

# BILL

No. 9 of 1915.

An Act to amend The Land Titles Act.

(Assented to \_\_\_\_\_, 1915.)

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

*The Land Titles Act* is amended as follows:

1. Section 62 is amended by striking out the word "shall" in the eighth line thereof and substituting therefor the word "may".

2. By inserting therein as section 62a thereof the following:

"62a. In case default is made in payment of the principal sum, interest, annuity or rent charge, or a part thereof secured by any mortgage or encumbrance registered under this Act, or in case default is made in the observance of any covenant expressed in any mortgage or encumbrance or herein declared to be implied in such instrument and in case such default continues for the space of one calendar month or for such longer period of time as may therein for that purpose be expressly limited, the mortgagee or encumbrancee may forthwith after giving the notice herein provided enter into possession of the lands and receive and take the rents, issues and profits thereof, and whether in or out of possession thereof may make any lease of the same or any part thereof as he may see fit.

"(2) Such notice shall declare the intention of the mortgagee or encumbrancee to so enter into possession and receive and take the rents, issues and profits as aforesaid, and shall contain a statement that in case default continues for the further space of two calendar months from the date of service of the notice, the mortgaged lands may be sold under the provisions of *The Land Titles Act*.

"(3) The said notice may also require the mortgagor or encumbrancer and the persons to whom the same is directed to pay within a time to be specified in such notice the money then due or owing on such mortgage or encumbrance or to observe the covenants therein expressed or implied as the case may be.

"(4) Such notice may also declare the intention of the mortgagee or encumbrancee to make an application for foreclosure as hereinafter provided in case a sale of the lands by public auction shall prove abortive, and in case default in payment of the principal or interest secured by the mortgage or encumbrance shall be continued for six months after the time for payment mentioned in the mortgage or encumbrance.

"(5) A copy of the notice shall be filed in the land titles office in which the mortgage or encumbrance is registered and shall be served upon every person appearing by the records of such land titles office at the time of filing such notice to have any mortgage, encumbrance or lien upon

the land subsequent to the mortgage or encumbrance or any estate, right or interest therein subject to such mortgage or encumbrance or upon the legal representative of any such person.

“(6) After such default in payment or in the observance of any covenant as aforesaid continuing for the further space of two calendar months from the date of service of such notice, such mortgagee or encumbrancee is hereby authorized and empowered to sell the land so mortgaged or encumbered or any part thereof, subject to the rights of any persons having any estate, right or interest therein having priority to the mortgage or encumbrance, in such manner as the registrar of land titles for the land registration district in which the mortgage or encumbrance is registered may direct and either altogether or in lots by public auction or private contract or by such modes of sale and subject to such terms and conditions as to expenses or otherwise as the registrar may think fit.

“(7) Such mortgagee or encumbrancee may make and execute all such instruments as shall be necessary for the sale and enjoyment of the premises; and all such instruments shall be as valid and effectual as if the mortgagor or encumbrancer and the other persons upon whom the notice aforesaid is required to be served had, made, done or executed the same and the receipt in writing of the mortgagee or encumbrancee shall be a sufficient discharge to the purchaser of such land, estate or interest or of any portion thereof, for so much of his purchase money as may thereby be expressed to be received, and no such person shall be answerable for the loss, misapplication or nonapplication or be obliged to see to the application of the purchase money by him paid, nor shall he be obliged to inquire as to the fact of any default or notice having been made or given as aforesaid, or how the purchase money to arise from the sale of any such land, estate or interest shall be applied.

“(8) Such purchase money shall be applied: Firstly, in payment of the expenses incurred by such sale; secondly, in payment of the moneys which may then be due or owing to the mortgagee or encumbrancee; thirdly, in payment of the subsequent mortgages and encumbrances or liens, if any, in the order of their priority; and fourthly, the surplus, if any, shall be paid to the owner, mortgagor, or encumbrancer, as the case may be.

“(9) Upon the registration of any instrument executed by the mortgagee or encumbrancee for the purpose of such sale as aforesaid, the estate or interest of the owner of the land mortgaged or encumbered shall vest in the purchaser freed and discharged from all liability on account of such mortgage or encumbrance and of any mortgage, lien, charge or encumbrance created by any instrument registered subsequent thereto, and the purchaser shall be entitled to receive a certificate of title for the same.

“(10) Whenever default has been made in payment of the principal or interest secured by a mortgage or encumbrance and such default shall be continued for six months after the time for payment mentioned in the mortgage or encumbrance, the mortgagee or encumbrancee may if he has given notice of his intention so to do as aforesaid make an application in writing to the registrar of land titles for the land registration district in which the mortgage or encumbrance is registered for an order for foreclosure.

“(11) Such application for foreclosure shall state that such default in payment as aforesaid has been made and has continued for the period aforesaid; that the land mortgaged or encumbered has been offered for sale at public auction under the provisions of this Act; that the amount of the highest bid at such sale was not sufficient to satisfy the moneys secured by such mortgage or encumbrance together with the expenses occasioned by such sale, and that such notice as aforesaid declared the intention of the mortgagee or encumbrancee to make an application for foreclosure in case such sale proved abortive; and such application shall be accompanied by such proof of the matters stated by the applicant and by such other evidence as the said registrar may require.

“(12) In case the notice as aforesaid has not declared the intention of the mortgagee or encumbrancee to make an application for foreclosure, another notice may be given declaring such intention if default in payment has continued for six months after the time for payment mentioned in the mortgage or encumbrance and in case a sale of the lands has proved abortive and when such subsequent notice has been given the application for foreclosure as herein provided may be proceeded with.

“(13) Such subsequent notice shall be filed and served in the same manner and upon the same persons as provided for in subsection (5) hereof.

“(14) Unless the registrar shall see fit to order otherwise the notice whether of intention to sell or to apply for a foreclosure order shall be served personally but in case any person required to be served cannot after due diligence be found the registrar may direct service of such notice by leaving the same on the mortgaged lands or by mailing the same in a sealed envelope by registered post directed to him or them at his or their last known address, or in such other manner as the registrar may direct; and in case any person required to be served is deceased and such person has no legal representative, such notice shall be effectively served if served upon the public administrator for the district in which the lands subject to the mortgage or encumbrance are situate.

“(15) On an application for foreclosure the registrar may if he considers it proper cause the notice to be published once in each of three consecutive weeks in such newspaper or newspapers as the registrar may direct and in two consecutive issues of *The Alberta Gazette* offering the said land for private sale and the registrar shall appoint a time not less than one month from the date of the first of such advertisements or in case there is no advertisement not less than one month from the date of such application upon and after which he may issue to such applicant an order for foreclosure unless in the interval a sufficient amount of money has been obtained from the sale of such land or paid by or on behalf of the owner, mortgagor or encumbrancer or interested party as aforesaid to satisfy the principal and interest and other moneys secured and all expenses occasioned by such sale and proceedings.

“(16) Every order of foreclosure under the hand of the registrar when entered in the register shall have the effect of vesting in the mortgagee or encumbrancee the land mentioned in such order free from all right and equity of redemption on the part of the owner, mortgagor or encumbrancer or any person claiming through or under

him subsequently to the mortgage or encumbrance; and such mortgagee or encumbrancee shall upon such entry being made be deemed a transferee of the land and become the owner thereof and be entitled to receive a certificate of title for the same.

“(17) Where a mortgagor is entitled to redeem he shall have the power to require the mortgagee instead of giving a discharge of the mortgage to transfer the mortgage to any third party as the mortgagor directs and the mortgagee shall be bound to transfer such mortgage to such third party.

“(18) A judge of the Supreme Court or a master in chambers may, from time to time, upon such terms as he shall think fit, on summary application on notice to the mortgagee or encumbrancee by order stay any sale hereunder, and may, upon such terms as he shall think fit, on summary application on notice to the mortgagor or encumbrancer cancel any stay granted hereunder.”

**3.** *The Foreclosure and Sale Act*, being chapter 6 of the Statutes of 1914, is hereby repealed except as to proceedings commenced thereunder and such proceedings may be carried to completion as if this Act had not been passed.

No. 9

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THIRD SESSION  
THIRD LEGISLATURE  
5 GEORGE V  
1915

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BILL

An Act to amend The Land Titles  
Act.

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Received and read the

First time . . . . .

Second time . . . . .

Third time . . . . .

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HON. MR. CROSS.

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EDMONTON:  
J. W. JEFFERY, Government Printer  
A. D. 1915.