

Bill No. 22 of 1955

A BILL TO AMEND THE JUDICATURE ACT

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NOTE

This Bill amends *The Judicature Act*, being chapter 129 of the Revised Statutes of Alberta, 1942.

At the 1954 Session *The Judicature Act*, section 36, was amended to authorize the setting up of a receivership in actions upon mortgages or agreements for sale of urban lands. This provision is being repealed and more complete provisions concerning the same matter provided for in a new section 36*b*.

Subsection (1) of section 36*b* authorizes a court or judge to appoint a receiver, after the commencement of an action upon an agreement for sale, or a mortgage, of urban land and after an application therefor by a mortgagee or vendor.

Subsection (2) provides for the application of the rents and profits received by the receiver. They are to be used in paying the taxes on the property and in reducing the indebtedness of the mortgagor or purchaser in respect of the property.

Subsection (3) authorizes a receiver to distrain for rents; subsection (4) permits the court to order possession of the property to be given to the receiver, when there is a default in the payment of the rents and profits, for his leasing. Subsection (5) provides for application being made to court by a receiver for further instructions; while subsection (6) permits the court to discharge the order appointing a receiver upon notice.

Subsection (7) makes provision for substitute receivers; while subsection (8) provides that an order appointing a receiver will act as a stay of proceedings.

A new section 36*c* is added and provides that an assignment of a lease or of rent may be enforceable if the lease or rent affect urban land and is granted to a mortgagee or vendor by the mortgagor or purchaser of the land.

This Bill comes into force upon assent.

J. W. RYAN,  
*Acting Legislative Counsel.*

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

# BILL

No. 22 of 1955

An Act to amend The Judicature Act

(Assented to \_\_\_\_\_, 1955)

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

1. *The Judicature Act*, being chapter 129 of the Revised Statutes of Alberta, 1942, is hereby amended.

Section 36  
amended

2. Section 36 is amended by striking out clause (r).

New  
sections  
36b and 36c  
Appointment  
of receiver

3. The following new sections are added immediately after section 36a:

“36b. (1) Notwithstanding clauses (o), (p) and (q) of section 36, after the commencement of an action upon any mortgage of urban land or upon any agreement for sale of urban land, a court or judge, upon application by a mortgagee or vendor or an assignee thereof, may appoint, with or without security, a receiver to collect the rents and profits arising from the urban land.

Application  
of rents  
or profits

“(2) The proceeds of any rents or profits collected by the receiver, less any fee or disbursements, which may be allowed by the court or judge to the receiver as and by way of remuneration, shall be applied

“(a) in payment of taxes accruing due or owing on the land in receivership, and

“(b) in reduction of the claims of the mortgagee or vendor or assignee thereof against the land in receivership.

Distress  
for rent

“(3) A receiver appointed pursuant to this section may distrain for rent in arrears in the same manner and with the same right of recovery as a landlord.

Default

“(4) Upon default of the mortgagor or purchaser of the urban land in receivership to pay the rents or profits therefrom, a judge may order possession of the land to be delivered up to the receiver and leased by him, on such terms and conditions as the judge deems fit.

Application  
for direction

“(5) The court or a judge may, upon application thereto by the receiver, give the receiver such further directions from time to time as the circumstances may require.

Discharge  
of receiver

“(6) An order appointing a receiver may be discharged by the court or a judge at any time, but the order shall only be discharged upon application after notice.

“(7) When and so often as the circumstances require, the court or a judge may, without discharging the order appointing the receiver, substitute another person for the person originally appointed by the order appointing a receiver, and the substituted receiver shall perform all the duties and have all the powers given by the order or this section to the person originally appointed. <sup>Substitute receiver</sup>

“(8) When an order appointing a receiver is made under this section, proceedings in the action upon the mortgage or upon the agreement of sale shall be stayed until such time as the order appointing a receiver is discharged. <sup>Stay of proceedings</sup>

“**36c.** An assignment in writing of any lease or rent given by a mortgagor or by a purchaser under an agreement for sale in favour of a mortgagee or vendor thereof and not being an assignment of the mortgage or agreement for sale itself may be enforced notwithstanding the restrictions contained in clauses (o), (p) and (q) of section 36.” <sup>Assignments</sup>

**4.** This Act comes into force on the day upon which it is assented to. <sup>Coming into force</sup>

THIRD SESSION  
TWELFTH LEGISLATURE  
4 ELIZABETH II  
1955

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**BILL**

An Act to amend The Judicature Act

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. MAYNARD

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