

The Debt Adjustment Act

being

Chapter 87 of *The Revised Statutes of Saskatchewan, 1940*
(effective February 1, 1941).

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.

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CHAPTER 87

An Act to facilitate the Adjustment of Debts

Short title

1 This Act may be cited as *The Debt Adjustment Act*.

1934-35, c.88, s.1; R.S.S. 1940, c.87, s.1.

Interpretation

2 In this Act, unless the context otherwise requires, the expression:

“Board”

1. “**Board**” means the Debt Adjustment Board appointed under the authority of this Act and includes a tribunal;

“Person”

2. “**Person**” includes a body corporate and politic or party, other than a municipal corporation and a school district;

“Tribunal”

3. “**Tribunal**” means any person or persons upon whom power to act is conferred under the authority of section 4.

1934-35, c.88, s.2; R.S.S. 1940, c.87, s.2.

Debt Adjustment Board

3(1) There shall be a board, to be styled the Debt Adjustment Board and composed of such number of members as may be determined from time to time by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council shall appoint the members of the board, one of whom shall be chairman, and specify the number of members which shall constitute a quorum.

(3) In the case of the absence of a member of the board, or his inability to act, or in the case of a vacancy in the office the remaining members or member shall exercise the powers of the board.

(4) In the absence of the chairman, all orders, rules, regulations and other documents may be signed by any one member, and when so signed shall have the like effect as if signed by the chairman.

(5) Whenever it appears that a member other than the chairman has acted for and in the place of the chairman, it shall be conclusively presumed that he has so acted in the absence or disability of the chairman.

(6) Vacancies caused by death, resignation or otherwise may be filled by the Lieutenant Governor in Council, but a vacancy shall not impair the power of the remaining members or member to act. In any such case the signature of one member shall be sufficient.

(7) The members shall hold office during the pleasure of the Lieutenant Governor in Council, shall receive such remuneration as is approved by the Lieutenant Governor in Council and shall perform such duties, in addition to the duties assigned to them by this Act, as may be prescribed by the Lieutenant Governor in Council.

(8) The chairman shall perform such of the duties and exercise such of the powers of the board as are imposed upon or delegated to him from time to time by the board.

(9) Whenever a member is interested in a matter before the board, the Lieutenant Governor in Council may, upon the application of such member or otherwise, appoint some disinterested person to act as a member *pro hac vice*, and the Lieutenant Governor in Council may also appoint a person to act during the sickness, absence or disability of a member.

(10) The staff of the board shall consist of a secretary and such other employees as are deemed necessary for the proper conduct of the business of the board, and the salaries of all employees shall be determined by the Lieutenant Governor in Council.

(11) The salaries of the members and staff of the board and the expenses of the board shall be paid out of any moneys appropriated by the Legislature for the purpose.

1934-35, c.88, s.3; R.S.S. 1940, c.87, s.3.

Delegation of powers

4(1) The Debt Adjustment Board may appoint such person or persons to act in each judicial district of the province as it deems advisable for the purpose of facilitating the administration of this Act and may, subject to the approval of the Lieutenant Governor in Council, confer upon persons so appointed, and upon any member or members of the board, such powers as it deems expedient, including power to issue certificates or interim certificates and to make orders which the board is authorized to make.

(2) All orders made in pursuance of such powers by any appointee or appointees of the board or by any member or members of the board whether acting alone or along with any other person or persons, shall have the same force and effect as if made by the board.

1934-35, c.88, s.4; R.S.S. 1940, c.87, s.4.

Issue of certificate and effect thereof

5(1) Upon the application of any person who is a debtor or any one or more of his creditors, the board may, if it is satisfied that it is in the interests of such person and his creditors so to do, issue its certificate, and in such case and where a certificate is cancelled shall file a copy of the certificate or cancellation in the office of the registration clerks for bills of sale in all registration districts, in the offices of the local registrars of the Court of King's Bench and clerks of the district court of all judicial districts and in all land titles offices.

(2) After a certificate has been filed as required by subsection (1) and while it remains uncanceled, no proceeding in the nature of an execution, or proceeding leading to the sale or foreclosure of real property and no proceeding of any sort, either in court or extrajudicial, which may lead to the seizure or sale of property of the person named in the certificate or property held by him under a conditional sale agreement, shall be taken or continued without the authority in writing of the board:

Provided that this subsection shall not apply to any proceeding mentioned in subsection (2) of section 7.

(3) After a certificate has been filed as required by subsection (1) and while it remains uncanceled, no sale, conveyance or mortgage by the person named in the certificate of any of his real or personal property within the province, and no purchase made by such person under a conditional sale agreement, shall have any validity, force or effect unless made or done with the authority in writing of the board, which authority may be either general or relate only to a specific transaction.

(4) No registration clerk or registrar of land, titles, in whose office a certificate has been filed, shall register any transfer, mortgage, conveyance or other instrument made by the person named in the certificate unless it is accompanied by the authority in writing of the board or a certified copy thereof.

(5) The board may, in any case, where it has filed a certificate, direct the person therein named to deal with all or any part of his property in such manner as the board may in its discretion deem expedient. Every such direction shall be in writing and it shall be the duty of the person affected to comply therewith.

1934-35, c.88, s.5; R.S.S. 1940, c.87, s.5.

Power to authorize seizure after certificate filed, etc.

6 Where a certificate has been filed under this or any former Debt Adjustment Act, or where under any of the Acts an agreement in writing has been entered into any person covering the proceeds of his farming operations, or where notice has been given as required by subsection (1) of section 7 and:

1. if it is made to appear by any creditor to the board by verbal or written statement under oath that the debtor is disposing or about to dispose of any of his property for the purpose of defeating the claims of his creditors or any of them, the board may, by written order signed by any member of the board directed to the sheriff of the judicial district in which the property is situate, require such sheriff to seize such designated property and to hold and deal with the same for it in such manner as the board may in writing direct; and thereupon the sheriff shall proceed forthwith to seize such property and deal with the same in such manner as the board may from time to time direct, and the proper fees and expenses incurred by the sheriff in respect of such property shall be charged upon the property; or

2. if it is made to appear by any creditor to the sheriff by verbal or written statement under oath that the debtor is disposing of or about to dispose of any of his property for the purpose of defeating the claims of his creditors or any of them, the sheriff may seize and hold the same pending instructions from the board. The sheriff shall immediately inform the board of any seizure so made and shall deal with the property in such manner as the board may from time to time direct, and the proper fees and expenses incurred by the sheriff in respect of such property shall be charged upon the property.

1934-35, c.88, s.6; R.S.S. 1940, c.87, s.6.

Restrictions regarding certain proceedings

7(1) Unless with the consent of the board no legal or other proceeding of any of the classes hereinafter described shall be taken or continued, that is to say:

- (a) action or suit for any legal, equitable or statutory claim, demand, debt or account, or for any money demanded, where the amount or balance claimed exceeds \$100, except an action for nullity of marriage, restitution of conjugal rights, jactitation of marriage, judicial separation, or dissolution of marriage;
- (b) action, suit or proceeding upon a covenant under an agreement for sale or mortgage of land or assignment of such agreement for sale or mortgage;
- (c) action or proceeding for sale under or foreclosure of a mortgage on land, or for cancellation, rescission or specific performance of an agreement for sale of land or for recovery of possession of land, whether in court or otherwise;
- (d) proceeding to acquire title to land by virtue of any tax sale except a preliminary application by a tax purchaser to a registrar of land titles pursuant to and by virtue of section 58 of *The Arrears of Taxes Act*;
- (e) proceeding to obtain title under subsections (2) and (3) of section 22 of *The Tax Enforcement Act*;
- (f) proceeding to obtain title under *The Tax Arrears Consolidation Act*, after service of the six months notice under that Act;
- (g) proceeding to obtain title under *The Tax Consolidation and Adjustment Act*, after service of the six months' notice under that Act;
- (h) action or proceeding to sell land under or in satisfaction of any judgment or mechanic's lien;
- (i) seizure in the nature of an execution or distress, or under any lease, agreement for sale, mortgage, lien, chattel mortgage, hire purchase agreement or conditional sale agreement, whether by virtue of rights at common law or under statute;
- (j) such other class or classes of legal or other proceedings as may be brought within the provisions of this section by order of the Lieutenant Governor in Council;

until after the expiry of ten days, in the case of an action or suit mentioned in clause (a), or until after the expiry of thirty days in all other cases, from the date upon which notice of intention to do so has been given to the board and to the clerk of the district court of the judicial district in which such proceeding is to be taken or continued. Such notice may be given by registered mail and shall be deemed to have been given on the date of the receipt of the postmaster for the envelope containing the notice. The board may in its discretion for good cause dispense with the notice required in the case of an action or suit mentioned in clause (a).

(2) Subsection (1) shall not apply to:

(a) Any proceeding in respect of which a permit has been issued under the authority of *The Debt Adjustment Act, 1933*, or to any proceeding taken, prior to the seventh day of January, 1935, against a person who was not then an actual resident of the province;

(b) Any proceeding on a contract made or entered into by a debtor, the whole of the original consideration for which arose after the first day of April, 1933, nor to any action or suit which is founded on tort, save with respect to a contract which is merely a renewal or revision of a contract originally entered into prior to that date;

(c) any remedy available to a municipality, school district or other taxing authority in the province for the collection of taxes or other sums which are recoverable in the same manner as taxes:

Provided that the board may, by order, on application of a debtor restrict the rights of the municipality, school district or other taxing authority to recover taxes and other sums payable by him, to such extent as the board deems expedient;

(d) seizure in the nature of a distress for rent of urban property, provided that the goods distrained shall not be sold or otherwise dealt with except with the written permission of the board;

(e) any remedy available to the province or to any municipality for recovery of the purchase price of seed grain or other commodities supplied by The Saskatchewan Relief Commission or the municipality, to the extent only of the seed grain or other commodities supplied in the year in which the proceedings for collection are taken;

(f) proceedings by way of set-off or counter-claim;

(g) proceedings under section 107 of *The Workmen's Compensation (Accident Fund) Act*;

(h) proceedings under *The Dependants' Relief Act*, *The Deserted Wives' and Children's Maintenance Act*, *The Parents' Maintenance Act* or Part VI of *The Child Welfare Act*;

(i) such further class or classes of legal or other proceedings as may be withdrawn from the operation of subsection (1) by order of the Lieutenant Governor in Council.

(3) Notwithstanding anything contained in subsection (1), if upon the application of a creditor of any person, the board is satisfied that it is advisable to do so, the board may authorize the sheriff or the applicant to make any seizure referred to in clause (i) of that subsection, whether or not notice has been given as required by the said subsection; and in case a seizure is made the person making the seizure shall hold the property seized for a period of thirty days, or such further period as the board may order, and shall dispose of it in accordance with the directions of the board.

(4) If notice of intention to make final application for title is given before the expiry of the period allowed by *The Arrears of Taxes Act* for making such application, and the thirty days mentioned in subsection (1) extends beyond the last date upon which final application may be made under the said Act, then, notwithstanding anything contained in the said Act, the period within which final application for title may be made shall be extended by thirty days.

(5) Proceeding by way of attachment of personal property or garnishment may be initiated by a creditor, and seizure may be made under a writ of attachment and service effected on the defendant, or service may be effected on a garnishee and on the defendant or judgment debtor, as the case may require, but no further step in such proceedings shall be taken until thirty days' notice has been given as mentioned in subsection (1):

Provided that no garnishee summons in respect of wages or salary shall be issued unless the plaintiff or judgment creditor has given to the defendant or judgment debtor ten days' written notice of intention to do so.

(6) If any notice required by subsection (5) is not given, or if notice is given and an order is issued under the authority of this Act, then, unless the board otherwise orders, the proceedings shall be null and void and property seized shall be released from seizure and moneys paid into court if any, pursuant to such proceedings, shall be paid out to the debtor on his application.

(7) The issue of a notice under subsection (1) of section 25 of *The Mechanics' Lien Act* shall be and be deemed to be a proceeding within the provisions of subsection (1) of this section; and before issuing such notice the registrar of land titles shall require the applicant therefor to file with his application proof that the notice required by subsection (1) of this section has been given to the board and to the clerk of the proper district court and that thirty days have expired since the notice was given.

(8) Where the board deems it equitable to authorize a municipality to proceed with a final application for tax title upon condition that, when the municipality acquires title, it will enter into an agreement for sale, lease option agreement or other agreement with the former owner of the land, or with a person who, immediately prior to issue of title to the municipality, has a registered interest in the land, the board may, for the purpose of enabling the municipality to carry out such condition, by order relieve the municipality from the restrictive provisions of section 26 of *The Arrears of Taxes Act*.

(9) The board shall, forthwith after receipt by it of a notice given under subsection (1), notify the debtor of the intention of the creditor as stated in the notice.

1934-35, c.88, s.7 as amended by orders in council and 1937, c.95, s.15; 1938, c.90, s.1; 1938, c.91, s.4; R.S.S. 1940, c.87, s.7.

Inquiries

8(1) The board may make such inquiries as it deems necessary for the purposes of this Act and for the purpose of conducting any inquiry the board shall have all the powers conferred or which may be conferred upon commissioners under *The Public Inquiries Act*.

(2) Where notice is given as required by subsection (1) of section 7 and no order is made by the Lieutenant Governor in Council under section 9 or by the board under any power delegated to it under the authority of section 9, or where the board has consented to the commencement or continuance of proceedings the board may nevertheless impose such conditions and restrictions upon the creditor affecting the proceedings to be taken or continued by him, as the board deems proper.

1934-35, c.88, s.8; R.S.S. 1940, c.87, s.8.

Order of Lieutenant Governor in Council

9(1) The Lieutenant Governor in Council may, at any time and from time to time, by proclamation published in *The Saskatchewan Gazette*:

(a) authorize, in so far as the same may be within the legislative authority of the Province of Saskatchewan, the postponement of the payment of all or any debts, liabilities or obligations, existing or future, however arising, or of the enforcement of all or any liens or incumbrances, or other securities, whether created before or after the coming into force of this Act;

(b) prohibit in any judicial district the issue of any process out of any one or more of the courts of the province in all or any classes of civil actions, or the execution of process already issued in such actions, or stay proceedings in civil actions and matters of any description pending in such courts, or extend or otherwise vary the exemption privileges which execution debtors now enjoy.

(2) The powers conferred upon the Lieutenant Governor in Council by subsection (1) may be exercised in individual cases, or in favour or for the protection of individuals, by order in council without proclamation, and the Lieutenant Governor in Council may also by order in council without proclamation prohibit the commencement or continuance of any specified proceeding against any person; and any order in council made under this section shall take effect from the date specified therein.

(3) The Lieutenant Governor in Council may delegate to the board any or all of the powers conferred by subsections (1) and (2).

(4) The Lieutenant Governor in Council may at any time and from time to time prohibit in any judicial district or in the province the issue by any one or more creditors of any process out of any one or more of the courts of the province in all or any classes of civil actions, or the execution of any process already issued in such actions, or the continuance of proceedings by such creditor or creditors in civil actions and matters of any description pending in such courts, or the exercise or enjoyment by such creditor or creditors of all or any remedies either judicial or extrajudicial for the enforcement of civil rights by such creditor or creditors within the province.

1934-35, c.88, s.9; 1937, c.95, s.14; R.S.S. 1940, c.87, s.9.

Proof of service by post

10 Proof that any letter or package containing any document mailed by post prepaid by the board or a tribunal was properly addressed and put into the post office and of the time when it was so put in and of the time requisite for its delivery in the ordinary course of post shall be evidence of the fact and time of the receipt of the letter or package by the person to whom it was addressed.

1934-35, c.88, s.10; R.S.S. 1940, c.87, s.10.

Documents as evidence

11(1) All documents purporting to be issued by the board or a tribunal or any member or members of the board or a tribunal, or by the Lieutenant Governor in Council, in pursuance of this Act, shall be received in evidence and shall be deemed to have been so issued unless the contrary is shown.

(2) A certificate purporting to be signed by the Clerk of the Executive Council and stating that no order has been made by the Lieutenant Governor in Council under section 9 with respect to the proceedings specified in the certificate against the person named therein, or that such an order was made but was cancelled on a specified date, shall be *prima facie* evidence of the facts stated therein without proof of the signature thereto.

1934-35, c.88, s.11; R.S.S. 1940, c.87, s.11.

Non-liability for *bona fide* acts

12 Neither the board nor any tribunal nor any member of the board or a tribunal nor anyone acting under its or his instructions, or under the authority of this Act or *The Debt Adjustment Act of 1931 or 1932 or 1933* or the regulations under any of the said Acts, shall be personally liable for any loss or damage suffered by any person by reason of anything in good faith done, or omitted to be done, pursuant to or in the exercise or in the supposed exercise of the powers conferred by any of the said Acts or regulations; and the said Acts of 1931 and 1932 shall be deemed always to have contained a provision to the foregoing effect.

1934-35, c.88, s.12; R.S.S. 1940, c.87, s.12.

Penalty

13 If any person makes wilful default in complying with any order, direction or condition made, given or imposed by the board or a tribunal or violates any of the provisions of this Act or the regulations, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$250 and in default of payment to imprisonment for a term not exceeding three months or to both.

1934-35, c.88, s.13; R.S.S. 1940, c.87, s.13.

Limitation of Actions Act

14 Notwithstanding anything contained in *The Limitation of Actions Act*, in calculating the time within which any action or other proceeding must be commenced under that Act the period during which this Act is in force shall not be included in such calculation, whether or not such action or proceeding is prohibited by this Act, and, if so prohibited, whether or not notice has been given under subsection (1) of section 7.

1934-35, c.88, s.14; R.S.S. 1940, c.87, s.14.

Extension of time for application for title

15 Subject to the provisions of any Act respecting the postponement of issue of certificate of title to land sold for taxes, final application for title may be made within the same length of time after this Act ceases to have effect as the period within which final application might have been made if this Act had not been passed, and the land may be redeemed at any time before issue of certificate of title.

1934-35, c.88, s.15; R.S.S. 1940, c.87, s.15.

Repeal

16(1) *The Debt Adjustment Act, 1933*, is hereby repealed, except section 25 as amended by chapter 59 of the statutes of 1934 and section 35 as enacted by the said chapter 59; save that all subsisting certificates, orders and directions issued, made or given thereunder or under *The Debt Adjustment Act, 1932*, or *The Debt Adjustment Act, 1931*, shall continue as if those Acts had not been repealed in so far as is necessary to give full effect thereto; and the board may amend, vary or cancel any such certificate, order or direction.

(2) Notwithstanding the repeal of this Act, all orders made thereunder and then subsisting, except orders made under section 9 or in the exercise of any power delegated under the authority of that section, and all subsisting orders made by a Debt Adjustment Board under any former Debt Adjustment Act, shall continue in full force and effect and shall be binding and conclusive so far as they affect the parties concerned according to the tenor thereof.

1934-35, c.88, s.16; R.S.S. 1940, c.87, s.16.

