

1984 BILL 50

Second Session, 20th Legislature, 33 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 50

LAW OF PROPERTY AMENDMENT ACT, 1984

THE ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 50

1984

LAW OF PROPERTY AMENDMENT ACT, 1984

(Assented to _____, 1984)

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

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

2 *The following is added after section 42:*

42.1 Notwithstanding sections 41(2) and 42, in an action brought on a mortgage of land or on an agreement for sale of land where

(a) the land is transferred or sold, in the case of a mortgage,

(i) while the mortgage is in default, or

(ii) within 4 months before the mortgage goes into default,

(b) the purchaser's interest in the land is assigned or sold, in the case of an agreement for sale,

(i) while the agreement for sale is in default, or

(ii) within 4 months before the agreement for sale goes into default,

or

(c) the land

(i) is abandoned, or

(ii) is undeveloped land other than farm land as defined in section 43.4(3),

the Court may, without the land being first offered for sale under section 41(2), make a vesting order in the case of a mortgage or an order of cancellation in the case of an agreement for sale.

3 *Section 43(1.1) is amended by striking out "section 41 applies" and substituting "sections 41 and 42 apply".*

Explanatory Notes

- 1 This Act will amend chapter L-8 of the Revised Statutes of Alberta 1980.
- 2 Exception to sections 41(2) and 42.

- 3 Section 43(1.1) presently reads:

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

(a) the action is on

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

4 Section 43.4 is amended by adding the following after subsection (2):

(2.1) In order for an individual to be given the benefit of sections 43(1.1) and (3), 43.1 and 43.3, the onus of proof is on that individual to establish that he is not excluded from those benefits by reason of subsection (2).

(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.

4 Section 43.4 presently reads:

43.4(1) Sections 43(1.1) and (3), 43.1 and 43.3 apply only in respect of residential land and farm land.

(2) 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.

(3) 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

5 Section 45 is amended by repealing subsection (1) and substituting the following:

45(1) Notwithstanding section 41, after the commencement of an action on

- (a) a mortgage of land other than farm land, or
- (b) an agreement for sale of land other than farm land,

to enforce or protect the security or rights under the mortgage or the agreement for sale the Court may do one or both of the following:

- (c) appoint, with or without security, a receiver to collect rents or profits arising from the land;
- (d) empower the receiver to exercise the powers of a receiver and manager.

(1.1) If

- (a) a mortgage of land or an agreement for sale referred to in subsection (1) is in default, and
- (b) rents or profits are arising out of the land that is subject to that mortgage or agreement for sale,

the Court shall, on application by the mortgagee or vendor, appoint a receiver where the Court considers it just and equitable to do so.

(1.2) Notwithstanding subsections (1) and (1.1), an application to appoint a receiver may be made ex parte if

- (a) in the case of a mortgage, the land is transferred or sold
 - (i) while the mortgage is in default, or
 - (ii) within 4 months before the mortgage goes into default,

or

- (b) in the case of an agreement for sale, the purchaser's interest in the land is assigned or sold
 - (i) while the agreement for sale is in default, or
 - (ii) within 4 months before the agreement for sale goes into default.

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

*(ii) a residential unit under the Condominium Property Act,
that is or was used as a residence.*

5 Section 45 presently reads:

45(1) Notwithstanding section 41, after the commencement of an action on a mortgage of land other than farm land or on an agreement for sale of land other than farm land the Court, on application by a mortgagee or vendor, may appoint, with or without security, a receiver to collect the rents and profits arising from that land.

(2) The proceeds of rents or profits collected by the receiver, less any fee or disbursements, which may be allowed by the Court to the receiver by way of remuneration, shall be applied

(a) in payment of taxes accruing due or owing on the land in receivership, and

(b) in reduction of the claims of the mortgagee or vendor against the land in receivership.

(3) A receiver appointed pursuant to this section may distrain for rent in arrears in the same manner and with the same right of recovery as a landlord.

(4) On default of the mortgagor or purchaser of the land other than farm land that is in receivership to pay the rents or profits therefrom, the Court may order possession of the land to be delivered up to the receiver and leased by him, on any terms and conditions that the Court considers fit.

(5) The Court may, on application by the receiver, give the receiver further directions from time to time as the circumstances require.

(6) An order appointing a receiver may be discharged by the Court at any time, but the order shall only be discharged on application after notice.

(7) When and so often as the circumstances require, the Court may, without discharging the order appointing the receiver, substitute another person for the person originally appointed by the order appointing a receiver, and the substituted receiver shall perform all the duties and has all the powers given by the order or this section to the person originally appointed.

(8) When an order appointing a receiver is made under this section, then, unless the Court otherwise directs in that order or in a subsequent order, proceedings in the action on the mortgage or on the agreement for sale shall be stayed until the time that the order appointing a receiver is discharged.

(9) Subsection (8) does not apply when the mortgagor or purchaser is a corporation.

(10) In this section "farm land" means farm land as defined in section 43.4(3).