

1983 BILL 63

First Session, 20th Legislature, 32 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 63

**REAL PROPERTY STATUTES
AMENDMENT ACT, 1983 (NO. 2)**

THE ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 63

1983

REAL PROPERTY STATUTES AMENDMENT ACT, 1983 (NO. 2)

(Assented to _____, 1983)

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

Land Titles Act

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

(2) *Section 170(1) is repealed and the following is substituted:*

170(1) If the Attorney General is satisfied that a claim that is or might be the subject of an action for damages against the Registrar as a nominal defendant under this Act or the *Dower Act* is well founded,

(a) in the case of a claim for \$5000 or less, the Attorney General may direct the payment of the claim together with a reasonable sum for costs incurred in the making of the claim, and

(b) in the case of a claim for more than \$5000, the Lieutenant Governor in Council, on the recommendation of the Attorney General, may direct the payment of the claim together with a reasonable sum for costs incurred in the making of the claim.

Law of Property Act

2(1) *The Law of Property Act is amended by this Act.*

(2) *Section 39 is amended*

(a) *in subsection (3) by striking out “, without charge, to him or a person designated by him” and substituting “to him or a person designated by him, without charging any fee or expense for so doing,”*

(b) *by adding the following after subsection (5):*

(6) A mortgagee or vendor who

Explanatory Notes

Land Titles Act

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

(2) Section 170 presently reads:

170(1) The Attorney General on being satisfied that any claim that might, under this Act or under the Dower Act, be the subject of an action for damages against the Registrar as a nominal defendant is well founded may issue a certificate to that effect, and thereupon the Lieutenant Governor in Council may direct the payment of the claim out of the assurance fund, together with a reasonable sum for costs incurred in making the claim.

(2) When any amount is paid out of the assurance fund, it shall be deemed to have been paid on account of such person as the Attorney General may direct, and the amount may be recovered from that person in the manner directed by section 172.

Law of Property Act

2(1) This Bill will amend chapter L-8 of the Revised Statutes of Alberta 1980.

(2) Section 39(2), (3) and (4) presently read:

(2) The mortgagor or purchaser may, by notice in writing, require the mortgagee or vendor to furnish him with a statement in writing

(a) of the nature of the breach of any covenant, or

(b) of the amount of principal or interest with respect to which the mortgagor or purchaser is in default,

(a) fails to answer, as required by subsection (4), a notice given by a mortgagor or purchaser under subsection (2) or (3), or

(b) charges or attempts to charge any fee or expense or accepts any amount for providing a statement referred to in subsection (3),

is guilty of an offence and liable to a fine of not more than \$500.

(3) Section 43 is amended

(a) by adding the following after subsection (1):

(1.1) Notwithstanding subsection (1), sections 41 and 42 apply to any action on

(a) a mortgage of land, whether legal or equitable, given by a corporation, or

(b) an agreement for sale of land to a corporation,

made before or after the coming into force of this subsection and that is brought against an individual who is

(c) a transferee of land that is subject to that mortgage, or

(d) an assignee of a purchaser's interest under that agreement for sale of land,

whether the transfer or assignment was made before or after the coming into force of this subsection.

(1.2) Any waiver or release of the rights, benefits or protection given by subsections (1.1) and (3) is against public policy and void.

(b) in subsection (2) by adding "and subsections (1.1) and (3) of this section" after "and 42";

(c) by adding the following after subsection (2):

(3) Where

(a) an individual is

(i) a transferee of land that is subject to a mortgage given by a corporation, or

and of the amount of any expenses necessarily incurred by the mortgagee or the vendor.

(3) A mortgagor or purchaser may, not more than twice a year by notice in writing to the mortgagee or vendor, require the mortgagee or vendor, as the case may be, to furnish, without charge, to him or a person designated by him a statement in writing setting out with respect to the mortgage or agreement for sale

(a) the amount of principal, interest and any other charges owing, and

(b) the balance in the tax account.

(4) The mortgagee or vendor shall answer a notice given under subsection (2) or (3) within 15 days after he receives it and if, without reasonable excuse, he fails to do so or his answer is incomplete or incorrect, any rights that he may have for the enforcement of the mortgage or for the cancellation or specific performance of the agreement for sale are suspended until he has complied with the notice.

(3) Section 43 presently reads:

43(1) Sections 41 and 42 do not apply to a proceeding for the enforcement of any provision

(a) of an agreement for sale of land to a corporation, or

(b) of a mortgage given by a corporation.

(2) Sections 41 and 42 do not apply to a mortgage given to secure a loan under the National Housing Act, R.S.C. 1952, c.188 or the National Housing Act, R.S.C. 1970, c.N-10.

(ii) an assignee of a purchaser's interest under an agreement for sale of land to a corporation,

and

(b) before the coming into force of this subsection an action was brought against that individual

(i) on that mortgage or on that agreement for sale, and

(ii) in respect of that action no order nisi, in the case of the mortgage, or no order for specific performance, in the case of the agreement for sale, has been granted as of the coming into force of this subsection,

then after the coming into force of this subsection no judgment or order shall be granted in that action in respect of any of the covenants or damages referred to in section 41(1)(a) to (c), and sections 41 and 42 apply to the action.

(4) *The following is added after section 43:*

43.1(1) No action shall be brought against any individual who is a transferee of land that is subject to a mortgage, whether the transfer was made before or after the coming into force of this section, on the basis of

(a) a covenant for payment referred to in section 62(1) of the *Land Titles Act*, or

(b) any obligation that exists at law, in equity or by agreement that is in substance the same as a covenant referred to in clause (a).

(2) Any waiver or release of the rights, benefits or protection given by subsections (1) and (4) is against public policy and void.

(3) This section does not apply in respect of a mortgage given to secure a loan under the *National Housing Act*, R.S.C. 1952, c.188 or the *National Housing Act*, R.S.C. 1970, c.N-10.

(4) Where

(a) an individual is a transferee of land that is subject to a mortgage, and

(b) before the coming into force of this section an action was brought against that individual on the basis of

(i) a covenant for payment referred to in section 62(1) of the *Land Titles Act*, or

(ii) any obligation that exists at law, in equity or by agreement that is in substance the same as a covenant referred to in subclause (i),

(4) Section 62(1) of the Land Titles Act reads as follows:

62(1) In every instrument transferring land for which a certificate of title has been granted, subject to mortgage or encumbrance, there shall be implied the following covenant by the transferee both with the transferor and the mortgagee: That the transferee will pay the principal money, interest, annuity or rent charge secured by the mortgage or encumbrance, after the rate and at the time specified in the instrument creating it, and will indemnify and keep harmless the transferor from and against the principal sum or other money secured by the instrument and from and against the liability in respect of any of the covenants therein contained or under this Act implied on the part of the transferor.

and in respect of that action no judgment has been granted as of the coming into force of this section,

then after the coming into force of this section no judgment shall be granted in that action in respect of any covenant or obligation referred to in clause (b).

(5) *Section 65.1 is amended by adding the following after subsection (2):*

(3) A mortgagee who

(a) fails to comply with subsection (1), or

(b) charges or attempts to charge any fee or expense or accepts any amount for furnishing a discharge of mortgage or other document under subsection (1),

is guilty of an offence and liable to a fine of not more than \$500.

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

(5) Section 65.1 presently reads:

65.1(1) When a mortgage is fully paid the mortgagee shall furnish to the mortgagor, within 30 days of the mortgage being fully paid,

(a) a discharge of mortgage, and

(b) any other document, if any, required to enable the mortgage to be discharged,

that is in a form and contains the information satisfactory to the Registrar.

(2) No fee or expense shall be charged by a mortgagee for a discharge of mortgage and other document, if any, furnished under subsection (1).