

Unconscionable Transactions Relief Act

CHAPTER 481 OF THE REVISED STATUTES, 1989

as amended by

2018, c. 43, ss. 27, 28



© 2019 Her Majesty the Queen in right of the Province of Nova Scotia
Published by Authority of the Speaker of the House of Assembly
Halifax

This page is intentionally blank.

CHAPTER 481 OF THE REVISED STATUTES, 1989
amended 2018, c. 43, ss. 27, 28

An Act Respecting Relief from Unconscionable Transactions

Table of Contents

(The table of contents is not part of the statute)

	Section
Short title.....	1
Interpretation.....	2
Powers of court	3
Exercise of powers of court	4
Application by debtor for relief	5
Existing powers and jurisdiction of courts preserved.....	6
Deemed notice to assignee or transferee.....	7

Short title

1 This Act may be cited as the *Unconscionable Transactions Relief Act*.
R.S., c. 481, s. 1.

Interpretation

2 In this Act,

(a) “cost of the loan” means the whole cost to the debtor of money lent and includes interest, discount, subscription, premium, dues, bonus, commission, brokerage fees and charges, but not actual lawful and necessary disbursements made to the Registrar General under the *Land Registration Act*, a registrar of deeds, a prothonotary, a clerk of a court, a sheriff or a treasurer of a city, town or municipality;

(b) “court” means a court having jurisdiction in an action for the recovery of a debt or money demand to the amount claimed by a creditor in respect of money lent;

(c) “creditor” includes the person advancing money lent and the assignee of any claim arising or security given in respect of money lent;

(d) “debtor” means a person to whom or on whose account money lent is advanced and includes every surety and endorser or other person liable for the repayment of money lent or upon any agreement or collateral or other security given in respect thereof;

(e) “money lent” includes money advanced or credit granted to or on account of any person in any transaction that, whatever its form may be, is substantially one of money-lending, credit granting or securing the repayment of money advanced or extended in the way of credit and includes a mortgage of real or personal property or both. R.S., c. 481, s. 2; 2018, c. 43, s. 27.

Powers of court

3 Where, in respect of money lent, the court finds that, having regard to the risk and to all the circumstances, the cost of the loan is excessive and that the transaction is harsh and unconscionable, the court may

- (a) re-open the transaction and take an account between the creditor and the debtor;
- (b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan;
- (c) order the creditor to repay any such excess if the same has been paid or allowed on account by the debtor;
- (d) set aside, either wholly or in part, or revise or alter any security given or agreement made in respect of the money lent and, if the creditor has parted with the security, order him to indemnify the debtor. R.S., c. 481, s. 3.

Exercise of powers of court

4 The powers conferred by Section 3 may be exercised

- (a) in an action or proceeding by a creditor for the recovery of money lent;
- (b) in an action or proceeding by the debtor, notwithstanding any provision or agreement to the contrary and notwithstanding that the time for repayment of the loan or any instalment thereof has not arrived;
- (c) in an action or proceeding in which the amount due or to become due in respect of money lent is in question. R.S., c. 481, s. 4.

Application by debtor for relief

5 (1) In addition to any right that a debtor may have under this or any other Act or otherwise in respect of money lent, the debtor may apply for relief under this Act to a court.

(2) An applicant shall provide two clear days notice to the creditor when making an application under subsection (1).

(3) The court may, on an application received under subsection (1), exercise any of the powers of the court under Section 3.

(4) An order made under subsection (3) may be appealed in accordance with the rules of the court. 2018, c. 43, s. 28.

Existing powers and jurisdiction of courts preserved

6 Nothing in this Act derogates from the existing powers or jurisdiction of any court. R.S., c. 481, s. 6.

Deemed notice to assignee or transferee

7 (1) Where any security for repayment of, or any right to recover, money lent in a transaction in respect of which the debtor would be entitled to relief under this Act against the original creditor is assigned or transferred by that creditor either before, or within two years after, the money lent is disbursed, unless at the time of or after the assignment or transfer the debtor gives an acknowledgement

- (a) of the amount of money or credit the debtor received from the money lent;
- (b) that the debtor is aware of the cost of the loan; and
- (c) that the debtor is aware of the manner and amounts in which, and the persons to whom, the proceeds of the loan were disbursed,

the assignee or transferee shall be conclusively deemed to have notice of every particular of, and all circumstances surrounding, the loan, and the matters set out in the acknowledgement shall be presumed to be true.

(2) An acknowledgement to which reference is made in subsection (1) has no effect under this Act unless it is made before a barrister authorized to practise in the Province who certifies that he has explained to the debtor taking the acknowledgement the meaning, purpose, and effect thereof and it is made at least forty-eight hours after the money lent has been wholly disbursed.

(3) This Section does not apply to an assignee or transferee under the assignment or transfer of any security for repayment of, or any right to recover money lent, that was completed before this Section comes into force. R.S., c. 481, s. 7.
