

1979 BILL 15

First Session, 19th Legislature, 28 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 15

THE ATTORNEY GENERAL STATUTES
AMENDMENT ACT, 1979

THE ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 15

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1979

THE ATTORNEY GENERAL STATUTES AMENDMENT ACT, 1979

(Assented to , 1979)

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

The Administration of Estates Act

1(1) The Administration of Estates Act is amended by this section.

(2) Section 8 is amended by adding the following after subsection (1.1):

*(1.2) A judge may by order dispense with the requirement that a copy of the application and notice be sent to a spouse under subsection (1.1) if he is satisfied that the spouse does not have a right to make a claim under *The Matrimonial Property Act* against the estate of the deceased.*

The Land Titles Act

2(1) The Land Titles Act is amended by this section.

(2) Section 12 is amended by striking out “before some judge or magistrate in the Province”.

(3) Section 75(1) is amended by adding “or on another material or in another ink approved by the Registrar” after “in black India ink”

Explanatory Notes

The Administration of Estates Act

1(1) This section will amend chapter 1 of the Revised Statutes of Alberta 1970.

(2) Section 8(1.1) presently reads:

(1.1) Where an application is made for a grant of probate or administration, the applicant shall send a copy of the application and a notice pertaining to the rights of a spouse under The Matrimonial Property Act to the spouse of the deceased, if the spouse of the deceased is not the sole beneficiary under the will of the deceased or under The Intestate Succession Act.

The Land Titles Act

2(1) This section will amend chapter 198 of the Revised Statutes of Alberta 1970.

(2) Section 12 presently reads:

12. The Inspector of Land Titles Offices and every Registrar, Deputy Registrar and Assistant Deputy Registrar before he enters upon the execution of his office shall take before some judge or magistrate in the Province the official oath prescribed by The Oaths of Office Act.

(3) Gives the Registrar of Titles discretion as to the material or ink used in preparing plans.

(4) Section 78(1)(a) is amended by adding “or on another material or in other inks approved by the Registrar” after “vermillion red”.

(5) Section 82 is amended

(a) in subsection (2) by adding “or another material approved by the Registrar” after “tracing linen”, and

(b) in subsection (4) by adding “or another ink approved by the Registrar” after “black India Ink”.

(6) Section 109(2) is amended by striking out “section 104” and substituting “section 108”.

The Matrimonial Property Act

3(1) *The Matrimonial Property Act* is amended by this section.

(2) Section 5(1)(d)(i) is amended by adding “substantial” after “to transfer”.

(3) Section 19 is amended by adding the following after subsection (4):

(5) An order under this section does not create a subdivision within the meaning of *The Planning Act, 1977*.

(4) Gives the Registrar of Titles discretion as to the material or ink used in preparing plans.

(5) Gives the Registrar of Titles discretion as to the material or ink used in preparing plans.

(6) Changes a cross-reference.

The Matrimonial Property Act

3(1) This section will amend chapter 22 of the Statutes of Alberta, 1978.

(2) Section 5(1) presently reads in part:

5(1) A matrimonial property order may only be made

(d) if the Court is satisfied that the spouses are living separate and apart at the time the application is commenced and the defendant spouse

(i) has transferred or intends to transfer property to a third party who is not a bona fide purchaser for value, or

(3) Section 19 presently reads:

19(1) The Court, on application by a spouse, may by order do any one or more of the following:

(a) direct that a spouse be given exclusive possession of the matrimonial home;

(b) direct that a spouse be evicted from the matrimonial home;

(c) restrain a spouse from entering or attending at or near the matrimonial home.

(2) In addition to making an order under subsection (1) the Court may, by order, give a spouse possession of as much of the property surrounding the matrimonial home as is necessary, in the opinion of the Court, for the use and enjoyment of the matrimonial home.

(3) An order under this section may be made subject to such conditions and for such time as the Court considers necessary.

(4) An order under this section may be varied by the Court on application by a spouse.

(4) *Section 33(1) is repealed and the following is substituted:*

33(1) If proceedings have been commenced under this Act, a spouse who knows or has reason to believe that the proceedings have been commenced shall not

- (a) dispose of or encumber any household goods, or
- (b) except in an emergency, remove from the matrimonial home any household goods that are household appliances or household effects or that form part of the household furnishings of that matrimonial home,

without an order of the Court or the consent of the other spouse.

(5) *Section 37(1) is repealed and the following is substituted:*

37(1) Part 1 does not apply to property that is owned by either or both spouses or that may be acquired by either or both of them, if, in respect of that property, the spouses have entered into a subsisting written agreement with each other that is enforceable under section 38 and that provides for the status, ownership and division of that property.

(6) *Section 38 is amended*

(a) *by repealing subsection (1) and substituting the following:*

38(1) An agreement referred to in section 37 is enforceable if

- (a) each spouse, or
- (b) each person, in the case of persons referred to in section 37(2),

has acknowledged, in writing, apart from the other spouse or person

- (c) that he is aware of the nature and the effect of the agreement,
- (d) that he is aware of the possible future claims to property he may have under this Act and that he intends to give up these claims to the extent necessary to give effect to the agreement, and
- (e) that he is executing the agreement freely and voluntarily without any compulsion on the part of the other spouse or person.

(b) *in subsection (2) by adding “or person” after “other spouse” wherever it occurs.*

(4) Section 33(1) presently reads:

33(1) If proceedings have been commenced under this Act, no person who knows or has reason to believe that the proceedings have been commenced shall

(a) dispose of or encumber any household goods, or

(b) except in an emergency, remove from the matrimonial home any household goods that are household appliances or household effects or that form part of the household furnishings of that matrimonial home,

without an order of the Court or the consent of both spouses.

(5) Section 37(1) presently reads:

37(1) Part 1 does not apply to spouses who have entered into a subsisting agreement in writing with each other that is enforceable under section 38, and that deals with the status, ownership and division of property, including future property, owned by either or both of them.

(6) Section 38 presently reads:

38(1) An agreement is enforceable for the purposes of section 37 if each spouse has acknowledged, in writing, apart from the other spouse

(a) that he is aware of the nature and the effect of the agreement,

(b) that he is aware of the possible future claims to property he may have under this Act and that he intends to give up these claims to the extent necessary to give effect to the agreement, and

(c) that he is executing the agreement freely and voluntarily without any compulsion on the part of the other spouse.

(2) The acknowledgement referred to in subsection (1) shall be made before a lawyer other than the lawyer acting for the other spouse or before whom the acknowledgement is made by the other spouse.

Commencement

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