

**Uniform Law
Conference of Canada**

***Uniform
Bulk Sales
Act***

Uniform Bulk Sales Act

(1962 Consolidation)

Interpretation

In this Act

- (a) **“buyer”** means a person who acquires stock under a sale in bulk;
- (b) **“court”** means the (*county or district*) court of a (*county or district*) in which the seller’s stock or a substantial part thereof is located or the seller’s business or trade or a substantial part thereof is carried on at the time of the sale in bulk;
- (c) **“creditor”** means any creditor, including an unsecured trade creditor and a secured trade creditor;
- (d) **“judge”** means a judge of the court;
- (e) **“proceeds of the sale”** includes the purchase price and any security therefor or for any part thereof, and any other consideration payable to the seller or passing from the buyer to the seller on a sale in bulk, and the moneys realized by a trustee under a security or by the sale or other disposition of any property coming into his hands as the consideration or part of the consideration for the sale, less the proper and reasonable costs of the seller’s solicitor for completing the sale;
- (f) **“sale”**, whether used alone or in the expression **“sale in bulk”**, includes a transfer, conveyance, barter or exchange, but does not include a pledge, charge or mortgage;
- (g) **“sale in bulk”** means a sale of stock, or part thereof, out of the usual course of business or trade of the seller;
- (h) **“secured trade creditor”** means a person to whom a seller is indebted, whether or not the debt is due,
 - (i) for stock, money or services furnished for the purpose of enabling the seller to carry on business, or
 - (ii) for rental of premises in or from which the seller carries on business, and who holds security or is entitled to a preference in respect of his claim;
- (i) **“seller”** means a person who sells stock under a sale in bulk;
- (j) **“stock”** means
 - (i) the goods, wares, merchandise or chattels in which a person trades or that he produces or that are the output of a business, or
 - (ii) the fixtures, goods and chattels with which a person carries on a trade or business;
- (k) **“unsecured trade creditor”** means a person to whom a seller is indebted for stock, money, or services, furnished for the purpose of enabling the seller to carry on a business, whether or not the debt is due, and who holds no security or who is entitled to no preference in respect of his claim.

*Bulk Sales***Application of Act**

2(1) This Act applies only to sales in bulk by

- (a) persons who, as their ostensible occupation or part thereof, buy and sell goods, wares or merchandise;
- (b) commission merchants;
- (c) manufacturers; and
- (d) proprietors of hotels, motels, autocourts, rooming houses, restaurants, motor vehicle service stations, oil or gasoline stations, or machine shops.

(2) Nothing in this Act applies to or affects a sale in bulk by an executor, an administrator, a committee of the estate of a mentally incompetent or incapable person, the Public Trustee as committee under the _____ Act or a person under an order made under that Act, a creditor realizing upon his security, a receiver, an assignee or trustee for the benefit of creditors, a trustee under the *Bankruptcy Act* (Canada), a liquidator or official receiver, or a public official acting under judicial process.

Judicial exemption

3(1) A seller may apply to a judge for an order exempting a sale in bulk from the application of this Act and the judge, if he is satisfied on such evidence as he thinks necessary that the sale is advantageous to the seller and will not impair his ability to pay his creditors in full, may make the order, and thereafter this Act, except section 7, does not apply to the sale.

Notice of application; terms of order

(2) The judge may require notice of the application for the order to be given to the creditors of the seller or such of them as he directs and he may in the order impose such terms and give such directions with respect to the disposition of the proceeds of the sale or otherwise as he thinks fit.

Statement of creditors

4(1) The buyer, before paying or delivering to the seller any part of the proceeds of the sale other than the part mentioned in section 6, shall demand of and receive from the seller, and the seller shall deliver to the buyer, a statement verified by the affidavit of the seller in Form 1.

Contents of statement

(2) The statement shall show the names and addresses of the unsecured trade creditors and the secured trade creditors of the seller and the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by the seller to each of them and, with respect to the claims of the secured trade creditors, the nature of their security and whether their claims are due or, in the event of sale, become due on the date fixed for the completion of the sale.

No preference or priority

5 From and after the delivery of the statement mentioned in section 4, no preference or priority is obtainable by any creditor of the seller in respect of the stock, or the proceeds of the sale thereof, by attachment, garnishment proceedings, contract or otherwise.

*Bulk Sales***Part payment**

6 The buyer may, before he receives the statement mentioned in section 4, pay to the seller on account of the purchase price a sum not exceeding ten per cent of the purchase price which shall form part of the proceeds of sale and which the seller shall hold in trust

(a) for the buyer until completion of the sale, or if the sale is not completed and the buyer becomes entitled to repayment of it, until it is repaid to the buyer; or

(b) where the sale is completed and a trustee has been appointed, for the trustee until the seller complies with section 11(b).

Particulars

7 Any creditor of a seller is entitled to demand of the buyer particulars in writing of the sale in bulk in which case the buyer shall forthwith deliver such particulars in writing to the creditor.

Completion of sale

8(1) Where the buyer has received the statement mentioned in section 4, he may pay or deliver the proceeds of the sale to the seller and thereupon acquire the property of the seller in the stock,

(a) if the statement discloses that the claims of the unsecured trade creditors of the seller do not exceed a total of \$2,500 and that the claims of the secured trade creditors of the seller do not exceed a total of \$2,500 and the buyer has no notice that the claims of the unsecured trade creditors of the seller exceed a total of \$2,500 or that the claims of the secured trade creditors of the seller exceed a total of \$2,500;

(b) if the seller delivers a statement verified by his affidavit showing that the claims of all unsecured trade creditors and all secured trade creditors of the seller of which the buyer has notice have been paid in full; or

(c) if adequate provision has been made for the immediate payment in full of

(i) all claims of the unsecured trade creditors of the seller of which the buyer has notice, and

(ii) all claims of secured trade creditors of the seller which are or become due and payable upon completion of the sale of which the buyer has notice,

but, where any such creditor has delivered a waiver in Form 2, no provision need be made for the immediate payment of his claim.

Idem

(2) Where a sale is completed in accordance with subsection (1)(c), the buyer shall ensure that all such claims are paid in full forthwith after the completion of the sale.

*Bulk Sales***Completion of sale**

9(1) Where the buyer has received the statement mentioned in section 4 and if section 8 does not apply, he may pay or deliver the proceeds of the sale to the trustee appointed under section 10(l) and thereupon acquire the property of the seller in the stock, if the seller delivers to the buyer,

- (a) the consent to the sale in Form 3 of unsecured trade creditors of the seller representing not less than sixty per cent in number and amount of the claims that exceed fifty dollars of all the unsecured trade creditors of the seller of whose claims the buyer has notice; and
- (b) an affidavit of the seller deposing
 - (i) that he has delivered to all unsecured trade creditors and secured trade creditors personally or by registered mail addressed to them at their latest known addresses at least fourteen days before the date fixed for the completion of the sale copies of the contract of the sale in bulk, or if there is no written contract, written particulars of the sale, the statement mentioned in section 4(1), and the statement of affairs in Form 4, and
 - (ii) that the affairs of the seller as disclosed in the statement of affairs have not materially changed since it was made.

Idem

(2) Copies of the documents mentioned in subsection (1)(b) shall be attached as exhibits to the affidavit mentioned therein.

Appointment of trustee

10(1) Where a sale in bulk is being completed under section 9, a trustee shall be appointed

- (a) by the seller with the consent in Form 3 of his unsecured trade creditors representing not less than sixty per cent in number and amount of the claims that exceed fifty dollars of the unsecured trade creditors as shown by the statement mentioned in section 3; or
- (b) by a judge upon the application of any person interested where the unsecured trade creditors of the seller representing not less than sixty per cent in number and amount of the claims that exceed fifty dollars as shown by the statement mentioned in section 4 have consented to the sale in bulk but have not consented to the appointment of a trustee, or where the trustee appointed under clause (a) is unable or unwilling to act.

Security

(2) Every trustee shall, unless a judge otherwise orders, forthwith give security in cash or by bond satisfactory to the judge for the due accounting for all property received by him as trustee and for the due and faithful performance of his duties, and the security shall be deposited with the clerk of the court and shall be given in favour of the creditors generally and may be enforced by any succeeding trustee or by any one of the creditors on behalf of all by direction of a judge and the amount of the security may be increased or decreased by a judge at any time.

*Bulk Sales***When proceeds of sale paid to trustee**

11 Where a sale in bulk is being completed under section 9,

- (a) the seller shall deliver to the trustee a statement verified by the affidavit of the seller showing the names and addresses of all creditors of the seller and the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by the seller to each of them;
- (b) the seller shall pay to the trustee all moneys received by him from the buyer on account of the purchase price under section 6; and
- (c) the buyer shall pay or deliver the balance of the proceeds of the sale to the trustee.

Filings on completion of sale

12(1) Within five days after the completion of a sale in bulk, the buyer shall file in the office of the clerk of the court an affidavit setting out the particulars of the sale, including the subject matter thereof and the name and address of the trustee, if any, and exhibiting copies of the statement mentioned in section 4, the statement, if any, mentioned in section 8(b), the waivers, if any, mentioned in section 8(c) and the consent and affidavit, if any, mentioned in section 9.

Failure to comply with subsection (1)

(2) If the buyer fails to comply with subsection (1), a judge may at any time,

- (a) upon the application of the trustee or any creditor, order the buyer to comply therewith,
- (b) upon the application of the buyer, extend the time for compliance with subsection (1), or
- (c) upon the application of the buyer after the lapse of one year from the date of the completion of the sale in bulk and upon being satisfied
 - (i) that the claims of all unsecured trade creditors and secured trade creditors of the seller existing at the time of the completion of the sale, have been paid in full,
 - (ii) that no action or proceeding is pending to set aside the sale or to have the sale declared void, and
 - (iii) that the application is made in good faith and not for any improper purpose,

make an order dispensing with compliance with subsection (1)

Distribution of proceeds of sale

13(1) Where the proceeds of the sale are paid or delivered to a trustee under section 11, the trustee is a trustee for the general benefit of the creditors of the seller and he shall distribute the proceeds of the sale among the creditors of the seller, and in making the distribution all creditors' claims shall be proved in like manner and are subject to like contestation before a judge and are entitled to like priorities as in the case of a distribution under the *Bankruptcy Act* (Canada), as amended or re-enacted from time to time, and shall be determined as of the date of the completion of the sale.

*Bulk Sales***Notice of distribution**

(2) Before making the distribution, the trustee shall cause a notice thereof to be published in at least two issues of a newspaper having general circulation in the locality in which the stock was situated at the time of the sale, and the trustee shall not make the distribution until at least fourteen days after the last of such publications.

Fee of trustee

14(1) The Lieutenant Governor in Council may establish a tariff of fees for trustees and when any of the fee payable to a trustee is to be deducted from the moneys to be paid to the creditors, the fee paid may not exceed the amount fixed by the tariff.

Idem

(2) Subject to subsection (3) and in the absence of an arrangement between the seller and the trustee to the contrary, the fee, together with any disbursements made by the trustee, shall be deducted by him from the moneys to be paid to the creditors.

Idem

(3) Where the proceeds of the sale exceed the amount required to pay in full all indebtedness of the seller to his creditors, the fee of the trustee together with any disbursements made by the trustees shall be deducted by him from the excess proceeds to the extent of that excess, and any portion of the trustee's fee remaining unpaid thereafter shall be deducted as provided in subsection (2).

Who may make affidavits

15(1) Subject to subsections (2) and (3), an affidavit required to be made under this Act by a seller may be made by an authorized agent of the seller and, if the seller is a corporation, by an officer, director or manager of the corporation.

Idem

(2) Where the seller is a partnership, the affidavit shall be made severally by each of the partners or his authorized agent.

Idem

(3) An affidavit by a person other than the seller may be made only by a person who has a personal knowledge of the facts sworn to, and the fact that he has the personal knowledge shall be stated in the affidavit.

Effect of noncompliance with Act

16 Unless the buyer has complied with this Act, a sale in bulk is voidable as against the creditors of the seller and if the buyer has received or taken possession of the stock he is personally liable to account to the creditors of the seller for the value thereof, including all moneys, security or property realized or taken by him from, out of, or on account of, the sale or other disposition by him of the stock.

*Bulk Sales***Who may bring action**

17 An action or proceeding to set aside or have declared void a sale in bulk may be brought or taken by any creditor of the seller, and, if the seller is adjudged bankrupt, by the trustee of his estate.

Burden of proof

18 In an action or proceeding in which a sale in bulk is attacked or comes in question, whether directly or indirectly, the burden of proof that this Act has been complied with is upon the person upholding the sale in bulk.

Limitation of action

19 No action shall be brought or proceeding taken to set aside or have declared void a sale in bulk for failure to comply with this Act unless the action is brought or the proceeding is taken either before the documents are filed under section 12 or within six months after the date on which the documents were so filed.

Bulk Sales

FORM 1
(Section 4(1))

STATEMENT AS TO SELLER'S CREDITORS

Statement showing names and addresses of all unsecured trade creditors and secured trade creditors of _____ of the _____ of _____, in the _____ of _____ and the amount of the indebtedness or liability due, owing, payable or accruing due or to become due by him to each of them.

UNSECURED TRADE CREDITORS

Name of Creditor	Address	Amount

SECURED TRADE CREDITORS

Name of Creditor	Address	Amount	Nature of security	Due or becoming due on the date fixed for the completion of the sale

I, _____, of the _____ of _____, in the _____ of _____, make oath and say:

- 1 That the foregoing statement is a true and correct statement
 - (a) of the names and addresses of all the unsecured trade creditors of the said _____ the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the said _____ to each of the said unsecured trade creditors; and
 - (b) of the names and addresses of all the secured trade creditors of the said _____ and of the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the said _____ to each of the said creditors, the nature of their security, and whether they are or in the event of the sale will become due and payable on the date fixed for the completion of the sale.

(and, if sworn by someone other than the seller)

- 2 That I am _____ and have a personal knowledge of the facts herein deposed to.

SWORN before me, etc.

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Bulk Sales

FORM 2
(Section 8(c))

WAIVER

In them matter of the sale in bulk
Between

Seller

, and,

Buyer

I, _____ of the _____ of _____ in
the _____ of _____ a
secured (an unsecured) trade creditor of the above named seller, hereby waive the
provisions of *The Bulk Sales Act*, which require that adequate provision be made for the
immediate payment in full of my claim forthwith after completion of the sale, and I
hereby acknowledge and agree that the buyer may pay or deliver the proceeds of the
sale to the seller and thereupon acquire the property of the seller in the stock without
making provision for the immediate payment of my claim and that any right to recover
payment of my claim may, unless otherwise agreed, be asserted against the seller only.

Dated at _____ this _____ day of _____ 19 _____ .

Witness:

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Bulk Sales

FORM 3
(Sections 9(1)(a) and 10(1)(a))

CONSENT

In them matter of the sale in bulk
Between

Seller

, and,

Buyer

I, _____ of the _____ of _____ in
the _____ of _____ an
unsecured trade creditor of the above named seller, hereby acknowledge and agree:

1 That I have received

(a) a copy of the statement showing the names and addresses of the unsecured trade creditors and the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the seller, and showing the names and addresses of his secured trade creditors, the nature of their security and whether their claims are or, in the event of sale, become due on the date fixed for completion of the sale, and the amount of the indebtedness or liability due, or owing, payable or accruing due or to become due and payable by the seller;

(b) a statement of the affairs of the seller; and

(c) a copy of the contract of the sale in bulk (or particulars of the sale).

2 That I consent to the sale.

3 That I consent to the appointment of _____ as trustee.

Dated at _____ this _____ day of _____ 19 _____ .

Witness:

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*Bulk Sales*FORM 4
(Section 9(1)(b))

STATEMENT OF AFFAIRS

Assets included in the Sale in Bulk

(a) Amount of the proceeds of the sale _____	\$ _____
Assets not included in the Sale in Bulk	
(b) Stock-in-trade at cost price not exceeding fair value _	\$ _____
(c) Trade fixtures, fittings, utensils, etc. _____	\$ _____
(d) Book debts, Good _____	\$ _____
Doubtful _____	\$ _____
Bad _____	\$ _____
Estimated to produce \$ _____	
(e) Bills of exchange, promissory notes, etc _____	\$ _____
(f) Cash in bank _____	\$ _____
(g) Cash on hand _____	\$ _____
(h) Livestock _____	\$ _____
(i) Machinery, equipment and plant _____	\$ _____
(j) Real estate _____	\$ _____
(k) Estimated value of securities in hands of secured creditors _____	\$ _____
(l) Furniture _____	\$ _____
(m) Life insurance policies _____	\$ _____
(n) Stocks and bonds _____	\$ _____
(o) Interest in estates _____	\$ _____
(p) Other property, viz _____	\$ _____
Total _____	\$ _____

Bulk Sales

Liabilities

(q) Unsecured trade creditors _____	\$ _____
(r) Secured trade creditors _____	\$ _____
(s) Preferred creditors _____	\$ _____
(t) All other liabilities, except contingent liabilities set out below _____	\$ _____
Total _____	\$ _____
	=====
Surplus or deficiency _____	\$ _____
	=====

Contingent Liabilities

(u) Liabilities under endorsements and guarantees _____	\$ _____
(v) All other contingent liabilities _____	\$ _____
Total _____	\$ _____
	=====

I, _____, of the _____ of _____, in the _____ of _____, _____, make oath and say that the above statement is to the best of my knowledge and belief a full, true and complete statement of the affairs of _____ on the _____ day of _____, 19____, (which date must not be more than 30 days before the date of the affidavit) and fully discloses all the property of the said _____ of every description.

SWORN before me, etc.