

1981

## c 17 Registry Amendment Act, 1981

Ontario

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## CHAPTER 17

## An Act to amend the Registry Act

*Assented to June 26th, 1981*

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

- 1.—(1) Subsection 51 (6) of the *Registry Act*, being chapter 445 of the Revised Statutes of Ontario, 1980, is amended by inserting after “shall” in the fourth line “within a reasonable time”. s. 51 (6), amended
- (2) Section 51 of the said Act is amended by adding thereto the following subsections: s. 51, amended
- (8) Where the land registrar is satisfied that a registered instrument purporting to discharge a mortgage validly discharges the land described in the mortgage, or that part of the land described in the discharging instrument, from any claim arising under the mortgage or under any other instrument relating exclusively thereto, the land registrar shall delete from the abstract index the entry of the mortgage and any other instrument relating exclusively thereto. Deletion of entries from abstract index
- (9) Notwithstanding subsection (8), the land registrar shall not delete the entry of an instrument in the abstract index for a lot or part of a lot unless he is satisfied that all the lot or part is free from claims under the instrument. Exception
- (10) Where the land registrar has deleted from the abstract index the entry of a mortgage under subsection (8), the land described in the mortgage, or that part of the land described in the discharging instrument, as the case may be, is not affected by any claim under the mortgage or under any other instrument relating exclusively thereto. Effect of deletion
- (11) Where it appears from the abstract index that an instrument purporting to be a valid discharge of a mortgage has been registered for ten or more years, and the entry of the mortgage or any other instrument relating exclusively thereto has not been deleted from the abstract index, the land described in the Discharge of mortgage registered for ten years

mortgage or instrument, or that part of the land described in the discharging instrument, as the case may be, is not affected by any claim under the mortgage or instrument or under any instrument relating exclusively thereto.

Application of  
subss. (8)-(9)  
to instruments  
under s. 26

(12) Subsections (8) to (11) apply with necessary modifications to every instrument purporting to discharge an instrument under section 26 and to an instrument under that section.

s. 62 (1),  
repealed

2. Subsection 62 (1) of the said Act is repealed.

s. 71 (2),  
amended

3. Subsection 71 (2) of the said Act is amended by inserting after "recording" in the second line "or deleting".

Part III,  
re-enacted

4. Part III of the said Act is repealed and the following substituted therefor:

### PART III

#### INVESTIGATION OF TITLES

Interpre-  
tation

104.—(1) In this Part,

- (a) "claim" means a right, title, interest, claim, or demand of any kind or nature whatsoever affecting land set forth in, based upon or arising out of a registered instrument, and, without limiting the generality of the foregoing, includes a mortgage, lien, easement, agreement, contract, option, charge, annuity, lease, dower right, and restriction as to the use of land or other encumbrance affecting land;
- (b) "notice of claim" means a notice of claim registered under subsection 106 (2) and includes a notice registered under a predecessor of this Part or under *The Investigation of Titles Act*, being chapter 193 of the Revised Statutes of Ontario, 1960, or a predecessor thereof;
- (c) "notice period" means the period ending on the day forty years after the day of the registration of an instrument or a notice of claim, as the case may be;
- (d) "owner" means a person, other than a lessee or a mortgagee, entitled to a freehold or other estate or interest in land at law or in equity, in possession, in futurity or in expectancy;
- (e) "title search period" means the period of forty years described in subsection 105 (1).

(2) A claim referred to in clause 106 (5) (a) or (b) is not confined to a claim under a registered instrument. Claims under unregistered instruments

105.—(1) A person dealing with land shall not be required to show that he is lawfully entitled to the land as owner thereof through a good and sufficient chain of title during a period greater than the forty years immediately preceding the day of such dealing, except in respect of a claim referred to in subsection 106 (5). Title search period

(2) Where there has been no conveyance, other than a mortgage, of the freehold estate registered within the title search period, the chain of title commences with the conveyance of the freehold estate, other than a mortgage, most recently registered before the commencement of the title search period. Deemed commencement of chain of title

(3) A chain of title does not depend upon and is not affected by any instrument registered before the commencement of the title search period except, Instruments registered prior to title search period not effective

(a) an instrument that, under subsection (2), commences the chain of title;

(b) an instrument in respect of a claim for which a valid and subsisting notice of claim was registered during the title search period; and

(c) an instrument in relation to any claim referred to in subsection 106 (5).

106.—(1) A claim that is still in existence on the last day of the notice period expires at the end of that day unless a notice of claim has been registered. Expiry of claims

(2) A person having a claim that is not barred by this Part, or a person on his behalf, may register a notice of claim in the prescribed form, Notice of claim

(a) at any time within the notice period; or

(b) at any time after the expiration of the notice period but before the registration of any conflicting claim.

(3) A notice of claim may be renewed from time to time by the registration of a notice of claim in accordance with subsection (2). Renewal

(4) Subject to subsection (7), when a notice of claim has been registered, the claim affects the land for the notice period of the notice of claim. Effect of notice of claim

## Exceptions

(5) This Part does not apply to,

(a) a claim,

- (i) of the Crown reserved by letters patent,
- (ii) of the Crown in unpatented land or in land for which letters patent have been issued, but which has reverted to the Crown by forfeiture or cancellation of letters patent, or in land that has otherwise reverted to the Crown,
- (iii) of the Crown or a municipality in a public highway or lane,
- (iv) of a person to an unregistered right of way or other easement or right that the person is openly enjoying and using;

(b) a claim arising under any Act; or

(c) a claim of a corporation authorized to construct or operate a railway, including a street railway or incline railway, in respect of lands acquired by the corporation after the 1st day of July, 1930, and,

- (i) owned or used for the purposes of a right-of-way for railway lines, or
- (ii) abutting such right-of-way.

## Freehold estates

(6) Subsection (1) does not apply to a claim to a freehold estate in land or an equity of redemption in land by a person continuously shown by the abstract index for the land as being so entitled for more than forty years as long as the person is so shown.

## Claims not validated

(7) The registration of a notice of claim does not validate or extend a claim that is invalid or that has expired.

## Dower

(8) For the purposes of subsection (1), an instrument by which a husband conveyed land before the 31st day of March, 1978 shall be deemed to be a notice of claim with respect to his wife's dower right.

## Repeal

(9) Subsection (8) is repealed on the 31st day of March, 1988.

## Conflict

107. Where there is a conflict between any provision of this Part and any provision of Part I or Part II of this Act or of any provision of any other Act or any rule of law, the provision of this Part prevails.

5. The said Act is amended by adding thereto the following Part: Part IV,  
enacted

PART IV

COMPENSATION

108.—(1) A person wrongfully deprived of land registered under this Act by reason of, Entitle-  
ment to  
compen-  
sation

- (a) the deletion of an entry under section 51 or 62; or
- (b) any error or omission in recording a registered instrument,

is entitled to compensation out of The Land Titles Assurance Fund formed under section 57 of the *Land Titles Act*. R.S.O. 1980,  
c. 230

(2) A person is not entitled to any compensation out of The Land Titles Assurance Fund in respect of land registered under this Act unless, Qualifi-  
cations

- (a) the person has been wrongfully deprived of land for a reason set out in subsection (1);
- (b) the person is unable to recover what is just by way of compensation or damages from any person whose act caused the loss or who was privy to any such act; and
- (c) the claim for compensation is made within six years from the time the person discovered or ought reasonably to have discovered the deletion, error or omission.

(3) Notwithstanding clause (2) (c), a person under the disability of infancy, mental incompetency or unsoundness of mind may make a claim for compensation under this Part at any time within six years from the day on which the disability ceased but not more than twenty years after the deletion, error or omission occurred. Persons  
under  
disabilities

(4) Section 26, subsections 60 (5) to (12), section 61 and subsection 161 (3) of the *Land Titles Act* apply, with necessary modifications, to claims for compensation under this Part. Application of  
R.S.O. 1980,  
c. 230,  
ss. 26, 60  
(5-12),  
61, 161 (3)

109. If, while a deletion or omission of any entry relating to any mortgage or other instrument securing the payment of money is subsisting, an innocent person has acquired an estate, right or interest in the land mentioned in the mortgage or other instrument, and the estate, right or interest of the innocent person is set forth in, is based upon or arises out of an instrument registered before the deletion or omission is corrected, Interests  
of innocent  
persons

- (a) the estate, right or interest of the innocent person in the land is not affected by any claim under the mortgage or other instrument; and
- (b) the person whose interest under the mortgage or other instrument is extinguished under clause (a) is entitled to compensation under this Part.

Protection  
from  
personal  
liability

110.—(1) No action or other proceeding for damages shall be instituted against any officer or employee of the Ministry of Consumer and Commercial Relations or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty under this Act, or for any alleged neglect or default in the execution in good faith of his duty under this Act.

Crown  
liability  
R.S.O. 1980,  
c. 393

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted.

Application

6. Part III of the *Registry Act*, as re-enacted by section 4 of this Act, applies to every claim and notice of claim whether registered before or after the coming into force of the said section 4.

Commence-  
ment

7. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

8. The short title of this Act is the *Registry Amendment Act, 1981*.