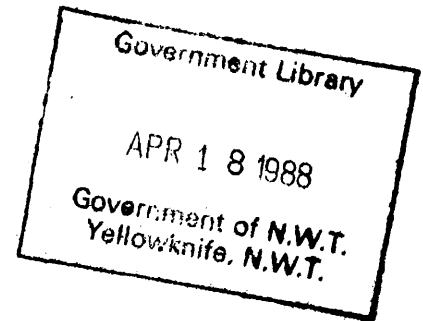


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APR 15 1988

LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

LAND TITLES ACT



Statement of Purpose

The purpose of this Bill is to provide for the registration of title to certain lands and to establish the rights of owners where title has been registered; to provide for a system of registration of estates and interests in land after the title to the land has been registered; to establish the remedies of persons who have been deprived of their land through fraud or other causes; to provide for the establishment of an assurance fund to be used in certain situations to compensate persons who have been deprived of their land; and to make consequential amendments to various Acts.

IMPORTANT

This Bill is tabled for public review. This proposed Act does not represent the final policy of the Government of the Northwest Territories and is subject to change after public review and comment. Furthermore, changes of a technical nature can be expected to prepare the Bill for introduction in the Legislative Assembly.

LAND TITLES ACT

The Commissioner of the Northwest Territories, by and with the advice and consent of the Legislative Assembly, enacts as follows:

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Interpretation

Definitions	1. In this Act,	10
"Canada Lands Surveyor"	"Canada Lands Surveyor" means a Canada Lands Surveyor as defined in the <u>Canada Lands Surveys Act</u> (Canada);	15
"Deputy Registrar"	"Deputy Registrar" means a Deputy Registrar of Land Titles appointed under section 12;	15
"descriptive plan"	"descriptive plan" means a plan prepared from (a) a plan of survey that has been filed or registered in a land titles office, (b) property descriptions on a certificate of title, or (c) any other information in which some or all of the boundaries of the lots or other parcels created by the plan are not defined by monuments, but does not include a plan of survey;	20 25
"district"	"district" means a registration district established under section 3;	30
"encumbrance"	"encumbrance" means any charge on land, created or effected for any purpose and includes mortgages, special encumbrances, mechanics' liens when authorized by statute, caveats, and writs of execution or other writs against lands, unless expressly excepted;	35
"encumbrancee"	"encumbrancee" means the lien claimant in a mechanics' lien, the caveator in a caveat, the execution creditor in a writ of execution or other writ against land and, in respect of any other encumbrance, the owner of the encumbrance;	40



"filing"	"filing" means the entering in the day-book of any instrument or caveat;	
"grant"	"grant" means any grant of land vested in Her Majesty in right of Canada, whether by letters patent under the Great Seal, a notification or any other instrument whether in fee or for years, and whether direct from Her Majesty or under any statute;	5
"Inspector"	"Inspector" means the Inspector of Land Titles appointed under section 6;	10
"instrument"	"instrument" means any grant, certificate of title, conveyance, assurance, deed, map, plan, will, probate or exemplification of probate of a will, letters of administration or an exemplification of letters of administration, mortgage, special encumbrance, withdrawal of caveat or any other document in writing relating to or affecting the transfer of or other dealing with land or evidencing title to land, but does not include a caveat;	15 20
"land"	"land" means lands, messuages, tenements and hereditaments, corporeal and incorporeal, of every nature and description, and every estate or interest in such lands, messuages, tenements and hereditaments, whether such estate or interest is legal or equitable, together with all paths, passages, ways, watercourses, liberties, privileges, easements, mines, minerals and quarries appertaining to the land, and all trees and timber on or lying on land, unless any such are specially excepted;	25 30
"memorandum"	"memorandum" means the endorsement upon the certificate of title and on the duplicate certificate of title of the particulars of any instrument or caveat presented for registration;	35
"metes and bounds"	"metes and bounds" means, in reference to a description of land, any description that is not for a whole lot or parcel created by a plan that has been filed or registered in a land titles office;	40
"mortgage"	"mortgage" means any charge on land created merely for securing a debt or a loan;	45
"mortgagee"	"mortgagee" means the owner of a mortgage;	
"mortgagor"	"mortgagor" means the owner or transferee of land or of any estate or interest in land pledged as security for a debt or a loan;	50

"notification"	"notification" means a notification as defined in the <u>Territorial Lands Act</u> (Canada);	
"owner"	"owner" means any person entitled to any freehold or other estate or interest in land, at law or in equity, in possession, in futurity or expectancy;	5
"person under a legal disability"	"person under a legal disability" means (a) a minor, (b) a person who is named on a certificate of mental incompetence issued under the <u>Mental Health Act</u> or who is declared to be mentally incompetent by the Court, and (c) a person (i) referred to in section 12.1 of the <u>Public Trustee Act</u> who is incapable of managing his or her affairs, or (ii) referred to in paragraph 29(1)(a) of the <u>Public Trustee Act</u> who is unable to attend to or transact his or her affairs and business for whose estate the Public Trustee is the committee or administrator;	10 15 20
"plan of survey"	"plan of survey" means a plan in which the boundaries of the lots or other parcels created by the plan are defined by (a) monuments, or (b) monuments and natural features;	25 30
"possession"	"possession", when applied to persons claiming title to land, includes the receipt of the rents and profits from the land;	30
"prescribed"	"prescribed" means prescribed by regulation;	35
"Registrar"	"Registrar" means (a) a Registrar of Land Titles appointed under section 8, or (b) a Deputy Registrar or the Inspector when acting as Registrar;	40
"registration"	"registration" means (a) the bringing of lands under the provisions of this Act, and (b) the entering upon a certificate of title of a memorandum authorized by this Act, of any instrument or caveat;	45
"Sheriff"	"Sheriff" means the Sheriff appointed under the <u>Judicature Act</u> ;	50

"special encumbrance"	"special encumbrance" means the instrument referred to in subsection 113(2);	
"Surveyor General"	"Surveyor General" means the Surveyor General as defined in the <u>Canada Lands Surveys Act</u> (Canada);	5
"transfer"	"transfer" means the passing of any estate or interest in land under this Act, whether for valuable consideration or otherwise;	10
"transferee"	"transferee" means the person to whom any interest or estate in land is transferred, whether for valuable consideration or otherwise;	
"transferor"	"transferor" means the person by whom any interest or estate in land is transferred, whether for valuable consideration or otherwise;	15
"transmission"	"transmission" means a change of ownership consequent upon death, sale under a writ of execution or other writ against land, any settlement or any legal succession in case of intestacy, or any other act of law.	20

Government of the Northwest Territories

Government bound by Act	2. The Government of the Northwest Territories and its agents are bound by this Act and the regulations.	25 30
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PART I

ADMINISTRATION 35

Registration Districts

Registration districts	3. The Minister may, by order, (a) constitute any portion or all of the Territories as a registration district; (b) establish the name of a district; (c) identify the community in which the land titles office of a district is to be located; (d) change the boundaries of a district; and (e) when creating new districts, provide for any matter necessary to ensure that the land titles offices in the new districts operate properly.	40 45 50
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Land titles office	4.(1) There must be a land titles office for each district.	
Location	(2) The land titles office for a district must be located in a community within that district.	5
Office days and hours	5. Every land titles office must be kept open to the public on the prescribed days, during the prescribed hours.	10
Officers		
Inspector of Land Titles	6.(1) The Minister shall appoint an Inspector of Land Titles.	15
Qualifications	(2) No person shall be appointed as the Inspector unless the person is (a) a barrister, solicitor or advocate of a province or territory; or (b) a notary of Quebec, with at least three years standing.	20
Duties	7.(1) The Inspector shall, under instructions from the Minister, (a) inspect the books and records of the land titles offices; and (b) perform such other duties as may be determined by the Minister.	25
Guidelines	(2) The Inspector may establish guidelines for Registrars respecting (a) registration requirements and procedures; and (b) any matter relating to the operation of a land titles office.	30
Inspector as a Registrar	(3) The Inspector may perform any duty or exercise any power of a Registrar.	40
Registrar of Land Titles	8.(1) The Minister shall appoint a Registrar of Land Titles for each district.	45
Qualifications	(2) No person shall be appointed as a Registrar unless the person is (a) a barrister, solicitor or advocate of a province or territory; or (b) a notary of Quebec.	45
Duties	9. The business of the land titles office in a registration district shall be conducted by the Registrar for that district.	50

Seal of office	10. Each Registrar shall obtain a seal of office that has been approved by the Minister.	
Suspension of Registrar's powers and duties	11.(1) The Inspector may, in writing, direct a Registrar not to exercise the powers and perform the duties of a Registrar, and the Registrar shall comply with the direction.	5
Cancellation of suspension	(2) The Inspector may, in writing, at any time cancel the direction and restore the Registrar to his or her former powers and duties.	10
Deputy Registrars of Land Titles	12. The Minister may appoint one or more Deputy Registrars of Land Titles for each district.	15
Duties	13.(1) A Deputy Registrar for a registration district shall assist the Registrar for that district under instructions from the Registrar.	20
Delegation by Registrar	(2) A Registrar may delegate to a Deputy Registrar for that Registrar's district any of the duties or powers of the Registrar.	
Deputy Registrar as Registrar	(3) A Deputy Registrar for a district may, in the event of the illness of the Registrar for that district or the absence of the Registrar, perform all the duties and exercise all the powers of the Registrar.	25
Idem	(4) Where (a) a Registrar dies or resigns; (b) the appointment of a Registrar is revoked; or (c) the Inspector has directed a Registrar not to perform the duties or exercise the powers of a Registrar, a Deputy Registrar for the registration district of that Registrar may perform all the duties and exercise all the powers of the Registrar, under the direction of the Inspector, until another Registrar is appointed or the Inspector has cancelled the direction, as the case may be.	30 35 40
Oath of office	14. The Inspector and every Registrar and Deputy Registrar shall take the prescribed oath of office before a judge prior to exercising their powers or performing their duties.	45

Officers and clerks not to be agents 15. Neither the Inspector, nor any Registrar, Deputy Registrar or clerk in any land titles office shall

- (a) directly or indirectly, act as the agent of any person investing money and taking securities on land within any district; 5
- (b) advise for fee, reward or otherwise upon titles to land;
- (c) practise as a conveyancer; or
- (d) carry on or transact within a land titles office, any business or occupation, other than the duties of an Inspector, Registrar, Deputy Registrar or clerk. 10

Protection of officers 16. Neither the Inspector, nor any Registrar, Deputy Registrar, or person acting under the authority of a Registrar, is liable to any action or proceeding for or in respect of any act bona fide done or omitted to be done in the performance or supposed performance of his or her duties, or in the exercise or supposed exercise of his or her powers. 15 20

Administration of oaths 17. The Inspector, or any Registrar or Deputy Registrar, may administer any oath or take any affirmation or declaration that is to be filed or registered or that is attached to an instrument or caveat that is to be filed or registered under this Act. 25

Attendance of officers 18. During the time that a land titles office is required to be open to the public, either the Registrar or a Deputy Registrar for that office shall be in attendance. 30 35

PART II

PROCEDURES

Processing Instruments and Caveats 40

Stamping of instruments and caveats 19. Every Registrar shall stamp every instrument and caveat that is submitted for filing or registration with the day, hour and minute of its receipt. 45

Rejection of instruments and caveats	20. A Registrar may refuse to accept any instrument or caveat that has been submitted for filing or registration if, in the opinion of the Registrar, the instrument or caveat	
	(a) does not substantially conform to the prescribed form for the instrument or caveat; or	5
	(b) is, for any other reason, unfit for filing or registration.	
Day-book	21.(1) Every Registrar shall keep a book called the day-book.	10
Contents	(2) The day-book must contain	
	(a) a short description of every instrument and caveat submitted for filing or registration that has been accepted by the Registrar; and	15
	(b) the day, hour and minute that the instrument or caveat was received.	20
General register	22.(1) Every Registrar shall keep a book called the general register.	
Contents	(2) The general register must contain a short description of	25
	(a) powers of attorney;	
	(b) letters of administration and letters probate;	
	(c) documents evidencing a change of name;	30
	(d) instruments required by other enactments to be recorded in the general register; and	
	(e) such other documents or instruments that the Registrar considers appropriate to be recorded in the general register	35
	that have been filed in the land titles office of that Registrar.	
Writ book	23.(1) Each Registrar shall keep a book called the writ book.	40
Contents	(2) The writ book must contain a short description of every writ of execution or other writ against land that has been filed in the land titles office of that Registrar.	45
General Requirements		
Requirement for certificate of title	24.(1) No Registrar shall accept	50
	(a) an instrument; or	

(b) a caveat,
unless a certificate of title has been issued for
the land described in the instrument or caveat.

Exception	(2) Subsection (1) does not apply to an instrument that is a grant, writ of execution or other writ that may affect land, mechanics' lien or plan.	5
Post office address	25.(1) No Registrar shall accept a grant, transfer, lease or encumbrance, other than a caveat, unless the instrument contains a post office address within Canada for the person named in the grant, the transferee, lessee or encumbrancee.	10
Idem	(2) No Registrar shall accept a caveat unless the caveat contains a post office address within the Territories for the caveator.	15
Change of address	26.(1) Where a person in whose name a certificate of title is issued, a lessee or an encumbrancee, other than a caveator, changes his or her post office address as shown on a Registrar's records to a new post office address in Canada, that person, lessee or encumbrancee shall notify that Registrar of the new post office address.	20 25
Idem	(2) Where a caveator changes his or her post office address as shown on a Registrar's records to a new post office address in the Territories, the caveator shall notify that Registrar of the new post office address.	30
Notice	27.(1) A notice required to be sent under this Act or the regulations to a person who has been issued a certificate of title or to a lessee or an encumbrancee may be sent by registered mail to the most current post office address for that person, lessee or encumbrancee shown on the records of the Registrar in whose office the certificate of title, lease or encumbrance is filed or registered.	35 40
Sufficiency of notice	(2) A notice by a Registrar under this Act or the regulations to a person who has been issued a certificate of title or to a lessee or encumbrancee sent in accordance with subsection (1) is a good and sufficient notice for the purposes of this Act.	45
Age of majority	28. A Registrar may require evidence that any person making a transfer, mortgage, special encumbrance or lease is 19 years of age.	50

Witness	29.(1) Subject to subsection (3), the execution of every instrument submitted for filing or registration under this Act must be witnessed.	
Requirements of witness	(2) A witness to the execution of an instrument shall sign his or her name to the instrument as a witness and make an affidavit in the prescribed form.	5
Exception	(3) Subsection (1) does not apply to (a) instruments under the seal of a corporation; (b) mechanics' liens and discharges of mechanics' liens; (c) grants; and (d) orders of a judge, executions and certificates of any judicial proceedings.	10 15
Affidavits	30. Every affidavit submitted to a Registrar to be filed or registered or that is submitted in support of an instrument or caveat that is to be filed or registered is subject to the provisions respecting affidavits in <u>The Supreme Court Rules</u> .	20
Production of duplicate certificate	31.(1) Unless required to do so by order of a judge, and subject to subsection (2), no Registrar shall accept any instrument for filing or registration until the duplicate certificate of title that has been issued for the land affected by the instrument is produced to the Registrar.	25 30
Exceptions	(2) A duplicate certificate of title for the lands affected need not be produced where (a) the Registrar has retained the duplicate under section 114; or (b) the instrument is (i) a writ of execution or other writ against land or a mechanics' lien or a discharge of such instruments, (ii) a withdrawal of caveat, (iii) a transfer by the Sheriff or by order of a judge, (iv) a plan that is not required to be registered, or (v) a certificate or order of a judge.	35 40 45

Records

Retaining instruments	32. Every Registrar shall retain in the land titles office of that Registrar, every instrument and caveat that is filed, registered or issued in that office, every duplicate certificate that the Registrar is required to retain under section 114 and every duplicate certificate of title cancelled by that Registrar.	5
Inspection of instruments	33.(1) Subject to subsection (2), a Registrar who has been requested to produce for inspection an instrument or caveat that has been filed or registered in the land titles office of that Registrar, shall produce the original or the microphotographic film of the instrument or caveat for inspection.	10 15
Original instrument	(2) Where a person specifically requests the production of the original of an instrument or caveat, the Registrar shall, if the original has not been lost or destroyed, provide the original for inspection.	20
Copies	34. A Registrar who has been requested to provide copies of an instrument or caveat that has been filed or registered in the land titles office of that Registrar shall provide photocopies of the original or enlarged prints from the microphotographic film of the instrument or caveat.	25 30
Certified copies	35.(1) A Registrar who has been requested to provide certified copies of an instrument or caveat that has been filed or registered in the land titles office of that Registrar shall provide, under seal, photocopies of the original or enlarged prints from the microphotographic film of the instrument or caveat, certified by the Registrar to be a true copy of the original.	35

Evidence	(2) A certified copy referred to in subsection (1) shall be received as evidence in the same manner and with the same effect as if the original instrument or caveat was produced.	5
Certificate respecting writ book and general register	36. Upon request, a Registrar shall provide, under seal, a certificate in the prescribed form setting out, in respect of a person, (a) all writs that have not been discharged or expired that are recorded against that person as execution debtor in the writ book maintained by that Registrar; and (b) all documents or instruments that have not been discharged or expired that are recorded against that person in the general register maintained by that Registrar.	10 15
Microphotography	37. Every Registrar shall microphotograph (a) every certificate of title for land in the land titles office of that Registrar immediately after it is issued and immediately after a memorandum is entered upon the certificate of title; and (b) every caveat and instrument, other than a plan, that is filed or registered in the land titles office of that Registrar.	20 25
Replacement of instruments	38.(1) Where a Registrar is satisfied that an instrument or caveat that is required to be retained in the land titles office of that Registrar has been destroyed or lost, the Registrar may certify that an enlarged print of the instrument or caveat made from the microphotographic film of the original instrument or caveat is a true copy of the instrument or caveat.	30 35
Effect of replacement	(2) A print of an instrument or caveat, certified to be a true copy under subsection (1), is of the same force and effect as the original instrument or caveat.	40

Certificates of Title

Form of certificate of title	39. Certificates of title must be in the prescribed form.	45
Receipt of grants	40. A Registrar who receives a grant of land that is within the district of that Registrar shall issue a certificate of title, with any necessary qualification contained in the grant, to the person named in the grant.	50

Entries in case of transfer	41.(1) Where a Registrar registers a transfer for the fee simple estate in land, the Registrar shall cancel the certificate of title of the transferor and the duplicate certificate, if any, either wholly or partially pursuant to the transfer, and issue a new certificate of title in the name of the transferee.	5
Numbers of certificate of title	(2) A Registrar issuing a certificate of title referred to in subsection (1) shall note upon the certificate of title of the transferor, the number of the new certificate of title issued in the name of the transferee and, upon the certificate of title of the transferee, the number of the certificate of title of the transferor.	10 15
Estate for life or for years	42. Where a Registrar registers an instrument, other than a grant, creating (a) a leasehold estate for a life or lives or for a term of more than three years; or (b) an estate for life, the Registrar shall issue a certificate of title to the owner, unless the owner requests, in writing, that no certificate of title be issued.	20 25
Easement	43. Where a Registrar registers a transfer creating an utility easement as defined in subsection 76(4), the Registrar shall, upon the written request of the owner of the utility easement, issue a certificate of title to that person.	30
Encumbrances	44. Whenever a Registrar issues a certificate of title, the Registrar shall make a memorandum on the certificate of each encumbrance or other instrument affecting the land described in the certificate.	35
Duplicate certificates	45. Every Registrar who issues a certificate of title to an owner shall issue a duplicate certificate to the owner, unless the owner requests, in writing, that no duplicate be issued.	40
Signature of owner	46.(1) Every owner who is entitled to receive a certificate of title shall, if required by a Registrar, provide a sample of his or her signature.	45
Impersonation	(2) The Registrar may use the signature to detect any impersonation of the owner.	

Consolidation of certificates of title	47.(1) Upon the application of an owner of several parcels of land held under separate certificates of title, or where the consolidation of certificates of title appears to a Registrar to be desirable, the Registrar may cancel the existing certificates of title and the duplicates and issue to the owner one or more certificates of title for all the parcels of land.	5
Separation of certificates of title	(2) Upon the application of an owner of several parcels of land held under one certificate of title, or where the separation of certificates of title appears to a Registrar to be desirable, the Registrar may cancel the existing certificate of title and the duplicate and issue to the owner two or more certificates of title for all the parcels of land.	10 15
Notation on new certificates	(3) The Registrar shall enter upon each certificate of title issued under subsection (1) or (2) (a) a notation explaining that the certificate is issued for the purposes of a consolidation or separation of certificates of title; and (b) a reference to the certificate of title that has been cancelled.	20 25
Replacing partially cancelled certificate	48.(1) Upon the application of an owner whose certificate of title has been partially cancelled or where such a course appears to a Registrar to be desirable, the Registrar may cancel the existing certificate of title and duplicate and issue to the owner a new certificate of title for the land remaining on the cancelled certificate.	30 35
Notation on new certificate	(2) The Registrar shall enter upon the certificate of title issued under subsection (1) (a) a notation explaining that the certificate is issued to replace a partially cancelled certificate of title; and (b) a reference to the certificate of title that has been cancelled.	40 40
Duty to obtain duplicate	49. A Registrar shall not cancel a certificate of title under section 47 or 48 unless the Registrar obtains and cancels the duplicates, if any, of those certificates.	45

Duplicate certificate lost or destroyed	50.(1) Upon production to a Registrar of an affidavit that describes the accidental loss or destruction of a duplicate certificate for land within the district of that Registrar that has been made by	5
	(a) a person to whom the duplicate certificate was issued; or	
	(b) someone having knowledge of the facts, the Registrar may, after having entered a memorandum of the loss or destruction on the certificate of title to which the duplicate relates, issue a duplicate certificate to replace the one lost or destroyed.	10
Notice	(2) Where a Registrar receives an affidavit referred to in subsection (1), the Registrar may	15
	(a) cause to be published, once a week for four weeks, a notice of the Registrar's intention to issue a replacement duplicate certificate in a newspaper distributed nearest to the land described in the duplicate; and	20
	(b) post such notice in a conspicuous place in the land titles office of that Registrar at least four weeks before the Registrar intends to issue a replacement duplicate certificate.	25
Refusal to issue replacement duplicate	(3) The Registrar may refuse to issue a replacement duplicate certificate if the Registrar receives any information that indicates that the duplicate is not lost or destroyed.	30
Notation on duplicate	(4) The Registrar shall indicate on a duplicate certificate issued under this section that it is a replacement duplicate.	35

PART III

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REGISTRATION

Instruments and Caveats

Grants	51. Every grant is registered when the certificate of title issued on the basis of that grant is signed by the Registrar in whose district the land is located and the seal of office of the Registrar is affixed to the certificate.	45
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Other instru- ments and caveats	52. Every instrument, other than a grant, and every caveat is registered when a memorandum of it has been entered on the certificate of title to which the instrument or caveat applies.	5
Day and time of registration	53. The day and time of registration of an instrument or caveat is the day and time that the instrument or caveat was received by the Registrar who accepted the instrument or caveat as set out in the day-book.	10
Memorandum	54. A Registrar, when making a memorandum on a certificate of title, shall	
	(a) set out	
	(i) the nature of the instrument to which such memorandum relates or, in the case of a caveat, that the memorandum is of a caveat,	15
	(ii) the day of registration of the instrument or caveat,	20
	(iii) the number or symbol assigned to the instrument or caveat, and	
	(iv) such other information that the Registrar considers to be appropriate; and	25
	(b) sign the memorandum.	
Memorandum on duplicate	55. Where a Registrar enters a memorandum or notation on a certificate of title, the Registrar shall make the same memorandum or notation upon the duplicate certificate, if the duplicate	30
	(a) is in the possession of the Registrar; or	
	(b) is presented to the Registrar for the purpose of having the memorandum or notation entered onto the duplicate.	35
Evidence	56. A memorandum referred to in section 54 or 55 is conclusive evidence of the contents of the memorandum and that the instrument or caveat of which it is a memorandum has been duly registered under this Act.	40
	Application by Minister or Commissioner	45
Definitions	57. In sections 58 and 59,	
"Minister"	"Minister" means a federal Minister of Her Majesty in right of Canada;	

"territorial lands"	"territorial lands" means territorial lands as defined in section 2 of the <u>Territorial Lands Act</u> (Canada) that are located within the Northwest Territories for which there is no subsisting certificate of title.	5
Certificates of title to Her Majesty	58.(1) Where a Minister has the administration, management or control of territorial lands, the Minister may apply to have a certificate of title for such lands issued under this Act in the name of Her Majesty in right of Canada.	10
Certificates of title to Commissioner	(2) Where the right to the beneficial use or the proceeds of territorial lands is appropriated to the Commissioner, the Commissioner may apply to have a certificate of title for such lands issued under this Act in the name of the Commissioner.	15
Lands to be surveyed	(3) No certificate of title shall be issued for territorial lands under this section unless those lands have been the subject of or included within a survey made in accordance with Part II of the <u>Canada Lands Surveys Act</u> (Canada) and a copy of an official plan of the survey has been filed in the land titles office for the district in which the lands shown on the plan are located.	20 25
Application to withdraw lands from Act	59.(1) Where a Minister or the Commissioner is named as the owner on a certificate of title, the Minister or the Commissioner, as the case may be, may apply to the Registrar in whose office the certificate has been issued to have the land described on the certificate of title withdrawn from this Act.	30 35
Cancellation of certificate of title	(2) A Registrar who receives an application under subsection (1), may cancel the certificate of title where there are no encumbrances or other interests registered against the certificate of title.	40
Effect of cancellation	(3) The land described on a certificate of title that has been cancelled under subsection (2) is not subject to this Act except where (a) a new grant for the land or an application under section 58 is registered; or (b) an action for ejectment or damages referred to in subsection (4) in respect of the land is commenced.	45

Idem (4) An action for ejectment or damages under this Act with respect to the land described in a certificate of title that has been cancelled under subsection (2) is not affected by the cancellation of the certificate of title, the registration of a new grant or the registration of an application under section 58 for the land. 5

Application by Owner 10

Land granted before 1887 60. The owner of any estate in any land, whether legal or equitable, letters patent for which issued from Her Majesty in right of Canada before January 1, 1887, or which otherwise had prior to that date passed from Her Majesty, is entitled to have the estate registered under this Act. 15

Application 61. Where an owner referred to in section 60 applies to the Registrar in whose district the land is located in accordance with the prescribed procedures and the owner meets the prescribed standards for establishing the ownership and validity of the estate, the Registrar shall issue a certificate of title to the owner for the estate. 20 25

Effect of Registration

Implied covenant 62. In every instrument transferring, encumbering or charging any land for which a certificate of title has been issued, there is implied the following covenant by the transferor or encumbrancer, namely, that the transferor or encumbrancer will do such acts and execute such instruments as, in accordance with this Act, are necessary to give effect to all covenants, conditions and purposes expressly contained in such instrument, or by this Act declared to be implied against such person in instruments of a like nature. 30 35 40

Idem	63. In every instrument transferring land, for which a certificate of title has been issued, subject to a mortgage or special encumbrance, there is implied the covenant by the transferee, that the transferee will pay the principal money, interest, annuity or rent charge secured by the mortgage or special encumbrance, at the rate and at the time specified in the instrument creating the same, and will indemnify and keep harmless the transferor from and against the principal sum or other moneys secured by the instrument creating such mortgage or special encumbrance, and from and against the liability in respect of any covenant contained in such mortgage or special encumbrance or under this Act implied, on the part of the transferor.	5 10 15
Unregistered instruments ineffectual	64. After a certificate of title has been issued for any land, no instrument, until registered under this Act, is, as against any bona fide transferee of the land under this Act, effectual to pass any estate or interest in such land except a leasehold interest not exceeding three years, or to render such land liable as security for the payment of money.	20 25
Effect of registration	65. Upon the registration of any instrument under this Act, the estate or interest specified in the instrument passes, or the land becomes liable as security, in the manner and subject to the covenants, conditions and contingencies contained and specified in such instrument, or by this Act declared to be implied in instruments of a like nature.	30
Effect of certificate	66.(1) The owner of land for which a certificate of title has been issued, except in case of a fraud in which the owner has participated or colluded, holds such land subject, in addition to the incidents implied by virtue of this Act, to such encumbrances, liens, estates or interests as are notified on the certificate of title for such land, but absolutely free from all other encumbrances, liens, estates or interests whatever, except the estate or interest of an owner claiming the same land under a prior certificate of title issued under this Act.	35 40 45
Computation of priority	(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 or anyone through whom that person derives title, has held such possession.	50

Holder of prior certificate	67. A person is deemed to claim under a prior certificate of title who is a holder of, or whose claim is derived directly or indirectly from a person who was the holder of an earlier certificate of title, notwithstanding that such certificate of title has been surrendered and a new certificate of title has been issued upon any transfer or other instrument.	5
Jurisdiction of courts in cases of fraud	68. Nothing in this Act takes away or affects the jurisdiction of any competent court (a) on the ground of actual fraud; or (b) over contracts for the sale or other disposition of land for which a certificate of title has been issued.	10 15
Implied reservations	69. The title of the land mentioned in any certificate of title is, by implication, and without any special mention in the certificate, unless the contrary is expressly declared, subject to (a) any subsisting reservations or exceptions contained in the original grant of the land; (b) all unpaid taxes; (c) any public highway or right-of-way or other public easement, however created, upon, over or in respect of the land; (d) any subsisting lease or agreement for a lease for a period not exceeding three years, where there is actual occupation of the land under the lease or agreement; (e) any decrees, orders or writs against or affecting the interest of the owner in the land, that have been filed and maintained in force against the owner; and (f) any right of expropriation that is authorized by statute.	20 25 30 35
Instruments operative on registration	70. Every instrument becomes operative according to the tenor and intent of the instrument, when it is registered, and upon registration it creates, transfers, surrenders, charges or discharges, as the case may be, the land or estate or interest mentioned in such instrument.	40 45
Priority in order of registration	71. Instruments registered in respect of or affecting the same land are entitled to priority the one over the other according to the time of registration and not according to the date of execution.	50

Trusts

Memorandum of trust	72.(1) No memorandum or entry shall be made upon a certificate of title of any notice of a trust, whether expressed, implied or constructive, except to identify the person named on the certificate as	
	(a) an executor or administrator of an estate of a deceased person;	5
	(b) a person who is recognized in law as having the power to hold and dispose of the estate of a person under a legal disability;	10
	(c) a trustee of the estate of a bankrupt; or	
	(d) the trustee of a religious society or congregation holding land under the <u>Religious Societies Land Act.</u>	15
Trusts to be ignored	(2) A Registrar shall treat any instrument containing notice of a trust as if there were no trust except for the purpose of identifying the person named on the certificate as an executor, an administrator, a person representing the estate of a person under a legal disability or a trustee under subsection (1).	20
Trustees deemed beneficial owners	(3) Trustees named in an instrument shall be deemed to be the absolute and beneficial owners of the land for the purposes of this Act.	25
Transfer to trustees	73.(1) Upon the transfer of land for which a certificate of title has been issued to two or more persons as joint owners to be held by them as trustees, the transferor may insert in the transfer the words "No Survivorship" and the Registrar who accepts the transfer shall include such words in the certificate of title issued to such owners pursuant to the transfer.	30 35
Trustees may require words	(2) Any two or more persons registered as joint owners of any land held by them as trustees may, in writing, authorize the Registrar in whose district the land is located to enter the words "No Survivorship" upon their certificate of title.	40
Effect of words	(3) After the words "No Survivorship" have been entered on a certificate of title under subsection (1) or (2) and such notation has been signed by the Registrar, it is not lawful for any less number of joint owners than the number on the certificate of title to transfer or otherwise deal with the land, without obtaining an order of a judge.	45

Commencement of proceedings	(4) The proceedings to obtain the sanction of a judge may be commenced by originating notice.	
Judge's power	74.(1) Before making an order referred to in subsection 73(3), the judge may cause notice of intention of making such order to be advertised and may set out a period of time within which any person interested may show cause why the order should not be made.	5
Idem	(2) The judge 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 such order as the judge thinks just, for the protection of the persons beneficially interested in the land or in the proceeds of the land.	10 15
Effect of memorandum	(3) Upon a memorandum of the order being made on the certificate of title, the persons named in the order are the owners of the land.	20

Notice

Inquiry	75.(1) No person contracting or dealing with or taking or proposing to take a transfer, mortgage, special encumbrance or lease from the owner of any land for which a certificate of title has been issued, is, except in case of fraud by such person, bound or concerned to inquire into or ascertain the circumstances in or the consideration for which the owner or any previous owner of the land is or was registered, or to see to the application of the purchase money or of any part of the purchase money, nor is the person affected by notice direct, implied or constructive of any trust or unregistered interest in the land, any rule of law or equity to the contrary notwithstanding.	25 30 35
Knowledge of trust	(2) The knowledge that any trust or unregistered interest is in existence shall not of itself be imputed as fraud.	40

PART IV

INSTRUMENTS AND CAVEATS

Transfers

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Form	76.(1) Subject to subsection (2), where land, for which a certificate of title has been issued, is intended to be transferred, or any right-of-way or other easement affecting such land is intended to be created or transferred, the owner shall execute a transfer in the prescribed form.	10
Grant	(2) Where the owner referred to in subsection (1) is Her Majesty in right of Canada or the Commissioner, Her Majesty or the Commissioner may submit a grant that has been properly executed.	15
Requirements	(3) A transfer referred to in subsection (1) must (a) refer to the certificate of title of the land intended to be dealt with or give such description as is necessary to identify that land; (b) contain an accurate statement of the estate, interest or easement intended to be created or transferred; and (c) describe each lease, mortgage, special encumbrance or other encumbrance to which the land is subject.	20 25
Utility easement	(4) For the purposes of this section, "easement" includes a utility easement, that is to say a right, expressed or intended to be capable of assignment whether or not expressed to be appurtenant to or for the benefit of other land, that is derived other than as a natural right of ownership of the freehold in land, (a) to construct, maintain and operate on the land any railway, street railway, tramway or aerial tramway for the transportation of passengers or goods or both; (b) to construct, maintain and operate through, on, over or under the land, pipes, transmission lines or wires (i) for the transmission or transportation of electrical power, water, oil or gas, or (ii) for telephone, telegraph or other electronic communication systems;	30 35 40 45

	(c) to construct, maintain and operate through the land ditches and drains for the conveyance of water, sewage or waste products;	
	(d) to flood the land or control waters on the land, including the formation and break-up of ice, the construction, maintenance and operation of a dam, reservoir, power-house or other work for	5
	(i) the generation, manufacture, distribution or supply of electrical power,	10
	(ii) the irrigation or other agricultural use of land, or	
	(iii) the supplying of water; or	15
	(e) to do such other things in respect of land as may be prescribed.	
Words of limitation unnecessary	77.(1) No words of limitation are necessary in any transfer of land in order to transfer all or any title in the land, but every instrument transferring land operates as an absolute transfer of all such 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.	20
Estoppel	(2) Nothing in subsection (1) precludes any transfer from operating by way of estoppel.	25
Effect of words of limitation	(3) The introduction of any words of limitation into any transfer or devise of any land, has the like force and meaning, as the same words of limitation would have if used by way of limitation of any personal estate.	30
Memorandum on dominant as well as servient land	78. Where any easement or any incorporeal right in or over any land for which a certificate of title has been issued 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 issued, the Registrar in whose office the certificates were issued shall make a memorandum of the instrument creating such easement or incorporeal right upon the existing certificate of title of such other land.	35 40 45
Surrender of easement	79.(1) The owner of a utility easement as defined in subsection 76(4) or the person who has the benefit of any other type of easement may submit to the Registrar in whose office the easement is registered a surrender of easement in the prescribed form.	50

Consent of encumbrancees	(2) The Registrar shall not accept a surrender of an easement unless a consent to the surrender signed by the owner of each encumbrance against the easement is submitted with the surrender.	5
Effect of registration	(3) Upon the registration of a surrender of easement, the easement is extinguished and the Registrar may cancel any certificate of title and duplicate certificate for the easement.	10
Plans		
Requirement for plan	80.(1) A Registrar may require the owner of an estate or interest in land, that is less than a lot or other parcel created by a plan of survey that has been filed or registered, who has submitted a transfer or other dealing for all of that land to provide the Registrar with a plan of survey or a descriptive plan, as specified by the Registrar, for the land described in the instrument.	15 20
Refusal to register dealing	(2) The Registrar may refuse to register the transfer or other dealing by the owner until the plan specified under subsection (1) is submitted to the Registrar.	25
Notice respecting plan	81.(1) A Registrar may notify an owner of an estate or interest in land, that is less than a lot or other parcel created by a plan of survey that has been filed or registered, that unless the owner submits a plan of survey or a descriptive plan, as specified by the Registrar, for all of that land, the Registrar will not accept a transfer or other dealing by the owner for all of that land.	30 35
Memorandum of notice	(2) Where a Registrar gives notice to an owner under subsection (1), the Registrar shall make a memorandum of the notice on the certificate of title for the land described in the notice.	40
Effect of notice	82. A Registrar, who has given notice to an owner under section 81, shall not register any transfer or other dealing by the owner for the land described in the notice unless (a) the owner submits the plan as specified by the Registrar in the notice; or (b) the Registrar withdraws the notice under section 83.	45

Withdrawal of plan requirement	83.(1) The Registrar may, at any time, withdraw the requirement to submit a plan referred to in section 81.	
Duties of Registrar	(2) The Registrar who withdraws the requirement to submit a plan shall	5
	(a) notify the owner who was subject to the requirement of the withdrawal; and	
	(b) make a memorandum of the withdrawal on the certificate of title for the land of the owner affected by the withdrawal.	10
Requirements of plan	84. A plan of survey or a descriptive plan required by the Registrar to be submitted under section 80 or 81 must	15
	(a) be certified correct in the prescribed form and made by a Canada Lands Surveyor; and	
	(b) meet the prescribed requirements.	20
Duty after registration of plan	85. Where a Registrar registers a plan submitted in compliance with a requirement of the Registrar under section 80 or 81, the Registrar may	
	(a) cancel any existing certificate of title for the land shown on the plan;	25
	(b) issue a new certificate of title for the land having a description that refers to the lot or other parcel created by the plan; and	
	(c) amend any memorandum that refers to the land by deleting the old description and substituting a description that refers to a lot or other parcel created by the plan.	30
Subdivision by transfer	86.(1) Subject to subsection (2), a Registrar shall not accept a transfer of	35
	(a) a fee simple estate; or	
	(b) an estate or interest in mines and minerals for which a certificate of title has been issued, where the land description in the transfer describes a parcel of land that is	40
	(c) less than a lot or other parcel created by a plan of survey that has been filed or registered; and	
	(d) less than the land described on the certificate of title.	45

Exceptions	(2) Subsection (1) does not apply to a transfer or two or more transfers submitted at the same time where the transfer or transfers, if registered, convey	
	(a) the ownership of land so that all of a lot or other parcel created by a registered plan of survey is held by one person or two or more persons as co-owners; or	5
	(b) the ownership of part of a lot or other parcel created by a registered plan of survey to a transferee who owns an adjacent part of the same lot or parcel.	10
Condominium plan	87. A Registrar shall not accept a plan as defined in the <u>Condominium Act</u> for land for which a certificate of title has been issued where the plan is for land that is less than a lot or other parcel created by a plan of survey that has been filed or registered.	15
Subdivision and consolidation plan of survey	88. The owner of any registered estate or interest may submit to the Registrar in whose office the estate or interest is registered a plan of survey that subdivides or consolidates lots or other parcels created by one or more plans of survey that have been filed or registered.	20
Requirement for transfers	89. A Registrar shall not accept a plan of survey referred to in section 88 in which all of a lot or other parcel created by the plan is not owned by one person or two or more persons as co-owners unless the owners of the land submit, with the plan, transfers so that,	30
	(a) with respect to a plan submitted by owners of an estate or interest in mines and minerals, the estate or interest in the mines and minerals for each lot or other parcel created by the plan is owned by one person or two or more persons as co-owners; or	35
	(b) with respect to a plan submitted by any other owners, the fee simple estate for each lot or other parcel created by the plan is owned by one person or two or more persons as co-owners.	40
		45

Plan requirements

90. A plan of survey referred to in section 88 must

- (a) where the plan is for dealings respecting an estate or interest in mines and minerals, be signed by the owner of that estate or interest in every lot or other parcel created by the plan; 5
- (b) where the plan is not for dealings respecting an estate or interest in mines and minerals, be signed by the fee simple owner of every lot or other parcel created by the plan; 10
- (c) where transfers are submitted with the plan under paragraph 89(a), be signed by every lessee and encumbrancee of the estate or interest in the mines and minerals of every lot or other parcel created by the plan; 15
- (d) where transfers are submitted with the plan under paragraph 89(b), be signed by every lessee and encumbrancee of every lot or other parcel created by the plan, other than the lessees and encumbrancees of any estate or interest in the mines and minerals; 20
- (e) be approved by the Minister responsible for the Planning Act or a person designated by the Minister to approve such plan; 25
- (f) be certified correct in the prescribed form and made by a Canada Lands Surveyor; and 30
- (g) be prepared in accordance with the prescribed procedures and meet the prescribed requirements.

Order dispensing with signature

91.(1) Where an owner, lessee or encumbrancee whose signature is required on a plan of survey refuses to sign the plan, the owner who directed the plan to be prepared, may apply, by originating notice, to a judge for an order dispensing with the requirement that the owner, lessee or encumbrancee sign the plan. 35 40

Grounds for granting order

(2) A judge may grant an order dispensing with the signature of the owner, lessee or encumbrancee where the judge is satisfied that the signature is being unreasonably withheld. 45

Duty after registration of plan	<p>92. Upon the registration of a plan of survey referred to in section 88 and any transfers under section 89, the Registrar shall</p> <p>(a) where the plan is for dealings respecting an estate or interest in mines and minerals, cancel the certificates of title for that estate or interest and any certificate of title based on that estate or interest for every lot or other parcel created by the plan; or</p> <p>(b) where the plan is not for dealings respecting an estate or interest in mines and minerals, cancel the certificates of title for the fee simple estate and any certificate of title based on that estate for every lot or other parcel created by the plan</p> <p>and issue new certificates of title with descriptions of land that refer to the new lots or other parcels to replace the certificates that have been cancelled.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p>
Application	<p>93.(1) This section does not apply to</p> <p>(a) a transfer to which section 86 applies; or</p> <p>(b) a plan as defined in the <u>Condominium Act</u> referred to in section 87.</p>	<p>25</p>
Dealing of less than whole lot	<p>(2) A Registrar shall not accept a dealing by an owner of land whose interest has been registered on a certificate of title where the land description in the dealing describes a parcel of land that is</p> <p>(a) less than a lot or other parcel created by a plan of survey that has been filed or registered; and</p> <p>(b) less than the land of the owner of the interest as registered on the certificate of title</p> <p>unless the Registrar approves of a land description in the dealing that refers to a lot or other parcel created by</p> <p>(c) a plan commonly known as an "explanatory plan" or other administrative plan prepared under the <u>Canada Lands Surveys Act</u> (Canada) that has been filed; or</p> <p>(d) a descriptive plan.</p>	<p>30</p> <p>35</p> <p>40</p> <p>45</p>
Descriptive plan	<p>94. Where the Registrar approves, under subsection 93(2), of an owner submitting a dealing with a land description that refers to a descriptive plan, the owner may submit a descriptive plan that creates a lot or other parcel for the land intended to be dealt with.</p>	<p>50</p>

Plan requirements	<p>95. A descriptive plan submitted under section 94 must be</p> <ul style="list-style-type: none"> (a) approved by the Minister responsible for the <u>Planning Act</u> or a person designated by the Minister to approve such a plan; (b) certified correct in the prescribed form and made by a Canada Lands Surveyor; and (c) prepared in accordance with the prescribed procedures and meet the prescribed requirements. 	<p>5</p> <p>10</p>
Encumbrance against less than whole lot	<p>96.(1) A Registrar shall not accept for registration against a certificate of title an encumbrance that does not require the signature of the owner against whose interest the encumbrance is proposed to be registered, where the land description in the encumbrance describes a parcel of land that is</p> <ul style="list-style-type: none"> (a) less than a lot or other parcel created by a plan that has been filed or registered; and (b) less than the land of the owner against whose interest the encumbrance is proposed to be registered. 	<p>15</p> <p>20</p> <p>25</p>
Mechanics' lien	<p>(2) A Registrar shall not accept for filing a mechanics' lien for filing against land for which there is no certificate of title where the land description in the lien describes a parcel of land that is less than a lot or other parcel created by a plan that has been filed.</p>	<p>30</p>
Descriptive plan	<p>97. An encumbrancee may submit a descriptive plan that creates a lot or other parcel for the purpose of registering the encumbrance of the encumbrancee under section 96.</p>	<p>35</p>
Plan requirements	<p>98. A descriptive plan referred to in section 97 must</p> <ul style="list-style-type: none"> (a) be certified correct in the prescribed form and made by a Canada Lands Surveyor; and (b) meet the prescribed requirements. 	<p>40</p>
Restriction on issuance of certificate of title	<p>99. A Registrar shall not issue a certificate of title for land that is described by reference to a descriptive plan referred to in section 97.</p>	<p>45</p>

Reference to proper plan	100.(1) Subject to subsection (2), a Registrar shall not accept an instrument or caveat for registration against a certificate of title where the land description in the instrument or caveat does not refer to the plan used in the land description on the certificate of title or a plan registered against the certificate of title.	5
Exception	(2) Subsection (1) does not apply to (a) transmissions and transfers of mortgages and special encumbrances, discharges, satisfactions, withdrawals and surrenders; (b) transfers referred to in section 89; and (c) transmissions and transfers of leases for which no certificate of title has been issued.	10 15
Correction of plans by Registrar	101.(1) A Registrar may, with respect to any plan submitted under this Act, correct on the plan, any omission, clerical error or other defect in the plan that does not have the effect of changing any boundary shown on the plan.	20
Notice	(2) Where a Registrar makes a correction under subsection (1), the Registrar shall send a notice of the correction to the Surveyor General or the agent of the Surveyor General and any owner that the Registrar believes would be interested in the correction.	25
Correction of plans by judge	102.(1) Upon the application of a Registrar, the Surveyor General, a Canada Lands Surveyor or any person having an interest in land affected by a plan submitted under this Act, a judge may, after hearing all persons concerned, order the plan to be (a) cancelled in whole or in part; or (b) amended.	30 35
Terms and conditions	(2) An order granted under subsection (1) may be upon such terms and conditions as to costs and other matters as the judge deems proper.	40
Notice	(3) Where a Registrar registers an order referred to in subsection (1), the Registrar shall send a notice of the order to the Surveyor General or the agent of the Surveyor General and any owner that the Registrar believes is affected by the order.	45

Plans prepared under statutes	<p>103. A plan that has been</p> <p>(a) prepared in accordance with the provisions of any Act of the Parliament of Canada; and</p> <p>(b) sent, under or in accordance with those provisions, to the Registrar in whose district the lands shown on the plan are located,</p> <p>must be dealt with and recognized by the Registrar, in so far as it is capable of being dealt with and recognized, as if it had been prepared in accordance with this Act.</p>	<p>5</p> <p>10</p>
Plans of surrendered Indian reserves	<p>104. A plan that has been</p> <p>(a) attested by the signature of the Minister or Deputy Minister of Indian Affairs and Northern Development;</p> <p>(b) certified by a Canada Lands Surveyor to be a true copy of a plan of survey lodged or filed in the Department of Indian Affairs and Northern Development of lands described as surrendered lands in the <u>Indian Act</u> (Canada); and</p> <p>(c) sent to the Registrar in whose district the lands shown on the plan are located</p> <p>must be dealt with and recognized by the Registrar, in so far as it is capable of being dealt with and recognized, as if it had been prepared in accordance with this Act.</p>	<p>15</p> <p>20</p> <p>25</p> <p>30</p>
Substitution of plan	<p>105. Where a Registrar receives a plan from the federal Minister of Energy, Mines and Resources that is, by virtue of the <u>Canada Lands Surveys Act</u> (Canada), to be substituted for all or corresponding portions of a plan previously sent to the Registrar by the Minister, the Registrar shall</p> <p>(a) file or register the new plan giving it a new plan number;</p> <p>(b) cancel any certificate of title that refers to the previously sent plan and issue a new certificate of title based on the new plan; and</p> <p>(c) amend any memorandum that refers to the previously sent plan by deleting any reference to the previously sent plan and substituting a reference to the new plan.</p>	<p>35</p> <p>40</p> <p>45</p>

Deleting memorandum of plan 106. Where a Registrar is satisfied that there are no registered instruments or caveats with land descriptions based on a descriptive plan that has been filed or a plan prepared for administrative purposes under the Canada Lands Surveys Act (Canada) that has been filed, the Registrar may delete a memorandum of the descriptive plan or plan prepared for administrative purposes from a certificate of title. 5

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Leases

Form 107.(1) Where land, for which a certificate of title has been issued, is intended to be leased or demised for a life or lives, or for a term of more than three years, the owner shall execute a lease in the prescribed form. 15

Requirements (2) A lease referred to in subsection (1) must, 20
(a) refer to the certificate of title of the land intended to be dealt with or give such description as is necessary to identify that land; and
(b) describe each lease, mortgage, special encumbrance or other encumbrance to which the lease is subject. 25

Right to purchase 108.(1) A right of the lessee to purchase the land described in the lease may be stipulated in the lease. 30

Obligation of lessor (2) Where the lessee
(a) pays the purchase money pursuant to the right to purchase the land stipulated in the lease; and 35
(b) observes the other covenants expressed and implied in the lease,
the lessor is bound to execute a transfer to such lessee of the land and to perform all necessary acts set out by this Act for the purpose of transferring the land to the purchaser. 40

Lease of mortgaged land 109. No lease of land that is subject to a mortgage or special encumbrance is valid and binding against a mortgagee or encumbrancee of the special encumbrance, unless the mortgagee or encumbrancee consents to the lease prior to the lease being registered or subsequently adopts the lease. 45

Registrar's duty in case of re-entry	110.(1) The Registrar in whose office a lease is registered, upon proof to the satisfaction of the Registrar of lawful re-entry and recovery of possession of the land described in the lease through a legal proceeding by a lessor, or the successor of the lessor in law, shall make a memorandum of the recovery of possession upon the certificate of title affected by the lease, and the estate of the lessee in such land immediately terminates.	5 10
Liability of lessee	(2) The termination of the estate does not release the lessee from liability in respect of the breach of any covenant in the lease, expressed or implied.	15
Cancellation of lease	(3) The Registrar shall cancel a lease that is the subject of a memorandum referred to in subsection (1), if delivered to the Registrar for that purpose.	20
Short form of covenants	111.(1) Where, in any lease made under this Act, the words in column one of Schedule A, and distinguished by any number in column one, are used, the lease has the same effect and shall be construed as if there had been inserted in the lease the words contained in column two of Schedule A, and distinguished by the same number, but it is not necessary in any lease to insert any words or number from Schedule A.	25 30
Effect	(2) Words that are construed to be in a lease by subsection (1) are deemed a covenant by the covenantor with the covenantee and the transferees of the covenantee, binding the covenantor and the heirs, executors, administrators and transferees of the covenantor.	35
Covenants may be modified	(3) There may be introduced into or annexed to any of the words in the first column of Schedule A exceptions from or qualifications of the words, and the exceptions or qualifications apply to the corresponding words in the second column of Schedule A.	40
Surrender of lease	112.(1) The lessee of a lease who intends to surrender the lease, other than through the operation of a surrender in law, may submit to the Registrar in whose office the lease is registered a surrender of the lease in the prescribed form.	45

Consents required	(2) The Registrar shall not accept a surrender of a lease unless a consent to the surrender signed by the lessor, or the successor of the lessor in law, and the owner of each encumbrance against the lease is submitted with the surrender.	5
Effect of registration	(3) Upon the registration of a surrender of lease, the estate or interest of the lessee in the land vests in the lessor, or the successor of the lessor in law, and the Registrar may cancel any certificate of title and duplicate for the estate or interest of the lessee.	10
	Mortgages and Special Encumbrances	15
Form of mortgage	113.(1) Where land, for which a certificate of title has been issued, is intended to be charged or made security in favour of a mortgagee, the mortgagor shall execute a mortgage in the prescribed form.	20
Form of special encumbrance	(2) Where land, for which a certificate of title has been issued, is intended to be charged with or made security for the payment of an annuity, rent charge or sum of money, in favour of an encumbrancee, the encumbrancer shall execute a special encumbrance in the prescribed form.	25
Contents of instrument	(3) A mortgage referred to in subsection (1) and a special encumbrance referred to in subsection (2) must	30
	(a) refer to the certificate of title in which the estate or interest intended to be dealt with is held or give such description as is necessary to identify the land in which that estate or interest is held;	35
	(b) contain an accurate statement of the estate or interest intended to be mortgaged or encumbered; and	40
	(c) describe each lease, mortgage, special encumbrance or other encumbrance to which the estate or interest intended to be dealt with is subject.	45
Duplicate certificate retained	114. Where an estate or interest in land for which a certificate of title has been issued becomes subject to a mortgage or special encumbrance, the Registrar in whose district the land is located shall retain the duplicate certificate, until the land is no longer subject to a mortgage or special encumbrance.	50

Effect of mortgage or special encumbrance	115. A mortgage or special encumbrance under this Act has effect as security, but does not operate as a transfer of the land charged by the mortgage or special encumbrance.	5
Implied covenants by mortgagor	116. There is in every mortgage an implied covenant against the mortgagor remaining in possession, that the mortgagor will repair and keep in repair all buildings or other improvements erected and made upon the land, and that the mortgagee may at all convenient times, until the mortgage is redeemed, be at liberty, with or without others, to enter into or upon the land to view and inspect the state of repair of the buildings or improvements.	10
Short form of covenants	117.(1) Where, in any mortgage made under this Act, the words in column one of Schedule B, and distinguished by any number in column one, are used, the mortgage has the same effect and shall be construed as if there had been inserted in the mortgage the words contained in column two of Schedule B, and distinguished by the same number, but it is not necessary in any mortgage to insert any words or number from Schedule B.	15
Effect	(2) Words that are construed to be in a mortgage by subsection (1) are deemed a covenant by the covenantor with the covenantee and the transferees, of the covenantee, binding the covenantor and the heirs, executors, administrators and transferees of the covenantor.	20
Covenants may be modified	(3) There may be introduced into or annexed to any of the words in the first column of Schedule B exceptions from or qualifications of the words, and the exceptions or qualifications apply to the corresponding words in the second column of Schedule B.	25
Proceedings to enforce	118. Proceedings to enforce payment of moneys secured by a mortgage or special encumbrance, or to enforce the observance of the covenants, agreements, stipulations or conditions contained in any mortgage or special encumbrance, or for the sale of the lands mortgaged or encumbered, or to foreclose the estate, interest or claim of any person in or upon the land mortgaged or encumbered, or proceedings to redeem or discharge any land from any such mortgage or special encumbrance, shall be had and taken in the Court.	30
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Registration
of discharge

119.(1) Upon the production of a discharge of mortgage or special encumbrance executed in the prescribed form, discharging the whole or any part of the land comprised in such instrument from the whole or any part of the principal sum or annuity secured by such instrument, or upon proof being made to the satisfaction of a judge of the payment of all or part of the moneys due on any mortgage or special encumbrance, and the production of a certificate signed by the judge to that effect to the Registrar in whose office the mortgage or special encumbrance is registered, the Registrar shall make a memorandum on the certificate of title noting that such mortgage or special encumbrance is discharged wholly or partially, or that part of the land is discharged wholly or partially, as the case may be.

Effect

(2) Upon a memorandum referred to in subsection (1) being made, the land or the portion of the land referred to in the memorandum ceases to be subject to or liable for such principal sum or annuity, or, as the case may be, for the part of such principal sum or annuity mentioned in the memorandum as discharged.

Extinction of
an annuity

120.(1) Upon proof of the death of the annuitant, or of the occurrence of the event or circumstance upon which, in accordance with the provisions of a special encumbrance, the annuity or sum of money secured by the special encumbrance ceases to be payable, and upon proof that all arrears of the annuity and interest or money have been paid, satisfied or discharged, the Registrar in whose office the special encumbrance is registered shall, upon the order of a judge, make a memorandum upon the certificate of title, that such annuity or sum of money is satisfied and discharged.

Effect of
memorandum

(2) Upon a memorandum referred to in subsection (1) being made, the land ceases to be subject to or liable for such annuity or sum of money.

Order for
payment into a
chartered bank

121.(1) Where any mortgagor becomes entitled to pay off the mortgage money, and the registered mortgagee is absent from the Territories and there is no person authorized by registered power of attorney to give a discharge to the mortgagor for the mortgage money after the date appointed for the redemption of any mortgage, a judge, on application and proof of the facts and of the amount due for principal and interest under the mortgage, may direct the payment of the mortgage money, with all arrears of interest then due, into a chartered bank having a branch office in the district in which the mortgage is registered, to the credit of the mortgagee or other person entitled to the mortgage money.

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Accrual of
interest

(2) Upon payment of the mortgage money with all arrears of interest then due into a chartered bank under subsection (1), the interest upon the mortgage ceases to run or accrue.

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Memorandum

122.(1) The Registrar in whose office the mortgage is registered shall, upon presentation of the order of the judge and of the receipt of the manager or agent of the bank for the amount of the mortgage money and interest, make a memorandum upon the certificate of title discharging the mortgage.

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Effect

(2) A memorandum referred to in subsection (1) is a valid discharge of the mortgage.

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Notice to
mortgagee

(3) The Registrar shall, when presented with such order and receipt, send a notice of the discharge to the mortgagee.

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Payment to be
full discharge

(4) After the payment of any mortgage money and interest referred to in subsection (1), the mortgagee shall not recover any further sum in respect of such mortgage other than the amount so paid.

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Transfer of Mortgages, Special
Encumbrances and Leases

Form	123.(1) Mortgages, special encumbrances and leases of land for which a certificate of title has been issued must be transferred by a transfer executed in the prescribed form.	5
Registration	(2) A Registrar shall register a transfer referred to in subsection (1) in the same manner as mortgages, special encumbrances and leases are registered.	10
Priority	(3) A transferee, whose transfer of mortgage, special encumbrance or lease has been registered, has priority according to the time of registration of the mortgage, special encumbrance or lease that has been transferred.	15
Partial transfer of sum secured	124.(1) A mortgagee may transfer a part of the sum secured by the mortgage 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.	20 25
Entry by Registrar	(2) The Registrar in whose office the mortgage is registered 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, and shall notify the mortgagor of these facts.	30
Effect of registration of transfer	125. Upon the registration of a transfer of any mortgage, special encumbrance or lease, the estate or interest of the transferor, as set out in such instrument, with all rights, powers and privileges belonging or appertaining to the transferor, passes to the transferee, and such transferee becomes subject to and liable for all of the requirements and liabilities to which the transferee would have been subject and liable if named in such instrument.	35 40

Rights of transferee	126.(1) By virtue of the registration of a transfer of a mortgage, special encumbrance or lease, the right to sue upon the mortgage, special encumbrance or lease that is transferred and to recover any debt, sum of money, annuity or damages under that mortgage, special encumbrance or lease, and all interest at the time of such transfer in any such debt, sum of money, annuity or damages, transfers so as to vest the same in law in the transferee.	5
Trusts	(2) Nothing in subsection (1) prevents a judge from giving effect to any trusts affecting the debt, sum of money, annuity or damages, where the transferee holds the mortgage, special encumbrance or lease as trustee for any other person.	10 15
Powers of Attorney		
Form	127.(1) The owner of any 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 such land or with any part of such land, in accordance with this Act, by executing a power of attorney in the prescribed form, or as near to the prescribed form as circumstances permit.	20 25
Memorandum	(2) A Registrar shall not make a memorandum of any power of attorney upon a certificate of title.	30
Owner's rights preserved	(3) The execution or filing of a power of attorney does not in any way affect the right of the owner to transfer or otherwise deal with the land of that owner.	35
Certified copies may be registered	128. Where an original power of attorney referred to in section 127 is filed in a land titles office, a copy of the power of attorney, certified as such by the Registrar in whose office it is of record, may be accepted by any other Registrar in lieu of the original, and be recognized for the purpose for which the original power of attorney was executed, in so far as it affects any land in the district of the last mentioned Registrar.	40 45
Revocation	129.(1) A power of attorney may be revoked by the filing of a revocation in the prescribed form.	

Effect of
revocation

(2) The Registrar shall not accept a transfer or other instrument signed pursuant to a power of attorney where the transfer or other instrument has been signed after the filing of a revocation of such power of attorney.

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Transmission

Transmission
application

130.(1) Where

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- (a) the owner of land for which a certificate of title has been issued;
- (b) the owner whose interest has been registered upon a certificate of title; or
- (c) an encumbrancee

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dies, the personal representative of the owner or encumbrancee shall, before dealing with such land, interest or encumbrance, make a transmission application, in the prescribed form, to be registered as owner of such land, interest or encumbrance in the capacity of personal representative and such application shall be verified by affidavit in the prescribed form by the applicant or someone on the applicant's behalf.

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Letters probate

(2) The applicant shall produce to the Registrar, at the time of making the application, the probate of the will of the deceased owner or encumbrancee, letters of administration of the deceased owner or encumbrancee or the order of the Court authorizing the applicant to administer the estate of the deceased owner or encumbrancee, or a copy, certified by the Court, of the probate, letters of administration or order, as the case may be.

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Transmission of
titled land

131. Upon a Registrar making a memorandum of a transmission application in respect of land for which the deceased owner had been issued a certificate of title, the personal representative is deemed to be the owner of the land and the Registrar shall cancel the certificate of title in the name of the deceased owner and issue to the personal representative as the executor or administrator of the estate of the deceased owner a new certificate of title.

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Transmission of
interest or
encumbrance

132.(1) Upon a Registrar making a memorandum of a transmission application in respect of a deceased owner whose interest has been registered upon a certificate of title or a deceased encumbrancee, the personal representative is deemed to be the owner of the interest or encumbrance.

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Memorandum	(2) The memorandum must state that the personal representative as the executor or administrator of the estate of the deceased owner or encumbrancee, is the owner of the interest or encumbrance.	5
Title to relate back	133. The title of an executor or administrator relates back and takes effect from the date of the death of the deceased owner or encumbrancee.	
Nature of title of personal representative	134.(1) A personal representative who is registered in place of a deceased owner or encumbrancee, holds the land, interest or encumbrance in respect of which the representative is deemed to own, upon the trusts and for the purposes that apply by this Act or by law, and subject to any trusts and equities upon which the deceased owner or encumbrancee held the land, interest or encumbrance.	10 15
Registered dealings	(2) For the purpose of any registered dealings in any land, interest or encumbrance registered in the name of a personal representative, the personal representative is deemed to be the absolute and beneficial owner of the land, interest or encumbrance.	20
Application to judge	135.(1) Any person beneficially interested in any land, interest or encumbrance registered in the name of a personal representative, may apply to a judge to have the land, interest or encumbrance taken out of the hands of the personal representative and transferred to some other person.	25 30
Powers of judge	(2) The judge, upon reasonable cause being shown, may name some suitable person to replace the personal representative and upon the person so named accepting the appointment as personal representative and giving approved security for the due fulfillment of the trusts, the judge may, by order, direct the Registrar in whose office the personal representative has been registered as an owner,	35 40
	(a) where the personal representative has been issued a certificate of title, to cancel the certificate of title and to issue a new certificate to the person named in the order; or	45
	(b) where the personal representative has not been issued a certificate of title, to delete from the memorandum that refers to the personal representative being replaced, the name of that representative and to substitute the name of the new representative.	50

Effect of compliance with order	(3) Upon the Registrar complying with the terms of an order referred to in paragraph (2)(a) or (b), the person named as the new personal representative is deemed to be the owner of the land, interest or encumbrance, as the case may be.	5
Application by surviving joint tenant	136.(1) Upon the death of an individual or the dissolution of a corporation, that is an owner of (a) land for which a certificate of title has been or may be issued; or (b) a registered mortgage or special encumbrance as a joint tenant with another owner, the surviving owner may make an application in the prescribed form to the Registrar in whose district the land is located or the mortgage or special encumbrance is registered, to be registered as the sole owner of the land, mortgage or special encumbrance.	10 15
Requirements	(2) The application must be signed by the surviving owner and be accompanied with proof, satisfactory to the Registrar, of the death of the individual or the dissolution of the corporation, as the case may be.	20 25
Registration of application	(3) Upon the surviving owner submitting an application that meets the requirements of subsection (2), the Registrar shall register the application and, where a certificate of title had been issued to the owners as joint tenants, cancel the certificate of title and duplicate, if any, and issue a new certificate in the name of the surviving owner.	30
Effect of registration	(4) Upon the registration of an application under subsection (3), the interest of the deceased owner or dissolved corporation in the land, mortgage, or special encumbrance is extinguished.	35

Writs of Executions

Copy of writ	137.(1) A Registrar shall accept for filing a writ of execution or other writ against land that is in force and that has been certified by the Sheriff under the seal of the Sheriff to have been filed in the Sheriff's office.	45
When land bound	(2) No land in any district is bound by a writ until a copy of the writ referred to in subsection (1) is filed in the land titles office for that district.	50

Disposition	(3) From and after the filing of the copy of a writ referred to in subsection (1) in a land titles office, no certificate of title shall be issued in that office and no instrument executed by the execution debtor submitted for registration in that office is effectual, except subject to the rights of the execution creditor, while the writ is in force.	5
Memorandum on transfer by debtor	(4) The Registrar in whose office the writ is filed, on issuing a certificate of title to and on registering any instrument executed by the execution debtor, shall, by memorandum upon the certificate of title, express that such certificate or instrument is subject to the writ.	10 15
Renewal	138. Every writ filed in a land titles office ceases to bind or affect land at the expiration of two years from the date that the writ is filed, unless before the expiration of such period of two years a renewal of the writ is filed with the Registrar for that office in the same manner as the original is required to be filed.	20
Satisfaction of writ	139.(1) Upon the delivery to a Registrar of (a) a certificate of the Sheriff, under the seal of the Sheriff, stating that a writ has been satisfied or withdrawn; or (b) an order of a judge stating that a writ has expired or has been satisfied or withdrawn with respect to all the land affected by the writ or a portion of such land, the Registrar shall make (c) a memorandum of the certificate or order upon every certificate of title affected by the certificate or order upon which the writ has been registered; and (d) a notation of the certificate or order opposite the entry for that writ in the writ book.	25 30 35 40
Discharge of land	(2) Where the Registrar makes a memorandum or a notation under subsection (1), the land or portion of land affected by the certificate or order is absolutely released and discharged from the writ.	45

Sheriff's Sales

Confirmation of Sheriff's sale	140.(1) No sale by the Sheriff under process of law, of any land, for which a certificate of title has been issued, is of any effect until the sale has been confirmed by a judge.	50
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Registration of Sheriff's transfer	(2) Where land, for which a certificate of title has been issued, is sold by the Sheriff under process of law, the Registrar in whose district the land is located, upon the production of a transfer of the land in the prescribed form and an order of a judge confirming the sale, shall, after the expiration of four weeks from the day of receipt of the transfer and order, unless such registration is in the meantime stayed by the order of a judge, register the transfer.	5 10
When registration stayed	(3) In case the registration has been stayed, the Registrar shall not register the transfer except according to the terms of an order of a judge.	15
Time limit	141.(1) A transfer referred to in subsection 140(2) must be registered within two years of the date of the order of confirmation.	
Validity of transfer	(2) The transfer, if not registered within the period referred to in subsection (1), ceases to be valid as against the owner of the land so sold and any person claiming by, from or through that person.	20
Application for confirmation of sale	142.(1) The application for confirmation of a sale referred to in subsection 140(2) may be made by the Sheriff or other officer making the sale, or by any person interested in the sale, on notice to the owner, unless the judge to whom the application is made, dispenses with such notice.	25 30
Costs if sale confirmed	(2) If the sale is confirmed, the costs of confirmation shall be borne and paid out of the purchase money, or as the judge directs.	35
If sale not confirmed	(3) In case the sale is not confirmed, the purchase money paid by the purchaser shall be refunded to the purchaser, and the judge may make such order as to the costs of all parties to the sale and of the application for its confirmation as the judge thinks just.	40
	Caveats	45
Basis of caveat	143. A person who claims (a) an interest or estate in land described in a certificate of title; or	

	(b) to be an execution creditor and the execution debtor is interested beneficially in land for which a certificate of title has been issued, but the certificate of title is in the name of a person other than the execution debtor,	5
	may submit to the Registrar in whose district the land is located, a caveat to the effect that no registration of any transfer or other instrument affecting the land described in the certificate of title shall be made, and that no certificate of title for such land shall be issued, until such caveat has been withdrawn or has lapsed, unless such instrument or certificate of title is expressed to be subject to the claim of the caveator as stated in such caveat.	10 15
Requirements	144.(1) A caveat referred to in section 143 must be (a) in the prescribed form; and (b) verified by affidavit in the prescribed form.	20
Agent	(2) An agent of the caveator may execute a caveat and the affidavit verifying the claim of the caveator.	25
Registrar's caveat	145. A Registrar may sign and register a caveat in the prescribed form giving notice that the Registrar believes that a certificate of title has been issued in error or that there is an error with a memorandum, entry or notation on a certificate of title.	30
Notice	146. Upon the registration of a caveat, the Registrar shall, without delay, send a notice of the caveat to the person against whose title the caveat has been registered.	35
Instruments subject to caveat	147. So long as any caveat remains in force, the Registrar shall not enter on the certificate of title any memorandum of any transfer or other instrument purporting to transfer, encumber or otherwise deal with or affect the land in respect of which such caveat is registered, except subject to the claim of the caveator.	40 45
Summons of caveator	148.(1) An owner or other person claiming land that is subject to a caveat may, by summons, call upon a caveator to attend before a judge to show cause why the caveat of the caveator should not be withdrawn.	50

Power of judge	(2) The judge may, upon proof that the caveator has been summoned and upon such evidence as the judge requires, make such order that the judge considers proper.	5
Lapse of caveat	149. An owner or other person claiming land that is subject to a caveat, other than a caveat of a Registrar referred to in section 145, may personally serve or send by registered mail to the caveator a notice in the prescribed form setting out that the caveat may lapse unless, within 90 days from the day on which the notice was served or mailed, (a) the caveator takes proper proceedings in a court of competent jurisdiction to establish the claim of the caveator; and (b) an order has been registered restraining the Registrar in whose office the caveat is registered from issuing a certificate or otherwise dealing with the land.	10 15 20
Memorandum of lapse	150.(1) Upon the service or mailing of the notice referred to in section 149 being proved to the satisfaction of the Registrar and where 90 days from the day on which the notice was served or sent have passed without the conditions set out in paragraphs 149(a) and (b) being met, the Registrar shall make a memorandum on the certificate of title affected by the caveat stating that the caveat has lapsed.	25 30
Effect of memorandum	(2) Upon the Registrar making a memorandum under subsection (1), the caveat referred to in the memorandum is of no force or effect.	
Withdrawal	151.(1) A caveator, including a Registrar with respect to a Registrar's caveat, may, by notice to the Registrar in the prescribed form, withdraw his or her caveat at any time.	35
Agent	(2) An agent of a caveator may execute a withdrawal of caveat.	40
Proof of agency	152. A Registrar may refuse to register a caveat or withdrawal of caveat purporting to be executed by an agent of the caveator if the Registrar is not satisfied that the caveator has authorized the purported agent to sign on the caveator's behalf.	45

Further caveat	153. After a caveat has been removed by order of a judge or after a caveat has been withdrawn or lapsed, it is not lawful for the caveator, or for anyone on the caveator's behalf, to submit to the Registrar in whose office the previous caveat was registered, a further caveat in relation to the same matter, unless by leave of the Registrar in whose office the previous caveat was registered or a judge.	5
Compensation and costs	154.(1) A caveator who has submitted his or her caveat wrongfully and without reasonable cause is liable to make compensation, including costs, to any person who has sustained damage by the registration of the caveat.	10
Recovery of costs	(2) The compensation, with costs, may be recovered by proceedings at law.	15
Amalgamation of proceedings	(3) If proceedings have been taken to have a caveat withdrawn or to establish the claim of a caveator, the compensation and costs referred to in subsection (1) shall be determined by the judge acting in the same proceedings.	20
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Change of Name

Application	155.(1) A person named in an instrument or caveat that has been filed or registered, whose name has changed, may apply in the prescribed form to the Registrar in whose office the instrument or caveat is filed or registered to have any memorandum or certificate of title referring to that person changed to reflect the new name.	30
Requirements	(2) The application must contain evidence, satisfactory to the Registrar, that the change of name is recognized in law.	35
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PART V

FEES AND ASSURANCE FUND

Fees	156. Before a Registrar	45
	(a) performs any duty under this Act, the regulations or any other enactment; or	
	(b) accepts for filing or registration under this Act or any other enactment any instrument or caveat,	50

the Registrar shall demand and receive the prescribed fee for the performance of the duty or for the filing or registration.

Valuation of land	157.(1) Where the prescribed fee is based upon the value of the land, the value shall be ascertained by the affidavit of the applicant, owner or person acquiring such land or of such other person as the Registrar in whose district the land is located believes to be acquainted with the value of the land and whose affidavit the Registrar is willing to accept.	5 10
Certificate may be required	(2) If the Registrar is not satisfied as to the correctness of the value set out in the affidavit, the Registrar may require such applicant, owner or person acquiring the land to produce a certificate of the value, under the hand of a sworn valuator appointed by a judge.	15 20
Probative value of certificate	(3) The certificate referred to in subsection (2) is conclusive evidence of the value of the land for the purpose of calculating fees.	20
Assurance fund	158.(1) The assurance fund is established.	25
Purpose	(2) Money in the assurance fund is to be used to compensate owners and other persons identified in this Act for damages suffered in the situations described in this Act.	30
Special purpose fund	(3) The assurance fund is a special purpose fund as defined in the <u>Financial Administration Act</u> .	
Disbursement	(4) No person shall make a disbursement from the assurance fund except in accordance with the provisions of this Act and the <u>Financial Administration Act</u> .	35
Limit on compensation	(5) Notwithstanding any provision of this Act, no person is entitled to receive compensation under this Act from the Minister of Finance or the Government of the Northwest Territories in an amount that exceeds the money in the assurance fund.	40 45
Fees transferred to assurance fund	159. A prescribed percentage of all fees collected by every Registrar must be transferred into the assurance fund.	

Liability of assurance fund	<p>160.(1) The assurance fund is not, under any circumstances, liable for compensation for any loss, damage or deprivation occasioned by</p> <ul style="list-style-type: none"> (a) the breach by the owner of any trust, whether expressed, implied or constructive; (b) the same land having been included in two or more grants; or (c) any land having been included in the same certificate of title with other land, through misdescription of the boundaries or parcels of any land, <p>unless it is proved that the person liable for compensation and damages is dead, has absconded from the Territories or has been adjudged insolvent, or the Sheriff has certified that the Sheriff is not able to realize the full amount and costs awarded in any action for such compensation.</p>	<p>5</p> <p>10</p> <p>15</p>
Limit of liability	<p>(2) The assurance fund is liable only for the amounts that the Sheriff fails to recover from the person liable for compensation referred to in subsection (1).</p>	<p>20</p>
Recovery of money paid out of assurance fund	<p>161.(1) Whenever any amount has been paid out of the assurance fund on account of any person, the amount may be recovered from that person, or if that person is dead, from the estate of that person, by an action in the name of a Registrar.</p>	<p>25</p>
Proof of debt	<p>(2) In such action, a certificate signed by the Minister of Finance of the payment out of the assurance fund is sufficient proof of such debt.</p>	<p>30</p>
If debtor is not in the Territories	<p>162.(1) Where any amount has been paid out of the assurance fund on account of any person</p> <ul style="list-style-type: none"> (a) who has absconded or who cannot be found within the Territories; and (b) who has left real or personal estate within the Territories, <p>a judge may, upon the production of a certificate signed by the Minister of Finance that the amount has been paid in satisfaction of a judgment against a Registrar as nominal defendant and on proof of service of the writ, allow the Registrar to immediately sign judgment against such person for the amount so paid out of the assurance fund, together with the costs of the application.</p>	<p>35</p> <p>40</p> <p>45</p>
Judgment final	<p>(2) The judgment referred to in subsection (1) is final subject only to the right to have such judgment opened up on the same grounds as the grounds for setting aside a judgment by default.</p>	<p>50</p>

Execution

(3) The judgment shall be signed in like manner as a final judgment by default in an adverse action and execution may issue immediately.

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PART VI

REMEDIAL PROCEEDINGS

Ejectment

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Protection against
ejectment

163.(1) No action of ejectment or other action for the recovery of any land for which a certificate of title has been issued lies or shall be sustained against the owner of the land under this Act, except in the case of

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(a) a mortgagee as against a mortgagor in default;

(b) an encumbrancee of a special encumbrance as against an encumbrancer in default;

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(c) a lessor as against a lessee in default;

(d) a person deprived of any land by fraud as against the owner of such land through fraud, or as against a person deriving otherwise than as a transferee bona fide for value, from or through such owner through fraud;

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(e) a person deprived of or claiming any land included in any grant or certificate of title of other land by misdescription of such other land or of its boundaries, as against the owner of such other land; or

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(f) an owner claiming under an instrument of title prior in date of registration under this Act, in any case in which two or more grants, or two or more certificates of title, or a grant and certificate of title, are registered under this Act in respect to the same land.

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Certificate as absolute bar to action

(2) Except in the case of claims referred to in paragraphs (1)(a) to (f), the production of the certificate of title or a certified copy of the certificate of title is an absolute bar and estoppel to any such action of ejectment or other action for the recovery of land against a person named in a certificate of title as owner or lessee of the land described in the certificate.

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Damages

Indemnification of person deprived of land	164.(1) After a certificate of title has been issued for any land, any person deprived of such land	5
	(a) because of fraud;	
	(b) by the registration of any other person as owner of such land;	
	(c) because of an error, omission or misdescription in any certificate of title or in any memorandum on a certificate of title or the duplicate; or	10
	(d) in any other case	
	may,	
	(e) if the land has been included in two or more grants; and	15
	(f) in any other case,	
	bring and prosecute an action at law for the recovery of damages against the person upon whose application the erroneous registration was made or who acquired title to the land in question through such fraud, error, omission or misdescription.	20
Liability for damages	(2) Except in the case	
	(a) of fraud; or	25
	(b) of error occasioned by any omission, misrepresentation or misdescription in	
	(i) the application of such person to be registered as owner of such land, or	
	(ii) any instrument executed by him or her,	30
	such person, upon a transfer of such land bona fide for value, ceases to be liable for the payment of any damages that but for the transfer might have been recovered from him or her under the provisions of this Act.	35
Assurance fund	(3) Such damages, with costs, may, in the case described in subsection (2), be recovered out of the assurance fund provided for in this Act, by action against the Registrar in whose district the land forming the basis of the action is located as nominal defendant.	40

Protection of
bona fide
purchasers or
mortgagees

165. Except in the case of misdescription of the land or its boundaries and notwithstanding anything in this Act to the contrary, no bona fide purchaser or mortgagee under this Act of land for valuable consideration is subject to an action for the recovery of damages under section 164, to an action of ejectment, or to deprivation of land in respect of which the purchaser or mortgagee is registered as owner, on the ground that the transferor or mortgagor of the purchaser or mortgagee has been registered as owner through fraud or error, or has derived from or through a person registered as owner through fraud or error.

Action against
Registrar as
nominal
defendant

166.(1) Where the person against whom the action for damages is directed to be brought under subsection 164(1) is dead or cannot be found within the Territories, an action for damages may be brought against the Registrar in whose district the land that is the subject of the action is located as nominal defendant for the purpose of recovering the damages and costs out of the assurance fund.

Recovery of
damages out of
the assurance
fund

(2) If final judgment in an action brought under subsection (1) against a Registrar is recovered, and also in any case in which damages are awarded in any action referred to in subsection 164(1), and the Sheriff makes a return of nulla bona, or certifies that any portion of the damages, with costs awarded, cannot be recovered from such person, the Minister of Finance, upon receipt of a certificate of the judge before whom the action was tried, shall pay the amount of the damages and costs as are awarded, or the unrecovered balance of the damages and costs, as the case may be, and shall charge the payment to the account of the assurance fund.

Action for omissions of officers	167.(1) Any person sustaining loss or damage through any omission, mistake or misfeasance of the Inspector, a Registrar, a Deputy Registrar or any of the officers or clerks employed in a land titles office in the execution of their respective duties under this Act and the regulations, and any person deprived of any land, by the registration of any other person as owner of such land, or by any error, omission or misdescription in any certificate of title, or in any memorandum upon the certificate or upon the duplicate certificate, and who, by this Act, is barred from bringing an action of ejectment or other action for the recovery of the land, may, in any case in which remedy by action for recovery of damages, provided in this Act, is barred, bring an action against the Registrar in whose office the omission, mistake, misfeasance or deprivation of land occurred as nominal defendant, for the recovery of damages.	5 10 15 20
Recovery of damages out of the assurance fund	(2) Where the plaintiff recovers final judgment against the Registrar as nominal defendant, the Minister of Finance shall pay the amount of the damages and costs awarded under the judgment out of the assurance fund to the person entitled on production of a certified copy of the judgment.	25
Notice	(3) Notice in writing of every action referred to in subsection (1), and the cause of the action, shall be served upon the Registrar who is named as nominal defendant at least 90 days before the commencement of the action.	30
Where costs are given to nominal defendant	168.(1) Where in an action against the Registrar referred to in section 167, judgment is given against the plaintiff, or the plaintiff discontinues or becomes non-suited, the plaintiff is liable to pay the full costs of defending the action.	35
Taxation of costs	(2) The costs of defending the action, when taxed, shall be levied in the name of the nominal defendant, by the like process of execution as in ordinary civil cases.	40
Limitation of action	169.(1) Subject to subsection (2), no action for recovery of damages sustained through deprivation of land lies or shall be sustained against a Registrar or against the assurance fund, unless the action is commenced within the period of six years from the date of such deprivation.	45 50

Persons under a legal disability	(2) A person under a legal disability may bring an action referred to in subsection (1) within six years from the date on which the disability ceases.	
When plaintiff non-suited	170. The plaintiff in an action for recovery of damages sustained through deprivation of land and the plaintiff in an action for the recovery of land, shall be non-suited in any case in which it appears to the satisfaction of the judge before whom such 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 delay, and wilfully or collusively omitted to submit a caveat for registration or allowed the caveat to lapse.	5 10 15

PART VII

PROCEEDINGS BEFORE A JUDGE 20

Decision of Registrar

Appeal from Registrar	171.(1) Any person who is dissatisfied with any act, omission, refusal, decision or direction of a Registrar, may require the Registrar to set out, in writing, the grounds of such act, omission, refusal, decision or direction, and such person may apply to a judge, by originating notice, setting out the grounds of the dissatisfaction.	25 30
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Judge's powers	(2) The judge, having caused the Registrar to be served with a copy of the originating notice, has jurisdiction to hear the matter, and to make such order, including an order as to the costs of the parties, as the circumstances of the case require.	35
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Reference by Registrar 40

Registrar may refer questions to judge	172.(1) A Registrar may, (a) where a question arises with regard to the performance of his or her duties or the exercise of his or her powers; (b) where in the exercise of any duty of a Registrar, a question arises as to the true construction or legal validity or effect of any instrument or caveat, or as to the persons entitled, or as to the extent or nature of the estate, right or interest, power or authority of any person or class of persons;	45 50
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	(c) where a question arises respecting the making of an entry in the day-book, general register or writ book, or a memorandum upon a certificate of title or duplicate; or	
	(d) where a question arises as to any doubtful or uncertain right or interest stated or claimed in an instrument or caveat submitted to the Registrar,	5
	refer the question in the prescribed form to a judge.	10
Judge's powers	(2) Where a question in subsection (1) is referred to a judge, the judge may allow any person having an interest in the reference to appear before the judge and may summon any person that the judge believes has an interest in the reference to appear and show cause in relation to the question.	15
Judge's duties	(3) The judge, having regard to the persons appearing at the hearing of the reference, whether summoned or not, shall provide an answer to the question or direct that proceedings be instituted for that purpose.	20
Effect of answer	(4) The answer to the question has the same force and effect as an order of the judge.	25

Return of Duplicate or Other Instrument

		30
Demand for delivery of the duplicate	173.(1) If, under any of the provisions of this Act, a Registrar requires a duplicate certificate of title for the purpose of making any memorandum or for the purpose of wholly or partially cancelling the duplicate certificate or if it appears to the satisfaction of a Registrar that	35
	(a) any duplicate certificate or other instrument has been issued in error, or contains any misdescription of land or boundaries;	40
	(b) any entry, memorandum or endorsement has been made on or omitted from any duplicate certificate or other instrument in error;	
	(c) any duplicate certificate, instrument, entry, memorandum or endorsement has been fraudulently or wrongfully obtained; or	45

(d) any duplicate certificate or instrument is fraudulently or wrongfully retained, the Registrar may, by written demand in the prescribed form, to be served upon such person or to be sent by registered mail to that person, require the person to whom such duplicate certificate or instrument has been issued, or by whom it has been obtained, to deliver it to the Registrar, for the purpose of being cancelled, corrected or completed, as the case may be.

Summons

(2) Where the person refuses or neglects to comply with the demand referred to in subsection (1), or cannot be found, the Registrar may apply to a judge to issue a summons for such person to appear before the judge and show cause why the duplicate certificate or other instrument should not be delivered to the Registrar to be cancelled, corrected or completed.

Arrest upon warrant

(3) If the person, when served with the summons personally or in the mode 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 summoned to be apprehended and brought before the judge for examination.

Order for delivery

174.(1) Upon the appearance before the judge of any person summoned or brought up by virtue of a warrant, the judge may examine such person upon oath, and where it appears to the judge to be proper, may order the person to deliver to the Registrar the duplicate certificate or other instrument.

Committal for contempt

(2) Upon refusal or neglect by the person
(a) to deliver up the duplicate certificate or other instrument pursuant to an order made under subsection (1);
(b) to be put under oath; or
(c) to answer any question concerning the matter after being sworn,
the judge may commit such person to the nearest jail for any period not exceeding six months, unless the duplicate certificate or other instrument is sooner delivered to the Registrar or sufficient explanation is made why the duplicate or other instrument cannot be delivered.

Cancellation
or correction
of instrument
by judge's
order

(3) Where the person summoned does not deliver the duplicate certificate or other instrument or where the person has absconded so that the summons cannot be served or in case a period of 90 days from the time of mailing the demand in the prescribed form referred to in subsection 173(1) to the person has elapsed before the duplicate certificate or other instrument has been delivered to the Registrar, the judge may direct the Registrar to

- (a) cancel, correct or complete the duplicate certificate or other instrument in the possession of the Registrar or any memorandum on the certificate of title relating to the land; 10
- (b) substitute and issue, if necessary, a duplicate certificate or other instrument; and 15
- (c) make such memorandum as the circumstances of the case require. 20

Powers
of judge

175. In any proceeding in respect of land, any transaction or contract relating to land or any instrument, caveat, memorandum or entry affecting land, a judge may, by order, direct a Registrar

- (a) to cancel, correct, substitute or issue any certificate of title or duplicate certificate; 25
- (b) to make any memorandum or entry on a certificate of title or duplicate; and
- (c) to do every act necessary to give effect to the order. 30

Conditions
respecting
plans

176.(1) Subject to subsection (2), an order of a judge that directs a Registrar to issue a new certificate of title for

- (a) a fee simple estate; or
- (b) an estate or interest in mines and minerals; 35

for land that is less than a lot or other parcel created by a plan of survey that has been filed or registered is subject to the following conditions: 40

- (c) the order must not be submitted for registration unless a plan of survey prepared in accordance with paragraphs 90(e), (f) and (g) is submitted to the Registrar with the order; and 45
- (d) the new certificate of title issued by the Registrar in compliance with the order must refer to a lot or other parcel created by that plan of survey. 50

Exceptions (2) Subsection (1) does not apply to an order
 (a) that is based on an instrument registered under the Land Titles Act (Canada); or
 (b) that has a land description that is
 (i) the metes and bounds description that is used as the land description on an existing certificate of title, or 5
 (ii) a lot or other parcel created by a registered descriptive plan required by the Registrar under section 80 or 81. 10

Conditions respecting plans 177.(1) Subject to subsection (2), an order of a judge that directs a Registrar to
 (a) register an instrument or caveat; or 15
 (b) issue a new certificate of title for an estate or interest, other than a fee simple estate or an estate or interest in mines and minerals,
 for land that is less than a lot or other parcel created by a plan of survey that has been filed or registered is subject to the following conditions: 20
 (c) the person submitting the order for registration shall comply with the requirements of the Registrar with respect to the submission of a plan to be used to describe the land referred to in the order; 25
 (d) the Registrar shall not register the order until a plan that complies with the Registrar's requirements is submitted for registration; and 30
 (e) the memorandum of the registration or the new certificate of title made or issued in compliance with the order must refer to a lot or other parcel created by that plan. 35

Exception (2) Subsection (1) does not apply to an order that has a land description that is
 (a) the metes and bounds description that is used as the land description on an existing certificate of title; or 40
 (b) a lot or other parcel created by a registered descriptive plan required by the Registrar under section 80 or 81.

Persons Under Certain Disabilities

Prohibition by judge	178.(1) A judge, on behalf of a person	
	(a) under a legal disability;	
	(b) the subject of a proceeding to determine if a committee or administrator should be appointed to administer the estate of that person; or	5
	(c) absent from the Territories,	
	may, by order directed to a Registrar, prohibit the registration of an instrument signed by the person.	10
Duration and conditions	(2) The prohibition contained in the order may be for such time and subject to such conditions as the judge considers proper.	15

Submission to Judge

Notice to interested parties	179. Where any matter is, under this Act, submitted to a judge by a Registrar or by any other person and the judge deems it advisable that parties interested should be notified of the time and place of the hearing of the matter, 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 those provisions to be given is not sufficient, the judge may direct that	20
	(a) notice of the time and place of the hearing be given;	30
	(b) the notice is to be served personally upon such persons as the judge directs, or be left at their usual place of residence;	
	(c) the notice is to be posted at such place or places and for such periods of time as the judge may set out;	35
	(d) the notice be published in a newspaper or newspapers and for such time as the judge directs; or	40
	(e) the notice may be given in any one or more, or in all the methods specified in paragraphs (a) to (d).	

Interested parties absent 180. Where this Act directs that interested persons shall be heard or shall receive notice and such parties are not within the Territories or cannot be found so as to be personally served, the judge may direct that any party outside the Territories may be served personally, or in either case may direct substitutional service within or outside the Territories in such manner as the judge deems proper, or that publication of notice in such manner as the judge may direct may be sufficient service.

Evidence

Implied covenants 181.(1) Every covenant and power declared to be implied in any instrument by virtue of this Act may be deleted or modified by express declaration in the instrument.

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

Effect of implied covenants (3) Every covenant implied in any instrument by virtue of this Act has the same force and effect, and shall be enforced in the same manner, as if it had been set out at length in the transfer or other instrument.

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

Use of owner's name	182.(1) The owner of any land for which a certificate of title has been issued or of any registered lease, mortgage or special encumbrance, is, on application of any beneficiary or person interested in the land, lease, mortgage or special encumbrance, bound to allow his or her name to be used by such 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 special encumbrance, or for the protection or benefit of the title vested in the owner, or of the interest of any such beneficiary or person.	5 10
Indemnification	(2) An owner referred to in subsection (1) is, in any case, entitled to be indemnified in like manner as a trustee would, before January 1, 1895, have been entitled 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 <u>cestui que trust</u> .	15 20
Certificate conclusive evidence of title	183. Every certificate of title issued under this Act is, except (a) in case of fraud where the owner has participated or colluded; (b) as against any person claiming under a prior certificate of title issued under this Act in respect of the same land; and (c) so far as regards any portion of the land, by wrong description of boundaries or parcels included in such certificate of title, so long as the certificate remains in force and uncancelled under this Act, conclusive evidence in all courts as against all persons and Her Majesty in right of Canada that the person named on the certificate of title is entitled to the estate or interest specified on the certificate of title with respect to the land described on the certificate, subject to the exceptions and reservations implied under this Act.	25 30 35 40
Proceedings not to abate	184. Proceedings under this Act do not abate and are not suspended by any death, transmission or change of interest, but in any such event a judge may make an order for carrying on, discontinuing or suspending the proceedings, upon the application of any interested person, as under the circumstances the judge thinks just, and may for such purpose require the production of such evidence and such notices to be given, as the judge thinks necessary.	45 50

Purchase for valuable consideration	185. Where, in any action, suit or other proceeding affecting land for which a certificate of title has been issued, it becomes necessary to determine whether the transferee, lessee, mortgagee or encumbrancee of a special encumbrance is a purchaser or transferee, lessee, mortgagee or encumbrancee of a special encumbrance for valuable consideration, any person who is a party to the action, suit or other proceeding may give in evidence any transfer, lease, mortgage, special encumbrance or other instrument or caveat that has been issued, filed or registered by a Registrar affecting the land in dispute.	5 10
Evidence in inquiries before judge	186. Where, by virtue of this Act, a judge is required or authorized to hold an inquiry, proof of matters relevant to the inquiry may be made before the judge by affidavit, but the judge may, whenever he or she deems it proper, by summons under his or her hand and seal, require the personal attendance of any person to testify as to the matter of such inquiry or of an affiant to be cross-examined upon the affidavit of the affiant.	15 20
Failure of person or affiant to attend	187.(1) If a person or affiant named on a summons fails to attend at the time and place specified by the summons, then upon due proof under oath that the person or affiant has been duly served with the summons and that proper conduct money was paid or tendered to the person or affiant, the judge may issue a warrant authorizing the Sheriff or any peace officer to apprehend the person or affiant and bring the person or affiant before the judge for examination and to keep the person or affiant in custody until the person or affiant is examined.	25 30 35
Duties of Sheriff	(2) The Sheriff or peace officer shall obey the warrant referred to in subsection (1) and is entitled to the same fees for executing the warrant as the Sheriff or peace officer would be entitled to for executing a process issued out of the Court.	40
Costs	(3) The costs incidental to any such inquiry are in the discretion of the judge, and shall be taxed by the Clerk of the Court in which the inquiry was held, as much as possible, in accordance with the tariff provided for civil causes in the Court.	45

Recovery of costs	(4) Judgment must be signed in the Court for the costs in favour of the party to whom they are awarded by the judge and execution may be issued for the recovery of the costs out of the Court as upon an ordinary judgment in such Court.	5
Security for costs by non-resident	188.(1) Where any proceeding is taken under this Act, whether by motion or summons, or by the filing of a caveat, mechanics' lien, or copy of a writ of execution or other writ against lands, or other proceeding, and any party to such proceeding or the person on whose behalf or against whose interest such caveat, lien, execution or proceeding has been filed is not a resident in the Territories, a judge may, upon the application of a party to the proceeding or interested in the proceeding, or affected by the caveat, lien, execution or proceeding, grant an order requiring the non-resident to give security for the costs of the applicant of such order, in prosecuting or resisting the proceeding, or in removing or maintaining the caveat, lien, execution or proceeding.	10 15 20
Terms	(2) It may be a term of an order issued under subsection (1) that in default the proceeding may be deemed granted or dismissed, or the caveat, lien, execution or proceeding may be deemed removed or maintained.	25
Stay of proceedings	(3) The order issued under subsection (1) may provide for a stay of proceedings.	30
Practice	(4) The practice and procedure for obtaining an order under subsection (1) and giving security shall be, as much as possible, the same as upon an application for security for costs in civil causes in the Court.	35
Costs	(5) The judge may order the costs incident to such application or order to be taxed and recovered as is provided for costs in subsections 187(3) and (4).	40
Judge may award costs	189.(1) The judge may order costs to be paid by or to any person that is a party to any proceeding under this Act.	45

Liability of applicant	(2) Any applicant under this Act is prima facie liable to pay all costs, charges and expenses incurred by or in consequence of the application, except in a case where parties object whose rights are sufficiently secured without their appearance, or where any costs, charges or expenses are incurred unnecessarily or improperly.	5
Erroneous certificate	190. The judge may, by order directed to a Registrar, prohibit the dealing with any land in the district of that Registrar in any case in which it appears to the judge that an error has been made by misdescription of such land or otherwise in a certificate of title or other instrument, or may make an order directed to a Registrar for the prevention of any other improper dealing.	10 15
Proof	191. In all matters before a judge where proof is required, the proof may be taken by affidavit or by <u>viva voce</u> evidence, as may be ordered by a judge.	20
Defects in form	192. No petition, originating notice, order, affidavit, certificate, registration or other proceeding under this Act is invalid by reason of any informality or technical irregularity or of any mistake not affecting the substantial justice of the proceeding.	25
Reference by judge	193. If, in any matter before a judge under this Act, the judge considers it proper, the judge may refer the matter to the Court of Appeal and that Court may either dispose of the matter or refer it back to the judge with such direction as the Court of Appeal thinks proper.	30 35
Appeal		
Appeal from judge's decision	194.(1) An order or judgment of a judge made or given under this Act, may be appealed by the Inspector, a Registrar or person directly interested in the order or judgment to the Court of Appeal.	40
Practice on appeals	(2) The practice and proceedings relating to appeals in the Court of Appeal, including costs and payment of costs and the enforcement of judgments on appeal, adapted to the circumstances, apply to an appeal referred to in subsection (1).	45

PART VIII

REGULATIONS

Regulations	195. The Commissioner, upon the recommendation of the Minister, may make regulations	5
	(a) prescribing the oath of office for the Inspector, Registrars and Deputy Registrars;	
	(b) prescribing the form for any document or instrument that may be filed, registered or issued under this Act and any notice referred to in this Act;	10
	(c) prescribing the days and hours that a land titles office is required to be open to the public;	15
	(d) prescribing the fees for	
	(i) any duty performed by a Registrar under this Act, the regulations or any other enactment, and	20
	(ii) the filing or registration under this Act or any other enactment of any instrument or caveat;	
	(e) prescribing the percentage of fees that must be transferred into the assurance fund;	25
	(f) respecting the procedures for making an application to have an estate in land registered under section 61 and the standards for establishing the ownership and validity of such an estate;	30
	(g) prescribing the things that may be included in a utility easement for the purposes of subsection 76(4);	
	(h) respecting the procedures for the preparation of and the requirements for plans made under this Act;	35
	(i) amending, adding to or repealing the covenants set out in Schedule A or B;	
	(j) prescribing any matter or thing that by this Act may or is to be prescribed; and	40
	(k) respecting any other matter that the Commissioner considers necessary or advisable for carrying out the purposes and provisions of this Act.	45

PART IX

TRANSITIONAL

Existing certificates of title	196. Every certificate of title that has been granted and every duplicate that has been issued under the <u>Land Titles Act</u> (Canada) and every filing, registration or memorandum made under the <u>Land Titles Act</u> (Canada) is deemed to be a certificate of title, duplicate, filing, registration or memorandum under this Act.	5 10
Power of attorney	197. On the coming into force of this section, any suspension of the right of an owner to transfer or otherwise deal with a specified parcel of land by subsection 110(3) of the <u>Land Titles Act</u> (Canada) is terminated.	15
Lapse of caveat	198. Where a person has served or mailed a notice in Form EE under section 137 of the <u>Land Titles Act</u> (Canada), the caveator named in the notice has three months from the day on which the notice was served or sent to meet the conditions set out in paragraphs 149(a) and (b) of this Act.	20 25
Assurance fund	199. The money in the assurance fund continued under the <u>Land Titles Act</u> (Canada) that is attributed to fees collected by the Registrar of Titles for the Northwest Territories Land Registration District under that Act must be deposited in the assurance fund established under this Act.	30

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PART X

CONSEQUENTIAL AMENDMENTS

Charter Communities Act 40

200. The Charter Communities Act is amended by striking out "(Canada)" in paragraphs 74(1)(a) and (b).

45

Cities, Towns and Villages Act

201. The Cities, Towns and Villages Act is amended by striking out "(Canada)" in paragraphs 70(1)(a) and (b).

50

Commercial Tenancies Act

202. The Commercial Tenancies Act is amended by repealing section 14 and substituting the following: 5

"Landlord to notify all claimants in action for re-entry or forfeiture

14. Where a landlord is proceeding by action to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, every person claiming any right, title or interest in the demised premises under the lease shall be made a party to the action if 10

(a) the landlord knows that the person claims such right or interest; or 15

(b) the instrument under which the person claims is registered in the land titles office for the registration district in which the premises are located.".

Commissioner's Land Act 20

203. The Commissioner's Land Act is amended by repealing subsection 4(3) and substituting the following:

"Plan of survey to be filed

(3) No Commissioner's land shall be sold until a duly approved plan of survey of the land has been filed in the land titles office for the registration district in which the land is located.".

30

Companies Act

204. The Companies Act is amended by striking out "Land Titles Act, chapter L-4 of the Revised Statutes of Canada, 1970," and substituting "Land Titles Act" in subsection 147(3). 35

Condominium Act 40

205. The Condominium Act is amended by this Act.

206. Paragraph 2(a) is repealed. 45

207. Paragraph 2(k) is amended by striking out "corporation" and substituting "declaration".

208. Paragraph 2(m) is amended by striking out "Act" and substituting "Land Titles Act". 50

	209. The following is added after paragraph 2(o):	
"prescribed"	(o.1) "prescribed" means prescribed by regulation under this Act;".	5
	210. Paragraph 2(q) is repealed.	
	211. Paragraph 2(r) is repealed.	
	212. Subsection 3(1) is amended by striking out "the Act" and substituting "the <u>Land Titles Act</u> ".	10
	213. Section 4 is amended by striking out "the Act" and substituting "this Act".	15
	214. The following is added after subsection 5(1):	
"Effect of registration"	(1.1) Upon registration of a declaration and plan, the property described in the plan is governed by the <u>Land Titles Act</u> and this Act.".	20
	215. Subsection 5(2) is repealed and the following substituted:	
"Duties of Registrar"	(2) Upon registration of a declaration and plan, the Registrar in whose office the instruments are registered shall	25
	(a) issue a certificate of title in the name of the corporation as provided in section 11;	30
	(b) issue a separate certificate of title in the name of each owner for each unit described in the plan, which shall set forth the proportion of the common interest appurtenant to the unit; and	35
	(c) keep an index to be known as the Condominium Corporation Index.	
Form of certificate of title	(2.1) Every certificate of title issued under paragraph (2)(a) or (b) must be in the prescribed form and state that it is issued under the <u>Land Titles Act</u> and this Act.".	40
	216. Paragraph 6(1)(a) is amended by striking out "Act" and substituting " <u>Land Titles Act</u> ".	45
	217. Paragraph 6(1)(c) is amended by striking out "registrar" and substituting "Registrar to whom it has been submitted".	50
	218. Paragraph 7(1)(d) is amended by striking out "surveyor" and substituting "Canada Lands Surveyor".	

219. Subsection 7(2) is repealed and the following substituted:

"Registration
of plan

- (2) A plan and any amending plan shall not be registered unless the plan or amended plan 5
- (a) has been approved by the Minister responsible for the Planning Act or a person designated by the Minister to approve such plans; and
 - (b) has been prepared in accordance with the prescribed procedures and meets the prescribed requirements." 10

220. Subsection 8(1) is amended by striking out "Act" and substituting "Land Titles Act". 15

221. The fourth line of subsection 11(8) is amended by adding "in the prescribed form" after "service".

222. The marginal note to subsection 13(2) is repealed and the following substituted: 20

"By-laws consistent with this Act".

223. Paragraph 15(1)(e) is amended by striking out "notice of lien" and substituting "notice of lien in the prescribed form". 25

224. Paragraph 15(1)(f) is amended by striking out "Act" and substituting "Land Titles Act". 30

225. Subsection 15(3) is amended by
- (a) striking out "(d)" and substituting "(e)"; and
 - (b) striking out "discharge of the lien" and substituting "discharge of the lien in the prescribed form". 35

226. Subsection 21(1) is repealed and the following substituted: 40

"Termination
by notice after
substantial
damage

21.(1) Where, on a vote under subsection 20(2), the owners do not vote for repair, the corporation shall, within ten days of the vote, submit for registration a notice of termination in the prescribed form." 45

227. Subsection 21(2) is amended by striking out "register a notice of termination" and substituting "submit for registration a notice of termination in the prescribed form". 50

228. Paragraph 22(2)(a) is amended by striking out "register a notice of termination" and substituting "submit for registration a notice of termination in the prescribed form". 5

229. Paragraph 22(2)(b) is amended by striking out "transfer" and substituting "submit for registration a transfer of".

230. Paragraph 22(4)(b) is amended by striking out "registrar" and substituting "Registrar to whom the certificate is submitted". 10

231. The words preceding paragraph 22(5)(a) are repealed and the following substituted: 15

"Effect of registration

(5) The Registrar who registers the transfer shall".

232. Paragraph 22(5)(b) is repealed and the following substituted: 20

"(b) in the case of a transfer of all the property, cancel the certificates of title of each unit; and". 25

233. Paragraph 22(6)(b) is amended by deleting "registrar" and substituting "Registrar who registers the transfer". 30

234. Subsection 23(2) is amended by striking out "register a notice of termination" and substituting "submit for registration a notice of termination in the prescribed form". 35

235. Section 26 is amended by
(a) striking out "and" in paragraph (a); and
(b) adding the following after paragraph (a):

"(a.1) respecting the procedures for the preparation of and the requirements for a plan; and". 40

Devolution of Real Property Act 45

236. The Devolution of Real Property Act is amended by adding ", but subject to the Land Titles Act" after "disposition" in subsection 3(1).

Domestic Relations Act

237. The Domestic Relations Act is amended by repealing section 20 and substituting the following:

"Land titles office

20.(1) An order or judgment for alimony, whether interim or otherwise, may be filed in any land titles office.

5

General register

(2) The Registrar of Land Titles in whose office the order or judgment is filed, shall enter a short description of the instrument in the general register.

10

Effect of filing

(3) The filing of the order or judgment, so long as the order or judgment remains in force,
(a) binds the estate and interest of every description that the defendant has in any lands in the registration district where the filing is made; and
(b) operates on the estate or interest in the same manner and with the same effect as a registration of a charge by the defendant of a life annuity on lands of the defendant."

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Evidence Act

238. The Evidence Act is amended by striking out "any Land Registry Office, or" in subsection 44(1).

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Expropriation Act

239. The Expropriation Act is amended by this Act.

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240. Paragraph 2(1)(i) is amended by striking out "the registrar of titles" and substituting "a Registrar of Land Titles".

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241. The following is added after subsection 4(3):

"Plan

(3.1) A plan referred to in subsection (2) or (3) must be satisfactory to the registrar."

45

242. The following is added after subsection 12(2):

"Plan

(3) The plan referred to in subsection (2) must be satisfactory to the registrar."

50

243. Section 20 is repealed.

Hamlets Act

244. The Hamlets Act is amended by striking out "(Canada)" in paragraphs 70(1)(a) and (b).

5

Intestate Succession Act

245. The Intestate Succession Act is amended by striking out "registry of deeds" and substituting "land titles office" in section 18.

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Limitation of Actions Act

246. The Limitation of Actions Act is amended by striking out "(Canada)" in section 17.

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Matrimonial Property Act

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247. The Matrimonial Property Act is amended by this Act.

248. Paragraph 2(c) is repealed and the following substituted:

25

"Land Titles Office

"Land Titles Office" means a land titles office established under the Land Titles Act;"

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249. Subsection 28(5) is amended by (a) striking out "the Registrar" and substituting "a Registrar"; and (b) adding "in the Land Titles Office of that Registrar" after "certificate of title".

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Mechanics' Lien Act

250. The Mechanics' Lien Act is amended by this Act.

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251. The words of subsection 17(1) preceding paragraph (a) are amended by deleting "Land Titles Office" and substituting "land titles office for the registration district in which the land described in the lien is located".

45

252. Section 19 is amended by adding "of Land Titles who accepts the claim of lien" after "Registrar".

253. Paragraph 23(b) is amended by deleting "Land Titles Office" and substituting "land titles office for the registration district in which the land affected by the lien is located". 5
254. Paragraph 24(1)(d) is amended by striking out "Land Titles Office" and substituting "land titles office in which the lien is deposited".
255. Section 29 is amended by deleting "the registrar" and substituting "the Registrar of Land Titles in whose office the receipt is filed". 10

Partnership Act 15

256. The Partnership Act is amended by striking out "at the Land Titles Office" and substituting "on a certificate of title at a land titles office" in subsection 62(3). 20

Planning Act

257. The Planning Act is amended by this Act. 25
258. Paragraph 2(i) is repealed and the following substituted:

""land titles office"	"land titles office" means a land titles office established under the <u>Land Titles Act</u> ;"	30
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259. Subparagraph 2(1)(i) is amended by striking out "the Land Titles Office" and substituting "a land titles office". 35

260. Subparagraph 2(1)(ii) is amended by striking out "the Land Titles Office" and substituting "a land titles office". 40

261. Paragraph 2(m) is amended by striking out "the Land Titles Office" and substituting "a land titles office".

262. Paragraph 2(p) is amended by striking out ", including a caveat," and substituting "or caveat". 45

263. Subsection 34(2) is amended by striking out "Land Titles Office" and substituting "land titles office for that land". 50

264. Subsection 42(3) is amended by striking out "Land Titles Office" and substituting "land titles office for the land shown on the plan".
265. Section 43 is amended by striking out "Land Titles Office" and substituting "land titles office for the parcel". 5
266. Section 46 is amended by striking out "lodge in the Land Titles Office" and substituting "may submit for registration in the appropriate land titles office". 10

Property Assessment and Taxation Act 15

267. The Property Assessment and Taxation Act is amended by this Act.
268. The definition of "parcel" in section 2 is amended by 20
- (a) striking out "Land Titles Act (Canada)" and substituting "Land Titles Act" in paragraph (a);
 - (b) striking out in paragraph (b) "(Canada)" in the words preceding subparagraph (i); 25
 - (c) striking out "the land titles office" and substituting "a land titles office" in subparagraphs (b)(i) and (ii);
 - (d) striking out "Land Titles Act (Canada)" and substituting "Land Titles Act" in paragraph (e); and 30
 - (e) striking out "(Canada)" in paragraph (f).
269. Subsection 5(2) is amended by 35
- (a) striking out "(Canada)" from paragraphs (a) and (b); and
 - (b) striking out "Land Titles Act (Canada)" and substituting "Land Titles Act" in paragraph (c). 40
270. Paragraph 20(1)(a) is amended by striking out "(Canada)".

Public Trustee Act 45

271. The Public Trustee Act is amended by this Act.
272. Subsection 12(6) is amended by striking out "the Land Titles Office" and substituting "a land titles office". 50

273. Subsection 12(7) is amended by striking out "of Titles shall register it" and substituting "of Land Titles for that office shall file the certificate in the general register".

5

Residential Tenancies Act

274. The Residential Tenancies Act is amended by striking out "(Canada)" in subsection 4(2).

10

Securities Act

275. The Securities Act is amended by striking out "the Registrar of Titles" and substituting "a Registrar of Land Titles" in subsection 21(3).

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Seizures Act

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276. The Seizures Act is amended by striking out "the Registrar" and substituting "a Registrar" in paragraph 12(1)(b).

25

Trustee Act

277. The Trustee Act is amended by striking out "(Canada)" in subsection 14(1).

30

Workers' Compensation Act

278. The Workers' Compensation Act is amended by repealing subsection 74(5) and substituting the following:

35

"Filing in
land titles
office

(5) A copy of a certificate under this section, certified by the Secretary of the Board to be a true copy, may be filed in a land titles office.

40

Effect of filing	5.1. Any real property located in the registration district of the land titles office in which the certificate is filed, of the employer, is bound by the assessment, to the same extent as by a registered judgment or mortgage, from the date of the filing, and any judgment entered with respect to the certificate binds the property from the date of the filing."	5
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PART XI

COMING INTO FORCE

Coming into force	279. Sections 264 to 266 come into force on the day that the sections they amend come into force.	15
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Idem	280. All or any of the other provisions of this Act come into force on a day or days to be fixed by order of the Commissioner.	20
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Schedule A (Subsection 111(1))

SHORT COVENANTS IN LEASE

COLUMN ONE	COLUMN TWO	
1. Will not, without leave, assign or sublet	1. The covenantor and the executors, administrators or transferees of the covenantor, will not, during the said term, transfer, assign or sublet the land and premises described in this lease, or any part of the land and premises, or otherwise by any act or deed procure the said land and premises, or any part of the land and premises, to be transferred or sublet, without first obtaining the consent in writing of the lessor or the transferees of the lessor.	5 10 15
2. Will fence	2. The covenantor, his executors, administrators or transferees, will, during the continuance of the said term, erect and put upon the boundaries of the said land or on those boundaries on which no substantial fence now exists, a good and substantial fence.	20
3. Will cultivate	3. The covenantor and the executors, administrators or transferees of the covenantor, will, at all times during the said term, cultivate, use and manage in a proper husband-like manner, all such parts of the land as are now or later, with the consent, in writing, of the said lessor or the transferees of the lessor, broken up or converted into tillage and will not impoverish or waste the same.	25 30
4. Will not cut timber	4. The covenantor and the executors, administrators or transferees of the covenantor, will not cut down, fell, injure or destroy any living timber or tree upon the said land, without the consent, in writing, of the said lessor or the transferees of the lessor.	35 40

5. Will not
carry on
offensive
trade

5. The covenantor and the executors,
administrators or transferees of the covenantor,
will not, at any time during the said term, use,
exercise, or carry on, or permit or suffer to be
used, exercised or carried on, in or upon the said 5
premises, or any part of the premises, any noxious,
noisome or offensive act, trade, business,
occupation or calling; and no act, matter or thing
whatsoever shall, at any time during the said term
be done in or upon the said premises, or any part 10
of the premises that is an annoyance, nuisance,
grievance, damage or any disturbance of the
occupiers or owners of the adjoining lands and
properties.

SHORT COVENANTS IN MORTGAGE

5

COLUMN ONE

COLUMN TWO

- | | | |
|--|---|----------------------|
| 1. Has a good title to the said land | 1. And also, that the said mortgagor, at the time of the sealing and delivery of the mortgage 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 lands, tenements, hereditaments and the premises described, with their appurtenances, without any manner of trusts, reservations, limitations, provisos or conditions, except those contained in the original grant of the estate, or any other matter or thing to alter, charge, change, encumber or defeat the same. | 10
15
20 |
| 2. Has the right to mortgage the land | 2. And also, that the said mortgagor, has good right, full power and lawful and absolute authority to convey the said lands, tenements, hereditaments, and the premises described, with their appurtenances, unto the said mortgagee and the heirs, executors, administrators and assigns of the mortgagee in the manner aforesaid, and according to the true intent and meaning of these presents. | 25
30 |
| 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 said sum of money, in the said above proviso mentioned, or the interest of the said sum of money or any part of such money or interest, or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents, and of the said proviso, then, and in every such case, it shall and may be lawful to and for the said mortgagee, and the heirs, executors, administrators and assigns of the mortgagee, peaceably and quietly to enter into, have, hold, use, occupy, possess, and enjoy the aforesaid lands, tenements, hereditaments and premises, described by this mortgage, with their appurtenances, without the let, suit, hindrance, interruption or denial of the said mortgagor and the heirs or assigns of the mortgagor, or any other person or persons whomsoever. | 35
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45
50 |

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 upon or in respect of the said lands,
tenements, hereditaments and premises, and of and
from all former conveyances, mortgages, rights,
annuities, debts, judgments, executions,
recognizances, and of and from all manner of other
charges or encumbrances whatsoever.

5

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 said
sum of money in the said proviso mentioned, or the
interest of the said sum of money or any part of
such money or interest or of or in the doing,
observing, performing, fulfilling, or keeping of
one or more of the provisions, agreements or
stipulations in the said above proviso particularly
set forth, contrary to the true intent and meaning
of these presents and of the said proviso, then and
in every such case the said mortgagor and the heirs
and assigns of the mortgagor, and all and every
other person or persons whosoever having, or
lawfully claiming, or who have or may have or
lawfully claim any estate, right, title, interest
or trust of, in, to or out of the lands, tenements,
hereditaments, and premises described with their
appurtenances, by, from, under or in trust for the
said mortgagor, shall and will, from time to time,
and at all times thereafter, at the proper costs
and charges of the said mortgagee, and the heirs,
executors, administrators and assigns of the
mortgagee make, do, suffer and execute, or cause or
procure to be made, done, suffered and executed, all
and every such further and other reasonable acts,
deeds, devices, conveyances and assurances in the
law for the further, better and more perfectly and
absolutely conveying the said lands, tenements,
hereditaments and premises, with their
appurtenances, unto the said mortgagee and the
heirs, executors, administrators and assigns of the
mortgagee, as by the said mortgagee or the
mortgagee's lawyer and the heirs, executors of the
mortgagee, or their lawyer, shall or may be lawfully
and reasonably devised, advised or required, so that
no person who shall be required to make or execute
such assurances shall be compelled, for the making
or executing such assurances, to go or travel from
that person's usual place of residence.

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6. Has done no
act to
encumber the
land

6. And also that the said mortgagor has not at
any time made, done, committed, executed or
wilfully or knowingly suffered any act, deed,
matter or thing whatsoever whereby or by means
whereof the said lands, tenements, hereditaments
and premises described or any part or parcel of the
said lands, tenements, hereditaments and premises
are or may be in any way impeached, charged,
affected or encumbered in title, estate or
otherwise.

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