

No. 54

3rd Session, 13th Legislature, Alberta
5 Elizabeth II, 1957

BILL 54

A Bill to amend The Land Titles Act

HON. MR. MANNING

EDMONTON, ALBERTA
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1957

Explanatory Note

General. This Act, in part, results from the report of the Law Society of Alberta, Benchers' Special Committee on Mineral Titles. It is proposed at this time, only to deal with certain matters affecting the assurance fund.

2. This section (Section 33 of R.S.A. 1942, c. 205) provides that a judge of the Supreme Court may direct that a by-law providing for the expropriation of land or the closing of a street by a municipality be registered in the land titles office. As Supreme Court judges are not always available to hear these applications, it is intended to give district court judges similar power.

3. The Unearned Increment Tax Act was repealed at the last session. The references to that Act in this section are therefore removed, and the section made to refer to the affidavit as presently required as a result of that repeal. Section 161, subsections (2) to (4) read as follows (Section 153 of R.S.A. 1942, c. 205):

"(2) The value of land and improvements for the purpose of this Act and of The Unearned Increment Tax Act may be ascertained by the oaths or affirmations of the transferor and transferee of the land or of such other person or persons on behalf of either or both of them as the Registrar believes to be acquainted with the value of the land and whose oath or affirmation he is willing to accept.

"(3) The oaths or affirmations may be in Form 39 in the Schedule, and shall be necessary in all cases where any new duplicate certificate of title is required to be issued whether or not any fees are payable in respect of the land under the provisions of this section or of The Unearned Increment Tax Act.

"(4) If the value of the land or of the improvements as set out in the affidavit sworn by or on behalf of the transferor and transferee respectively are not the same, or if for any other reason the valuations are unsatisfactory to the Registrar he may cause a valuation to be made by an inspector of transfers and such valuation shall be taken to be the value of the land or improvements and binds the parties to the transfer, subject to the provisions of section 3 of The Unearned Increment Tax Act."

4. This clause amends section 176 (Section 167a of R.S.A. 1942, c. 205) of the Act to permit, in future, claims against the assurance fund for moneys actually paid for mines and minerals lost by error in the land titles office, for moneys expended fairly and reasonably on their development and not recovered or recoverable, and a further sum for general damages not exceeding \$1,000.00 per acre.

BILL

No. 54 of 1957

An Act to amend The Land Titles Act

(Assented to _____, 1957)

HER 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 170 of the Revised Statutes of Alberta, 1955, is hereby amended.

2. Section 34, subsection (1) is amended by adding immediately following the words "Supreme Court" the words "or of the district court".

3. Section 161 is amended

(a) by striking out subsection (2) and by substituting the following:

"(2) The value of land and improvements for the purpose of this Act may be ascertained by the oath or affirmation of the transferee of the land or of such other person or persons on his behalf as the Registrar believes to be acquainted with the value of the land and whose oath or affirmation he is willing to accept.",

(b) as to subsection (3)

(i) by striking out the words "oaths or affirmations" and by substituting the words "oath or affirmation",

(ii) by striking out the words "or of *The Unearned Increment Tax Act*",

(c) by striking out subsection (4) and by substituting the following:

"(4) If for any reasons the valuation is unsatisfactory to the Registrar, he may cause a valuation to be made by an inspector of transfers and the valuation shall be taken to be the value of the land or improvements and binds the parties to the transfer."

4. Section 176 is amended by striking out subsection (1) and by substituting the following:

"**176.** (1) In any action against the Registrar as nominal defendant for any loss or damage sustained by reason of any error, omission or misdescription relating to mines and minerals in the register, the claimant is entitled to recover as liquidated damages

5. Since claims established by the filing of caveats are established without any assurance fee being paid for the filing, it is proposed to exclude caveators or those claiming under caveats from the benefits of the assurance fund.

- “(a) the moneys actually paid out by him for the interest in mines and minerals, or when the claimant is a volunteer, the moneys actually paid out by the last preceding purchaser for value of such interest,
- “(b) if the claimant fairly and reasonably expended moneys in the development of the mines and minerals before their loss to him and the development enures to the benefit of the person to whom the mines and minerals are awarded or restored, the moneys expended therefor and not by the claimant otherwise recovered or recoverable, and
- “(c) such further sum, not exceeding one thousand dollars for each acre of mines and minerals lost, by way of damages for actual or prospective loss, if any, suffered by the claimant, which shall be based upon the fairly appraised value of the mines and minerals at the time when the action was begun against the Registrar.”.

5. (1) Section 178 is amended

- (a) by renumbering the section as subsection (1),
- (b) by adding immediately after the renumbered subsection (1) the following:

“(2) The assurance fund is not liable for compensation for loss, damage or deprivation where a claimant against the assurance fund

- “(a) claims through, by or under a caveat, or
- “(b) claims under a chain of titles to an interest in land that is incomplete without an unregistered instrument for which a caveat has been filed,

for any loss, damage or deprivation resulting from any error, omission or misdescription in a certificate of title, or by reason of any omission, mistake or misfeasance of the Registrar or any official in his office and whether in either event the same existed or was made before or after the filing of the caveat.”.

- (2) This section does not apply to actions pending at the commencement of this Act.

6. The Schedule is amended by striking out Form 39 and by substituting the following:

“FORM 39

“(Section 161 (3))

“AFFIDAVIT OF TRANSFEREE

“CANADA }
“PROVINCE OF ALBERTA }

“I,
(Name in full)

of
(Residence) (Occupation)

Make Oath and say:

1. I am the transferee (or agent of the transferee) in the within transfer, and I know the lands therein described.

2. Since the above date of purchase I have created the following improvements at a cost set out opposite each:

Building used as a \$
Building used as a \$
Other buildings \$
Fencing \$

(State length)

Clearing acres at \$ per acre \$

Breaking acres at \$ per acre \$

Other improvements \$

(specify)

Total \$

3. I know the circumstances of the within transfer and the true consideration passing between the parties thereto is as follows:

(full details, cash assumption or mortgage, exchange or other consideration with cash value of same)

4. The present value of the subsequent improvements which I have created upon the said lands is \$

5. The transferor named herein is the person from whom I purchased the within described property.

(If the transferor is other than above, give particulars)

6. The present value of the land without improvements is \$

7. The present value of the land together with improvements is \$

SWORN before me at the }
..... of in }
the Province of Alberta, }
this day of } (Signature)
..... A.D. 19..... }

(A Commissioner for Oaths in and for the Province of Alberta.)”

7. This Act comes into force on the day upon which the Revised Statutes of Alberta, 1955, come into force.

THIRD SESSION
THIRTEENTH LEGISLATURE
5 ELIZABETH II
1957

BILL

An Act to amend The Land
Titles Act

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING
