

1983 BILL 55

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First Session, 20th Legislature, 32 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 55

**REAL PROPERTY STATUTES  
AMENDMENT ACT, 1983**

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THE ATTORNEY GENERAL

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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## BILL 55

1983

### REAL PROPERTY STATUTES AMENDMENT ACT, 1983

(Assented to \_\_\_\_\_, 1983)

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

#### Builders' Lien Act

*1(1) The Builders' Lien Act is amended by this section.*

*(2) Section 25 is amended by adding the following after subsection (2):*

(2.1) A statement of lien shall be signed by the lienholder or his agent.

*(3) The following is added after section 27:*

**27.1(1)** On an application to the court by an originating notice by a lien claimant whose lien has been invalidated by an order or judgment for failure to comply with section 151(1) or 152(1) of the *Land Titles Act*, the court may order the reinstatement of the lien or make any other order that is just in the circumstances subject to the order not prejudicing

(a) any rights acquired in good faith for valuable consideration subsequent to the discharge of the lien at the land titles office as a result of the order or judgment invalidating the lien, or

(b) any person who has acted in reliance on

(i) the order or judgment invalidating the lien, or

(ii) the discharge of the lien at the land titles office as a result of the order or judgment invalidating the lien.

(2) In a proceeding under this section the court may extend any time limits provided for under this Act as the court considers proper in the circumstances.

## **Explanatory Notes**

### **Builders' Lien Act**

**1(1)** This section will amend chapter B-12 of the Revised Statutes of Alberta 1980.

**(2)** Statement of lien to be signed.

**(3)** Reinstatement of lien.

(3) The originating notice shall be served on all persons who by the records of the land titles office appear to have an interest in the land in question and on any other persons that the court may direct.

(4) All persons, including lienholders, served with an originating notice are parties to the proceeding.

(5) The clerk of the court in which a proceeding is begun under this section may grant a certificate of lis pendens to a lien claimant

(a) who is a party to the proceeding, and

(b) whose lien was invalidated for failure to comply with section 151(1) or 152(1) of the *Land Titles Act*.

(6) A lien claimant who is granted a certificate of lis pendens under subsection (5) may cause the certificate of lis pendens to be registered in the appropriate land titles office.

(7) On receiving

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

(b) a withdrawal of a certificate of lis pendens signed by the person on whose behalf the certificate was registered,

the Registrar shall cancel registration of the certificate of lis pendens.

(8) No order or judgment shall be made or granted in any action, including any action commenced before the coming into force of this section, invalidating a lien for the failure of the statement of lien to comply with section 151(1) or 152(1) of the *Land Titles Act*.

#### **Land Titles Act**

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

*(2) Section 151 is amended*

*(a) in subsection (1) by striking out "Other than notification referred to in section 32, 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" and substituting "Subject to section 152.1, every";*

*(b) by repealing subsections (1.1) and (2).*

## Land Titles Act

2(1) This section will amend chapter L-5 of the Revised Statutes of Alberta 1980.

(2) Section 151 presently reads:

*151(1) Other than notification referred to in section 32, 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 Alberta 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 or Assistant 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, provincial judge, notary public, commissioner for taking affidavits, or a justice of the peace in or for Alberta, and make an affidavit in the prescribed form.*

(3) *Section 152 is amended*

(a) *in subsection (1) by striking out “Other than grants from the Crown, orders in council, notification referred to in section 32, instruments under the seal of a corporation or caveats, every” and substituting “Subject to section 152.1, every”;*

(b) *by repealing subsection (2).*

(4) *The following is added after section 152:*

**152.1** Sections 151 and 152 do not apply to the following:

- (a) a grant from the Crown;
- (b) an order in council;
- (c) a regulation filed under the *Regulations Act*;
- (d) a notification referred to in section 32;
- (e) an instrument under the seal of a corporation;
- (f) a caveat;
- (g) an order of a court or judge;
- (h) an execution;
- (i) a certificate of a judicial proceeding attested as such;
- (j) an instrument executed by a Minister of the Crown or by a person authorized by him to execute the instrument;
- (k) an instrument, including any instrument executed before the coming into force of this section, that is provided for under another Act, its predecessor or a regulation and that does not under that Act or regulation require a witness to the instrument.

**152.2** Failure to comply with section 151 or 152 or an attestation requirement under another Act, its predecessor or a regulation does not, for that reason only, affect the validity of any

*(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.*

*(2) Any document executed by a corporation, notwithstanding anything to the contrary in the Act, statute, charter or memorandum and articles of association incorporating the corporation, shall for the purposes of this Act be deemed to be sufficiently executed if it is sealed with the corporate seal of the corporation and countersigned by at least one officer of the corporation.*

(3) Section 152 presently reads in part:

*152(1) Other than grants from the Crown, orders in council, notifications referred to in section 32, instruments under the seal of a corporation or caveats, every instrument executed outside the limits of Alberta and required 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 one of the following persons and make an affidavit in the prescribed form:*

*(a) .....*

*(2) On being satisfied of the due execution of an instrument, the court may, whether the instrument has been executed inside or outside the limits of Alberta, authorize its registration, notwithstanding that the proof of the execution may be defective under this section or section 151.*

(4) Section 152.1 provides an exception to section 151 and 152 and also replaces the present section 151(1.1). Section 152.2 provides that failure to comply with attestation requirements will not necessarily invalidate a registered instrument. Sections 152.3 and 152.4 replace the present sections 151(2) and 152(2) respectively.

registered instrument including any instrument registered before the coming into force of this section.

**152.3** Any document executed by a corporation, notwithstanding anything to the contrary in the Act, statute, charter or memorandum and articles of association incorporating the corporation, shall for the purposes of this Act be deemed to be sufficiently executed if it is sealed with the corporate seal of the corporation and countersigned by at least one officer of the corporation.

**152.4** On being satisfied of the due execution of an instrument, the court may authorize its registration, notwithstanding that the proof of the execution may be absent or defective.

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

