

1977 BILL 29

Third Session, 18th Legislature, 26 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 29

THE LAND TITLES AMENDMENT ACT, 1977

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

Bill 29

BILL 29

1977

THE LAND TITLES AMENDMENT ACT, 1977

(Assented to _____, 1977)

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 20 is amended*
 - (a) *by striking out subsection (1) and by substituting therefor the following subsection:*

20. (1) The Registrar shall keep a record called the "day book" which shall contain particulars of every instrument and caveat accepted by the Registrar for filing or registration.
 - (b) *as to subsection (2) by adding after the word "instrument" wherever it occurs the words "or caveat",*
 - (c) *as to subsection (2.1) by adding after the word "instrument" the words "or caveat",*
 - (d) *as to subsection (2.2) by adding after the word "instruments" the words "or caveats",*
 - (e) *as to subsection (2.3) by adding after the word "instrument" wherever it occurs the words "or caveat", and*
 - (f) *as to subsection (3)*
 - (i) *as to clause (a) by striking out the word "caveats",*
 - (ii) *by adding the word "and" at the end of clause (d) and by striking out the word "and" at the end of clause (e),*

Explanatory Notes

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

2. Section 20(1) to (3) presently read:

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.

(3) Until the duplicate certificate of title for the lands affected is produced to him so as to enable him to enter the proper memorandum on the duplicate certificate, unless required to do so by order of a court or a judge, the Registrar shall not receive or enter in the day book any instrument except

(a) executions against lands, caveats, builders' liens, easements and instruments referred to in section 71,

(b) transfers by a sheriff or municipal officer, or by order of a court or a judge,

(iii) by striking out clause (f), and

(iv) by striking out the words “if there is produced to and left with the Registrar, with the mortgage, an affidavit made by the mortgagor in Form 21 in the Schedule, and also in the case of lands mortgaged prior to the issue of transfer from the Hudson’s Bay Company or other company as aforesaid a certificate from the land commissioner or other proper officer of the company that the purchase price of the mortgaged lands has been paid and that the applicant is entitled to a transfer in fee simple thereof from the company.”.

3. Section 22.1, subsection (1) is amended by striking out clause (d) and by substituting therefor the following clause:

(d) every

(i) caveat, and

(ii) instrument, other than a plan of survey,

accepted for filing or registration, after the memorandum of the filing or registration has been entered on the title and signed by the Registrar.

4. Section 54 is amended by adding after subsection (2) the following subsection:

(3) The Registrar may reject any document submitted for filing or registration which is in his opinion for any reason unsuitable to be microphotographed pursuant to section 22.1.

5. Section 58 is amended by striking out the words “the time of registration” and by substituting therefor the words “section 20”.

- (c) *transfers on sales of lands for taxes,*
- (d) *tax arrears notifications and other notices and cancellations under The Mineral Taxation Act,*
- (e) *maps or plans that do not require to be registered, or certificates of orders of a court or a judge, and*
- (f) *a mortgage or other encumbrance created by any person rightfully in possession of land*
 - (i) *prior to the issue of the grant from the Crown, or*
 - (ii) *prior to the issue of transfer from the Hudson's Bay Company or from any company entitled to a grant of such lands from the Crown or to which letters patent from the Crown for such mortgaged lands have already issued,*

if there is produced to and left with the Registrar, with the mortgage, an affidavit made by the mortgagor in Form 21 in the Schedule, and also in the case of lands mortgaged prior to the issue of transfer from the Hudson's Bay Company or other company as aforesaid a certificate from the land commissioner or other proper officer of the company that the purchase price of the mortgaged lands has been paid and that the applicant is entitled to a transfer in fee simple thereof from the company.

3. Section 22.1(1) presently reads:

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.*

4. Self-explanatory.

5. Section 58 will be amended to conform with other provisions of the Act. Section 58 presently reads:

58. Instruments registered in respect of or affecting the same land have priority the one over the other according to the time of registration and not according to the date of execution.

6. *Section 79 is amended by adding after the words “is required” the words “except that the signature of an engineer is not required on the plan thereof”.*

7. *Section 93, subsection (1) is amended by adding after the words “the land shown on the” the words “notification or”.*

8. *Section 104 is amended by striking out subsection (2).*

9. *Section 136 is struck out and the following section is substituted therefor:*

136. Any person claiming to be interested in any land, mortgage or encumbrance pursuant to

- (a) any will, settlement or trust deed, or
- (b) any instrument of transfer or transmission, or

6. Self-explanatory. Section 79 presently reads:

79. The provisions of section 78 apply mutatis mutandis to every person, firm, company or corporation constructing any gas or oil pipe line or any other transmission line, pipe or conduit, irrigation ditch, water ditch or drain for which a right of way is required.

7. This amendment will correct a drafting error. Section 93(1) presently reads:

93. (1) Upon the filing in the Land Titles Office of a notification or the plans of survey of any land taken for any public work under The Public Works Act or of a certificate of approval in respect of any land taken for any public work under The Expropriation Act, the land shown on the plans of survey or in the certificate of approval, so far as they are not Dominion lands, vest in the Crown in right of Alberta, subject to the right of any person who has acquired any interest in the lands to compensation for his interest.

8. Consequential. Section 104(2) presently reads:

(2) There may be filed in the office of the Registrar any mortgage or other encumbrance created by any person rightfully in possession of land prior to the issue of the grant from the Crown or prior to the issue of the transfer from the Hudson's Bay Company or from any company entitled to a grant of such lands from the Crown or to which letters patent from the Crown have already issued, if there is produced to and left with the Registrar with the mortgage or encumbrance an affidavit made by the mortgagor or encumbrancer in Form 21 in the Schedule, and also in the case of lands mortgaged or encumbered prior to the issue of transfer from the Hudson's Bay Company or other company as aforesaid, a certificate from the land commissioner or other proper officer of the company, that the purchase price of the mortgaged or encumbered lands has been paid, and that the mortgagor or encumbrancer is entitled to a transfer in fee simple therefor from the company, and the Registrar shall on registering the grant, or transfer of lands so mortgaged or encumbered, enter in the register and endorse upon the duplicate certificate of title before issuing it, a memorandum of the mortgage or encumbrance, and when so entered the mortgage or encumbrance shall be as valid as if made subsequent to the issue of the grant or to the issue of the transfer from the Hudson's Bay Company or from any company entitled to a grant of the lands from the Crown or to which letters patent from the Crown for the lands may have issued, as the case may be, and if more than one mortgage or encumbrance is filed they shall be registered in the order of time in which they have been filed in the office.

9. This amendment will recast the section to clarify its meaning. Section 136 presently reads:

136. Any person claiming to be interested under any will, settlement or trust deed, or any instrument of transfer or transmission or under an unregistered instrument, or under an execution where the execution creditor seeks to affect land in which the execution debtor is interested beneficially but the title to which is registered in the name of some other person, or otherwise howsoever in any land, mortgage or encumbrance, may cause to be filed on his behalf with the Registrar a caveat in Form 33 in the Schedule against the registration of any person as transferee or owner of, or of any instrument affecting, the estate or interest, unless the instrument or certificate of title is expressed to be subject to the claim of the caveator.

- (c) an unregistered instrument, or
- (d) an execution where the execution creditor seeks to affect land in which the execution debtor is interested beneficially but the title to which is registered in the name of some other person, or
- (e) any right acquired under any Act of Alberta,

may cause to be filed with the Registrar a caveat on his behalf in Form 33 in the Schedule against the registration of any person as transferee or owner of, or any instrument affecting, the estate or interest, unless the certificate of title or instrument, as the case may be, is expressed to be subject to the claim of the caveator.

10. Section 141 is struck out and the following section is substituted therefor:

141. (1) Where the Registrar accepts a caveat for registration, he shall

- (a) make a memorandum thereof upon the certificate of title for the land to which it relates, and
- (b) forthwith send notice of the caveat and of the interest claimed thereunder by mail addressed to the person against whose title the caveat is registered.

(2) No caveat may be registered which affects land for which no certificate of title has been issued.

11. The Schedule is amended by striking out Form 21.

12. This Act comes into force on the day upon which it is assented to and upon so coming into force shall be deemed to have been in force at all times on and after April 1, 1973 in the South Alberta Land Registration District and at all times on and after January 13, 1975 in the North Alberta Land Registration District.

10. Section 141 presently reads:

141. Upon the receipt of a caveat the Registrar shall enter it in the day book and shall make a memorandum thereof upon the certificate of title of the land affected by the caveat and shall forthwith send a notice of the caveat and of the interest claimed thereunder through the post office or otherwise to the person against whose title caveat has been lodged, but in the case of a caveat before registration of title under this Act the Registrar shall on receipt thereof enter it in a book which shall be kept by him and in which shall be entered all instruments affecting land as to which no title has yet issued.

11. Consequential to the amendments to section 20, subsection (3) and section 104 of the Act.