



Province of Alberta

## **LAND TITLES ACT**

Revised Statutes of Alberta 2000  
Chapter L-4

Current as of December 15, 2017

Office Consolidation

© Published by Alberta Queen's Printer

Alberta Queen's Printer  
Suite 700, Park Plaza  
10611 - 98 Avenue  
Edmonton, AB T5K 2P7  
Phone: 780-427-4952  
Fax: 780-452-0668

E-mail: [qp@gov.ab.ca](mailto:qp@gov.ab.ca)  
Shop on-line at [www.qp.alberta.ca](http://www.qp.alberta.ca)

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### Note

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### Regulations

The following is a list of the regulations made under the *Land Titles Act* that are filed as Alberta Regulations under the Regulations Act

	<b>Alta. Reg.</b>	<i>Amendments</i>
<b>Land Titles Act</b>		
Forms .....	480/81 .....	232/82, 538/82, 195/85, 331/88, 48/95, 231/99, 211/2001, 251/2001, 326/2003, 248/2006, 149/2007, 164/2010, 227/2011, 170/2012, 159/2016
Metric Conversion.....	22/2000 .....	354/2003, 213/2010
Name Search .....	207/99 .....	251/2001, 354/2003, 73/2010, 66/2014
Proof of Identity .....	174/2008 .....	137/2017
Tariff of Fees.....	120/2000 .....	251/2001, 108/2003, 354/2003, 35/2007, 68/2008, 29/2011, 137/2015

# **LAND TITLES ACT**

## Chapter L-4

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

### Definitions

**1** In this Act,

- (a) “affidavit” means an affirmation when made by a person entitled to affirm;
- (b) “certificate of title” means the record of the title to land that is maintained by the Registrar;
- (c) “court” means any court authorized to adjudicate in Alberta in civil matters in which the title to real estate is in question;
- (d) repealed 2008 cA-4.2 s137;
- (e) “encumbrance” means any charge on land created or effected for any purpose whatever, inclusive of mortgage, mechanics’ or builders’ liens, when authorized by statute, and executions against land, unless expressly distinguished;
- (f) “encumbrancee” means the owner of an encumbrance;
- (g) “encumbrancer” means the owner of any land or of any estate or interest in land subject to any encumbrance;
- (h) “endorsed” and “endorsement” apply to anything entered, printed, stamped or written on an instrument or caveat or on any paper attached to it by the Registrar;
- (i) “filing” means the entering in the record of any instrument or caveat;
- (j) “grant” means a grant of Crown land, whether in fee or for years, and whether direct from Her Majesty or pursuant to any statute;
- (k) “instrument” means
  - (i) a grant, certificate of title, conveyance, assurance, deed, map, plan, will, probate or exemplification of will, letters of administration, or an exemplification of letters of administration, mortgage or encumbrance,
  - (ii) a judgment or order of a court,
  - (iii) an application under section 75, or

- (iv) any other document in writing relating to or affecting the transfer of or dealing with land or evidencing title to land;
- (l) “judge” means an official authorized in Alberta to adjudicate in civil matters in which the title to real estate is in question;
- (m) “land” means land, messuages, tenements and hereditaments, corporeal and incorporeal, of every nature and description, and every estate or interest therein, whether the estate or interest is legal or equitable, together with paths, passages, ways, watercourses, liberties, privileges and easements appertaining thereto and trees and timber thereon, and mines, minerals and quarries thereon or thereunder lying or being, unless any of them are specially excepted;
- (n) “memorandum” means the endorsement on the certificate of title of the particulars of an instrument or caveat presented for registration;
- (o) “mortgage” means a charge on land created merely for securing a debt or loan;
- (p) “mortgagee” means the owner of a mortgage;
- (q) “mortgagor” means the owner or transferor of land, or of any estate or interest in land charged as security for a debt or a loan;
- (r) “owner” means a person entitled to any freehold or other estate or interest in land, at law or in equity, in possession, in futurity or expectancy;
- (s) “possession” when applied to persons claiming title to land means also alternatively the reception of the rents and profits of the land;
- (t) “register” means the register of titles to land kept in accordance with this Act;
- (u) “Registrar” means the Registrar of Titles and includes a Deputy Registrar and an Assistant Deputy Registrar;
- (v) “registration” means
  - (i) the bringing of land under the provisions of this Act,

- (ii) the entering on the certificate of title of a memorandum authorized by this Act or any other Act of any instrument or caveat, and
  - (iii) the entering in the proper register of any instrument or caveat authorized to be registered, of which a memorandum is not required to be entered on a certificate of title;
- (v.1) “represented adult” means
- (i) a represented adult as defined in the *Adult Guardianship and Trusteeship Act*, or
  - (ii) a person in respect of whom a certificate of incapacity is in effect under the *Public Trustee Act*;
- (w) “transfer” means the passing of any estate or interest in land under this Act, whether for valuable consideration or otherwise, as well as the instrument of transfer in the prescribed form;
- (x) “transferee” means the person to whom any interest or estate in land is transferred, whether for value or otherwise;
- (y) “transferor” means the person by whom any interest or estate in land is transferred, whether for value or otherwise;
- (z) “transmission” applies to change of ownership consequent on death, mental incapacity, sale under execution, order of court, or other act of law, sale for arrears of taxes or on a settlement or any legal succession in case of intestacy.

RSA 2000 cL-4 s1;2006 c21 s2;2008 cA-4.2 s137

### Land Titles Office

#### Land Titles Office

**2** An office known as a “Land Titles Office” shall be located at one or more locations as determined by the Minister responsible for this Act.

RSA 1980 cL-5 s4;1985 c48 s2(3);1996 c32 s5(3)

### Officers

**3** Repealed 2006 c21 s3.

#### Officials

**4** In accordance with the *Public Service Act*, there may be appointed

- (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 purpose of administering the Land Titles Office.  
RSA 1980 cL-5 s6;1988 c27 s4;2000 c14 s2

#### **Deputy Registrar**

**5** The Deputy Registrar may do and perform all the duties required by this Act to be done or performed by the Registrar.  
RSA 2000 cL-4 s5;2006 c21 s4

#### **Officials under control of Minister**

**6** The Registrar, Deputy Registrars and other necessary officers are under the control of the Minister responsible for this Act.  
RSA 2000 cL-4 s6;2006 c21 s5

#### **Oath of office**

**7** The Registrar and every Deputy Registrar and Assistant Deputy Registrar before entering on the execution of that office shall take the official oath prescribed by the *Oaths of Office Act*.  
RSA 2000 cL-4 s7;2006 c21 s6

#### **Seal of office**

**8** The Registrar shall have a seal of office.  
RSA 1980 cL-5 s11;1988 c27 s5;2000 c14 s3

#### **Administration of oaths**

**9** The Registrar or any Deputy Registrar or Assistant Deputy Registrar may administer any oath or take any affirmation or declaration instead of an oath respecting titles to land from anyone entitled by law to affirm or declare.  
RSA 2000 cL-4 s9;2006 c21 s7

#### **Officials acting as agents, etc.**

**10** The Registrar or any Deputy Registrar, Assistant Deputy Registrar or clerk in any Land Titles Office shall not directly or indirectly act as the agent of any person investing money and taking securities on land within Alberta, advise, for any fee or reward or otherwise, on titles to land or practise as a conveyancer.  
RSA 2000 cL-4 s10;2006 c21 s8

#### **Business on premises**

**11** The Registrar or Deputy Registrar, Assistant Deputy Registrar or clerk in any Land Titles Office shall not carry on or transact within the Land Titles Office any business or occupation whatever

other than that official's duties as Registrar, Deputy Registrar, Assistant Deputy Registrar or clerk.

RSA 2000 cL-4 s11;2006 c21 s9

#### **Office hours**

**12** Every Land Titles Office shall be kept open during the hours and on the days fixed by the Minister.

RSA 1980 cL-5 s15;1985 c48 s2(5);1994 cG-8.5 s40

#### **Keeping of records**

**13** Where records are required to be kept under this Act, the Registrar may keep those records

- (a) in written form,
- (b) by any graphic, photographic, magnetic or electronic means, or
- (c) by any other means or combination of means,

as the Registrar considers appropriate.

1988 c27 s6

#### **Daily record**

**14(1)** The Registrar shall keep a record that shall contain particulars of every instrument and caveat accepted by the Registrar for filing or registration.

**(2)** The Registrar shall cause each instrument or caveat received by the Registrar for filing or registration to be examined and if it is found to be complete and in the proper form and fit for filing or registration, the Registrar shall endorse on the instrument or caveat the serial number assigned to it and the date on which the serial number is assigned.

**(3)** For purposes of priority between mortgagees, transferees and others, the serial number assigned to the instrument or caveat shall determine the priority of the instrument or caveat filed or registered.

**(4)** Notwithstanding subsections (2) and (3), instead of assigning a serial number to an instrument or caveat, the Registrar may identify the instrument or caveat by a means other than a serial number so long as that other means of identification allows for the determination of priority between mortgagees, transferees and others.

RSA 1980 cL-5 s16;1985 c48 s2(6);1988 c27 s7;  
1994 cC-10.5 s134;1996 c32 s5(5);1999 c10 s3

**Register**

**15** The Registrar shall keep each certificate of title and shall record on it the particulars of all instruments, caveats, dealings and other matters by this Act required to be registered or entered on the certificate of title and affecting the land included in it and the certificates of title so kept constitute the “register”.

RSA 1980 cL-5 s17;1985 c48 s2(7);1988 c27 s8

**Record of names**

**16** The Registrar shall maintain a record that will enable the Registrar to provide a list of land owned by persons who have the same name as a person specified in a request made to the Registrar for a search under section 17.

1988 c27 s9

**Search**

**17** On receiving a request for a search and the payment of the prescribed fee and on the fulfilment of any conditions, criteria or qualifications prescribed by regulation, the Registrar shall furnish a search of the information contained in the register.

RSA 1980 cL-5 s18;1988 c27 s10;1999 c10 s4

**Photostatic negative of certificate of title**

**18(1)** When a certificate of title in the register is torn, damaged, frayed, mutilated or is otherwise rendered unfit, in the opinion of the Registrar, for continued use, the Registrar may cause a photostatic negative to be made of the face of the certificate of title and a photostatic negative to be made of the reverse side of the certificate of title.

**(2)** The Registrar shall endorse and sign a memorandum on the reverse side of each photostatic negative stating the date on which the negative was made.

**(3)** The Registrar may remove the certificate of title from the register and shall replace it with the 2 photostatic negatives.

**(4)** The 2 negatives are deemed for all purposes of this Act to be the certificate of title and after the date on which they were made the Registrar shall record on them the particulars of each instrument, dealing or other matter required to be registered or entered in the register by this Act and affecting the land included in the certificate of title.

**(5)** The 2 negatives are admissible in evidence in all cases and for all purposes for which the certificate of title would have been admissible, notwithstanding that the certificate of title has not been destroyed.

RSA 1980 cL-5 s19;1988 c27 s11

**Duplicate records**

**19(1)** The Registrar shall, by any method the Registrar considers appropriate, keep a duplicate record of the following:

- (a) a certificate of title when it is removed from the register;
- (b) a new certificate of title when it is issued;
- (c) a certificate of title after a memorandum is endorsed on it;
- (d) an instrument or caveat accepted for filing or registration, after the memorandum of the filing or registration has been entered on the certificate of title.

**(2)** Where a duplicate record has been made of an instrument or caveat, the original instrument or caveat may be destroyed after any period of time that may be prescribed by regulation.

RSA 1980 cL-5 s20;1988 c27 s12

**Substitute instrument or caveat**

**20(1)** Where the Registrar is satisfied that an instrument or caveat has been destroyed, is lost or cannot be found, the Registrar may refer to

- (a) the records kept under section 19, and
- (b) the other records kept in the Land Titles Office,

and create a substitute for or a copy of the instrument or caveat based on the information contained in those records.

**(2)** Where a substitute for or a copy of the instrument or caveat is made under subsection (1), it has, without further proof, the same force and effect as the original instrument or caveat.

RSA 1980 cL-5 s21;1988 c27 s13

**Court order re lost instrument**

**21(1)** When the Registrar

- (a) is required to produce an instrument or caveat, and
- (b) certifies that the Registrar is unable to produce the instrument or caveat by reason that it has been destroyed, is lost or cannot be found and another record of the instrument or caveat has not been made,

a person having an interest in the land affected by the instrument or caveat may apply to the court for an order dealing with the instrument or caveat in any manner that the court considers appropriate.

(2) The referred to in subsection (1) shall be served on those persons and in any manner that the court directs.

RSA 2000 cL-4 s21;2009 c53 s95

#### **District boundaries**

**22** On receipt of a copy of the order forming the district or of any other order or notice altering the content of the district from the drainage council or irrigation council, as the case may be, the Registrar shall note on each certificate of title to a parcel of land shown in the order or notice the fact that the parcel forms part of the district or, as the case may be, shall remove the note to that effect.

RSA 1980 cL-5 s23;1999 cI-11.7 s214

#### **Copies of instruments and caveats**

**23(1)** The Registrar shall, on request and payment of the prescribed fee, furnish a reproduction of any instrument or caveat.

(2) Notwithstanding subsection (1), if a reproduction of an instrument or caveat cannot be made, the Registrar may furnish a document setting out the information contained in the instrument or caveat that is available to the Registrar.

RSA 2000 cL-4 s23;2006 c21 s10

### **Registration**

#### **Registration of grant**

**24(1)** A grant is deemed to be registered under this Act when it has been marked by the Registrar with the serial number assigned to it and a memorandum of its registration has been entered in the record.

(2) A caveat or an instrument, other than a grant, is deemed to be registered when a memorandum of it has been entered on the existing certificate of title.

RSA 1980 cL-5 s25;1985 c48 s2(9);1988 c27 s17;1996 c32 s5(28)

#### **Memorandum on instrument**

**25** Every memorandum entered on a certificate of title shall state the nature of the instrument or caveat to which it relates, the serial number of the instrument or caveat, the date on which the serial number was assigned and any other particulars that the Registrar considers to be appropriate.

RSA 1980 cL-5 s27;1988 c27 s19

#### **Land in one certificate**

**26(1)** A certificate of title shall not include the following:

- (a) more than one section of land;

- (b) parcels of land that are described by reference to different registered plans;
- (c) land described in parts, where one part is described by reference to a registered plan and another part is described by any other kind of description.

**(2)** Unless the Registrar otherwise permits, a certificate of title shall include only land that consists of a contiguous area.

**(3)** The Registrar may cancel a certificate of title that does not comply with subsection (1) or (2), or both of them, and issue in substitution for it new certificates of title to the land that was included in the cancelled certificate of title.

RSA 1980 cL-5 s29;1988 c27 s20

#### **Instruments in favour of corporations**

**27(1)** The Registrar may reject any instrument or caveat under which an interest in land is claimed or dealt with on behalf of a corporation unless the Registrar is satisfied that the corporation is

- (a) registered under the *Companies Act*,
- (b) registered, incorporated or continued under the *Business Corporations Act* or the *Cooperatives Act*,
- (c) a loan corporation or trust corporation,
- (d) licensed under the *Insurance Act*,
- (e) registered under the *Societies Act*,
- (f) registered under the *Rural Utilities Act*,
- (g) incorporated under the *Credit Union Act*,
- (h) incorporated under the *Agricultural Societies Act*,
- (i) incorporated in Alberta by or pursuant to a public or private Act,
- (j) incorporated or continued under the *Bank Act* (Canada) or the *Railway Act* (Canada), RSC 1985 cR-3, or
- (k) an agent of the Crown in right of Canada.

**(2)** In the case of any corporation to which subsection (1)(a), (b), (c), (d), (e), (f), (g) or (h) applies, the receipt by the Registrar of a certificate from

- (a) the Registrar of Companies that a corporation is registered under the *Companies Act*,
- (b) the Registrar as defined in the *Business Corporations Act* that a corporation is registered, incorporated or continued under that Act,
- (b.1) the Director as defined in the *Cooperatives Act* that a cooperative is registered, incorporated or continued under that Act,
- (c) the Registrar as defined in the *Business Corporations Act* that a corporation is registered under the *Societies Act* or the *Rural Utilities Act*,
- (d) the member of the Executive Council responsible for the administration of the *Loan and Trust Corporations Act* that a corporation is a loan corporation or trust corporation,
- (e) the Minister responsible for the *Insurance Act* that a corporation is licensed under the *Insurance Act*,
- (f) the member of the Executive Council responsible for the administration of the *Credit Union Act* that a corporation is incorporated under the *Credit Union Act*, or
- (g) the Director of Agricultural Societies that a corporation is incorporated under the *Agricultural Societies Act*,

shall be sufficient to satisfy the Registrar in relation to every submission for registration or filing made afterwards in relation to that corporation until the Registrar is informed by the Registrar of Companies, the Registrar as defined in the *Business Corporations Act*, the member of the Executive Council responsible for the administration of the *Loan and Trust Corporations Act*, the Superintendent of Insurance, the member of the Executive Council responsible for the administration of the *Credit Union Act* or the Director of Agricultural Societies, as the case may be, that the certificate issued in respect of that corporation is no longer valid.

**(3)** The Registrar of Companies, the Registrar as defined in the *Business Corporations Act*, the member of the Executive Council responsible for the administration of the *Loan and Trust Corporations Act*, the Superintendent of Insurance, the member of the Executive Council referred to in subsection (2)(f) and the Director of Agricultural Societies, as the case may be, shall notify the Registrars forthwith, on any corporation for which they may have issued their respective certificates being dissolved or

liquidated and dissolved or ceasing to be registered or licensed, that the certificate issued in respect of that corporation is invalid.

**(4)** Except in respect of a corporation

- (a) that is a loan corporation or trust corporation, or
- (b) licensed under the *Insurance Act*,

a certificate of a solicitor who is a member of The Law Society of Alberta stating that the corporation is registered under the *Companies Act*, the *Societies Act*, the *Rural Utilities Act* or the *Agricultural Societies Act*, or is incorporated, continued or registered under the *Business Corporations Act*, the *Cooperatives Act* or the *Credit Union Act* shall be sufficient to satisfy the Registrar in relation to the submission for registration or filing of the instrument or caveat to which the certificate is attached and of which it forms part.

**(5)** Notwithstanding subsections (1) to (4), the Registrar may register a lien under the *Builders' Lien Act* by an extra-provincial corporation that is not registered in Alberta.

RSA 2000 cL-4 s27;RSA 2000 cI-3 s860;  
2001 cC-28.1 s457;2001 c23 s1(10);2011 c13 s5

**Statutory declaration required**

**28(1)** The Registrar shall refuse to register the transfer or transmission of any estate or interest in land, to register any caveat relating to an estate or interest in land or to register or file a plan of subdivision unless the transfer, transmission, caveat or plan of subdivision is accompanied with a statutory declaration in the form and containing the information prescribed by regulations under the *Agricultural and Recreational Land Ownership Act* and section 35 of the *Citizenship Act* (Canada) and made by the person required by those regulations to make it.

**(2)** The Registrar shall refuse to register a transfer, transmission, caveat or plan of subdivision described in subsection (1) if the Registrar has reason to believe that the transfer, transmission, caveat or plan of subdivision results in the taking or acquisition directly or indirectly of, or the succession to, an estate or interest in land by a person contrary to regulations made under the *Agricultural and Recreational Land Ownership Act* and section 35 of the *Citizenship Act* (Canada).

RSA 1980 cL-5 s31;1994 c23 s50

**Letters patent**

**29(1)** When any land is granted in Alberta by the Crown and the letters patent for the grant have been forwarded from the office

from which the letters patent are issued to the Registrar, the Registrar shall retain the letters patent in the Registrar's office, and a certificate of title, as provided by this Act, with any necessary qualifications shall be granted to the patentee.

(2) If a person has obtained a patent under a homestead or under a homestead and pre-emption entry in accordance with any statutory provision, a certificate of title shall be issued to the party free of all fees and charges that under this Act are otherwise required to be paid.

(3) The notification to the Hudson's Bay Company by the Minister of the Interior under the *Dominion Lands Act* (Canada), RSC 1927 c113, of the survey and confirmation of the survey of any township or part of a township shall be accepted by the Registrar as equivalent to and dealt with by the Registrar in all respects in the same manner as if the notification were letters patent to and in favour of the company granting to the company in fee simple the sections or portions of sections to which it is entitled in the townships or parts of townships under the *Dominion Lands Act* (Canada), RSC 1927 c113.

(4) A notification to the Registrar from the Minister of the Interior of Canada that the land described in the notification has been granted to the Canadian Pacific Railway Company or to any other railway company entitled to Dominion land under authority of an Act of the Parliament of Canada shall be accepted by the Registrar and dealt with by the Registrar in all respects as if it were letters patent in favour of the company.

(5) A notification received by the Registrar from the Minister of Infrastructure of the abandonment by the Crown of any roads or road allowances or trails that now are or that may hereafter be vested in the Crown in right of Alberta has the same effect as a patent issued by the Crown to the person mentioned in the notification as transferee and shall be so treated by the Registrar, and the notification shall state the nature of the grant and shall specify any mines, minerals, easements or rights that are excepted from the grant.

(6) A certified copy of an order in council passed by the Government of Canada or other notification that the land described in the order in council or notification has been granted to the Crown in right of Alberta is of the same effect as a patent issued by the Crown and shall be so treated by the Registrar.

(7) On receipt by the Registrar of a notification affecting any land vested in the Crown in right of Alberta, issued and executed in the manner provided in any statute in force in Alberta relating to the

disposition of the land first mentioned, that any parcel of the land described in the notification or any interest in any such land has been granted to any person pursuant to that statute, the notification shall be accepted by the Registrar and be dealt with by the Registrar in all respects as if it were letters patent in favour of that person, and the Registrar shall issue a certificate of title in conformity with the terms of the notification.

RSA 2000 cL-4 s29;2006 c21 s11

#### **Land in national parks**

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

- (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.

RSA 1980 cL-5 s33;1985 c48 s2(10);2000 c14 s5

#### **Statutory proceedings**

**31** When by virtue of any statutory proceedings, land or an interest in land, belonging to any person, has become vested in any other person, and no other express authority exists for making the necessary entries, cancellations, or issues of new instruments, the Registrar shall make the entries, cancellations and issues of new instruments that the Registrar would have made if there had been a transfer of the land or interest from the first mentioned person to the other person.

RSA 1980 cL-5 s34

#### **Registration of estate**

**32(1)** The owner of any estate leased or demised to the owner or to the person from whom the owner claims a title, for a life or for lives, or for a term of more than 3 years, in any land for which the grant from the Crown has been registered, may apply to have the owner's title registered and to have a certificate of title issued for it to the owner under this Act.

(2) A certificate of title issued for a leasehold or life estate is, by implication and without any special mention in the certificate of title, subject to all instruments and caveats registered against the certificate of title from which the estate is derived prior to the registration of the instrument creating the leasehold or life estate.

RSA 1980 cL-5 s35;1985 c48 s2(11);1988 c27 s22

#### **Registration of title to land already granted**

**33(1)** The owner of any estate or interest in any land whether legal or equitable, letters patent for which issued from the Crown before January 1, 1887, or that otherwise had prior to that date passed from the Crown, may apply to have the owner's title registered under this Act.

(2) If at the time of the grant of the certificate of title there are no registered encumbrances or conveyances affecting the land, the certificate may be granted to the patentee on payment of the fees fixed in that behalf by tariff made by the Lieutenant Governor in Council, but no fees shall be payable for it under section 164.

RSA 1980 cL-5 s36

#### **Registration of owner arising out of tax recovery proceedings**

**34** When a caveat or notification is forwarded to the Registrar under the *Municipal Government Act* with respect to any parcel of land the title to which is not registered under this Act, together with an affidavit that the person named in the caveat or notification is the owner of the parcel and that the person resides at an address given in the caveat or notification, the Registrar shall notify that person by registered mail that unless the latter shows cause why the person should not be registered as owner of the parcel within one month from the posting of the letter, the Registrar will so register the person, and shall, on being satisfied that any such person or any other person is the owner of the land, issue a certificate of title in the person's name.

RSA 1980 cL-5 s37;1994 cM-26.1 s642(35)

#### **Application for registration**

**35(1)** The application to bring land under the operation of this Act shall be made in the prescribed form to the Registrar, shall be verified by the affidavit in the prescribed form of the applicant or someone on the applicant's behalf and shall be accompanied with

- (a) all deeds in possession of the applicant, if any,
- (b) a certificate showing all registrations affecting the title down to the time when the application is filed, with copies of any registered documents the original of which the applicant is unable to produce, and

(c) a printed search result showing that no writ of enforcement has been registered in the Personal Property Registry against the applicant.

(2) In no case is it necessary for any applicant to produce copies of any documents under subsection (1) if the originals are of record at the time when the application is made in the office of the Registrar to whom the application is made.

(3) It is not necessary for the Hudson's Bay Company, in the case of land the title of which has passed to that company before January 1, 1887, either by notification made under the *Dominion Lands Act* (Canada), RSC 1927 c113, or by letters patent issued under that Act prior to that date, to produce to the Registrar any of the certificates mentioned in this section if the application is accompanied with an affidavit, in the prescribed form, to be made by any officer of the company, approved by the Minister.

(4) For the purpose of the application, all transfers of land executed in the manner in which transfers are required to be executed under this Act shall be taken to be effectual to vest the title to the land in the transferee mentioned in the transfer.

RSA 2000 cL-4 s35;2006 c21 s12

#### **Delivery of certificate of title when applicant is original grantee**

**36(1)** On the filing of the application,

- (a) if the applicant is the original grantee of the Crown of the land and no deed, transfer, mortgage or other encumbrance or instrument or caveat affecting the title to that land appears to have been recorded, or
- (b) if the applicant is not the original grantee, all the original title deeds are produced and no person other than the applicant is in actual possession of the land and no caveat has been registered,

the Registrar, if the Registrar entertains no doubt as to the title of the applicant, shall grant a certificate of title as provided in this Act.

(2) If there is a mortgage or encumbrance against the land at the date of the application, the filing with the Registrar of the original mortgage or the instrument creating the encumbrance or a copy of the mortgage or instrument having endorsed on it or attached to it a receipt for the payment of the amount secured by it signed by the mortgagee or encumbrancee attested by an affidavit of the witness, operates a discharge of the security created by the mortgage or encumbrance.

(3) The receipt may be in the prescribed form.

(4) If any person other than the applicant is admitted or appears to be interested in the land, then if the person's interest is by virtue of a mortgage, encumbrance, lease, or charge created by any other instrument and the instrument is at the time of the application of record in the office of the Registrar to whom the application is made, or, if not of record, the instrument is produced to the Registrar, and if the applicant desires to have the applicant's title registered, subject to the interest of the other person, the Registrar, if the Registrar entertains no doubt as to the extent and nature of the interest or of the title of the applicant, may register the title and grant a certificate of title subject to the interest.

(5) In any case where the person who is admitted or appears to be interested in land is a consenting party to an application, the Registrar may, if the Registrar entertains no doubt as to the title of the applicant, grant a certificate of title, subject to the terms of the consent, but the consent shall be in writing by the consenting party in the presence of a witness and attested in the manner provided for by this Act.

RSA 1980 cL-5 s39;1999 c10 s7

#### **Reference to judge**

**37** In all cases other than those provided for in section 36, the Registrar shall forthwith, having given the applicant a certificate of the filing of the applicant's application, transmit the application, with all evidence supplied, to a judge to be dealt with as provided in this Act.

RSA 1980 cL-5 s40

#### **Examination by judge**

**38** The judge shall examine without delay all titles submitted to the judge, and for that purpose shall when necessary hear all persons interested and shall hear and consider the claims as against the applicant of any person who is in possession of the land, and the judge has all the powers for compelling the attendance of persons and the production of documents that usually appertain to courts of civil justice in civil actions brought in those courts.

RSA 1980 cL-5 s41

#### **Adverse claims**

**39(1)** Any person having an adverse claim or a claim not recognized in the application for registration may, at any time before the judge has approved of the applicant's title, file with the Registrar a short statement of the person's claim, verified by affidavit, and shall serve a copy of it on the applicant, the applicant's solicitor or agent.

(2) If an adverse claim is filed, the judge shall proceed to examine into and adjudicate on it, and no certificate of title shall be granted until the adverse claim has been disposed of.

RSA 1980 cL-5 s42

#### **Publication of application**

**40(1)** In any case before the judge, the judge may direct that notice of the application be published in some newspaper or newspapers in a form and for a period the judge thinks expedient.

(2) No order for registration shall be granted by the judge until after the expiration of at least 4 weeks from the first publication of the notice, if the judge has directed it to be published.

RSA 1980 cL-5 s43

#### **Direction for registration**

**41** The judge if satisfied with the applicant's title shall make an order directing the Registrar to register it after the expiration of 4 weeks from the date of the order, unless in the meantime the order is appealed from.

RSA 1980 cL-5 s44

#### **Granting certificate on transfer**

**42** On every transfer of land mentioned in a certificate of title, the certificate of title to be issued shall be issued by the Registrar.

RSA 1980 cL-5 s46;1985 c48 s2(12);1999 c10 s9

#### **Proof of age**

**43** In all cases of transfers, mortgages, encumbrances or leases, the Registrar may require satisfactory evidence that the person making the instruments is an adult.

RSA 1980 cL-5 s47

#### **Proof of identity**

**43.1(1)** In all cases of transfers, mortgages, encumbrances, caveats, leases or other instruments, the Registrar may require satisfactory proof of identity of any person whose name appears on the instrument, including, without limitation, photographic identification, statutory declarations, documentation regarding a change of name, birth certificates, marriage certificates or death certificates.

(2) The Registrar may make a copy of any form of documentation submitted under subsection (1), or make a note of the information contained in the documentation, and may retain the copy or the note in a file regarding the transaction, but the copy or the note does not constitute information contained in the register for the purpose of a search under section 17.

(3) The types of identification and the number of identification documents that may be required for the purpose of this section may be specified by regulation.

2006 c21 s13

**Post office address, signature, etc.**

**44(1)** An owner or mortgagee of land for which a certificate of title has been granted shall deliver to the Registrar a memorandum in writing of some post office address to which it shall be sufficient to mail all notices that under this Act are required to be sent to an owner or mortgagee.

(2) An owner or mortgagee shall from time to time in like manner notify the Registrar of any change in the owner's or mortgagee's address.

(3) Notwithstanding subsection (1), the Registrar may proceed without a memorandum of address.

RSA 1980 cL-5 s48;1982 c23 s3;1985 c48 s2(13)

**Names and addresses on documents**

**45** If a document is presented to the Registrar for registration and does not disclose, in respect of any person who is a party to the document, whether or not the person signed it, or who issued or is affected by the document,

- (a) the person's surname and at least one given name in full, in the case of a natural person, and
- (b) an address giving the municipal number and the street or avenue, if any, or an address that is in the opinion of the Registrar sufficient for the purpose of giving notice by mail to that person,

the Registrar may refuse registration of the document until either the document is changed to contain the information required by the Registrar or there is furnished to the Registrar a memorandum by or on behalf of the person presenting the document for registration setting out the information required by the Registrar.

RSA 1980 cL-5 s49;1988 c27 s23

**Transfer of ownership**

**46** On a transfer of ownership, the certificate of title of the transferor shall be cancelled in respect of the land transferred and a new certificate of title shall be issued to the transferee.

RSA 1980 cL-5 s50;1988 c27 s24;1999 c10 s10

**Registration of trusts**

**47** No memorandum or entry shall be made, on a certificate of title, of any notice of trusts, whether expressed, implied or constructive, but the Registrar shall treat any instrument containing any such notice as if there were no trust, and the trustee or trustees named in the instrument are deemed to be the absolute and beneficial owners of the land for the purposes of this Act.

RSA 1980 cL-5 s51;1999 c10 s11

**Registration of restrictive covenant**

**48(1)** There may be registered as annexed to any land that is being or has been registered, for the benefit of any other land that is being or has been registered, a condition or covenant that the land, or any specified portion of the land, is not to be built on, or is to be or not to be used in a particular manner, or any other condition or covenant running with or capable of being legally annexed to land.

**(2)** When any such condition or covenant is presented for registration, the Registrar shall enter a memorandum of it on the proper certificate or certificates of title.

**(3)** Notwithstanding subsection (2), before a memorandum of a condition or covenant may be entered on a certificate of title under subsection (2), certificates of title must exist for all the parcels of land affected by the condition or covenant, including the parcel of land that comprises the servient tenement and the parcel of land that comprises the dominant tenement.

**(4)** The first owner, and every transferee, and every other person deriving title from the first owner or through tax sale proceedings, is deemed to be affected with notice of the condition or covenant, and to be bound by it if it is of such nature as to run with the land, but any such condition or covenant may be modified or discharged by order of the court, on proof to the satisfaction of the court that the modification will be beneficial to the persons principally interested in the enforcement of the condition or covenant or that the condition or covenant conflicts with the provisions of a land use bylaw or statutory plan under Part 17 of the *Municipal Government Act*, and the modification or discharge is in the public interest.

**(5)** The entry on the register of a condition or covenant as running with or annexed to land does not make it run with the land, if the covenant or condition on account of its nature, or of the manner in which it is expressed, would not otherwise be annexed to or run with the land.

**(6)** No such condition or covenant is deemed to be an encumbrance within the meaning of this Act.

RSA 1980 cL-5 s52;1988 c27 s25;1994 cM-26.1 s642(35);  
1995 c24 s100;1999 c10 s12

#### **Unit operation**

**49(1)** In this section, “unit operation” means an operation where, pursuant to an agreement, interests in a mineral are merged, pooled, consolidated or integrated as a single unit, without regard to the boundaries of the separate parcels, for the purposes of

- (a) the development or production of the mineral within, on or under the parcels, or any specified stratum or strata or portion thereof within the parcels, or
- (b) the implementing of a program for the conservation of the mineral, or the co-ordinated management of interests in the mineral.

**(2)** If a person enters into an agreement for a unit operation, that person may file a copy of that agreement with the Registrar.

**(3)** When an agreement is filed with the Registrar under subsection (2), the Registrar shall endorse a memorandum of that agreement on the certificates of title of all the land specified in the agreement as being subject to the unit operation.

**(4)** Where there is filed with the Registrar

- (a) a discharge in respect of an agreement for a unit operation that
  - (i) is executed by the person who is the unit operator, and
  - (ii) specifies the land to which the discharge applies,and
- (b) an affidavit of the unit operator stating
  - (i) that the unit operator is the unit operator for the agreement,
  - (ii) that the unit operator has the authority pursuant to the agreement or a collateral agreement to discharge the agreement in respect of the land specified in the discharge, and

- (iii) that the unit operator has given notice of the intention to effect a discharge to the parties that will be affected by the discharge,

the Registrar shall, in accordance with the discharge, cancel the registration of the agreement for the unit operation in respect of the land specified in the discharge.

RSA 1980 cL-5 s53;1988 c27 s26

#### **Formalities in instrument**

**50(1)** The Registrar shall decide whether any instrument or caveat presented to the Registrar for registration is substantially in conformity with the proper prescribed form or not and may reject any instrument or caveat that the Registrar decides for any reason to be unfit for registration.

**(2)** When an instrument or caveat is presented to the Registrar for registration subject to any condition, the Registrar shall reject the instrument or caveat for registration if the condition is not satisfied at the time the instrument or caveat would otherwise be registered.

**(3)** The Registrar may reject any document submitted for filing or registration which is in the Registrar's opinion for any reason unsuitable to be duplicated pursuant to section 19.

RSA 1980 cL-5 s54;1988 c27 s27

#### **Refusal to register**

**50.1(1)** The Registrar may refuse to register a transfer, mortgage, encumbrance, caveat, lease or other instrument if for any reason it appears to the Registrar that the transaction may involve fraud.

**(2)** Without limiting subsection (1), the Registrar may refuse to register a transfer, mortgage, encumbrance, caveat, lease or other instrument if a person whose name appears on the instrument, or a person acting or purporting to act for a person whose name appears on the instrument, fails or refuses to produce identification documents in accordance with section 43.1 that in the opinion of the Registrar are sufficient to establish the identity of the person.

2006 c21 s14

#### **Land identification number**

**51(1)** The Registrar may assign to a parcel of land a number for the purpose of facilitating the identification of the parcel in records, registers and instruments.

**(2)** The Registrar may require the number assigned under subsection (1) to be set out as part of the description of land.

1988 c27 s28

**Undivided fractional interest in minerals**

**52** The Registrar may refuse to accept for registration any instrument transferring, encumbering, charging or otherwise disposing of an undivided fractional interest in a parcel of land containing mines and minerals, or any mineral, and being less than an undivided 1/20 of the whole interest in mines or minerals, or in any mineral contained in that parcel of land.

RSA 1980 cL-5 s55

**Necessity of registration**

**53** After a certificate of title has been granted for any land, no instrument is effectual to pass any estate or interest in that land (except a leasehold interest for 3 years or for a less period) or to render that land liable as security for the payment of money, unless the instrument is executed in accordance with this Act and is registered under this Act, but on the registration of any such instrument in the manner hereinbefore prescribed the estate or interest specified in the instrument passes or, as the case may be, the land becomes liable as security in manner and subject to the covenants, conditions and contingencies set out and specified in the instrument or by this Act declared to be implied in instruments of a like nature.

RSA 1980 cL-5 s56

**Effect of registration**

**54** So soon as registered every instrument becomes operative according to its tenor and intent, and on registration creates, transfers, surrenders, charges or discharges, as the case may be, the land or the estate or interest in the land or estate mentioned in the instrument.

RSA 1980 cL-5 s57

**Expropriation**

**55** On the registration of a certificate of approval under the *Expropriation Act*, the Registrar shall cancel the registration of the notice of intention to expropriate respecting the land to which the certificate applies that had been filed by the expropriating authority.

RSA 1980 cL-5 s58

**Priority of registration**

**56** Instruments registered in respect of or affecting the same land have priority the one over the other according to section 14 and not according to the date of execution.

RSA 1980 cL-5 s59

## **Electronic Submission, Filing and Registration**

### **Definitions**

**56.1(1)** For the purposes of sections 56.11 to 56.7 and section 213,

- (a) “certification authority” means a certification authority designated by the Registrar under section 56.41;
- (b) “digital signature” means a secure signature in electronic format that is authorized by a certificate of the Registrar or a certification authority issued under section 56.51;
- (c) “electronic version” of an application, instrument, plan, caveat or other document means an electronic application, instrument, plan, caveat or other document that is identical in content to the corresponding paper version and into which any required digital signatures have been incorporated;
- (d) “other document” means any document, other than an application, instrument, plan or caveat, that is required or permitted to be filed or registered in the Land Titles Office under this Act or any other enactment;
- (e) “paper version” of an application, instrument, plan, caveat or other document means the application, instrument, plan, caveat or other document that bears the hand-written signatures of all required signatories;
- (f) “subscriber” means an individual who is authorized by a certificate issued under section 56.51 to incorporate the individual’s digital signature into an electronic application, instrument, plan, caveat or other document and to submit the electronic version of the application, instrument, plan, caveat or other document to the Land Titles Office electronically.

**(2)** A reference in this Act to an electronic application, instrument, plan, caveat or other document shall be construed as meaning any of those documents in electronic format.

2015 c12 s3

### **Registrar’s specifications, permission, requirements re documents in electronic format**

**56.11(1)** The Registrar may permit or direct subscribers

- (a) to execute an electronic version of a particular type of application, instrument, plan, caveat or other document, and

(b) to submit the electronic version of the application, instrument, plan, caveat or other document electronically.

(2) The Registrar may, subject to this Act and the regulations, specify the following in respect of electronic applications, instruments, plans, caveats and other documents:

- (a) the form, content and format;
- (b) the manner of incorporating a digital signature;
- (c) the method of electronic submission of the electronic version.

(3) Subject to subsection (2), the Registrar or a certification authority may set standards, guidelines and policies respecting the preparation, submission and acceptance of documents in electronic format.

(4) If a standard, guideline or policy set under subsection (3) is inconsistent or in conflict with, or is less stringent than, this Act or the regulations, this Act or the regulations prevail.

2015 c12 s3

#### **Requirements re digital signatures and paper versions**

**56.2(1)** An electronic application, instrument, plan, caveat or other document that is submitted electronically to the Land Titles Office must contain the digital signature of a subscriber.

(2) A digital signature must be incorporated into an electronic application, instrument, plan, caveat or other document in compliance with

- (a) this Act and the regulations,
- (b) any requirements specified by the Registrar under section 56.11(2),
- (c) any applicable standards, guidelines and policies set under section 56.11(3), and
- (d) the approved certification practice statement of the certification authority that issued the subscriber a certificate under section 56.51.

(3) A subscriber shall not incorporate his or her digital signature into an electronic application, instrument, plan, caveat or other document unless a paper version of the application, instrument, plan, caveat or other document has been executed.

- (4) The incorporation of the digital signature of a subscriber into an electronic application, instrument, plan, caveat or other document is a certification by the subscriber that
- (a) the paper version of the application, instrument, plan, caveat or other document has been executed,
  - (b) to the subscriber's knowledge, the paper version was executed in accordance with all applicable requirements, and
  - (c) the paper version of the application, instrument, plan, caveat or other document is in the possession of the subscriber.
- (5) If an electronic version of an application, instrument, plan, caveat or other document is submitted, the subscriber shall keep the paper version of the application, instrument, plan, caveat or other document as prescribed in the regulations.

2015 c12 s3

**Equivalence of electronic application, instrument, plan, caveat or other document submitted**

**56.3** Despite any enactment or other rule of law to the contrary, an electronic application, instrument, plan, caveat or other document that has been prepared and submitted electronically in accordance with this Act, the regulations and any applicable standards, guidelines and policies is conclusively deemed to be equivalent to an application, instrument, caveat or other document prepared and submitted in written format.

2015 c12 s3

**Production of paper version**

**56.31(1)** The Registrar may require a subscriber to produce the paper version of an application, instrument, plan, caveat or other document of which an electronic version was submitted.

(2) The Registrar may refuse to accept, register or file an electronic version of an application, instrument, plan, caveat or other document if the subscriber does not produce the paper version of the application, instrument, plan, caveat or other document.

2015 c12 s3

**Evidentiary matters**

**56.4(1)** An electronic version of an application, instrument, plan, caveat or other document that has been submitted to and received by the Registrar electronically is conclusively deemed to be the original of the application, instrument, plan, caveat or other document.

- (2) A copy of the electronic version of an application, instrument, plan, caveat or other document that is
- (a) obtained from the records of the Land Titles Office, and
  - (b) certified by the Registrar as being an accurate representation of the original of the application, instrument, plan, caveat or other document

is conclusive evidence of the original and is admissible in a court to the same extent as the original.

- (3) A certification of the Registrar referred to in subsection (2) is conclusive evidence that
- (a) the technology and procedure used by the Registrar to receive, store, retrieve and copy the electronic version of the application, instrument, plan, caveat or other document is capable of recording and reproducing all significant details of the electronic version of the application, instrument, plan, caveat or other document without any additions, deletions, omissions or changes, and
  - (b) the electronic version of the application, instrument, plan, caveat or other document was received, stored, retrieved and copied by the Registrar in the usual and ordinary course of business.

(4) If there is a difference between a copy of an electronic version of an application, instrument, plan, caveat or other document certified under subsection (2) and a copy of the application, instrument, plan, caveat or other document obtained from a source other than the records of the Land Titles Office, the former prevails over the latter whether or not the latter is the paper version of the application, instrument, plan, caveat or other document.

(5) The paper version of an application, instrument, plan, caveat or other document is admissible in a court for the purposes of proving the authenticity of a signature or other writing, mark or impression.

2015 c12 s3

#### **Certification authority**

**56.41(1)** For the purposes of this Act, the Registrar may designate a person as a certification authority if

- (a) the person has adopted and published a certification practice statement that has been approved by the Registrar, and
- (b) the Registrar is satisfied that

- (i) the person is capable of administering and complying with the certification practice statement, and
- (ii) subscribers named in certificates issued by the person will be required to observe and comply with the certification practice statement.

**(2)** The Registrar may enter into an agreement with a person referred to in subsection (1) for the purpose of establishing the terms and conditions of the designation.

2015 c12 s3

#### **Certification practice statement**

**56.5(1)** A certification practice statement must contain

- (a) a statement of the qualifications for eligibility to become a subscriber,
- (b) a description of the policies, practices and procedures to be used by the certification authority in
  - (i) issuing, administering, suspending and revoking a certificate,
  - (ii) providing access to the information contained in a certificate, and
  - (iii) establishing and maintaining the security and validity of digital signatures of subscribers,
- (c) a description of the practices and procedures that a subscriber must follow, including, without limitation, practices and procedures to ensure the security and validity of that subscriber's digital signature, and
- (d) any other content that the Registrar or certification authority considers necessary.

**(2)** The Registrar may require a certification authority to make changes to an approved certification practice statement to address

- (a) changes to the Registrar's policies, practices and procedures, or
- (b) issues respecting a certification authority.

**(3)** A certification authority shall submit any changes required under subsection (2) to the Registrar for approval.

(4) If an approved certification practice statement is inconsistent or in conflict with, or is less stringent than, a standard, guideline or policy set by the Registrar under section 56.11(3), the standard, guideline or policy set by the Registrar prevails.

2015 c12 s3

**Issuance of certificate re digital signature**

**56.51(1)** The Registrar or a certification authority may

- (a) issue a certificate to an individual to authorize the individual to incorporate the individual's digital signature into electronic applications, instruments, plans, caveats and other documents, and
- (b) provide the individual with the information necessary to incorporate the individual's digital signature and to submit the electronic version of applications, instruments, plans, caveats or other documents electronically.

(2) A certificate issued under subsection (1) may impose restrictions or conditions on the authorization.

(3) The Registrar or certification authority, as the case may be, may suspend or revoke a certificate issued under subsection (1) if the subscriber fails to comply with this Act or the regulations, the approved certification practice statement or other applicable standards, guidelines or policies.

(4) A certification authority shall maintain a directory of subscribers to whom the certification authority has issued a certificate.

2015 c12 s3

**Warranties of certification authority**

**56.6** The issuance of a certificate by a certification authority constitutes a warranty by the certification authority that

- (a) to the knowledge of the certification authority, the information contained in the certificate is true,
- (b) the individual to whom the certificate was issued is eligible to be a subscriber under the requirements set out in the approved certification practice statement,
- (c) the certificate was issued in accordance with the approved certification practice statement,
- (d) the individual to whom the certificate was issued has agreed to observe and comply with the requirements of the approved certification practice statement, and

- (e) where necessary, the certification authority will act promptly to suspend or revoke the certificate in accordance with the requirements of the approved certification practice statement.

2015 c12 s3

**Immunity**

**56.61** No action lies and no proceeding may be brought against a certification authority in respect of any loss or damage arising out of an unlawful or negligent act or omission of a subscriber under this Act or the regulations in the absence of an unlawful or negligent act or omission by the certification authority in relation to the exercise of its powers or performance of its duties under this Act or the regulations.

2015 c12 s3

**Offences re digital signatures**

**56.7** A person who

- (a) incorporates his or her digital signature into an electronic application, instrument, plan, caveat or other document without first complying with the requirements of this Act or the regulations, or
- (b) incorporates the digital signature of another person into an electronic application, instrument, plan, caveat or other document,

is guilty of an offence and subject to a fine of not more than \$10 000 or imprisonment for a term of not more than 6 months.

2015 c12 s3

**Effect of Registration****Implied covenants**

**57** In every instrument transferring, encumbering or charging land for which a certificate of title has been granted, there shall be implied the following covenant by the transferor or encumbrancer: That the transferor or encumbrancer will do any acts and execute any instruments that in accordance with this Act are necessary to give effect to all covenants, conditions and purposes expressly set out in the instrument or by this Act declared to be implied against that person in instruments of a like nature.

RSA 1980 cL-5 s61

**Implied covenants in transfer**

**58(1)** In every instrument transferring land for which a certificate of title has been granted, subject to mortgage or encumbrance, there shall be implied the following covenant by the transferee both with the transferor and the mortgagee: That the transferee will pay

the principal money, interest, annuity or rent charge secured by the mortgage or encumbrance, after the rate and at the time specified in the instrument creating it, and will indemnify and keep harmless the transferor from and against the principal sum or other money secured by the instrument and from and against the liability in respect of any of the covenants contained in the instrument or under this Act implied on the part of the transferor.

(2) If a transferee declines to register any such transfer, the transferor or the mortgagee may by notice call on the transferee or any other person or persons that a judge may direct to show cause why it should not be registered, and on the return of the notice the judge may order the registration of the transfer within a time named or make any further or other order and on any terms as to costs and otherwise that to the judge seem proper.

RSA 1980 cL-5 s62

#### **Negation and modification of implied covenants**

**59(1)** Every covenant and power declared to be implied in any instrument by virtue of this Act may be negated or modified by express declaration in the instrument.

(2) In an action for a supposed breach of any such covenant, the covenant alleged to be broken may be set out and it may be alleged that the party against whom the action is brought did so covenant, precisely in the same manner as if the covenant had been expressed in words in the transfer or other instrument, any law or practice to the contrary notwithstanding.

(3) Every such implied covenant has the same force and effect and is enforceable in the same manner as if it had been set out at length in the transfer or other instrument.

(4) When any transfer or other instrument in accordance with this Act is executed by more parties than one, the covenants that are by this Act to be implied in instruments of a like nature shall be construed to be several and not to bind the parties jointly.

RSA 1980 cL-5 s63

#### **Obligation affecting land**

**60(1)** The owner of land in whose name a certificate of title has been granted shall, except in case of fraud in which the owner has participated or colluded, hold it, subject (in addition to the incidents implied by virtue of this Act) to the encumbrances, liens, estates and interests that are endorsed on the certificate of title, absolutely free from all other encumbrances, liens, estates or interests whatsoever except the estate or interest of an owner claiming the same land under a prior certificate of title granted

under this Act or granted under any law heretofore in force and relating to title to real property.

**(2)** Such priority shall, in favour of any person in possession of land, be computed with reference to the grant or earliest certificate of title under which the person claiming priority or any person through whom that person derives title has held possession.

RSA 1980 cL-5 s64;1988 c27 s29

#### **Implied conditions**

**61(1)** The land mentioned in any certificate of title granted under this Act is, by implication and without any special mention in the certificate of title, subject to

- (a) any subsisting reservations or exceptions, including royalties, contained in the original grant of the land from the Crown,
- (b) all unpaid taxes, including irrigation charges and drainage district rates,
- (c) any public highway or right of way or other public easement, howsoever created, on, over or in respect of the land,
- (d) any subsisting lease or agreement for a lease for a period not exceeding 3 years, if there is actual occupation of the land under the lease or agreement,
- (e) any right of expropriation that may by statute be vested in any person or corporation or Her Majesty, and
- (f) any right of way or other easement granted or acquired under any Act or law in force in Alberta.

**(2)** Land mentioned in a certificate of title issued under Part 10 of the *Municipal Government Act* or Part 6 of the *Irrigation Districts Act* or in a certificate of title based on a foreclosure order, notwithstanding any other Act is, by implication and without any special mention in the certificate of title, subject to

- (a) any easement or incorporeal right, a memorandum of which has been made under section 67, 69 or 70,
- (b) any instrument registered under section 69(4),
- (c) any condition or covenant running with or annexed to the land and registered under section 48, and

- (d) any caveat protecting any such easement, incorporeal right, condition or covenant, duly filed,
- (e) repealed 2004 cH-8.5 s68

if the registration, endorsement or filing, as the case may be, was made prior to the registration of the judge's adjudication on the enforcement return under the *Irrigation Districts Act* or to the date of registration of the mortgage with respect to which a foreclosure order was made, as the case may be.

RSA 2000 cL-4 s61;RSA 2000 cD-16 s79;2004 cH-8.5 s68;  
2017 c22 s32

#### **Certificate as evidence of title**

**62(1)** Every certificate of title granted under this Act (except in case of fraud in which the owner has participated or colluded), so long as it remains in force and uncanceled under this Act, is conclusive proof in all courts as against Her Majesty and all persons whomsoever that the person named in the certificate is entitled to the land included in the certificate for the estate or interest specified in the certificate, subject to the exceptions and reservations mentioned in section 61, except so far as regards any portion of land by wrong description of boundaries or parcels included in the certificate of title and except as against any person claiming under a prior certificate of title granted under this Act or granted under any law heretofore in force relating to titles to real property in respect of the same land.

**(2)** For the purpose of this section, that person is deemed to claim under a prior certificate of title who is holder of or whose claim is derived directly or indirectly from the person who was the holder of the earliest certificate of title granted, notwithstanding that the certificate of title has been surrendered and a new certificate of title has been granted on any transfer or other instrument.

RSA 1980 cL-5 s66

#### **Omission to send notice**

**63** A purchaser, mortgagee or encumbrancee for valuable consideration is not affected by the omission to send any notice by this Act directed to be given or by the non-receipt of that notice.

RSA 1980 cL-5 s67

### **Transfers**

#### **Transfers**

**64(1)** When land for which a certificate of title has been granted is intended to be transferred, the owner may execute a transfer in the prescribed form.

(2) When land for which a certificate of title has been granted is intended to be made subject to a right of way or other easement, the registered owner may execute an instrument granting the easement or right of way in the prescribed form.

(3) A transfer made pursuant to subsection (1) or an instrument made pursuant to subsection (2) shall

- (a) give a description of the land that is sufficient to identify it, and
- (b) contain an accurate statement of the estate or interest intended to be transferred or created.

RSA 1980 cL-5 s68;1982 c23 s6;1988 c27 s31

#### **Registration of transfer affecting joint tenancy**

**65** The Registrar shall not register a transfer that has the effect of severing a joint tenancy unless

- (a) the transfer is executed by all the joint tenants,
- (b) all the joint tenants, other than those executing the transfer, give their written consent to the transfer, or
- (c) the Registrar is provided with evidence satisfactory to the Registrar that all the joint tenants who have not executed the transfer or given their written consent to the transfer have by

- (i) personal service, or
- (ii) substitutional service pursuant to a court order,

been given written notice of the intention to register the transfer.

1985 c48 s2(15)

#### **Transfer of Crown land**

**66(1)** When land for which a certificate of title has been granted to the Crown in right of Alberta is intended to be transferred, or any right of way or other easement is intended to be created or transferred, a Minister of the Crown or any person authorized by statute or by order in council to do so may execute a transfer in the prescribed form or to the like effect.

(2) If subsection (1) applies, it is not necessary for the Crown or an agent of the Crown to make and subscribe an oath or affirmation required by the transferor of land under section 164 of this Act or any affidavit or certificate required by the *Dower Act*.

RSA 1980 cL-5 s69

**Memorandum of easements on certificate**

**67** When an easement or an incorporeal right in or over land for which a certificate of title has been granted is created for the purpose of being annexed to or used and enjoyed together with other land for which a certificate of title has also been granted, the Registrar shall make a memorandum of the instrument creating the easement or incorporeal right on the existing certificates of title of the dominant and servient tenements respectively.

RSA 1980 cL-5 s70;1988 c27 s32

**Grant of easement, etc. by owner to himself or herself**

**68(1)** An owner may grant to himself or herself an easement or restrictive covenant for the benefit of land that the owner owns and against land that the owner owns and the easement or restrictive covenant may be registered under this Act.

**(2)** When the dominant and servient tenements are registered in the name of the same person, an easement under subsection (1) is not merged by reason of the common ownership.

RSA 1980 cL-5 s71

**Utility right of way**

**69(1)** If the registered owner of land grants to the Crown or a corporation a right on, over or under the land for

- (a) carrying, laying, constructing, maintaining or using conduits, cables, wires, poles or transmission lines,
- (b) laying, constructing, maintaining and operating pipelines for the transmission, transportation or conduct of any substance,
- (c) conveying water,
- (d) drainage, irrigation, flooding or erosion,
- (e) disposing of sewage,
- (f) constructing or maintaining a public work,
- (g) constructing, maintaining and operating a railway, street railway or light rail transit, or
- (h) constructing, maintaining and operating a temporary roadway,

the instrument granting the right may be registered under this Act.

**(2)** The Crown or a corporation as a registered owner may grant to itself a right for any purpose described in subsection (1).

(3) On registration, the grantee has the right to use the land in accordance with the terms of the grant and that right runs with the land notwithstanding that the benefit of the right is not appurtenant or annexed to any land of the grantee.

(4) An instrument purporting to transfer, mortgage or encumber any right granted by an instrument registered under subsection (1) and executed by or on behalf of the grantee may be registered under this Act.

(5) The grantee may at any time, by an instrument to that effect registered under this Act, surrender the right granted by an instrument registered under subsection (1).

(6) Notwithstanding subsection (5), a right that is subject to a mortgage or encumbrance shall not be surrendered unless the surrender is consented to by the mortgagee or encumbrancee.

RSA 1980 cL-5 s72;1985 c48 s2(16)

#### **Rights of way on closed roads**

**70(1)** When an authority requests the Registrar to issue a certificate of title for land that comprised a public road that the authority has permanently closed, the authority shall notify the Registrar of the particulars of any right granted under section 69 that

- (a) existed in respect of that land immediately before that land became a public road, and
- (b) would still exist in respect of that land if the land had not become a public road.

(2) On being notified under subsection (1), the Registrar shall enter on the certificate of title a memorandum of the instrument relating to the right in respect of which the notice was given.

(3) The entering of a memorandum on a certificate of title under subsection (2) revives the right effective on the day that the memorandum is entered on the certificate of title.

1985 c48 s2(16)

#### **Party wall agreement**

**71(1)** In this section, “party wall agreement” includes a declaration registered under subsection (3).

(2) A party wall agreement entered into by persons who are registered owners of adjoining parcels of land

- (a) declaring certain existing walls or walls that are to be constructed on those parcels to be party walls, and

- (b) setting out the rights, privileges, easements and covenants that exist in respect of the party walls,

may be registered.

**(3)** A person who is the registered owner of adjoining parcels of land may register a declaration

- (a) declaring certain existing walls or walls that are to be constructed on those parcels to be party walls, and
- (b) setting out the rights, privileges, easements and covenants that exist in respect of the party walls.

**(4)** When land under this Act is subject to, or has as appurtenant to it, or enjoyed with it, any rights, privileges, easements and covenants under a party wall agreement, those rights, privileges, easements and covenants are deemed to run with the land.

1985 c48 s2(16)

#### **Encroachment agreement**

**72(1)** An encroachment agreement executed by the registered owner of a parcel of land to permit the encroachment of improvements made on an adjoining parcel of land

- (a) may be registered against the parcels of land affected by that agreement, and
- (b) after registration shall be binding on and enures to the benefit of all persons subsequently acquiring interests in the parcels of land affected by that agreement to the same extent as if it were an easement.

**(2)** Notwithstanding subsection (1), before an encroachment agreement may be registered against a parcel of land under subsection (1)(a), certificates of title must exist for all parcels of land affected by the agreement, including the parcel of land that is subject to the encroachment and the parcel of land that is to benefit from the encroachment.

1985 c48 s2(16);1999 c10 s13

#### **Cancellation of certain encumbrances**

**73(1)** The Registrar shall cancel the registration in whole or in part of an easement, a restrictive covenant, a party wall agreement or an encroachment agreement on production of a discharge in the prescribed form signed by the registered owner of the dominant tenement.

**(2)** The Registrar may, on application by an owner of land that is affected by an instrument referred to in subsection (1), cancel the

registration of that instrument in whole or in part if the Registrar is satisfied that the interest created by the instrument has expired through the passage of time in accordance with an express provision in the instrument.

1985 c48 s2(16);1988 c27 s33;1996 c32 s5(10)

**Registration of judgment quieting title, etc.**

**74(1)** Any person recovering against a registered owner of land a judgment declaring that the person recovering the judgment is entitled to the exclusive right to use the land or that the person recovering the judgment be quieted in the exclusive possession of the land, pursuant to the *Limitation of Actions Act*, RSA 1980 cL-15, or pursuant to an immunity from liability established under the *Limitations Act*, may file a certified copy of the judgment in the Land Titles Office.

**(2)** Subject to section 191, the Registrar shall

- (a) enter on the certificate of title a memorandum cancelling the certificate of title, in whole or in part, according to the terms of the judgment, and
- (b) issue a new certificate of title to the person recovering the judgment.

RSA 2000 cL-4 s74;2007 c22 s2

**Transfers**

**New certificates re consolidations, etc.**

**75(1)** On the application by or on behalf of the registered owner of land, the Registrar may separate or consolidate parcels or interests in land by cancelling the existing certificate of title for that parcel or interest and issuing in substitution for that certificate of title one or more new certificates of title.

**(2)** Where an application is made under subsection (1)

- (a) for the purpose of consolidating 2 adjacent parcels of land into one certificate of title, and
  - (b) one of the parcels included in the consolidation was
    - (i) formerly
      - (A) a public road, right of way, drainage ditch or canal,  
or
      - (B) the bed and shore of a body of water,
- or

- (ii) transferred to or vested in the registered owner to accommodate an encroachment or rights to exclusive possession,

all encumbrances registered or caveated against the other parcel immediately prior to the application are deemed to apply to all the land comprised in the consolidated parcel.

1988 c27 s36;1999 c10 s14

#### **Registration of instrument, etc. re Municipal Government Act**

**76(1)** No instrument or caveat shall be registered in contravention of Part 17 of the *Municipal Government Act* or the regulations made under that Part.

**(2)** Notwithstanding subsection (1), if a registration of an instrument or caveat is made in contravention of subsection (1), that registration ceases to be voidable when any person has in good faith acquired rights for value in the subdivided land.

1988 c27 s36;1995 c24 s100

#### **Illustration of plan of survey**

**77(1)** A plan of survey shall not be registered unless the plan of survey

- (a) illustrates and represents the survey as made on the ground in accordance with the *Surveys Act*,
- (b) is prepared
  - (i) to the satisfaction of the Registrar, so that it contains the information and details that the Registrar considers appropriate, and
  - (ii) on a medium or material or in a digital format approved by the Registrar,
- (c) states the purpose of the survey, and
- (d) is certified in the prescribed form.

**(2)** The illustration of a survey made under subsection (1)(a) shall include

- (a) the position and nature of all survey monuments found and placed in the course of the survey,
- (b) subject to subsection (3), the original boundary lines of any parcel of land affected by the survey and any boundary line established by the survey, and

(c) a sufficient number of measurements,

as is necessary to enable the position of the parcels established by the survey to be located on the ground.

**(3)** If, in the opinion of the Registrar, it is not necessary to show all of the original boundaries of a parcel of land in order to determine the position of the land intended to be dealt with, it is sufficient to show only the information in regard to the boundaries that the Registrar determines to be necessary.

1988 c27 s36;1996 c32 s5(12);1999 c6 s10;1999 c10 s15

#### **Requirements re plan**

**78** Notwithstanding anything in this or any other Act, where a plan is required to be signed, consented to or certified or otherwise endorsed, the Registrar may instead require that the signature, consent, certificate or endorsement be executed or otherwise placed, in a manner acceptable to the Registrar, on an attachment that references the plan.

1988 c27 s36;1999 c10 s16

#### **Requirements for registration**

**79(1)** Before a plan is registered, amended, altered or corrected the Registrar may do one or more of the following:

- (a) require a written explanation of
  - (i) any apparent discrepancy between the plan and the description of the land in the register or any former plan, or
  - (ii) any other matter shown on or affecting the plan, that in the Registrar's opinion requires an explanation;
- (b) require the plan of survey to be submitted to the Director of Surveys for confirmation that the survey as represented by the plan complies with the requirements of the *Surveys Act*;
- (c) require the Director of Surveys to cause the survey as illustrated on the plan to be verified on the ground.

**(2)** The registration of a plan under this Act does not relieve the Alberta land surveyor who conducted the survey and prepared the plan from any liability for damages suffered by any person as a consequence of the survey or the registration of the plan.

1988 c27 s36

**Survey re transfer**

**80(1)** Where the owner of land or a person who claims an interest in land desires to transfer or otherwise deal with the land or interest, the Registrar may, before registering any instrument or caveat to transfer or deal with the land, require the owner or other person

- (a) to have the land surveyed by an Alberta land surveyor, and
- (b) to submit for registration a plan of survey signed by the owner or the other person.

**(2)** No instrument or caveat shall be registered with respect to the land referred to in subsection (1) until the owner or other person has complied with the Registrar's requirements under subsection (1).

1988 c27 s36

**Registration of plan of survey**

**81(1)** A plan of survey prepared in respect of land may be registered, where the land is required for one or more of the following:

- (a) an easement or a right of way;
- (b) a purpose incidental to the undertaking for which a right of way is required;
- (c) a purpose with respect to a railway;
- (d) another purpose approved by the Registrar and not otherwise referred to in this Act.

**(2)** A plan referred to in subsection (1) shall be signed by the person who requested the plan of survey to be made.

**(3)** The registration of a plan under this section does not

- (a) affect the title to the land shown on the plan, or
- (b) convey any interest or right to any person.

1988 c27 s36

**Plan of survey re public works, etc.**

**82(1)** When

- (a) a notification or a plan of survey that is prepared in respect of a public work under the *Public Works Act* or the *Municipal Government Act*, or

- (b) a certificate of approval that is prepared in respect of works to which the *Expropriation Act* applies,

is submitted for registration, the Registrar shall act under subsection (2).

**(2)** When subsection (1) applies, the Registrar shall

- (a) register the notification, plan or certificate that is submitted for registration,
- (b) make the necessary endorsements on or cancellations of the appropriate certificates of title, and
- (c) issue, when appropriate, free of all encumbrances, a new certificate of title for the area taken in accordance with the notification, plan or certificate.

**(3)** Notwithstanding subsection (2)(c), where

- (a) the area taken consists of a public highway, road, street or lane, and
- (b) a plan of survey referred to in subsection (1)(a) has been submitted for registration in respect of the area taken,

a certificate of title shall not be issued with respect to that area.

**(4)** Where an instrument is registered under subsection (2), that registration vests the interest taken in the Crown in right of Alberta or in a municipality or other authority, as the case may be, but does not affect the right of a person who held an interest in the land to compensation for that interest.

**(5)** The Crown, municipality or other authority is not entitled to any mines or minerals in land vested in it under this section, and the title to the mines and minerals is not affected by the registration of a notification, plan of survey or certificate of approval, unless the mines and minerals are expressly acquired by the Crown, municipality or other authority, as the case may be.

**(6)** For the purpose of excepting an area that is required for a public work from a certificate of title as the certificate of title is issued when land is granted by the Crown, the Registrar may accept for registration a plan prepared by the Director of Surveys showing the area affected by the public work.

1988 c27 s36;1996 c32 s5(13);1999 c10 s17

**Plan of survey re transfer, etc.**

**83(1)** A registered owner who desires to transfer or otherwise deal with land described in a certificate of title may

- (a) have the boundaries of the land surveyed by an Alberta land surveyor, and
- (b) submit for registration a plan of survey of the land.

**(2)** A plan of survey that is submitted for registration under this section must be signed by the registered owner of the land.

**(3)** On registration of the plan of survey, the Registrar shall cancel the existing certificate of title and issue to the registered owner a new certificate of title to the land as shown on the plan.

1988 c27 s36;1999 c10 s18

**Plan of survey re subdivision**

**84(1)** A plan of survey subdividing land may be registered.

**(2)** A plan of subdivision that is submitted for registration shall

- (a) be signed by the registered owner of the land except in the case of land included in a plan of subdivision referred to in section 85(2)(a),
- (b) show the numbers or letters of the parcels illustrated on the plan, and
- (c) show all public roadways and other areas dedicated or set apart for public purposes and indicate the courses and width of each of them.

**(3)** The registration under this section of a plan of subdivision vests title, free of all encumbrances, to all land

- (a) that is shown on the plan as
  - (i) an environmental reserve or municipal reserve, or
  - (ii) a public utility parcel,  
  
in the municipality in which the land is situated, or in the Crown in right of Alberta in the case of land that is situated in an improvement district or special area,
- (b) that is shown on the plan as a school reserve, in the school authority as defined in Part 17 of the *Municipal Government Act*, or

- (c) that is shown on the plan as a municipal and school reserve,
  - (i) in the school authority as defined in Part 17 of the *Municipal Government Act* and the municipality, or
  - (ii) in the school authority as defined in Part 17 of the *Municipal Government Act* and the Crown in right of Alberta in the case of land that is situated in an improvement district or special area.

**(4)** The registration of a plan of subdivision does not affect the title to mines and minerals in the land affected by the plan.

**(5)** On registration of a plan of subdivision under this section, the Registrar shall

- (a) cancel the existing certificate of title, except as to mines and minerals,
- (b) issue new certificates of title to the parcels as shown on the plan, including the reserves and public utility parcels referred to in subsection (3), and
- (c) not issue a certificate of title in respect of land that is shown on the plan as a public highway, road, street or lane.

1988 c27 s36;1995 c24 s100

#### **Signatures of encumbrancees**

**85(1)** A plan that has the effect of subdividing land shall be signed by each person shown on the certificate of title for the land included in the plan as having an interest pursuant to a registered instrument or caveat, other than

- (a) a mortgage of a utility right of way,
- (b) a restrictive covenant,
- (c) a zoning restriction, or
- (d) a writ of enforcement,

if the interest is affected by the subdivision.

**(2)** Subsection (1) does not apply to the following:

- (a) a plan of subdivision prepared pursuant to a land boundary adjustment scheme for The Municipality of Crowsnest Pass under the *Municipal Government Act*;

(b) a plan of subdivision, other than a condominium plan or strata space plan, in which there is no dedication of land for any public purposes.

(3) A person whose signature is required on a plan under subsection (1) may, instead of signing the plan, sign a consent in the prescribed form.

(4) If for any reason a signature required under this section cannot be obtained, an application may be made to the court for an order dispensing with the signature on any terms and conditions that the court may impose.

RSA 2000 cL-4 s85;2009 c53 s95

### **Strata space**

**86(1)** In this section, “strata space” means volumetric space, whether it is

- (a) located below or above or below and above the surface of the land, or
- (b) occupied in whole or in part by any structure,

and that is shown as strata space on a strata space plan.

(2) A registered owner subdividing volumetric space, other than mines and minerals lying on or under the surface of the land, into strata spaces shall present a plan of survey to the Registrar for registration under this Act.

(3) Volumetric space shall not be subdivided into strata spaces unless the land in relation to which the subdivision is to be made is shown as a single parcel on a plan of survey registered under this Act.

(4) The boundaries of a strata space

- (a) may consist of vertical, horizontal or inclined planes or curved surfaces that are satisfactory to the Registrar, and
- (b) shall conform to or lie within the boundaries of the single parcel referred to in subsection (3).

(5) A strata space plan shall

- (a) show
  - (i) the boundaries of the volumetric space that is to be subdivided into strata spaces, and

- (ii) the boundaries of each strata space,
  - (b) include a diagram to scale of the survey of the perimeter of the land affected,
  - (c) have noted on it the elevation of each corner or angle of the strata spaces in relation to monuments of known elevation or survey control markers in accordance with the *Surveys Act*,
  - (d) assign a suitable letter or number to each strata space and designate each space as a strata space,
  - (e) be signed by the registered owner of the land, and
  - (f) show any other details that the Registrar may require.
- (6) On registration of the strata space plan, the Registrar shall cancel the existing certificate of title to the extent necessary and issue new certificates of title to the strata spaces shown on the strata space plan.

1988 c27 s36

**Statutory plan**

**87(1)** A plan prepared in accordance with

- (a) an Act of the Parliament of Canada, or
- (b) an Act of the Legislature of Alberta,

that is deposited, filed or registered with the Registrar in accordance with that Act shall be dealt with and recognized by the Registrar insofar as it is capable of being dealt with and recognized under this Act.

(2) A plan that is to be deposited, filed or registered with the Registrar pursuant to another Act of the Legislature of Alberta must be prepared in a manner that is satisfactory to the Registrar notwithstanding the provisions of that other Act.

1988 c27 s36

**Registration of descriptive plans**

**88(1)** The Registrar may

- (a) cause a plan that illustrates boundaries to be prepared and registered in respect of a parcel of land described in a certificate of title, or
- (b) permit a plan that is not a plan of survey to be registered if the Registrar

- (i) is satisfied that the circumstances do not justify the preparation of a plan of survey, and
  - (ii) has given the Registrar's prior approval to the plan's being prepared.
- (2)** If a plan referred to in subsection (1)(b) has the effect of subdividing land, it shall not include
- (a) more than 2 parcels of land, or
  - (b) any land dedicated for public purposes.
- (3)** A plan prepared under subsection (1) shall
- (a) be styled as a "descriptive plan",
  - (b) be prepared in a manner and on a medium or material that is satisfactory to the Registrar,
  - (c) contain sufficient detail so that, in the opinion of the Registrar, the parcel boundaries can be ascertained from the plan, and
  - (d) if the plan was prepared under subsection (1)(b), be signed by
    - (i) an Alberta land surveyor, and
    - (ii) any other person whose signature would be required if the plan were a plan of survey.
- (4)** When a descriptive plan is registered under subsection (1)(a), the Registrar shall
- (a) cancel the existing certificate of title and issue a new certificate of title to the parcel as shown on the plan, and
  - (b) notify the registered owner and all other persons having a registered or caveated interest in the parcel that the description of the parcel has been changed.
- (5)** When a descriptive plan is registered under subsection (1)(b), the Registrar shall deal with the plan as if it were a plan of survey.

1988 c27 s36

**Change in natural boundary**

**89(1)** Where a parcel of land that adjoins land owned by the Crown in right of Alberta has a natural boundary, the Registrar, on application by the registered owner of the parcel or the Crown, may

amend the description of the parcel to reflect the current location of the natural boundary.

**(2)** Where a parcel of land

- (a) had adjoined land owned by the Crown in right of Alberta, and
- (b) had a natural boundary that no longer exists,

the Registrar, on application by the registered owner of the parcel, may amend the description of the parcel to reflect the non-existence of the natural boundary.

**(3)** An application under subsection (1) or (2) shall be accompanied

- (a) in the case where the natural boundary still exists, with a plan of survey or other evidence satisfactory to the Registrar showing the location of the natural boundary,
- (b) in the case where the natural boundary no longer exists, with evidence satisfactory to the Registrar of the non-existence of the natural boundary,
- (c) with the consent of the Minister charged with the administration of the adjoining land or a person authorized by the Minister, where the Crown is not the applicant, and
- (d) with the consent of the registered owners of parcels that may be adversely affected by the amendment of the description.

1988 c27 s36

**Actual area of land**

**90** Every parcel of land described in a certificate of title consists only of the actual area within its legal boundaries and no more or less, notwithstanding that a certificate of title or other instrument that describes the parcel expresses an area that is more or less than the actual area.

1988 c27 s36

**Application to vary plan**

**91(1)** A court may, on application and on hearing the persons to whom notice of the application was given,

- (a) order a plan to be cancelled, in whole or in part, amended, altered or corrected, and

- (b) make any order with respect to the vesting or re-vesting of any land included in the plan,

on any terms or conditions as to costs and otherwise as the court considers proper.

**(2)** An application for an order under subsection (1) may be made by

- (a) a person who caused a plan to be registered,
- (b) a person deriving title to or some other interest in any land shown on a plan,
- (c) an Alberta land surveyor who signed a plan or, if that Alberta land surveyor is deceased, retired or otherwise unable to act, an Alberta land surveyor appointed by the Council of the Alberta Land Surveyors' Association to sign for that Alberta land surveyor, or
- (d) the Registrar.

**(3)** Notice of the application referred to in subsection (2) shall be served on those persons and in any manner that the court directs.

RSA 2000 cL-4 s91;2008 c22 s5

#### **Correction of registered plan**

**92** When there is an omission, clerical error or other defect in a registered plan, the Registrar may correct the plan if

- (a) the Registrar is satisfied that the correction will not adversely affect any person, or
- (b) where the correction may adversely affect a person, that person has consented to the correction,

and the Alberta land surveyor who signed the plan or, if the Alberta land surveyor is deceased, retired or otherwise unable to act, either the Director of Surveys or an Alberta land surveyor appointed by the Council of the Alberta Land Surveyors' Association has consented to the correction.

RSA 2000 cL-4 s92;2008 c22 s6

#### **Change of legal description**

**93(1)** The Registrar may change the legal description assigned to a parcel of land if

- (a) the Registrar is satisfied that the change will not adversely affect any person, and

(b) the change does not alter the boundaries of the parcel.

**(2)** On making a change under subsection (1), the Registrar shall notify the registered owner and all other persons having a registered or caveated interest in the parcel that the description of the parcel has been changed.

1988 c27 s36

#### **Sale of subdivided land**

**94(1)** No lots shall be sold under agreement for sale or otherwise according to any townsite or subdivision plan until a plan creating the lots has been registered.

**(2)** A person who contravenes subsection (1) is guilty of an offence.

**(3)** No party to a sale or agreement for sale is entitled in a civil action or proceeding to rely on or plead the provisions of this section

(a) if the plan of subdivision by reference to which the sale or agreement for sale was made is registered when the action or proceeding is commenced, or

(b) if, pursuant to the arrangement between the parties, it was the duty of the party who seeks to rely on or plead the provisions of this section to cause the plan of subdivision to be registered.

1988 c27 s36

### **Leases**

#### **Requirements of lease**

**95(1)** When land for which a certificate of title has been granted is intended to be leased or demised for a life or lives, or for a term of more than 3 years, the owner shall execute a lease, in the prescribed form.

**(2)** A lease made pursuant to subsection (1) shall give a description of the leased land that is sufficient to identify the land.

**(3)** A right for the lessee to purchase the land described in the instrument may be stipulated in the instrument, and if the lessee pays the purchase money stipulated, and otherwise observes the lessee's covenants expressed and implied in the instrument, the lessor is bound to execute a transfer to the lessee of the land, and to perform all necessary acts by this Act prescribed for the purpose of transferring the land to the purchaser.

(4) No such lease of mortgaged or encumbered land is valid and binding against the mortgagee or encumbrancee unless the mortgagee or encumbrancee has consented to the lease prior to its being registered, or subsequently adopts it.

RSA 1980 cL-5 s98;1988 c27 s37

#### **Covenants implied in lease**

**96** In every lease referred to in section 95 other than a lease that is subject to the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act*, there shall be implied the following covenants by the lessee, unless a contrary intention appears in the lease:

- (a) that the lessee will pay the rent reserved by the lease at the times mentioned in the lease, and all rates and taxes that may be payable in respect of the demised land during the continuance of the lease;
- (b) that the lessee will at all times during the continuance of the lease keep and at the termination of the lease yield up the demised land in good and tenantable repair, accidents and damage to buildings from fire, storm and tempest or other casualty and reasonable wear and tear excepted.

RSA 1980 cL-5 s99;1991 c18 s48

#### **Implied powers of lessor**

**97** In every lease referred to in section 95 other than a lease that is subject to the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act*, there shall also be implied the following powers in the lessor, unless a contrary intention appears in the lease:

- (a) that the lessor may, by himself or herself or his or her agents, enter on the demised land and view its state of repair, and may serve on the lessee, or leave at the lessee's last or usual place of abode, or on the demised land, a notice in writing of any defect, requiring the lessee within a reasonable time, to be mentioned in the notice, to repair it, insofar as the lessee is bound to do so;
- (b) that in case the rent or any part of it is in arrear for the space of 2 calendar months, or in case default is made in the fulfilment of any covenant, whether expressed or implied in the lease, on the part of the lessee, and is continued for the space of 2 calendar months, or in case the repairs required by the notice, as provided in clause (a), are not completed within the time specified in the notice, the lessor may enter on and take possession of the demised land.

RSA 1980 cL-5 s100;1991 c18 s48

**Re-entry**

**98** The Registrar, on proof to the Registrar's satisfaction of lawful re-entry and recovery of possession pursuant to section 97(b) by a lessor, or the lessor's transferee by a legal proceeding, shall make a memorandum of the fact on the certificate of title and, on so doing, the estate of the lessee in the land determines and the Registrar shall cancel the lease if delivered up to the Registrar for that purpose, but the lessee is not hereby released from the lessee's liability in respect of the breach of any covenant in the lease, expressed or implied.

RSA 1980 cL-5 s101;1999 c10 s19

**Short form of lease**

**99(1)** When in a lease made under this Act other than a lease that is subject to the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act*, the forms of words in column 1 of Schedule 1 and distinguished by any number in that Schedule are used, the lease shall be taken to have the same effect and be construed as if the words used had been those contained in column 2 of Schedule 1 and distinguished by the same number.

**(2)** Every such expression of words is deemed a covenant by the lessee with the lessor and the lessor's transferees, binding the lessee and the lessee's heirs, executors, administrators and transferees, but it is not necessary in any such lease to insert any such number and there may be introduced into or annexed to any of the expressions in column 1 any expressed exceptions from it or expressed qualifications of it, respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding expressions in column 2.

RSA 1980 cL-5 s102;1991 c18 s48

**Surrender of lease**

**100(1)** When a lease or demise required to be registered by this Act is intended to be surrendered and its surrender is effected otherwise than through the operation of a surrender in law, the Registrar shall, on the production to the Registrar of the surrender in the prescribed form, make a memorandum of the surrender on the certificate of title in the register.

**(2)** When the memorandum has been so made, the estate or interest of the lessee in the land vests in the lessor or in the person in whom, having regard to intervening circumstances, if any, the land would have vested if the lease had never been executed.

**(3)** Notwithstanding subsection (1),

- (a) a lessee of a lease that is mortgaged or encumbered shall not surrender the lease without the consent of the mortgagee or encumbrancee, and
- (b) when a certificate of title has been issued for a leasehold estate, the Registrar shall not register a surrender of the lease unless the persons entitled to the benefit of any instruments or caveats registered against the certificate of title consent to the surrender.

(4) Where a lease or demise required to be registered under this Act has been discharged before the term of the lease has expired, that discharge is deemed to have the same effect as if the lease had been surrendered.

RSA 1980 cL-5 s103;1985 c48 s2(20);1996 c32 s5(14);  
1999 c10 s20

#### **Cancellation of expired lease**

**101(1)** Any person claiming to be interested in any land for which a certificate of title has been granted may apply to a court for an order discharging any lease or demise registered pursuant to this Act the term of which has expired, and the court, on being satisfied that the term of the lease or demise in respect of which the application is made has expired, may grant an order to that effect.

(2) Notwithstanding subsection (1), where the lessee is still in possession, the court shall not grant an order under subsection (1) unless the lessee has been given notice of the application.

(3) On the filing of the order with the Registrar, the Registrar shall cancel the registration of the lease or demise mentioned in the order and any caveat based on the existence of that lease or demise.

(4) The Registrar shall cancel the registration of a lease or demise on the production to the Registrar of a discharge executed by the lessee certifying that

- (a) the term of the lease or demise has expired, and
- (b) the lessee is no longer in possession.

RSA 1980 cL-5 s104;1988 c27 s38

### **Mortgages and Encumbrances**

#### **Mortgages and encumbrances**

**102(1)** When land for which a certificate of title has been granted is intended

- (a) to be charged or made security in favour of a mortgagee, the mortgagor shall execute a mortgage in the prescribed form, or to the like effect, or
- (b) to be charged with or made security for the payment of an annuity, rent charge or sum of money in favour of any encumbrancee, the encumbrancer shall execute an encumbrance in the prescribed form, or to the like effect.

**(2)** A mortgage or encumbrance shall

- (a) contain an accurate statement of the estate or interest intended to be mortgaged or encumbered, and
- (b) give a description of the land intended to be dealt with that is sufficient to identify the land,

and a memorandum of the mortgage or encumbrance shall be made on the certificate of title.

**(3)** A mortgage or encumbrance providing for the delivery to the mortgagee or encumbrancee of grain is registerable in the same manner as any other mortgage or encumbrance if there is set out in it the amount of grain of any specified description and grade as being the amount of grain deliverable pursuant to it, and all the provisions of this Act relating to other mortgages or encumbrances apply, with all necessary modifications, to any mortgage or encumbrance to which this subsection relates.

RSA 1980 cL-5 s105;1988 c27 s39

**Mortgage as security**

**103** A mortgage or encumbrance under this Act has effect as security but does not operate as a transfer of the land charged by it.

RSA 1980 cL-5 s106

**Priority of mortgage**

**104(1)** On registration of a mortgage for a specific principal sum, the mortgage obtains priority in accordance with section 14 of this Act for all advances and obligations secured pursuant to the terms of the mortgage, notwithstanding that they are made or incurred subsequent to the registration, on or after January 1, 1983, of any other instrument or caveat.

**(2)** On registration of a mortgage that provides for a revolving line of credit up to a specific principal sum, the mortgage obtains priority in accordance with section 14 of this Act for all advances and obligations secured pursuant to the terms of the mortgage notwithstanding

- (a) that the advances and obligations are made or incurred subsequent to the registration, after December 31, 1982, of any other instrument or caveat, and
- (b) that at any time during the term of the mortgage there may not be any outstanding advances to be secured.

(3) If a mortgagee refuses to make, or a mortgagor has and exercises a right to refuse to accept or be bound by, any further advances that would be secured under subsection (1) or (2), the mortgagee shall, on the request of the mortgagor, provide a discharge of the mortgage as to the further advances.

(4) The rights given under the *Builders' Lien Act* and the *Personal Property Security Act* are not affected by this section.

1982 c23 s14;1985 c48 s2(21);1988 cP-4.05 s86

#### **Mortgages affected by conditional sales agreement**

**105(1)** A mortgage, charge or encumbrance on land or on any estate or interest in land contained in, endorsed on or annexed to a written order, contract or agreement for the purchase or delivery of any chattel or chattels, is void to all intents and purposes whatsoever, notwithstanding anything in any Act.

(2) No such mortgage, charge or encumbrance, and no caveat founded on it, or on any such writing or instrument, shall be registered or filed under this Act.

(3) If any such writing or instrument, by inadvertence, accident or otherwise howsoever, is registered or filed in any Land Titles Office contrary to this section, the registration or filing is ineffective and nugatory to all intents and purposes whatsoever, and may be cancelled by a judge of the Court of Queen's Bench on the application of any person interested.

RSA 2000 cL-4 s105;2009 c53 s95

#### **Discharge of mortgage or encumbrance**

**106(1)** The Registrar shall discharge a mortgage or an encumbrance wholly or in part, or the land comprised in it wholly or in part, according to the tenor of the discharge, and shall make an entry of the discharge on the certificate of title affected by the discharge, in any of the following cases:

- (a) on the production to the Registrar of a discharge in the prescribed form signed by the mortgagee or encumbrancee and accompanied with the proper affidavit of execution, but
  - (i) when it is expressly stated in a mortgage or encumbrance to 2 or more mortgagees or encumbrancees

that the money has been advanced on a joint account, it is sufficient if the discharge of the mortgage or encumbrance is signed by any one of the mortgagees or encumbrancees, or

(ii) when it is expressly stated in a mortgage or encumbrance that the mortgage or encumbrance is held in joint tenancy by 2 or more mortgagees or encumbrancees, it is sufficient, on the death of a joint tenant, if the discharge of the mortgage or encumbrance is signed by the surviving mortgagees or encumbrancees;

(b) on the production of a certificate signed by a judge certifying that the judge is satisfied of the payment of all or part of the money secured by the mortgage or encumbrance, and that the mortgagee or encumbrancee is living, or if dead, that no succession duty or other tax is payable to the Crown in right of Alberta with respect to the mortgage or encumbrance;

(c) on the production of a certificate signed by a judge certifying that the right of any person to recover any money secured by the mortgage or encumbrance has been extinguished by reason of the operation of the *Limitation of Actions Act*, RSA 1980 cL-15, or is unenforceable pursuant to an immunity from liability established under the *Limitations Act*.

(2) On the entry being made on the certificate of title, the land or the estate, or interest in the land, or the portion of the land mentioned or referred to in the endorsement as provided in this Act, ceases to be subject to or liable for the principal sum or annuity, or, as the case may be, for the part of it mentioned in the entry as discharged.

RSA 2000 cL-4 s106;2007 c22 s2

### Postponements

**107(1)** A person entitled to the benefit of a mortgage, encumbrance, lease or other instrument or a caveat registered against land may postpone the person's rights under it by filing a postponement in the prescribed form.

(2) The registration of a postponement has the effect of postponing the rights under the postponed instrument or caveat to the rights under the instrument or caveat to which it is postponed in the same way and to the same extent as if the postponed instrument or caveat had been registered after the instrument or caveat to which it is to be postponed.

1985 c48 s2(23)

#### **Memorandum in case of extinction of annuity, etc.**

**108** On proof of the death of the annuitant, or of the occurrence of the event or circumstance on which in accordance with the provisions of any encumbrance the annuity or sum of money secured by it ceases to be payable, and on proof that all arrears of the annuity and interest or money have been paid, satisfied or discharged, the Registrar shall, on the order of a judge, make a memorandum on the certificate of title that the annuity or sum of money is satisfied and discharged and shall cancel the instrument or caveat, and on the memorandum being made the land ceases to be subject to or liable for the annuity or sum of money.

RSA 1980 cL-5 s109;1999 c10 s21

#### **Priority of transfers of mortgages**

**109(1)** Mortgages, encumbrances and leases of land for which a certificate of title has been granted may be transferred by a transfer in the prescribed form and the transfer shall be registered in the same manner as mortgages, encumbrances and leases are registered, and transferees have priority according to section 14.

(2) Any mortgagee may transfer a part of the sum secured by the mortgage by a transfer in the prescribed form, and the part so transferred continues to be secured by the mortgage and may be given priority over the remaining part or may be deferred or may continue to rank equally with it under the security of the original mortgage, as stated in the transfer, and the Registrar shall enter on the certificate of title a memorandum of the amount of the mortgage so transferred, the name of the transferee, and how the sum so transferred is to rank.

RSA 1980 cL-5 s110;1985 c48 s2(24)

#### **Liability of transferee**

**110** On the registration of a transfer of any mortgage, encumbrance or lease, the estate or interest of the transferor, as set out in the instrument, with all the rights, powers and privileges belonging or appertaining to it, passes to the transferee, and the transferee becomes subject to and liable for all the same requirements and liabilities to which the transferee would have been subject and liable if named in the instrument.

RSA 1980 cL-5 s111

**Rights of transferee**

**111(1)** By virtue of every such transfer the right to sue on any mortgage or other instrument and to recover any debt, sum of money, annuity of damage under it, and all interest at the time of the transfer in the debt, sum of money, annuity or damages, are transferred so as to vest them in law in the transferee of them.

**(2)** Nothing contained in this Act prevents the court from giving effect to any trust affecting the debt, sum of money, annuity or damages in case the transferee holds it as trustee for any other person.

RSA 1980 cL-5 s112

**Short form of mortgage**

**112(1)** When in a mortgage made under this Act the forms of words in column 1 of Schedule 2 and distinguished by any number in that Schedule are used, the mortgage is to be taken to have the same effect and be construed as if the words used had been those contained in column 2 of Schedule 2 and distinguished by the same number.

**(2)** Every such expression of words is deemed a covenant by the mortgagor with the mortgagee and the mortgagee's transferees, binding the mortgagor and the mortgagor's heirs, executors, administrators and transferees, but it is not necessary in any such mortgage to insert any such number and there may be introduced into or annexed to any of the expressions in column 1 any expressed exceptions from it or expressed qualifications of it, respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding expressions in column 2.

RSA 1980 cL-5 s113;1983 c37 s33

**Standard form mortgage**

**113(1)** A person may apply to the Registrar to file a standard form mortgage with the Registrar.

**(2)** The standard form mortgage submitted for filing under subsection (1) must contain the terms of the mortgage other than

- (a) the parties to the mortgage;
- (b) the legal description of the mortgaged land;
- (c) the amount secured under the mortgage;
- (d) the amount of the payments to be made under the mortgage;
- (e) the rate of interest on the mortgage;
- (f) the term of the mortgage;

- (g) the signatures to be executed on the mortgage;
- (h) any other matter as determined by the Registrar.

**(3)** Once the Registrar considers that the form and terms of the standard form mortgage are acceptable, the Registrar

- (a) may file a copy of the standard form mortgage, and
- (b) on filing the standard form mortgage, shall advise the applicant of the filing.

**(4)** When a copy of a standard form mortgage is filed under subsection (3), the Registrar shall give the copy an identifying number or other identifying mark.

1996 c32 s5(15);1997 c18 s16

#### **Use of standard form mortgage**

**114(1)** For the purpose of using a standard form mortgage, the following applies:

- (a) the mortgage must set out
  - (i) the parties to the mortgage;
  - (ii) the address and postal code of the mortgagee;
  - (iii) the legal description of the mortgaged land;
  - (iv) the principal sum of the mortgage;
  - (v) the amount of the instalments, if any, to be made under the mortgage;
  - (vi) the rate of interest on the mortgage;
  - (vii) the term of the mortgage;
  - (viii) a description of any deletions from, and any amendments or additions to, the terms of the standard form mortgage made by the mortgagee;
  - (ix) any other matter as determined by the Registrar;
- (b) the mortgage must contain a statement that the mortgage consists of those terms and is subject to the terms contained in the standard form mortgage that was filed with the Registrar as varied by any deletions from, or amendments or additions to, the terms of the standard form mortgage;

- (c) the mortgage must set out the identifying number or mark that was assigned to the standard form mortgage under section 113(4) that contains the terms referred to in clause (b);
- (d) the mortgagor must acknowledge on the mortgage
  - (i) that the mortgagor understands the nature of the statement referred to in clause (b),
  - (ii) that the mortgagor has been given a copy of those terms referred to in clause (b),
  - (iii) that the mortgagor is the registered owner of the land being mortgaged, and
  - (iv) that the mortgagor mortgages all of the mortgagor's estate and interest in the land for the purpose of securing the payment of the principal amount, interest and all other amounts secured by the mortgage;
- (e) the mortgage must be dated and executed by the mortgagor, and if there is more than one mortgagor, by all the mortgagors, to the mortgage and witnessed if witnesses are required.

**(2)** A mortgage completed and executed under this section has the same force and effect as if the mortgage had set out the actual terms contained in the standard form mortgage filed with the Registrar under section 113 as varied by any deletions from, or amendments or additions to, the terms of the standard form mortgage.

1996 c32 s5(15);1997 c18 s16

## **Powers of Attorney**

### **Power of attorney**

**115(1)** The owner of land may authorize and appoint any person to act for the owner or on the owner's behalf with respect to the transfer or other dealing with the land or with any part of it, in accordance with this Act, by executing a power of attorney in the prescribed form, or as near to it as circumstances permit, or in any form heretofore in use for the like purpose in which the land is not specially mentioned and described but is mentioned and referred to in general terms and the Registrar shall register any such power of attorney.

**(2)** If the land referred to in any power of attorney is specifically and properly described, the Registrar shall make a memorandum of the instrument on the certificate of title.

**(3)** Until a power of attorney in which the land referred to is so specifically described is revoked in the manner provided by subsection (4), the right of the owner to deal with the land for the purposes specified in the power of attorney is suspended, but the execution or registration of a general power of attorney does not in any way affect the right of the owner to transfer or otherwise deal with the owner's land.

**(4)** The power of attorney may be revoked by a revocation in the prescribed form and, after the registration of a revocation of a power of attorney, the Registrar shall not register any transfer or other instrument made under the power of attorney unless the transfer or other instrument was executed prior to the revocation.

**(5)** Where an irrevocable power of attorney is granted by a corporation in a registered mortgage or encumbrance and is to take effect when certain conditions, including default, occur, a certificate by the mortgagee or encumbrancee may be filed with the Registrar in respect of land that is owned by the corporation,

- (a) setting out the provisions from the mortgage or encumbrance that grant the power of attorney,
- (b) certifying that the power of attorney is in effect by virtue of the conditions having occurred,
- (c) where the mortgagee or encumbrancee is not the attorney, certifying the appointment of the person who is authorized to act as attorney pursuant to the power of attorney,
- (d) describing the land in respect of which the power of attorney is to be exercised, and
- (e) certifying that at least 15 days' notice has been given to the corporation of the intention of the attorney to file the certificate,

and the Registrar shall register the certificate and make a memorandum of the instrument on the certificate of title.

**(6)** A certificate registered under subsection (5)

- (a) suspends the right of the owner to deal with the land for the purposes specified in the power of attorney,
- (b) is sufficient authority for the Registrar to accept an instrument that is executed by the attorney for a purpose specified in the power of attorney, and

- (c) subject to subsection (7), may be withdrawn by the mortgagee or encumbrancee at any time.

(7) The mortgagee or encumbrancee shall withdraw a certificate registered under subsection (5) when the conditions permitting the certificate to be filed no longer exist.

RSA 1980 cL-5 s115;1988 c27 s42;1999 c10 s23

### **Transmission**

#### **Transmission of title on death**

**116(1)** When the owner of land for which a certificate of title has been granted dies, the land, subject to this Act, vests in the personal representative of the deceased owner.

(2) The personal representative before dealing with the land shall apply in writing, executed by the personal representative or the personal representative's solicitor, to the Registrar to be registered as owner and shall produce to and leave with the Registrar the probate of the will of the deceased owner, or letters of administration, or order of the court authorizing the personal representative to administer the estate of the deceased owner, or a certified copy of the probate, letters of administration or order, as the case may be.

(3) For the purposes of this Act, the probate of a will or letters of administration, or other legal document purporting to be of the same nature, granted by the proper court of any province or territory of Canada, or of the United Kingdom of Great Britain, or of Northern Ireland, or of any other British dominion or possession, or an exemplification of it is deemed sufficient if it has been resealed with the seal of the court in Alberta having jurisdiction in those matters.

(4) On the registration of the application,

- (a) the Registrar shall cancel the certificate of title that is in the name of the deceased owner and grant to the executor or administrator, in the capacity as the executor or administrator, a new certificate of title, and
- (b) the executor or administrator, as the case may be, is deemed to be the owner of the land.

(5) For the purposes of section 120 only, the Registrar shall, in issuing a certificate of title to an executor, administrator or trustee under a will, describe the owner as the executor, administrator or trustee.

(6) The title of the executor or administrator to the land relates back and takes effect from the date of the death of the deceased owner.

RSA 1980 cL-5 s116;1988 c27 s43;1999 c10 s24

**Transmission of estate or interest under will or in intestacy**

**117(1)** When an estate or interest in land for which a certificate of title has been granted is transmitted in consequence of the will or intestacy of the deceased owner,

- (a) the probate of the will of the deceased owner,
- (b) the letters of administration,
- (c) the order of the court authorizing a person to administer the estate of the deceased owner, or
- (d) a certified copy of the probate, letters of administration or order, as the case may be,

accompanied with an application in writing from the executor, administrator or other person applying to be registered as owner in respect of the estate or interest, shall be filed with the Registrar, who shall at the time of filing make a memorandum on the certificate of title.

(2) On the memorandum being made, the executor, or administrator, or such other person, as the case may be, is deemed to be the owner of the estate or interest in land.

(3) Section 116(3) applies to transmissions under this section.

RSA 1980 cL-5 s117;1988 c27 s44

**Tenure of person registered in place of deceased owner**

**118(1)** Any person registered in place of a deceased owner shall hold the land in respect of which the person is registered, on the trusts and for the purposes to which it is applicable by this Act or by law and subject to any trusts and equities on which the deceased owner held it, but for the purpose of any registered dealings with the land, the person is deemed to be the absolute and beneficial owner of the land.

(2) Any person beneficially interested in any such land may apply to a court having jurisdiction to have it taken out of the hands of the trustee having by law charge of the land and to have it transferred to some other person or persons, and the court, on reasonable cause being shown, shall name some suitable person or persons as owner of the land, and on the person or persons named accepting the ownership and giving approved security for the due fulfilment of the trusts, the court may order the Registrar to cancel

the certificate of title to the trustee, and to grant a new certificate of title to the person or persons named.

RSA 1980 cL-5 s118;1988 c27 s45

**Transfer by personal representative to himself or herself**

**119** An executor, administrator or trustee may make a valid transfer to himself or herself in the executor's, administrator's or trustee's personal capacity.

RSA 1980 cL-5 s119

**Conditions of registration of transfer, etc.**

**120(1)** The Registrar shall not register a transfer, mortgage or other instrument executed by an executor, administrator or trustee under a will except an application for transmission or a caveat or a discharge of mortgage, unless

- (a) a certificate of the Public Trustee, made subsequent to the grant or resealing of letters probate or administration, that the Public Trustee has no knowledge of minors being interested in the estate of the deceased owner, has been filed with the Registrar,
- (b) in cases where minors are interested, the instrument to be registered is accompanied with the consent of the Public Trustee to the proposed dealing,
- (c) the instrument to be registered is accompanied with an order of a judge of a court of competent jurisdiction, authorizing the proposed dealing, or
- (d) the instrument to be registered is accompanied with an affidavit made by the deponent of the deponent's own knowledge that there are no minors who are interested in the estate of the deceased owner, nor were there any minors interested in the estate of the deceased owner at the time of the owner's death.

**(2)** If land in which minors are interested is subject to a general testamentary trust for sale, the Public Trustee may give one written consent, which shall refer to the trust and authorize the executor, administrator or trustee, as the case may be, to deal with the land, and after the general consent has been filed in a Land Titles Office the Registrar shall register any transfer, mortgage or other instrument executed by the executor, administrator or trustee, as the case may be, without requiring any further consent to be filed.

RSA 1980 cL-5 s120

**Joint tenancy**

**121** When

- (a) an estate or interest in land for which a certificate of title has been granted is in the name of joint tenants, and
- (b) a joint tenant of that estate or interest dies,

the Registrar, on application in writing accompanied with any documentation and other information that is requested by or that is otherwise satisfactory to the Registrar, shall cancel the certificate of title and grant a new certificate of title in the name of the surviving joint tenant.

1996 c32 s5(16);1999 c10 s25

### **Enforcement**

#### **Registration of instruments**

**122(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.

**(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 by that filing or continuation.

(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*.

2000 c14 s7

#### **Lapse of instrument**

**123(1)** In this section, "instrument" means an instrument as defined in section 122(1).

(2) Every instrument registered against any land shall be lapsed by the Registrar on 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 application, subject to the *Alberta Rules of Court*, 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*.

RSA 2000 cL-4 s123;2009 c53 s95

#### **Transfer or postponement of writ**

**124(1)** A writ may be transferred in whole or in part or postponed by the enforcement creditor.

(2) An assignment of a judgment in respect of which a writ is registered may be accepted by the Registrar as a transfer of the writ.

1985 c48 s2(27);1994 cC-10.5 s134

#### **Discharge of writ**

**125** The Registrar shall discharge a writ against all or a portion of the land bound by the writ on production to the Registrar of

- (a) a judge's order directing the discharge of the writ against all or a portion of the land,

- (b) evidence from the clerk of the court showing the expiration, satisfaction or withdrawal of the writ, or
- (c) a discharge executed by the enforcement creditor.  
RSA 1980 cL-5 s123;1982 c23 s16;1985 c48 s2(28);  
1994 cC-10.5 s134

### Changes of Name

#### Change of name of married person or adult interdependent partner

**126(1)** When a married person or adult interdependent partner who is the owner of an interest in land adopts the surname of the spouse or adult interdependent partner, the Registrar may make a memorandum of the change of name on the appropriate certificate of title on production of

- (a) an affidavit by that person verifying
  - (i) the date of the marriage or the existence of an adult interdependent relationship,
  - (ii) the place where the marriage was solemnized, if applicable, and
  - (iii) the spouse's or adult interdependent partner's full name,and
- (b) a certificate of marriage or an agreement made under section 7 of the *Adult Interdependent Relationships Act*, if applicable, or any other evidence that the Registrar may require to substantiate the identity of that person.

**(2)** When an interest in land is registered in the name of a person under the surname of that person's spouse or former spouse or adult interdependent partner or former adult interdependent partner and that person now uses

- (a) that person's original surname,
- (b) a hyphenated surname that incorporates that person's original surname and the surname of that person's spouse or former spouse or adult interdependent partner or former adult interdependent partner, or
- (c) the surname of a spouse or adult interdependent partner from a previous marriage or adult interdependent relationship,

the Registrar may make a memorandum of the change of name on the appropriate certificate of title on production of evidence referred to in subsection (3).

**(3)** The following evidence may be provided in respect of a person referred to in subsection (2):

- (a) an affidavit by that person verifying the surname now used by that person, and
  - (i) a certificate of marriage, or
  - (ii) a copy of an agreement made under section 7 of the *Adult Interdependent Relationships Act*, or an affidavit by that person declaring that the person is an adult interdependent partner or is a former adult interdependent partner,

or

- (b) any other evidence that the Registrar may require to substantiate the identity of that person.

RSA 2000 cL-4 s126;2002 cA-4.5 s49

### **Changes of name**

**127** When a person who is the owner of an interest in land

- (a) changes a name pursuant to a statute in Alberta or legislation in another jurisdiction, and
- (b) provides to the Registrar documentation that is satisfactory to the Registrar showing that the person's name was changed under that statute or other legislation and setting out that person's name as changed,

the Registrar may make a memorandum of the change of name on the appropriate certificate of title.

1996 c32 s5(20);1999 c10 s27

### **Assignment for Benefit of Creditors**

#### **Assignment for benefit of creditors**

**128(1)** On an assignment being made by the owner of any land, mortgage or encumbrance for the benefit of the owner's creditors, the assignee or trustee of the owner may register the assignment, and may at any time afterwards apply to the Registrar to be registered as owner of the land, mortgage or encumbrance, and the Registrar shall, pursuant to the application, transmit the land, mortgage or encumbrance to the assignee or trustee, who on that transmission becomes the owner of the land, mortgage or

encumbrance and is vested with all the rights and powers that the assignor was possessed of, and the title of the assignee or trustee relates back to and takes effect from the date of the assignment.

(2) The Registrar shall not, in issuing a certificate of title to the assignee or in any entries the Registrar may make regarding the transmission, refer to the fact that the new owner is the assignee or trustee, or that the new owner holds the land, mortgage or encumbrance for any other than the new owner's absolute use, and for the purpose of any registered dealing with the land, mortgage or encumbrance the assignee or trustee is deemed to be its absolute owner.

RSA 1980 cL-5 s129

### **Amending Agreements**

#### **Registration of amending agreement**

**129** Where the registered owner of land and the owner of an interest in that land under an instrument registered under this Act have entered into an agreement amending any of the terms of the instrument, that agreement may be registered as an instrument.

1985 c48 s2(33)

### **Caveats**

#### **Filing of caveat**

**130** A person claiming to be interested in land for which a certificate of title has been issued or in a mortgage or encumbrance relating to that land

- (a) pursuant to
  - (i) a will, settlement or trust deed,
  - (ii) an instrument of transfer or transmission, or
  - (iii) an unregistered instrument,
- (b) by virtue of the provisions of any Act of Alberta under which that person acquired any right with respect to that land, mortgage or encumbrance, or
- (c) by virtue of
  - (i) having acquired through the owner or any prior owner of that land, mortgage or encumbrance, otherwise than under clause (a) or (b), an interest in that land, mortgage or encumbrance after the first certificate of title was issued for that land,

- (ii) being the owner or previous owner of an interest in that land, otherwise than under clause (a) or (b), when that interest arose after the first certificate of title was issued for that land, or
- (iii) being the owner or a previous owner of the mortgage or encumbrance, otherwise than under clause (a) or (b),

may cause to be filed with the Registrar a caveat on the person's behalf in the prescribed form against the registration of any person as transferee or owner of, or any instrument affecting, the estate or interest, unless the certificate of title is expressed to be subject to the claim of the caveator.

RSA 1980 cL-5 s130;1982 c23 s18;1985 c48 s2(34);  
1988 c27 s50

#### **Requirements of caveat**

**131(1)** Every caveat filed with the Registrar shall state the name and addition of the person by whom or on whose behalf it is filed and, except in the case of a caveat filed by the Registrar as provided, shall in this Act be signed by the caveator or the caveator's agent and shall state some address or place at which notices and proceedings relating to the caveat or the subject-matter of the caveat may be served and the nature of the interest claimed and the grounds on which the claim is founded.

**(2)** Every caveat, except in the case of a caveat filed by the Registrar as provided, shall in this Act be supported by an affidavit

- (a) that in the belief of the deponent the person by whom or on whose behalf the caveat is filed has a good and valid claim in respect of the land, mortgage or encumbrance intended to be affected by it, and
- (b) that the caveat is not filed for the purpose of delaying or embarrassing the applicant, or owner, or any person claiming through the applicant or owner,

and the affidavit may be in the prescribed form.

RSA 1980 cL-5 s131;1982 c23 s19;1996 c32 s5(21)

#### **Address for service**

**132(1)** A caveator while the caveator's caveat remains in force may file with the Registrar a notice of the change of address for service stated in the caveat, or in any previous notice of change of address for service.

**(2)** On receipt of a notice of change of address for service, in the prescribed form or to the like effect, and the Registrar's proper fee,

the Registrar shall enter the notice in the record and shall make a memorandum of it on the certificate of title affected by the caveat.

RSA 1980 cL-5 s132;1982 c23 s20;1985 c48 s2(35);1996 c32 s5(28)

#### **Caveat based on unregistered mortgage**

**133** If, in any caveat presented for registration, a caveator claims an interest under an unregistered mortgage or encumbrance, the fees payable for the registration of the caveat shall be the same as if a mortgage or encumbrance for an equivalent amount were being registered.

RSA 1980 cL-5 s133;1982 c23 s21;1988 c27 s51

#### **Duties of Registrar on receipt of caveat**

**134(1)** When the Registrar accepts a caveat for registration, the Registrar shall

- (a) make a memorandum of it on the certificate of title for the land to which it relates, and
- (b) forthwith send notice of the caveat and of the interest claimed under it by mail addressed to the person against whose title the caveat is registered.

**(2)** No caveat may be registered that affects land for which no certificate of title has been issued.

RSA 1980 cL-5 s134

#### **Effect of caveat**

**135** So long as a caveat remains in force, an instrument registered subsequent to the caveat and purporting to affect the land, mortgage or encumbrance in respect of which the caveat is lodged is subject to the claim of the caveator.

RSA 1980 cL-5 s135;1982 c23 s22

#### **Transfer of caveat**

**136(1)** A caveat may be transferred by a caveator, or by the caveator's agent where the caveat is signed by the agent, and on registration of a transfer of the caveat, the transferee has the same priority as if the transferee were the original caveator.

**(2)** On registration of a transfer of caveat, the transferee becomes entitled to all rights granted by this Act to the caveator and subject to all liabilities imposed by this Act on the caveator.

**(3)** A transfer of caveat shall specify an address at which notices and proceedings relating to the caveat or the subject-matter of the caveat may be served.

1982 c23 s23;1996 c32 s5(22)

**Withdrawal of caveat**

**137(1)** Subject to subsection (2), a caveat may be withdrawn by the caveator or by the agent for the caveator who signed the caveat.

**(2)** In the case of a caveat in which

- (a) the nature of the interest claimed is
  - (i) an easement,
  - (ii) a party wall agreement,
  - (iii) an encroachment agreement, or
  - (iv) a restrictive covenant running with or capable of being annexed to land,

and

- (b) the dominant tenement is identified,

the caveat may be withdrawn only by the registered owner of the dominant tenement or, if the registered owner of the dominant tenement is the caveator and the caveat was signed by an agent, by the registered owner or the agent.

RSA 1980 cL-5 s136;1982 c23 s24;1988 c27 s52;1996 c32 s5(23)

**Lapse of caveat**

**138(1)** Except as otherwise provided in this section and except in the case of a caveat lodged by the Registrar, as provided in this Act, every caveat lodged against any land, mortgage or encumbrance shall be lapsed by the Registrar on application made after the expiration of 60 days after notice, in the prescribed form, to take proceedings in court on the caveat's caveat has been either

- (a) served as process is usually served, or
- (b) sent by registered mail to the caveator at or to the address stated in the caveat 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 caveator takes proceedings in court by application, subject to the *Alberta Rules of Court*, to substantiate the title, estate, interest or lien claimed by the caveator's caveat 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) In the case of a caveat registered to protect an easement, a party wall agreement or an encroachment agreement,

- (a) if the dominant tenement is not identified in the caveat, subsection (1) applies, and
- (b) if the dominant tenement is identified in the caveat, subsection (1) applies only if, instead of the notice's being served on or sent to the caveator, the notice is
  - (i) served as process is usually served on the registered owner of the dominant tenement, or
  - (ii) sent by registered mail to the registered owner of the dominant tenement at or to the address stated on the certificate of title 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.

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

(5) No caveat is deemed to have lapsed pursuant to subsection (1) 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, mortgage or encumbrance against which the caveat was lodged.

RSA 2000 cL-4 s138;2009 c53 s95

#### **Caveat to protect restrictive covenant**

**139(1)** In the case of a caveat that is registered to protect a restrictive covenant running with or capable of being annexed to land,

- (a) section 138 does not apply, and
- (b) where the dominant tenement is not identified in the caveat, section 137(1) does not apply.

(2) Subject to section 137(2), a caveat referred to in subsection (1) may be modified or discharged only by an order of the court made under section 48.

1988 c27 s54

**Extension of time for proceeding on caveat**

**140** On application to a judge at any time before the expiration of the time limited for proceeding on a caveat, the judge, for sufficient cause shown and subject to any conditions that seem proper, may extend the time for proceeding on the caveat for a further period to be specified in the order.

RSA 2000 cL-4 s140;2009 c53 s95

**Application to discharge caveat**

**141(1)** In the case of a caveat filed, except a caveat filed by the Registrar as hereinafter provided, the applicant or owner may at any time apply to the court, subject to the *Alberta Rules of Court*, calling on the caveator to show cause why the caveat should not be discharged, and on the hearing of the application the court may make any order in the premises and as to costs that the court considers just.

**(2)** If a caveat has been filed with the Registrar pursuant to section 130 and the caveat is based on an unregistered mortgage or encumbrance, the Registrar shall cancel the memorandum of it

- (a) on the certificate of title to the land affected by the caveat on the production of a certificate signed by a judge certifying that the judge is satisfied of the payment of all money secured by the mortgage or encumbrance and that the mortgagee or encumbrancee is living, or if dead, that no succession duty or other tax is payable to the Crown in right of Alberta with respect to the mortgage or encumbrance, or
- (b) on production of a certificate signed by a judge certifying that all obligations, the performance of which has been secured by the mortgage or encumbrance, have been performed and have come to an end.

RSA 2000 cL-4 s141;2009 c53 s95

**Order for security**

**142** In any proceedings in respect of a caveat the court

- (a) may order that the caveator give an undertaking or security that the court considers sufficient to indemnify every person against any damage that may be sustained by reason of any disposition of the property being delayed or to answer the costs of the caveatee,
- (b) may direct the Registrar to delay registering any instrument dealing with the land, mortgage or encumbrance during the time the order of the court provides,

- (c) may direct the caveator to take further proceedings by action or otherwise on the caveator's caveat, or
- (d) may make any other order considered just.

RSA 1980 cL-5 s140

**Refusal to remove caveat**

**143(1)** In any proceedings taken in consequence of the filing of a caveat, if it is made to appear to the court

- (a) that the caveator, or person on whose behalf the caveat has been filed by the Registrar, as hereinafter provided, claims an interest in the land, mortgage or encumbrance by virtue of a contract in writing for the sale and purchase of the land, mortgage or encumbrance, signed by its vendor or by the vendor's authorized agent, or by virtue of an assignment of the contract, attested in the manner provided for by this Act, and
- (b) that there has been no default under the terms of the contract, or if any default has been made that the default has been cured before the return of the application to the court,

then the court may, and, unless it otherwise appears to be a case in which the caveat should be removed, shall refuse to order the removal of the caveat.

**(2)** An assignor of such a contract may apply to remove a caveat filed by the assignor's assignee in cases in which default has been made under any covenant or agreement entered into by the assignee.

RSA 1980 cL-5 s141

**Compensation in case of caveat filed wrongfully**

**144** Any person, other than the Registrar, filing or continuing a caveat without reasonable cause is liable to make compensation to any person who may have sustained damage by that filing or continuation, and the compensation may be recovered by action if the caveator has withdrawn the caveat and no proceedings have been taken by the caveator or caveatee as provided in this Act, but if the proceedings have been taken then the compensation is to be decided by the court in the proceedings whether the caveat has been withdrawn or not.

RSA 1980 cL-5 s142

**Number of caveats**

**145** Except as mentioned in this Act, no one shall file more than one caveat in respect of the same matter, but nothing contained in this Act prejudices the right of the Registrar to enter any caveat

under the powers vested in the Registrar by this Act, and a judge may, if the judge thinks proper on application made to the judge for that purpose, and on any terms as to costs or otherwise that the judge considers just, order that a new caveat may be filed, and the order shall fix a time within which the caveator must proceed on the caveat.

RSA 1980 cL-5 s143

**Order re caveat**

**146(1)** In the case of a caveat filed by the Registrar as hereinafter provided, the applicant or owner may apply to the court as provided for by the *Alberta Rules of Court* to be served on the person on whose behalf the caveat has been filed for an order that the caveat be withdrawn or discharged.

**(2)** If the person on whose behalf the caveat has been filed is a minor without a guardian or a represented adult without a trustee, the court may by an ex parte order direct that the application be served on the Public Trustee, or some other person to be named in the application, and may impose on the applicant any terms as to the costs of the guardian or other person appointed by the order that seem just.

**(3)** On the application, the court may make any order in the premises, either dismissing the application, discharging or withdrawing the caveat, or directing any of the parties to commence proceedings by action or otherwise that to the court seems just and proper.

RSA 2000 cL-4 s146;2008 cA-4.2 s137;2009 c53 s95

**Priority of caveat**

**147** Registration by way of caveat, whether by the Registrar or by any caveator, has the same effect as to priority as the registration of any instrument under this Act, and the Registrar may in the Registrar's discretion allow the withdrawal of a caveat at any time and the registration in its place of the instrument under which the person on whose behalf the caveat was lodged claims the person's title or interest, if the instrument is an instrument that may be registered under this Act, and, if the withdrawal of the caveat and the registration of the instrument is simultaneous, the same priority is preserved to all rights under the instrument as the like rights were entitled to under the caveat.

RSA 1980 cL-5 s145

**Registration of certificate of lis pendens**

**148(1)** A person claiming an interest in any land, mortgage or encumbrance may, instead of filing a caveat or after filing a caveat, proceed by way of action to enforce the person's claim and register a certificate of lis pendens in the prescribed form.

(2) A person who has proceeded by way of action to call into question some title or interest in any land may register a certificate of lis pendens in the prescribed form.

1985 c48 s2(36)

#### **Compensation re certificate of lis pendens**

**149** A person filing or continuing a certificate of lis pendens without reasonable cause is liable to make compensation to any person who may have sustained damage by that filing or continuation.

1985 c48 s2(37);1988 c27 s55

#### **Memorandum on withdrawal, etc., of caveat**

**150** On the withdrawal, lapse or removal of a caveat, or on the making of any order by the court in connection with it, a memorandum of the withdrawal, lapse, removal or order, as the case may be, shall be made by the Registrar on the certificate of title.

RSA 1980 cL-5 s147;1999 c10 s28

#### **Caveat for Crown or person under disability**

**151** The Registrar may file a caveat on behalf of the Crown, or on behalf of any person who may be under any disability, to prohibit the transfer or dealing with any land belonging or supposed to belong to the Crown or to that person, and also to prohibit the dealing with any land in any case in which it appears to the Registrar that an error has been made in any certificate of title or other instrument, or for the prevention of any fraud or improper dealing.

RSA 1980 cL-5 s148

#### **Cancellation of certificate of lis pendens**

**152** The Registrar shall cancel the registration of a certificate of lis pendens on receiving

- (a) a certificate from the clerk of the court stating that the proceedings for which the certificate of lis pendens was granted are
  - (i) discontinued, or
  - (ii) dismissed and the time for commencing an appeal has expired and no appeal has been commenced, or if commenced, has been finally disposed of or discontinued,
- (b) a withdrawal of the certificate of lis pendens signed by the person on whose behalf the certificate was registered, or

- (c) where a certificate of lis pendens relates to a caveat that was signed by an attorney or an agent, a withdrawal of the certificate of lis pendens signed by
  - (i) the attorney or the agent, as the case may be, or
  - (ii) the person on whose behalf the certificate was registered.

RSA 2000 cL-4 s152;2011 c14 s14

### Liens under the Builders' Lien Act

#### Builders' liens

**153(1)** On receipt of a claim for registration of a lien under the *Builders' Lien Act* and the entry and registration of the lien as an encumbrance against the estate or interest in the land described in the claim, the Registrar shall forthwith send a notice of the lien and of the amount claimed

- (a) to the registered owner of the land,
- (b) to the person alleged on the claim for lien to be the owner of the land, and
- (c) to the person for whom the work referred to in the claim for lien was done or proposed to be done, or the materials were furnished or to be furnished.

**(2)** The notice may be addressed to the registered owner of the land and sent through the post office to the person alleged in the claim to be the owner of the land and to the person for whom the work was or was proposed to be done, or the materials to be supplied, each at their respective residences as stated in the claim for lien.

RSA 1980 cL-5 s149

### Assignments of Contracts of Sale

#### Assignment of contract

**154(1)** Any contract in writing for the sale and purchase of any land, mortgage or encumbrance is assignable notwithstanding anything to the contrary contained in it, and any assignment of any such contract operates according to its terms to transfer to the assignee mentioned in it all the right, title and interest of the assignor both at law and in equity, subject to the conditions and stipulations contained in the assignment.

**(2)** Nothing in this section affects any rights at law or in equity of the original vendor or owner of the land, mortgage or encumbrance, until notice in writing of the assignment has been

either sent to the original vendor or owner by registered mail or served on the original vendor or owner in the way process is usually served, and the notice mentioned in section 134 is deemed to be such notice.

RSA 1980 cL-5 s150

### **Attestation of Instruments**

#### **Attestation within Alberta**

**155** Subject to section 159, every instrument executed within the limits of Alberta and that may be registered under this Act shall be witnessed by a person, who shall sign the person's name to the instrument as a witness and make an affidavit in the prescribed form.

RSA 1980 cL-5 s151;1982 c23 s26;1983 c46 s2;1985 c48 s2(39)

#### **Attestation outside Alberta**

**156** Subject to section 159, every instrument executed outside the limits of Alberta and that may be registered under this Act, shall be witnessed by one person, who shall sign the person's name to the instrument as a witness and who shall appear before one of the following persons and make an affidavit in the prescribed form:

- (a) if made in any province or territory of Canada, before a judge of any court of record, a commissioner authorized to take affidavits in the province or territory for use in any court of record in Alberta, or before a notary public under the notary public's official seal;
- (b) if made in Great Britain or Northern Ireland, before a judge of the Supreme Court of Judicature in England or Northern Ireland, or of the Court of Session or of the Judiciary Court in Scotland, or a judge of any of the county courts within the judge's county, or the mayor of a city or incorporated town, under the common seal of the city or town, or before any commissioner in Great Britain or Northern Ireland, authorized to take affidavits in Great Britain or Northern Ireland, for use in any court of record in Alberta, or a notary public under the notary public's official seal;
- (c) if made in any British Dominion, colony or possession outside Canada, before a judge of any court of record, the mayor of a city or incorporated town, under the common seal of the city or town, or a notary public under the notary public's official seal;
- (d) if made in any foreign country, before the mayor of any city or incorporated town, under the common seal of the city or town, or before the Canadian or British consul, vice-consul

or consular agent residing in the foreign country or before a judge of any court of record or a notary public under the notary public's official seal.

RSA 1980 cL-5 s152;1983 c46 s2;1985 c48 s2(40)

#### **Ineligibility to act as witness**

**157** An individual is not eligible to be a witness to an instrument if that individual is

- (a) a party to the instrument, or
- (b) a spouse who consents to the instrument pursuant to the *Dower Act*.

1985 c48 s2(41)

#### **Execution by interested commissioner for oaths or notary public**

**158** The Registrar is not required to register an instrument or a caveat if the individual who acted as a commissioner for oaths or notary public in respect of that instrument or caveat is

- (a) a party to the instrument or caveat, or
- (b) a spouse who consents to the instrument or caveat pursuant to the *Dower Act*.

RSA 2000 cL-4 s158;2006 c21 s15

#### **Exceptions to sections 155 and 156**

**159** Sections 155 and 156 do not apply to the following:

- (a) a grant from the Crown;
- (b) an order in council;
- (c) a regulation filed under the *Regulations Act*;
- (d) a notification referred to in section 29;
- (e) an instrument under the seal of a corporation;
- (f) a caveat;
- (g) an order of a court or judge;
- (h) an execution;
- (i) a certificate of a judicial proceeding attested as such;
- (j) an instrument executed by a Minister of the Crown or by a person authorized by the Minister to execute the instrument;

- (k) an instrument, including any instrument executed before June 6, 1983, that is provided for under another Act, its predecessor or a regulation and that does not under that Act or regulation require a witness to the instrument.

1983 c46 s2

**Effect of failure to comply with attestation requirements**

**160** Failure to comply with section 155 or 156 or an attestation requirement under another Act, its predecessor or a regulation does not, for that reason only, affect the validity of any registered instrument including any instrument registered before June 6, 1983.

1983 c46 s2

**Execution of documents by corporation**

**161** An instrument or caveat executed by a corporation, notwithstanding anything to the contrary in the Act, statute, constating documents, charter or memorandum and articles of association incorporating the corporation, is for the purposes of this Act deemed to be sufficiently executed if the instrument or caveat is

- (a) sealed with the corporate seal of the corporation and countersigned by at least one officer or director of the corporation, or
- (b) executed by at least one officer or director of the corporation who
  - (i) has the officer's or director's signature attested to under section 155 or 156, and
  - (ii) verifies by affidavit in the prescribed form the officer's or director's authority to execute the instrument or caveat.

1983 c46 s2;1985 c48 s2(42)

**Power of the court**

**162** On being satisfied of the due execution of an instrument, the court may authorize its registration, notwithstanding that the proof of the execution may be absent or defective.

1983 c46 s2

**Application of Dower Act**

**163** When no consent is produced as required under the *Dower Act*, the Registrar shall, before registering any transfer, lease, mortgage or encumbrance, require an affidavit of the transferor, lessor, mortgagor or encumbrancer

- (a) that the land described in the instrument is not subject to the *Dower Act*, or
- (b) that the transferor, lessor, mortgagor or encumbrancer is not married

and the affidavit shall be supported by any other evidence by affidavits or otherwise that the Registrar may prescribe, but if the instrument is executed under a power of attorney the party executing it may make the affidavit if the party is acquainted with the facts.

RSA 1980 cL-5 s153

### **Assurance Fees**

#### **Registration and assurance fees**

**164(1)** Except as otherwise provided in this Act, the Registrar shall not perform any duty to be performed by the Registrar under this or any other Act until the Registrar has received

- (a) the fees for the performance of that duty, and
- (b) the assurance fees

prescribed by the Lieutenant Governor in Council.

**(2)** The value of land for the purpose of this Act may be ascertained by the oath or affirmation of the transferee of the land or an agent of the transferee where the oath or affirmation is acceptable to the Registrar.

**(3)** The oaths or affirmations may be in the prescribed form, and are necessary in all cases when a new certificate of title is required to be issued, whether or not any fees are payable under this section in respect of the land.

**(4)** If for any reason the valuation of land given to the Registrar is unsatisfactory to the Registrar, the Registrar may cause a valuation to be made by an inspector of transfers and the inspector's valuation shall be taken to be the value of the land.

**(5)** The costs of any such valuation are to be borne by the person or persons, and either altogether or in part, whom the Registrar directs.

**(6)** If the Registrar considers it appropriate to do so, the Registrar may enter into an agreement with any person whereby the fees and other charges payable by that person to the Registrar under subsection (1) will be charged to the credit of that person on a continuing basis and on the conditions the Registrar considers

necessary and in that case the amounts so charged are deemed to have been paid in accordance with subsection (1).

(7) If any amount charged to the credit of a person under subsection (6) is not paid within 15 days, or some other period that the Registrar may require, of a request for payment by the Registrar, no further amounts may be charged to the account of that person until all amounts owing are paid in full.

(8) The Registrar may terminate an agreement under subsection (6) with any person on 7 days' notice in writing sent by registered mail to the person at the person's last address known to the Registrar.

RSA 1980 cL-5 s154;1994 c31 s5;1996 c32 s5(24);  
1999 c10 s29

#### **Inspectors of transfers**

**165** The Minister responsible for this Act may appoint one or more inspectors of transfers, and the inspectors shall investigate any valuations the Registrar requires and report on the valuations and shall perform any other duties the Minister may from time to time assign to them.

RSA 1980 cL-5 s155;1994 cG-8.5 s40

#### **Accounting for money received**

**166** The Registrar shall keep a correct account of all sums of money received by the Registrar in accordance with this Act and shall pay the money to the Crown in the manner directed by the Lieutenant Governor in Council.

RSA 2000 cL-4 s166;2005 c28 s7;2006 c21 s16

#### **Assurance fees**

**167** All money received by the Registrar under this Act as assurance fees shall be paid to the Crown.

RSA 2000 cL-4 s167;2005 c28 s7

#### **Actions against Registrar**

**168** Any person

- (a) who sustains loss or damage through an omission, mistake or misfeasance of the Registrar or an official in the Registrar's office in the execution of the Registrar's or official's duties, or
- (b) who is deprived of any land or encumbrance or of an estate or interest in any land or encumbrance
  - (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 in the land or encumbrance,

may bring an action against the Registrar for the recovery of damages.

RSA 2000 cL-4 s168;2006 c21 s17

#### **Right of action of spouse**

**169(1)** If a married person disposes of the married person's homestead, within the meaning of the *Dower Act*, without the consent of the spouse of that married person, contrary to the *Dower Act*, the spouse has whatever right of action for the recovery of damages that is provided by the *Dower Act*, but has no right of action for the recovery of damages pursuant to this Act.

**(2)** Subject to subsection (1), in an action brought by the spouse pursuant to the *Dower Act*, those provisions of this Act that may be applicable relating to actions against the Registrar for the recovery of damages apply except insofar as they may be varied by the *Dower Act*.

RSA 1980 cL-5 s159;1994 c31 s5

#### **Protection of bona fide purchasers and mortgagees**

**170(1)** Nothing in this Act is to be so interpreted as to leave subject to action for recovery of damages, or to action of ejectment, or to deprivation of land in respect of which the purchaser or mortgagee is registered as owner, any purchaser or mortgagee bona fide for valuable consideration of land under this Act on the plea that the purchaser's transferor or the mortgagee's mortgagor has been registered as owner through fraud or error, or has derived title from or through a person registered as owner through fraud or error, except in the case of misdescription as mentioned in section 183(1)(e), if the purchaser or mortgagee has made all reasonable efforts to confirm that the transferor or mortgagor is the registered owner of the land.

**(2)** The protection for a purchaser or mortgagee referred to in subsection (1) commences when the purchaser's or mortgagee's instrument is registered.

RSA 2000 cL-4 s170;2008 c22 s9

**Registrar as defendant**

**171(1)** In an action for the recovery of loss or damage arising only through an omission, mistake or misfeasance of the Registrar or the Registrar's officials, the Registrar shall be sole defendant.

**(2)** If the action is brought for loss or damage

- (a) arising only from the fraud or wrongful act of some person other than the Registrar and the Registrar's officials, or
- (b) arising jointly through the fraud or wrongful act of such other person, and the omission, mistake or misfeasance of the Registrar or other official,

then the action shall be brought against both the Registrar and the other person.

RSA 1980 cL-5 s161

**Final judgment against Registrar  
where co-defendant liable**

**172** In all actions where there is a defendant other than the Registrar and damages are recovered, if the court finds that some defendant other than the Registrar is liable for the loss sustained, final judgment shall not be entered against the Registrar until a judge of the court in which the action was brought has made an order declaring that

- (a) the judgment is not and cannot presently be satisfied, or can only be satisfied in part, out of
  - (i) the goods or land of the other defendant found liable, or
  - (ii) any other source, including but not limited to any money paid to the plaintiff pursuant to a claim under a contract of insurance,

and

- (b) the amount of the judgment in whole, or the part of it that remains unsatisfied, together with costs, should be a judgment against the Registrar,

and on the making of that order, judgment may be entered against the Registrar.

RSA 2000 cL-4 s172;2015 c12 s3

**Assignment of judgment to Crown**

**173** On payment of the amount of the judgment, the Crown is entitled to assignment of it as against any other defendant liable as

aforesaid and entitled to be subrogated to all the rights of the person entitled to the judgment.

RSA 2000 cL-4 s173;2005 c28 s7

#### **Notice of action to Registrar**

**174** No action shall be brought against the Registrar under sections 168 and 171 unless 3 months' previous notice in writing of the intended action and of its cause has been served on the Registrar and the Minister of Justice and Solicitor General.

RSA 2000 cL-4 s174;2013 c10 s34

#### **Payment of judgment out of General Revenue Fund**

**175(1)** A judgment recovered against the Registrar or a claim directed to be paid pursuant to section 180 shall be paid out of the General Revenue Fund.

**(2)** Notwithstanding subsection (1), no judgment or claim shall be paid out of the General Revenue Fund under this Act or the *Dower Act* in respect of any amount that exceeds an amount equal to the difference between

- (a) the aggregate of \$49 000 000 and the amounts paid as assurance fees under this Act after March 31, 1994, and
- (b) the amounts paid out of the General Revenue Fund pursuant to claims under this Act after March 31, 1994.

RSA 2000 cL-4 s175;2005 c28 s7;2006 c23 s45

#### **Actions against Registrar in Registrar's name of office**

**176** All actions against the Registrar shall be brought against the Registrar by the Registrar's name of office, and they do not abate nor are they in any way affected by a vacancy occurring in the office or by a change of officer.

RSA 1980 cL-5 s166

#### **Costs of action**

**177** If, in any action against the Registrar as nominal defendant, judgment is given in favour of the nominal defendant or the plaintiff discontinues the action, the plaintiff is liable to pay the full costs of defending the action, and the full costs when assessed shall be levied in the name of the nominal defendant by the like process of execution as in ordinary civil cases.

RSA 2000 cL-4 s177;2009 c53 s95

#### **Limitation of action against Registrar**

**178(1)** No action for damages under this Act shall be brought against the Registrar

- (a) by reason of the deprivation of land, unless it is brought within 6 years from the date when the deprivation took place,
- (b) by reason of any error, omission or misdescription in a certificate of title, unless it is brought within 6 years after the time when the error, omission or misdescription was made, or
- (c) for any other reason, unless it is brought within 6 years from the date when the cause of action arose.

**(2)** Notwithstanding subsection (1), any person under the disability of being a minor or a represented adult may bring the action within 6 years from the date on which the disability ceased.

**(3)** Notwithstanding subsections (1) and (2), the plaintiff in the action within 6 years from the date on which the disability ceased, and the plaintiff in any such action at whatever time it is brought, and the plaintiff in any action for the recovery of land, shall be nonsuited if it appears to the satisfaction of the judge before whom the action is tried that the plaintiff or the person through or under whom the plaintiff claims title had notice by personal service or otherwise was aware of the delay and wilfully or collusively omitted to lodge a caveat or allowed the caveat to lapse.

RSA 2000 cL-4 s178;2008 cA-4.2 s137

#### **Error in mines and minerals**

**179(1)** In an action against the Registrar as nominal defendant for any loss or damage sustained by reason of any error, omission or misdescription relating to mines and minerals in the register, the claimant is entitled to recover as liquidated damages

- (a) the money actually paid out by the claimant for the interest in mines and minerals, or when the claimant is not a purchaser for value, the money actually paid out by the last preceding purchaser for value of that interest,
- (b) if the claimant fairly and reasonably expended money in the development of the mines and minerals before their loss to the claimant and the development enures to the benefit of the person to whom the mines and minerals are awarded or restored, the money expended for that development and not by the claimant otherwise recovered or recoverable, and
- (c) the fair appraised value, at the time the action was brought, of the mines and minerals lost to the claimant, but damages awarded under this clause shall not exceed in the aggregate

the sum of \$2500 for each hectare of mines and minerals lost by the claimant.

(2) In the case of a disposition by sale, lease, assignment, agreement or other instrument executed on or after March 29, 1949, by which the person who purports to be the registered owner of an interest in mines and minerals disposes of all or any part of that interest, any party to the disposition and that party's successors and assigns may apply to the Registrar for a mineral certificate.

(3) The Registrar shall search and examine the register to ascertain as at the date of the purported disposition the ownership of the mines and minerals purporting to be dealt with by the disposition and the Registrar shall issue a mineral certificate in the prescribed form if the Registrar is satisfied that the purported ownership is correct.

(4) Notwithstanding subsection (1), no action arising out of a disposition of an interest in mines and minerals executed on or after March 29, 1949, lies against the Registrar for any loss or damage sustained by reason of any error, omission or misdescription in the register relating to the interest in mines and minerals, unless the Registrar has issued in respect of that disposition the mineral certificate provided for in subsection (3) or has registered the disposition under subsection (5).

(5) No disposition of an interest in mines and minerals executed on or after March 29, 1949 shall be registered except by way of a caveat unless the Registrar is satisfied that the person purporting to dispose of the interest is the correct registered owner.

(6) Notwithstanding subsection (5), a disposition of the surface of land including mines and minerals may be registered but in that case no action lies against the Registrar in respect of the interest in mines and minerals until the Registrar has issued a mineral certificate.

RSA 1980 cL-5 s169;1988 c27 s56

#### **Settlement of claim out of General Revenue Fund**

**180(1)** If a claim is or might be the subject of an action for damages against the Registrar as nominal defendant under this Act or the *Dower Act*,

- (a) the Minister responsible for this Act, in the case of a claim for \$5000 or less, may direct the payment of the claim together with a reasonable sum for costs incurred in the making of the claim, and

(b) the Lieutenant Governor in Council, in the case of a claim for more than \$5000, may, on the recommendation of the Minister responsible for this Act, direct the payment of the claim together with a reasonable sum for costs incurred in the making of the claim.

(2) Notwithstanding subsection (1), where a claim referred to in subsection (1) is for an amount not exceeding \$1000, the Registrar may direct the payment of the claim together with a reasonable sum for costs incurred in the making of the claim.

(3) When any amount is paid out of the General Revenue Fund pursuant to section 175, it is deemed to have been paid on account of such person as the Minister responsible for this Act may direct, and the amount may be recovered from that person in the manner directed by section 182.

RSA 1980 cL-5 s170;1983 c97 s1;1985 c48 s2(45);  
1994 c31 s5;1994 cG-8.5 s40;1996 c32 s5(25)

#### **Liability of General Revenue Fund**

**181** The General Revenue Fund is not under any circumstances liable for compensation for loss, damage or deprivation

- (a) occasioned by the owner's breach of any trust whether express, implied or constructive,
- (b) in any case in which the same land has been included in 2 or more grants from the Crown,
- (c) in any case in which loss, damage or deprivation has been occasioned by land being included in the same certificate of title with other land through misdescription of the boundaries or parcels, unless it is proved that the person liable for compensation and damages is dead or has absconded from Alberta or has been adjudged insolvent, or a civil enforcement agency has certified that the civil enforcement agency is not able to realize the full amount and costs awarded in an action for that compensation,
- (d) by reason of the improper execution of an instrument on behalf of a corporation or the want of capacity in a corporation to deal with the estate or interest involved or to execute or take the benefit of the instrument registered,
- (e) by reason of the registration of an instrument or caveat executed by a person under legal disability, unless the fact of the disability was disclosed on the instrument or caveat,
- (f) by reason of the registration of an instrument executed by an attorney if

- (i) the instrument is for a purpose specified in the power of attorney, and
- (ii) the certificate referred to in section 115(5) has been registered,
- (g) by reason of a refusal of the Registrar under section 50.1 to register a transfer, caveat or other instrument,
- (h) if the interest or right on which the claim is founded is derived from a subrogated claim, or
- (i) if the person makes the claim on behalf of an insurer of the person.

RSA 2000 cL-4 s181;2006 c21 s18;2015 c12 s3

#### **Transitional**

**181.1** No claim for compensation may be made against the General Revenue Fund after April 1, 2015 in respect of a claim referred to in section 181(h) or (i), notwithstanding that the interest or right on which the claim for compensation is founded arose before the coming into force of section 181(h) and (i).

2015 c12 s3

#### **Recovery of money paid out of General Revenue Fund**

**182(1)** When any amount has been paid out of the General Revenue Fund pursuant to section 175 on account of any person, the amount may be recovered from the person, or if the person is dead, from the person's estate by action against the person's personal representatives, in the name of the Registrar.

**(2)** A certificate signed by an accounting officer, as defined in the *Financial Administration Act*, of the payment out of the General Revenue Fund pursuant to section 175 is sufficient proof of the debt.

**(3)** When any amount has been paid out of the General Revenue Fund pursuant to section 175 on account of any person who has absconded or who cannot be found within Alberta and who has left any real or personal estate within Alberta, a judge, on

- (a) the application of the Registrar,
- (b) production of a certificate described in subsection (2) that the amount has been paid in satisfaction of a judgment against the Registrar as nominal defendant, and
- (c) proof of service of the writ in any of the modes provided by the ordinary procedure in Alberta,

may allow the Registrar to sign judgment against that person forthwith for the amount paid out of the General Revenue Fund pursuant to section 175, together with the costs of the application.

(4) The judgment is final, subject only to any right to have the judgment opened up that may be provided in relation to ordinary procedure in Alberta in cases of judgment by default.

(5) The judgment shall be signed in like manner as a final judgment by default in an adverse suit and execution may issue immediately, and if the person has not left real or personal estate within Alberta sufficient to satisfy the amount for which execution has issued, the Registrar may recover that amount, or the unrecovered balance of it, by information against that person at any time afterwards in the Court of Queen's Bench, at the suit of the Minister of Justice and Solicitor General.

RSA 2000 cL-4 s182;2005 c28 s7;2013 c10 s34

## Remedial Proceedings

### *Ejectment*

#### **Protection against ejectment**

**183(1)** No action of ejectment or other action for the recovery of any land for which a certificate of title has been granted lies or shall be sustained against the owner under this Act in respect of it, except in any of the following cases:

- (a) the case of a mortgagee as against a mortgagor in default;
- (b) the case of an encumbrancee as against an encumbrancer in default;
- (c) the case of a lessor as against a lessee in default;
- (d) the case of a person deprived of land by fraud as against the owner of the land through fraud, or as against a person deriving title otherwise than as a transferee bona fide for value, from or through the owner through fraud;
- (e) the case of a person deprived of or claiming any land included in a grant or certificate of title to other land by misdescription of the other land or of its boundaries, as against the owner of the other land;
- (f) the case of an owner claiming under an instrument of title prior in date of registration under this Act, or under any law heretofore in force in any case in which 2 or more grants, or 2 or more certificates of title, or a grant and certificate of

title, are registered under this Act or under any such law in respect of the same land.

(2) In any case, other than one mentioned in subsection (1), the production of the certificate of title or a certified copy of it is an absolute bar and estoppel to any such action against the person named in the certificate of title as owner or lessee of the land described in it.

RSA 1980 cL-5 s173

### *Appeals and References to Judge*

#### **Appeal to judge from acts of Registrar**

**184(1)** If any person is dissatisfied with any act, omission, refusal, decision, direction or order of the Registrar, that person may require the Registrar to set out, in writing under the Registrar's hand, the ground of the act, omission, refusal, decision, direction or order, and may then apply to the Court of Queen's Bench, setting out the grounds of the person's dissatisfaction.

(2) The Court, having caused the Registrar to be served with a copy of the application, has jurisdiction to hear the application and to make any order in the premises and as to the costs of the parties appearing on the application that the circumstances of the case require.

RSA 2000 cL-4 s184;2006 c21 s19;2009 c53 s95

#### **Reference by Registrar to judge**

**185** If a question arises with regard to the performance of any duty or function by this Act conferred or imposed on the Registrar, or if in the performance of any duty of the Registrar a question arises

- (a) as to the true construction or legal validity or effect of any instrument or caveat,
- (b) as to the persons entitled to the estate, right or interest,
- (c) as to the extent or nature of the estate, right or interest, power or authority of any person or class of persons,
- (d) as to the mode in which any entry or memorandum ought to be made in the record or register, or on any certificate of title, or
- (e) as to any doubtful or uncertain right or interest stated or claimed to be dealt with by the Registrar,

the Registrar may, by a reference in the prescribed form, refer the question to a judge of the Court of Queen's Bench, who may allow

any of the parties interested to appear before the judge and summon any other of such persons to appear and show cause, either personally or by counsel, in relation to the question, and the judge, having regard to the persons appearing before the judge, whether summoned or not, shall decide the question or direct any proceedings to be instituted for that purpose and direct the particular form of entry or memorandum to be made that under the circumstances appears to be just.

RSA 2000 cL-4 s185;2006 c21 s20

#### **Reservations in original grant from the Crown**

**186** In the case of any certificate of title or other instrument that, pursuant to section 61, is declared to be subject to the reservations contained in the original grant from the Crown, the Registrar may make a memorandum or endorsement on the certificate of title or other instrument expressly declaring the reservations or implied conditions to which the land is subject.

RSA 1980 cL-5 s176;1999 c10 s31

#### **Correction of instrument**

**187(1)** If it appears to the satisfaction of the Registrar

- (a) that any instrument has been issued in error or contains any misdescription of land or boundaries,
- (b) that any entry, memorandum or endorsement has been made in error on or omitted from any instrument,
- (c) that any instrument, entry, memorandum or endorsement has been fraudulently or wrongfully obtained, or
- (d) that any instrument is fraudulently or wrongfully retained,

the Registrar may by written demand, that may be in the prescribed form and that shall be served on the person or be mailed to the person's last known post office address, require the person to whom the instrument has been issued, or by whom it has been obtained or is retained, to deliver it up for the purpose of being cancelled, corrected or completed, as the case requires.

**(2)** If any person refuses or neglects to comply with the written demand or cannot be found, the Registrar may apply to a judge to issue a summons for that person to appear before the judge and show cause why the instrument should not be delivered up to be cancelled, corrected or completed.

**(3)** If the person when served with the summons either personally or in the manner directed in the summons neglects or refuses to attend before the judge at the time set out in the summons, the

judge may issue a warrant authorizing and directing the person so summoned to be apprehended and brought before the judge for questioning.

**(4)** In the case of any instrument that comes within the provisions of subsection (1), the Registrar, whether or not the instrument is in the Registrar's custody or has been produced to the Registrar in answer to the Registrar's written demand, so far as practicable without prejudicing rights conferred for value, may do one or more of the following:

- (a) cancel, correct or complete the register;
- (b) wholly or partially cancel any instrument;
- (c) correct any error or make any entry or addition in the instrument or in any entry, memorandum or other endorsement on it or in any memorial, exemplification or copy of any instrument;
- (d) supply entries omitted.

RSA 2000 cL-4 s187;2009 c53 s95

#### **Entry of correction**

**188(1)** In the correction of any error or in the making of any cancellation, correction or completion or in the making of any entry or addition, the Registrar shall keep a record of the original words and the Registrar shall mark the date on which the cancellation, correction, completion, entry or addition was made or supplied.

**(2)** Every cancellation, correction or completion in the register and every instrument or entry cancelled, corrected, completed or added to has the like validity and effect as if the error had not been made or as if the entry or addition had not been omitted.

RSA 1980 cL-5 s178;1988 c27 s58;1999 c10 s33

#### **Questioning and orders by judge**

**189** On the appearance before a judge of any person summoned or brought up by virtue of a warrant as aforesaid, the judge may question that person on oath and if it appears right to do so may order the person to deliver up the instrument as aforesaid, and on the person's refusal or neglect to deliver it up, pursuant to the order, or to be put under oath, or to be questioned, or to answer any question touching the matter after being sworn, may commit the person to the nearest common jail for any period not exceeding 6 months, unless the instrument is sooner delivered up or sufficient explanation is made why this cannot be done, and in that case, or if the person has absconded so that summons cannot be served on the person as hereinbefore directed, or if a period of 3 months from the

time of mailing the demand to the person has elapsed without the instrument having been returned to the Registrar, the judge may direct the Registrar to cancel or correct or complete the instrument in the Registrar's possession or any memorandum on it relating to the land and to substitute and issue if necessary any instrument or make whatever memorandum the circumstances of the case require, and the Registrar shall obey the order.

RSA 2000 cL-4 s189;2009 c53 s95

**Power of judge to cancel, correct, etc., duplicate certificate**

**190(1)** In any proceeding respecting land or in respect of any transaction or contract relating to it, or in respect of any instrument, caveat, memorandum or entry affecting land, the judge by decree or order may direct the Registrar to cancel, correct, substitute or issue any certificate of title or make any memorandum or entry on it and otherwise to do every act necessary to give effect to the decree or order.

**(2)** In particular and without limiting the generality of subsection (1), in any case where a title to land has been issued and the owner has entered into any contract relating to the sale or disposition of the land and if it can be shown to the satisfaction of the judge that

- (a) the applicant is entitled to a transfer of the land and to be registered as its owner and the registered owner has no further interest in the land, and
- (b) the registered owner is dead and no transfer of the land to the purchaser has been made or the registered owner has not been located after a reasonable inquiry and no transfer of the land to the purchaser has been made,

the judge on the giving of any notice to any persons that the judge may require, may by order direct the Registrar to cancel the existing certificate of title and issue a new certificate of title in the name of the purchaser.

RSA 1980 cL-5 s180;1999 c10 s35

**Registration of judgment, order or certificate**

**191(1)** Subject to subsection (3), the Registrar shall not register a judgment, order or certificate made in any proceedings of a court that operates to cancel a certificate of title, terminate an interest in land or discharge an instrument or a caveat unless the judgment, order or certificate

- (a) is consented to by all the parties to the proceedings or their solicitors,

- (b) was granted ex parte and states that it does not have to be served on any person,
- (c) is accompanied with a written undertaking from those persons having a right to appeal from the judgment, order or certificate, or their solicitors, that no appeal from the judgment, order or certificate will be commenced,
- (d) is accompanied with a certificate of the clerk of the court that issued the judgment, order or certificate to the effect
  - (i) that no defence or demand of notice of proceedings has been filed in the proceedings on behalf of any defendant, or
  - (ii) that the time for appeal from the judgment, order or certificate has expired and that no notice of appeal has been filed,

or

- (e) is accompanied with a certificate of a solicitor to the effect
  - (i) that an appeal to the Court of Appeal has been finally disposed of or discontinued, that the time for an appeal to the Supreme Court of Canada has expired and that no notice of appeal has been filed, or
  - (ii) that the judgment, order or certificate has been appealed to the Supreme Court of Canada and that the appeal has been finally disposed of or discontinued.

**(2)** If a judgment, order or certificate referred to in subsection (1) has been appealed to the Court of Appeal or to the Supreme Court of Canada, a copy of the final judgment shall accompany the solicitor's certificate referred to in clause (e) of that subsection.

**(3)** This section does not apply to

- (a) an order removing a builders' lien or removing a certificate of lis pendens with respect to a builders' lien, or
- (b) a judgment, order or certificate that expressly states that it shall be registered notwithstanding the requirements of subsection (1).

1982 c23 s27;1988 c27 s59

#### **Notice to interested parties**

**192(1)** When any matter is under this Act submitted to a judge by the Registrar or by any other person or authority and the judge

thinks it advisable that parties interested should be notified of the time and place when and where a hearing of the matter so submitted should be held, and no special provisions are made for notice in this Act or if there are any such special provisions and the judge is of the opinion that the notice required by the provisions to be given is not sufficient, the judge may direct notice of the time and place to be given and the judge may direct

- (a) that the notice be served personally on the persons the judge directs or be left at their usual place of abode,
- (b) that the notice be posted at a place or places and for the periods the judge names,
- (c) that the notice be published in a newspaper or newspapers the judge designates and for the time the judge directs, or
- (d) that the notice may be given in any one or more or in all the methods specified in clauses (a) to (c).

**(2)** When this Act directs that a person interested be heard or receive notice and that party is not in Alberta or cannot be found so as to be personally served, the judge may direct that a party outside Alberta may be served personally, or in either case may direct substitutional service inside or outside Alberta to be made in a manner the judge directs or the judge may direct that publication of notice in a manner the judge directs is sufficient service.

RSA 2000 cL-4 s192;2006 c21 s21

### **Inquiry**

**193(1)** When by virtue of this Act a judge is required or authorized to hold an inquiry, proof of the matters relevant to the inquiry may be made before the judge by affidavit, which may be sworn before any judge of any court, notary public, justice of the peace or commissioner for taking affidavits, having authority or jurisdiction within the place where the oath is administered.

**(2)** Notwithstanding subsection (1), the judge may, whenever the judge thinks it expedient to do so, require the personal attendance of any person before the judge to testify as to the matters of an inquiry, or that any deponent to any affidavit attend in person before the judge to be cross-examined on the deponent's affidavit.

**(3)** When the judge requires a person or deponent to appear before the judge in person the judge may issue a summons requiring the person or deponent to appear before the judge at a time and place to be specified to testify as to what the person or deponent may know concerning the matters in question, or to be cross-examined, as the case may be, and if the person or deponent fails to attend at the

time and place specified, on due proof under oath that the person or deponent has been duly served with the summons and that the proper allowance has been paid or tendered to the person or deponent in accordance with the requirements of the *Alberta Rules of Court* for the attendance of witnesses at trials in civil causes in the Court of Queen's Bench, the judge may issue a warrant directed to a peace officer, directing the peace officer to apprehend the person or deponent and bring the person or deponent before the judge for questioning and to keep the person or deponent in the peace officer's custody until the person or deponent is questioned, and the peace officer shall obey the warrant according to its tenor.

(4) The costs incidental to any such inquiry shall be in the discretion of the judge, and shall be assessed by the assessment officer of the court at the judicial centre at which the inquiry was held in accordance with the *Alberta Rules of Court* in the case of civil causes in the court, and judgment shall be signed in the court for those costs in favour of the party to whom they are awarded by the judge, and a writ of enforcement may be issued for their recovery out of the court as on an ordinary judgment in that court.

(5) When any proceeding is taken under this Act, whether by an application or summons, or by the filing with or the delivery to the Registrar of a caveat, builders' lien, or copy of an execution against land, or other proceeding, and any party to the proceeding, or the person in whose behalf or against whose interest the caveat, lien or execution has been filed or delivered, is not a resident of Alberta, a judge may, on the application of a party to the proceeding or of anyone interested in the proceeding or affected by the caveat, lien or execution, grant an order requiring the non-resident to give security for the costs of the applicant for the order in prosecuting or resisting the proceedings or in removing or maintaining the caveat, lien or execution, and it may be a term of the order that in default the proceeding may be deemed granted or dismissed, or the caveat, lien or execution may be deemed removed or maintained, and the order may also provide for a stay of proceedings.

(6) The practice and procedure for obtaining the order and giving the security shall be as nearly as may be the same as on an application for security for costs in civil causes in the Court of Queen's Bench, and the judge may direct payment of the costs incident to the application or order to be assessed and recovered as is provided in the case of the costs mentioned in subsection (4).

RSA 2000 cL-4 s193;2009 c53 s95

## Appeal

### Appeal from judge's decision

**194** An appeal, by the Registrar or any person directly interested in it, from any order or decision of a judge made or given under this Act, lies to the Court of Appeal within the prescribed time, in the same manner and with the same incidents in and with which judgments and orders of that court by a single judge may be appealed from, and the practice and proceedings relating to appeals in that court, including costs and payment of them and the enforcement of judgments on appeal, apply as adapted to the circumstances.

RSA 2000 cL-4 s194;2006 c21 s22

### Reference by judge to Court of Appeal

**195** If in any matter before a judge under this Act the judge considers it proper to do so the judge may refer the matter to the Court of Appeal, and the Court of Appeal may either dispose of the matter or refer it back to the judge with any direction it thinks fit.

RSA 1980 cL-5 s184

### Payment of costs

**196** The court or judge may order costs to be paid by or to any person party to any proceeding under this Act.

RSA 1980 cL-5 s185

### Enforcement of orders of court

**197** Any order of the court or a judge may be enforced in the same manner and by the same officials and process as orders of the Court of Queen's Bench or a judge of that court are enforced, and shall be obeyed by the Registrar when directed to the Registrar.

RSA 2000 cL-4 s197;2006 c21 s23

### Tariff of costs

**198** The judges of the Court of Appeal may provide a tariff of costs payable for all services and proceedings under this Act, but, in any case not so provided for, the tariff of costs relating to actions in court where the title to land is in question applies as adapted to the circumstances.

RSA 1980 cL-5 s187

## General Provisions

### Use of name of owner by beneficiary in action respecting land, etc.

**199** The owner of any land for which a certificate of title has been granted or of any lease, mortgage or charge affecting that land shall, on the application of any beneficiary or person interested in it, allow the owner's name to be used by the beneficiary or person in any action, suit or proceeding that it may be necessary or proper

to bring or institute in the name of the owner concerning the land, lease, mortgage or charge, or for the protection or benefit of the title vested in the owner, or of the interest of any such beneficiary or person, but nevertheless the owner is in any case entitled to be indemnified in the same manner as that in which a trustee was entitled, prior to May 9, 1906, to be indemnified in a similar case of the trustee's name being used in any such action, suit or proceeding by the trustee's cestui que trust.

RSA 1980 cL-5 s190

**Use of instrument as evidence of transfer, etc.**

**200** When in a proceeding affecting land for which a certificate of title has been granted it becomes necessary to determine the fact whether the transferee, mortgagee, encumbrancee or lessee is a transferee, mortgagee, encumbrancee or lessee for valuable consideration or not, any person who is party to the proceeding may give in evidence any transfer, mortgage, encumbrance, lease or other instrument or any caveat affecting the land in dispute, although it is not referred to in the certificate of title or has been cancelled by the Registrar.

RSA 1980 cL-5 s192

**Reproduction of instrument or caveat**

**201** A reproduction of an instrument or caveat

- (a) that is made from an original or duplicate record that is required to be kept by the Registrar, and
- (b) that is certified by the Registrar as being an accurate reproduction of the instrument or caveat,

is admissible in evidence in any court or proceeding in the same manner as if it were an original.

RSA 1980 cL-5 s193;1988 c27 s62

**Minerals owned by Crown**

**202** When the Crown is the owner of a mineral,

- (a) no person shall register, nor shall the Registrar accept for registration any lease, assignment, caveat or encumbrance affecting that mineral or any interest in it, and
- (b) the Registrar may correct the register by cancelling the registration of a lease, assignment, caveat or encumbrance insofar as it affects a Crown mineral or any interest in it and by making any necessary memorandum or endorsement on the certificate of title and on any other instrument.

RSA 1980 cL-5 s194;1999 c10 s37

**Protection of person accepting transfer, etc.**

**203(1)** In this section,

- (a) “interest” includes any estate or interest in land;
- (b) “owner” means
  - (i) the owner of an interest in whose name a certificate of title has been granted,
  - (ii) the owner of any other registered interest in whose name the interest is registered, or
  - (iii) the caveator or transferee of a caveat in whose name the caveat is registered.

**(2)** A person contracting or dealing with or taking or proposing to take a transfer, mortgage, encumbrance, lease or other interest from an owner is not, except in the case of fraud by that person,

- (a) bound or concerned, for the purpose of obtaining priority over a trust or other interest that is not registered by instrument or caveat, to inquire into or ascertain the circumstances in or the consideration for which the owner or any previous owner of the interest acquired the interest or to see to the application of the purchase money or any part of the money, or
- (b) affected by any notice, direct, implied or constructive, of any trust or other interest in the land that is not registered by instrument or caveat, any rule of law or equity to the contrary notwithstanding.

**(3)** The knowledge of the person that any trust or interest that is not registered by instrument or caveat is in existence shall not of itself be imputed as fraud.

**(4)** This section is deemed to have been in force since the commencement of *The Land Titles Act*, SA 1906 c24, in place of section 135 of that Act and similar sections in successor Acts.

RSA 1980 cL-5 s195;1994 c23 s26

**Suit for specific performance**

**204** In an action for specific performance brought by an owner of land in whose name a certificate of title has been granted against a person who has contracted to purchase the land, not having notice of any fraud or other circumstances that according to this Act would affect the right of the transferor, a certified copy of the certificate of title of the owner is evidence that the owner has a

good and valid title to the land for the estate or interest mentioned or described in it.

RSA 1980 cL-5 s196;1999 c10 s38

#### **Transfers to trustees and joint owners**

**205(1)** On the transfer of land for which a certificate of title has been granted to 2 or more persons as joint owners, to be held by them as trustees, the transferor may insert in the transfer or other instrument, the words “no survivorship” and the Registrar shall in that case include the words in the certificate of title.

**(2)** Any 2 or more persons registered as joint owners of land held by them as trustees may by writing under their hand authorize the Registrar to enter the words “no survivorship” on the certificate of title.

**(3)** After the entry of the words “no survivorship” has been made by the Registrar pursuant to this section it is not lawful for any less number of joint owners than the number entered to transfer or otherwise deal with the land without obtaining the sanction of the court.

RSA 1980 cL-5 s197;1988 c27 s63;1999 c10 s39

#### **Notice of court order**

**206** Before making any order as aforesaid the court shall, if it seems requisite, cause notice of intention to do so to be properly advertised, and appoint a period of time within which any person interested may show cause why the order should not be made and, on so doing, the court may order the transfer of the land to any new owner or owners, solely or jointly with or in the place of any existing owner or owners, or may make any order in the premises that the court thinks just for the protection of the persons beneficially interested in the land or in the proceeds of it, and on the order being deposited with the Registrar, the Registrar shall make a memorandum of the order on the certificate of title, and on the memorandum being made the person or persons named in the order is the owner or are the owners of the land.

RSA 1980 cL-5 s198;1999 c10 s40

#### **Jurisdiction of courts**

**207** Nothing in this Act takes away or affects the jurisdiction of any court on the ground of actual fraud or over contracts for the sale or other disposition of land for which a certificate of title has been granted.

RSA 1980 cL-5 s199

**Land description in court order**

**208** Where a court gives a direction to the Registrar with respect to land, it shall in the direction give a description of the land that is sufficient to identify the land.

1988 c27 s64

**Effect of death, etc., on proceedings under Act**

**209** Proceedings under this Act do not abate nor shall they be suspended by any death, transmission or change of interest, but in that event a judge may make any order for carrying on, discontinuing or suspending the proceedings, on the application of any person interested, that under the circumstances the judge thinks just, and may for that purpose require the production of any evidence and notices to be given that the judge thinks necessary.

RSA 1980 cL-5 s200

**Effect of irregularity in proceedings**

**210(1)** No application, order, affidavit, certificate, registration or other proceeding under this Act is invalid by reason of any informality or technical irregularity in it or of any mistake not affecting the substantial justice of the proceedings.

**(2)** Affidavits for use in application to register title, or in any matter other than the execution of instruments, may be made before any person authorized to take affidavits for use in the Court of Queen's Bench, and in all matters before a judge or the court where proof is required the proof may be taken by affidavit sworn as mentioned or by oral evidence as may be ordered by the judge or court.

**(3)** Affidavits are subject to the practice governing affidavits in the Court of Queen's Bench.

RSA 2000 cL-4 s210;2009 c53 s95

**Protection of officers, etc.**

**211** The Registrar or any person acting under the authority of the Registrar is not liable for any act that is, in good faith, done or omitted to be done in the exercise or supposed exercise of a power given under this Act or an order or regulation made under this Act.

RSA 2000 cL-4 s211;2006 c21 s24

**False statements**

**212(1)** Any person who knowingly makes a false statement in

- (a) an instrument or a caveat, or
- (b) a written representation prepared in respect of
  - (i) an instrument or a caveat, or

- (ii) a submission to the Registrar to enter a memorandum on a certificate of title,

that could reasonably have the effect of misleading another person is guilty of an offence and subject to a fine of not more than \$10 000 or to imprisonment for a term of not more than 6 months or to both fine and imprisonment.

**(2)** Any person who without lawful authority

- (a) destroys or alters the contents of, or
- (b) removes from where it is stored or recorded,

any instrument, caveat or other land titles record, is guilty of an offence and subject to a fine of not more than \$10 000 or to imprisonment for a term of not more than 6 months or to both fine and imprisonment.

1985 c48 s2(48);1988 c27 s65

### **Regulations**

**213** The Lieutenant Governor in Council may make regulations

- (a) prescribing forms to be used under this Act;
- (b) prescribing for the purposes of section 19(2) the period of time that must pass before the original of an instrument or caveat may be destroyed;
- (c) prescribing conditions, criteria or qualifications that are to be fulfilled in order for a search of information to be furnished under section 17;
- (d) respecting types of identification and the number of identification documents that may be required as proof of identity under section 43.1, including substitutes that may be accepted by the Registrar at the Registrar's discretion for the purposes of that section;
  - (d.1) respecting the preparation, submission, filing, registration or processing of documents in electronic format;
  - (d.2) respecting digital signatures;
  - (d.3) respecting the retention by a subscriber of the paper version of the documents of which an electronic version was submitted;
  - (d.4) respecting powers, duties and functions of a certification authority;

- (d.5) defining for the purposes of this Act any term or expression that is used but not defined in this Act;
- (e) respecting the use of information furnished by the Registrar as a result of a search of the register under this Act.

RSA 2000 cL-4 s213;2006 c21 s25;2015 c12 s3

#### **Furnishing books, forms, etc.**

**214(1)** The Lieutenant Governor in Council shall provide the necessary books, forms and other office requisites and shall make any regulations as are necessary to carry out this Act, and in cases unprovided for shall also make any regulations that to the Lieutenant Governor in Council appear necessary for giving effect to this Act, according to its true intent and purpose.

**(2)** The Lieutenant Governor in Council may make regulations for the purpose of the introduction and use in any instrument or caveat of the International System of Units as defined in the *Weights and Measures Act* (Canada).

RSA 1980 cL-5 s204

#### **Address for service of notice**

**215(1)** Any person having a registered interest in any land may file with the Registrar of the proper Land Titles Office a notice giving the person's address for service, and any notice that is required to be given by the Registrar pursuant to this or any other Act is deemed to have been duly served on the notice being sent by regular mail addressed to the person at the person's address for service, if any, and if the person has no address for service then at the person's address as shown by the registered instruments.

**(2)** The Registrar may require that the notice contain a description of the registered interest and the land in which the person claims to be interested.

**(3)** Where a description is given under subsection (2), the notice shall have effect only as to the interest and the land mentioned in the notice.

RSA 1980 cL-5 s205;1982 c23 s30;1988 c27 s67

#### **Notice to Crown**

**216** Where

- (a) the Registrar is required to give a notice to a person under this Act, and
- (b) the person to whom the notice is to be given is the Crown,

the Registrar may forego giving the notice to the Crown and the Crown is deemed to have been given the notice when the instrument or caveat for which the notice was to have been given is registered under this Act.

1996 c32 s5(27)

### **Schedule 1**

#### **(Section 99)**

#### **Short Covenants in Lease**

<b>Column 1</b>	<b>Column 2</b>
1. Will not, without leave in writing, assign or sublet.	1. The covenantor, the covenantor's executors, administrators, or transferees, will not, during the stated term, transfer, assign or sublet the land and premises hereby leased, or any part of them, or otherwise by any act or deed procure that land and those premises, or any part of them, to be transferred or sublet without the consent in writing of the lessor or the lessor's transferees first had and obtained.
2. Will fence.	2. The covenantor, the covenantor's executors, administrators, or transferees will during the continuance of the stated term erect and put on the boundaries of the said land, or on those boundaries on which no substantial fence now exists, a good and substantial fence.
3. Will cultivate.	3. The covenantor, the covenantor's executors, administrators, or transferees, will, at all times during the stated term, cultivate, use and manage in a proper husbandlike manner, all parts of the land as are now or shall afterwards, with the consent in writing of the lessor or the lessor's transferees, be broken up or converted into tillage and will not impoverish or waste that land.
4. Will not cut timber.	4. The covenantor, the covenantor's executors, administrators, or transferees will not cut down, fell, injure or destroy any living timber or timber like tree standing and being on the land, without the consent in writing of the lessor or the

5. Will not carry on offensive trade.
- lessor's transferees.
5. The covenantor, the covenantor's executors, administrators, or transferees will not, at any time during the stated term, use, exercise, or carry on, or permit or suffer to be used, exercised or carried on or in the stated premises, or any part of the premises, any noxious, noisome or offensive art, trade, business, occupation or calling, and no act, matter or thing may at any time during the term be done in or on the premises, or any part of the premises, that will or may be or grow to the annoyance, nuisance, grievance, damage or any disturbance of the occupiers or owners of the adjoining lands and properties.

RSA 2000 cL-4 Sched. 1;2008 c22 s11

**Schedule 2****(Section 112)****Short Covenants in Mortgage**

<b>Column 1</b>	<b>Column 2</b>
1. Has a good title to the stated land.	1. And also that the mortgagor at the time of the sealing and delivery of this instrument, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee simple, of and in the land, tenements, hereditaments and all and singular other the premises described in this instrument, with their and every part of their appurtenances, and of and in every part and parcel of them, without any manner of trusts, reservations, limitations, provisoes or conditions, except those contained in the original grant of them from the Crown, or any other matter or thing to alter, charge, change, encumber or defeat them.
2. Has the right to mortgage the land.	2. And also, that the mortgagor now personally has the good right, full power and lawful and absolute authority to mortgage the stated land, tenements, hereditaments and all and singular other the premises hereby mortgaged or mentioned or intended so to be in this instrument, with their and every of their appurtenances to the mortgagee, the mortgagee's heirs, executors, administrators and assigns in manner as stated, and according to the true intent and meaning of these presents.
3. And that on default the (mortgagee) shall have quiet possession of the land.	3. And also, that from and after default shall happen to be made of or in the payment of the stated sum of money, in the above covenant mentioned or the interest on that money, or any part of it, or of or in the doing, observing, performing,

fulfilling or keeping of same one or more of the covenants in this mortgage particularly set out, contrary to the true intent and meaning of these presents, then and in every such case, it is and may be lawful to and for the mortgagee, the mortgagee's heirs, executors, administrators and assigns, peaceably and quietly to enter into, have, hold, use, occupy, possess and enjoy the stated land, tenements, hereditaments and premises, hereby mortgaged or mentioned or intended so to be, with their appurtenances, without the let, suit, hindrance, interruption or denial of the mortgagor, the mortgagor's heirs, or assigns, or any other person or persons.

4. Free from all encumbrances.

4. And that free and clear and freely and clearly acquitted, exonerated and discharged of and from all arrears of taxes and assessments whatsoever due or payable on or in respect of the stated land, tenements, hereditaments and premises, or any part of them, and of and from all former conveyances, mortgages, rights, annuities, debts, judgments, executions and recognizances, and of and from all manner or other charges or encumbrances.

5. Will execute such further assurances of the land as may be requisite.

5. And also, that from and after default shall happen to be made of or in the payment of the stated sum of money in the covenant mentioned or the interest on it, or any part of that money or interest or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the covenants in this mortgage, particularly set out, contrary to the true intent and meaning of these presents and of the said covenants then and in every such case the mortgagor, the mortgagor's heirs and assigns, and all and every

other person or persons having, or lawfully claiming, or who shall or may have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the land, tenements, hereditaments and premises hereby mortgaged, or mentioned, or intended so to be, with the appurtenances or any part of them, by, from, under or in trust for the mortgagor, shall and will, from time to time, and at all times afterwards, at the proper costs and charges of the mortgagee, the mortgagee's heirs, executors, administrators and assigns make, do, suffer and execute, or cause or procure to be made, done, suffered and executed, all and every such further and other reasonable act or acts, deed or deeds, devices, conveyances and assurances in the law for the further, better and more perfectly and absolutely conveying the stated land, tenements, hereditaments and premises, with the appurtenances to the mortgagee, the mortgagee's heirs, executors, administrators and assigns, as by the mortgagee, the mortgagee's heirs, executors or, on behalf of one or more of them, counsel learned in the law, are or may be lawfully and reasonably devised, advised or required, so as no person who may be required to make or execute such assurances is compelled, for the making or executing of them, to go or travel from the person's usual place of abode.

6. Has done no act to encumber the land.

6. And also, that the mortgagor has not at any time previously made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing by which or by means of which the stated land, tenements, hereditaments and premises hereby mortgaged or mentioned or intended so to be, or any part or parcel of them,

are, is or shall or may be in any wise  
impeached, charged, affected or  
encumbered in title, estate, or  
otherwise howsoever.

RSA 2000 cL-4 Sched. 2;2008 c22 s12









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