goods continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for that person of the goods or documents of title under a sale, pledge or other disposition thereof or under an agreement for sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale has the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the delivery or transfer.

Effect where registration in Registry

(2) Subsection (1) does not apply to a sale, pledge or other disposition of goods or of a document of title to goods, other than a negotiable document of title to goods, that is out of the ordinary course of business of the person having sold the goods where, prior to the sale, pledge or other disposition, the interest of the owner of the goods is registered in the Registry in accordance with regulations made under the *Personal Property Security Act*.

Application of Part IV, *Personal Property Security Act*

(3) The interest of an owner referred to in subsection (2) may be registered in the Registry and Part IV of the *Personal Property Security Act* applies to the registered interest with such modifications as the circumstances require. S.N.W.T. 1994,c.8,s.78(4).

Disposition by buyer obtaining possession

9. (1) Where a person having bought or agreed to buy goods obtains with the consent of the seller possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for that person of the goods or documents of title under any sale, pledge or other disposition thereof or under any agreement for sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, has the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

Effect where possession under security agreement

(2) Subsection (1) does not apply to a sale, pledge or other disposition of goods or of documents of title to goods by a person who has obtained possession of the goods pursuant to a security agreement under which the seller has a security interest. S.N.W.T. 1994,c.8,s.78(5).

Effect of transfer of documents on vendor's lien or right of stoppage in transit

10. Where a document of title to goods has been lawfully transferred to a person as buyer or owner of the goods and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the last-mentioned transfer has the same effect for defeating any vendor's lien or right of stoppage in transit as the transfer of a bill of lading has for defeating the right of stoppage in transit.

GENERAL

Mode of transferring documents

11. For the purposes of this Act, the transfer of a document may be

- (a) by endorsement; or
- (b) by delivery where the document is by custom or by its express terms transferable by delivery or makes the goods deliverable to the bearer.

Liability of agent

12. (1) Nothing in this Act authorizes an agent to exceed or depart from his or her authority as between the agent and his or her principal or exempts the agent from any civil or criminal liability for doing so.

Saving for rights of true owner

(2) Nothing in this Act shall be construed to prevent the owner of goods from recovering the goods from an agent or assignee under an assignment for the benefit of creditors at any time before the sale or pledge of the goods or to prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale of the goods on satisfying the claim for which the goods were pledged and paying to the agent, if required by the agent, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title to the goods or any of them by way of lien as against the owner or from recovering from any person with whom the goods have been pledged any balance of money remaining in his or her hands as the produce of the sale of the goods after deducting the amount of his lien.

Right of owner to recover goods

(3) Nothing in this Act shall be construed to prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the goods or any part of that price subject to any right of set-off on the part of the buyer against the agent.

Saving for common law

13. The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act.