

## **BILL 31**

2005

### **REAL ESTATE AMENDMENT ACT, 2005**

*(Assented to , 2005)*

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

#### **Amends RSA 2000 cR-5**

**1 The *Real Estate Act* is amended by this Act.**

#### **2 Section 60 is amended**

**(a) in subsection (1)(b) by striking out** “by reason of lapse of time or of being confirmed by the highest court to which that judgment may be appealed”;

**(b) by repealing subsection (4) and substituting the following:**

**(4)** Subject to any order under subsection (3), where an application has been made under subsection (1), the Council shall pay to the applicant the amount of compensation determined in accordance with the regulations.

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

**(6)** For the purposes of this Act, a judgment becomes final when

**(a)** the time for all appeals in respect of the judgment has expired without those appeals having been taken, or

- (b) all appeals have been concluded and the judgment has not been set aside or varied.

**3 The following is added after section 60:**

**Eligibility**

**60.1** Despite section 60(1), the following persons are not eligible to apply to the Council for compensation from the Fund:

- (a) a bank, loan corporation, trust corporation, credit union or treasury branch, or any other financial institution, whose business includes the lending of money by way of mortgage security or otherwise, or a subsidiary, within the meaning of section 2 of the *Business Corporations Act*, of any of them;
- (b) any person who in the Council's opinion knowingly participated in or was wilfully blind to the fraud or breach of trust of the industry member that gave rise to the judgment against the industry member;
- (c) any corporation or other entity carrying on any business or activity specified or described in the regulations.

**Payment from Fund**

**60.2(1)** No payment from the Fund shall be made under section 60 unless an application in writing for compensation from the Fund is received by the Council within one year from the date on which a judgment referred to in section 60 becomes final.

**(2)** In addition to the application referred to in subsection (1), an applicant shall provide the Council with the following:

- (a) the judgment with respect to which the application is made;
- (b) the statement of claim or other document that initiated the action to which the judgment relates;
- (c) evidence satisfactory to the Council that the judgment has become final;

- (d) an irrevocable assignment of all or part of the judgment from the applicant to the Council, in a form acceptable to the Council;
- (e) a statutory declaration stating that the applicant did not participate in and was not wilfully blind to the fraud or breach of trust of the industry member that gave rise to the judgment against the industry member;
- (f) any other information and documents prescribed by the regulations.

(3) If the applicant is a body corporate, the statutory declaration under subsection (2)(e) must be made by an officer of the body corporate authorized to make it.

#### **4 Section 84 is amended**

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

##### **Regulations**

**84(1)** The Lieutenant Governor in Council may make regulations

- (a) exempting persons or classes of persons or transactions in the business of an industry member or classes of such transactions from the application of any of the provisions of this Act;
- (b) specifying or describing a business or activity for the purposes of section 60.1(c).

- (b) in subsection (2)**

- (i) by repealing clause (f) and substituting the following:**

- (f) respecting the payment of compensation from the Fund including, without limitation, regulations respecting the maximum payments that may be paid from the Fund based on any one or more factual circumstances relating to an applicant or an industry

member or on any other consideration set out in the regulations;

**(ii) by repealing clause (g);**

**(iii) by adding the following before clause (h):**

(g.1) prescribing the information and documents to be provided by an applicant under section 60.2(2);

**5(1)** In this section, “amended Act” means the *Real Estate Act* as amended by this Act.

**(2)** The amended Act applies only in respect of judgments granted against an industry member after the coming into force of this Act.

### **Explanatory Notes**

**1** Amends chapter R-5 of the Revised Statutes of Alberta 2000.

**2** Section 60 presently reads in part:

*60(1) When a person obtains a judgment against an industry member of a class provided for in the regulations, and the judgment*

- (a) is based on a finding of fraud or breach of trust in respect of a transaction in the business of the industry member,*
- (b) has become final by reason of lapse of time or of being confirmed by the highest court to which that judgment may be appealed, and*
- (c) is not satisfied within 30 days after the date that it became final,*

*that person may apply to the Council for compensation from the Fund.*

*(4) Subject to the regulations and to any order under subsection (3), where an application has been made under subsection (1), the Council shall pay to the applicant the amount of the unsatisfied portion of the judgment.*

**3** Provisions added respecting eligibility to apply for compensation from Fund.

**4** Section 84 presently reads in part:

*84(1) The Lieutenant Governor in Council may make regulations exempting persons or classes of persons or transactions in the business of an industry member or classes of such transactions from the application of any of the provisions of this Act.*

*(2) The Minister may make regulations*

*(f) respecting the limits of liability of the Fund;*

*(g) prescribing the time within which claims against the Fund must be made;*

**5** Transitional.