

# BILL

No. 103

An Act respecting Actions based on Certain Contracts affecting Land, making consequential amendments to certain Acts and repealing certain Acts

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(Assented to )

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

## PART 1

### Preliminary Matters

#### Short title

1 This Act may be cited as *The Land Contracts (Actions) Act, 2017*.

## Interpretation

2 In this Act:

**“action”** means:

- (a) an action in the court by a mortgagee or the mortgagee’s assignee for:
  - (i) foreclosure of an equity of redemption;
  - (ii) sale or possession of mortgaged premises; or
  - (iii) the recovery of any moneys payable under a mortgage; or
- (b) an action in the court by a vendor of land or the vendor’s assignee for:
  - (i) specific performance or cancellation of an agreement for the sale of land;
  - (ii) sale or possession of land sold under an agreement for the sale of land; or
  - (iii) any other relief that may be granted under an agreement for the sale of land;

**“agreement for the sale of land”** means an agreement for the sale of land pursuant to which:

- (a) the purchaser agrees to pay the purchase price over a period of time, in the manner stated in the agreement; and
- (b) on payment of the purchase price mentioned in clause (a), the vendor is obliged to convey the title to the land to the purchaser;

but does not include an agreement pursuant to which the purchase price is payable in less than 6 months from the date of possession as set out in the agreement or in any amendment to the agreement;

**“court”** means the Court of Queen’s Bench;

**“defendant”** includes a mortgagor or purchaser under an agreement for the sale of land, or the mortgagor’s or purchaser’s assignee:

- (a) against whom an action has been or is to be commenced; or
- (b) with respect to whom a notice of application for leave to commence an action has been or is to be served;

**“judge”** means a judge of the court;

**“land”** includes title to land and interest in land as defined in *The Land Titles Act, 2000*;

**“plaintiff”** includes a mortgagee or vendor under an agreement for the sale of land, the mortgagee’s or vendor’s assignee and a person who:

- (a) has commenced or intends to commence an action; or
- (b) has served or intends to serve a notice of application for leave to commence an action;

**“prescribed”** means prescribed in the regulations.

**Non-application of Act**

3 This Act does not apply to a mortgage or agreement for the sale of land if, at the time of application for leave to commence an action or at the time of application for an order, the land that is subject to the mortgage or agreement for the sale of land is used solely for commercial purposes.

**Cancellation effected through the courts**

4 Notwithstanding any other provision of this Act or any term or provision to the contrary in an agreement for the sale of land, but subject to sections 3 and 14, a vendor under an agreement for the sale of land may enforce, cancel, rescind or otherwise terminate the agreement only by commencing an action in the court.

## PART 2

**Applications and Notices****Leave required to commence action**

5(1) No action shall be commenced except by leave of the court granted on an application pursuant to section 8.

(2) An action that is commenced without obtaining leave pursuant to section 8 is a nullity.

**Notice of application for leave to commence an action**

6(1) The plaintiff shall serve on the defendant and the Provincial Mediation Board a notice of application for leave to commence an action at least 60 days before the hearing date.

(2) The notice mentioned in subsection (1) must:

- (a) be in the prescribed form; and
- (b) include:
  - (i) a copy of the mortgage or agreement for the sale of land; and
  - (ii) reasonable evidence of the value of the land.

(3) The notice mentioned in subsection (1) is invalid if:

- (a) it does not substantially comply with the prescribed form mentioned in clause (2)(a); or
- (b) it does not include the information required pursuant to clause (2)(b).

(4) Notwithstanding subsection (3), the notice mentioned in subsection (1) is valid if the information required in the prescribed form mentioned in clause (2)(a) has been conveyed to the defendant and the Provincial Mediation Board in some other way.

(5) Every notice pursuant to subsection (1) must be filed in the court at the judicial centre nearest to which the land or any part of it lies, and every hearing must take place at that judicial centre, unless otherwise ordered.

(6) When served on the Provincial Mediation Board, the notice mentioned in subsection (1) is deemed to be an application in writing within the meaning of subsection 6(1) of *The Provincial Mediation Board Act*, with any necessary modification.

**Updated information to be filed in court**

7 The plaintiff shall file with the court and provide the defendant with updated information regarding the state of the defendant's account with the plaintiff not more than 25 days and at least 5 days before the hearing date.

**Application for leave to commence an action**

8(1) On an application for leave to commence an action, the judge may require the parties to provide all information that, in the opinion of the judge, may be relevant, including:

- (a) an appraisal of the land that includes the appraised value;
  - (b) the state of the defendant's account with the plaintiff;
  - (c) the income and assets of the parties, unless the party is a financial institution; and
  - (d) prevailing conditions of a local or temporary nature.
- (2) On considering the information mentioned in subsection (1), the judge may:
- (a) adjourn the hearing from time to time for a period not more than 8 months in total;
  - (b) grant the application for leave to commence an action;
  - (c) dismiss the application for leave to commence an action; or
  - (d) make any other order that the judge considers appropriate.
- (3) The judge may order any party to an application for leave to commence an action to pay all or any portion of the costs of the application.
- (4) If an application is dismissed pursuant to clause (2)(c), the dismissal is not a bar to a future application for leave to commence an action.
- (5) If an action has not been commenced, a judge may, on application, vary an order made pursuant to this section.

**Calculation of time—*The Limitations Act***

9 Notwithstanding *The Limitations Act*, if an application is made for leave to commence an action pursuant to section 8, the period between the date of the first application for leave to commence an action and the date on which leave to commence an action is granted must not be included in the calculation of time pursuant to that Act for commencing the action.

**Actions**

10(1) In an action, the judge may require the parties to provide all information that, in the opinion of the judge, may be relevant, including:

- (a) an appraisal of the land that includes the appraised value;
- (b) the state of the defendant's account with the plaintiff;
- (c) the income and assets of the parties, unless the party is a financial institution; and
- (d) prevailing conditions of a local or temporary nature.

- (2) On considering the information mentioned in subsection (1), the judge may:
- (a) make an order:
    - (i) granting the relief sought in the action;
    - (ii) refusing to grant the relief sought in the action;
    - (iii) postponing the payment of money due to the plaintiff;
    - (iv) varying or extending an order from time to time;
    - (v) imposing the terms and conditions to which an order may be subject; or
    - (vi) staying the action; or
  - (b) make any other order that the judge considers appropriate.
- (3) The judge may order any party to an action to pay all or any portion of the costs of the action.

### **Service**

**11** Any document required to be served pursuant to this Act may be served in any manner permitted by *The Queen's Bench Rules*.

## **PART 3 Appeals**

### **Appeal of order**

- 12(1)** An order made pursuant to section 8 or 10 may be appealed to the Court of Appeal.
- (2) A notice of appeal must be served on the respondent and filed in the Court of Appeal within 30 days after the date of the order.
- (3) The Court of Appeal or a judge of that court may extend the time for commencing an appeal pursuant to subsection (2) if, in its, his or her opinion, exceptional circumstances exist.

### **Decision by Court of Appeal**

- 13** On hearing an appeal, the Court of Appeal may:
- (a) dismiss the appeal;
  - (b) allow the appeal;
  - (c) allow the appeal subject to terms and conditions;
  - (d) vary the order of the court; or
  - (e) make any other order that it considers appropriate.

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PART 4  
**General Provisions**

**Agreements waiving Act void**

**14(1)** Subject to subsections (3) and (4), every agreement, waiver or release, verbal or written, express or implied:

- (a) to the effect that this Act or any provision of this Act or the regulations does not apply or that any benefit, remedy or protection provided by this Act or the regulations is not available is void; or
  - (b) that in any way limits, modifies or abrogates or in effect limits, modifies or abrogates any benefit, remedy or protection provided by this Act or the regulations is void.
- (2) Any moneys paid under or by reason of an agreement, waiver or release mentioned in subsection (1) are recoverable in any court of competent jurisdiction.
- (3) A body corporate may, in writing, agree that this Act has no application to an action with respect to:
- (a) a mortgage given by the body corporate; or
  - (b) an agreement for the sale of land entered into by the body corporate as purchaser.
- (4) If an agreement is made by a body corporate pursuant to subsection (3), this Act does not apply to an action mentioned in that subsection.

**Exemption**

**15** Nothing in this Act applies to a mortgage given:

- (a) to secure a loan made pursuant to the *Industrial Development Bank Act (Canada)* by the Industrial Development Bank established in accordance with that Act; or
- (b) on or after October 2, 1975 to secure a loan made pursuant to the *Federal Business Development Bank Act (Canada)* by the Federal Business Development Bank established in accordance with that Act or by its successor, the Business Development Bank of Canada, pursuant to the *Business Development Bank of Canada Act*.

**Regulations**

**16** The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) for the purposes of clause 6(2)(a):
  - (i) prescribing a form of notice of application for leave to commence an action; and
  - (ii) respecting information to be included with or set out in a notice of application for leave to commence an action;
- (c) prescribing any matter or thing that is required or authorized by this Act to be prescribed in the regulations;
- (d) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

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PART 5  
**Repeal, Transitional, Consequential Amendments  
and Coming into Force**

**RSS 1978, c A-7 repealed**

17 *The Agreements of Sale Cancellation Act* is repealed.

**SS 1981-82, c H-4.2 repealed**

18 *The Home Owners' Protection Act* is repealed.

**RSS 1978, c L-3 repealed**

19 *The Land Contracts (Actions) Act* is repealed.

**Transitional—*The Land Contracts (Actions) Act***

20(1) A proceeding commenced pursuant to *The Land Contracts (Actions) Act* as that Act existed on the day before the coming into force of this Act, but not completed before this Act comes into force, is continued and is to be dealt with pursuant to this Act as if it had been commenced pursuant to this Act.

(2) Any agreements entered into by a body corporate pursuant to subsection 5(2) of *The Land Contracts (Actions) Act*, as that Act existed on the day before the coming into force of this Act, and that were in effect on the day before the day this Act comes into force continue and may be dealt with pursuant to this Act as if they were made pursuant to this Act.

**Transitional—*The Agreements of Sale Cancellation Act***

21 A proceeding commenced pursuant to *The Agreements of Sale Cancellation Act* as that Act existed before the coming into force of this Act, but not completed before this Act comes into force, is continued and is to be dealt with pursuant to this Act as if it had been commenced pursuant to this Act.

**SS 2010, c E-9.22, section 104 amended**

22 **Clause 104(b) of *The Enforcement of Money Judgments Act* is amended by striking out “sections 3 and 4 of *The Land Contracts (Actions) Act* apply” and substituting “*The Land Contracts (Actions) Act, 2017* applies”.**

**SS 1988-89, c S-17.1, section 9 amended**

23 **Clause 9(1)(a) of *The Saskatchewan Farm Security Act* is amended by striking out “*The Land Contracts (Actions) Act*” and substituting “*The Land Contracts (Actions) Act, 2017*”.**

**RSS 1978, c S-24, section 46 amended**

24 **Subsection 46(1) of *The Saskatchewan Housing Corporation Act* is amended in the portion following clause (e) by striking out “*The Land Contracts (Actions) Act*” and substituting “*The Land Contracts (Actions) Act, 2017*”.**

**Coming into force**

25 This Act comes into force on proclamation.

SECOND SESSION

# Twenty-eighth Legislature

SASKATCHEWAN

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## B I L L

No. 103

An Act respecting Actions based on Certain  
Contracts affecting Land, making consequential  
amendments to certain Acts and repealing  
certain Acts

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Received and read the

First time

Second time

Third time

And passed

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Honourable Don Morgan

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