

2000 BILL 5

Fourth Session, 24th Legislature, 49 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 5

LAND TITLES AMENDMENT ACT, 2000

MR. JACQUES

First Reading
Second Reading
Committee of the Whole
Third Reading
Royal Assent

Bill 5
Mr. Jacques

BILL 5

2000

LAND TITLES AMENDMENT ACT, 2000

(Assented to , 2000)

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

Amends RSA
1980 cL-5

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

**2 Section 6 is amended by striking out “for each Land Titles
Office”.**

3 Section 11 is repealed and the following is substituted:

Seal of office

11. The Registrar shall have a seal of office.

4 Sections 17.1 and 17.2 are repealed.

Explanatory Notes

1 Amends chapter L-5 of the Revised Statutes of Alberta 1980.

2 Section 6 presently reads:

6 In accordance with the Public Service Act there may be appointed for each Land Titles Office

(a) an officer to be known as the "Registrar of Titles",

(b) one or more Deputy Registrars,

(c) one or more Assistant Deputy Registrars, and

(d) any other employees,

as required for the purposes of administering the Land Titles Office.

3 Section 11 presently reads:

11 Each Registrar shall have a seal of office that may be printed, stamped or otherwise reproduced on documents that are required to be sealed under this Act.

4 Sections 17.1 and 17.2 presently read:

17.1(1) The Registrar shall keep a register called the "general register"

(a) in which shall be entered a record of all copies of writs of enforcement and other registrable instruments that

- (i) charge generally, or*
- (ii) bind in the same manner as a writ of enforcement, the property interests of a person, and*
- (b) that shall set out in alphabetical order the names of the persons whose land is affected by writs of enforcement and other instruments entered in the general register.*

(2) Notwithstanding this or any other Act, no writ of enforcement or other instrument referred to in subsection (1) that is presented to the Registrar after the coming into force of section 17.3,

- (a) shall be recorded in the general register, or*
- (b) shall charge or have any binding effect on any land in which the debtor has an interest unless a memorandum of the writ of enforcement or other instrument has been endorsed on the certificate of title for that land.*

(3) During the 3 years after the coming into force of section 17.3, the creditor who is named in a writ of enforcement or other instrument that is recorded in the general register may, in respect of land specified by the creditor as land in which the debtor has an interest, require the Registrar to endorse a memorandum of the writ of enforcement or other instrument on the certificate of title for that land.

(4) After the coming into force of section 17.3, a person

- (a) presenting to the Registrar for registration a writ of enforcement or other instrument referred to in subsection (1), or*
- (b) requiring the Registrar under subsection (3) to endorse a memorandum on a certificate of title,*

shall provide to the Registrar a statement in the prescribed form setting out the land in which the debtor has an interest and the debtor's interest in the land.

(5) After the coming into force of section 17.3, when the Registrar

- (a) accepts a writ of enforcement or other instrument referred to in subsection (1) for registration, and*
- (b) is provided with a statement referred to in subsection (4)*

the Registrar shall endorse a memorandum of the writ of enforcement or other instrument on the certificate of title to the land specified by the creditor.

(6) At any time after the registration of a writ of enforcement or other instrument under subsection (5), the creditor may, on providing to the Registrar a statement referred to in subsection (4), require the Registrar to endorse a memorandum of the writ of enforcement or

other instrument on the certificate of title for other land in which the debtor has an interest.

(7) On making a memorandum on a certificate of title under subsection (3), (5) or (6), the Registrar shall forthwith send by mail addressed to

(a) the registered owner of the land at the address stated on the certificate of title, and

(b) the debtor, if the debtor is not the registered owner of the land, at the address provided by the creditor,

a notice of the writ of enforcement or other instrument and of the debtor's interest in the land.

(8) Where a memorandum of a writ of enforcement or other instrument referred to in subsection (1) or a caveat protecting either of them is endorsed on a certificate of title,

(a) in the case of a writ of enforcement, all legal and equitable interests of the debtor in the land included in the certificate of title are bound by the writ of enforcement, and

(b) in the case of an instrument, the interests of the debtor in the land included in the certificate of title are bound or charged in accordance with the Act that authorized registration of the instrument,

during the period of time that the writ of enforcement or other instrument is in force.

(9) If the obligation in respect of which a writ of enforcement or other instrument referred to in subsection (1) was registered has been satisfied, the creditor shall furnish the debtor with a registrable discharge of that writ of enforcement or that other instrument, as the case may be.

(10) A creditor who, without reasonable cause, files or continues the registration of a writ of enforcement or other instrument referred to in subsection (1) is liable to make compensation to any person who has sustained damage thereby.

(11) During the 3 years after the coming into force of section 17.3, sections 65(1)(e), 122(2), (2.1), (3), (7) and (9), 122.1, 124 and 124.1 apply only to writs of enforcement or other instruments recorded in the general register.

(12) Notwithstanding this or any other Act, on the expiry of 3 years after the coming into force of section 17.3,

(a) the general register shall cease to exist, and

(b) subject to subsection (8), any writ of enforcement or other instrument that is recorded in the general register

5 Section 33 is repealed and the following is substituted:

Land in
national parks

33 The Registrar shall accept for registration and register duplicate originals, or copies certified by

leases to charge or have any binding effect on any land in which the debtor has an interest.

(13) Any reference in this section to a writ of enforcement includes a reference to a writ of execution with respect to any writ of execution that was entered in the general register or registered against land before the coming into force of the Civil Enforcement Act.

17.2(1) Every writ of enforcement or other instrument referred to in section 17.1 registered against any land shall be lapsed by the Registrar on an application made to the Registrar after the expiration of 60 days after notice, in the prescribed form, to take proceedings in court has been either

(a) served on the creditor as process is usually served, or

(b) sent by registered mail to the creditor at or to the address stated in the writ of enforcement or other instrument or if a notice of change of address for service has been filed with the Registrar then at or to the address stated in the last notice of change of address for service filed in the Land Titles Office,

unless the creditor takes proceedings in court by originating notice, subject to the Alberta Rules of Court, or otherwise, to substantiate the interest claimed by the creditor and a certificate of lis pendens in the prescribed form has been filed with the Registrar.

(2) Notwithstanding subsection (1), the court may on an ex parte application shorten the period of 60 days to a period it specifies in the order, and a copy of the order shall be served or mailed with the notice.

(3) The service of notice shall be proved to the satisfaction of the Registrar.

(4) No writ of enforcement or other instrument referred to in section 17.1 shall be lapsed pursuant to subsection (1) unless the person who caused the notice to be served proves to the satisfaction of the Registrar that he has an interest in the land against which the writ of enforcement or other instrument was registered.

(5) Any reference in this section to a writ of enforcement includes a reference to a writ of execution with respect to any writ of execution that was entered in the general register or registered against land before the coming into force of the Civil Enforcement Act.

5 Section 33 presently reads:

33 The Registrar shall accept for registration and register duplicate originals, or copies certified under the hand of the deputy or acting deputy of the Minister charged with the administration of the National Parks Act (Canada) of any leases or other registerable

- (a) the deputy or acting deputy of the Minister charged with the administration of the *National Parks Act* (Canada), or
- (b) the Chief Executive Officer under the *Parks Canada Agency Act* (Canada) or a person duly authorized by the Chief Executive Officer,

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.

6 Section 122 is repealed.

7 The following is added before section 122.2:

Registration of
instruments

122.11(1) In this section, “instrument” means

- (a) a writ of enforcement, or
- (b) a registerable instrument other than a writ of enforcement that
 - (i) charges generally the property interest of a person, or
 - (ii) binds in the same manner as a writ of enforcement the property interests of a person.

(2) Notwithstanding this or any other Act, no instrument that is presented to the Registrar shall charge or have any binding effect on any land in which the debtor has an interest unless a memorandum of the instrument has been endorsed on the certificate of title for that land.

... instruments in connection with or relating to the title to land situated within the area set apart for National Parks.

6 Section 122 presently reads:

122(1) For the purposes of this section there shall be in Alberta 2 land registration districts, respectively known and described as follows:

(a) "North Alberta Land Registration District", being composed of all that portion of Alberta lying to the north of the 9th correction line;

(b) "South Alberta Land Registration District", being composed of all that portion of Alberta lying to the south of the 9th correction line.

(1.1) The Registrar may register a writ of enforcement or other writ affecting land.

7 Provides for the registration and the lapse of instruments; replaces sections 17.1 and 17.2 of the Land Titles Act.

(3) A person presenting to the Registrar an instrument for registration shall provide to the Registrar a statement in the prescribed form setting out the land in which the debtor has an interest and the debtor's interest in the land.

(4) When the Registrar

- (a) accepts an instrument for registration, and
- (b) is provided with a statement referred to in subsection (3),

the Registrar shall register the instrument and endorse a memorandum of the instrument on the certificate of title to the land specified by the creditor.

(5) At any time after the registration of an instrument under subsection (4), the creditor may, on providing to the Registrar a statement referred to in subsection (3), require the Registrar to endorse a memorandum of the instrument on the certificate of title for other land in which the debtor has an interest.

(6) On making a memorandum on a certificate of title under subsection (4) or (5), the Registrar shall forthwith send by mail addressed to

- (a) the registered owner of the land at the address stated on the certificate of title, and
- (b) the debtor, if the debtor is not the registered owner of the land, at the address provided by the creditor,

a notice of the instrument and of the debtor's interest in the land.

(7) Where a memorandum of an instrument or a caveat protecting the instrument is endorsed on a certificate of title,

- (a) in the case of an instrument that is a writ of enforcement, all legal and equitable interests of the debtor in the land included in the certificate of title are bound by the writ of enforcement during the period of time that the instrument is in force, and
- (b) in the case of an instrument other than a writ of enforcement, the interests of the debtor in the land included in the certificate of title are bound or charged in accordance with the Act that authorized

registration of the instrument during the period of time that the instrument is in force.

(8) If the obligation in respect of which an instrument was registered has been satisfied, the creditor shall furnish the debtor with a registerable discharge of that instrument.

(9) A creditor who, without reasonable cause, files or continues the registration of an instrument is liable to make compensation to any person who has sustained damage thereby.

(10) Any reference in this section to an instrument that is a writ of enforcement includes a reference to a writ of execution with respect to any writ of execution that was registered against land before the coming into force of the *Civil Enforcement Act*.

Lapse of instrument

122.12(1) In this section, "instrument" means an instrument as defined in section 122.11(1).

(2) Every instrument registered against any land shall be lapsed by the Registrar on an application made to the Registrar after the expiration of 60 days after notice, in the prescribed form, to take proceedings in court has been either

(a) served on the creditor as process is usually served, or

(b) sent by registered mail to the creditor at or to the address stated in the instrument or, if a notice of change of address for service has been filed with the Registrar, then at or to the address stated in the last notice of change of address for service filed in the Land Titles Office,

unless the creditor takes proceedings in court by originating notice, subject to the Alberta Rules of Court, or otherwise, to substantiate the interest claimed by the creditor and a certificate of *lis pendens* in the prescribed form has been filed with the Registrar.

(3) Notwithstanding subsection (2), the court may on an *ex parte* application shorten the period of 60 days to a period it specifies in the order, and a copy of the order must be served or mailed with the notice.

(4) The service or sending of the notice must be proved to the satisfaction of the Registrar.

(5) No instrument shall be lapsed pursuant to subsection (2) unless the person who caused the notice to be served or sent proves to the satisfaction of the Registrar that the person has an interest in the land against which the instrument was registered.

(6) Any reference in this section to an instrument that is a writ of enforcement includes a reference to a writ of execution with respect to any writ of execution that was registered against land before the coming into force of the *Civil Enforcement Act*.

8 Section 137 is amended

(a) in subsection (4) by striking out “of notice” and substituting “or sending of the notice”;

(b) in subsection (5) by adding “or sent” after “to be served”.

9 Section 158 is amended by striking out “of the district in which the land is situated”.

8 Section 137(4) and (5) presently read:

(4) The service of notice shall be proved to the satisfaction of the Registrar.

(5) No caveat shall be deemed to have lapsed pursuant to subsection (1) unless the person who caused the notice to be served proves to the satisfaction of the Registrar that he has an interest in the land, mortgage or encumbrance against which the caveat was lodged.

9 Section 158 presently reads:

158 Any person

(a) who sustains loss or damage through an omission, mistake or misfeasance of a Registrar or an official in his office in the execution of his duties, or

(b) who is deprived of any land or encumbrance or of an estate or interest therein

(i) through the bringing of it under this Act,

(ii) by the registration of another person as owner of the land or encumbrance, or

(iii) by an error, omission or misdescription in a certificate of title,

and who by this Act is barred from bringing an action for the recovery of the land or encumbrance or interest therein,

may bring an action against the Registrar of the district in which the land is situated for the recovery of damages.