

TITLE 24.

PROPERTY

CHAPTER 1.

REAL AND PERSONAL PROPERTY

ARRANGEMENT OF SECTIONS

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An Act to establish real and personal property in the Republic, and for related purposes.
[Original Part IV - "Recording of Land Transfers" §§117, 118 and 119, repealed by P.L. 2003-92]

Source: TTC 1966
57TTC 1970
COM P.L. 5-29 (1973)
57 TTC 1980
P.L. 1996-26
P.L. 1997-57
P.L. 2003-92

PART I - PERSONAL PROPERTY

DIVISION 1- GENERAL PROVISIONS

§101. Short title.

This Chapter may be cited as the “Real and Personal Property Act.” [Chapter name added to conform to the format of the Revised Code.]

§102. Interpretations.

(1) “Debtor” as used in this Chapter shall include any debtor, buyer, lessee, or other person having an equity in the property under an agreement subject to this Chapter.

(2) “Creditor” as used in this Chapter shall include any creditor, seller, lessor, or other person having rights in the property as security under an agreement subject to this Chapter. [77 TTC 1966, §279(b) and (c); 57 TTC 1970, §2; 57 TTC 1980, §2.]

§103. Application of Chapter.

This Chapter shall apply to any agreement (hereinafter “Agreement”), regardless of its form, which is intended to give rights in personal property, including houses on land not owned individually or entirely by the party or parties purporting to give an interest in the house, as security for the performance of any obligation. Such Agreements include, among others, pledges, conditional sales agreements, chattel mortgages, and leases under which ownership of personal property is to pass upon completion of the terms of the lease. [TTC 1966, §279 (a); 57 TTC 1970, §1; 57 TTC 1980, §1, modified.]

§104. Obligations of creditor and debtor in exercise of rights.

Both the debtor and the creditor have an obligation to exercise their rights in the property in good faith and with regard for the rights of the other. Each must use reasonable care in the custody and preservation of the property while in his possession. [TTC 1966, §279(d); 57 TTC 1970, §3; 57 TTC 1980, §3.]

§105. Unauthorized destruction, removal or use of property.

Prior to completion of performance of all the terms of the Agreement to be performed by the debtor, whoever maliciously or with intent to defraud shall injure, destroy or conceal the property, or remove it without the consent of the creditor from the area, if any, where the Agreement provides that it is to be used, or shall sell, mortgage, or otherwise dispose of the property under claim of full ownership, shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding six (6) months, or both. [TTC 1966, §279(e); 57 TTC 1970, §4; 57 TTC 1980, §4, modified.]

§106. Procedure if creditor fails to comply with Chapter.

If the creditor fails to comply with this Chapter, disposition of the property may be ordered or restrained in a civil action in court on such terms and conditions as the court deems best. If the property has been taken or disposed of by the creditor other than in accordance with this Chapter, the debtor may recover his actual damages, if any, and in no event less than one fourth (1/4) of the sum of all payments which have been made under the Agreement. with interest at six percent (6%) a year. [TTC 1966, §279(f); 57 TTC 1970, §5; 57 TTC 1980, §5.]

§107. Waiver of provisions of Part.

No act or agreement of the debtor before or at the time of the making of the Agreement. nor any provision or statement by the debtor in such Agreement, shall constitute a valid waiver of the

provisions of this Chapter: except, that the Agreement may stipulate that if the debtor is in default for twenty (20) days or more, the creditor may take the property without notice. [TTC 1966, §279(g); 57 TTC 1970, §6; 57 TTC 1980, §6.]

§108. Rights of creditor subject to foreclosure only by procedures of Part.

The rights of the debtor under an Agreement subject to this Division may only be foreclosed after default by one of the methods set forth in this Chapter. [TTC 1966, §279(h) (1); 57 TTC 1970, §7; 57 TTC 1980, §7.]

DIVISION 2- NON-JUDICIAL FORECLOSURE

§109. Property in possession of debtor.

(1) If the Agreement provides that the creditor may take the property if the debtor is in default for twenty (20) days or more and the debtor is so in default, the creditor may take possession of the property without notice if this can be done without breach of the peace. If the creditor does so, he shall retain the property for twenty (20) days Within the area where he took possession of it, during which period the debtor may redeem the property as provided below; thereafter, if the property has not been so redeemed, the creditor may hold the property as his own subject to the provisions of Section 111 of this Chapter.

(2) If the Agreement does not contain the provision for taking without notice referred to in the preceding Subsection, the creditor shall, not more than forty (40) nor less than twenty (20) days prior to the taking, cause written notice to be given to the debtor of the property on account of default of the debtor. The notice shall state the default and the period at the end of which the property will be taken. This notice may be given personally to the debtor or by leaving it at his usual place of abode or of business with some person not less than eighteen (18) years of age and of sound mind then residing or employed there, and, if the person with whom the notice is left states he is unable to read it, by also orally explaining the substance of it to him, if practical, in a language understood by him, otherwise in a language generally understood in the locality.

(3) If after such notice the debtor does not perform the obligations in which he has made default before the day set in such notice for taking, the creditor may take possession of the property if this can be done without breach of the peace.

(4) Unless the property can be taken without a breach of the peace either under subsection (1) or (3) of this Section, the foreclosure shall proceed thereafter only by a civil action in the High Court under the judicial foreclosure provisions of this Chapter. Nothing herein shall be construed to authorize a violation of the criminal law.

(5) Nothing in this Section shall affect the right of a creditor to proceed under Sections 106 and 107 of the Enforcement of Judgments Act, 30 MIRC 1, of this Revised Code simultaneously with action in accordance with this Section nor shall anything herein limit the discretion of the High Court to order a sale authorized by Section 107 of the Enforcement of Judgments Act of this Revised Code, on such terms or notice, if any, as it deems best. [TTC 1966, §279(h)(1)(A); 57; TTC 1970, §51; 57 TTC 1980, §51.]

§110. Property in possession of creditor.

If the property is in the possession of the creditor:

(1) Not more than forty (40) nor less than twenty (20) days prior to foreclosing on the

properly, the creditor shall cause written notice to be given to the debtor of the creditor's intention to foreclose. The notice shall state the default and the period at the end of which the property will be foreclosed. This notice may be given in the manner provided in Section 109(2) of this Division.

(2) If after such notice the debtor does not perform the obligations in which he has made default before the day set in such notice for foreclosure, the creditor may hold the property as his own subject to the provisions of Section 111 of this Division. [TTC 1966, §279(h) (1) (B); 57 TTC 1970, §52; 57 TTC 1980, §52.]

§111. Procedures.

(1) If the debtor, at the time of the taking or of the foreclosure under this Division, has paid at least one half (%) of the principal due under the Agreement, the creditor shall sell the property at public auction where it was located at the time of the taking or foreclosure, such sale to be held not more than ninety (90) days after the taking or foreclosure. The creditor shall give to the debtor not less than ten (10) days written notice of the sale in the manner provided in Section 109(2) of this Division, which notice shall not be given until the expiration of the twenty (20) days retention period provided for in Section 109(1) of this Division if the taking was made under such Section. The creditor shall also give notice of the sale by posting in at least three (3) conspicuous places within the area where the property is to be sold at least five (5) days before the sale and shall make an honest attempt to obtain a fair value at the sale and, provided he does this, may himself bid for the property at the sale.

(2) The proceeds of the sale shall be applied:

(a) to the payment of the reasonable expenses thereof,

(b) to the payment of the reasonable expenses of taking, keeping and storing the property,

(c) to the satisfaction of the balance due under the Agreement.

Any sum remaining after the satisfaction of such claims shall be paid to the debtor. If the proceeds of the sale are not sufficient to defray the reasonable expenses thereof and also the reasonable expenses of taking, keeping and storing the property and the balance due under the Agreement, the creditor may recover the deficiency from the debtor or anyone who has succeeded to the obligations of the debtor.

(3) If the debtor, at the time of the taking or of the foreclosure mentioned above, has not paid at least one half (1/2) of the principal due under the Agreement, the creditor shall have the option of:

(a) notifying the debtor in the manner provided in Section 109(2) of this Division of his election to retain the property as his own without obligation to account to the debtor and the debtor shall then be discharged of all obligations under the Agreement; or

(b) selling the property in the manner provided in subsection (1) of this Section and applying the proceeds as provided in subsection (2) of this Section, with the same right to recover any deficiency as therein provided.

(4) During the twenty (20) days retention period provided for in Section 109(1) of this Division and at any other time before the creditor has disposed of the property or before the debtor's obligation has been discharged under subsection (3) of this Section, the debtor may redeem the property by tendering fulfillment of all obligations due under the Agreement up to the date of the tender as well as all the expenses reasonably incurred by the creditor in taking, keeping and storing

the property and in arranging for the sale, and upon so doing shall become entitled to take possession of the property and to continue in the performance of the agreement as if no default has occurred. Upon written demand given by the debtor in the manner provided for notice in Section 109(2) of this Division, the creditor shall furnish to the debtor a written statement of the sum due under the Agreement and the expenses of taking, keeping and storing and in arranging for the sale. For failure to furnish such a statement within a reasonable time after demand the creditor shall forfeit to the debtor five dollars and shall also be liable to him for all damages suffered because of such failure. [TTC 1966, §2 79(h) (1) (C) to (F); 57 TTC 1970, § 53; 57 TTC 1980, §53.]

DIVISION 3- JUDICIAL FORECLOSURE

§112. Civil action for foreclosure authorized.

The creditor may bring a civil action for foreclosure in such manner as the court may order. If the creditor starts foreclosure under the provisions of Division 2 of this Chapter, he may abandon that at any point and proceed by a civil action. After proper service on the defendant or defendants, the court may order foreclosure in such manner as it deems will best protect the rights of the parties. [TTC 1966, §279(h) (2); 57 TTC 1970, §101; 57 TTC 1980, §101.]

PART II- LAND OWNERSHIP GENERALLY

§113. Restrictions upon ownership.

Only citizens of the Republic or corporations wholly owned by citizens of the Republic may hold title to land in the Republic; provided, that nothing herein shall be construed to prevent the Government of the Republic from holding title to lands in the Republic. A statute of limitations shall not apply to the inheritance of land by rightful heirs. [TTC 1966, §900; 57 TTC 1970, §11101; 57 TTC 1980, §201; amended in its entirety by P.L. 1996-26, §2.]

PART III - LAND MEASUREMENT SYSTEM

§114. Metric system authorized; conversion tables.

It shall be lawful throughout the Republic to employ the metric system of measurement of lengths and areas, and no contract or dealing, or pleading in any court shall be deemed invalid or liable to objection because the measures expressed or referred to therein are measures of the metric system. The tables in the following schedule shall be recognized in the construction of contracts and in all legal proceedings, and may lawfully be used for expressing measurements of length and area in the metric system:

Metric denominations and values
Equivalent in English System

MEASURES OF LENGTH:

Kilometer 1,000 meters
0.62137 miles, or 3,280 feet and 10 inches

Hectometer 100 meters
328 feet and 1 inch

Dekameter 10 meters
393.7 inches
Meter 1 meter
39.3 7inches

Decimeter 1/10 of a meter
3.937 inches

Centimeter 1/100 of a meter
0.3937 inch

Millimeter 1/1000 of a meter
9.0394 inch

MEASURE OF AREA:

Hectare 10,000 square meter
2.4 72 acres

Acre 100 square meters
119.6 square yards

Centare 1 square meter
1.19 square yards or 1,550 square inches

[TTC 1966, §1020; 57 TTC 1970, §11151; 57 TTC 1980, §251.]

§115. Markers; payment.

The Chief of Lands and Surveys shall collect and deposit with the Secretary of Finance of the Republic the reasonable cost of land markers furnished by the Land and Surveys Office. [TTC 1966, §1021; 57 TTC 1970, §11152; 57 TTC 1980, §252.]

§116. Same; removal.

Any person who willfully and maliciously defaces, alters or removes any marker, monument or reference point which marks or determines the configuration or contour of any lot or tract of land, if erected by:

- (a) a licensed surveyor;
- (b) a private individual;
- (c) adjacent landowners, pursuant to agreement, provided, however, that this paragraph shall apply only to persons who own no interest in any land to which such marker, monument, or reference point pertains; or
- (d) any agency of the Government, shall be guilty of an offense and shall upon

conviction be liable to a fine not exceeding \$100 or to a term of imprisonment not exceeding one year, or both. [TTC 1966, §1022; 57 TTC 1970, §11153 COMPL. 5-29, §1(1973); 57 TTC 1980, §253, modified.]

PART IV - RECORDING OF LAND TRANSFERS

§117. Copies; indexes.

The Clerk of Court, upon payment of such fees, if any, as the High Court may fix, shall make and keep in a permanent record a copy of all documents submitted to him for recording which relate to title to real estate and shall comply with regulations issued by the High Court and any law applicable thereto. He shall also keep an index or indexes of such records in such manner as the High Court may direct. [TTC 1966, §1023 (a); 57 TTC 1970, §11201; 57 TTC 1980, §301.][Repealed by P.L. 2003-92 but this section to remain in force until the transfer of records anticipated under section 19 of the P.L. 2003-92 is complete]

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