

1983 BILL 109

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First Session, 20th Legislature, 32 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 109

**REAL PROPERTY STATUTES AMENDMENT ACT, 1983  
(NO. 3)**

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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 109

1983

### REAL PROPERTY STATUTES AMENDMENT ACT, 1983 (NO. 3)

(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(2) *Section 170(1) is repealed and the following is substituted:*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 or accepting any amount for so doing,”*

(b) *in subsection (4) by striking out “15” and substituting “30”;*

(c) *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,*

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

(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 40 is amended*

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

**40(1)** Proceedings for recovery of money secured by a mortgage of land, agreement for sale of land or encumbrance on land, or to enforce any provision thereof, or sale, redemption, specific performance, foreclosure or cancellation proceedings with respect to the land, may be taken in any court of competent jurisdiction in accordance with the existing practice and procedure of the court.

*(b) in subsection (2) by adding “a mortgage of land or” after “contained in”;*

*(c) in subsection (3) by adding “a mortgage of land or” after “secured by”;*

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

(3.1) Notwithstanding subsection (3), if proceedings are commenced against a corporation in respect of

(a) a mortgage of land given by a corporation, or

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

the mortgagee or vendor, as the case may be, may

(c) apply to the Court for the appointment of a receiver, and

(d) bring proceedings against the corporation for the arrears of money owing in respect of the mortgage or agreement for sale,

or either of them.

*(e) in subsection (4) by adding “mortgage or” after “partly to the”;*

*(f) in subsection (5)*

*(i) in clause (a) by striking out “agreed to be paid for the land” and substituting “owing under the mortgage or agreement for sale”;*

*(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 40 presently reads:

*40(1) Proceedings for recovery of money secured by a mortgage or encumbrance, or to enforce any provision thereof, or sale, redemption or foreclosure proceedings with respect to mortgaged or encumbered land, may be taken in any court of competent jurisdiction in accordance with the existing practice and procedure thereof.*

*(2) No execution to enforce a judgment on the personal covenant contained in an agreement for sale of land shall issue or be proceeded with until the sale of the land, and levy shall then only be made for the amount of money remaining unpaid after the due application of the purchase money received at the sale.*

*(3) As long as execution cannot issue or be proceeded with under this section, the payment of the money secured by an agreement for sale of land shall not be enforced by attachment or garnishment or by the appointment of a receiver or by any other process of a similar nature.*

*(4) The Court in any case where it is fair and equitable to do so and on application by notice of motion may order that subsections (2) and (3) are no longer to apply wholly or partly to the agreement for sale that is the subject matter of the application.*

*(5) No order shall be made under subsection (4) unless the Court is satisfied*

*(a) of the inadequacy of the land as a security for the amount agreed to be paid for the land,*

*(b) of the possession by the purchaser of liquid assets sufficient to discharge the debt, and*

*(c) of the existence of a grave danger of disposal of the assets of the purchaser to defeat the claim of the vendor.*

*(6) An order under subsection (4) may be at any time varied or set aside by the same or any other judge.*

(ii) in clause (b) by striking out “purchaser” and substituting “mortgagor or purchaser”;

(iii) by repealing clause (c) and substituting the following:

(c) of the existence of a grave danger of disposal of the assets of the mortgagor or purchaser to defeat the claim of the mortgagee or vendor.

(4) Section 42 is amended

(a) in subsection (1)(b) by striking out “urban land” and substituting “land other than farm land”;

(b) in subsection (2)(a) by adding the following after subclause (ii):

(ii.1) whether the land has been abandoned,

(c) in subsection (2)(b)

(i) by striking out “urban land” and substituting “land other than farm land”;

(ii) by adding the following after subclause (ii):

(ii.1) whether the land has been abandoned,

(5) Section 43 is amended

(a) in subsection (1) by striking out “Sections 41 and 42 do” and substituting “Section 41 does”;

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

(1.1) Notwithstanding subsection (1), section 41 applies to an action brought against an individual, as it relates to that individual, where

(4) Section 42 presently reads:

*42(1) The time to be fixed for redemption by the order nisi in an action for foreclosure of a mortgage and the time to be fixed for redemption by the order for specific performance in an action on an agreement for sale shall*

*(a) in the case of farm land be one year from the date of the granting of the order, and*

*(b) in the case of urban land be 6 months from the date of the granting of the order.*

*(2) In an action coming under subsection (1), the Court on application may decrease or extend the period of redemption having regard to the following circumstances:*

*(a) when the action is in respect of a security on farm land,*

*(i) the ability of the debtor to pay,*

*(ii) the value of the land including the improvements made thereon,*

*(iii) the nature, extent and value of the security held by the creditor, and*

*(iv) whether the failure to pay was due to hail, frost, drought, agricultural pests or other conditions beyond the control of the debtor;*

*(b) when the action is in respect of a security on urban land,*

*(i) the ability of the debtor to pay,*

*(ii) the value of the land including the improvements made thereon,*

*(iii) the nature, extent and value of the security held by the creditor,*

*(iv) the earning capacity of the debtor, and*

*(v) whether the debtor's failure to pay was due to temporary or permanent unemployment or other conditions beyond the control of the debtor.*

*(3) Nothing in this section applies to an order to which the consent of the debtor has been obtained.*

(5) 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.*

- (a) the action is on
  - (i) a mortgage of land, whether legal or equitable, given by a corporation, or
  - (ii) an agreement for sale of land to a corporation,made before or after the coming into force of this subsection, and

- (b) the individual is
  - (i) a transferee of land that is subject to that mortgage, or
  - (ii) 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.

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

*(d) by adding the following after subsection (2):*

- (3) Notwithstanding subsection (1), where
  - (a) an individual is
    - (i) a transferee of land that is subject to a mortgage, whether legal or equitable, given by a corporation, or
    - (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
    - (i) an action was brought against that individual on that mortgage or 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,

then after the coming into force of this subsection no judgment or order shall be granted against that individual 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 as it relates to that individual.

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

**43.1(1)** In this section, "covenant for payment" means that portion of the covenant referred to in section 62(1) of the *Land Titles Act* that comprises one or more of the following:



*(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.*

(6) 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*

- (a) the covenants referred to in section 41(1)(a) and (b) of this Act;
  - (b) the obligation that relates to the damages referred to in section 41(1)(c) of this Act;
  - (c) the indemnification of the transferor from and against the principal sum or other money secured by a mortgage.
- (2) 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) the covenant for payment, or
  - (b) any obligation that exists at law, in equity or by agreement that is in substance the same as the covenant for payment.
- (3) Any waiver or release of the rights, benefits or protection given by subsections (2) and (5) is against public policy and void.
- (4) 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.
- (5) 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
    - (i) an action was brought against that individual on the basis of
      - (A) the covenant for payment, or
      - (B) any obligation that exists at law, in equity or by agreement that is in substance the same as the covenant for payment,
    - and
    - (ii) in respect of that action no judgment has been granted,
- then after the coming into force of this section no judgment shall be granted against the individual in respect of any covenant or obligation referred to in clause (b).
- 43.2** Nothing in section 43(1.1) or (3) or 43.1 limits or derogates from any remedy that a person has against
- (a) a corporation, or
  - (b) a guarantor or other surety of
    - (i) a mortgage of land, or
    - (ii) an agreement for sale of land,
- notwithstanding that the guarantor or other surety may be-

*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.*

come a transferee of that land or assignee of the agreement for sale.

**43.3** For the purposes of section 62 of the *Land Titles Act*, when

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

(b) a corporation becomes a transferee of that land from that individual,

the corporation referred to in clause (b) is deemed to be the transferee of the land from the last corporation to which that land was transferred prior to that individual's becoming the transferee of that land.

**43.4(1)** Sections 43(1.1) and (3), 43.1 and 43.3 do not apply to an individual that is or was a registered owner of residential land or farm land if

(a) in the case of residential land, neither that individual nor any member of his family has ever used that land as his bona fide residence at any time during which that individual is or was a registered owner of that land, or

(b) in the case of farm land, neither that individual nor any member of his family has himself ever used that land for carrying on bona fide farming operations at any time during which that individual is or was a registered owner of that land.

(2) In this section,

(a) "farm land" means land that is or was used for carrying on farming operations;

(b) "farming operations" means

(i) the planting, growing and sale of trees, shrubs or sod,

(ii) the raising or production of crops, livestock, fish, pheasants or poultry,

(iii) fur production, or

(iv) beekeeping;

(c) "member of his family" means

(i) an individual's grandparent, parent, sibling, child, niece, nephew or spouse, and

(ii) a grandparent, parent, sibling, child, niece or nephew of the individual's spouse;

(d) "parcel" means the aggregate of the one or more areas of land described in a certificate of title or described in a certificate of title by reference to a plan filed or registered in a land titles office;

(e) "registered owner" includes an individual purchasing the land under an agreement for sale;



(f) “residential land” means

(i) a parcel on which a single-family detached unit or duplex unit is located, or

(ii) a residential unit under the *Condominium Property Act*,

that is or was used as a residence.

(7) *Section 64 is amended*

(a) *by renumbering it as section 64(1);*

(b) *in subsection (1) by striking out “the mortgage money” and substituting “the balance owing on the mortgage”;*

(c) *by adding the following after subsection (1):*

(2) When a person

(a) becomes entitled or obligated to pay off the balance owing on a mortgage, and

(b) pays to the mortgagee the balance owing on the mortgage,

the mortgagee on receiving the payment, instead of giving a discharge, is bound on the request of the person who made the payment to transfer the mortgage as the person who made the payment directs.

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

(8) *Section 65.1 is amended*

(a) *in subsection (2) by adding “and no amount shall be accepted” after “be charged”;*

(b) *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.

<sup>3</sup> *Section 2(3), (4) and (5)(a) apply only to an action commenced after those provisions come into force.*

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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.*

(7) Section 64 presently reads:

*64 When a mortgagor becomes entitled to pay off the mortgage money, he may require the mortgagee on receiving payment, instead of giving a discharge, to transfer the mortgage to a third party and the mortgagee is bound to transfer the mortgage as the mortgagor directs.*

(8) 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).*

**3** Application of certain provisions.