

UNEDITED

The Land Contracts (Actions) Act

being

Chapter 96 of *The Revised Statutes of Saskatchewan, 1953*
(effective February 1, 1954).

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FOR HISTORICAL REFERENCE ONLY

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

CHAPTER 96

An Act to confer Powers upon the Court of Queen's Bench respecting Actions founded upon Certain Contracts affecting Land

Short title

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

R.S.S. 1953, c.96, s.1.

Interpretation "action"

2 In this Act "action" means:

(a) any action by a mortgagee, or his personal representatives or assigns, for foreclosure of the equity of redemption, or for sale or possession of the mortgaged premises or for the recovery of any moneys payable under the mortgage;

(b) any action by a vendor of land, or his personal representatives or assigns, for specific performance or cancellation of an agreement for sale of land, or for sale or possession of land sold under agreement of sale, or for any other relief that may be granted under the provisions of any such agreement.

1943, c.17, s.2; R.S.S. 1953, c.96, s.2.

Leave required to commence action

3(1) No action shall be commenced except by leave of the Court of Queen's Bench granted upon application under this section.

(2) A person desiring to commence an action may apply *ex parte* to a local master for an appointment to hear an application for leave to commence the action.

(3) Upon such application the local master shall grant an appointment for a hearing, and notice of the hearing shall be served upon the registered owner of the mortgaged land or in the case of an action under an agreement for sale of land, upon the purchaser, or his assignee if known to the applicant, and approved by him if approval is required by the agreement, and upon any person, other than a tenant, in personal occupation of the land, and, if any of the said persons is deceased and there is no personal representative, the local master may order service of the notice upon the widow, widower or child of the deceased person or upon such person as to the local master may seem fit:

Provided that the hearing may proceed without notice and the application may be disposed of *ex parte* if it appears to the local master that there is no person upon whom notice can be served as required by this subsection and that there is no person upon whom he should order service under the power conferred by this subsection, or if the registered owner of the mortgaged land, or the purchaser or his assignee, has consented to the application or has abandoned the land and does not reside in the province.

(4) In subsection (3) "any person, other than a tenant, in personal occupation of the land" includes any person farming the land notwithstanding that he does not reside thereon.

(5) Every application for an appointment under subsection (2) shall be made in the judicial district in which the land or any part thereof lies, and every hearing shall take place in that judicial district.

- (6) All notices of the hearing shall be served not less than fifteen days before the date of the hearing.
- (7) The notice may be served by personal service or by registered mail with postage prepaid. Where service is made by registered mail, the service shall be deemed sufficient if a receipt from the postmaster for the envelope containing such notice and a post office receipt form therefor purporting to be signed by the person to be served are produced as exhibits to the affidavit of service. A notice served by registered mail shall be deemed to have been served on the day of the date of the receipt which purports to be signed by the person to be served.
- (8) Upon the hearing the local master may require the parties to the proceedings to furnish information respecting the value of the land, the state of cultivation of the land, the state of the mortgagor's or purchaser's account with the mortgagee or vendor, the income and assets of the parties, prevailing conditions of a local or temporary nature and all other matters which may appear relevant and make such inquiries with regard to any of the said matters as he deems necessary and may grant the application, adjourn the hearing from time to time for such period or periods not exceeding eight months in all as he deems fit or refuse to grant the application, and, except where an action has been commenced, vary any order, including an order for adjournment, from time to time. Refusal to grant an application shall not be a bar to the granting of any further application to commence the action. On any second or subsequent application the material used on the previous application may be used.
- (9) In disposing of an application the local master shall have and exercise discretion in each case and shall act upon his own view of the proper order to be made having regard to all the facts.
- (10) No costs shall be allowed by the local master on any hearing unless in his opinion the application is made without proper justification, in which case he may order payment of costs by the applicant.
- (11) An appeal lies from any fiat or order made on an application under this section.
- (12) The appeal shall be to a judge of the Court of Queen's Bench sitting without a jury at a regular sitting of the court or sitting in chambers in the judicial district in which the land or any part thereof lies.

(13) The appellant shall give notice of his intention to appeal by filing in the office of the local registrar within fifteen days after the date of the fiat or order complained of. If the appeal is to a judge of the Court of Queen's Bench sitting without a jury the appeal shall be returnable at the next sitting of the court in the judicial district unless such sitting is to commence within ten days from the filing of the notice of appeal in which case the appeal shall be returnable at the next following sitting. If the appeal is to a judge of the Court of Queen's Bench sitting in chambers the appeal shall be returnable within two weeks from the filing of the notice of appeal and if a judge is not sitting in chambers on the return date of the appeal the appeal shall stand adjourned until the first day on which a judge is sitting in chambers in the judicial district. The respondent shall be served with a copy of the notice of appeal four clear days before the return date thereof. Subsection (7) applies with respect to service under this subsection. If the respondent appeared by solicitor on the application before the local master, service on the respondent may be effected by service on such solicitor. Notice of appeal need not be served on any person who did not appear on the application before the local master. Any of the time's fixed in this subsection, other than the time for filing a notice of appeal, may be extended or abridged by the local master or a judge on *ex parte* application before or after the time has expired but not after the commencement of an action pursuant to leave granted under this section.

(14) Except as herein otherwise provided, all statutory provisions and all rules of the Court of Queen's Bench respecting service of process, including those respecting substitutional service, apply with respect to service of a notice under this section.

(15) Where an appeal is taken the local master shall certify to the appellate judge what, if any, inquiry the local master has made and all the information obtained upon which he has purported to act, and the information so certified shall be part of the record before the judge. The local registrar shall obtain such certificate and place it on the file; provided that the judge may hear and dispose of the appeal without such certificate in case of the absence, illness or death of the local master.

(16) Where an appeal is taken the judge appealed to shall have and exercise a discretion similar to that of the local master, notwithstanding that the fiat or order appealed from was made in the discretion of the local master, and may draw inferences of fact and make the order which, in the judgment of the judge appealed to, the local master ought to have made.

(17) There shall be no further appeal.

(18) Where an application is made for leave to commence an action, the period between the date of the first application for an appointment and the date on which leave is given to commence the action shall not be included in calculation of time under *The Limitation of Actions Act* for commencing such action.

1943, c.17, s.3; 1944, c.22, s.2; 1951, c.31, s.2;
R.S.S. 1953, c.96, s.3.

Discretionary powers of court in actions

4(1) In an action whether heretofore or hereafter commenced the court or judge may require the parties to furnish information respecting the value of the land, the state of cultivation of the land, the state of the mortgagor's or purchaser's account with the mortgagee or vendor, the income and assets of the parties, prevailing conditions of a local or temporary nature and all other matters which may appear relevant and make such inquiries with regard to any of the said matters as he deems necessary, and may grant or refuse to grant any order, stay the action, postpone payment of any moneys due, prescribe terms and conditions to which any order made shall be subject, vary or extend any order from time to time, and give any direction as to costs; and in disposing of any application the court or judge shall have and exercise discretion in each case and shall act upon its or his own view of the proper order to be made having regard to all the facts and notwithstanding any order or ruling made before the fifteenth day of May, 1943, in any other action. Notwithstanding that appearance has not been entered to the writ, the defendant may nevertheless enter an appearance at any time for the purpose only of receiving notice of any application in the action and of being heard upon such application.

(2) Where an appeal is taken from a judgment or order given or made under subsection (1), the court, judge, master or local master whose decision is appealed from shall certify to the court or judge appealed to what, if any, inquiry the court, judge, master or local master has made and all the information obtained upon which it or he has purported to act, and the information so certified shall be part of the record before the appellate court or judge.

(3) Where an appeal is taken each court or judge appealed to shall have and exercise a discretion similar to that of the court or judge or master or local master appealed from, notwithstanding that the judgment or order appealed from was made in the discretion of the court or judge or master or local master, and may draw inferences of fact and pronounce the judgment or make the order which in its or his judgment the court or judge or master or local master whose judgment or order is appealed from ought to have pronounced or made. The local registrar or registrar of the Court of Appeal, as the case may require, shall obtain the certificate required by subsection (2) and place it on the file; provided that the appellate court or judge may hear and dispose of the appeal without such certificate in case of the absence, illness or death of the judge, master or local master from whose judgment or order the appeal is taken.

1943, c.17, s.4; 1944, c.22, s.3; R.S.S. 1953, c.96, s.4.

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