

Newcomers to Equity & Redemption

The following may be used as a guide to lay foundational wisdom, Basic words and concepts.

S.M. 2008, c. 14 Manitoba

"adverse claim" means a claim that

- (a) the claimant has a property interest in a financial asset; and

"certificated security" means a security that is represented by a certificate.

"security" means, except as otherwise provided in sections 10 to 16, an obligation of an issuer or a share, participation or other interest in an issuer or in property or an enterprise of an issuer

- (a) that is represented by a security certificate in bearer form or registered form, or the transfer of which may be registered on books maintained for that purpose by or on behalf of the issuer;

"entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary and includes a person who acquires a security entitlement by virtue of clause 95(1)(b) or (c). (« titulaire du droit »)

"entitlement order" means a notice communicated to a securities intermediary directing the transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

"financial asset" means, except as otherwise provided in sections 10 to 16,

- (a) a security;
- (b) an obligation of a person that
 - (i) is, or is of a type, dealt in or traded on financial markets, or
 - (ii) is recognized in any other market or area in which it is issued or dealt in as a medium for investment;
- (c) a share, participation or other interest in a person, or in property

or an enterprise of a person,

"person" means an individual, including an individual in his or her capacity as trustee, executor, administrator or other representative, a sole proprietorship, a partnership, an unincorporated association, an unincorporated syndicate, an unincorporated organization, a trust, including a business trust, a corporation, a government or agency of a government or any other legal or commercial entity.

"protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest in the security, who

- (a) gives value;
- (b) does not have notice of any adverse claim to the security; and
- (c) obtains control of the security.

"securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that constitute the financial asset.

"securities intermediary" means

- (a) a clearing agency; or
- (b) a person, including a broker, bank or trust company, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity. (« intermédiaire en valeurs mobilières »)

"security" means, except as otherwise provided in sections 10 to 16, an obligation of an issuer or a share, participation or other interest in an issuer or in property or an enterprise of an issuer

- (a) that is represented by a security certificate in bearer form or registered form, or the transfer of which may be registered on books maintained for that purpose by or on behalf of the issuer;
- (b) that is one of a class or series, or by its terms is divisible into a class or series, of shares, participations, interests or obligations; and
- (c) that
 - (i) is, or is of a type, dealt in or traded on securities exchanges or securities markets, or
 - (ii) is a medium for investment and by its terms expressly provides that it is a security for the purposes of this Act. (« valeur mobilière »)

"security certificate" means a certificate representing a security, but does not include a certificate in electronic form. (« certificat de valeur mobilière »)

"security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset that are specified in Part 6. (« droit intermédié »)

"security interest" means a security interest as defined in *The Personal Property Security Act*. (« sûreté »)

"value" means any consideration sufficient to support a simple contract and includes an antecedent debt or liability. (« contrepartie »)

Interpretation — financial asset

1(2)

As the context requires, **"financial asset"** means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate and a security entitlement.

Definition of "good faith"

4(2) In this section, **"good faith"** means honesty in fact and the observance of reasonable commercial standards of fair dealing.

Principles of law and equity apply

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Except in so far as they are inconsistent with this Act, the principles of law and equity supplement this Act and continue to apply, including

- (a) the law merchant;
- (b) the law relating to the capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion and mistake; and
- (c) other validating or invalidating rules of law.

Application to Crown

8(1)

Subject to subsection (2), this Act applies to the Crown.

PART 2
GENERAL MATTERS CONCERNING SECURITIES AND OTHER FINANCIAL ASSETS

DIVISION 1
CLASSIFICATION OF OBLIGATIONS AND INTERESTS

Equity interest

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A share or similar equity interest issued by a corporation, business trust or similar entity is a security.

Person entitled to acquire or redeem security

9.1(4)

Subject to subsection (5), if a person would otherwise be entitled to acquire or redeem the seized security for a predetermined price or at a price fixed by reference to a predetermined formula, the person is entitled to acquire or redeem the security

NOTICE OF ADVERSE CLAIMS

What constitutes notice of adverse claim

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A person has notice of an adverse claim if

- (a) the person knows of the adverse claim;
- (b) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim;

Statement on security certificate

21(1)

A purchaser of a certificated security has notice of an adverse claim if the security certificate

- (a) whether in bearer form or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving a transfer; or
- (b) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor.

Purchaser's control of certificated security in registered form

23(2)

A purchaser has control of a certificated security that is in registered form if the certificated security is delivered to the purchaser and

- (a) the security certificate is endorsed to the purchaser or in blank by an effective endorsement; or
- (b) the security certificate is registered in the name of the purchaser at the time of the original issue or registration of transfer by the issuer.

Purchaser's control of security entitlement

25(1)

A purchaser has control of a security entitlement if

- (a) the purchaser becomes the entitlement holder;
- (b) the securities intermediary has agreed that it will comply with entitlement orders that are originated by the purchaser without the further consent of the entitlement holder; or
- (c) another person has control of the security entitlement on behalf of the purchaser or, having previously obtained control of the security entitlement, acknowledges that the person has control on behalf of the purchaser.

ENDORSEMENTS, INSTRUCTIONS AND ENTITLEMENT ORDERS

Effectiveness of endorsement instruction or entitlement order

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An endorsement, instruction or entitlement order is effective if

- (a) it is made by the appropriate person;
- (b) it is made by a person who, in the case of an endorsement or instruction, has the power under the law of agency to transfer the security, or in the case of an entitlement order, has the power under the law of agency to transfer the financial asset, on behalf of the appropriate person, including,
 - (i) in the case of an instruction referred to in clause 24(1)(b), the person who has control of the uncertificated security, or
 - (ii) in the case of an entitlement order referred to in clause 25(1)(b), the person who has control of the security entitlement; or
- (c) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

Recovery on certificate

53(4)

If signatures on a security certificate are admitted or established, the production of the security certificate entitles a holder to recover on the security certificate unless the defendant establishes a defence or defect that goes to the validity of the security.

Staleness as notice of defect or defence

61(1)

After an act or event that creates a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is deemed to have notice of any defect in the security's issue or of any defence of the issuer

(a) if

(i) the act or event requires that, on presentation or surrender of the security certificate, money be paid, a certificated security be delivered or a transfer of an uncertificated security be registered,

(ii) the money or security is available on the date set for payment or exchange, and

(iii) the purchaser takes delivery of the security more than one year after the date referred to in subclause (ii)

Completion of security certificate

63(1)

If a security certificate contains the signatures necessary to the security's issue or transfer but is incomplete in any other respect

(a) any person may complete the security certificate by filling in the blanks in accordance with the person's authority; and

(b) even if any of the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took the security certificate for value and without notice of the incorrectness.

Completion of instruction

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If an instruction has been originated by the appropriate person but is incomplete in any other respect, any person may complete the instruction in accordance with the person's authority and the issuer may rely on the instruction as completed, even if it has been completed incorrectly.

Enforceability of improperly altered complete security certificate

63(2)

A complete security certificate that has been improperly altered,

even if fraudulently, remains enforceable, but only according to its original terms

When endorsement constitutes transfer of security

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An endorsement of a security certificate, whether special or in blank, does not constitute a transfer of the security

- (a) until the delivery of the security certificate on which the endorsement appears; or
- (b) if the endorsement is on a separate document, until the delivery of both the security certificate and the document on which the endorsement appears.

SECURITY ENTITLEMENTS

Acquisition of security entitlement

95(1)

Except as otherwise provided in subsections (3) and (4), a person acquires a security entitlement if a securities intermediary

- (a) indicates by book entry that a financial asset has been credited to the person's securities account;
- (b) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or
- (c) becomes obligated under another statute, law, regulation or rule to credit a financial asset to the person's securities account.

Holding financial asset directly

95(3)

A person is to be treated as holding a financial asset directly rather

than as having a security entitlement with respect to the financial asset if a securities intermediary holds the financial asset for that person and the financial asset

- (a) is registered in the name of, payable to the order of or specially endorsed to that person;

Duty of securities intermediary re payments and distributions

99(1)

A securities intermediary must take action to obtain a payment or distribution made by the issuer of a financial asset.

Obligation to entitlement holder

99(2)

A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

Duty of securities intermediary to comply with entitlement order

101(1)

A securities intermediary must comply with an entitlement order if

- (a) the entitlement order is originated by the appropriate person;
- (b) the securities intermediary has had a reasonable opportunity to assure itself that the entitlement order is genuine and authorized; and
- (c) the securities intermediary has had a reasonable opportunity to comply with the entitlement order.

Duty of securities intermediary re entitlement holder's direction

102(1)

A securities intermediary must act at the direction of an entitlement holder

- (a) to change a security entitlement into another available form of holding for which the entitlement holder is eligible; or
- (b) to cause the financial asset to be transferred to a securities account of

the entitlement holder with another securities intermediary.