

Bill No. 61 of 1946.

A BILL TO AMEND THE LAND TITLES ACT

NOTE.

Section 1 of this Bill introduces a new section 115a. Section 115 of the Act renders null and void what is commonly called the attornment clause in mortgages and agreements for sale, and which gives a mortgagee or vendor the rights of a landlord, such as the right of distress. The new section 115a makes an exception in the case of a mortgage or agreement for sale of business premises and renders the attornment clause valid in such cases unless the mortgagor or purchaser occupies part of the premises as a residence. "Business premises" means any land and premises other than farm land, from which revenue is derived.

Section 2 of the Bill adds a new subsection (2) to section 139. That section provides for the removal of a caveat on application to the Court or originating notice. This is a somewhat expensive procedure and the new subsection provides that a caveat may be removed on a judge's certificate where it is based on a mortgage or incumbrance. There is already a similar provision in section 107 for cancellation of the registration of a mortgage or incumbrance on a judge's certificate, and the amendment extends this authority to a caveat based on an unregistered mortgage or incumbrance.

W. S. GRAY,
Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 61 of 1946.

An Act to amend The Land Titles Act.

(Assented to _____, 1946.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Land Titles Act*, being chapter 205 of the Revised Statutes of Alberta, 1942, is hereby amended by adding immediately after section 115 thereof the following new section:

“**115a.**—(1) Notwithstanding the provisions of section 115, any mortgage or agreement for sale of business premises may contain a covenant or provision where the mortgage money or purchase money, as the case may be, is to be paid by instalments, that the mortgagor or purchaser agrees to become the tenant of the mortgagee or vendor, and in any such case the relationship of landlord and tenant shall be validly constituted between such persons but shall be so constituted only so long as no part of such land or premises is occupied by the mortgagor or purchaser as a residence.

“(2) The rent payable under any such agreement shall not exceed the fair annual rent at which the premises might reasonably be expected to rent on a tenancy from year to year, the landlord paying the taxes.

“(3) No such agreement shall of itself operate as or be considered as a taking of possession of the premises or land mortgaged or sold by the mortgagee or the vendor.

“(4) In this section ‘business premises’ means land and premises, other than land and premises used for farming purposes, from which revenue is derived.”

2. The said Act is further amended as to section 139 by adding immediately at the end thereof the following new subsection:

“(2) In any case where a caveat has been filed with the Registrar pursuant to section 131, which caveat is based upon an unregistered mortgage or incumbrance, the Registrar shall cancel the memorandum thereof upon the certificate of title of the land affected by the caveat upon the production of a certificate signed by a judge certifying that the judge is satisfied of the payment of all the moneys secured by the mortgage or incumbrance and that the mortgagee or incumbrancee is living, or if dead, that no succession duty or other tax is payable to the Crown in the right

of the Province with respect to the said mortgage or incumbrance, or upon the production of a certificate signed by a judge certifying that all obligations, the performance of which has been secured by the mortgage or incumbrance, have been duly performed and have come to an end."

3. This Act shall come into force on the day upon which it is assented to.

THIRD SESSION
TENTH LEGISLATURE
10 GEORGE VI
1946

BILL

An Act to amend The Land Titles Act.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MAYNARD.

EDMONTON:
A. Shnftka, King's Printer
1946