

1981 BILL 90

Third Session, 19th Legislature, 30 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 90

LAND TITLES AMENDMENT ACT, 1981

MR. KNAAK

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 90
Mr. Knaak

BILL 90

1981

LAND TITLES AMENDMENT ACT, 1981

(Assented to _____ *, 1981)*

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

1 The Land Titles Act is amended by this Act.

2 Section 30 is amended:

(a) in subsection (1) by repealing clause (h) and substituting the following:

(h) registered under the Bank Act (Canada) or the Railway Act (Canada).

(b) by adding the following after subsection (4):

(5) Notwithstanding subsections (1) to (4), the Registrar may register a lien under the Builders' Lien Act by an extra-provincial corporation that is not registered in Alberta.

Explanatory Notes

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

2 Section 30 presently reads in part:

30(1) The Registrar may reject any instrument or caveat 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.*

(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

3 *Section 48(1) is amended by striking out “within the Province”.*

4 *Section 52 is amended by adding the following after subsection (5):*

(6) A condition or covenant may be discharged by the Registrar on the production to him of a release of the condition or covenant executed by the registered owners of all parcels of land benefiting from the condition or covenant.

5 *Section 53 is amended*

(a) *in subsection (2) by striking out “, upon payment of the fee prescribed,”;*

(b) *in subsection (3) by striking out “upon payment of a fee of \$1 for each certificate of title required to be so endorsed”;*

(c) *by adding the following after subsection (3):*

(4) The Registrar may discharge an agreement for the unit operation of a mineral

(a) if an operator under the agreement certifies that the agreement for the unit operation has terminated,

(b) if all the registered owners of the mineral sign a discharge of the agreement for the unit operation, or

(c) with respect to part of the land to which the agreement relates, if an operator under the agreement and the registered owner of that part certify that the agreement no longer affects that part.

6 *Section 59 is repealed and the following is substituted:*

59 The Registrar may register in the Land Titles Office of a registration district a certified copy of any instrument that has been registered in the Land Titles Office of any other land registration district.

be sufficient to satisfy the Registrar in relation to the submission for registration or filing of the instrument or caveat to which the certificate is attached and of which it forms part.

3 Section 48(1) presently reads:

48(1) Every owner or mortgagee of any land for which a certificate of title has been granted shall deliver to the Registrar a memorandum in writing of some post office address within the Province to which it shall be sufficient to mail all notices that under this Act are required to be sent to an owner or mortgagee.

4 Discharge of a restrictive covenant.

5 Section 53 presently reads:

53(1) In this section "unit operation" means an operation where, pursuant to an agreement, interests in a mineral are merged, pooled, consolidated or integrated as a single unit, without regard to the boundaries of the separate parcels, for the purposes of

(a) the development or production of the mineral within, upon or under the parcels, or any specified stratum or strata or portion thereof within the parcels, or

(b) the implementing of a program for the conservation of the mineral, or the co-ordinated management of interests in the mineral.

(2) Where a person enters into an agreement for the unit operation of a mineral, he may file, upon payment of the fee prescribed, a copy of the agreement with the Registrar of the district in which is situated any land to which the agreement relates.

(3) The Registrar shall endorse a memorandum of the agreement on the certificate of title of any land to which the agreement relates upon payment of a fee of \$1 for each certificate of title required to be so endorsed.

6 Section 59 presently reads:

59 In case any instrument is registered in the Land Titles Office of one registration district a judge of the Court of Queen's Bench may order that a certified copy of the instrument be filed in the Land Titles Office of any other registration district, and the filing of the copy together

7 *Section 68(3)(c) is repealed.*

8 *Section 70 is amended by renumbering it as section 70(1) and by adding the following after subsection (1):*

(2) An easement or incorporeal right may be discharged by the Registrar on the production to him of a release of the easement or incorporeal right executed by the registered owner of the dominant tenement.

9 *Section 82 is amended*

(a) *in subsection (1) by striking out “An owner” and substituting “Subject to section 82.1, an owner”;*

(b) *by repealing subsection (6) and substituting the following:*

(6) Except for

(a) a plan of subdivision or other instrument under section 78 of the *Planning Act, 1977*,

(b) a plan of subdivision prepared pursuant to a replotting scheme under the *Planning Act, 1977*,

(c) a plan of subdivision signed by the Minister of Municipal Affairs pursuant to section 143 of the *Planning Act, 1977* relating to an Innovative Residential Development Area, or

(d) a plan of subdivision, other than a condominium plan, in which there is no dedication of land for roads, reserves or other public purposes

the original plan shall be signed by each person shown on the certificate or certificates of title for the land in the plan of subdivision as having a registered interest or a claimed interest by way of caveat in that land other than an interest under a writ of execution or a mortgage of a lease or easement, and certified in the prescribed form by an Alberta land surveyor.

with the order has the same effect as the registration of the original instrument.

7 Section 68(3) presently reads in part:

(3) A transfer made pursuant to subsection (1) or an instrument made pursuant to subsection (2) shall

(c) contain a memorandum of each lease, mortgage or other encumbrance to which the land is subject.

8 Discharge of easements. 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 existing certificates of title of the dominant and servient tenements respectively, and upon the duplicates thereof.

9 Section 82(1) and (6) presently read:

82(1) An owner subdividing land for which a certificate of title has been granted, for the purpose of selling or conveying it in allotments shall deposit with the Registrar a plan of survey of the land, together with two copies thereof.

(6) The original plan shall be signed by the owner or his agent, or where the owner is a corporation in the manner specified in section 158, and certified in black India ink in Form 14 in the Schedule by an Alberta land surveyor, and the signature of the owner shall be witnessed and attested in the manner provided by this Act for the attestation of instruments to be registered under this Act.

(6.1) A plan of subdivision, other than a condominium plan, in which there is no dedication of land for roads, reserves or other public purposes need only be signed by the registered owner of the estate being subdivided, and certified in the prescribed form by an Alberta land surveyor.

(6.2) A person whose signature is required on a plan of subdivision may, instead of signing the plan, sign a consent in the prescribed form.

(6.3) Where a required signature cannot be obtained or is being unreasonably withheld, an application by originating notice of motion may be made to the court for an order that the signature is not required on the plan of subdivision.

10 *The following is added after section 82:*

82.1(1) The Registrar may

(a) prepare a descriptive plan for a parcel of land described in a certificate of title by a metes and bounds description, or

(b) instead of requiring a plan of survey under section 75, require an owner to have a descriptive plan prepared by an Alberta land surveyor.

(2) Where a subdivision is to be effected and the Registrar is of the opinion that the circumstances do not justify the preparation of a plan of survey, the Registrar may require the owner of the land being subdivided to have a descriptive plan prepared by an Alberta land surveyor.

(3) A descriptive plan shall

(a) be prepared only with the prior approval of the Registrar,

(b) be described in the plan as a descriptive plan,

(c) be drafted in a manner satisfactory to the Registrar on material and in ink that is approved by the Registrar,

(d) contain those details that in the opinion of the Registrar will enable the boundaries of the parcels to be ascertained from the plan,

(e) if the plan is prepared by an Alberta land surveyor, be signed by the Alberta land surveyor preparing the plan, and

(f) if the plan effects a subdivision, be signed by the registered owner of the estate being subdivided.

(4) A metes and bounds description in a certificate of title with respect to which a descriptive plan is prepared under this section

10 Descriptive plans.

shall be replaced with a reference to the descriptive plan and the use of the metes and bounds description in any registered instrument or caveat shall be deemed to be a reference to the descriptive plan.

11 Section 84 is repealed and the following is substituted:

84 No instrument or caveat shall be registered in contravention of the *Planning Act, 1977* or the regulations under that Act, but a registration made in contravention of this section is not invalid as against a person who in good faith has acquired rights for value in the subdivided land.

12 Section 85 is repealed.

13 The following is added after section 91:

91.1(1) Where a parcel of land has a water boundary and the water boundary has changed, the registered owner of the parcel may apply to the Registrar to have the description of the parcel amended to include accreted land.

(2) An application under subsection (1) shall be accompanied by

(a) a certificate from the Minister charged with the administration of the *Public Lands Act* or a person authorized by him certifying that the Crown does not claim ownership of the accreted land,

(b) a plan of survey or other evidence satisfactory to the Registrar showing the present boundary of the accreted land, and

(c) the consent of the registered owners of other parcels that may be affected by the amendment of the description, unless

11 Section 84 presently reads:

84 No plan of subdivision of land shall be registered unless the subdivision complies in all respects with The Planning Act, 1977 and the regulations thereunder, but a registration made in contravention of this section does not invalidate a subdivision effected by that registration.

12 Consequential to section 10 of this Bill. Section 85 presently reads:

85 Except for

(a) a plan of subdivision or other instrument under section 78 of The Planning Act, 1977, or

(b) a plan of subdivision prepared pursuant to a replotting scheme under The Planning Act, 1977, or

(c) a plan of subdivision signed by the Minister of Municipal Affairs pursuant to section 143 of The Planning Act, 1977 relating to an Innovative Residential Development Area,

no plan of subdivision of any encumbered land shall be registered unless it is approved and signed by the one or more encumbrancees.

13 Registration of title to accretions.

the Registrar is of the opinion that those owners will not be prejudiced.

14 Section 93(1) is repealed and the following is substituted:

93(1) On 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 the *Municipal Government Act* or of a certificate of approval in respect of any land taken for any work under the *Expropriation Act*, the lands shown on the notification or 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, the municipality or other authority, as the case may be, subject to the right of any person who has acquired any interest in the lands to compensation for his interest.

15 Section 94 is repealed and the following is substituted:

94 When the notification, plan of survey or certificate of approval referred to in section 93 is forwarded to the Registrar of the proper Land Titles Office, the Registrar shall

- (a) file the notification, plan or certificate,
- (b) cancel the area taken, as shown on the plan or described in the notification or certificate of approval, from the original certificates of title in his office,
- (c) issue in fee simple free from all encumbrances a certificate of title for the area taken to the Crown in right of Alberta, the municipality or other authority, as the case may be, except in the case of roads and public highways, in which case certificates of title need not be issued, and
- (d) call in for amendment or cancellation the duplicate certificates of title for all the affected land.

16 Section 109(2) is repealed.

14 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 lands shown on the notification or 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.

15 Section 94 presently reads:

94(1) Whenever the plan of survey mentioned in section 93 is forwarded to the Registrar of the proper Land Titles Office, the Registrar shall call in the duplicate certificates of title for all patented lands affected thereby in the manner set forth in section 185.

(2) If the registered owner refuses or neglects to return the duplicate certificate of title within 30 days after the demand has been mailed to him, the Registrar shall

(a) proceed to file the plan,

(b) cancel the area required for the public work as shown on the plan from the original certificates in his office and from the duplicates that may have been or may otherwise be returned to him, and

(c) issue, in fee simple free from all encumbrances, a certificate of title for the area required for the public work to Her Majesty in right of Alberta and forward the duplicate thereof to the Minister of Housing and Public Works, except in the case of roads and public highways shown on a registered plan of survey in which case certificates of title need not be issued.

16 Consequential to section 27 of this Bill. Section 109(2) presently reads:

(2) The Registrar shall not register an order vesting the title of land in a mortgagee or encumbrancee and made in proceedings taken pursuant to section 108 unless the order is consented to by the mortgagor or his solicitor or is accompanied by a certificate of the Clerk of the Court of the judicial district in which the order was issued to the effect

(a) that no defence or demand of notice of proceedings has been filed in the said proceedings on behalf of any defendant, or

17 Section 134 is repealed and the following is substituted:

134(1) When a woman who is the owner of an interest in land marries and adopts the surname of her husband, the Registrar may make a memorandum of the change of name on the appropriate certificate of title on production of an affidavit by the woman verifying the date of the marriage, the place where the marriage was solemnized and her husband's full name accompanied by the duplicate certificate of title, if required, and by an official certificate of the marriage or any other evidence that the Registrar may require to substantiate the particulars of the marriage.

(2) If a married or formerly married woman is the owner of an interest in land and uses, instead of the surname of her husband or former husband, her maiden name or a hyphenated surname that incorporates her maiden surname and the surname of her husband or former husband, the Registrar may make a memorandum of the change of name on the appropriate certificate of title on production of an affidavit by the woman verifying the surname that she uses and accompanied by the duplicate certificate of title, if required, and an official certificate of the marriage or any other evidence that the Registrar may require to substantiate identity.

18 Section 136 is amended by striking out "or instrument, as the case may be,".

(b) that the time for appeal from the order has expired and that no notice of appeal has been filed with him, or

(c) that a notice of appeal from the order has been duly filed and that the appeal has been finally disposed of, and that the order has not been set aside by the court on appeal.

17 Section 134 presently reads:

134 Upon production to the Registrar of a duplicate certificate of title issued to a female, accompanied with a statement in writing of her marriage and giving the date of the marriage, the place where solemnized, and her husband's full name with his residence and occupation, verified by oath or affirmation and the production of a certificate of the marriage by the person who solemnized it, and such further evidence as the Registrar may require, or upon production to the Registrar of such evidence as would be sufficient to establish the marriage in any court in the Province and on an application to the Registrar to grant a new certificate of title, he shall file the documents produced and shall make a memorandum of each of the facts established, and shall thereupon cancel the existing certificate of title and the duplicate thereof and grant a new certificate of title to the applicant owner in her newly acquired surname, in which her husband's full name, residence and occupation shall be given, and issue to her a duplicate certificate.

18 Section 136 presently reads:

136 Any person claiming to be interested in any land for which a certificate of title has been issued or in any mortgage or encumbrance relating to that land

(a) pursuant to

(i) any will, settlement or trust deed, or

(ii) any instrument of transfer or transmission, or

(iii) any unregistered instrument, or

(iv) 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

(b) by virtue of the provisions of any Act of Alberta under which

19 Section 137 is amended by striking out “within the Province”.

20 Section 139 is amended by striking out “setting forth in full the new address for service upon the caveat filed with the Registrar” and substituting “on the certificate of title affected by the caveat”.

21 Section 140 is repealed and the following is substituted:

140(1) If in any caveat presented for registration a caveator claims to be interested under an unregistered mortgage or an unregistered encumbrance other than an encumbrance securing an annuity or rent charge, he shall state in the caveat the principal amount secured by the mortgage or the sum secured by the encumbrance.

that person acquired any right with respect to that land, mortgage or encumbrance, or

(c) by virtue of

(i) having acquired through the owner or any prior owner thereof, otherwise than under clause (a) or (b), an interest in that land, mortgage or encumbrance after the first certificate of title was issued for that land, or

(ii) being the owner or previous owner of an interest in that land, otherwise than under clause (a) or (b), where that interest arose after the first certificate of title was issued for that land, or

(iii) being the owner or a previous owner of the mortgage or encumbrance, otherwise than under clause (a) or (b),

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.

19 Section 137 presently reads:

137 Every caveat filed with the Registrar shall state the name and addition of the person by whom or on whose behalf it is filed and, except in the case of a caveat filed by the Registrar as hereinafter provided, shall be signed by the caveator, his attorney or agent and shall state some address or place within the Province at which notices and proceedings relating to the caveat or the subject matter thereof may be served and the nature of the interest claimed and the grounds upon which the claim is founded, and shall be supported by an affidavit that in the belief of the deponent the person by whom or on whose behalf the caveat is filed has a good valid claim in respect of the land, mortgage or encumbrance intended to be affected by the same, and that the caveat is not filed for the purpose of delaying or embarrassing the applicant, or owner, or any person claiming through him, and the affidavit or declaration may be in Form 34 in the Schedule.

20 Section 139 presently reads:

139 Upon receipt of a notice of change of address for service, in Form 35 in the Schedule or to the like effect, and his proper fee, the Registrar shall enter the notice in the day book and shall make a memorandum thereof setting forth in full the new address for service upon the caveat filed with the Registrar.

21 Section 140 presently reads:

140(1) If in any caveat presented for registration a caveator claims to be interested under an unregistered mortgage, he shall either attach to the caveat a copy of the mortgage or state in the caveat the amount for which the mortgage was given.

(2) The fees payable for registration of the caveat shall be the same as if the mortgage or encumbrance under which the caveator claims to be interested were being registered.

22 *The following is added after section 141:*

141.1(1) A caveat may be transferred by a caveator, or by his attorney or agent where the caveat is signed by the attorney or agent, and on registration of a transfer of the caveat the transferee has the same priority as if he were the original caveator.

(2) On registration of a transfer of caveat the transferee becomes entitled to all rights granted by this Act to the caveator and subject to all liabilities imposed by this Act on the caveator.

(3) A transfer of caveat shall specify an address at which notices and proceedings relating to the caveat or the subject matter of the caveat may be served.

23 *Section 142 is repealed.*

24 *Section 143 is amended by striking out “at any time, and the Registrar shall forthwith give notice in writing of the withdrawal by mail or otherwise to the caveatee”.*

25 *The following is added after section 156:*

156.1 The Registrar shall cancel the registration of a certificate of lis pendens on receiving

(a) a certificate under seal of the clerk of the court stating that proceedings for which the certificate of lis pendens was granted are discontinued, or

(b) a withdrawal of the certificate of lis pendens signed by the person on whose behalf the certificate was registered or his solicitor.

26 *Section 158 is amended by adding the following after subsection (1):*

(2) The fees payable for registration of the caveat and for the assurance fund shall be the same as if the mortgage under which the caveator claims to be interested were being registered.

22 Transfer of caveats.

23 Section 142 presently reads:

142 So long as any caveat remains in force the Registrar shall not register an instrument purporting to affect the land, mortgage or encumbrance in respect of which the caveat is lodged, unless the instrument is expressed to be subject to the claim of the caveator.

24 Section 143 presently reads:

143 The caveator or, in case the caveat is signed by his attorney or agent, the attorney or agent may by notice in writing to the Registrar withdraw his caveat at any time, and the Registrar shall forthwith give notice in writing of the withdrawal by mail or otherwise to the caveatee.

25 Cancellation of certificate of lis pendens.

26 Section 158(1) presently reads:

(1.1) Subsection (1) does not apply to instruments executed by a Minister of the Crown or by a person authorized by him to execute the instruments.

27 *The following is added after section 188:*

188.1(1) The Registrar shall not register a judgment, order or certificate, other than an injunction, made in any proceedings of a court unless the judgment, order or certificate

(a) is consented to by all the parties to the proceedings or their solicitors,

(b) was granted *ex parte* and does not require service to be effected on any person,

(c) is accompanied by a written undertaking from those persons having a right to appeal from the judgment, order or certificate, or their solicitors, that no appeal from the judgment, order or certificate will be commenced,

(d) is accompanied by a certificate of the clerk of the court that issued the judgment, order or certificate to the effect

(i) that no defence or demand of notice of proceedings has been filed in the proceedings on behalf of any defendant, or

(ii) that the time for appeal from the judgment, order or certificate has expired and that no notice of appeal has been filed,

or

(e) is accompanied by a certificate of a solicitor to the effect

(i) that an appeal to the Court of Appeal has been finally disposed of or discontinued, that the time for an appeal to the Supreme Court of Canada has expired and that no notice of appeal has been filed, or

(ii) that the judgment, order or certificate has been appealed to the Supreme Court of Canada and that the appeal has been finally disposed of or discontinued.

(2) If a judgment, order or certificate referred to in subsection (1) has been appealed to the Court of Appeal or to the Supreme

158(1) Other than notifications referred to in section 31, instruments under the seal of any corporation, caveats, orders of a court or judge, executions, or certificates of any judicial proceedings, attested as such, every instrument executed within the limits of the Province and requiring to be registered under this Act, shall be witnessed by one person, who shall sign his name to the instrument as a witness and who shall appear before the Inspector of Land Titles Offices or the Registrar or Deputy Registrar of the registration district in which the land is situated, or before a judge, magistrate, notary public, commissioner for taking affidavits, or a justice of the peace in or for the Province, and make an affidavit in Form 38 in the Schedule.

27 Registration of judgment, order or certificate.

Court of Canada, a copy of the final judgment shall accompany the solicitor's certificate referred to in clause (e) of that subsection.

28 *Section 197 is repealed and the following is substituted:*

197 On production to the Registrar of satisfactory proof, by statutory declaration by the person to whom a duplicate certificate has been issued or by someone having knowledge of the facts, of the accidental loss or destruction of the duplicate certificate issued, the Registrar may issue a new duplicate certificate in place of the one lost or destroyed.

29 *Section 213(2) is amended by striking out "Where the person filing such a notice is a body corporate, the notice may be general, and in all other cases the" and substituting "The".*

30 *The Partition and Sale Act is amended by repealing section 7.*

31 *Section 2(b) of this Bill comes into force on Proclamation.*

In accordance with section 4(1) of The Interpretation Act, 1980, this Bill, except section 2(b), comes into force on the date it receives Royal Assent.

28 Section 197 presently reads:

197(1) Upon production to the Registrar of satisfactory proof by statutory declaration by the person to whom a duplicate certificate has been issued or by someone having knowledge of the facts, of the accidental loss or destruction of the duplicate certificate issued, the Registrar, having published a notice of his intention to do so, in the newspaper published nearest the land described in the register, or if more newspapers than one are published in the same locality then in one of such newspapers, and in a conspicuous place in the Land Titles Office for four weeks, and having entered in the register the facts as proven, may issue a fresh duplicate certificate in lieu of the one lost or destroyed, noting upon it why it is so issued.

(2) The publication of the notice in a newspaper as above provided, or of any notice, may be dispensed with if the Registrar is satisfied as to the loss or destruction of the duplicate certificate issued and that notice of the issue of another duplicate certificate in lieu of the lost or destroyed certificate in a newspaper or otherwise is unnecessary.

29 Section 213 presently reads in part:

(2) Where the person filing such a notice is a body corporate, the notice may be general, and in all other cases the notice shall contain a description of the land in which the person claims to be interested, and has effect only as to the lands mentioned therein.

30 Consequential amendment to chapter 59 of the Statutes of Alberta, 1979.