

1980 BILL 26

Second Session, 19th Legislature, 29 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 26

THE LAND AGENTS LICENSING ACT

MR. M. CLARK

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

THE LAND AGENTS LICENSING ACT

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Bill 26
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THE LAND AGENTS LICENSING ACT

(Assented to , 1980)

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

1 In this Act,

(a) “Court” means the Court of Queen’s Bench;

(b) “interest in land” means an estate or interest in land that

(i) is acquired for the purpose of a right of way,

(ii) is of a kind that may be acquired

(A) by a right of entry order under *The Surface Rights Act*,

(B) by an expropriation as defined in *The Expropriation Act*, or

(C) pursuant to any other Act of Alberta that provides for the expropriation of land,

and

(iii) is acquired by agreement with the owner of it;

(c) “land agent” means

(i) a person who

(A) on behalf of his employer,

(B) as an agent on behalf of another person, or

(C) on his own behalf,

negotiates for or acquires an interest in land, or

Explanatory Notes

1 Definitions.

(ii) a person who for a fee gives or offers advice to an owner or his agent with respect to a negotiation for or acquisition of an interest in land;

(d) “licence” means a licence granted under this Act;

(e) “Minister” means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;

(f) “owner” means a person who has a right to dispose of an interest in land and includes

(i) a person registered in the Land Titles Office as the owner of an estate in fee simple in the surface of land,

(ii) a person who is shown by the records of the Land Titles Office as having a particular estate or interest in the surface of land,

(iii) a person who is in possession or occupation of the surface of land, and

(iv) in the case of Crown land, a person shown on the records of the Department administering the land as having an estate or interest in the surface of the land,

but does not include the Crown;

(g) “prescribed” means prescribed by the regulations;

(h) “Registrar” means the person appointed under section 4 to be Registrar of Land Agents.

2 This Act does not apply to

(a) a member of the Law Society of Alberta who engages in activities referred to in section 1(c), if he engages in them in the course of, and as part of, a solicitor’s practice,

(b) a person who is a member of a municipal council or is employed or engaged by the council and who, for or on behalf of the municipality, negotiates for or acquires an interest in land within the boundaries of the municipality,

(c) a person who is a member of, is employed by or is engaged by

(i) a rural gas co-operative association as defined in *The Rural Gas Act*, or

(ii) an association as defined in *The Rural Electrification Long Term Financing Act*,

2 Exemption from Act.

and who, for or on behalf of the association, negotiates for or acquires an interest in land, or

(d) any other person or class of persons who have been exempted from the application of this Act by regulation.

3(1) Unless he is the holder of a subsisting licence, no person shall

- (a) engage in the activities of a land agent,
- (b) advertise himself or hold himself out as a land agent, or
- (c) act in a manner that creates or induces in the mind of any reasonable person the belief that he is authorized to act as a land agent.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$5000 and in default of payment to imprisonment for a term not exceeding 6 months.

(3) A person who is convicted of a second or subsequent offence pursuant to subsection (2) may, in addition to or instead of any other penalties, be sentenced to imprisonment for a term not exceeding 12 months.

4 In accordance with *The Public Service Act* there may be appointed a Registrar of Land Agents and any other staff that is necessary for the administration of this Act.

5(1) An application for a licence shall be made to the Registrar in a form acceptable to him and shall be accompanied by the prescribed fee.

(2) The Registrar may make any inquiry or investigation that is necessary in relation to the qualifications and suitability of an applicant for a licence and

- (a) may issue the licence applied for,
- (b) may refuse to issue the licence applied for if, in his opinion, it is in the public interest to do so, and
- (c) shall refuse to issue the licence applied for if the applicant does not meet the prescribed qualifications.

6 The Registrar may cancel or suspend a licence if

3 Land agent must be licensed.

4 Appointment of Registrar and staff.

5 Licensing procedure.

6 Registrar may cancel or suspend licence.

(a) the licensed person contravenes or fails to comply with this Act or the regulations, or

(b) it is in the public interest to do so.

7(1) A person

(a) who has been refused a licence under section 5, or

(b) whose licence has been cancelled or suspended under section 6,

may appeal the refusal, cancellation or suspension by serving the Minister with a notice of appeal within 30 days of being notified of the refusal, cancellation or suspension.

(2) The Minister shall, within 30 days of being served with a notice of appeal under subsection (1), appoint an appeal board to hear the appeal.

(3) The Minister shall set the time within which the appeal board is to hear an appeal and render a decision and may extend that time.

(4) An appeal board that hears an appeal under this section may, by order,

(a) confirm the refusal, cancellation or suspension,

(b) direct that a licence be issued,

(c) reinstate the cancelled licence, or

(d) remove or vary the suspension.

(5) An appeal board appointed under this section shall consist of the following members:

(a) a person to be designated as chairman of the appeal board by the Minister, but that person shall not be the Registrar or his representative or a person licensed under this Act, and

(b) not less than 2 and not more than 4 other persons who are persons licensed under this Act.

(6) The Minister may pay reasonable fees, living and travelling expenses to the members of an appeal board.

8 The Registrar, or a person whose appeal is heard by an appeal board, may appeal the decision of the appeal board by filing an originating notice with the Court within 30 days of

7 Appeal respecting cancellation or suspension of licence.

8 Appeal to Court.

being notified of the decision, and the Court may make any order that an appeal board may make under section 7(4).

9(1) A person

(a) whose licence has been cancelled or suspended under section 6, and

(b) who has in respect of that cancellation or suspension commenced an appeal under section 7,

may by filing an originating notice with the Court apply for an order reinstating the cancelled licence or removing the suspension, as the case may be, pending the determination of the appeal.

(2) The Court shall hear an application made under this section not less than 2 days after the originating notice has been served upon the Registrar.

(3) Upon hearing an application made under this section, the Court may, subject to such conditions as it considers proper, if any, reinstate the cancelled licence or remove the suspension, as the case may be, pending the determination of the appeal under section 7.

10 A licence expires 2 years after its date of issue unless it is cancelled or suspended, and may be renewed for additional 2 year periods upon payment of the prescribed renewal fee.

11 If a licence is cancelled or suspended the land agent shall forthwith return the licence to the Registrar.

12 A land agent shall immediately notify the Registrar in writing of any change in his business address or his employer.

13(1) The Registrar may, if he receives a complaint in respect of any matter that pertains to this Act or the regulations or has reason to believe that a contravention of this Act or the regulations has taken place or is taking place, investigate the complaint or alleged contravention and, for the purpose of the investigation, may inquire into and examine

(a) the business affairs of the person in respect of whom the investigation is being made, and

(b) books, papers, documents, correspondence, communications, negotiations, transactions and investigations by, on behalf of, in relation to or connected with the person in respect of whom the investigation is being made,

9 Reinstatement pending appeal.

10 Term of licence.

11 Return of licence.

12 Change of employer or address.

13 Registrar's power to investigate.

as they relate to the complaint or alleged contravention.

(2) A person in respect of whom an investigation is made shall make prompt and explicit answers to inquiries made under subsection (1).

14(1) The Registrar may at reasonable times demand the production of and inspect all or any of the things mentioned in section 13(1)(b).

(2) A person who has the custody, possession or control of any of the things referred to in subsection (1) shall produce and permit the inspection of them by the Registrar.

(3) If a person to whom a demand under subsection (1) is made refuses or fails to comply with the demand, the Registrar may apply to the Court by originating notice and the Court may make any order it considers necessary to enforce compliance with the demand.

(4) A copy of the originating notice, and each affidavit in support, shall be served not less than 3 days before the date named in the notice for hearing the application.

(5) The Registrar acting under this section may take possession of the things mentioned in section 13(1)(b) for the purpose of making copies of them and he shall, within 48 hours after taking possession of them, return them to the person entitled to them.

15 No person shall hinder, obstruct, molest or interfere with the Registrar, or a person acting on his behalf, in the performance of a function or duty under this Act.

16 For the purposes of conducting an investigation under this Act, the Registrar has all the powers, privileges and immunities of a commissioner appointed under *The Public Inquiries Act*.

17(1) If a land agent enters into negotiations to acquire an interest in land, he shall leave with the owner of the interest or his agent a completed copy of the proposed agreement to acquire the interest, with the land agent's name and business address endorsed on it or attached to it and, at that time, inform the owner or his agent of the provisions of this section.

(2) No land agent shall resume negotiations with, or accept a signed agreement from, the owner or his agent in relation to the interest in land until at least 48 hours after subsection (1) has been complied with.

14 Production and seizure of documents.

15 Obstruction.

16 General powers of Registrar.

17 Control of negotiations.

(3) No part of a holiday shall be included in the computation of the 48 hour period referred to in subsection (2).

(4) A land agent need only comply with subsections (1) and (2) once during the course of negotiations on the same transaction, notwithstanding that the terms and conditions of the proposed agreement may subsequently be varied.

(5) A land agent who accepts a signature from the owner or his agent on a document relating to the interest in land shall, at that time, leave with the owner or his agent a true copy of the document.

(6) An owner or his agent may waive the application of this section, except subsection (5), by signing a waiver in the prescribed form.

(7) A waiver of the application of subsection (2) shall be sworn or affirmed before a commissioner for oaths.

18 Nothing in this Act restricts, limits or derogates from any remedy at common law or under any statute.

19 A person who contravenes a provision of this Act or the regulations for which a penalty is not otherwise provided is guilty of an offence and liable on summary conviction to a fine of not more than \$5000.

20 A prosecution under this Act may be commenced within 2 years from the date on which the offence is alleged to have been committed, but not thereafter.

21(1) A certificate purporting to be signed by the Registrar and stating that on a specified date or during a specified period of time

(a) the person named in the certificate was or was not the holder of a subsisting licence, or

(b) the licence of the person named in the certificate was suspended or cancelled,

shall be admitted in evidence as prima facie proof of the facts stated in the certificate, without proof of the signature or appointment of the Registrar.

22 Any notice or other document required to be served under this Act or the regulations may be served by

18 Remedies.

19 General penalty.

20 Commencement of prosecution.

21 Certificate of Registrar as proof.

22 Service of documents.

(a) personal service, or

(b) sending it by double registered mail or certified mail to the person for whom it is intended at his last known address.

23(1) There is hereby established a committee called the Land Agent Advisory Committee consisting of the following members:

(a) the Registrar;

(b) at least 8 and not more than 12 members appointed by the Minister, of whom at least 4 shall be licensed land agents and at least 4 shall be owners.

(2) The chairman of the committee shall be a member designated by the Minister.

(3) In the absence of the chairman at a meeting of the committee the members present shall appoint a member to act as chairman at that meeting.

(4) The Registrar shall act as secretary to the committee.

(5) The term of a member, except the Registrar, shall not exceed 3 years and no member shall be appointed for more than 2 consecutive terms.

(6) The Minister may fill a vacancy in the committee by appointing a person as a member to fill the unexpired term of office of the former member, but no vacancy on the committee impairs the right of the remaining members to act until the vacancy is filled.

(7) The committee may make rules governing the calling and conduct of its meetings and any other matters pertaining to its business and affairs.

(8) A majority of the members then holding office constitutes a quorum at a meeting of the committee.

(9) The members of the committee, except the Registrar, shall be paid remuneration at the rate prescribed by the Minister and may accept travelling and living expenses authorized by the Minister.

24 The Land Agent Advisory Committee shall, at the request of the Minister or the Registrar, make recommendations respecting qualifications of applicants for licences, standards of conduct of land agents and any other matter requested by the Minister or the Registrar.

23 Establishes Land Agent Advisory Committee.

24 Duties of Land Agent Advisory Committee.

25 The Lieutenant Governor in Council may make regulations:

- (a) respecting the qualifications of applicants for licences;
- (b) prescribing the fees to be paid on applications for licences, replacement licences and renewal licences;
- (c) prescribing forms to be used under this Act;
- (d) respecting standards of conduct for land agents;
- (e) exempting persons or classes of persons from the application of this Act.

26(1) A licence issued under *The Landmen Licensing Act* shall be deemed to have been issued under this Act and, unless it has expired or is suspended or cancelled, is valid,

- (a) in the case of a licence that expires on a date that is not more than 2 years after the date this Act comes into force, until its expiry date, or
- (b) in the case of a licence that expires on a date that is more than 2 years after the date this Act comes into force, until the anniversary date of its issue in the 2nd year after the date this Act comes into force.

(2) In subsection (1), “year” means a 12 month period.

27 *The Landmen Licensing Act* applies to all complaints filed with the registrar under that Act before the coming into force of this Act.

28 Except for the purposes of section 27, *The Landmen Licensing Act* is repealed.

29 *The Real Estate Agents’ Licensing Act* is amended by adding the following after section 3:

3.1 A person who is licensed under *The Land Agents Licensing Act* is not required to be licensed under this Act with respect to his activities as a land agent.

30 *The Rural Gas Act* is amended by repealing section 39(5).

25 Lieutenant Governor in Council may make regulations.

26 Transitional licensing.

27 Transitional.

28 Repeals chapter 202 of the Revised Statutes of Alberta 1970.

29 Consequential.

30 Consequential. Section 39 of The Rural Gas Act presently reads in part:

(5) The Landmen Licensing Act does not apply with respect to an easement or expropriation order in favour of a member-owned co-operative association.

31 This Act comes into force on a date or dates to be fixed by Proclamation.