



Province of Alberta

## **LAW OF PROPERTY ACT**

Revised Statutes of Alberta 2000  
Chapter L-7

Current as of November 1, 2014

Office Consolidation

© Published by Alberta Queen's Printer

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### Regulations

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

<b>Alta. Reg.</b>	<i>Amendments</i>
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# LAW OF PROPERTY ACT

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

#### **Definitions**

**1** In this Act,

- (a) “Court” means the Court of Queen’s Bench;
- (b) “Registrar” means the Registrar of Titles.

RSA 1980 cL-8 s1

### **Part 1 Transfer and Descent of Land**

#### **Necessity of transfer to devisee**

**2** No devise is valid or effectual as against the personal representative of the testator until the land devised is transferred to the devisee of it by the personal representative of the devisor, excepting a devise made by the testator to the testator’s personal representative either in the personal representative’s representative capacity or for the personal representative’s own use.

RSA 1980 cL-8 s2

#### **Abolition of dower**

**3** No widow is entitled to dower in the land of her deceased husband except as provided in the *Dower Act*.

RSA 1980 cL-8 s3

#### **Abolition of tenancy by the curtesy**

**4** No husband is entitled to any estate by the curtesy in the land of his deceased wife.

RSA 1980 cL-8 s4

#### **Transfer of land to husband and wife**

**5(1)** Subject to section 8, if land is transferred to a husband and wife, the transferees take according to the tenor of the transfer.

**(2)** Every tenancy by entireties existing immediately before November 16, 1979 becomes on November 16, 1979 a joint tenancy.

**(3)** Any letters patent, transfer, conveyance, assurance, will or other assignment that would have the effect of creating a tenancy by entireties creates instead a joint tenancy.

RSA 1980 cL-8 s5

**Transfers between husband and wife**

**6** A husband may make a transfer of land to his wife, and a wife may make a transfer of land to her husband, without in either case the intervention of a trustee.

RSA 1980 cL-8 s6

**Effect of transfer**

**7(1)** No words of limitation are necessary in a transfer or conveyance of land in order to transfer all or any title in it, but every instrument transferring land operates as an absolute transfer of all right and title that the transferor has in the land at the time of its execution, unless a contrary intention is expressed in the transfer or conveyance.

**(2)** Nothing in this Part precludes a transfer from operating by way of estoppel.

**(3)** Any words of limitation used in a transfer, conveyance or devise of land have the like force and meaning as the same words used by way of limitation of personal estate.

RSA 1980 cL-8 s7

**Land held by 2 or more persons**

**8** When, by letters patent, notification, transfer, conveyance, assurance, will or other assignment, land or an interest in land is granted, transferred, conveyed, assigned or bequeathed to 2 or more persons, other than as executors or trustees, in fee simple or for any less estate, legal or equitable, those persons take as tenants in common and not as joint tenants unless an intention sufficiently appears on the face of the letters patent, transfer or conveyance, will or other assurance that they should take as joint tenants.

RSA 1980 cL-8 s8

**Abolition of estate tail**

**9** Any devise or limitation that previously would have created an estate tail creates an estate in fee simple or the greatest other estate that the deviser or transferor had in the land.

RSA 1980 cL-8 s9

## **Part 2 Common Parties Contracts and Conveyances**

**Common parties to contracts**

**10(1)** A contract is valid and enforceable in accordance with its terms notwithstanding that in or by the contract

- (a) one of the parties enters into a covenant, promise or agreement with that party and some other person,

- (b) one of the parties and some other person enter into a covenant, promise or agreement with that same party and a different person, or
- (c) one of the parties and some other person enter into a covenant, promise or agreement with that same party.

**(2)** A contract, whether in the form of a deed or not, is valid and enforceable in accordance with its terms notwithstanding that a person by that contract ostensibly contracts with that person alone if, in the person's capacity as one of the parties to the contract, the person is acting as agent for some other person.

**(3)** This section applies to a contract that provides for the conveyance of an interest in real or personal property.

RSA 1980 cL-8 s10

#### **Right to claim contribution**

**11** When a right of contribution or indemnity exists by law in relation to a contract, that right exists in relation to contracts to which this Part applies.

RSA 1980 cL-8 s11

#### **Common parties to conveyances**

**12(1)** An interest in real or personal property may be validly conveyed

- (a) by a person to that person jointly with another person,
- (b) by 2 or more persons to one or more but not all of themselves,
- (c) by 2 or more persons to any one or more of themselves and some other person,
- (d) by a person who holds the property as a joint tenant to that person as a tenant in common,
- (e) by joint tenants to themselves as tenants in common, or
- (f) by tenants in common to themselves as joint tenants,

to the same extent and in the same manner as the interest might be conveyed to a third party.

**(2)** Notwithstanding subsection (1), if the persons in whose favour the conveyance is made are by reason of a fiduciary relationship or by any other reason precluded from validly carrying out the transaction, the conveyance is liable to be set aside.



(3) A transfer by a person as a joint tenant to that person under subsection (1)(d) has, on the registration of the transfer under the *Land Titles Act*, the same effect of severing the joint tenancy as a transfer to another person.

RSA 1980 cL-8 s12;1985 c48 s4

#### Application

**13(1)** This Part applies to contracts and conveyances whether made before, on or after June 6, 1974, but without prejudice to any order of a court made before that date.

(2) The Crown is bound by this Part.

RSA 1980 cL-8 s13

### Part 3 Partition and Sale

#### Definitions

**14** In this Part,

- (a) “co-owners” means joint tenants or tenants in common of an interest in land but does not include joint tenants or tenants in common of an interest in land who are holding the interest for common beneficiaries;
- (b) “encumbrance” means any interest in land other than a fee simple estate;
- (c) “encumbrancee” means an owner of an encumbrance;
- (d) “homestead” means a homestead as defined in the *Dower Act*;
- (e) “land” means land as defined in the *Land Titles Act* and includes a profit a prendre;
- (f) “local authority” means
  - (i) the council of a city, town, village or municipal district,
  - (ii) the Minister responsible for the *Municipal Government Act*, in the case of an improvement district, or
  - (iii) the Minister responsible for the *Special Areas Act*, in the case of a special area;
- (g) “order” means an order made under this Part;
- (h) “parcel” means a parcel of land as defined in Part 17 of the *Municipal Government Act*;

- (i) “registered” means registered under the *Land Titles Act*.  
RSA 1980 cL-8 s14;1994 cM-26.1 s642(36);  
1995 c24 ss99(39),100

#### **Application for termination of co-ownership**

**15(1)** A co-owner may apply to the Court for an order terminating the co-ownership of the interest in land in which the co-owner is a co-owner.

**(2)** On hearing an application under subsection (1), the Court shall make an order directing

- (a) a physical division of all or part of the land between the co-owners,
- (b) the sale of all or part of the interest of land and the distribution of the proceeds of the sale between the co-owners, or
- (c) the sale of all or part of the interest of one or more of the co-owners’ interests in land to one or more of the other co-owners who are willing to purchase the interest.

**(3)** A sale under subsection (2)(b) or (c) and the distribution of the proceeds of the sale shall be under the direction of the Court.

**(4)** In making an order under subsection (2)(c), the Court shall fix the value of the land sold and the terms of the sale.

RSA 2000 cL-7 s15;2009 c53 s96

#### **Refusal to approve sale of interest in land**

**16** Notwithstanding section 15(2), if an order is made under section 15(2)(b) and the highest amount offered for the purchase of the interest in the land is less than the market value of the interest, the Court may

- (a) refuse to approve the sale, and
- (b) make any further order it considers proper.

RSA 1980 cL-8 s16

#### **Accounting, contribution and adjustment**

**17(1)** In making an order, the Court may direct that

- (a) an accounting, contribution and adjustment, or any one or more of them, take place in respect of the land, and
- (b) compensation, if any, be paid for an unequal division of the land.

(2) In determining if an accounting, contribution or adjustment should take place or compensation be paid for an unequal division of the land, the Court shall, without limiting itself from considering any matter it considers relevant in making its determination, consider whether

- (a) one co-owner has excluded another co-owner from the land;
- (b) an occupying co-owner was tenant, bailiff or agent of another co-owner;
- (c) a co-owner has received from third parties more than the co-owner's just share of the rents from the land or profits from the reasonable removal of its natural resources;
- (d) a co-owner has committed waste by an unreasonable use of the land;
- (e) a co-owner has made improvements or capital payments that have increased the realizable value of the land;
- (f) a co-owner should be compensated for non-capital expenses in respect of the land;
- (g) an occupying co-owner claiming non-capital expenses in respect of the land should be required to pay a fair occupation rent;
- (h) a co-owner has at the time the application is made under this Part rights in the land for which the co-owner would receive compensation under the *Dower Act* if an order had been made under that Act dispensing with that co-owner's consent to the disposition of that land.

RSA 1980 cL-8 s17

#### **Ensurance that obligations performed**

**18** If an order is made with respect to an interest in land other than a fee simple estate, the Court may impose any terms and conditions it considers necessary to ensure that the obligations imposed in respect of the interest are performed.

RSA 1980 cL-8 s18

#### **Severance of joint tenancy**

**19** If the interest in land that is the subject of an order is held in joint tenancy, the order on being granted severs the joint tenancy.

RSA 1980 cL-8 s19

#### **Homestead**

**20(1)** A termination of co-ownership under this Part is not a disposition under the *Dower Act*.

(2) On termination of co-ownership under this Part, the land that was co-owned ceases to be a homestead as between the parties to the action who were the co-owners immediately prior to the order being made.

(3) An order made under this Part terminating the co-ownership of land by two spouses dispenses with consent under the *Dower Act* by those spouses to a disposition of land that is subject to that order.

RSA 2000 cL-7 s20;2014 c8 s13

### **Application of the Matrimonial Property Act and Family Law Act**

**21** Notwithstanding section 15(2), the Court may, with respect to land that comprises a matrimonial home as defined in the *Matrimonial Property Act* or a family home as defined in the *Family Law Act*, stay proceedings under this Part

- (a) pending the disposition of an application made under the *Matrimonial Property Act* or section 68 of the *Family Law Act*, or
- (b) while an order made under the *Matrimonial Property Act* or section 68 of the *Family Law Act* remains in force.

RSA 2000 cL-7 s21;2003 cF-4.5 s118;2010 c16 s1(46)

### **Refusal to allow application**

**22** Notwithstanding section 15(2), if an application for an order is made with respect to an interest in land other than a fee simple estate, the Court may refuse to allow the application if the order would unduly prejudice the grantor of that interest.

RSA 1980 cL-8 s23

### **Encumbrances against the entire interest**

**23(1)** An order does not affect an encumbrance registered against the entire interest in land in respect of which the order is made.

(2) If an encumbrance is registered against the entire interest in land in respect of which an order is made and under the order the interest of a co-owner is to be sold to another co-owner, the Court may direct that compensation for the vendor's liability under the encumbrance in an amount determined by the Court be paid to the purchaser of the interest from the proceeds of the sale.

RSA 1980 cL-8 s24

### **Encumbrances against particular interest**

**24** If an encumbrance is registered against an interest in land other than the entire interest in the land in respect of which the order is made then

- (a) if the land is to be physically divided between the co-owners, the Court may direct that the encumbrance on the land being divided be registered only against the land allotted to the co-owner in respect of whose interest the encumbrance was registered,
- (b) if the land or part of it is to be sold and proceeds of the sale are to be distributed between the co-owners, the Court may direct that the encumbrance on the land being sold be discharged as against that land and compensation in an amount determined by the Court be paid to the encumbrancee from the proceeds accruing to the co-owner in respect of whose interest the encumbrance was registered, or
- (c) if the interest of a co-owner is to be sold to another co-owner, the Court may direct that the encumbrance on the interest being sold be discharged as against that land and compensation for the vendor's liability under the encumbrance in an amount determined by the Court be paid to the encumbrancee from the proceeds accruing to the vendor of the interest, if the interest sold was the interest in respect of which the encumbrance was registered.

RSA 1980 cL-8 s25

**Service of application**

**25(1)** A co-owner commencing an application for an order shall, not less than 10 days before the application is to be heard, serve a copy of the application on

- (a) the other co-owner,
- (b) any encumbrancee who has an encumbrance registered against an interest in the land, and
- (c) any other person that the Court may direct.

**(2)** Every person served with an application is a party to the action.

**(3)** An encumbrancee who

- (a) holds an unregistered encumbrance against land that is the subject of an application for an order, and
- (b) is not a party to the action,

may apply to the Court to be made a party to the action and the Court may make that encumbrancee a party to the action on any terms the Court considers proper.

RSA 2000 cL-7 s25;2009 c53 s96

**Application of Part 17 of the Municipal Government Act**

**26** Notwithstanding section 15(2), if an order has or may have the effect of subdividing a parcel to which Part 17 of the *Municipal Government Act* applies, the Court shall

- (a) stay the proceedings under this Part until the requirements of Part 17 of the *Municipal Government Act* have been complied with, or
- (b) make the order subject to the requirements of Part 17 of the *Municipal Government Act* being complied with.

RSA 1980 cL-8 s27;1995 c24 s100

**Termination of co-ownership**

**27** Notwithstanding any agreement between co-owners of land, the Court may make an order terminating the co-ownership, if the continuance of the co-ownership will cause undue hardship to one or more of the co-owners.

RSA 1980 cL-8 s28

**Validity of previous partition orders**

**28** A partition order registered in a land titles office before May 20, 1976 is valid notwithstanding that the order was not approved under the *Planning Act* then in force.

RSA 1980 cL-8 s29

**Planning requirements**

**29(1)** In this section and in sections 30 and 31, “planning requirements” means those requirements contained in sections 25 and 26 of *The Planning Act*, RSA 1970 c276, and the regulations referred to in section 25 of that Act as those sections and regulations read on May 20, 1976.

**(2)** A person

- (a) who was a co-owner of land that was subject to a partition order referred to in section 28 immediately prior to that partition order being made, and
- (b) who was, on November 12, 1979, the owner of that land or a part of it,

shall, on being served with a written notice to do so by the local authority having jurisdiction over the area within which the land is located, comply with the planning requirements in the same manner as if that land was the subject of a proposed subdivision under *The Planning Act*, RSA 1970 c276.

(3) A local authority shall not serve a written notice under subsection (2) after June 30, 1980.

RSA 1980 cL-8 s30

#### **Appeal**

**30(1)** A person served with a written notice under section 29(2) who alleges that it will cause the person hardship to comply with the planning requirements may appeal to an appeal board to have the planning requirements reduced or waived.

(2) A person served with a written notice under section 29(2) or the local authority on whose behalf the written notice was served may appeal to an appeal board for directions as to how the planning requirements are to be complied with.

(3) An appeal under this section shall be commenced within 6 months from the day that the local authority served the written notice under section 29(2).

(4) An appeal under this section may be commenced by serving on the Minister responsible for this Act a notice of appeal setting out the reasons for the appeal and the remedy sought.

RSA 1980 cL-8 s31;1994 cG-8.5 s41

#### **Appeal board**

**31(1)** Within 60 days after being served with a notice of appeal under section 30, the Minister responsible for this Act shall cause an appeal board to be established consisting of

- (a) one member, to be chair of the appeal board, appointed by the Minister responsible for this Act,
- (b) one member appointed by the person who was served with a written notice under section 29(2), and
- (c) one member appointed by the local authority on whose behalf the written notice was served.

(2) If a party to an appeal fails to appoint a member to the appeal board, the chair of the appeal board and the other member of the appeal board may hear the appeal, the chair having a casting vote in the event of a tie vote respecting any matter being heard by the appeal board.

(3) In hearing a matter referred to it, the appeal board may consider any matter it considers relevant.

(4) On hearing the matter the appeal board may make an order

- (a) reducing the planning requirements;

- (b) waiving the planning requirements;
  - (c) directing how the planning requirements are to be complied with;
  - (d) dismissing the appeal.
- (5) An order made under subsection (4) may be registered.
- (6) The chair of the appeal board has the same powers as a commissioner under the *Public Inquiries Act*.
- (7) Section 55 of the *Arbitration Act* applies to a matter heard under this section in the same manner as if the members of the appeal board were arbitrators under the *Arbitration Act*.
- (8) The appeal board shall hear the matter being appealed and make its decision within 6 months from the day that the appeal is commenced.
- (9) Notwithstanding subsection (8), on the request of the chair of the appeal board, the Minister responsible for this Act may extend the time within which the appeal board shall hear the matter being appealed and make its decision.
- (10) Any decision, purported decision or proceeding of the appeal board is final and shall not be questioned, reviewed or restrained by injunction, prohibition, mandamus, quo warranto proceedings or other process or proceedings in any court or be removed by certiorari or otherwise into any court.

RSA 1980 cL-8 s32;1991 cA-43.1 s57;1994 cG-8.5 s41

### Service of documents

**32** A written notice under section 29, a notice of appeal under section 30 or any other document issued in respect of an appeal commenced under section 30 may be served by personal service or by registered or certified mail.

RSA 1980 cL-8 s33

### Non-application of other laws

**33** The following statutes of England no longer apply in Alberta:

*Partition Act, 1539*, 31 Hen. VIII c1 (U.K.);

*Partition Act, 1540*, 32 Hen. VIII c32 (U.K.);

*Partition Act, 1868*, 31 & 32 Vict. c40 (U.K.).

RSA 1980 cL-8 s34



## Part 4 Attornment Clauses

### Attornment clause

**34(1)** Every covenant, agreement, condition or stipulation that is contained in a mortgage or agreement for sale, or in any other instrument of any kind that is supplementary or collateral to a mortgage or agreement and whereby the mortgagor agrees or has agreed to become the tenant of the mortgagee or whereby the purchaser agrees or has agreed to become the tenant of the vendor, as the case may be, is void.

**(2)** Nothing in this section applies to

- (a) a mortgage on land in favour of The Canadian Farm Loan Board or the Farm Credit Corporation or an agreement for the sale of land entered into by The Canadian Farm Loan Board or the Farm Credit Corporation,
- (b) a mortgage to secure a loan under the *National Housing Act* (Canada) or the *National Housing Act* (Canada), RSC 1952 c188, or
- (c) a mortgage given to secure loans for the purpose of building a house or houses when the form of the mortgage, including its terms and conditions, has been approved by the Lieutenant Governor in Council.

RSA 1980 cL-8 s35;1994 c23 s27

### Mortgagor tenant of mortgagee

**35(1)** A mortgage to which section 34(2)(b) refers and under which the mortgage money is to be paid by instalments may contain a covenant or provision that the mortgagor agrees to become the tenant of the mortgagee, and in that case the relationship of landlord and tenant is validly constituted between those persons.

**(2)** The rent payable under such an agreement shall not exceed the fair annual rent at which the premises might reasonably be expected to rent on a tenancy from year to year with the landlord paying the taxes.

**(3)** No such agreement of itself operates as, or shall be considered as, a taking of possession of the mortgaged premises or land by the mortgagee.

RSA 1980 cL-8 s36

**Relationship of landlord and tenant**

**36(1)** Notwithstanding section 34, when the mortgage money or purchase money, as the case may be, is to be paid by instalments, a mortgage or agreement for sale of business premises may contain a covenant or provision that the mortgagor or purchaser agrees to become the tenant of the mortgagee or vendor, and in that case the relationship of landlord and tenant is validly constituted between those persons but is so constituted only so long as no part of the land or premises is occupied by the mortgagor or purchaser as a residence.

**(2)** The rent payable under such an agreement shall not exceed the fair annual rent at which the premises might reasonably be expected to rent on a tenancy from year to year with the landlord paying the taxes.

**(3)** No such agreement of itself operates as, nor shall it be considered as, a taking of possession of the premises or land mortgaged or sold by the mortgagee or the vendor.

**(4)** In this section, “business premises” means land and premises from which revenue is derived, other than land and premises for farming purposes.

RSA 1980 cL-8 s37

## **Part 5 Enforcement of Mortgages and Agreements for Sale of Land**

**Mortgagor’s right to sue**

**37** A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of the mortgagee’s intention to take possession or to enter into receipt of the rents and profits of the land has been given by the mortgagee, may in the mortgagor’s own name only,

- (a) sue for possession of the land,
- (b) sue or distrain for the recovery of the rents or profits, or
- (c) sue to prevent or recover damages in respect of a trespass or other wrong relative to the land,

unless the cause of action arises on a lease or other contract made by the mortgagor jointly with any other person and in that case the mortgagor may sue or distrain jointly with the other person.

RSA 1980 cL-8 s38

**Granting relief to mortgagor**

**38(1)** The Court has jurisdiction and shall grant relief from the consequences of the breach of a covenant or the non-payment of principal or interest by a mortgagor or purchaser in any case in which the mortgagor or purchaser remedies the breach of covenant or pays all the arrears due under the mortgage or agreement for sale with lawful costs and charges in that behalf

- (a) at any time before a judgment is recovered, or
- (b) within a time that by the practice of the Court relief in it could be obtained.

**(2)** The mortgagor or purchaser may, by notice in writing, require the mortgagee or vendor to furnish the mortgagor or purchaser with a statement in writing

- (a) of the nature of the breach of any covenant, or
- (b) of the amount of principal or interest with respect to which the mortgagor or purchaser is in default,

and of the amount of any expenses necessarily incurred by the mortgagee or the vendor.

**(3)** A mortgagor or purchaser may, not more than twice a year by notice in writing to the mortgagee or vendor, require the mortgagee or vendor, as the case may be, to furnish, to the mortgagor or purchaser or a person designated by the mortgagor or purchaser, without charging any fee or expense or accepting any amount for so doing, a statement in writing setting out with respect to the mortgage or agreement for sale

- (a) the amount of principal, interest and any other charges owing, and
- (b) the balance in the tax account.

**(4)** The mortgagee or vendor shall answer a notice given under subsection (2) or (3) within 30 days after the mortgagee or vendor receives it and if, without reasonable excuse, the mortgagee or vendor fails to do so or the mortgagee's or vendor's answer is incomplete or incorrect, any rights that the mortgagee or vendor may have for the enforcement of the mortgage or for the cancellation or specific performance of the agreement for sale are suspended until the mortgagee or vendor has complied with the notice.

(5) Notice by a mortgagor or purchaser to the mortgagee or vendor may be given personally or may be sent to the mortgagee or vendor by ordinary mail to the address where money owing under the mortgage or agreement for sale is payable.

(6) A mortgagee or vendor who

- (a) fails to answer, as required by subsection (4), a notice given by a mortgagor or purchaser under subsection (2) or (3), or
- (b) charges or attempts to charge any fee or expense or accepts any amount for providing a statement referred to in subsection (3),

is guilty of an offence and liable to a fine of not more than \$500.

RSA 1980 cL-8 s39;1982 c24 s2;1983 c97 s2

#### **Foreclosure proceedings**

**39(1)** Proceedings for recovery of money secured by a mortgage or encumbrance, or to enforce any provision of the mortgage or encumbrance, or sale, redemption or foreclosure proceedings with respect to mortgaged or encumbered land, may be taken in any court of competent jurisdiction in accordance with the existing practice and procedure of the court.

(2) No execution to enforce a judgment on the personal covenant contained in an agreement for sale of land shall issue or be proceeded with until the sale of the land, and levy shall then only be made for the amount of money remaining unpaid after the due application of the purchase money received at the sale.

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

(4) The Court in any case where it is fair and equitable to do so may, on application, order that subsections (2) and (3) are no longer to apply wholly or partly to the agreement for sale that is the subject-matter of the application.

(5) No order shall be made under subsection (4) unless the Court is satisfied

- (a) of the inadequacy of the land as a security for the amount agreed to be paid for the land,
- (b) of the possession by the purchaser of liquid assets sufficient to discharge the debt, and

(c) of the existence of a grave danger of disposal of the assets of the purchaser to defeat the claim of the vendor.

(6) An order under subsection (4) may be at any time varied or set aside by the same or any other judge.

RSA 2000 cL-7 s39;2009 c53 s96

#### **Action on covenant**

**40(1)** In an action brought on a mortgage of land, whether legal or equitable, or on an agreement for the sale of land, the right of the mortgagee or vendor is restricted to the land to which the mortgage or agreement relates and to foreclosure of the mortgage or cancellation of the agreement for sale, as the case may be, and no action lies

- (a) on a covenant for payment contained in the mortgage or agreement for sale,
- (b) on any covenant, whether express or implied, by or on the part of a person to whom the land comprised in the mortgage or agreement for sale has been transferred or assigned subject to the mortgage or agreement for the payment of the principal money or purchase money payable under the mortgage or agreement or part of it, as the case may be, or
- (c) for damages based on the sale or forfeiture for taxes of land included in the mortgage or agreement for sale, whether or not the sale or forfeiture was due to, or the result of, the default of the mortgagor or purchaser of the land or of the transferee or assignee from the mortgagor or purchaser.

**(2)** In an action brought on a mortgage of land or on an agreement for the sale of land,

- (a) the order nisi in the case of a mortgage, or the order for specific performance in the case of an agreement for sale, shall direct that if the defendant fails to comply with the terms of the order, the land that is subject to the mortgage or agreement for sale is to be offered for sale at a time and place, in a manner, after any advertisement of sale, and at any price that the Court considers proper, and
- (b) if the land is not sold at the time and place so appointed, the Court may either order the land to be again offered for sale or make a vesting order in the case of a mortgage or an order of cancellation in the case of an agreement for sale, and on the making of a vesting order or cancellation order, every right of the mortgagee or vendor for the recovery of

any money whatsoever under and by virtue of the mortgage or agreement for sale in either case ceases and determines.

(3) Nothing in subsection (2) applies to an order nisi or order for specific performance to which the consent of the debtor has been obtained.

(4) Notwithstanding the provisions of any order nisi or order for specific performance, it is not necessary for the land to be advertised or offered for sale when, subsequent to the making of the order, the debtor consents

- (a) to a vesting order in the case of a mortgage, or
- (b) to an order of cancellation in the case of an agreement for sale,

without that advertising or offering for sale.

(5) Any waiver or release hereafter given of the rights, benefits or protection given by subsections (1) and (2) is against public policy and void.

RSA 1980 cL-8 s41;1982 c24 s3

#### **Redemption time**

**41(1)** The time to be fixed for redemption by the order nisi in an action for foreclosure of a mortgage and the time to be fixed for redemption by the order for specific performance in an action on an agreement for sale shall,

- (a) in the case of farm land, be one year from the date of the granting of the order, and
- (b) in the case of land other than farm land, be 6 months from the date of the granting of the order.

(2) In an action coming under subsection (1), the Court on application may decrease or extend the period of redemption having regard to the following circumstances:

- (a) when the action is in respect of a security on farm land,
  - (i) the ability of the debtor to pay,
  - (ii) the value of the land including the improvements made on it,
  - (iii) whether the land has been abandoned,

- (iv) the nature, extent and value of the security held by the creditor, and
  - (v) whether the failure to pay was due to hail, frost, drought, agricultural pests or other conditions beyond the control of the debtor;
- (b) when the action is in respect of a security on land other than farm land,
- (i) the ability of the debtor to pay,
  - (ii) the value of the land including the improvements made on it,
  - (iii) whether the land has been abandoned,
  - (iv) the nature, extent and value of the security held by the creditor,
  - (v) the earning capacity of the debtor, and
  - (vi) whether the debtor's failure to pay was due to temporary or permanent unemployment or other conditions beyond the control of the debtor.

(3) Nothing in this section applies to an order to which the consent of the debtor has been obtained.

(4) In this section, "farm land" means farm land as defined in section 47(4).

RSA 1980 cL-8 s42;1983 c97 s2

**Vesting order, etc. without land being offered for sale**

**42** Notwithstanding sections 40(2) and 41, in an action brought on a mortgage of land or on an agreement for sale of land where

- (a) the land is transferred or sold, in the case of a mortgage,
  - (i) while the mortgage is in default, or
  - (ii) within 4 months before the mortgage goes into default,
- (b) the purchaser's interest in the land is assigned or sold, in the case of an agreement for sale,
  - (i) while the agreement for sale is in default, or
  - (ii) within 4 months before the agreement for sale goes into default,

or

- (c) the land
  - (i) is abandoned, or
  - (ii) is undeveloped land other than farm land as defined in section 47(4),

the Court may, without the land being first offered for sale under section 40(2), make a vesting order in the case of a mortgage or an order of cancellation in the case of an agreement for sale.

1984 c24 s2

#### **Application of sections 40 and 41**

**43(1)** Sections 40 and 41 do not apply to a proceeding for the enforcement of any provision

- (a) of an agreement for sale of land to a corporation, or
- (b) of a mortgage given by a corporation.

**(2)** Notwithstanding subsection (1), sections 40 and 41 apply to an action brought against an individual, as it relates to that individual, where

- (a) the action is on
  - (i) a mortgage of land, whether legal or equitable, given by a corporation, or
  - (ii) an agreement for sale of land to a corporation,  
made before or after the coming into force of this subsection, and
- (b) the individual is
  - (i) a transferee of land that is subject to that mortgage, or
  - (ii) an assignee of a purchaser's interest under that agreement for sale of land,

whether the transfer or assignment was made before or after the coming into force of this subsection.

**(3)** Any waiver or release of the rights, benefits or protection given by subsections (2) and (5) is against public policy and void.

**(4)** Sections 40 and 41 and subsections (2) and (5) of this section do not apply to a mortgage given to secure a loan under the



*National Housing Act* (Canada) or the *National Housing Act* (Canada), RSC 1952 c188.

**(4.1)** Sections 40 and 41 and subsections (2) and (5) of this section do not apply to a high-ratio mortgage, as defined in the regulations,

- (a) given to secure a loan under the *National Housing Act* (Canada), or
- (b) insured by an insurer licensed under the *Insurance Act* to undertake mortgage insurance in Alberta.

**(4.2)** Subsection (4) applies to mortgages entered into before the coming into force of this subsection and to the renewal of those mortgages and subsection (4.1) applies to high-ratio mortgages entered into after the coming into force of this subsection and to the renewal of those mortgages.

**(5)** Notwithstanding subsection (1), where

- (a) an individual is
  - (i) a transferee of land that is subject to a mortgage, whether legal or equitable, given by a corporation, or
  - (ii) an assignee of a purchaser's interest under an agreement for sale of land to a corporation,

and

- (b) before November 30, 1983
  - (i) an action was brought against that individual on that mortgage or agreement for sale, and
  - (ii) in respect of that action no order nisi, in the case of the mortgage, or no order for specific performance, in the case of the agreement for sale, has been granted,

then on or after November 30, 1983 no judgment or order shall be granted against that individual in respect of any of the covenants or damages referred to in section 40(1)(a) to (c), and sections 40 and 41 apply to the action as it relates to that individual.

RSA 2000 cL-7 s43;2003 c24 s2

#### **Covenant for payment**

**44(1)** In this section, “covenant for payment” means that portion of the covenant referred to in section 58(1) of the *Land Titles Act* that comprises one or more of the following:

- (a) the covenants referred to in section 40(1)(a) and (b) of this Act;
- (b) the obligation that relates to the damages referred to in section 40(1)(c) of this Act;
- (c) the indemnification of the transferor from and against the principal sum or other money secured by a mortgage.

**(2)** No action shall be brought against any individual who is a transferee of land that is subject to a mortgage, whether the transfer was made before or after the coming into force of this section, on the basis of

- (a) the covenant for payment, or
- (b) any obligation that exists at law, in equity or by agreement that is in substance the same as the covenant for payment.

**(3)** Any waiver or release of the rights, benefits or protection given by subsections (2) and (5) is against public policy and void.

**(4)** This section does not apply in respect of a mortgage given to secure a loan under the *National Housing Act (Canada)* or the *National Housing Act (Canada)*, RSC 1952 c188.

**(4.1)** This section does not apply in respect of a high-ratio mortgage, as defined in the regulations,

- (a) given to secure a loan under the *National Housing Act (Canada)*, or
- (b) insured by an insurer licensed under the *Insurance Act* to undertake mortgage insurance in Alberta.

**(4.2)** Subsection (4) applies to mortgages entered into before the coming into force of this subsection and to the renewal of those mortgages and subsection (4.1) applies to high-ratio mortgages entered into after the coming into force of this subsection and to the renewal of those mortgages.

**(5)** Where

- (a) an individual is a transferee of land that is subject to a mortgage, and
- (b) before November 30, 1983
  - (i) an action was brought against that individual on the basis of

- (A) the covenant for payment, or
- (B) any obligation that exists at law, in equity or by agreement that is in substance the same as the covenant for payment,

and

- (ii) in respect of that action no judgment has been granted,

then on or after November 30, 1983 no judgment shall be granted against that individual in respect of any covenant or obligation referred to in clause (b).

RSA 2000 cL-7 s44;2003 c24 s3

#### **Remedy against corporation, guarantor or surety**

**45** Nothing in section 43(2) or (5) or 44 limits or derogates from any remedy that a person has against

- (a) a corporation, or
- (b) a guarantor or other surety of
  - (i) a mortgage of land, or
  - (ii) an agreement for sale of land,

notwithstanding that the guarantor or other surety may become a transferee of that land or assignee of the agreement for sale.

1983 c97 s2

#### **Corporation deemed to be transferee**

**46** For the purposes of section 58 of the *Land Titles Act*, when

- (a) an individual is a transferee of land that is subject to a mortgage given by a corporation, and
- (b) a corporation becomes a transferee of that land from that individual,

the corporation referred to in clause (b) is deemed to be the transferee of the land from the last corporation to which that land was transferred prior to that individual's becoming the transferee of that land.

1983 c97 s2

#### **Limitation on individual's rights**

**47(1)** Sections 43(2) and (5), 44 and 46 apply only in respect of residential land and farm land.

(2) Sections 43(2) and (5), 44 and 46 do not apply to an individual who is or was a registered owner of residential land or farm land if

- (a) in the case of residential land, neither that individual nor any member of that individual's family has ever used that land as the individual's or member's bona fide residence at any time during which that individual is or was a registered owner of that land, or
- (b) in the case of farm land, neither that individual nor any member of that individual's family has personally ever used that land for carrying on bona fide farming operations at any time during which that individual is or was a registered owner of that land.

(3) In order for an individual to be given the benefit of sections 43(2) and (5), 44 and 46, the onus of proof is on that individual to establish that the individual is not excluded from those benefits by reason of subsection (2).

(4) In this section,

- (a) "farm land" means land that is or was used for carrying on farming operations;
- (b) "farming operations" means
  - (i) the planting, growing and sale of trees, shrubs or sod,
  - (ii) the raising or production of crops, livestock, diversified livestock animals within the meaning of the *Livestock Industry Diversification Act*, fish, pheasants or poultry,
  - (iii) fur production, or
  - (iv) beekeeping;
- (c) "member of that individual's family" means
  - (i) an individual's grandparent, parent, sibling, child, niece, nephew or spouse or adult interdependent partner, and
  - (ii) a grandparent, parent, sibling, child, niece or nephew of the individual's spouse or adult interdependent partner;
- (d) "parcel" means the aggregate of the one or more areas of land described in a certificate of title or described in a certificate of title by reference to a plan filed or registered in a land titles office;

- (e) “registered owner” includes an individual purchasing the land under an agreement for sale;
- (f) “residential land” means
  - (i) a parcel on which a single-family detached unit or duplex unit is located, or
  - (ii) a residential unit under the *Condominium Property Act*,  
that is or was used as a residence.

RSA 2000 cL-7 s47;2002 cA-4.5 s50;2003 c26 s19;  
2011 c12 s33

#### Order of foreclosure

**48(1)** The effect of an order of foreclosure of a mortgage or encumbrance is to vest the title of the land affected by it in the mortgagee or encumbrancee free from all right and equity of redemption on the part of the owner, mortgagor or encumbrancer or any person claiming through or under the owner, mortgagor or encumbrancer subsequent to the mortgage or encumbrance, and

- (a) the order operates as full satisfaction of the debt secured by the mortgage or encumbrance, and
- (b) the mortgagee or encumbrancee is deemed a transferee of the land and becomes the owner of it and is entitled to receive a certificate of title for it.

**(2)** An order nisi may at any time prior to the sale of the mortgaged land under an order for sale or to the granting of a final order for foreclosure, whichever first happens, be relieved against by a postponement of the day fixed for redemption.

**(3)** When a judge has postponed the day fixed for redemption no appeal lies except on the ground that the discretion of the judge was not exercised judicially.

**(4)** No order of absolute foreclosure made in an action is deemed to deprive any court of any power that the court had immediately before May 17, 1919, to reopen the foreclosure.

RSA 1980 cL-8 s44;1982 c23 s31

#### Appointment of receiver

**49(1)** Notwithstanding section 40, after the commencement of an action on

- (a) a mortgage of land other than farm land, or
- (b) an agreement for sale of land other than farm land,

to enforce or protect the security or rights under the mortgage or the agreement for sale the Court may do one or both of the following:

- (c) appoint, with or without security, a receiver to collect rents or profits arising from the land;
- (d) empower the receiver to exercise the powers of a receiver and manager.

**(2)** If

- (a) a mortgage of land or an agreement for sale referred to in subsection (1) is in default, and
- (b) rents or profits are arising out of the land that is subject to that mortgage or agreement for sale,

the Court shall, on application by the mortgagee or vendor, appoint a receiver where the Court considers it just and equitable to do so.

**(3)** Notwithstanding subsections (1) and (2), an application to appoint a receiver may be made ex parte if

- (a) in the case of a mortgage, the land is transferred or sold
  - (i) while the mortgage is in default, or
  - (ii) within 4 months before the mortgage goes into default,
- or
- (b) in the case of an agreement for sale, the purchaser's interest in the land is assigned or sold
  - (i) while the agreement for sale is in default, or
  - (ii) within 4 months before the agreement for sale goes into default.

**(4)** The proceeds of rents or profits collected by the receiver, less any fee or disbursements, which may be allowed by the Court to the receiver by way of remuneration, shall be applied

- (a) in payment of taxes accruing due or owing on the land in receivership, and
- (b) in reduction of the claims of the mortgagee or vendor against the land in receivership.

- (5) A receiver appointed pursuant to this section may distrain for rent in arrears in the same manner and with the same right of recovery as a landlord.
- (6) On default of the mortgagor or purchaser of the land other than farm land that is in receivership to pay the rents or profits from it, the Court may order possession of the land to be delivered up to the receiver and leased by the receiver, on any terms and conditions that the Court considers fit.
- (7) The Court may, on application by the receiver, give the receiver further directions from time to time as the circumstances require.
- (8) An order appointing a receiver may be discharged by the Court at any time, but the order shall only be discharged on application after notice.
- (9) When and so often as the circumstances require, the Court may, without discharging the order appointing the receiver, substitute another person for the person originally appointed by the order appointing a receiver, and the substituted receiver shall perform all the duties and has all the powers given by the order or this section to the person originally appointed.
- (10) When an order appointing a receiver is made under this section, then, unless the Court otherwise directs in that order or in a subsequent order, proceedings in the action on the mortgage or on the agreement for sale shall be stayed until the time that the order appointing a receiver is discharged.
- (11) Subsection (10) does not apply when the mortgagor or purchaser is a corporation.
- (12) In this section, "farm land" means farm land as defined in section 47(4).

RSA 1980 cL-8 s45;1983 c97 s2;1984 c24 s5

### **Assignments**

**50** An assignment in writing for a lease or rent given by a mortgagor or by a purchaser under an agreement for sale in favour of a mortgagee or vendor of it and not being an assignment of the mortgage or agreement for sale itself may be enforced notwithstanding the restrictions contained in section 40.

RSA 1980 cL-8 s46

**Regulations**

**50.1** The Lieutenant Governor in Council may make regulations defining “high-ratio mortgages” for the purposes of sections 43(4.1) and (4.2) and 44(4.1) and (4.2).

2003 c24 s4

## **Part 6**

### **Enforcement of Purchase-money Security Agreements**

**Definitions**

**51** In this Part,

- (a) “consumer goods” means consumer goods as defined in the *Personal Property Security Act*;
- (b) “consumer services” means services acquired by an individual other than for the benefit of or use in a business, profession or calling and acquired from a person who is engaged in the business of providing those services;
- (c) “debtor” means a debtor under a purchase-money security agreement;
- (d) “goods” means tangible personal property other than chattel paper, a document of title, an instrument, a security and money, and includes fixtures, growing crops and the unborn young of animals, but does not include timber until it is cut or minerals until they are extracted;
- (e) “purchase-money security agreement” means an agreement that provides for a purchase-money security interest;
- (f) “purchase-money security interest” means a security interest taken or reserved in consumer goods by a seller to secure payment of all or part of its purchase price and any credit charges payable in respect of the purchase;
- (g) “secured party” means a seller or bailor under a purchase-money security agreement;
- (h) “security agreement” means an agreement that creates or provides for a security interest, and if the context requires, includes a writing that evidences a security agreement;
- (i) “security interest” means an interest in goods that secures payment or performance of an obligation.

RSA 1980 cL-8 s47;1988 cP-4.05 s87



**Cut-off clauses**

**52(1)** The right of a transferee of the interest of a secured party under a purchase-money security agreement or the right of a transferee under an agreement for the purchase of consumer services to have the whole or any part of the agreement performed by the debtor is no greater than the secured party or the transferor would have had in any action on the agreement and the transferee is subject to the same obligations, duties, liabilities and defences, other than counterclaim, as the secured party or transferor would have been.

**(2)** Any provision of a purchase-money security agreement or an agreement for the provision of consumer services or any related agreement that

- (a) purports in any manner to limit or render inapplicable, or
- (b) has the effect of in any manner limiting or rendering inapplicable

the application of subsection (1) is against public policy and void.

RSA 1980 cL-8 s48;1988 cP-4.05 s87

**Recovery proceedings**

**53(1)** A secured party may enforce the secured party's right to recover the purchase price owing to the secured party under a purchase-money security agreement or related agreement either

- (a) by proceeding as provided in subsection (4), or
- (b) by action for a judgment against the debtor.

**(2)** If the secured party elects to enforce the secured party's purchase-money security interest and the goods are seized, no action is maintainable for the purchase price of the goods or any part of it, notwithstanding anything to the contrary in any Act or in any agreement between the secured party and the debtor.

**(3)** If the secured party elects to bring an action against the debtor and recovers a judgment for the money owing, then if the goods in respect of which that money is owing are seized under a writ of enforcement issued pursuant to that judgment,

- (a) the secured party's rights are restricted to the amount realized from the sale of those goods, and
- (b) the judgment, to the extent that it is based on the purchase price of those goods, and the taxed costs, is deemed to be fully paid and satisfied.

- (4) When goods that are collateral under a purchase-money security agreement
- (a) are surrendered by the debtor to the secured party with the secured party's consent, other than for the purpose of perfecting a security interest in the goods pursuant to section 24 of the *Personal Property Security Act*.
  - (b) are taken into the custody and control of a receiver or receiver-manager pursuant to the purchase-money security agreement or Part 5 of the *Personal Property Security Act* and are disposed of,
  - (c) are seized pursuant to the purchase-money security agreement or Part 5 of the *Personal Property Security Act* and are disposed of, or
  - (d) are retained by a secured party in accordance with section 62 of the *Personal Property Security Act*,

the indebtedness of the debtor under the purchase-money security agreement, to the extent that it relates to all or part of the purchase price of some or all of the goods, is extinguished, and any money subsequently paid in respect of the purchase price is recoverable by action against the secured party.

(5) Any waiver or release of any or all of the rights, benefits or protection given to debtors by this section is against public policy and void.

(6) This section does not apply to

- (a) goods unless they were acquired from the seller for use as consumer goods, or
- (b) a purchase-money security agreement to the extent that it provides for a security interest that is not a purchase-money security interest.

RSA 1980 cL-8 s49;1988 cP-4.05 s87;1991 c21 s18;1994 cC-10.5 s166

#### **Application of section**

**54(1)** Section 53 does not apply if, after seizure, the goods are destroyed or damaged to such an extent that the secured party's security is materially impaired either by the wilful act of the debtor or by the debtor's neglect or otherwise.

**(2)** Notwithstanding anything in section 53, if the goods have been seized and it is found that an accessory that was part of the goods when they were sold was removed from the goods before they were seized and has not been replaced by another accessory of a like

kind and value, the secured party may bring action against the debtor

- (a) for the value of the accessory, or
- (b) for the amount by which the sum realized on the sale of the goods falls short of the amount owing by the debtor and the amount of the proper fees, charges, claims and disbursements in connection with the seizure and the sale,

whichever is less.

RSA 1980 cL-8 s50;1988 cP-4.05 s87

## Part 7 Mineral Titles Clarification

### Application

**55** This Part applies to all land in Alberta and the owners of land, including the Crown in right of Alberta.

RSA 1980 cL-8 s51

### Mineral declaration

**56(1)** Each of the following substances that naturally occurs within, on or under land is hereby declared to be and at all times to have been a mineral:

Anhydrite	Gypsum	Sandstone	
Barite	Limestone	Serpentine	
Bauxite	Marble	Shale	
Bentonite	Mica	Slate	
Diatomite	Mirabilite	Talc	
Dolomite	Potash	Thenardite	
Epsomite	Quartz	Rock	Trona
Granite	Rock	Phosphate	Volcanic Ash

**(2)** When a substance named in subsection (1) has been dealt with or removed from any land prior to April 12, 1961

- (a) by the owner of any part of the land, other than that substance, or
- (b) by a person claiming through the owner,

acting in good faith and in the honest belief that the owner or person was entitled to it, no right of action lies against that owner or person for damages or for compensation by reason of the dealing with or removal of the substance prior to that date.

(3) A person who owns or has an interest in the surface of land but who does not own or have an interest in a substance named in subsection (1) has the right

- (a) to excavate and otherwise disturb the substance for the purpose of constructing, maintaining or abandoning any building, water well, road, highway or other structure incidental to the use or occupancy of the surface of the land,
- (b) to disturb the substance in the course of any operations the person is entitled to conduct at or on the surface of the land, and
- (c) to excavate or otherwise disturb the substance for the purpose of carrying on farming operations on the land,

without permission from or compensation to any person.

(4) Notwithstanding anything contained in this or any other Act, when the Crown or a municipality

- (a) owns the surface of any land, or
- (b) has the right to excavate and carry away material from the surface of any land,

the Crown or the municipality has, for the purpose of constructing, maintaining or abandoning a highway, thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestleway, culvert, ditch or drain, the right to excavate and carry away any substance named in subsection (1) that naturally occurs within, on or under that land, without permission from or compensation to any person.

RSA 1980 cL-8 s52

#### **Clay and marl**

**57(1)** In this section, “clay” or “marl” does not include any substance named in section 56(1).

(2) The owner of the surface of land is and is to be deemed at all times to have been the owner of and entitled to clay and marl on the surface of that land, and all clay and marl obtained by stripping off the overburden or excavating from the surface, or otherwise recovered by surface operations.

(3) The clay and marl referred to in subsection (2) is deemed not to be a mine, mineral or valuable stone but is deemed to be and to have been a part of the surface of land and to belong to the owner of the surface.

(4) Notwithstanding any patent, title, grant, deed, notification, conveyance, lease, licence, agreement, disposition or other document, issued or made before, on or after April 12, 1961, and that contains or reserves mines, minerals or valuable stone, the owner of the mines, minerals or valuable stone in any land is not entitled to the clay and marl referred to in subsection (2) as against the owner of the surface of the land.

(5) Notwithstanding subsections (2), (3) and (4), if a person who is the owner of or has an interest in mines, minerals or valuable stone has, prior to April 12, 1961, in good faith and for valuable consideration, granted a lease or other disposition of the clay or marl referred to in subsection (2), the lease or other disposition is not invalidated by the fact that the owner of or person having an interest in the mines, minerals or valuable stone is not entitled to the clay or marl.

(6) Subsection (5) only applies during the current term of the lease or other disposition as provided in it at April 12, 1961 and does not apply to any renewal, extension or continuation of it.

(7) No right of action for damages or for compensation lies against the parties to the lease or other disposition for dealing in the clay or marl in accordance with the terms of a lease or other disposition to which this section applies.

(8) Nothing in this section shall be construed as entitling or empowering any person who owns or has an interest in the surface of any land affected by a lease or other disposition to which subsection (5) applies

- (a) to enforce the lease or other disposition or exercise any rights under it, or
- (b) to demand or recover any rents or royalties under it or any money payable under it.

(9) If clay or marl has been removed from any land prior to April 12, 1961

- (a) by the owner of the mines, minerals or valuable stone, or
- (b) by a person claiming through the owner,

acting in good faith and in the honest belief that the owner or person was entitled to it, no right of action lies against that owner or person for damages or for compensation by reason of the removal of the clay or marl prior to April 12, 1961.

RSA 1980 cL-8 s53

**Sand and gravel**

**58(1)** The owner of the surface of land is and is to be deemed at all times to have been the owner of and entitled to sand and gravel on the surface of that land, and all sand and gravel obtained by stripping off the overburden or excavating from the surface, or otherwise recovered by surface operations.

**(2)** The sand and gravel referred to in subsection (1) is deemed not to be a mine, mineral or valuable stone but is deemed to be and to have been a part of the surface of land and to belong to the owner of the surface.

**(3)** Notwithstanding any patent, title, grant, deed, notification, conveyance, lease, licence, agreement, disposition or other document, issued or made before, on or after April 7, 1951, and that contains or reserves mines, minerals or valuable stone, the owner of the mines, minerals or valuable stone in any land is not entitled to the sand and gravel in that land referred to in subsection (1) as against the owner of the surface of the land.

**(4)** If, before April 7, 1951, sand and gravel have been dealt with or removed from any land

- (a) by the owner of the mines, minerals or valuable stone, or
- (b) by a person claiming through the owner,

acting in good faith and in the honest belief that the owner or person was entitled to it, the owner of the surface of the land has no right of action for damages or for compensation by reason of that dealing with or removal of the sand and gravel other than any right of action that the owner of the surface of the land would have had if the person who dealt with or removed the sand and gravel had been the owner of it.

RSA 1980 cL-8 s54

**Minerals underlying roads**

**59(1)** For the purpose of removing doubts and uncertainties with regard to the effect of section 15(26) of *The Statute Law Amendment Act, 1911*, it is hereby declared that the Crown did not, unless they were expressly purchased, acquire under a plan of survey or return of survey filed before February 16, 1912 any mines or minerals, whether solid, liquid or gaseous, by reason of the acquisition and vesting of land for purposes of a road, trail or road allowance diversion under the plan of survey or return of survey.

**(2)** All acts done before March 29, 1956 by a Registrar, or by a person acting under the authority of a Registrar, with regard to

correcting certificates of title so as to indicate that the mines and minerals underlying land acquired as mentioned in subsection (1) were not vested in the Crown, are hereby made and declared to be lawful and are confirmed as, on and from the time of the performance of those acts, and the Registrar and the person acting under the Registrar's authority are hereby freed, discharged and indemnified, as well against the Crown as against all persons, from all legal proceedings of any kind in respect of those acts.

(3) When the ownership of mines and minerals underlying a road, trail or road allowance diversion is shown as being acquired by the Crown under a plan of survey or return of survey filed before February 16, 1912, as mentioned in subsection (1), and the mines and minerals are not shown as having been expressly purchased by the Crown, the Registrar shall do all things necessary to correct the relevant certificates of title.

RSA 1980 cL-8 s55

#### **Confirmation of corrections**

**60(1)** Section 87(4) of *The Land Titles Act*, RSA 1942 c205, as enacted by section 7 of SA 1950 c35, shall be construed to have had application as well before as on and after March 21, 1950 and shall be deemed to have reference to all other land finally shown as reserved for public purposes on the filing of the original, amended or substituted plan of subdivision.

(2) Subject to subsection (1), all acts done before March 29, 1956 by a Registrar, or by a person acting under the authority of a Registrar, with regard to correcting or reviving certificates of title so as to indicate that the mines and minerals under streets, avenues, roadways, highways, lanes or thoroughfares or other land reserved for public purposes shown on an original, amended or substituted plan of subdivision filed before March 21, 1950, were vested in the owner of the mines or minerals at the date of the filing of the original, amended or substituted plan of subdivision, are hereby made and declared to be lawful and are confirmed as, on and from the time of the performance of those acts, and the Registrar and the person acting under the Registrar's authority are hereby freed, discharged and indemnified, as well against the Crown as against all persons, from all legal proceedings of any kind in respect of those acts.

(3) Subject to subsection (4), when the ownership of mines and minerals under streets, avenues, roadways, highways, lanes or thoroughfares or other land reserved for public purposes shown on an original, amended or substituted plan of subdivision filed before March 21, 1950 was shown to be vested in the Crown or was cancelled out of the title of the owner at that time of the mines and minerals, the Registrar shall, except when there has been an

intervening bona fide purchaser or lessee for value of the mines and minerals, do all things necessary to reinstate or vest the title of those mines and minerals in the owner of them.

(4) Nothing in this section shall be deemed to prejudice, abrogate or affect the title to any mines and minerals referred to in this section of a bona fide purchaser of it for value from the Crown or a person shown on the records of the land titles office at the time of the purchase as being the registered owner of those mines or minerals.

RSA 1980 cL-8 s56

#### **Tax recovery proceedings**

**61** When under any tax recovery proceedings a title to land including any mines and minerals has been cancelled in full and the surface only of the land has been vested in the name of the taxing authority or in a bona fide purchaser for value from the taxing authority, the Registrar is hereby authorized to reinstate the title as to the mines and minerals in the name of the owner at the time the title was cancelled in full.

RSA 1980 cL-8 s57

## **Part 8 Miscellaneous**

#### **Merger of equitable estate**

**62** There is no merger by operation of law only of any estate the beneficial interest in which would not be merged or extinguished in equity.

RSA 1980 cL-8 s59

#### **Equitable interests in land**

**63(1)** The following are equitable interests in land:

- (a) a right of first refusal to acquire an interest in land;
- (b) an assignment of rents payable pursuant to a lease of land.

(2) After registration of a caveat under the *Land Titles Act* protecting an equitable interest referred to in subsection (1), the equitable interest takes priority in accordance with section 14 of the *Land Titles Act* and runs with the land.

(3) When

- (a) an assignment of rents payable pursuant to a lease of land is made,



- (b) a tenant is served with written notice of the assignment of rents, and
- (c) pursuant to that notice, the tenant in good faith pays the tenant's rent to the assignee or a person on the assignee's behalf,

that payment discharges the tenant from any further obligation with respect to that portion of the rent for which the payment was made.

**(4)** A payment by a tenant under subsection (3)(c) does not affect any claim to priority as between competing assignees.

1985 c48 s4

### **Registration of charges on land**

**64(1)** In this section,

- (a) "agreement" means an agreement creating or providing for a charge on land;
- (b) "charge on land" means an interest, whether arising immediately or in the future, in real property given by a corporation, that secures payment or performance of an obligation;
- (c) "real property" means land, an interest in land, including a leasehold interest in land, and a right to payment arising in connection with an interest in land, including an interest in rental payments payable under a lease of land, but does not include a right to payment evidenced by a security or an instrument to which the *Personal Property Security Act* applies;
- (d) "registered" means registered by means of a financing statement in the Personal Property Registry in accordance with the *Personal Property Security Act* and the regulations made under that Act.

**(2)** Subject to subsections (8) and (12), except in the case of fraud, priority among successive charges on land affecting the same interest shall be determined as follows:

- (a) priority between registered charges on land shall be determined by the order of registration without regard to the order of creation of the charges or execution of the agreements providing for the charges;
- (b) a registered charge on land has priority over an unregistered charge on land;

- (c) priority between unregistered charges on land shall be determined by the order of execution of the agreements providing for the charges.

**(3)** Sections 18, 40, 68 and 72 of the *Personal Property Security Act* and Part 4 of that Act, other than sections 44(2), 49 and 50(1) to (5) and (8), apply with all necessary modifications to registrations under this section.

**(4)** In subsections (5) to (7),

- (a) “debtor” means a person identified as debtor in a financing statement registered in respect of a charge on land;
- (b) “secured party” means a person identified as secured party in a financing statement registered in respect of a charge on land.

**(5)** Where a financing statement is registered in respect of a charge on land, and

- (a) all of the obligations under the agreement to which it relates have been performed,
- (b) no agreement exists between the debtor and the secured party, or
- (c) the agreement to which it relates does not confer an interest in all the present and after-acquired real property of the debtor,

the debtor may give a written demand to the secured party.

**(6)** The demand referred to in subsection (5) shall require that the secured party, not later than 40 days after the demand is given, either

- (a) register a financing change statement
  - (i) discharging the registration in a case falling within subsection (5)(a) or (b), or
  - (ii) amending the registration so as to identify by date the agreement to which it relates in a case falling within subsection (5)(c),

or

- (b) provide to the Registrar an order of the Court confirming that the registration need not be amended or discharged,

accompanied with a completed financing change statement in respect of the order.

(7) If the secured party fails to comply with a demand referred to in subsection (5), the debtor may register the financing change statement referred to in subsection (6) on providing to the Registrar satisfactory proof that the demand has been given to the secured party.

(8) This section is subject in all respects to the *Land Titles Act* and the *Mines and Minerals Act*, and the priority of any interest registered or filed under either Act shall be determined pursuant to that Act.

(9) For the purposes of subsection (2) and the *Land Titles Act*, a person does not act fraudulently merely because the person acts with knowledge of a charge on land, regardless of whether it has been registered under this section or not.

(10) An agreement registered under the *Business Corporations Act* or the *Companies Act* is, until September 30, 1993, deemed to have been registered under this section as of the date it was registered under the *Business Corporations Act* or the *Companies Act*, and that deemed registration shall continue to be effective after September 30, 1993 if a registration in respect of the agreement is made in the Personal Property Registry on or before September 30, 1993.

(11) A charge on land arising under an agreement executed after September 30, 1990 and before November 1, 1992 that is registered under this section within 60 days from November 1, 1992 is deemed to have been registered under this section on November 1, 1992.

(12) Where there are successive charges on land affecting the same interest, arising under agreements executed after September 30, 1990 and before November 1, 1992,

- (a) subject to clause (b), priority between them shall be determined by the date of execution of the agreements, and
- (b) a charge registered not later than 60 days from November 1, 1992 has priority over a charge not registered during that period.

1992 c21 s22

#### **Acquisition of interest of landlord or tenant**

**65(1)** Subject to the *Land Titles Act* and this Act, a person who acquires the reversionary interest of the landlord or the leasehold

interest of the tenant has all the rights and is subject to all the obligations based on the real covenants relating to the tenancy, during the time that the person holds the interest.

(2) The *Grantees of Reversions Act, 1540*, 32 Hen. VIII c34 (U.K.), does not apply to the rights of a landlord or of a tenant.

1991 c18 s49;1994 c23 s27

#### **Interesse termini abolished**

**66(1)** The doctrine of “interesse termini” is abolished.

(2) The *Landlord and Tenant Act, 1730*, 4 Geo. II c28 (U.K.), and section 18 of the *Distress for Rent Act, 1737*, 11 Geo. II c19 (U.K.), do not apply to tenancies.

1991 c18 s49

#### **Acceptance of payments by landlord**

**67** The acceptance of payments by a landlord that the landlord is entitled to receive either as compensation for use and occupation by an overholding tenant or for arrears of rent does not, unless the parties so agree, operate as

- (a) a waiver of a prior notice to terminate the tenancy, or
- (b) the creation of a new tenancy on the same terms as the prior tenancy or with modified terms.

1991 c18 s49

#### **Compensation by overholding tenant**

**68** In determining the amount of compensation recoverable by a landlord for the use and occupation of premises by an overholding tenant after the tenancy has expired or been terminated, the court hearing the matter shall consider the nature of the use and occupation by the overholding tenant and the rent payable under the prior tenancy.

1991 c18 s49

#### **Improvements made on wrong land through error**

**69(1)** When a person at any time has made lasting improvements on land under the belief that the land was the person’s own, the person or the person’s assigns

- (a) are entitled to a lien on the land to the extent of the amount by which the value of the land is enhanced by the improvements, or
- (b) are entitled to or may be required to retain the land if the Court is of the opinion or requires that this should be done having regard to what is just under all circumstances of the case.

(2) The person entitled or required to retain the land shall pay any compensation that the Court may direct.

(3) No right to the access and use of light or any other easement, right in gross or profit a prendre shall be acquired by a person by prescription, and no such right is deemed to have ever been so acquired.

RSA 1980 cL-8 s60;1996 cL-15.1 s15

#### **Implied covenants as to repairs and entry**

**70** In every mortgage there shall be implied against the mortgagor remaining in possession a covenant that the mortgagor will repair and keep in repair all buildings or other improvements erected and made on the land, and that the mortgagee may at all convenient times until the mortgage is redeemed be at liberty, with or without surveyors or others, to enter into or on the land to view and inspect the state of repair of the buildings or improvements.

RSA 1980 cL-8 s61

#### **Equitable waste**

**71** An estate for life without any impeachment of waste does not confer and shall not be deemed to have conferred on the tenant for life a legal right to commit waste of the description known as equitable waste, unless an intention to confer the right expressly appears by the instrument creating the estate.

RSA 1980 cL-8 s62

#### **Prevention of waste and trespass**

**72** If an injunction is asked, either before or at or after the hearing of a cause or matter, to prevent a threatened or apprehended waste or trespass, the injunction may be granted if the Court thinks fit

- (a) whether the person against whom the injunction is sought
  - (i) is or is not in possession under a claim or title or otherwise, or
  - (ii) if out of possession, does or does not claim under any colour of title a right to do the act sought to be restrained,

and

- (b) whether the estates claimed by both or by either of the parties are legal or equitable.

RSA 1980 cL-8 s63

#### **Transfer of mortgage**

**73(1)** When a mortgagor becomes entitled to pay off the balance owing on the mortgage, the mortgagor may require the mortgagee

on receiving payment, instead of giving a discharge, to transfer the mortgage to a third party and the mortgagee is bound to transfer the mortgage as the mortgagor directs.

**(2)** When a person

- (a) becomes entitled or obligated to pay off the balance owing on a mortgage, and
- (b) pays to the mortgagee the balance owing on the mortgage,

the mortgagee on receiving the payment, instead of giving a discharge, is bound on the request of the person who made the payment to transfer the mortgage as the person who made the payment directs.

**(3)** Any waiver or release of the rights, benefits or protection given by this section is against public policy and void.

RSA 1980 cL-8 s64;1983 c97 s2

**Receipt for mortgage money**

**74(1)** When a mortgagor becomes entitled to pay off the mortgage money, and the registered mortgagee is absent from Alberta and there is no person authorized by registered power of attorney to give a receipt to the mortgagor for the mortgage money after the date appointed for the redemption of the mortgage, the Court may, on application and proof of the facts and of the amount due for principal and interest on the mortgage, direct the payment into a bank of the mortgage money, with all arrears of interest then due on it, to the credit of the mortgagee or other person entitled to it and, on the payment into a bank, the interest on the mortgage ceases to run or accrue.

**(2)** When a mortgagor becomes entitled to pay off the mortgage money, and a dispute arises between the mortgagee or other person entitled to receive the mortgage money as to the amount payable in satisfaction of the mortgage, the Court may, on the application of either party and on the giving of notice to any persons that the Court may direct, after hearing evidence in any manner that it may direct, by order fix the amount payable as at the date to be mentioned in the order and direct the payment of that amount into a bank, together with any interest accrued on it since the date so fixed to the date of payment, to the credit of the mortgagee or other person entitled to it and, on the payment into a bank, the interest on the mortgage ceases to run or accrue.

**(3)** The Registrar shall, on presentation of the order and of the receipt of the manager or agent of the bank for the amount of the mortgage money and interest, make on the certificate of title in the

register a memorandum discharging the mortgage, and stating the serial number of the order and the date on which the serial number was assigned.

- (4) The memorandum is a valid discharge of the mortgage.
- (5) The Registrar shall, when the order and receipt are presented to the Registrar, send a notice of the fact to the mortgagee by letter addressed by mail to the mortgagee's last known place of abode.
- (6) After payment of any mortgage money, as provided in this section, and interest, the mortgagee entitled to it shall not, in respect of the mortgage, recover any further sum than the amount so paid.

RSA 2000 cL-7 s74;2009 c53 s96

#### **Discharge of mortgage**

**75(1)** When a mortgage is fully paid the mortgagee shall furnish to the mortgagor, within 30 days after the mortgage being fully paid,

- (a) a discharge of mortgage, and
- (b) any other document, if any, required to enable the mortgage to be discharged,

that is in a form and contains the information satisfactory to the Registrar.

(2) No fee or expense shall be charged and no amount shall be accepted by a mortgagee for a discharge of mortgage and other document, if any, furnished under subsection (1).

(3) A mortgagee who

- (a) fails to comply with subsection (1), or
- (b) charges or attempts to charge any fee or expense or accepts any amount for furnishing a discharge of mortgage or other document under subsection (1),

is guilty of an offence and liable to a fine of not more than \$500.

1982 c24 s4;1983 c97 s2

#### **Vesting order**

**76(1)** When the Court has authority to order the execution of a deed, conveyance, transfer or assignment of any property, real or personal, the Court may by order vest that real or personal estate in the person, and in the manner and for the estate that would be done by the deed, conveyance, transfer or assignment if executed.

(2) An order under subsection (1) has the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed, conveyance, transfer, assignment or otherwise for the same estate or interest to the person in whom it is so ordered to be vested, or in the case of a chose in action, as if the chose in action had been actually assigned to that person.

RSA 1980 cL-8 s66

### **Relief against forfeiture**

**77(1)** The Court on any terms it thinks proper may relieve against a forfeiture for breach of a covenant or condition in a lease to insure against loss or damage by fire when

- (a) no loss or damage by fire has happened,
- (b) the breach has, in the opinion of the Court, been committed through accident or mistake or otherwise without fraud or gross negligence, and
- (c) there is an insurance on foot at the time of the application to the Court in conformity with the covenant to insure.

(2) The Court, when relief is granted, shall direct a record of it to be made by endorsement on the lease or otherwise.

(3) This section applies to leases

- (a) that are for a term of years absolute,
- (b) that are determinable on a life or lives or otherwise, or
- (c) that are for the life of the lessee or for the life or lives of another person or persons.

RSA 1980 cL-8 s67

### **Private streets**

**78(1)** In this section, “private street” means a street, road, lane or track that is not vested in the Crown in right of Alberta or a municipality.

(2) For the purpose of visiting or transacting business with a person resident in a dwelling on a private street that serves, of itself or in conjunction with any other street, as the common means of access to or egress from 10 or more separate dwellings, there is a full and free right at all times to a member of the public to travel on foot over the private street.

(3) For lawful purposes and on any lawful occasion, the same right extends to the persons resident on the private street.

RSA 1980 cL-8 s68



**Mineral leases**

**79** It is hereby declared that the term “lease” as used in the *Land Titles Act* and any Act for which the *Land Titles Act* was substituted includes, and is deemed to have included, an agreement whereby an owner of an estate or interest in a mineral within, on or under any land for which a certificate of title has been granted under the *Land Titles Act* or any Act for which the *Land Titles Act* was substituted, demises or grants or purports to demise or grant to another person a right to take or remove any of the mineral for a term certain or for a term certain coupled with a right subsequently to remove any of the mineral so long as it is being produced from the land within, on or under which that mineral is situated.

RSA 1980 cL-8 s69







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