

1972 BILL 109

~~Second~~ ^{First} Session, 17th Legislature, 21 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 109

The Land Titles Amendment Act, 1972

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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1972

THE LAND TITLES AMENDMENT ACT, 1972

(Assented to _____, 1972)

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

1. *The Land Titles Act is hereby amended.*

2. *Section 16 is amended by striking out the words “, and he shall stamp all instruments that are presented to him for registration, showing the day, hour and minute of receiving the same”.*

3. *Section 20 is amended by striking out subsections (1) and (2) and by substituting the following subsections therefor:*

20. (1) The Registrar shall keep a book or books to be called the “day book” which shall contain a record of every instrument received by him for filing or registration.

(2) The Registrar shall cause each instrument received by him for filing or registration to be examined and if found to be complete and in the proper form and fit for filing or registration, the Registrar shall stamp the instrument with the serial number assigned to it and the date on which the serial number is assigned.

(2.1) The Registrar shall enter a record of each stamped and signed instrument in the day book.

(2.2) The Registrar in endorsing memoranda of instruments upon a certificate of title and in entering memoranda upon duplicate titles shall take the serial number and date from the day book and shall sign the memoranda and the certificate or duplicate certificate upon which the endorsement or entry is made.

(2.3) For purposes of priority between mortgagees, transferees and others, the serial number assigned to the instrument shall determine the priority of the instrument filed or registered.

Explanatory Notes

GENERAL: The amendments contained in this Part will originate a new system of effecting filing or registration of instruments under the Act. The present "day book" which provides priority by the day, hour and minute of entry would be revised so as to establish priority by the use of serial numbers assigned to instruments as they are accepted for filing or registration. The current books of title, each containing 250 certificates of title, would be replaced by a "loose leaf" system of filing individual certificates of title. The new system would have the advantage of enabling persons to search for instruments submitted for and in the process of filing or registration but not yet filed or registered; it would also alleviate the unavailability of 249 other certificates of title while one certificate in the same book is being searched or a copy is being made. Damage to titles not being searched or copied would also be prevented.

1. This Bill will amend chapter 198 of the Revised Statutes of Alberta 1970.

2. Section 16 presently reads:

16. Each Registrar shall have a seal of office, approved by the Lieutenant Governor in Council, with which he shall seal all certificates of title, and he shall stamp all instruments that are presented to him for registration, showing the day, hour and minute of receiving the same.

3. Establishes the revised day book procedure. Section 20, subsections (1) and (2) presently read:

20. (1) The Registrar shall keep a book or books which shall be called the "day book", and in which shall be entered by a short description every instrument relating to lands for which a certificate of title has been issued or been applied for and that is given in for registration, with the day, hour and minute of its being given in, and for purposes of priority between mortgagees, transferees and others the time so entered shall be taken as the time of registration.

(2) The Registrar in entering memoranda upon the certificate of title embodied in the register and in endorsing a memorandum upon the duplicate shall take the time from the day book as the time of the registration.

4. *Section 21 is amended by striking out subsections (1) and (2) and by substituting the following subsections therefor:*

21. (1) The Registrar shall keep each certificate of title and shall record thereon the particulars of all instruments, dealings and other matters by this Act required to be registered or entered on the certificate of title and affecting the land included therein and the certificates of title so kept shall constitute the "register".

(2) The Registrar may remove any or all certificates of title from the register in which they were heretofore required to be entered and upon removal each certificate of title shall be kept in such manner as the Lieutenant Governor in Council may prescribe.

5. *The following section is added after section 21:*

21.1 A certificate of title kept under section 21 shall not be open to inspection by the public except with the consent of the Registrar but the Registrar shall upon request and payment of the prescribed fee furnish to a person desiring to inspect a certificate of title, an exact copy of the certificate of title.

6. *Section 22 is amended*

- (a) *as to subsection (3) by striking out the words "which shall be deemed to constitute one folio of the book", and*
- (b) *by striking out subsection (4) and by substituting the following subsection therefor:*

(4) The certificates of title so removed shall be kept separately from the register and shall not be open to inspection except pursuant to the order of a court or judge.

7. *The following sections are added after section 22:*

22.1 (1) The Registrar shall microphotograph

- (a) every certificate of title when it is removed from the register,
- (b) every new certificate of title when it is issued,
- (c) every certificate of title mentioned in clause (a) or (b) immediately after a memorandum is endorsed thereon, and
- (d) every instrument other than a plan of survey accepted for filing or registration, after it has been entered on the title and signed by the Registrar.

(2) The microphotographic films may be kept at such place or places as may be designated by the Attorney General.

4. Establishes the "loose-leaf" system of keeping certificates of title. Section 21, subsections (1) and (2) presently read:

21. (1) The Registrar shall also keep a book or books which shall be called the "register" and shall enter therein all certificates of title, which shall be in Form 4 in the Schedule and shall each constitute a separate folio of the book.

(2) The Registrar shall record therein the particulars of all instruments, dealings and other matters by this Act required to be registered or entered in the register and affecting the land included in the certificate of title.

5. New. The amendment provides security from loss of certificates of title in the "loose-leaf" storage system by restricting public access to originals, but provides the needs of persons desiring to search certificates by enabling them to obtain copies.

6. Section 22, subsections (3) and (4) presently read:

(3) The Registrar may remove the certificate of title from the register and shall replace it with the two photostatic negatives which shall be deemed to constitute one folio of the book.

(4) The certificates of title so removed shall be kept in a separate book or books which shall not be open to inspection by any person except upon the order of a court or judge.

7. New. The amendment will introduce new security of record-keeping into the land titles system by providing useable micro-photographic duplicates of each instrument retained in the system; it also provides a method of proving the contents of instruments that have been lost, mislaid or destroyed and of which a duplicate does not exist or cannot be located.

22.2 (1) Where the Registrar is satisfied that a certificate of title has been destroyed or lost or cannot be found he may, where the certificate of title has been microphotographed, refer to the microphotographic film thereof or to a print therefrom and to the other records of the land titles office and then issue a new certificate of title based thereon which shall be marked "Substitute Certificate of Title".

(2) Notwithstanding anything contained in this Act or any other statute, a new certificate of title issued under subsection (1) shall for all purposes be the certificate of title to the land therein described and shall have the same force and effect as the original certificate of title.

(3) Where the Registrar is satisfied that any instrument filed or registered in the land titles office, other than a certificate of title or duplicate certificate of title, has been destroyed or lost or mislaid he may, where the instrument has been microphotographed, certify that an enlarged print from the microphotographic film of the instrument is a copy thereof, and thereupon the print shall, without further proof, have the same force and effect as the original instrument.

22.3 Where the Registrar is required to produce an instrument and is unable to do so by reason of its having been lost, mislaid or destroyed and not having been microphotographed, he shall furnish to the court or person requiring production of the instrument his certificate under seal stating that the instrument has been lost, mislaid or destroyed, as the case may be, and has not been microphotographed, and thereupon any memorandum, entry or record produced by him shall to the extent that it purports to show the nature and contents of the instrument that has been lost, mislaid or destroyed be received as evidence of the nature and contents thereof.

8. Section 25 is struck out and the following section is substituted therefor:

25. (1) A grant shall be deemed to be registered under the Act when it has been marked by the Registrar with the serial number assigned to it, signed by the Registrar and a memorandum of its registration entered in the day book.

(2) An instrument, other than a grant, shall be deemed to be registered when a memorandum of it, signed by the Registrar, has been entered upon the existing certificate of title.

9. Section 26 is amended by adding at the end thereof the words "or such other place as the Lieutenant Governor in Council by order may prescribe".

8. Section 25 presently reads:

25. Every grant shall be deemed and taken to be registered under the provisions and for the purposes of this Act so soon as it has been marked by the Registrar with the folio and volume on and in which it is embodied in the register, and every other instrument shall be deemed to be registered as soon as a memorandum of it has been entered in the register upon the folio constituted by the existing grant or certificate of title to the land.

9. It may become advantageous to store instruments elsewhere than at the Land Titles Offices. Section 26 presently reads:

26. The Registrar, upon registration of any instrument shall retain the instrument in his office.

10. Section 27 is struck out and the following section is substituted therefor:

27. Every memorandum entered upon a certificate of title shall state the nature of the instrument to which it relates, the serial number of the instrument, the date on which the serial number was assigned by the Registrar and the names of the parties thereto.

11. Section 30 is struck out and the following section is substituted therefor:

30. (1) The Registrar may reject any instrument under which an interest in any land is claimed or dealt with on behalf of any corporation unless he is satisfied that the corporation is

- (a) registered under *The Companies Act*, or
- (b) registered under *The Trust Companies Act*, or
- (c) licensed under *The Alberta Insurance Act*, or
- (d) registered under *The Societies Act*, or
- (e) registered under *The Co-operative Associations Act*, or
- (f) registered under *The Credit Union Act*, or
- (g) incorporated in Alberta by or pursuant to a public or private Act, or
- (h) otherwise capable of holding land in Alberta.

(2) In the case of any corporation to which clause (a), (b), (c), (d), (e) or (f) of subsection (1) applies, the receipt by the Registrar of a certificate from

- (a) the Registrar of Companies that a corporation is registered under *The Companies Act*, *The Societies Act* or *The Co-operative Associations Act*, or
- (b) the Director of Trust Companies that a corporation is registered under *The Trust Companies Act*, or
- (c) the Superintendent of Insurance that a corporation is licensed under *The Alberta Insurance Act*, or
- (d) the Registrar of Credit Unions that a corporation is registered under *The Credit Union Act*,

shall be sufficient to satisfy the Registrar in relation to every submission for registration or filing thereafter made in relation to that corporation until the Registrar is informed by the Registrar of Companies, the Director of Trust Companies, the Superintendent of Insurance or by the Registrar of Credit Unions, as the case may be, that

10. Section 27 presently reads:

27. Every memorandum entered in the register shall state the nature of the instrument to which the memorandum relates, the day, the hour and the minute of its registration, and the names of the parties thereto, and shall refer by number or symbol to the instrument, and shall be signed by the Registrar.

11. Proof of corporate status. Section 30 reads:

30. No instrument under which an interest in any land is claimed or dealt with on behalf of any company, joint stock company or corporation shall be registered until satisfactory evidence is produced to the Registrar that the company, joint stock company or corporation is not in arrears for any tax or fee imposed thereon under The Companies Act or The Alberta Insurance Act.

the certificate issued in respect of that corporation is no longer valid.

(3) The Registrar of Companies, the Director of Trust Companies, the Superintendent of Insurance and the Registrar of Credit Unions, as the case may be, shall notify the Registrars of each registration district forthwith upon any corporation for which they may have issued their respective certificates ceasing to be registered or licensed that the certificate issued in respect of that corporation is invalid.

(4) Except in respect of a corporation

(a) registered under *The Trust Companies Act*, or

(b) licensed under *The Alberta Insurance Act*,

a certificate of a solicitor who is a member of The Law Society of Alberta stating that the corporation is capable of holding land in Alberta shall be sufficient to satisfy the Registrar in relation to the submission for registration or filing of the instrument to which the certificate is attached and of which it forms part.

12. Section 50 is struck out and the following section is substituted therefor:

50. (1) Upon every transfer of ownership, the certificate of title of the transferor and the duplicate thereof shall be cancelled in respect of the land transferred and a new certificate of title shall be granted to the transferee.

(2) The Registrar shall note upon the certificate of title of the transferor the number of the transferee's title and upon the certificate of title of the transferee the number of the transferor's title in such manner that reference can readily be made from one to the other.

13. Section 70 is amended by striking out the words "the folios of the register that constitute".

14. Section 113, subsection (3) is amended by striking out the words "the day, hour and minute on which the memorandum is made" and by substituting therefor the words "the serial number of the order and the date on which the serial number was assigned".

15. Section 114, subsection (1) is amended by striking out the words "the time of registration" and by substituting therefor the words "section 20".

16. Section 124, subsection (1) is amended by striking out the words "and the day, hour and minute of the production of the same to him," and by substituting therefor

12. Section 50 presently reads:

50. (1) Every certificate of title shall be made on a separate folio of the register, and upon every transfer of ownership the certificate of title of the transferor and the duplicate thereof shall be cancelled and the certificate of title to the transferee shall thereupon be entered upon a new folio in the register.

(2) The Registrar shall note upon the folio of the title of the transferor the number of the folio of the transferee's title and upon that of the transferee the number of the folio of the transferor's title so that referenc can be readily made from one to the other as occasion requires.

13. Section 70 presently reads:

70. Whenever an easement or any incorporeal right in or over any land for which a certificate of title has been granted is created for the purpose of being annexed to or used and enjoyed together with other land for which a certificate of title has also been granted, the Registrar shall make a memorandum of the interest creating the easement or incorporeal right upon the folios of the register that constitute the existing certificates of title of the dominant and servient tenements respectively, and upon the duplicates thereof.

14. Section 113, subsection (3) presently reads:

(3) The Registrar shall, upon presentation of the judge's order and of the receipt of the manager or agent of the bank for the amount of the mortgage moneys and interest, make upon the certificate of title in the register, a memorandum discharging the mortgage, and stating the day, hour and minute on which the memorandum is made.

15. Section 114, subsection (1) presently reads:

114. (1) Mortgages, encumbrances and leases of land for which a certificate of title has been granted may be transferred by a transfer executed in Form 23 in the Schedule, and the transfer shall be registered in the same manner as mortgages, encumbrances and leases are registered, and transferees have priority according to the time of registration.

16. Section 124, subsection (1) presently reads:

124. (1) Whenever any mortgage, encumbrance or lease affecting land for which a certificate of title has been granted is transmitted in consequence of the will or intestacy of the owner thereof, the probate of the will of the deceased owner, or letters of administration, or the order of the court authorizing a person as aforesaid to administer the estate of the deceased owner, or a duly certified copy of the said probate, letters of administration, or order, as the case may be, accompanied by an application in writing from the executor or administrator, or such other person as aforesaid, claiming to be registered as owner in respect of such estate or interest, together with a certificate of the Attorney General that all succession duties in respect of the said mortgage, encumbrance, or lease, as the case may be, have been paid or security given for the payment thereof, shall be produced to and left with the Registrar, who shall thereupon make a memorandum upon the certificate of title and upon the duplicate thereof of the date of the will and of the probate, or of the letters of administration, or order of the court as aforesaid, and the day, hour and minute of the production of the same to him, with such other particulars as he deems necessary.

the words “and the serial number of the instrument and the date on which the serial number was assigned to the instrument,”.

17. This Act or any section thereof comes into force on a date or dates to be fixed by Proclamation and when so proclaimed shall become effective in the Land Registration District or Districts specified in the Proclamation.

