

**Reprint
as at 6 June 2015**

Credit (Repossession) Amendment Act 1999

Public Act 1999 No 127
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Credit (Repossession) Amendment Act 1999: repealed, on 6 June 2015, pursuant to section 82 of the Credit Contracts and Consumer Finance Amendment Act 2014 (2014 No 33).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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An Act to amend the Credit (Repossession) Act 1997

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title and commencement

- (1) This Act may be cited as the Credit (Repossession) Amendment Act 1999 and is part of the Credit (Repossession) Act 1997 ("the principal Act").
- (2) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

2 Amendment to Title

The principal Act is amended by repealing the Title, and substituting the following Title:

An Act to govern the taking of possession of consumer goods by a creditor under a security agreement.

3 Interpretation

- (1) Section 2 of the principal Act is amended by inserting, after the definition of the term **cash price**, the following definition:

Consumer goods means goods that are used or acquired for use primarily for personal, domestic, or household purposes

- (2) Section 2 of the principal Act is amended by repealing the definition of the term **credit agreement**.
- (3) Section 2 of the principal Act is amended by repealing subparagraphs (ii) and (iii) of paragraph (a) of the definition of the term **creditor**, and substituting the following subparagraph:
 - (ii) In relation to a security interest, the secured party within the meaning of section 16 of the Personal Property Securities Act 1999; and
- (4) Section 2 of the principal Act is amended by repealing subparagraphs (ii) and (iii) of paragraph (a) of the definition of the term **debtor**, and substituting the following subparagraph:
 - (ii) In relation to a security interest, the debtor within the meaning of section 16 of the Personal Property Securities Act 1999; and
- (5) Section 2 of the principal Act is amended by repealing the definition of the term **goods**, and substituting the following definition:

Goods means any personal chattels (other than money or things in action) comprised in or subject to a security agreement

- (6) Section 2 of the principal Act is amended by repealing the definition of the term **instrument by way of security**.
- (7) Section 2 of the principal Act is amended by inserting, after the definition of the term **residential premises**, the following definition:

Security agreement or agreement has the same meaning as in section 16 of the Personal Property Securities Act 1999

- (8) Section 2 of the principal Act is amended by repealing the definition of the term **security interest**, and substituting the following definition:

Security interest has the same meaning as in section 17 of the Personal Property Securities Act 1999; but excludes—

- (a) An interest in personal property created or provided for by a transfer of an account receivable or chattel paper, a lease for a term of more than 1 year, or a commercial consignment;
 - (b) Any security interest created by a company within the meaning of section 2(1) of the Companies Act 1993 or by a society registered under the Industrial and Provident Societies Act 1908.
- (9) Section 2 of the principal Act is amended by adding, as subsection (2), the following subsection:
 - (2) For the purposes of this Act, the determination of whether goods are consumer goods is to be made by the debtor as at the time when the security interest in the goods attached within the meaning of the Personal Property Securities Act 1999.

4 Security agreements to which Act applies

The principal Act is amended by repealing section 5, and substituting the following section:

5

- (1) This Act applies to a security agreement—
 - (a) That creates or provides for a security interest in consumer goods; and
 - (b) That is entered into on or after the date of commencement of the Credit (Repossession) Amendment Act 1999.
- (2) This Act applies whether or not a financing statement has been registered under the Personal Property Securities Act 1999 in respect of the security interest.
- (3) This Act also applies as provided in section 51.

5 New Part inserted

The principal Act is amended by inserting, after Part 3, the following Part:

Part 3A

Rules that apply in relation to taking possession of accessions

19A Interpretation

In this Part, unless the context otherwise requires,—

Accession means consumer goods that are installed in, or affixed to, other consumer goods

Other goods means consumer goods in which an accession is installed or to which the accession is affixed

Whole means an accession and the consumer goods in which the accession is installed or to which the accession is affixed.

19B Creditor must not damage consumer goods when removing accession

A creditor who is entitled to take possession of an accession under this Act must remove the accession from the whole in a manner that causes no greater damage to the other goods or that puts the person in possession of the whole to no greater inconvenience than is necessarily incidental to the removal of the accession.

Compare: Personal Property Security Act 1993, s 38(7) (Saskatchewan)

19C Person with interest in other goods entitled to reimbursement for damage caused by removal of accession

- (1) A person, other than the debtor, who has an interest in the other goods at the time the goods become an accession is entitled to reimbursement for any dam-

age to that person's interest in the other goods caused by the removal of the accession.

- (2) Any reimbursement payable under subsection (1) does not include reimbursement for a reduction in the value of the property caused by the absence of the accession or by the necessity of the replacement of the accession.

Compare: Personal Property Security Act 1993, s 38(8) (Saskatchewan)

19D Person entitled to reimbursement may refuse permission to remove accession

A person entitled to reimbursement under section 19C may refuse permission to remove the accession until the creditor has given adequate security for the reimbursement.

Compare: Personal Property Security Act 1993, s 38(9) (Saskatchewan)

19E Secured party may apply to Court for order in respect of removal of accession

The Court may, on an application made by a creditor, make an order—

- (a) Determining who is entitled to reimbursement under section 19C:
- (b) Determining the amount and kind of security to be provided by the creditor:
- (c) Prescribing the amount and kind of security to be provided by the creditor:
- (d) Prescribing the depository for the security:
- (e) Dispensing with the need for the permission of any or all persons entitled to reimbursement under section 19C.

Compare: Personal Property Security Act 1993, s 38(10) (Saskatchewan)

19F Secured party must give notice of removal of accession

- (1) The creditor who is entitled to remove the accession from the whole must give notice of the creditor's intention to remove the accession to each of the following persons:

- (a) A person who is known by the creditor to have an interest in the other goods or in the whole:
- (b) A person who has registered a financing statement in the name of the debtor and referring to the other goods:
- (c) A person who has registered a financing statement containing the serial number of the other goods as required or authorised by regulations made under the Personal Property Securities Act 1999, if any.

- (2) The notice referred to in subsection (1) must be given not less than 10 working days before the removal of the accession and must contain—

- (a) The name and address of the creditor; and

- (b) A description of the goods to be removed; and
 - (c) A description of the other goods; and
 - (d) The amount due to the creditor and the value of the accession if the accession were removed from the other goods; and
 - (e) A statement of intention to remove the accession, unless the lesser of the amount secured or the value of the accession is paid on or before a specified date that is not less than 10 working days after the notice is given.
- (3) This section does not apply if—
- (a) The creditor believes on reasonable grounds that the consumer goods will decline substantially in value if they are not disposed of immediately after default; or
 - (b) The cost of care and storage of the consumer goods is disproportionately large in relation to their value; or
 - (c) For any other reason, a court on an *ex parte* application is satisfied that a notice is not required.

Compare: Personal Property Security Act 1993, s 38(12), (13) (Saskatchewan)

19G When person with interest in whole may retain accession

A person, other than the debtor, who has an interest in the whole that under this Act is subordinate to a security interest in the accession may retain the accession on payment to the creditor with a security interest that has priority over all other security interests in the accession of the lesser of—

- (a) The amount due to the creditor; or
- (b) The value of the accession if the accession were removed from the other goods.

19H Court may make order concerning removal of accession

The Court may, on the application of a person entitled to receive a notice under section 19F, make an order—

- (a) Postponing the removal of the accession;
- (b) Determining the amount payable to the creditor under section 19G for the retention of the accession.

Compare: Personal Property Security Act 1993, s 38(15) (Saskatchewan)

6 Notice of sale of consumer goods to other creditors

The principal Act is amended by inserting, after section 21, the following section:

21A

- (1) A creditor who intends to sell consumer goods must, in addition to any other notices that the creditor must give under this Act, give notice to the following persons, within 21 days of taking possession of consumer goods:
 - (a) Any person who has registered a financing statement in respect of the consumer goods that is effective at the time the creditor took possession of the consumer goods;
 - (b) Any other person that has given the creditor notice that that person claims an interest in the consumer goods.
- (2) Subsection (1) does not apply if—
 - (a) The consumer goods may perish within 21 days of the creditor taking possession; or
 - (b) The creditor believes on reasonable grounds that the consumer goods will decline substantially in value if they are not disposed of immediately after default; or
 - (c) The cost of care and storage of the consumer goods is disproportionately large in relation to their value; or
 - (d) For any other reason, a court on an *ex parte* application is satisfied that a notice is not required.

Compare: Personal Property Security Act 1993, s 59(6), (16) (Saskatchewan)

7 New sections inserted

The principal Act is amended by inserting, after section 32, the following sections:

32A Disposal of consumer goods to purchaser for value and in good faith

- (1) A purchaser for value and in good faith who takes possession of consumer goods sold by a creditor takes the consumer goods free from the following interests:
 - (a) The interest of the debtor;
 - (b) Any interest subordinate to that of the debtor;
 - (c) Any interest subordinate to that of the creditor.
- (2) Subsection (1) applies whether or not registrations relating to security interests that are subordinate to the security interest of the creditor selling the consumer goods have been removed from the register.

Compare: Personal Property Security Act 1993, s 61(7) (Saskatchewan)

32B Extinguishment of subordinate security interests on sale

If consumer goods have been sold under section 26 or section 32, all security interests in the consumer goods and their proceeds that are subordinate to the security interest of the creditor who sold the consumer goods are extinguished on the sale of the consumer goods.

8 Creditor to give statement of account to debtor, etc

Section 33 of the principal Act is amended by inserting, after the word “debtor” in the first place where it appears, the words “and the persons referred to in section 21A(1)”.

9 New sections substituted

The principal Act is amended by repealing section 34, and substituting the following sections:

34 Distribution of surplus

- (1) If a creditor has sold consumer goods under section 26 or section 32, the creditor must pay the following persons the amount of any surplus by satisfying the claims of those persons in the following order:
 - (a) Any person who has registered a financing statement in the name of the debtor over the consumer goods that are sold where—
 - (i) The registration was effective immediately before the consumer goods were sold; and
 - (ii) The security interest relating to that registration was subordinate to the security interest of the creditor who sold the consumer goods:
 - (b) Any other person who has given the creditor notice that that person claims an interest in the consumer goods that are sold and in respect of which the creditor is satisfied that that person has a legally enforceable interest in the consumer goods:
 - (c) The debtor.
- (2) The security interests to which subsection (1)(a) applies must be paid in the order of their priority as determined by Part 7 or Part 8 of the Personal Property Securities Act 1999.
- (3) Subsection (1) applies despite the extinguishment of a security interest under section 32B.

Compare: Personal Property Security Act 1993, s 60(2) (Saskatchewan)

34A Surplus may be paid into court

- (1) The creditor may pay the surplus into court if there is a question as to who is entitled to receive payment under section 34.
- (2) The surplus may be paid out only on an application by a person claiming an entitlement to the surplus.

Compare: Personal Property Security Act 1993, s 60(4) (Saskatchewan)

34B Debtor’s, etc, right to recover surplus

The persons referred to in section 34 are entitled to recover the amount of any surplus from the creditor.

10 No contracting out

The principal Act is amended by repealing section 42, and substituting the following section:

42

- (1) The provisions of this Act have effect despite any provision to the contrary in any security agreement.
- (2) Section 56 of the Sale of Goods Act 1908 is to be read subject to the provisions of this section.
- (3) Every creditor commits an offence against section 13(i) of the Fair Trading Act 1986 who purports to contract out of any provision of this Act.

11 Technical amendments to principal Act

The principal Act is amended in the manner indicated in the Schedule.

Schedule

Technical Amendments to Principal Act

Section 11

Provision	Amendment
Section 2	<p>By omitting from paragraphs (a), (b), and (d) of the definition of the term amount of credit the words “credit agreement”, and substituting in each case the words “security agreement”.</p> <p>By inserting in paragraph (c) of the definition of the term amount of credit before the word “goods” in each place where it appears, the word “consumer”.</p> <p>By inserting in the definition of the term cash price, before the word “goods” in each place where it appears, the word “consumer”.</p> <p>By inserting in the definition of the term creditor’s agent, before the word “goods”, the word “consumer”.</p> <p>By omitting from the definition of the term default the words “credit agreement”, and substituting the words “security agreement”.</p> <p>By inserting in the definition of the term default, before the word “goods”, the word “consumer”.</p>

Provision	Amendment
	<p>By omitting from paragraph (b) of the definition of the term guarantor the words “credit agreement” in each place where they appear, and substituting in each case the words “security agreement”.</p> <p>By inserting in paragraph (b)(ii) of the definition of the term guarantor, before the word “goods”, the word “consumer”.</p> <p>By omitting from the definition of the term net balance due the words “credit agreement”, and substituting the words “security agreement”.</p> <p>By inserting in the definition of the term net balance due, before the word “goods”, the word “consumer”.</p>
Section 4	<p>By omitting the words “credit agreement”, and substituting the words “security agreement”.</p>
	<p>By inserting, before the word “goods”, the word “consumer”.</p>
Section 6	<p>By omitting from subsection (1) the words “credit agreement”, and substituting the words “security agreement”.</p>
	<p>By inserting in subsections (1) and (2), before the word “goods” in each place where it appears, the word “consumer”</p>
Section 7	<p>By omitting from subsection (1)(a) the words “credit agreement”, and substituting the words “security agreement”.</p>
	<p>By inserting, before the word “goods” in each place where it appears, the word “consumer”.</p>
Section 8(1), (2)	<p>By inserting, before the word “goods” in each place, where it appears, the word “consumer”</p>
Section 10	<p>By inserting, before the word “goods”, the word “consumer”.</p>
Section 12(b)	<p>By inserting, before the word “goods”, the word “consumer”.</p>

Provision	Amendment
Section 13	By omitting from subsection (1) the words “credit agreement”, and substituting the words “security agreement”.
Section 15(3)(b)	By inserting, before the word “goods”, the word “consumer”.
Section 16(2), (3)	By inserting, before the word “goods” in each place where it appears, the word “consumer”.
Section 17(b)	By inserting, before the word “goods”, the word “consumer”.
Section 18(1), (2)(b)	By inserting, before the word “goods” in each place where it appears, the word “consumer”.
Section 19	By inserting, before the word “goods”, the word “consumer”.
Section 20	By inserting, before the word “goods”, the word “consumer”.
Section 22(a)	By inserting, before the word “goods”, the word “consumer”.
Section 23(1)	By inserting, before the word “goods” in each place, where it appears, the word “consumer”.
Section 24	By omitting from paragraph (a)(i) the words “credit agreement”, and substituting the words “security agreement”.
Section 25(1), (2)(b)	By inserting, before the word “goods”, the word “consumer”.
Section 26(2), (3), (4), (5)(a)	By inserting, before the word “goods” in each place where it appears, the word “consumer”.
Section 27(1), (2)	By inserting, before the word “goods” in each place where it appears, the word “consumer”.
Section 28	By inserting in subsections (1) and (2), before the word “goods” in each place where it appears, the word “consumer”. By omitting from subsection (2)(a) and (b) the words “credit agreement”, and substituting the words “security agreement”.

Provision	Amendment
Section 29	<p>By omitting from subsection (1)(b) the words “credit agreement”, and substituting the words “security agreement”.</p> <p>By inserting, before the word “goods” in each place where it appears, the word “consumer”.</p>
Section 30(1)	<p>By inserting, before the word “goods” in each place where it appears, the word “consumer”.</p>
Section 31	<p>By omitting from subsection (1) the words “credit agreement”, and substituting the words “security agreement”.</p> <p>By inserting in subsections (1), (2)(c), and (3)(a), before the word “goods” in each place where it appears, the word “consumer”.</p>
Section 32(1), (2)	<p>By inserting, before the word “goods” in each place where it appears, the word “consumer”.</p>
Section 33	<p>By inserting, before the word “goods” in both places where it appears, the word “consumer”.</p>
Section 36	<p>By omitting the words “credit agreement”, and substituting the words “security agreement”.</p> <p>By inserting, before the word “goods”, the word “consumer”.</p>
Section 40(2)(c), (d)	<p>By inserting, before the word “goods”, the word “consumer”.</p>
Schedule 1	<p>By omitting from the pre-possession notice the words “credit agreement” in each place where they appear, and substituting in each case the words “security agreement”.</p>
Schedule 2	<p>By omitting from the post-possession notice the words “credit agreement” in each place where they appear, and substituting in each case the words “security agreement”.</p>

Eprint notes

1 *General*

This is an eprint of the Credit (Repossession) Amendment Act 1999 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this eprint*

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this eprint*

Credit Contracts and Consumer Finance Amendment Act 2014 (2014 No 33): section 82