

CHAPTER 16

Conveyancing and Law of Property Act

[Assented to June 29, 1978.]

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

Interpretation

1. In this Act "charge", "encumbrance", "instrument", "lease or agreement for lease for a term not exceeding 3 years where there is actual occupation under the lease or agreement", "owner", "register", "registered owner", "registrar", "statutory right-of-way", "transfer" and "transferee" have the meanings assigned to them in the Land Titles Act.

Vendor and Purchaser

Rights of vendors and
purchasers in completing
contracts for sale of land

2. In a contract for the sale of land and in an action on it, the rights and obligations of the vendor and purchaser are, unless otherwise agreed, regulated by the following rules:

- (a) recitals of facts, statements and matters, and descriptions of parties in instruments or statutory declarations over 20 years old at the date of the contract are, unless the contrary is proved, sufficient evidence of their truth;
- (b) inability of a vendor to give a purchaser a legal covenant to produce and furnish copies of documents of title is not an objection to the title if the purchaser has, on the completion of the contract, an equitable right to the production of the copies that affirmatively prove his title.

Summary applications by
vendors or purchasers to
Supreme Court

3. (1) A vendor or purchaser of an interest in land may apply in a summary way to the Supreme Court in respect of

- (a) a requisition, or
- (b) an objection, or

(c) a claim for compensation, or
(d) any other question
relating to the contract, except a question affecting its existence or validity.

(2) In an application under subsection (1), the court shall make such order as it considers proper, by reference to a registrar or otherwise, and shall order how and by whom the costs of the application will be paid.

Duty of vendor to deliver
registrable instrument

4. A person entering into an agreement or assignment of an agreement for sale of land, where the purchase price is payable by instalments or at a future time, shall deliver to the person buying the land an instrument in such form and executed by such parties that the title of the purchaser under the instrument shall be registrable under the Land Titles Act.

Duty of transferor to
deliver registrable
instrument

5. (1) A person transferring land in fee-simple shall deliver to the transferee a transfer registrable under the Land Titles Act.

(2) A person who as landlord or intended landlord enters into a lease or agreement for lease (other than a lease or agreement for lease for a term not exceeding 3 years where there is actual occupation under the lease or agreement) shall, unless the contrary is agreed in it, deliver an instrument creating the lease or agreement for lease to the tenant or intended tenant in form registrable under the Land Titles Act.

Duty of vendor or
transferor to register
his own title

6. A person who sells or transfers land, or who enters into an agreement or assignment of an agreement for the sale of land, by which the purchase price is payable by instalments or at a future time, shall register his own title in order that a person to whom all or part of the land is transferred and a person claiming under the agreement or assignment can register his instrument under the Land Titles Act; and, so long as the first named person fails to comply with this section, no action shall be brought by him on the agreement or assignment.

Duty of transferor to
provide registrable
description

7. (1) A transferor in an instrument executed by him, or on his behalf, shall so describe the parcel of land intended to be transferred or otherwise dealt with that the title to the parcel shall be registrable

under the Land Titles Act; and to that end shall provide and deposit such further instruments of assurance and all such plans as are required by the registrar.

(2) Where the transferor, after demand made in writing on him, refuses or neglects for 30 days to comply with the requirements of this section, a person entitled or applying to be registered may obtain the necessary description or plans and may unless the parties have agreed otherwise recover the expenses of obtaining them, including the expenses of necessary surveys, in a court of competent jurisdiction from the transferor so refusing or neglecting to comply.

(3) In this section "transferor" includes a landlord obliged to deliver an instrument under section 5.

Creation and Disposition of Interests in Land

Disposition of rights and interests in land

8. (1) The following may be disposed of:

- (a) a contingent, executory, or future interest in land or a possibility coupled with an interest in land, whether or not the object of the gift or the limitation of the interest or possibility is ascertained;
- (b) a right of entry into or on land, whether immediate or future, vested or contingent.

(2) All rights of entry affecting a legal estate that are exercisable on breach of condition or for any other reason may, after the coming into force of this section, be made exercisable by any person and the persons deriving title through or under him.

(3) Exercise of a right of entry under subsection (2) is subject to the Limitations Act.

First refusal equitable interest in land

9. A right of first refusal with respect to land, otherwise known as a right of refusal or right of pre-emption, created by a contract entered into either before or after the coming into force of this section, is an equitable interest in land.

Creation of estates tail prohibited

10. (1) No estate in fee-simple shall be changed into a limited fee or fee tail, but the land, whatever form of words is used in an instrument, shall be and remain an estate in fee-simple in the owner for the time being.

(2) A limitation which, before June 1, 1921, would have created an estate tail shall transfer the fee-simple or the greatest estate that the transferor had in his land.

(3) Nothing in this Act prevents the creation of a determinable fee-

simple or a fee-simple defeasible by condition subsequent.

(4) A possibility of reverter or a right of entry for condition broken may be registered under the Land Titles Act against the title to the land affected in the same manner as a charge.

Joint Ownership

Creation of tenancy in common unless contrary intention appears

11. (1) Where, by an instrument executed after April 20, 1891,
- (a) land is transferred or devised in fee-simple, or charged, or
 - (b) land is contracted to be sold by a valid agreement for sale in which the vendor agrees to transfer the land
- to 2 or more persons, other than personal representatives or trustees, they take as tenants in common, unless a contrary intention appears in the instrument.
- (2) Where the respective interests of the tenants in common are not stated in the instrument, they are presumed to be equal.
- (3) In this section "transferred" includes a vesting by declaration of trust or order of court.

Rights of husband and wife

12. A husband and wife shall, for the purposes of acquisition of land, under a disposition made or coming into operation before or after the coming into force of this Act, be treated as 2 persons.

Remedy of co-owner who has paid more than his share of liabilities

13. Where 2 or more persons are registered owners and, owing to the default of one of them, the other has been called on to pay and has paid more than his proportionate share of
- (a) an instalment of purchase money, or
 - (b) mortgage money, or
 - (c) rent, or
 - (d) interest, or
 - (e) taxes, or
 - (f) insurance, or
 - (g) repairs, or
 - (h) a payment that they are required to make under the Strata Titles Act, or under a term, condition, or covenant entered into by them or contained in an instrument under which they hold title to or a charge on the land, or
 - (i) a payment in respect of a charge under which the land might be subject to forced sale or foreclosure,

the person making the payment may, in addition to all other rights and remedies to which he is entitled, apply to the Supreme Court for relief as provided for in section 14.

Supreme Court may order
lien and sale

14. (1) On the hearing of an application under section 13, the court may

- (a) order that the applicant has a lien on the interest in land of the defaulting owner for the amount recoverable under subsection (2),
 - (b) order that if the amount recoverable under subsection (2) is not paid by the defaulting owner
 - (i) within 30 days after the date of service of a certified copy of the order on him, or
 - (ii) within such other period as the court considers proper, his interest in the land be sold in accordance with the rules of court governing sales by the court, and
 - (c) make such further or other order as may be proper, including an order that the applicant may purchase the interest in the land of the defaulting owner at the sale.
- (2) The amount recoverable by the applicant is the amount that the defaulting owner would, at the time the application is made or repayment is tendered, have been liable to contribute in order to satisfy his share of the original debt if it had been allowed to accumulate until that time.
- (3) Where a sale occurs under an order made under this section, the transfer to the purchaser shall be executed by the registrar of the court, and, on registration, passes title to the interest in land sold.
- (4) Surplus money received from the sale shall be paid into court to the credit of the defaulting owner.

Instrument

Old methods of conveying
land abolished

15. (1) Land may be conveyed in freehold only by an instrument expressed to convey the land, but it is not necessary to use the word grant or any other term of art.

(2) A conveyance of land may pass the possession or right to possession without actual entry.

(3) This section is subject to the Land Titles Act.

Execution of instruments
without seal

16. (1) Subject to subsection (2), every instrument purporting to transfer, charge, or otherwise deal with land or to release or otherwise deal with a charge, and every power of attorney under which the instrument

is executed, may be executed without a seal.

(2) The execution of an instrument or power of attorney executed by a corporation, or of an instrument executed by an attorney on behalf of a corporation, is, notwithstanding the Companies Act, defective under the Land Titles Act unless the corporation executes it using a seal, or the attorney executes it under his seal.

(3) This section applies notwithstanding any other Act.

Construction of expressions
used in instruments

17. In transfers, contracts, wills, court orders and other instruments affecting land executed, made, or coming into operation after this Act comes into force, unless the context otherwise requires

- (a) "month" means calendar month,
- (b) "person" includes a corporation,
- (c) the singular includes the plural and vice versa, and
- (d) the masculine includes the feminine and vice versa.

Person may transfer
land to himself

18. (1) A person may transfer land to himself in the same manner as he can transfer land to another person, and, without restricting that generality, a joint tenant may transfer his interest in land to himself.

(2) A trustee or personal representative may make a valid transfer to himself in his personal capacity.

(3) A transfer by a joint tenant to himself of his interest in land, whether an estate in fee-simple or a charge, has and shall be deemed always to have had the same effect as to severance as a transfer to a stranger.

(4) A registered owner may make a transfer directly to himself jointly with another, and registered owners may make a direct transfer to one or more of their number either alone or jointly with another.

(5) An owner in fee-simple or an owner of a registered lease or sublease may grant to himself an easement or a restrictive covenant over land that he owns for the benefit of other land that he owns in fee-simple, or in respect of which he is the owner of a registered lease or sublease, but a grant under this subsection shall be consistent with the interests held by him as grantor and grantee at the time of the grant.

(6) When a corporation owns land in fee-simple and is a member of the class of persons named in section 214 of the Land Titles Act, it may grant or reserve a statutory right-of-way over the land to itself.

(7) Common ownership and possession of the dominant and servient tenements does not extinguish an easement.

(8) Common ownership and possession of the burdened and the benefited land does not extinguish a restrictive covenant.

Words of limitation
in fee-simple

19. (1) In the limitation of an estate in fee-simple in an

instrument, it is sufficient to use the words "in fee-simple" without the words "and his heirs".

(2) A transfer of land

- (a) to a person without words of limitation, or any equivalent expression, or
- (b) to a corporation sole by his corporate designation without the words "successors"

passes the fee-simple or the greatest estate or interest in the land that the transferor has power to transfer, unless the transfer expressly provides that a less estate or a particular interest is being transferred.

(3) In a voluntary transfer a resulting trust for the transferor is not implied by reason only that the property is not expressed to be transferred for the use or benefit of the transferee.

(4) Nothing in subsections (1) and (2) prevents an instrument from operating by way of estoppel.

Implied covenant of transferee
on transfers subject to
mortgage

20. In an instrument transferring an estate or interest in land subject to a mortgage, there is implied, unless otherwise expressly provided, a covenant by the transferee with the transferor

- (a) to pay the mortgage in accordance with its terms, and
- (b) to indemnify the transferor against
 - (i) liability to pay the principal sum and interest and any other money secured, and
 - (ii) liability on the mortgagor's covenants whether expressed or implied.

Benefit of restrictive
covenant annexed to whole
and each part of land
benefited

21. Where the benefit of a restrictive covenant respecting building on, or the use of, land is annexed or purports to be annexed by an instrument to other land, the benefit shall, unless expressly agreed otherwise, be deemed to be annexed to the whole and to each and every part of that other land capable of benefiting from the restrictive covenant.

Power of sale includes
power to subdivide and
dedicate

22. Where an instrument gives to a personal representative or to a trustee, or a power of attorney gives to an attorney, power to dispose of land, he may, unless the instrument or power of attorney expressly precludes it, subdivide the land and dedicate to the public such part of it as may be necessary

- (a) to obtain the approval of the approving officer under the Land

- Titles Act, and
(b) to complete the subdivision.

Attorney cannot sell,
etc., to himself

23. A sale, transfer, or charge to or in favour of himself, by an attorney named in a power of attorney, of land owned by the principal and purporting to be made under the power of attorney, is not valid unless the power of attorney expressly authorizes it or the principal ratifies it.

Mortgages

Further advances
by mortgagee

24. (1) Notwithstanding the Land Titles Act, after the coming into force of this Act, further advances made by a registered owner of a mortgage contemplated by and in accordance with the mortgage rank in priority to mortgages and judgments registered after his mortgage was registered

- (a) where the subsequent registered mortgagees or holders of the registered judgments have agreed in writing to the priority of the further advances, or
- (b) where, at the time the further advance is made, he has received no notice in writing of the registration of the subsequent mortgage or judgment, from its owner or holder, or
- (c) where, at the time the further advance is made, the subsequent mortgage or judgment has not been registered, or
- (d) where the mortgage requires him to make the further advances.

(2) Where a mortgage is expressed to be made to secure a current or running account, it shall not be deemed to have been redeemed by reason only that

- (a) advances made under it are repaid, or
- (b) the account of the mortgagor with the mortgagee ceases to be in debit,

and the mortgage remains effective as security for further advances and retains the priority given by this section until the mortgagee has delivered a registrable discharge of the mortgage to the mortgagor; but, if the mortgagor is not indebted nor in default under the mortgage, the mortgagee shall, on the mortgagor's request and at the mortgagor's expense, execute and deliver to the mortgagor a registrable discharge of the mortgage.

(3) Except as provided in this section, the right to tack in respect of mortgages of land is abolished; but priority acquired before the coming into force of this section in respect of further advances made under a mortgage is not affected.

(4) This section applies to mortgages of land made after the coming into force of this section.

(5) In this section "further advance" includes a first advance.

Mortgage subject to
registered equitable
interests

25. A registered owner

- (a) of an estate in fee-simple whose title is subject to a registered right to purchase or a registered option to purchase, or
 - (b) of a right to purchase who has created or given a subright to purchase that is registered,
- unless otherwise expressly agreed in the instruments creating, respectively, the right to purchase, the option, or the subright to purchase, may mortgage his estate or interest in the land, subject always to the prior rights of the purchaser, optionee, or subpurchaser, as the case may be, under the right to purchase, the option, or the subright to purchase, as the case may be.

Mortgage of equitable
interest enlarged to
fee-simple

26. Until it is discharged a mortgage by a purchaser or subpurchaser of his interest under an agreement for sale of land or subagreement for sale of land charges the present and future interest in land acquired by him under the agreement or subagreement, unless otherwise expressly provided in the mortgage.

Consolidation of
mortgages abolished

27. (1) A mortgagor seeking to redeem a mortgage of real or personal property is entitled to do so without paying money due under a separate mortgage made by him, or by a person through whom he claims, solely charging real or personal property other than that comprised in the mortgage which he seeks to redeem; but this subsection applies only if and as far as a contrary intention is not expressed in the mortgages or any of them.

(2) This section does not apply where all the mortgages were made before this Act comes into force.

(3) Except as provided in subsections (1) and (2), the doctrine of consolidation is abolished.

When right to enforce
personal covenant ceases

28. After the making of an order absolute for foreclosure or for cancellation of an agreement for sale, a mortgagee or vendor has no right to enforce the personal covenant of the mortgagor or the purchaser, as the case may be, to pay, nor shall he issue execution on a judgment taken on the covenant to pay unless by process of law the order absolute is set aside or reopened.

Mortgagor may request
statements from mortgagee

29. (1) Notwithstanding an agreement to the contrary, a mortgagor is entitled to receive from a mortgagee, on written request delivered to or mailed to the mortgagee,

- (a) a statement, showing the amount payable under the mortgage in order to obtain a discharge of the mortgage, setting out, where appropriate, the amounts of principal, interest and any other sums payable and the cost of the discharge, if any,
- (b) a statement of the balance payable under the mortgage on a date specified in the request with particulars of the amounts of principal remaining unpaid, any interest due and accrued, and any other sums secured by the mortgage, and
- (c) where the mortgagor is entitled to a discharge, a discharge of the mortgage executed in a form registrable under the Land Titles Act and otherwise a statement in writing of the terms on which the mortgagee will give a discharge, including, where appropriate, particulars of the money payable for principal, interest and any other sums.

(2) A statement by a mortgagee under this section shall be given free of charge.

Applications to Court

Application to Supreme Court
for right to enter adjoining
land to repair

30. (1) Where

- (a) adjoining parcels of land are owned by different owners,
- (b) by reason of a dwelling house on one parcel of land being so close to the boundary of the other parcel the owner of the dwelling house is unable to repair or work on the part of the dwelling house that adjoins the boundary without entering on the adjoining land, and
- (c) the consent of the owner of the adjoining land to the entry
 - (i) is refused, or
 - (ii) cannot reasonably be obtained,

the owner of the dwelling house may apply to the Supreme Court for an order permitting him to enter on the adjoining land to carry out the repair or work.

(2) An order under subsection (1) shall state

- (a) the period of time and purpose for which the permission is granted,
- (b) that the owner of the dwelling house shall compensate the adjoining owner for damage caused by the owner of the dwelling house, his servants, agents and contractors, in an amount to be determined by the court if the owners cannot agree, and
- (c) such other terms and conditions as the court considers reasonable.

Power of Supreme Court
to modify or cancel
certain charges

31. (1) A person interested in land against which there is registered, either before or after this section comes into force,

- (a) an easement, or
- (b) a land use contract, or
- (c) a statutory right-of-way, or
- (d) a restrictive covenant or other covenant burdening the land or the owner, or
- (e) a profit a prendre, or
- (f) an instrument by which minerals or timber or minerals and timber, being part of the land, are granted, transferred, reserved, or excepted

may apply to the Supreme Court for an order to modify or cancel the registered charge or interest.

(2) The court may make an order sought under subsection (1) on being satisfied

- (a) that, by reason of changes in the character of the property, the neighbourhood, or other circumstances the court considers material, the registered charge or interest is obsolete, or
- (b) that the reasonable use of the land will be impeded, without practical benefit to others, if the registered charge or interest is not modified or cancelled, or
- (c) that the persons who are or have been entitled to the benefit of the registered charge or interest have expressly or impliedly agreed to it being modified or cancelled, or
- (d) that modification or cancellation will not injure the person entitled to the benefit of the registered charge or interest, or
- (e) that the registered instrument is invalid or unenforceable or has expired, and its registration should be cancelled, or
- (f) that the application is not premature having regard to all the circumstances.

(3) The court may make the order subject to payment by the applicant of compensation to a person suffering damage in consequence of the order; but no compensation shall be payable in respect of the modification or cancellation solely by reason of any advantage accruing to the owner of the land burdened by the registered instrument.

(4) The court shall, before making an order under subsection (2), direct

- (a) such inquiries to be made of a municipality or other public authority, and
- (b) such notices, whether by way of advertisement or otherwise, to be given to such persons as appear to be entitled to the benefit of the registered charge or interest intended to be modified or cancelled

as the court thinks advisable.

(5) An order made under this section is binding on all persons, whether or not they are parties to the proceedings or have been served with notice.

(6) The registrar, on application and the production of an order made under subsection (2), or a certified copy of it, shall amend his records accordingly.

Encroachment on
adjoining land

32. (1) Where, on the survey of a parcel of land, it is found that a building on it encroaches on adjoining land, or a fence has been improperly located so as to enclose adjoining land, the Supreme Court may on application

- (a) declare that the owner of the parcel has
 - (i) for such period as the court determines, and
 - (ii) on making such compensation to the owner of the adjoining land as the court determines
- an easement on the land encroached on or enclosed; or
- (b) vest title to the land encroached on or enclosed in the owner of that parcel on making such compensation to the other owner as the court determines, or
- (c) order the owner of that parcel to remove the encroachment or the fence so that it no longer encroaches on or encloses any part of the adjoining land.

(2) For the purposes of this section, "owner" includes a person with an interest in, or right to possession of, the parcel of land or the adjoining land.

Miscellaneous

Rule in Bain v
Fothergill abrogated

33. A court may award damages for loss of a bargain against a person who cannot perform a contract to dispose of land by reason of a defect in his title.

Effect of merger
on subleases

34. (1) Where a reversion expectant on a lease is surrendered or merged, the estate or interest which as against the lessee for the time being confers the next vested right to the land, shall be deemed the reversion for the purposes of preserving the same incidents and obligations as would have affected the original reversion had it not been surrendered or merged.

(2) This section applies to surrenders or mergers effected before or after this Act comes into force.

8 and 9 Vict. c. 106

35. The Real Property Act, 1845, (Imperial) does not apply in the Province.

R.S.B.C. 1960 c. 213

36. Sections 12 and 36A of the Laws Declaratory Act are repealed.

Commencement

37. This Act comes into force on a day to be fixed by Proclamation.