

1968 BILL 69

First Session, 16th Legislature, 17, Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 69

An Act to amend The Public Lands Act, 1966

THE MINISTER OF LANDS AND FORESTS

First Reading

Second Reading

Third Reading

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1968

An Act to amend The Public Lands Act, 1966

(Assented to _____, 1968)

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

1. *The Public Lands Act, 1966* is hereby amended.

2. The following section is added after section 19:

19a. (1) Where the Minister proposes to sell public land pursuant to section 17 or pursuant to an order of the Lieutenant Governor in Council, the Minister may, as a condition of the sale, require the intended purchaser to enter into an agreement

(a) restricting the purposes to which the land to be sold may be used, and

(b) requiring the purchaser or his successors in title to retransfer the land to the Crown in the event that the land is no longer used for the purposes referred to in the agreement,

upon such terms and conditions as the Minister prescribes.

(2) An agreement under this section may be registered under *The Land Titles Act* and is not void by reason only that the agreement or any provision of the agreement infringes the rule against perpetuities.

3. Section 56 is amended by adding the following subsection:

(8) Notwithstanding anything in this section, the Minister may defer the payment of any amount required to be paid under this section in excess of the portion, if any, required to be applied or refunded under section 57, and where a deferment is made the disposition shall provide that the amount deferred be paid by the holder of the disposition on the date or dates fixed in the disposition for the payment thereof.

4. Section 72 is struck out and the following section is substituted:

72. Where a lease is held by two or more persons, the lessees are jointly and severally liable for the performance

Explanatory Notes

1. This Bill amends chapter 80 of the Statutes of Alberta, 1966.

2. The new section 19a will permit the Minister to enter into a collateral agreement with an intended purchaser of land so as to restrict its use and require its retransfer to the Crown in the event that it is no longer used for the purposes agreed to. This type of agreement would be entered into primarily in cases of land in forested areas that is to be used as a site for industrial installations.

3. Section 56 requires an applicant for a lease, etc. to submit with his application an amount in cash equal to the valuation of the improvements on the land. The cash amount is then applied in accordance with section 57 which reads:

57. Where a disposition is cancelled or expires and moneys are paid on account of improvements under section 56 on a subsequent application for a disposition of all or a part of the land contained in the cancelled or expired disposition, the Minister may

- (a) apply those moneys to the payment of any amounts owing under the cancelled or expired disposition,
- (b) apply the balance, if any, for the purpose of paying any other debt to the Crown, any taxes owing to a municipality, any debt to a municipality arising out of the use of the land described in the cancelled or expired disposition, or any debt owing by the former holder to a rural electrification association incorporated under The Co-operative Associations Act, and
- (c) refund the whole or part of the balance, if any, to the person who, in the opinion of the Minister, is entitled to it.

The new subsection (8) will permit the payment of the cash amount in instalments to the extent that the cash amount exceeds the amounts that are required to be applied or refunded under section 57.

4. Section 72 presently reads:

72. Where a lease is held by two or more persons, each lessee as against the Crown has an equal interest in the lease, and no lease or assignment of a lease shall express an undivided interest.

The effect of the repeal of the present section is to permit a lease to be held in undivided interests. The object of the new section is to ensure that all lessees are jointly and severally liable for the lessee's obligation, regardless of whether they hold as joint tenants or in undivided interests or otherwise.

of all of the lessee's obligations under the lease, the regulations and this Act regardless of the nature of their tenure under the lease.

5. Section 85 is amended by striking out subsection (2).

6. Section 88 is amended by striking out subsection (6) and by substituting the following:

(6) For the purpose of determining whether a homestead purchaser has complied with the residence requirements under this section or under the former Act, no period of residence shall be excluded for the reason only that the homestead purchaser was not chiefly engaged in farming during the period of residence.

7. Section 92, subsection (7) is amended by striking out the words "the performance of cultivation duties and".

8. Section 119 is amended

(a) as to subsection (3) by striking out clause (a) and by substituting the following:

(a) the assignment, other than an assignment of a mineral surface lease is unconditional,

(b) as to subsection (5) by striking out the word "certified" and by substituting the word "true".

9. Section 124 is struck out and the following section is substituted:

124. (1) Homestead leases granted by the Minister before April 20, 1964 or pursuant to an application received by him before April 20, 1964 are subject to the provisions of the former Act as it stood immediately before April 20, 1964 excepting the following provisions thereof:

(a) subsections (2) to (6) and (8) of section 20;

(b) subsections (3) to (7) of section 21;

(c) subsection (1) of section 22;

(d) subsection (5) of section 23;

(e) section 27;

(f) subsection (2) of section 39;

(g) subsection (2) of section 41.

(2) Subsections (3), (5), (6) and (7) of section 88 of this Act apply with the necessary changes, to homestead leases and the lessees holding them.

10. This Act comes into force on the day upon which it is assented to.

5. Section 85, subsection (2) presently reads:

(2) The deposit shall be refunded to the applicant where the Director rejects his application.

Subsection (2) deals with deposits made by applicants for homestead sales. The repeal of the subsection will mean that section 37 of the Act will apply. Section 37 deals with all refunds of moneys deposited by an applicant.

6. Section 88 (6) presently reads:

(6) Any period of time spent on a homestead or on a farm in the vicinity of the homestead during which the purchaser was chiefly engaged in an occupation other than farming shall not be counted as a period of residence for the purposes of this section.

The amendment removes the requirement that a homestead purchaser be chiefly engaged in farming during his residence on a homestead or on a farm in the vicinity.

7. Section 92 (7) presently reads:

(7) When a homestead sale is granted pursuant to this section the purchaser shall be in the same position with respect to the performance of cultivation duties and exemption from taxation as he would be if the date of the homestead sale were the same as the date of the cancelled homestead lease.

Section 92 deals with the substitution of a homestead lease with a homestead sale. Often this is done because the homestead lessee is in default on his cultivation duties and the amendment will have the effect of relieving him on the default and extending the time for performance of the cultivation duties.

8. Section 119, subsections (3) (a) and (5) presently read:

(3) The Minister may refuse to register an assignment unless

(a) the assignment is unconditional,

.....

(5) Before an assignment may be registered the holder's copy of the disposition or a certified copy thereof shall be submitted to the Department.

"Mineral surface leases" are issued for oil and gas well sites and roadways. Where the wells are included in a unitization agreement, the leases are usually assigned to the unit operator and the assignments are often subject to conditions that involve the continued existence of the unitization agreement. The amendment will exempt this class of assignments from the rule that they may be refused registration if they are conditional.

The amendment to subsection (5) removes the requirement that a copy of the disposition be certified.

9. Section 124 presently reads:

124. Homestead leases granted by the Minister

(a) before the twentieth day of April, 1964, or

(b) pursuant to an application received by him before the twentieth day of April, 1964,

are subject to the provisions of the former Act as it was immediately before the twentieth day of April, 1964.

Application for homestead leases ceased to be accepted after amendments to the former Act enacted on April 20, 1964, but the former Act continued to apply to them. The object of the new section 124 is to make residence requirements for homestead leases uniform with those that apply to homestead sales under the present Act.