

2009

CHAPTER 21

An Act to amend *The Land Titles Act, 2000*

(Assented to May 14, 2009)

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

Short title

1 This Act may be cited as *The Land Titles Amendment Act, 2009*.

S.S. 2000, c.L-5.1 amended

2 *The Land Titles Act, 2000* is amended in the manner set forth in this Act.

Section 2 amended

3 Subsection 2(1) is amended:

(a) by adding the following clause after clause (c):

“(c.1) **‘compensation’** means compensation payable pursuant to Part XII”;

(b) by adding the following clauses after clause (p):

“(p.1) **‘fraudulent instrument’** means an instrument:

- (i) pursuant to which a fraudulent person purports to receive or transfer a title or an interest in land;
- (ii) that is given under the purported authority of a power of attorney that is forged;
- (iii) that is an assignment of a mortgage where the mortgage is given by a fraudulent person; or
- (iv) that perpetrates a fraud as prescribed with respect to the title or interest in land affected by the instrument;

“(p.2) **‘fraudulent person’** means a person who executes or purports to execute an instrument if:

- (i) the person forged the instrument;
- (ii) the person named in the instrument is fictitious; or
- (iii) the person holds himself or herself out in the instrument to be, but knows that he or she is not, the registered owner of the title or interest in land affected by the instrument”;

(c) by adding the following clause after clause (q):

“(q.1) **‘grant directory’** means the grant directory of Crown grants established pursuant to section 76.1”;

(d) by repealing clause (u.1) and substituting the following:

“(u.1) ‘land registry’ means the land titles registry, the abstract directory, the writ registry and the grant directory”; **and**

(e) by adding the following clause after clause (xx):

“(yy) ‘wrongfully deprived’ means wrongfully deprived by registration of a fraudulent instrument”.

Section 4 amended

4 Subsection 4(4) is amended:

(a) by striking out “or” after clause (c);

(b) by adding “or” after clause (d); and

(c) by adding the following clause after clause (d):

“(e) any documents in draft form, including a document saved through the web-enabled submission method before the document is submitted to the Registrar for registration”.

Section 12 amended

5 Subsection 12(5) is amended:

(a) by striking out “or” after clause (a);

(b) by adding “or” after clause (b); and

(c) by adding the following clause after clause (b):

“(c) an undivided fractional interest that is less than the percentage prescribed in the regulations”.

Section 15 amended

6 The following clause is added after clause 15(1)(b):

“(b.1) where:

(i) the title is with respect to a surface parcel or condominium unit;

(ii) a person who was a registered owner to the title mentioned in subclause (i) was wrongfully deprived of the title; and

(iii) the person mentioned in subclause (ii) immediately before and continuously after being wrongfully deprived of the title:

(A) was in actual and continuous occupation of the surface parcel or the condominium unit; and

(B) used the surface parcel or condominium unit as the person’s principal residence”.

Section 70 amended

7(1) Subsection 70(2) is amended by striking out “All registrations” and substituting “Subject to subsection (2.1), all registrations”.

(2) The following subsection is added after subsection 70(2):

“(2.1) For the purposes of subsection (2), a registration or filing is deemed to have been filed in the abstract directory only if:

- (a) the registration or filing appears in the abstract directory; or
- (b) in accordance with section 97 and the regulations, the Registrar, so far as is practicable without prejudicing rights obtained in good faith for value, has made a correction to reinstate the registration or filing as an interest filed in the abstract directory”.

New Part X.1

8 The following Part is added after section 76:

**“PART X.1
Grant Directory**

“Grant directory established

76.1(1) The grant directory is established for the purpose of recording information respecting Crown grants.

(2) A Crown grant that accompanies a registration made pursuant to this Act shall be recorded in the grant directory.

(3) A Crown grant received by the land titles registry on or before the coming into force of this Part shall be recorded in the grant directory.

(4) The grant directory is governed only by the rules established in this Part, the regulations and by any rules established by the Registrar.

(5) The Registrar may make any alteration to information in the grant directory that the Registrar considers appropriate.

(6) The grant directory is a public registry of the people of Saskatchewan.

(7) All information in the grant directory is the property of the Government of Saskatchewan.

(8) Access to and disclosure of information in the grant directory is to be provided only in accordance with this Act, the regulations and any rules established by the Registrar pursuant to subsection (4).

(9) Any person may request a search of the grant directory in the prescribed manner”.

Section 84 amended

9 Subsection 84(2) is amended:

(a) in the portion preceding clause (a) by striking out “pursuant to this Part”;

(b) by adding the following clauses after clause (d):

“(d.1) where:

- (i) the circumstances mentioned in clause 15(1)(b.1) exist; and
- (ii) title has been restored to the former registered owner pursuant to section 101.1 or 107;

“(d.2) where:

- (i) the circumstances mentioned in clause 15(1)(b.1) exist; and
 - (ii) title has not been restored to the former registered owner”;
- and**

(c) by adding the following clause after clause (f):

“(g) where:

- (i) a mortgage obtained on the basis of a fraudulent instrument has been registered;
- (ii) the Registrar pursuant to section 101.1 or the court pursuant to section 107 has directed that the registration of the mortgage mentioned in subclause (i) be discharged against title;
- (iii) the mortgagee has demonstrated the prescribed due diligence; and
- (iv) the mortgagee satisfies the Registrar that the mortgagee has no right:
 - (A) to claim title insurance as defined in *The Saskatchewan Insurance Act*; or
 - (B) to otherwise recover the mortgagee’s loss”.

Section 85 amended

10 Section 85 is amended:

(a) in the portion preceding clause (a) by adding “any of the following types of” before “loss”;

(b) by striking out “or” after clause (m); and

(c) by adding the following after clause (n):

“(o) suffered as a result of the provision of services by the corporation in converting documents to electronic format before the documents are submitted to the Registrar for registration;

“(p) occasioned by the loss of information stored electronically by the corporation before that information is submitted to the Registrar for registration; or

“(q) suffered by any party if the Registrar did not send a verification statement or notification statement in accordance with the regulations”.

Section 87 amended

11 The following subsections are added after subsection 87(6):

“(7) Notwithstanding subsections (1) to (6), in the following circumstances an amount of compensation set out in subsection (8) is payable:

(a) the title for which a claim is made is with respect to a surface parcel or a condominium unit;

(b) the claimant:

(i) was the registered owner to the title mentioned in clause (a); and

(ii) was wrongfully deprived of the title; and

(c) the claimant immediately before and continuously after being wrongfully deprived of title:

(i) was in actual and continuous occupation of the surface parcel or the condominium unit; and

(ii) used the surface parcel or condominium unit as the person’s principal residence.

“(8) Subject to subsection (9), in the circumstances mentioned in subsection (7), the Registrar may agree to pay to the claimant mentioned in subsection (7) compensation in an amount that does not exceed the sum of:

(a) an amount that, in the opinion of the Registrar as at the date the Registrar agrees to pay, will compensate the claimant for the cost to the claimant of purchasing or constructing a principal residence equivalent to the principal residence of which the claimant was wrongfully deprived;

(b) any other prescribed amounts; and

(c) the amounts mentioned in clauses 90(1)(b) and (c).

“(9) No amount of compensation is payable pursuant to clause (8)(a) if title has been restored to the claimant pursuant to section 101.1 or 107”.

Section 89 amended

12(1) Subsection 89(1) is amended by striking out “pursuant to this Part”.

(2) Clause 89(2)(b) is amended by striking out “pursuant to this Part”.

Section 90 amended

13 Clause 90(2)(c) is amended by striking out “pursuant to this Part”.

Section 96 amended

14 Section 96 is amended in the portion preceding clause (a) by striking out “pursuant to this Part”.

New section 96.1

15 The following section is added after section 96:

“Title insurers cannot be subrogated

96.1(1) In this section:

(a) **‘demand’** means a claim or other demand made by a person who sustains loss or damage due to:

- (i) the invalidity of title; or
- (ii) any defect in any title or instrument;

(b) **‘title insurer’** means an insurer, fund or other prescribed person or entity that may make demands or against whom demands can be made.

(2) No title insurer is entitled:

(a) to be subrogated to the rights of a person to claim compensation for a loss by reason of the title insurer having made a payment to that person with respect to that loss; or

(b) notwithstanding any other Act or law, to be subrogated to the rights of a person to make a claim with respect to a loss against the corporation or the Crown or any other agent of the Crown by reason of the title insurer having made a payment to that person with respect to that loss”.

New section 101.1

16 The following section is added after section 101:

“Power to correct registry in certain cases

101.1(1) On receipt of a submission pursuant to section 101, the Registrar may direct a correction of the land titles registry to restore title to land to the former registered owner or discharge the registration of a mortgage or other interest in land against title if the Registrar is satisfied that:

(a) a registered instrument respecting the title, mortgage or other interest in land would be void if unregistered;

(b) a fraudulent instrument was registered; or

(c) the effect of an error respecting the title, mortgage or other interest in land would be to deprive a person of title to or an interest in land of which that person is lawfully in possession.

(2) If the Registrar does not correct the land titles registry pursuant to subsection (1), a person claiming a right to have the land titles registry corrected may apply to the court pursuant to section 107 to have the land titles registry corrected”.

New section 106.1**17 Section 106.1 is repealed and the following substituted:****“Hours of operation**

106.1 The Registrar or the corporation may determine the hours of operation of:

- (a) the land titles registry; and
- (b) any function of the land titles registry, the writ registry, the abstract directory or the grant directory”.

Section 107 amended**18 Clause 107(c) is amended by adding “101.1,” after “section 101.”.****Section 108 amended****19 Subsection 108(1) is amended:**

- (a) by striking out “or” after clause (a);
- (b) by adding “or” after clause (b); and
- (c) by adding the following clause after clause (b):
 - “(c) any other matter concerning the duties of the Registrar”.

Section 117 amended**20 Subsection 117(4) is amended by striking out “one year” and substituting “two years”.****New section 118****21 Section 118 is repealed and the following substituted:****“Fees**

118(1) Subject to the approval of the Lieutenant Governor in Council, the corporation shall determine the fees, charges and taxes payable with respect to all land registry functions.

(2) Notwithstanding subsection (1), the corporation may enter into an agreement with a person to provide a special service to that person, if, in the opinion of the corporation, a fee, charge, or tax mentioned in subsection (1) is not adequate to allow the corporation to provide that service to the person.

(3) The corporation shall determine the method of payment of any fees, charges and taxes imposed pursuant to this Act.

(4) If the Registrar or the corporation considers it appropriate or necessary, the Registrar or the corporation may:

- (a) waive any fees, charges or taxes, in whole or in part; or
- (b) refund any fees, charges or taxes, in whole or in part.

(5) All revenues derived from fees, charges or taxes imposed or collected pursuant to this Act are to be paid to and are the property of the corporation, unless the Lieutenant Governor in Council directs that all or any of the revenues be paid to the general revenue fund”.

Section 151 repealed**22 Section 151 is repealed.****Section 187 amended****23(1) The following clause is added after clause 187(1)(a):**

“(a.1) for the purposes of subclause 2(1)(p.1)(iv), prescribing the circumstances in which a fraud may be perpetrated with respect to the title or interest in land affected by an instrument”.

(2) The following clause is added after clause 187(1)(h):

“(h.1) prescribing circumstances when certain authorizations or consents are not required by the Registrar for the issuance of titles or abstract records”.

(3) The following clause is added after clause 187(1)(j):

“(j.1) for the purposes of clause 12(5)(c), prescribing the percentage that the undivided fractional interest must exceed”.

(4) The following clause is added after clause 187(1)(n.2):

“(n.3) for the purposes of clause 84(2)(g), prescribing the due diligence that must be demonstrated by a mortgagee to make a claim for compensation”.

(5) Clause 187(1)(p) is repealed and the following substituted:

“(p) prescribing all matters relating to searches of the land titles registry, abstract directory, writ registry and grant directory and the method of disclosure of information in the land titles registry, abstract directory, writ registry and grant directory, including the form of a search result”.

(6) The following clauses are added after clause 187(1)(cc):

“(cc.1) respecting the use of information in the land registry, including the integration of registry information with other information to develop products and services, as long as it is done in a manner that is consistent with the purposes for which the information was collected or is otherwise reasonable, justifiable or in the public interest;

“(cc.2) respecting the disclosure of and access to information in the land registry”.

(7) The following clause is added after clause 187(1)(dd):

“(dd.1) respecting the rules governing the operation of the grant directory”.

Section 199 amended**24(1) Subsection 199(1) is amended by striking out “On the coming into force” and substituting “Subject to subsection (1.1), on the coming into force”.****(2) The following subsection is added after subsection 199(1):**

“(1.1) For the purposes of clause (1)(b), a certificate of title with respect to a leasehold estate in the surface is deemed to be a registered interest based on a lease only if:

- (a) after title to the surface has been converted, an interest based on the lease appears as a registered interest against the converted surface title; or

(b) in accordance with section 97, the Registrar, so far as is practicable without prejudicing rights obtained in good faith for value, has made a correction to reinstate the lease as a registered interest based on a lease against the converted surface title”.

(3) Subsection 199(2) is repealed and the following substituted:

“(2) If an instrument was endorsed on a certificate of title mentioned in subsection (1) pursuant to the former Act and was in existence on the day before the coming into force of the order mentioned in subsection (1), the instrument is converted to and is deemed to be an interest registered against the interest based on a lease mentioned in subsection (1) if:

(a) after the registered interest based on the lease has been converted pursuant to subsection (1), an interest representing the instrument appears as a registered interest against the registered interest based on the lease; or

(b) in accordance with section 97, the Registrar, so far as is practicable without prejudicing rights obtained in good faith for value, has made a correction to reinstate the instrument as a registered interest against the registered interest based on the lease”.

Coming into force

25 This Act comes into force on proclamation.

