



Tuvalu

BILLS OF SALE ACT

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Tuvalu

BILLS OF SALE ACT

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Tuvalu

BILLS OF SALE ACT

AN ACT TO PROVIDE FOR THE REGISTRATION OF BILLS OF SALE¹

Commencement [1st August 1897]

1 Short title

This Act may be cited as the Bills of Sale Act.

2 Definition of bill of sale

In this Act the term “**bill of sale**” includes —

- (i) bill of sale, assignment, transfer, declaration of trust without transfer, inventory of goods with receipt thereto attached, receipt for purchase-money of goods, and other assurance of personal chattels;
- (ii) power of attorney, and authority or licence to take possession of personal chattels as security for any debt;
- (iii) any agreement (including debentures of a joint stock company) whether intended or not to be followed by the execution of any other instrument by which a right in equity to any personal chattels or to any charge or security thereon shall be conferred;
- (iv) every attornment, instrument, or agreement, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance or otherwise for the purpose of such security only; but this is not to extend to a mortgage of real estate which a mortgagee in possession has leased to the mortgagor at a fair and reasonable rent.

3 Trade Machinery

“**Chattels personal**” shall include machinery used in or attached to any factory or workshop exclusive of fixed motive powers such as water-wheels, steam-engines, steam-boilers, donkey-engines and other fixed appurtenances of the said motive powers, and exclusive of fixed power machinery such as shafts, wheels, or drums and their fixed appurtenances, which transmit the action of the motive powers, and exclusive of pipes for steam, gas and water in the factory or workshop.

4 Bill of sale to have schedule of property

Every bill of sale given as security for money must have annexed to it, or written on it, a schedule containing an inventory of the personal chattels specifically described in the said schedule; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

5 Bill of sale must be registered

- (1) Every bill of sale must be executed in the presence of and attested by at least one witness, and must be registered in the manner and within the time hereinafter provided, and must truly set forth the consideration for which it was granted.
- (2) Any bill of sale not complying with the requirements of this section shall be void in respect of the personal chattels comprised in it.

6 Seizure of chattels

Personal chattels assigned under a bill of sale as security for the payment of money shall not be liable to be seized or taken possession of by the grantee for any other than the following causes —

- (1) if the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for the payment or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;
- (2) if the grantor shall become bankrupt or suffer the said goods or any of them to be distrained for rent, rates, or taxes;
- (3) if the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises;
- (4) if the grantor shall, without reasonable excuse, refuse upon demand in writing by the grantee, to produce his last receipts for rent, rates and taxes;
- (5) if execution shall have been levied against the goods of the grantor under any judgment:

Provided that the grantor may apply to the High Court or Senior Magistrate's Court and such court, if satisfied that the said cause of seizure no longer exists, may restrain the grantee, if a person subject to the jurisdiction of such court, from removing or selling the said chattels, or may make such other order as may seem just.

7 How registration is to be effected

Registration shall be effected by presenting to the Registrar of the High Court the bill of sale with every schedule or inventory thereto annexed or therein referred to, and by filing a true copy, of such bill of sale and of every such schedule or inventory together with an affidavit stating the time of such bill of sale being made or given, and of its due execution and attestation and a description of the residence and occupation of the persons making or giving the same and of every attesting witness to such bill of sale.

8 Defeasance or declaration of trust to be registered

If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith, and as part thereof, otherwise the registration shall be void.

9 Transfer need not registered

The transfer or assignment of a registered bill of sale need not be registered.

10 Limit of time for registration

Registration of bills of sale shall be effected within 60 days:

Provided that the High Court may order registration at any time of a bill of sale on proof by affidavit that it has been presented for registration at the first available opportunity.

REGISTER TO BE KEPT

11 Schedule

The Registrar of the High Court shall keep a book, (in this Act called “**the register**”) for the purposes of this Act and shall, upon the filing of any bill of sale or copy

under this Act, enter therein in the form set forth in the Schedule or in any other prescribed form the name, residence, and occupation of the person by whom the bill was made or given, and also the name of the person or persons to whom or in whose favour the bill was given and all other particulars required by the said Schedule, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

12 Office copies

Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith (if any) or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court, and any copy of a registered bill of sale and affidavit purporting to be an office copy thereof shall be admitted as *prima facie* evidence thereof.

13 Right to search register

Any person shall be entitled at all reasonable times to search the register and inspect every registered bill of sale, upon payment of 25 cents for every copy of a bill of sale inspected.

14 Avoidance of certain duplicate bills of sale

Where a subsequent bill of sale is executed within or on the expiration of the time prescribed after execution for the registration of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent for which it is a security for the same debt, or part thereof, comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court that the subsequent bill of sale was *bona fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

15 Rectification of register

The High Court on being satisfied that the omission to register a bill of sale within the time prescribed by this Act, or the omission or misstatement of the name, residence, or occupation of any person was accidental or due to inadvertence, may in its discretion order such omission or misstatement to be rectified by the insertion in the register of the true name, residence or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as the High Court thinks fit to direct.

16 Satisfaction to be entered in register

The High Court may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon proof being given that the debt (if any) for which the bill of sale was made or given has been satisfied or discharged.

17 Fees

There shall be paid and received the following fees —

on filing a bill of sale 25 cents

on filing the affidavit of execution of a bill of sale 25 cents.

18 Order and disposition

- (1) Chattels comprised in a bill of sale which has been duly registered under this Act not being security for the payment of money shall not be deemed to be in the possession, order or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act 1914.
- (2) Chattels comprised in a bill of sale which has been duly registered under this Act, and being security for the payment of money, shall be deemed to be in the possession, order or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act 1883, but subject to the claim of the grantee.

19 Bill of sale no protection against claim for taxes

A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to be seized in execution under a judgment of the court for any rates or taxes due to the Government, and the liability of such chattels to any such seizure in execution shall be deemed to have arisen on the day when any such taxes became due, unless more than 3 months shall elapse between the day when such taxes became due and the day on which judgment was given, when the liability of such chattels to seizure in execution shall be deemed to have arisen 3 months before judgment was given.

20 Assignments accompanied by delivery need not be registered

Nothing in this Act shall affect an assignment of personal chattels accompanied by a transfer of the possession of such chattels.

SCHEDULE

(Section 11)

FORM OF REGISTER OF BILLS OF SALE

Satisfaction entered	No.	By whom given (or against whom process issued)			To whom given	Nature of Instrument	Date	Date of Registration
		Name	Residence	Occupation				

ENDNOTES

¹ 1990 Revised Edition, Cap. 57 – Acts 6 of 1897, 12 of 1915, 2 of 1969, 9 of 1971, 3 of 1972