

No. 97

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4th Session, 13th Legislature, Alberta  
6 Elizabeth II, 1958

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## **BILL 97**

A Bill to amend The Land Titles Act

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HON. MR. MANNING

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Printed by L. S. WALL, Printer to the Queen's Most Excellent Majesty,  
Edmonton, Alberta, 1958

## **Explanatory Note**

**2.** Subsection (3) provides that until a duplicate certificate of title is produced to him, the Registrar shall not receive or enter in the day book any instrument, within the meaning of The Land Titles Act, except instruments set out in clause (a) to (e). The Mineral Taxation Act prescribes the registration of certain instruments under those Acts, at various times and this amendment is for the purpose of removing the conflict between section 20 (3) and those Acts. It is therefore made retroactive, to March 31st, 1947. (See clause 11.)

**3. (a)** Subsection (1) presently reads:

"71. (1) In the event of the registered owner of a parcel of land granting to the Crown or to any pipe line, public utility or railway company the right to carry its pipes, wires, conductors or transmission lines upon, over or under the parcel the instrument granting the right may be registered under this Act."

**(b)** Subsection (2) presently reads:

"(2) Upon such registration the right to use the parcel in accordance with the terms of the grant and all the conditions and covenants expressed therein are binding upon and enure to the benefit of the Crown or of the company, its successors and assigns, owners of the pipe line, public utility or railway and the grantor, his heirs, executors, administrators and assigns being owners of the parcel."

**(c)** The purpose of these amendments is to permit agreements of this type made by municipal corporations to be registered and dealt with as other agreements here mentioned. Subsection (4) presently reads:

"(4) An instrument purporting to assign, mortgage, encumber or charge any right granted by instrument registered under the provisions of subsection (1) and executed by or on behalf of the Crown or of the company, its successors and assigns, owners of the pipe line, public utility or railway may be registered under this Act."

**4. Section 82, subsections (3) to (5) read as follows:**

"(3) The registration in the Land Titles Office of a plan of subdivision of land into lots or blocks not within the limits of an incorporated city vests title

"(a) to all streets, avenues, highways, lanes or thoroughfares shown on the plan in Her Majesty the Queen in the right of the Province of Alberta as represented by the Minister of Highways, and

"(b) to all public works reserves shown on the plan in Her Majesty the Queen in the right of the Province of Alberta as represented by the Minister of Public Works,

# BILL

No. 97 of 1958

An Act to amend The Land Titles Act

(Assented to \_\_\_\_\_, 1958)

**H**ER 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 20, subsection (3) is amended by adding immediately after clause (c) the following new clause:

“(c1) tax arrears notifications and other notices and cancellations under *The Mineral Taxation Act* or *The Mineral Taxation Act, 1945*.”.

**3.** Section 71 is amended

(a) as to subsection (1) by adding immediately after the word “Crown” the words “or municipal corporation”,

(b) as to subsection (2) by adding immediately after the word “Crown” the words “or municipal corporation”,

(c) as to subsection (4) by adding immediately after the word “Crown” the words “or municipal corporation”.

**4.** Section 82 is amended by striking out subsections (3) to (5).

"(4) No change or alteration in the boundary of any such street, avenue, highway, lane or thoroughfare shall be made without the consent of the Minister of Highways.

"(5) No change or alteration in the boundary of any such public works reserve shall be made without the consent of the Minister of Public Works."

**5. Section 84 reads as follows:**

"84. (1) No plan of subdivision of any land shall be registered unless it conforms in all respects to the regulations made by the Director of Surveys with regard thereto.

"(2) No plan of subdivision of land adjoining a lake, river, stream or body of water shall be registered unless the plan has endorsed thereon a certificate signed by or on behalf of the Director of the Technical Division of the Department of Lands and Forests stating that no part of the plan purports to subdivide land vested in Her Majesty in the right of the Province."

The last provision of this new section is taken in principle from present section 26(1) of The Town and Rural Planning Act.

**6. Section 85 reads as follows:**

"85. No plan of subdivision of any encumbered land shall be registered unless it is approved and signed by the encumbrancee or encumbrancees, nor unless it is accompanied by a discharge of all encumbrances affecting the lands required to be reserved for public purposes under The Surveys and Expropriation Act, and the regulations made thereunder."

**7. Section 87 reads as follows:**

"87. The Registrar shall not accept transfers or mortgages of parcels of land within the limits of any plan registered in the Land Titles Offices under section 82, if the boundaries of the parcels are not delimited on the plan, until a new plan showing the boundaries and distinguishing the parcels by numbers or letters has been registered under section 82 if, in his opinion, the subdivision affected by the transfer or mortgage is not in accord with the regulations made by the Director of Surveys regarding subdivisions and plans thereof."

**8. General.** The amendments to sections 82, 84, 85, 87, (above) and to this section are complementary to amendments proposed to sections 25 to 27 of The Town and Rural Planning Act and section 6 of The Surveys and Expropriation Act. However, the emphasis in this Act is more on the so called "public reserves" or "public works reserves", that is, the land reserved out of a subdivision for the purposes of schools and parks (throughout the amendments termed generically "community purposes") and for the purposes of roadways, streets and lanes (termed generically throughout as "public purposes"). Because of varied administrative duties arising in connection with subdivisions, and the many provisions in different Acts over a period of fifty years, some confusion has resulted in the administration of these reserved lands, which are vested in the Crown where the land is not within a city, and in the city when the subdivided land is within a city. These amendments in this Act are intended to clarify the ownership of the reserved lands and the duty of the Registrar in respect thereof.

**91.** (1) Present section 82 (3) and 91 (1) of The Land Titles Act in substance.

(2) New. Intended to clarify the position of a city in these cases.

**5.** Section 84 is struck out and the following is substituted:

**“84.** No plan of subdivision of land shall be registered unless the subdivision complies in all respects with the regulations made under *The Surveys and Expropriation Act* with respect to subdivisions, but a registration made in contravention of this section does not invalidate a subdivision effected by that registration.”.

**6.** Section 85 is amended by striking out the words “under *The Surveys and Expropriation Act* and the regulations made thereunder” and by substituting the words “or community purposes pursuant to the regulations made under *The Surveys and Expropriation Act* with respect to subdivisions”.

**7.** Section 87 is amended by striking out the words “made by the Director of Surveys regarding subdivisions and plans thereof” and by substituting the words “made under *The Surveys and Expropriation Act* with respect to subdivisions”.

**8.** Section 91 is struck out and the following is substituted:

**“91.** (1) The registration in the land titles office of a plan of subdivision of land not within the limits of a city vests title free of all encumbrances to all lands reserved for public purposes or community purposes pursuant to the regulations made under *The Surveys and Expropriation Act* with respect to subdivisions in the Crown in right of the Province.

“(2) The Registration in the land titles office of a plan of subdivision of land within the limits of a city vests title free of all encumbrances to all lands reserved for public purposes or community purposes pursuant to the regulations made under *The Surveys and Expropriation Act* with respect to subdivisions in the city in which the reserved lands are situate.

(3) Present section 82 (4) and (5) combined.

(4) Makes similar provision for city lands.

(5) New. The duties in the case mentioned have heretofore been arrived at by construing different provisions of various Acts.

(6) Makes provision for the converse of the circumstances described in (5) above.

(7) Present section 91 (2) in substance.

(8) Present section 91 (3) in substance.

(9) Present section 91 (4) in substance but extended to apply also to reserved lands within cities.

“(3) No change or alteration in the boundary of any lands reserved for public purposes or community purposes upon a subdivision of lands not within the limits of a city shall be made without the consent of the member of the Executive Council charged with the administration of the lands reserved for public purposes or community purposes, as the case may be.

“(4) No change or alteration in the boundary of any lands reserved for public purposes or community purposes upon a subdivision of lands within the limits of a city shall be made without the consent of the civic official or department concerned with the supervision of lands reserved for public purposes or community purposes, as the case may be.

“(5) Where under subsection (1) or pursuant to subsection (6) the title to any reserved land is vested in the Crown in right of the Province and subsequently while title thereto is still in the Crown the boundaries of a city are extended so that the reserved lands are brought within the limits of a city, the Registrar shall upon directions of the Lieutenant Governor in Council, take all necessary steps to transfer the title of the lands to the city subject to such estates, interests and encumbrances as may be noted on the title.

“(6) Where under subsection (2) or pursuant to subsection (5) the title to any reserved land is vested in a city and subsequently, while title thereto is still in the city, the boundaries of the city are reduced so that the reserved lands are no longer within the city, the city shall transfer the reserved lands to the Crown in right of the Province.

“(7) Upon the filing of an original or amended or substituted plan of subdivision, the Registrar shall cancel the areas shown on the plan as reserved for any public purpose or community purpose pursuant to the regulations made under *The Surveys and Expropriation Act* with respect to subdivisions from the original and duplicate certificates of title and issue a certificate of title for the lands reserved to the Crown in right of the Province or to the city within which the reserved lands are situate, as the case may be, but in the case of lands reserved for any streets, lanes or roadways no certificate of title need be issued.

“(8) Where under a plan of subdivision lands are vested in the Crown in right of the Province, a certificate of title to, or a plan of subdivision of, the lands may be cancelled or amended or a new certificate or plan substituted therefor with the consent in writing of the member or members of the Executive Council charged with the administration of such lands if the former plan under which the lands were vested in the Crown is withdrawn, amended or replaced.

“(9) Upon the filing of an original or amended or substituted plan of subdivision, the title to all mines and minerals under lands reserved for public purposes or community purposes as shown on the plan remains vested in

**9.** Section 161 presently provides for fees and for a percentage of the valuation of land for the assurance fund. Subsections (2) to (4) relate to "land and improvements" and to affidavits of both "transferee and transferor", as well as to The Unearned Increment Tax Act. With the repeal of that Act, only the valuation of land for purposes of the assurance fund is required and these subsections are therefore being revised. Subsections (2) to (4) presently read:

"(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."

**10.** Under section 176 (1), at the present time, there is a limitation on the amount that may be claimed from the assurance fund for loss or damage in respect of mines and minerals. This amendment raises the limit on the amount that may be claimed from the fund for such loss or damage. Subsection (1) presently reads:

"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 the moneys actually paid out by him for such interest in mines and minerals and such further sum not exceeding five thousand dollars for any present or prospective loss of profit, if any, sustained by him in his dealings with such mines and minerals."



the owner of the mines or minerals at the time of the subdivision and is not transferred to the Crown or to a city by the vesting of the lands reserved for public purposes or community purposes in the Crown or the city, as the case may be.”.

**9.** Section 161 is amended by striking out subsections (2) to (4) and by substituting the following:

“(2) The value of land for the purpose of this Act may be ascertained by the oaths or affirmations of the transferee or transferor of the land or of such other person on the behalf of either 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 under this section in respect of the land.

“(4) Where for any reasons the valuation of land given to the Registrar is unsatisfactory to him, 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.”.

**10.** 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

- “(a) the moneys actually paid out by him for the interest in mines and minerals, or when the claimant is not a purchaser for value, 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) the fair appraised value, at the time the action was brought, of the mines and minerals lost to the claimant, but damages awarded under this clause shall not exceed in the aggregate the sum of one thousand dollars for each acre of mines and minerals lost by the claimant.”.

**11.** This Act comes into force on the day upon which it is assented to and upon so coming into force section 2 shall be deemed to have been in force on and after the thirty-first day of March, 1947.

No. 97

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FOURTH SESSION

THIRTEENTH LEGISLATURE

6 ELIZABETH II

1958

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## **BILL**

An Act to amend The Land Titles Act

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. MANNING

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