

REPRINTED BILL.

## BILL

No. 34 of 1919.

An Act to amend The Land Titles Act.

(Assented to , 1919.)

**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*, being chapter 24 of the Statutes of Alberta, 1906, is amended as follows:

1. By striking out section 62 and substituting therefor the following:

“62. Proceedings for recovery of money secured by a mortgage or encumbrance, or to enforce any provision thereof, or sale, redemption or foreclosure proceedings with respect to mortgaged or encumbered land may be taken in any court of competent jurisdiction in accordance with the existing practice and procedure thereof.

“(2) No. execution to enforce a judgment for moneys secured by a mortgage, encumbrance or agreement of sale on or of land or of any security therefor shall issue or be proceeded with until sale of the land, and levy shall then only be made for the amount of the said moneys remaining unpaid after the due application of the purchase moneys received at the said sale.

“(3) As long as execution cannot issue or be proceeded with under the provisions of this section, the payment of the money secured by a mortgage or an agreement for sale of land shall not be enforced by attachment or garnishment, or by the appointment of a receiver or by any other process of a similar nature.

“(4) A judge of the Supreme Court, in any case where it is fair and equitable so to do and upon application by notice of motion, may order that the provisions of subsections 2 and 3 of this section are no longer to apply wholly or partly to the mortgage which is the subject matter of the application. The judge shall not make any such order save where he is convinced—

“(a) of the inadequacy of the land as a security for the mortgage debt;

“(b) of the possession by the mortgagor of liquid assets sufficient to discharge the mortgage debt; and

“(c) of the existence of a grave danger of disposal of the assets of the mortgagor to defeat the claim of the mortgagee.

“(5) Any order made under subsection 4 hereof may be at any time varied or set aside by the same or any other judge.”

2. By striking out of the proviso to section 46 the words “by or” where they occur therein.

3. By striking out subsection 5 of section 62a and substituting therefor the following:

“(5) A copy of the notice shall be served upon the mortgagor or incumbrancer and upon every person appearing by the records of the proper land titles office to have any right, estate or interest to or in the land charged, subsequent to the mortgage or encumbrance, and within two months after such service upon all such persons a copy shall be filed with the registrar of the proper land titles office.”

And by striking out the words “from the date of service of such notice” where they occur in subsection 6 thereof and inserting the words “from the date when service upon all such parties has been completed”, and by inserting at the end of such subsection the words “and such sale shall be confirmed by an order under the hand of the registrar”.

And by striking out subsection 16 thereof and inserting the following new subsections:

“(16) Every order of foreclosure and every order confirming a sale under the hand of the registrar shall contain a clause that possession of the lands mentioned therein shall be given to the mortgagee or purchaser forthwith, and upon filing a certified copy of such order in the office of the sheriff of the judicial district in which such lands are situate the sheriff of such district shall forthwith proceed to enforce such order for possession in the same manner as if it were a writ for possession, and the costs of obtaining such possession shall be forthwith paid by the person dispossessed to the mortgagee, purchaser or such other person or persons as may be entitled thereto under the next subsection.

“(16a) Where the land has been sold under this section, and there is a balance within the meaning of subsection 8 hereof, the costs of gaining possession shall be paid thereout and in priority to the claims of the other persons otherwise entitled to such balance, but such other persons shall be entitled to receive payment of the said costs from the person dispossessed.”

4. By inserting as section 62b the following:

**“62b.** The effect of an order for foreclosure of a mortgage or encumbrance heretofore or hereafter made by any court or judge or by any registrar shall be to vest the title of the land affected thereby in the mortgagee or encumbrancee 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 shall from and after the date of the passing of this section operate as full satisfaction of the debt secured by such mortgage or encumbrance. Such mortgagee or encumbrancee shall be deemed a transferee of the land and become the owner thereof and be entitled to receive a certificate of title for the same.”

**5.** By striking out section 73 and substituting therefor the following:

**“73.** Any such power of attorney may be revoked by a revocation in the form U in the schedule to this Act, and after the registration of a revocation of a power of attorney the registrar shall not register any transfer or other instrument made under such power of attorney unless such transfer or other instrument was executed prior to the revocation of the power of attorney.”

**6.** By striking out from subsection 1 of section 77 the three provisoes thereto and substituting therefor the following:

**“Provided** that every writ or renewal thereof shall cease to bind or affect land at the expiration of six years from the date of the receipt thereof by the registrar of the district in which the land is situated, unless before the expiration of such period of six years a renewal of such writ is filed with the registrar in the same manner as the original is required to be filed with him.

**7.** By adding after the word “lands” where it first occurs in subsection 3 of section 77 the words “at any time during the currency of such writ”.

**8.** By adding as subsections 4, 5 and 6 of section 77 the following:

**“(4)** In case a renewal writ of execution is received by the registrar after the expiration of the time limit such renewal shall nevertheless bind the land covered thereby from the time of its receipt in the same manner as if it were the certified copy of an original writ.

**“(5)** Any writ current at the date of the passing of this subsection shall be renewed as aforesaid on or before the first of January, 1920, or within six years from the receipt by the

registrar of a certified copy of such writ, whichever shall last occur; otherwise the same shall cease to bind the lands of the judgment debtor.

“(6) The registrar shall not be required to register any such writ unless it sets forth or has endorsed thereon in full the Christian name or names and surname of the debtor and his residence and occupation, or his name, residence and occupation in the exact form in which the same appear (if at all) upon a certificate of title in the same office.”

9. By adding as section 105a thereof the following:

“**105a.** Where any person has heretofore taken or shall hereafter take for valuable consideration and either immediately or by transfer a mortgage or encumbrance which is null and void as against a wife by reason of the provisions of *The Dower Act*, then and without prejudice to the generality of section 105 of this Act such person shall upon establishing the said nullity or voidness in an action for damages against the registrar as a nominal defendant be entitled to receive from the assurance fund all loss sustained by him by reason of taking the said mortgage or encumbrance, including therein the sum secured thereby at the date of judgment in the said action and the interest due thereon.

“(2) Any purchaser for value of land taking a transfer thereof which is null and void as aforesaid may recover from the assurance fund by the procedure aforesaid the amount of the loss sustained by him by reason of the said purchase, including all purchase moneys paid by him.

“(3) Absence of good faith on the part of the transferee, mortgagee, or encumbrancee or knowledge on his part of any fact sufficient to avoid the transfer, mortgage or encumbrance as aforesaid shall deprive him of the benefit of this section.

“(4) Upon recovery of judgment against the registrar or payment of damages or loss under section 111a of this Act, the Provincial Treasurer shall be entitled to be reimbursed by the transferrer, mortgagor or encumbrancer all sums paid by him out of the assurance fund and should he so desire to be registered as a transferee of the land or of the mortgage or encumbrance as trustee for the assurance fund and shall in any event be subrogated to all the rights and remedies, of the transferee, mortgagee, or encumbrancee.”

“(5) Time shall not commence or continue to run against the Provincial Treasurer, nor shall any statutory provision relating to limitation of action affect in any way the right of the Provincial Treasurer to recover all moneys paid out of the assurance fund under the provisions of this section or to take in any other way full advantage of subsection 4 hereof.”

**10.** By adding as section 111a thereof the following:

**"111a.** The Attorney General upon being satisfied that any claim which might under this Act be the subject of an action for damages against the registrar as a nominal defendant is well founded may issue a certificate to that effect, and thereupon the Lieutenant Governor in Council may direct the payment of the claim out of the assurance fund, together with a reasonable sum for costs incurred in making the same.

**"(2)** Whenever any amount is so paid out of the assurance fund, it shall be deemed to have been paid on account of such person as the Attorney General may direct, and the said amount may be recovered from the latter in manner directed by section 111 of this Act."

**11.** By inserting in section 117 at the end of the subsection thereof the following words:

**"Upon** registering any mortgage or encumbrance on land, the registrar shall demand and receive for the assurance fund twenty-five cents, or one-fortieth of one per cent. of the money secured by such mortgage or encumbrance, whichever is the greater."

**12.** By adding as section 124a thereof the following:

**"124a.** All plans of every nature whatsoever which are required to, or may be deposited with the registrar may be submitted for approval by him to the Director of Surveys of the province, or to such other person as the said director may in writing appoint thereunto."

**13.** By striking out of form EE in the schedule 1 thereto the word "only", and by adding at the end of the said form the following: "(The land herein referred to may also be subject to such decrees, orders, executions as may appear in a general registrar's certificate under seal in form FF)."

No. 34.

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SECOND SESSION  
FOURTH LEGISLATURE  
9 GEORGE V  
1919

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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. BOYLE.

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EDMONTON:  
J. W. JEFFERY, KING'S PRINTER  
A. D. 1919