

1984 BILL 89

Second Session, 20th Legislature, 33 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 89

REAL PROPERTY STATUTES AMENDMENT ACT, 1984

THE ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 89

1984

REAL PROPERTY STATUTES AMENDMENT ACT, 1984

(Assented to _____, 1984)

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 section.*

(2) *Section 1 is amended*

(a) *in clause (j) by striking out "day book" and substituting "daily record";*

(b) *in clause (r) by striking out "pledged" and substituting "charged";*

(c) *by repealing clause (w)(ii) and substituting the following:*

(ii) **the entering on the certificate of title of a memorandum authorized by this Act or any other Act of any instrument or caveat, and**

(3) *Section 4(2) is repealed.*

(4) *Section 12 is amended by striking out "within the district to which he is appointed".*

Land Titles Act

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

(2) Section 1(j), (r) and (w) presently read:

1 In this Act,

(j) "filing" means the entering in the day book of any instrument or caveat;

(r) "mortgagor" means the owner or transferor of land, or of any estate or interest in land pledged as security for a debt or a loan;

(w) "registration" means

(i) the bringing of land under the provisions of this Act,

(ii) the entering on the certificate of title of a memorandum authorized by this Act of any document, and

(iii) the entering in the proper register of any instrument or caveat authorized to be registered, of which a memorandum is not required to be entered on a certificate of title;

(3) Section 4 presently reads:

4(1) In each registration district at the place the Lieutenant Governor in Council determines there shall be an office to be called the "Land Titles Office."

(2) The Lieutenant Governor in Council may provide in each registration district at the public expense, and may thereafter maintain, in a proper state of repair, a building of stone or brick, or partly of brick and partly of stone, to serve as the Land Titles Office, and as the place of deposit and preservation of registers and other record books, certificates, instruments and documents connected with the registration of titles, and may fit up the office with any fire-proof safes and other secure places necessary.

(4) Section 12 presently reads:

12 The Inspector of Land Titles Offices, the Assistant Inspector of Land Titles Offices or any Registrar or Deputy Registrar or Assistant Deputy

(5) Section 15(2) is repealed.

(6) Section 16 is amended

(a) in subsection (1) by striking out “record called the “day book”” and substituting “daily record”;

(b) in subsections (3), (4) and (6) by striking out “day book” and substituting “daily record”.

(7) Section 17(3) and (4) are repealed and the following is substituted:

(3) The Registrar shall keep a register called the “general register”

(a) in which shall be entered a record of all copies of writs of execution and other instruments that charge generally or bind in the same manner as a writ the property interests of a person, and

(b) that shall show in alphabetical order the names of the persons whose land is affected by writs of execution and other instruments entered in the general register.

Registrar within the district to which he is appointed may administer any oath or take any affirmation or declaration in lieu of an oath respecting titles to land from anyone entitled by law to affirm or declare.

(5) Section 15(2) presently reads:

(2) During the hours when the Land Titles Office is required to be kept open, either the Registrar or his deputy shall be in attendance.

(6) Section 16 presently reads:

16(1) The Registrar shall keep a record called the "day book" which shall contain particulars of every instrument and caveat accepted by the Registrar for filing or registration.

(2) The Registrar shall cause each instrument or caveat received by him for filing or registration to be examined and if it is found to be complete and in the proper form and fit for filing or registration, the Registrar shall stamp the instrument or caveat with the serial number assigned to it and the date on which the serial number is assigned.

(3) The Registrar shall enter a record of each stamped and signed instrument or caveat in the day book.

(4) The Registrar in endorsing memoranda of instruments or caveats on a certificate of title and in entering memoranda on duplicate certificates shall take the serial number and date from the day book and shall sign the memoranda and the certificate or duplicate certificate on which the endorsement or entry is made.

(5) For purposes of priority between mortgagees, transferees and others, the serial number assigned to the instrument or caveat shall determine the priority of the instrument or caveat filed or registered.

(6) Until the duplicate certificate of title for the land affected is produced to him so as to enable him to enter the proper memorandum on the duplicate certificate, unless required to do so by order of a court, the Registrar shall not receive or enter in the day book any instrument except

(a) executions against land, builders' liens, easements and instruments referred to in section 72,

(b) transfers by a sheriff or municipal officer, or by order of a court,

(c) transfers on sales of land for taxes,

(d) tax arrears notifications and other notices and cancellations under the Mineral Taxation Act, and

(e) maps or plans that do not require to be registered, or certificates or orders of a court.

(7) Section 17(3) and (4) presently read:

(3) The Registrar shall also keep a book or books which shall be called the "execution register"; in which shall be entered according to the dates when received a record of all copies of executions received by him from the sheriff or other officer, and the register shall be kept indexed showing in alphabetical order the names of the persons whose land is affected by the writs with the day and hour and minute of receipt.

(4) The Registrar shall also keep a register which shall be known as the "irrigation districts register"; in which shall be recorded an abstract of the information as to each irrigation district shown by the order forming the district as published in The Alberta Gazette or of any other order altering

(8) *Section 24 is repealed and the following is substituted:*

24(1) A Registrar shall, when required, furnish under seal a general register certificate in the prescribed form.

(2) A general register certificate shall not disclose an instrument registered in the general register where there is a material difference between the name in the instrument and the name to be searched as set forth in the request for the certificate.

(3) For the purpose of this section and sections 122, 130 and 171, there is a material difference in names where

(a) the surnames are not identical,

(b) none of the given names in one name are identical to one of the given names in the other name,

(c) one name contains the same number of given names as the other name but one of the given names in one name is not identical to or a commonly used variation of any of the given names in the other name,

(d) one name contains the same number of given names as the other name and the given names in one name are identical to or commonly used variations of the given names in the other name but the given names in one name do not appear in the same sequence as the given names in the other name,

(e) one name contains fewer given names than the other name but one of the given names in the name with the fewer given names is not identical to or a commonly used variation of any of the given names in the other name, or

(f) one name contains fewer given names than the other name and the given names in the name with the fewer given names are identical to or commonly used variations of the given names in the other name, but the given names in one name do not appear in the same sequence as the given names in the other name.

(4) In subsection (3)(c), (d), (e) and (f),

(a) "given name" includes an initial used in the place of a given name, and

(b) an initial and a given name shall be considered to be commonly used variations of each other only where the initial is the same as the first letter of the given name.

24.1 A Registrar shall, on request, furnish under seal photographic copies of any instrument or caveat affecting land deposited, filed or registered in his office and if a photographic copy cannot be made, the Registrar may furnish under seal a copy of the instrument or caveat in any manner he sees fit.

the content of the district, and the register shall be open to inspection on payment of the fee prescribed by the regulations.

(8) Section 24 presently reads:

24(1) A Registrar shall, when required, furnish under seal a general registration certificate in the prescribed form.

(2) A Registrar shall, when required, furnish under seal photographic copies of any instrument or caveat affecting land deposited, filed or registered in his office, but if a photographic copy cannot be made, the Registrar may furnish under seal a copy of the instrument or caveat in any manner he sees fit.

(9) *Section 25(1) is amended by striking out “day book” and substituting “daily record”.*

(10) *Section 33 is amended by striking out “Deputy Minister or Acting Deputy Minister of Indian Affairs and Northern Development” and substituting “deputy or acting deputy of the Minister charged with the administration of the *National Parks Act* (Canada)”.*

(11) *Section 46 is amended by renumbering it as 46(1) and by adding the following after subsection (1):*

(2) Where the Registrar requires him to do so, an owner shall sign a receipt for a duplicate certificate of title before it is delivered to him.

(12) *Section 48(3) is repealed.*

(13) *Section 65(2) is repealed and the following is substituted:*

(2) Land mentioned in a certificate of title issued under the *Tax Recovery Act*, Part 5 of the *Irrigation Act* or Part 4 of the *Drainage Districts Act*, or in a certificate of title based on a foreclosure order, notwithstanding any other Act is, by implication and without any special mention therein, subject to

(a) any easement or incorporeal right, a memorandum of which has been made under section 70, 72 or 72.1,

(b) any instrument registered under section 72(4),

(c) any condition or covenant running with or annexed to the land and registered under section 52,

(d) any caveat protecting any such easement, incorporeal right, condition or covenant, duly filed, and

(e) a notice endorsed pursuant to section 11 of the *City Transportation Act*,

if the registration, endorsement or filing, as the case may be, was made prior to the registration of the judge’s adjudication on the rate enforcement return under the *Irrigation Act* or the *Drainage Districts Act*, or to the date of registration of the mortgage with respect to which a foreclosure order was made, as the case may be.

(14) *Section 72 is repealed and the following is substituted:*

72(1) If the registered owner of land grants to the Crown or a corporation a right on, over or under the land for

(9) Section 25(1) presently reads:

25(1) A grant shall be deemed to be registered under this Act when it has been marked by the Registrar with the serial number assigned to it, signed by the Registrar and a memorandum of its registration entered in the day book.

(10) Section 33 presently reads:

33 The Registrar shall accept for registration and register duplicate originals, or copies certified under the hand of the Deputy Minister or Acting Deputy Minister of Indian Affairs and Northern Development, of any leases or other registerable instrument or instruments in connection with or relating to the title to land situated within the area set apart for National Parks.

(11) Section 46 presently reads:

46 On every transfer of land mentioned in a certificate of title the certificate of title to be granted shall be granted by the Registrar and a duplicate certificate shall be issued to the transferee on application.

(12) Section 48(3) presently reads:

(3) An owner shall, if required by the Registrar to do so, before the delivery of a duplicate certificate, sign a receipt therefor in his own handwriting or otherwise furnish the Registrar with his signature so as to prevent impersonation as far as possible.

(13) Section 65(2) presently reads:

(2) Land mentioned in a certificate of title issued under the Tax Recovery Act, Part 5 of the Irrigation Act or Part 4 of the Drainage Districts Act, or in a certificate of title based on a foreclosure order, notwithstanding any other Act is, by implication and without any special mention therein, subject to

(a) any easement or incorporeal right, a memorandum of which has been made under section 70 or 72,

(b) any instrument registered under section 72(5),

(c) any condition or covenant running with or annexed to the land and registered under section 52,

(d) any caveat protecting any such easement, incorporeal right, condition or covenant, duly filed, and

(e) a notice endorsed pursuant to section 11 of the City Transportation Act,

if the registration, endorsement or filing, as the case may be, was made prior to the registration of the judge's adjudication on the rate enforcement return under the Irrigation Act or the Drainage Districts Act, or to the date of the mortgage with respect to which a foreclosure order was made, as the case may be.

(14) Section 72 presently reads:

72(1) If the registered owner of a parcel of land grants to the Crown or a municipal corporation or to any pipeline, public utility or railway company

- (a) carrying, laying, erecting or building pipes, conduits, cables, wires, poles or transmission lines,
- (b) laying, constructing, maintaining and operating pipelines for the transmission, transportation or conduct of any substance,
- (c) conveying water,
- (d) drainage,
- (e) irrigation,
- (f) disposing of sewage,
- (g) erecting or maintaining a public work, or
- (h) constructing, maintaining and operating a railway,

the instrument granting the right may be registered under this Act.

(2) The Crown or a corporation as a registered owner may grant to itself a right for any purpose described in subsection (1).

(3) On registration, the grantee has the right to use the land in accordance with the terms of the grant notwithstanding that the benefit of the right is not appurtenant or annexed to any land of the grantee.

(4) An instrument purporting to transfer, mortgage or encumber any right granted by an instrument registered under subsection (1) and executed by or on behalf of the grantee may be registered under this Act.

(5) The grantee may at any time, by an instrument to that effect registered under this Act, surrender the right granted by an instrument registered under subsection (1).

(6) Notwithstanding subsection (5), a right that is subject to a mortgage or encumbrance shall not be surrendered unless the surrender is consented to by the mortgagee or encumbrancee.

72.1(1) When an authority requests the Registrar to issue a certificate of title for land that comprised a public road that the authority has permanently closed, the authority shall notify the Registrar of the particulars of any right granted under section 72 that

- (a) existed in respect of that land immediately before that land became a public road, and
- (b) would still exist in respect of that land if the land had not become a public road.

(2) On being notified under subsection (1), the Registrar shall enter on the certificate of title a memorandum of the instrument relating to the right in respect of which the notice was given.

(3) The entering of a memorandum on a certificate of title under subsection (2) revives the right effective on the day that the memorandum is entered on the certificate of title.

or association the right to carry its pipes, wires, conductors or transmission lines on, over or under the parcel, the instrument granting the right may be registered under this Act.

(2) The Crown, a municipal corporation or any pipeline, public utility or railway company or association may grant to itself any rights described in subsection (1).

(3) On registration the right to use the parcel in accordance with the terms of the grant and all the conditions and covenants expressed therein are binding on and enure to the benefit of the Crown or municipal corporation or of the company or association, its successors and assigns, owners of the pipeline, public utility or railway and the grantor, his heirs, executors, administrators and assigns being owners of the parcel.

(4) Notwithstanding subsection (3), the parties to any such grant or their successors, executors, administrators or assigns may at any time by an instrument to that effect duly registered, release any such right and thereupon the Registrar shall cancel the registration of the grant.

(5) An instrument purporting to assign, mortgage, encumber or charge any right granted by instrument registered under subsection (1) and executed by or on behalf of the Crown or municipal corporation or of the company or association, its successors and assigns, owners of the pipeline, public utility or railway may be registered under this Act.

(6) In the event of a registered owner of a parcel of land granting to the Crown or any Minister thereof the right to use and to permit the public or any part thereof to use the parcel or any part thereof as an intermediate aerodrome for aircraft, or for the site of an aircraft beacon, then on the registration of the grant by the grantee, the right to use the parcel in accordance with the terms of the grant and all the conditions and covenants expressed therein are binding on and enure to the benefit of the Crown and the grantor, his heirs, executors, administrators and assigns, being owners of the parcel, or its successors and assigns, being owners of the parcel, as the case may be.

(7) Notwithstanding subsection (6), the Crown may at any time by an instrument to that effect, duly registered, release any such right, and thereupon the Registrar shall cancel the registration of the grant.

72.2(1) In this section, “party wall agreement” includes a declaration registered under subsection (3).

(2) Persons who are registered owners of adjoining parcels of land may register a party wall agreement

(a) declaring certain existing walls or walls that are to be constructed on those parcels to be party walls, and

(b) setting forth the rights, privileges, easements and covenants that exist in respect of the party walls.

(3) A person who is the registered owner of adjoining parcels of land may register a declaration

(a) declaring certain existing walls or walls that are to be constructed on those parcels to be party walls, and

(b) setting forth the rights, privileges, easements and covenants that exist in respect of the party walls.

(4) When land under this Act is subject to, or has as appurtenant to it, or enjoyed with it, any rights, privileges, easements and covenants under a party wall agreement, those rights, privileges, easements and covenants shall be deemed to run with the land.

72.3 An encroachment agreement executed by the registered owner of a parcel of land to permit the encroachment of improvements made on an adjoining parcel of land

(a) may be registered against the parcels of land affected by that agreement, and

(b) after registration shall be binding on all persons subsequently acquiring interests in the parcels of land affected by that agreement to the same extent as if it were an easement.

72.4 The Registrar shall cancel the registration of an easement, a restrictive covenant, a party wall agreement or an encroachment agreement on production of a discharge in the prescribed form signed by the registered owner of the dominant tenement.

(15) *Section 74(2) is repealed and the following is substituted:*

(2) Subject to section 180.1, the Registrar shall

(a) enter on the certificate of title a memorandum cancelling the certificate of title, in whole or in part, according to the terms of the judgment, and

(b) issue a new certificate of title to the person recovering the judgment.

(16) *The following is added after section 83.1:*

83.2(1) In this section “strata space” means volumetric space, whether or not it is

(a) located below or above or below and above the surface of the land, or

(15) Section 74(2) presently reads:

(2) At the expiration of 3 months after the filing thereof, the Registrar shall, unless he is satisfied that an appeal from the judgment is being taken, make, on the certificate of title in the register, a memorandum cancelling the certificate of title, either wholly or partially, according to the tenor of the judgment and setting forth the particulars of the judgment.

(16) Strata space.

(b) occupied in whole or in part by any structure,
and that is shown as strata space on a strata space plan.

(2) A registered owner desiring to subdivide volumetric space, other than mines and minerals lying on or under the surface of the land, into strata spaces may present a plan of survey to the Registrar for registration under this Act.

(3) Volumetric space shall not be subdivided into strata spaces unless the land in relation to which the subdivision is to be made is shown as a single parcel on a plan of survey registered under this Act.

(4) The boundaries of a strata space

(a) may consist of vertical, horizontal or inclined planes or curved surfaces that are satisfactory to the Registrar, and

(b) shall conform to or lie within the boundaries of the single parcel referred to in subsection (3).

(5) A strata space plan shall

(a) show

(i) the boundaries of the volumetric space that is to be subdivided into strata spaces, and

(ii) the boundaries of each strata space,

(b) include a diagram to scale of the survey of the perimeter of the land affected,

(c) have noted on it the elevation of each corner or angle of the strata spaces relative to the elevation of a geodetic monument,

(d) assign a suitable letter or number to each strata space and designate each space as a strata space,

(e) be signed by the registered owner of the land, and

(f) show any other details that the Registrar may require.

(6) Notwithstanding section 83(6)(d) and (6.1), section 83(6), (6.2) and (6.3) apply to a strata space plan.

(7) On registration of the strata space plan the Registrar shall cancel the existing certificate of title to the extent necessary and issue new certificates of title to the strata spaces shown on the strata space plan.

(17) *The following is added after section 92:*

92.1(1) Where a parcel of land that adjoins land owned by the Crown in right of Alberta has a natural boundary, the Registrar, on application by the registered owner of the parcel or the Crown, may amend the description of the parcel to reflect the current location of the natural boundary.

(17) Amendment of legal description affected by a change in a natural boundary.

- (2) An application under subsection (1) shall be accompanied by
- (a) a plan of survey or other evidence satisfactory to the Registrar showing the location of the natural boundary,
 - (b) the consent of the Minister charged with the administration of the *Public Lands Act* or a person authorized by him, where the Crown is not the applicant, and
 - (c) the consent of the registered owners of parcels that may be adversely affected by the amendment of the description.

(18) Section 103(3) is repealed and the following is substituted:

- (3) Notwithstanding subsection (1), when
- (a) a certificate of title has been issued for a leasehold estate, and
 - (b) an instrument or caveat is registered against that leasehold estate but not against the reversionary estate,
- the Registrar shall not register a surrender of the lease unless the person entitled to the benefit of that instrument or caveat consents to the surrender of the lease.

(19) Section 106.1(1) is amended by striking out “or obligations” and substituting “, re-advances and obligations”.

(20) Section 108 is amended

- (a) in subsection (1)(a) by striking out “of the mortgage or the encumbrance or evidence satisfactory to the Registrar of its loss or destruction, together with” and substituting “to the Registrar of”;*
- (b) by repealing subsections (3), (4) and (5).*

(18) Section 103(3) presently reads:

(3) Notwithstanding subsection (1), no lease that is subject to mortgage or encumbrance shall be surrendered without the consent of the mortgagee or encumbrancee.

(19) Section 106.1 presently reads:

106.1(1) Upon registration of a mortgage for a specific principal sum, the mortgage obtains priority in accordance with section 16 of this Act for all advances or obligations secured pursuant to the terms of the mortgage, notwithstanding that they are made or incurred subsequent to the registration, after this section comes into force, of any other instrument or caveat.

(2) If a mortgagee refuses to make, or a mortgagor has and exercises a right to refuse to accept or be bound by, any further advances that would be secured under subsection (1), the mortgagee shall, on the request of the mortgagor, provide a discharge of the mortgage as to the further advances.

(3) The rights given under the Builders' Lien Act are not affected by this section.

(20) Section 108 presently reads:

108(1) The Registrar shall discharge a mortgage or an encumbrance wholly or in part, or the land comprised therein wholly or in part, according to the tenor of the discharge, and shall make an entry of the discharge on the certificate of title affected by the discharge, in any of the following cases:

(a) on the production of the mortgage or the encumbrance or evidence satisfactory to the Registrar of its loss or destruction, together with a discharge in the prescribed form signed by the mortgagee or encumbrancee and accompanied by the proper affidavit of execution, but when it is expressly stated in a mortgage or an encumbrance to 2 or more mortgagees or encumbrancees that the money has been advanced on a joint account, it is sufficient if the discharge of the mortgage or encumbrance is signed by any one of the mortgagees or encumbrancees;

(b) on the production of a certificate signed by a judge certifying that the judge is satisfied of the payment of all or part of the money secured by the mortgage or encumbrance, and that the mortgagee or encumbrancee is living, or if dead, that no succession duty or other tax is

(21) The following is added after section 108:

108.1(1) A person entitled to the benefit of a mortgage, encumbrance, lease or other instrument or a caveat registered against land may postpone his rights under it by registering a postponement in the prescribed form.

(2) The registration of a postponement has the effect of postponing the rights under the postponed instrument or caveat to the rights under the instrument or caveat to which it is postponed in the same way and to the same extent as if the postponed instrument or caveat had been registered after the instrument or caveat to which it is to be postponed.

(22) Section 110(2) is amended by striking out “, and shall notify the mortgagor of the facts”.

(23) Section 121 is repealed.

payable to the Crown in right of Alberta with respect to the mortgage or encumbrance;

(c) on the production of a certificate signed by a judge certifying that the right of any person to recover any money secured by the mortgage or encumbrance has been extinguished by reason of the operation of the Limitation of Actions Act.

(2) On the entry being made on the certificate of title, the land or the estate, or interest in the land, or the portion of the land mentioned or referred to in the endorsement as aforesaid, ceases to be subject to or liable for the principal sum or annuity, or, as the case may be, for the part thereof mentioned in the entry as discharged.

(3) Any person entitled to the benefit of a caveat or of a mortgage, encumbrance, lease or other instrument registered against land, may postpone his rights thereunder by filing with the Registrar a postponement in the prescribed form.

(4) The Registrar shall thereupon register the postponement by entering on the certificate of title and the duplicate certificate a memorandum thereof.

(5) The registration has the effect of postponing the rights with regard to the land of the person mentioned in the postponement in the same way and to the same extent as if the postponed mortgage, encumbrance, lease or other instrument or the postponed caveat had been executed and registered immediately after the mortgage, encumbrance, lease or other instrument or the postponed caveat or the last of the instruments to which it is expressed to be postponed.

(21) Postponements.

(22) Section 110(2) presently reads:

(2) Any mortgagee may transfer a part of the sum secured by the mortgage by a transfer in the prescribed form, and the part so transferred continues to be secured by the mortgage and may be given priority over the remaining part or may be deferred or may continue to rank equally with it under the security of the original mortgage, as stated in the transfer, and the Registrar shall enter on the certificate of title a memorandum of the amount of the mortgage so transferred, the name of the transferee, and how the sum so transferred is to rank, and shall notify the mortgagor of the facts.

(23) Section 121 presently reads:

121(1) If land or a mortgage, lease or encumbrance is transmitted in consequence of the death of an owner thereof, the Registrar shall not register any instrument signed by his executor or administrator

(a) purporting to transfer, mortgage, lease or give a charge on the land that is the subject of the transmission, or

(24) Section 122 is amended

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

(2.1) Subsection (2)(b) does not apply where there is a material difference, within the meaning of section 24(3), between a name as it appears on a writ and the name as it appears on the instrument executed by the execution debtor.

(b) in subsection (5) by striking out “within Alberta”.

(25) Section 123 is repealed and the following is substituted:

123 The Registrar shall discharge a writ against all or a portion of the land bound by the writ on production to the Registrar of

(a) a judge’s order directing the discharge of the writ against all or a portion of the land,

(b) evidence from the sheriff showing the expiration, satisfaction or withdrawal of the writ, or

(c) a discharge executed by the judgment creditor.

(26) Section 124 is amended

(a) in subsection (1), by striking out “execution against the land of some person of the same or a similar name,” and substituting “instrument entered in the general register”;

(b) by repealing subsection (8) and substituting the following:

(8) A notice of any change of solicitors, in respect of an execution against land, that is certified by a sheriff or clerk of the

(b) purporting to discharge, transfer or assign any mortgage, lease or encumbrance that is the subject of the transmission,

unless there is filed with him a certificate of discharge issued under the Estate Tax Act (Canada), or a consent under section 47 thereof.

(2) If land or a mortgage, lease or encumbrance passes on death by survivorship, the Registrar shall not act on the passing unless there is filed with him a certificate of discharge issued under the Estate Tax Act (Canada), or a consent under section 47 thereof.

(3) This section applies only with respect to deaths occurring on and after January 1, 1959.

(24) Section 122(2) and (5) presently read:

(2) On and after the receipt by the Registrar of the copy of the writ,

(a) all legal and equitable interests of the execution debtor in any land there or thereafter registered in his name and including his interest, if any, as an unpaid vendor of the land, are bound by the execution, and

(b) no certificate of title shall be granted and no transfer, mortgage, encumbrance, lease or other instrument executed by the execution debtor of the land is effectual except subject to the rights of the execution creditor under the writ while it is legally in force,

and the Registrar, on granting a certificate of title and on registering any transfer, mortgage or other instrument executed by the debtor affecting the land, shall, by memorandum on the certificate of title in the register and on the duplicate issued by him, express that the certificate, transfer, mortgage, or other instrument is subject to those rights.

(5) Every person delivering or transmitting any such writ shall deliver or transmit therewith an address within Alberta where notice may be served on the judgment creditor, and the address shall be at some building of which the street and number, and in the case of an office building the number of the room, shall be given, or of which the location is otherwise accurately determined, which shall be known as his registered address, and no writ of execution shall be entered unless that address is furnished.

(25) Section 123 presently reads:

123 On the production to the Registrar of a judge's order or evidence from the sheriff showing the expiration, satisfaction or withdrawal of a writ as against all or a portion of the land bound by the writ, the Registrar shall make a memorandum on the certificate of title to that effect if the land has been brought under this Act and, if not, on or opposite to the entry of the writ in the execution register, and the land or portion of land, as the case may be, shall be deemed to be absolutely released and discharged from the writ.

(26) Section 124(1) and (8) presently read:

124(1) A registered owner of land whose dealings therewith are made or proposed to be made subject by the Registrar to an execution against the land of some person of the same or a similar name, may make an affidavit in duplicate in the prescribed form or to the like effect, and file it in the Land Titles Office for the land registration district in which his land is situated, or may mail it to the Registrar of the district in a fully prepaid registered letter.

court may be filed with the Registrar of the land registration district in which the execution is filed and on the notice being filed with the Registrar he shall note the change in the general register.

(27) *The following is added after section 124:*

124.1 When another Act provides that

(a) an instrument may be registered in a Land Titles Office, and

(b) the effect of the registration is to charge generally or bind in the same manner as a writ the property interests of a person named in the instrument,

then, notwithstanding that other Act, section 124 of this Act applies, with all necessary modifications, to that instrument as if it were a writ.

(28) *Section 125 is repealed and the following is substituted:*

125(1) No sale by a sheriff or other officer, under process of law,

(a) of any land for which a certificate of title has been granted, or

(b) of a lease of land or a mortgage or encumbrance on land is of any effect until it has been confirmed by the court.

(2) The Registrar shall not register an instrument executed by the sheriff or other officer to give effect to a sale unless

(a) an order of the court confirming the sale is endorsed on the instrument or attached to the instrument, and

(b) the requirements of section 180.1 have been complied with.

(29) *Section 128 and the title immediately preceding it are repealed and the following is substituted:*

Names of Married Persons

128(1) When a married person who is the owner of an interest in land adopts the surname of the spouse, the Registrar may make a memorandum of the change of name on the appropriate certificate of title on production of

(a) an affidavit by that person verifying

(i) the date of the marriage,

(ii) the place where the marriage was solemnized, and

(iii) the spouse's full name,

(8) A sheriff or clerk of the court, on receiving notice of any change of solicitor or solicitors in respect of an execution against land, shall forthwith notify the Registrar of the land registration district in which the execution is filed and the Registrar shall note the change on the execution.

(27) Application of section 124 to other instruments.

(28) Section 125 presently reads:

125 No sale by a sheriff or other officer, under process of law, of any land for which a certificate of title has been granted or of any lease thereof or any mortgage or encumbrance thereon is of any effect until it has been confirmed by the court, but when any such land is sold under the process of law, the Registrar, on the production to him of the transfer of it in the prescribed form, with proof of the due execution thereof, and with an order of the confirmation of the sale endorsed on the transfer or attached thereto, shall, after the expiration of 4 weeks after receiving it,

(a) register the transfer,

(b) cancel the existing certificate of title wholly or in part, if less than the whole of the land comprised therein is sold,

(c) grant a certificate of title to the transferee, and

(d) issue to him a duplicate certificate in the prescribed form,

unless the registration is in the meantime stayed by the order of the court, and in that case the registration shall not be made except according to the order and direction of the court.

(29) Section 128 presently reads:

Marriage of Female Owner

128(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 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

- (b) the duplicate certificate of title, and
- (c) a certificate of marriage or any other evidence that the Registrar may require to substantiate the identity of that person.

(2) When an interest in land is registered in the name of a person under the surname of that person's spouse or former spouse and that person now uses

- (a) her original surname,
- (b) a hyphenated surname that incorporates her original surname and the surname of her spouse or former spouse, or
- (c) the surname of a spouse from a previous marriage,

the Registrar may make a memorandum of the change of name on the appropriate certificate of title on the production of

- (d) an affidavit by that person verifying the surname now used by that person,
- (e) the duplicate certificate of title, and
- (f) a certificate of marriage or any other evidence that the Registrar may require to substantiate the identity of that person.

(30) *The following is added after section 129:*

Amending Agreements

129.1 Where the registered owner of land and the owner of an interest in that land under an instrument registered under this Act have entered into an agreement amending any of the terms of the instrument, that agreement may be registered as an instrument.

(31) *Section 130(a) is amended by striking out "or" at the end of subclause (iii) and by repealing subclause (iv) and substituting the following:*

- (iv) an instrument registered in the general register, where the creditor seeks to affect land in which the debtor is interested beneficially but the title to which is in the name of some other person, or
- (v) an instrument registered in the general register, where
 - (A) the creditor seeks to affect land owned by a debtor, and
 - (B) there is a material difference, within the meaning of section 24(3), between the name of the registered owner and the name of the debtor,

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 and an official certificate of the marriage or any other evidence that the Registrar may require to substantiate identity.

(30) Section 129.1 provides for the registration of amending agreements.

(31) Section 130(a) presently reads:

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

(a) pursuant to

(i) a will, settlement or trust deed,

(ii) an instrument of transfer or transmission,

(iii) an 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,

may cause to be filed with the Registrar a caveat on his behalf in the prescribed form against the registration of any person as transferee or owner of, or any instrument affecting, the estate or interest, unless the certificate of title is expressed to be subject to the claim of the caveator.

(32) *Section 132(2) is amended by striking out “day book” and substituting “daily record”.*

(33) *Section 146 is repealed and the following is substituted:*

146(1) A person claiming an interest in any land, mortgage or encumbrance may, in lieu of filing a caveat or after filing a caveat, proceed by way of action to enforce his claim and register a certificate of lis pendens in the prescribed form.

(2) A person who has proceeded by way of action to call into question some title or interest in any land may register a certificate of lis pendens in the prescribed form.

(34) *The following is added after section 146:*

146.1 A person registering or continuing a certificate of lis pendens without reasonable cause is liable to make compensation to any person who may have sustained damage thereby.

(35) *Section 148.1 is amended by striking out “or” at the end of clause (a), by adding “or” at the end of clause (b) and by adding the following after clause (b):*

(c) where a certificate of lis pendens relates to a caveat that was signed by an attorney or agent, a withdrawal of the certificate of lis pendens signed by the attorney or agent.

(36) *Section 151 is repealed and the following is substituted:*

151 Subject to section 152.1, every instrument executed within the limits of Alberta and that may be registered under this Act shall be witnessed by one person, who shall sign his name to the instrument as a witness and make an affidavit in the prescribed form.

(37) *Section 152(1) is amended*

(a) *by renumbering it as section 152;*

(b) *by striking out “required to” and substituting “that may”.*

(32) Section 132(2) presently reads:

(2) On receipt of a notice of change of address for service, in the prescribed form 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 on the certificate of title affected by the caveat.

(33) Section 146 presently reads:

146 A person claiming an interest in any land, mortgage or encumbrance, may, in lieu of, or after filing a caveat, proceed by way of action to enforce his claim.

(34) Compensation re a certificate of lis pendens.

(35) Section 148.1 presently reads:

148.1 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.

(36) Section 151 presently reads:

Attestation of Instruments

151(1) Subject to section 152.1, 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.

(1.1) and (2) Repealed 1983 c46 s2.

(37) Section 152 presently reads:

152(1) Subject to section 152.1, 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) if made in any province of Canada, before a judge of any court of record, a commissioner authorized to take affidavits in the province for use in any court of record in Alberta, or before a notary public under his official seal;

(38) The following is added after section 152:

152.01 A person is not eligible to be a witness to an instrument if that person is a party to the instrument.

152.02 A Registrar is not required to register an instrument or a caveat if the person who acted as a commissioner for oaths or notary public in respect of that instrument or caveat is a party to the instrument.

(39) Section 152.3 is repealed and the following is substituted:

152.3 An instrument or caveat executed by a corporation, notwithstanding anything to the contrary in the Act, statute, constating documents, charter or memorandum and articles of association incorporating the corporation, shall for the purposes of this Act be deemed to be sufficiently executed if the instrument or caveat is

- (a) sealed with the corporate seal of the corporation and countersigned by at least 1 officer of the corporation, or
- (b) executed by at least 1 officer of the corporation who
 - (i) has his signature attested to under section 151 or 152, and
 - (ii) verifies by affidavit in the prescribed form his authority to execute the instrument or caveat.

(40) Section 157 is amended

(a) in subsection (1) by striking out “and by investing the money together with all interest and profits accrued thereon from time to time in securities approved of by the Lieutenant Governor in Council”;

(b) by repealing subsection (2) and substituting the following:

- (2) The assurance fund may be invested in
 - (a) securities or obligations of the Government of Alberta,

(b) if made in Great Britain or Northern Ireland, before a judge of the Supreme Court of Judicature in England or Northern Ireland, or of the Court of Session or of the Judiciary Court in Scotland, or a judge of any of the county courts within his county, or the mayor of a city or incorporated town, under the common seal of the city or town, or before any commissioner in Great Britain or Northern Ireland, authorized to take affidavits therein, for use in any court of record in Alberta, or a notary public under his official seal;

(c) if made in any British Dominion, colony or possession out of Canada, before a judge of any court of record, the mayor of a city or incorporated town under the common seal of the city or town, or a notary public under his official seal;

(d) if made in any foreign country, before the mayor of any city or incorporated town, under the common seal of the city or town, or before the Canadian or British consul, vice-consul or consular agent residing therein or before a judge of any court of record or a notary public under his official seal.

(2) *Repealed 1983 c46 s2.*

(38) Persons ineligible to act as witnesses or to administer oaths.

(39) Section 152.3 presently reads:

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.

(40) Section 157 presently reads:

157(1) The assurance fund herein provided for shall be formed by the Provincial Treasurer from the money paid to and received by him for that purpose by and from the Registrars as hereinbefore provided and by investing the money together with all interest and profits accrued thereon from time to time in securities approved of by the Lieutenant Governor in Council.

(2) Notwithstanding subsection (1), the assurance fund may be invested in securities or obligations of the Government of Alberta.

(b) the Consolidated Cash Investment Trust Fund established under the *Financial Administration Act*, or

(c) any document evidencing an interest in a debt obligation if the payment of the debt and interest is insured under a policy of insurance issued by a company registered under the *Canadian and British Insurance Companies Act* (Canada).

(2.1) Any income earned from investments made under this section accrues to the General Revenue Fund.

(41) *Section 165 is repealed and the following is substituted:*

165(1) The Provincial Treasurer shall pay the amount of any

- (a) judgment recovered against the Registrar, or
- (b) claim directed to be paid pursuant to section 170,

as the case may be, out of

- (c) the assurance fund, and
- (d) to the extent that the assurance fund is insufficient to pay the judgment or claim, out of the General Revenue Fund.

(2) Notwithstanding subsection (1), no judgment or claim shall be paid out of the General Revenue Fund in respect of any amount that exceeds an amount equal to \$31 000 000 plus the amounts paid into the assurance fund after March 31, 1983, less the amounts paid out of the assurance fund and the General Revenue Fund, if any, pursuant to claims under this Act after March 31, 1983.

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

170(1) If a claim 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*,

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

(43) *Section 171(d) is repealed and the following is substituted:*

(d) by reason of the improper execution of an instrument on behalf of a corporation or the want of capacity in a corporation to deal with the estate or interest involved or to execute or take the benefit of the instrument registered,

(3) When the assurance fund reaches the sum of \$75 000 any sum in excess of that amount may, by direction of the Lieutenant Governor in Council, from time to time be transferred to and form part of the General Revenue Fund.

(41) Section 165 presently reads:

165 The Provincial Treasurer shall pay the amount of any judgment recovered against the Registrar out of the assurance fund provided by this Act.

(42) Section 170(1) presently reads:

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.

(43) Section 171(d) presently reads:

171 The assurance fund is not under any circumstances liable for compensation for loss, damage or deprivation

(d) by reason of the improper use of the seal of a corporation or the want of capacity in a corporation to deal with the estate or interest involved or to execute or take the benefit of the instrument registered, or

(d.1) by reason of the registration of an instrument where there is a material difference, within the meaning of section 24(3), between the name of a person described in that instrument and the name of a person described in an instrument registered in the general register, or

(44) Section 175(d) is amended by striking out “day book,” and substituting “daily record”.

(45) The following is added after section 202:

202.1 Any person who knowingly makes a false statement in

(a) an instrument or a caveat, or

(b) a written representation prepared in respect of

(i) an instrument or a caveat, or

(ii) a submission to the Registrar to enter a memorandum on a certificate of title,

is guilty of an offence and subject to a fine of not more than \$10 000 or to imprisonment for a term of not more than 6 months or to both a fine and imprisonment.

Land Titles Amendment Act, 1982

2(1) The Land Titles Amendment Act, 1982 is amended by this section.

(2) Section 11 is repealed.

(44) Section 175(d) presently reads:

175 If a question arises with regard to the performance of any duty or the exercise of any function by this Act conferred or imposed on a Registrar, or if in the exercise of any duty of a Registrar a question arises

(d) as to the mode in which any entry or memorandum ought to be made in the day book, or register, or on any certificate of title or duplicate thereof, or

(45) False statements.

Land Titles Amendment Act, 1982

2(1) This section will amend chapter 23 of the Statutes of Alberta, 1982.

(2) Section 11 of the Land Titles Amendment Act, 1982 presently reads:

11 The following is added after section 92:

92.1(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 adversely affected by the amendment of the description.

Law of Property Act

3(1) *The Law of Property Act is amended by this section.*

(2) *The title of Part 1 is amended by striking out "OF LAND".*

(3) *The following is added after section 8:*

8.1 Subject to Part 3, when 2 or more persons hold any land or any mortgage, encumbrance or lease in joint tenancy, other than as executors, administrators or trustees, those joint tenants are, after this section comes into force, incapable of severing that joint tenancy unless

(a) the document under which the severance is to take place is executed by all the joint tenants, or

(b) all the joint tenants, other than those executing the document under which the severance is to take place, give their written consent to the severance.

8.2 When 2 or more persons hold any land, mortgage, encumbrance or lease

(a) as joint tenants, those persons may transfer that land, mortgage, encumbrance or lease to themselves as tenants in common, or

(b) as tenants in common, those persons may transfer that land, mortgage, encumbrance or lease to themselves as joint tenants.

(4) *The following is added after section 59:*

59.1(1) The following are equitable interests in land:

(a) a right of first refusal to acquire an interest in land;

(b) an assignment of rents payable pursuant to a lease of land.

(2) When

(a) an assignment of rents payable pursuant to a lease of land is made,

(b) a tenant is served with written notice of the assignment of rents, and

(c) pursuant to that notice the tenant in good faith pays his rent to the assignee or a person on his behalf,

that payment discharges the tenant from any further obligation with respect to that portion of the rent for which the payment was made.

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

Law of Property Act

3(1) This section will amend chapter L-8 of the Revised Statutes of Alberta 1980.

(2) The title of Part 1 presently reads:

TRANSFER AND DESCENT OF LAND

(3) Section 8.1 provides for the severance of a joint tenancy. Section 8.2 allows persons to transfer to themselves as joint tenants or tenants in common.

(4) Right of first refusal and assignment of rents are equitable interests in land.