

# BILL

No. 26 of 1940.

An Act for the Relief of Persons Serving in the Present European War.

(Assented to \_\_\_\_\_, 1940.)

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

**1.** This Act may be cited as "*The Soldiers' Relief Act, 1940.*"

**2.**—(1) In this Act, unless the context otherwise requires,—

- (a) "Debt" includes any liability for the payment of taxes to a municipality or for drainage rates or irrigation rates;
- (b) "Home Property" means in the case of land which has been subdivided pursuant to the provisions of The Land Titles Act, land which consists of not more than four contiguous lots according to the plan of subdivisions and in the case of land not so subdivided, land which consists of not more than two quarter sections, if—
  - (i) as at the first day of September, 1939, such land was owned by a soldier and/or his wife and was at the time of the soldier becoming a soldier in the occupation of the soldier or the wife of the soldier or of any of the ascendants or descendants of the soldier who were at the last mentioned date dependent upon the soldier; and
  - (ii) such land is registered as a home property pursuant to the provisions of this Act;
- (c) "Judge" means a Judge of the Supreme Court or a Judge of the District Court acting in his respective jurisdiction;
- (d) "Land" means land together with all buildings, erections and other improvements thereon;
- (e) "Municipality" means any city, town, village, municipal district or improvement district, or any school district or consolidated school district which collects its own taxes;

- (f) "Soldier" means any person who was on the first day of September, 1939, permanently resident in the Province of Alberta, and who has left his or her usual occupation for the purpose of serving as a duly enlisted member of—
- (i) the Canadian active service force raised by the Government of Canada; or
  - (ii) the naval or air forces of Canada raised by the Government of Canada; or
  - (iii) the military, naval or air forces of His Majesty raised otherwise than by the Government of Canada; or
  - (iv) the military, naval or air forces of any of the Allies of His Majesty;
- (g) "Tax" means any tax levied by a municipality in respect of land.

(2) For the purpose of this Act,—

- (a) A person shall be deemed to own land if he is the registered owner thereof pursuant to The Land Titles Act or is entitled to be registered as the owner thereof or is the purchaser of land under an agreement of sale which was subsisting as at the first day of September, 1939, so long as such agreement remains in force;
- (b) Any land shall be deemed to be home property which devolves upon a soldier by will or intestacy upon the death of a person who is the wife of the soldier or any of the ascendants or descendants of the soldier if the same was in the occupation of such person immediately before the death of such person, if—
  - (i) in the case of subdivided land the same does not exceed four contiguous lots and in the case of unsubdivided land does not exceed two quarter sections; and
  - (ii) the land is registered as a home property pursuant to the provisions of this Act;
- (c) A soldier shall cease to be a soldier within the meaning of this Act—
  - (i) in case he is discharged within six months after the date of enlistment forthwith upon such discharge;
  - (ii) in case he is discharged at any time by reason of his being convicted by any duly constituted court of criminal jurisdiction other than a court martial of any criminal offence forthwith upon such discharge;
  - (iii) in case he is discharged for any other reason at the expiration of the year in which he is discharged;

- (d) In case a soldier dies whilst he is a soldier he shall for the purposes of this Act be deemed to have died on the last day of the year in which his death occurs.

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## PART I

### TAX EXEMPTION.

**3.** Land which is the home property of a soldier together with all buildings and improvements thereon shall be exempt from assessment and taxation by any municipality in the year in which the soldier became a soldier and thereafter until he ceases to be a soldier.

**4.** If at the time a soldier becomes a soldier there are any arrears of taxes against the land which is the home property of the soldier, all remedies for enforcing the payment thereof and without derogating from the generality of the foregoing, all proceedings against the land under *The Tax Recovery Act, 1938*, or any other Act relating to the recovery of taxes shall be suspended until the soldier ceases to be a soldier.

**5.** Upon the listing of any land as home property pursuant to this Act,—

- (a) all taxes levied by the municipality with whom it is so listed in the year in which the owner thereof became a soldier and subsequently thereto which are unpaid at the date of such listing shall be cancelled; and
- (b) in case there are at the time of such listing any arrears of taxes against the land which accrued before the year in which the owner became a soldier, no proceedings of any kind shall be instituted or carried on for the recovery of such arrears and no penalties for non-payment or interest shall be added thereto until the land ceases to be owned by the soldier or the owner thereof ceases to be a soldier, whichever event first happens.

**6.** In case the land owned by a soldier which would be his home property but for the fact that the same exceeds in the case of subdivided land more than four contiguous lots, and in the case of other land more than two quarter sections, the soldier may select so much thereof (inclusive of the lot or quarter section as the case may be, upon which the soldier resided) as is not in excess of four contiguous lots in the case of subdivided land, or two quarter sections of other land, as his home property and may notify any municipality in which such land is situate before the first day of March in any year that he has made such selection

together with the legal description of the land so selected, and thereupon the land so selected shall be the home property of the soldier.

**7.** Every municipality shall abstain from the assessment and taxation of all land which is the home property of a soldier, upon the same being listed as such under the provisions of this Act so long as the soldier continues to be a soldier within the meaning of this Act.

**8.** In case upon the listing of any home property it appears that the same exceeds four contiguous lots in the case of unsubdivided land, or two quarter sections in the case of other land, the soldier does not make the selection thereof pursuant to section 6 hereof, the municipality shall make such selection as it deems to be in the best interests of the soldier in the same manner as the soldier is empowered to do by this Act and not otherwise.

**9.** If any dispute or difficulty arises as to whether any land is exempted land, or as to whether any person is or was a soldier, or as to whether any person has been discharged, or as to whether any person is or was dependent upon a soldier for support, the Minister of Municipal Affairs shall decide thereon, and his decision when reduced to writing shall be conclusive proof of the points decided therein.

**10.—(1)** Every municipality shall keep a register of home properties.

(2) Any soldier may apply to a municipality to have his home property listed upon the register.

(3) Such application shall be in the form prescribed by the Minister of Municipal Affairs.

(4) Every municipality shall, upon being satisfied that any land is home property, list the same upon the register, whether any formal application has been made with respect thereto or not, but if no application has been made with respect thereto the municipality shall be in no way liable for not listing any land.

(5) Every municipality shall from time to time forward to the Minister of Municipal Affairs a copy of its register if so directed by him.

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## PART II.

### DEBT RELIEF.

**11.—(1)** No person, without first having obtained a permit in writing from the board constituted pursuant to *The Debt Adjustment Act, 1937*, giving consent thereto in writing, shall take, maintain or continue any action or pro-

ceedings, judicial or extra-judicial, against any person who is a soldier or against the wife or any dependent member of the family of a soldier for the enforcement of payment of any debt, liability or obligation incurred before the date upon which the soldier became a soldier within the meaning of this Act, or for the enforcement of any mortgage, charge, lien, encumbrance or other security upon any property of any such person created or arising before the soldier became a soldier within the meaning of this Act until the expiration of two years after his discharge:

Provided, however, that where in any pending action or proceeding, the soldier claims remedy or relief by way of counterclaim, or by way of a third party notice according to the practice of the Court, the action or proceeding may be proceeded with, notwithstanding anything herein contained, upon there being filed in the office of the Clerk of the Court in which such action was begun, a writing signed by or on behalf of the soldier consenting thereto.

(2) In the event of the death of a soldier prior to his discharge, he shall for the purposes of this section be deemed to have been discharged upon the expiration of two years after the date of his death and in the meantime his personal representatives shall be deemed to be the soldier:

Provided, however, that the estate of such soldier shall not be distributed to any of the parties entitled thereto prior to the payment of the liabilities of such estate.

**12.** In case any person against whom any action or proceeding is prohibited or stayed by this Act, is or would be, according to law or practice, a necessary or proper party to any action or proceeding against any other person or persons, such action or proceeding may, notwithstanding anything in this Act, be commenced and carried on as between such other person or persons, and the party or parties commencing or carrying on such proceeding, and the Court may reserve to any of the other parties to any action or proceeding any rights or remedies or relief over against the party for whose benefit this Act is enacted until the expiration of two years after the discharge of such person.

**13.** Nothing in this Act shall prevent any defendant against whom any action or proceeding is brought by a person entitled to the benefit of this Act from setting up any defence thereto, or any set-off or counterclaim which he might set up if this Act had not been passed.

**14.** *The Limitation of Actions Act, 1935*, shall not run in favour of any person entitled to the benefit of this Act during the period within which such person is receiving such benefit.

**15.** If any property of any kind or interest therein is held by or in the name of any person entitled to the benefit of this Act in trust for the benefit of any other person, then

any action or proceeding against such first named person, either alone or along with such other person, in respect of such property or interest therein, or for the purpose of realizing a claim of a creditor of such other person out of such property or interest, may be brought and continued and carried to its conclusion notwithstanding anything in this Act.

**16.** No person shall realize by sale or otherwise on any security given by a soldier from the date of the enlistment of such soldier until the expiration of a period of two years after the date of his discharge, without the consent of such soldier in writing.

**17.** In case any claim is made to any land owned by a soldier based on adverse possession, any time during which any person resided on or occupied such land from the date upon which the soldier became a soldier until the expiration of two years after the date of his discharge shall be excluded from the computation of the time during which such adverse possession continued.

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### PART III.

#### ADMINISTRATION OF PROPERTY AND ESTATES OF SOLDIERS.

**18.** Every public administrator appointed under the provisions of The Judicature Act is hereby empowered,—

- (a) upon being appointed by a soldier pursuant to the other provisions of this Act to act as the agent for a soldier in the management of all the property or any specified property of the soldier until the expiration of six months after the date of discharge of the soldier;
- (b) to accept an appointment as an executor or trustee under the will of a soldier.

**19.** Any soldier may appoint the public administrator for the judicial district in which he resided immediately before he became a soldier or in which is situate any property owned by the soldier as his agent for the management of all his property or any specified property by executing a power of attorney.

**20.** Every public administrator shall, in the management of any property of a soldier, manage the same in such manner as he, in his uncontrolled discretion, deems to be in the best interests of the soldier: in so doing he shall as far as possible endeavour to carry out the express wishes of the soldier but in case of any disagreement between the soldier and the public administrator as to the manner in which any property shall be managed the decision of the public administrator shall prevail.

**21.**—(1) Wherever the public administrator becomes a party to any action or proceeding as the agent of a soldier he shall be entitled to proceed as a needy litigant under the provisions of the Rules of Court relating to proceedings by and against poor persons or needy litigants.

(2) In case the public administrator declines to bring or defend any action or proceeding on behalf of the soldier, the soldier shall be entitled to take or defend any action as if he had not appointed the public administrator as his agent.

**22.** The public administrator may take over and administer any land owned by a soldier which is for the time being vacant or any personal property which is not for the time being in the custody of some person for and on behalf of the soldier, and he shall administer such land and personal property in the best interests of the soldier and may in his absolute discretion sell any such personal property as agent for the soldier at any price and in any manner which he thinks fit and may apply the proceeds of such realization or sale in such manner as he deems to the best interests of the soldier, and upon the making of any such sale the title to the property sold shall pass as if the sale had been made by the soldier owning the same.

**23.** In case the public administrator has reason to believe that any of the property of a soldier is being dissipated or wrongfully disposed of or dealt with in any way to the detriment of the soldier, he may apply to a judge *ex parte* for directions and may take such action or other proceedings as the judge may direct on behalf of and in the name of the soldier for the purpose of protecting the property of the soldier.

**24.** No action or proceeding of any kind shall lie against a public administrator by reason of any act or thing done by him whilst acting as the agent for a soldier, provided that such act or thing was done by him honestly and in the *bona fide* belief that it was so done in the best interests of the soldier.

**25.** Every public administrator whilst acting as an agent for a soldier in the management of his property shall be entitled to call upon all employees of the Provincial Government and of any municipality for assistance and such employees shall give any assistance required by a public administrator without charge, and may employ any barrister or solicitor as he may reasonably require for the proper discharge of his administration and may pay a reasonable remuneration for all services performed by such barrister or solicitor.

**26.** The fees payable to a public administrator in respect of services rendered by him as the agent for a soldier shall be the disbursements and a percentage not in excess of 5

per cent on the amount of all cash received by the public administrator for the benefit of the soldier as a judge may from time to time allow.

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#### PART IV.

##### VOTING AT ELECTIONS.

**27.** Any soldier who is entitled to vote at an election for members of the Legislative Assembly of the Province, but who is on the day fixed for the nomination of candidates at such election, quartered in an electoral division in the Province other than the electoral division in which he is entitled to vote, may, notwithstanding any of the provisions of *The Alberta Election Act*, cast his vote in the division in which he is so quartered for a candidate or candidates in the electoral division in which he is, under the provisions of *The Alberta Election Act*, entitled to vote.

**28.** The Lieutenant Governor in Council may do all such things and may make all such rules and regulations as may be necessary for the effective carrying out of the provisions of section 27 hereof and such rules and regulations shall be read and construed as if they formed part of the said section.

**29.** When there is any conflict between the provisions of sections 27 and 28 of this Act, or of the rules and regulations made under section 28 and the provisions of *The Alberta Election Act*, the provisions of the said sections and the said rules and regulations shall prevail.

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##### GENERAL.

**30.** The Lieutenant Governor in Council may from time to time by order make such regulations as he may deem necessary for the carrying out of this Act and in particular, but not so as to restrict the generality of the foregoing, as to the manner in which a public administrator shall execute all or any of his duties as an agent for a soldier and may prescribe the forms to be used in relation thereto.

**31.** This Act shall come into force on the day upon which it is assented to.



NINTH SESSION  
EIGHTH LEGISLATURE

4 GEORGE VI

1940

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**BILL**

An Act for the Relief of Persons  
Serving in the Present  
European War.

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. MAYNARD.

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EDMONTON:  
A. Shnitka, King's Printer  
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