

CONSOLIDATION OF LAND TITLES ACT

R.S.N.W.T. 1988,c.8(Supp.)
In force July 19, 1993: SI-008-93

(Current to: December 13, 2014)

The following provisions have been deleted for the purposes of this consolidation:
s.200-250 (Consequential Amendments)
s.251 (coming into force)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

S.N.W.T. 1994,c.8,s.80
s.80 in force May 7, 2001: SI-001-2001
S.N.W.T. 1995,c.25
s.3,4,15,18,21-26 in force August 1, 1995: SI-005-95
S.N.W.T. 1997,c.20
In force January 1, 1998: SI-014-97
S.N.W.T. 1998,c.5

AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:

S.N.W.T. 1998,c.35
In force April 1, 1999

AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2000,c.15 (as amended by S.Nu. 2002,c.7,s.1 [in force May 16, 2002])
In force August 19, 2002, except s.3
s.3 NIF
S.Nu. 2002,c.7,s.2
s.2 in force August 19, 2002
S.Nu. 2005,c.9,s.29
s.29 in force October 18, 2006: SI-005-2006
S.Nu. 2008,c.7
In force June 4, 2008
S.Nu. 2010,c.3,s.9
s.9 in force March 23, 2010

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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SCHEDULE A

SCHEDULE B

LAND TITLES ACT

INTERPRETATION

Definitions

1. In this Act,

"Canada Lands Surveyor" means a Canada Lands Surveyor as defined in the *Canada Lands Surveys Act*; (*arpenteur fédéral*)

"Deputy Registrar" means a Deputy Registrar of Land Titles appointed under section 12; (*registrateur adjoint*)

"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; (*plan descriptif*)

"district" means a registration district established under section 3; (*circonscription*)

"encumbrance" means any charge on land, created or effected for any purpose and includes mortgages, special encumbrances, liens authorized by statute to be filed in a land titles office, caveats, and writs of execution or other writs against land, unless expressly excepted; (*charge*)

"encumbrancee" means the lien claimant in a lien authorized by statute to be filed in a land titles office, 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; (*bénéficiaire de charge*)

"encumbrancer" means the owner of any land or of any estate or interest in land subject to any encumbrance; (*grevé de charge*)

"filing" means the entering in the day-book of any instrument or caveat; (*dépôt*)

"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; (*concession*)

"Inspector" means the Inspector of Land Titles appointed under subsection 6(1); (*inspecteur*)

"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, transfer of caveat, 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; (*acte*)

"judge" means a judge of the Nunavut Court of Justice; (*judge*)

"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 the 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; (*biens-fonds*)

"memorandum" means the endorsement on the certificate of title and on the duplicate certificate of title of the particulars of any instrument or caveat presented for registration; (*note ou mention*)

"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; (*tenants et aboutissants*)

"Minister having administration of territorial lands" means

- (a) the Minister of the Government of Canada having the administration and control of territorial lands, or
- (b) the Commissioner, where the Commissioner has the administration and control of territorial lands; (*ministre chargé de l'administration de terres territoriales*)

"mortgage" means any charge on land created merely for securing a debt or a loan; (*hypothèque*)

"mortgagee" means the owner of a mortgage; (*créancier hypothécaire*)

"mortgagor" means the owner of land or of any estate or interest in land pledged as security for a debt or a loan; (*débiteur hypothécaire*)

"notification" means a notification as defined in the *Territorial Lands Act* (Canada); (*notification*)

"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; (*propriétaire*)

"person under a legal disability" means

- (a) a minor,
- (b) a person who is named in a certificate of mental incompetence issued under the *Mental Health Act* or who is declared to be mentally incompetent by the Nunavut Court of Justice, and
- (c) a person
 - (i) referred to in section 12 of the *Public Trustee Act* who is incapable of managing his or her affairs, or
 - (ii) referred to in paragraph 29(1)(b) of the *Public Trustee Act* 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; (*incapable*)

"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; (*plan d'arpentage*)

"possession", when applied to persons claiming title to land, includes the receipt of the rents and profits from the land; (*possession*)

"Registrar" means

- (a) a Registrar of Land Titles appointed under subsection 8(1), or
- (b) a Deputy Registrar or the Inspector when acting as Registrar; (*registrateur*)

"registration" means

- (a) the bringing of lands under the provisions of this Act, and
- (b) the entering on a certificate of title of a memorandum authorized by this Act, of any instrument or caveat; (*enregistrement*)

"Sheriff" means the Sheriff appointed under the *Judicature Act*; (*shérif*)

"special encumbrance" means the instrument referred to in subsection 113(2); (*charge spéciale*)

"Surveyor General" means the Surveyor General as defined in the *Canada Lands Surveys Act*; (*arpenteur en chef*)

"territorial lands" means territorial lands as defined in section 2 of the *Territorial Lands Act* (Canada) that are in Nunavut; (*terres territoriales*)

"transfer" means the passing of any estate or interest in land under this Act, whether for valuable consideration or otherwise; (*transfert*)

"transferee" means the person to whom any interest or estate in land is transferred, whether for valuable consideration or otherwise; (*cessionnaire*)

"transferor" means the person by whom any interest or estate in land is transferred, whether for valuable consideration or otherwise; (*cédant*)

"transmission" means a change of ownership consequent upon death, sale under a writ of execution or other writ against land, a settlement or a legal succession in case of intestacy, or any other act of law. (*transmission*)

S.N.W.T. 1995,c.25,s.2; S.N.W.T. 1998,c.5,s.18(2); S.Nu. 2008,c.7,s.2,8.

Authorization by Minister

1.1. (1) The Minister of the Government of Canada having the administration and control of territorial lands may authorize an official in the public service of Canada to exercise any of the powers or perform any of the duties or functions of the Minister under this Act.

Authorization by Commissioner

(2) The Commissioner may, where the Commissioner has the administration and control of territorial lands, authorize an official in the public service of Nunavut to exercise any of the powers or perform any of the duties or functions of the Commissioner under this Act, except the power to make regulations under section 195.

S.Nu. 2008,c.7,s.3.

GOVERNMENT OF NUNAVUT

Government bound by Act

2. This Act binds the Government of Nunavut and its agents. S.Nu. 2008,c.7,s.4.

PART I

ADMINISTRATION

Registration Districts

Registration districts

3. The Minister may, by order,

- (a) establish any portion or all of Nunavut 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 establishing new districts, provide for any matter necessary to ensure that the land titles offices in the new districts operate properly.

S.Nu. 2008,c.7,s.8.

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.

(3) **Repealed, S.Nu. 2008,c.7,s.5.**

S.N.W.T. 1998,c.35,Sch.C,s.1; S.Nu. 2008,c.7,s.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.

Officers

Inspector of Land Titles

6. (1) The Minister shall appoint an Inspector of Land Titles.

Qualifications

- (2) No person shall be appointed as the Inspector unless the person is
- (a) a barrister, solicitor or advocate of Nunavut, a province or a territory, or
 - (b) a notary of Quebec,
- with at least three years standing. S.Nu. 2008,c.7,s.8.

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 any other duties that may be determined by the Minister.

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.

Inspector as Registrar

- (3) The Inspector may perform any duty or exercise any power of a Registrar.

Registrar of Land Titles

8. (1) The Minister shall appoint a Registrar of Land Titles for each district.

Qualifications

- (2) No person shall be appointed as a Registrar unless the person is
- (a) a barrister, solicitor or advocate of Nunavut, a province or a territory; or
 - (b) a notary of Quebec.
S.Nu. 2008,c.7,s.8.

Duties

9. The Registrar shall conduct the business of the land titles office in the district of that Registrar.

Seal of office

10. Each Registrar shall obtain a seal of office that has been approved by the Minister.

Suspension of powers and duties of Registrar

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.

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.

Deputy Registrars of Land Titles

12. The Minister may appoint one or more Deputy Registrars of Land Titles for each district.

Duties

13. (1) A Deputy Registrar for a district shall assist the Registrar for that district under instructions from the Registrar.

Delegation by Registrar

(2) A Registrar may delegate to a Deputy Registrar for the district of that Registrar 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.

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 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.

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.

Restriction on officers and clerks

15. No Inspector, Registrar, Deputy Registrar or clerk in a 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;
- (b) advise for fee, reward or otherwise on 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.

S.Nu. 2008,c.7,s.8.

Protection of officers

16. No Inspector, 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 done or omitted to be done in good faith in the performance or supposed performance of his or her duties, or in the exercise or supposed exercise of his or her powers.

S.Nu. 2008,c.7,s.8.

Administration of oaths

17. The Inspector, a 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.

18. Repealed, S.Nu. 2000,c.15,s.2.

PART II

PROCEDURES

Processing Instruments and Caveats

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.

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
- (b) is, for any other reason, unfit for filing or registration.

Note: On a day to be fixed by order of the Commissioner, the following section is added after section 20:

Faxed documents

20.1. (1) Notwithstanding any other provision of this Act or any other Act or law, a Registrar may, subject to any prescribed conditions, register instruments or caveats that are submitted by fax.

Validity

(2) A document registered under subsection (1) shall be deemed for all purposes to be an original document.

Time of receipt

(3) For the purposes of determining when an instrument or caveat submitted by fax was received, the stamp applied by the Registrar under section 19 is conclusive.

See S.Nu. 2000,c.15,s.3.

Electronic registration

20.2. (1) A Registrar may file or register any instrument or caveat submitted in electronic form if the instrument or caveat is

- (a) in a format approved by the Registrar;
- (b) completed in a manner approved by the Registrar; and
- (c) transmitted by a means approved by the Registrar.

Electronic registration mandatory

(2) A Registrar may require any instrument or caveat that is required to be submitted for filing or registration under this Act to be submitted in electronic form.

Electronic registration revoked

(3) A Registrar may suspend or revoke the filing or registration of an instrument or caveat submitted in electronic form if the Registrar has reasonable grounds to believe that the instrument or caveat is not authorized by the registered owner of the land affected by it or the holder of a registered interest in the land. S.Nu. 2008,c.7,s.6.

Day-book

21. (1) A Registrar may keep a record, in written or electronic form, called the day-book.

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
 - (b) the day, hour and minute that the instrument or caveat was received.
- S.Nu. 2000,c.15,s.4.

General register

- 22.** (1) A Registrar shall keep a book called the general register.

Contents

- (2) The general register must contain a short description of
- (a) powers of attorney,
 - (b) letters of administration and letters probate,
 - (c) documents evidencing a change of name,
 - (d) instruments required by other enactments to be recorded in the general register, and
 - (e) any other documents or instruments that the Registrar considers appropriate to be recorded in the general register,
- that have been filed in the land titles office of that Registrar. S.Nu. 2008,c.7,s.8.

Writ book

- 23.** (1) A Registrar shall keep a book called the writ book.

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.
- S.Nu. 2008,c.7,s.8.

General Requirements

Requirement for certificate of title

- 24.** (1) No Registrar shall accept
- (a) an instrument, or
 - (b) a caveat,

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

Exemption

- (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.

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.

Address of caveator

(2) No Registrar shall accept a caveat or transfer of caveat unless it contains a post office address in Nunavut for the caveator.

Exception

(3) Subsection (2) does not apply to a caveat submitted for registration under section 59.2. S.N.W.T. 1995,c.25,s.3; S.Nu. 2008,c.7,s.8.

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 the records of a Registrar to a new post office address in Canada, that person, lessee or encumbrancee shall notify that Registrar of the new post office address.

Idem

(2) Where a caveator changes his or her post office address as shown on the records of a Registrar to a new post office address in Nunavut, the caveator shall notify that Registrar of the new post office address.

Exception

(3) Subsection (2) does not apply to a person named as the caveator on a caveat registered under section 59.2. S.N.W.T. 1995,c.25,s.4; S.Nu. 2008,c.7,s.8.

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.

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.

Age of majority

28. A Registrar shall require evidence in the prescribed form that an individual making a transfer, mortgage, special encumbrance or lease has attained the age of 19 years. S.Nu. 2000,c.15,s.5.

Family home

28.1. (1) A Registrar shall require evidence in the prescribed form that an individual making a transfer, mortgage, special encumbrance or lease is entitled to do so under section 53 of the *Family Law Act*.

Exception

(2) Subsection (1) does not apply where the transfer, mortgage, special encumbrance or lease was made before August 19, 2002. S.Nu. 2000,c.15,s.5; S.Nu. 2002,c.7,s.2(2).

Execution of documents by corporation

29. (1) An instrument executed by a corporation, notwithstanding anything to the contrary in any other Act or law, or any Act or document incorporating the corporation, is sufficiently executed by the corporation for the purposes of this Act if the instrument is

- (a) sealed with the corporate seal of the corporation and signed by at least one officer or director of the corporation; or
- (b) executed by at least one officer or director of the corporation who verifies his or her authority to execute the instrument in the prescribed form.

Person making mark

(2) Where a person executing an instrument signs the instrument with a mark, the Registrar may require that the instrument be accompanied by a written statement from a witness stating

- (a) the name of the person signing with a mark;
- (b) that the witness knows the person, and saw the person sign with a mark;
- (c) that the contents of the instrument were explained to the person; and
- (d) that the person appeared to understand the contents of the instrument.

S.N.W.T. 1995,c.25,s.5; S.N.W.T. 1998,c.5,s.18(3);
S.Nu. 2000,c.15,s.6.

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 the Rules of the Nunavut Court of Justice. S.Nu. 2008,c.7,s.8.

31. Repealed, S.Nu. 2008,c.7,s.7.

Records

Retaining instruments

- 32.** A Registrar shall retain in the land titles office of that Registrar
- (a) every instrument and caveat that is filed, registered or issued in that office;
 - (b) every duplicate certificate that the Registrar is required to retain under section 114; and
 - (c) every duplicate certificate of title cancelled by that Registrar.
S.Nu. 2008,c.7,s.8.

Keeping of records

- 32.1.** A Registrar may keep records that are required to be kept under this Act
- (a) in written form;
 - (b) by any graphic, photographic, magnetic or electronic means capable of being reproduced in written form within a reasonable time; or
 - (c) by any other means or combination of means capable of being reproduced in written form within a reasonable time that the Registrar considers appropriate.
S.N.W.T. 1995,c.25,s.6.

Duplicate records

- 32.2.** (1) A Registrar may make, by any method the Registrar considers appropriate, a duplicate record of
- (a) a certificate of title when it is issued;
 - (b) a certificate of title after a memorandum is endorsed on it; and
 - (c) a document, instrument or caveat accepted for filing or registration.

Destruction of original document

(2) Where a duplicate record has been made of a document, instrument or caveat, the original document, instrument or caveat may be destroyed after such period of time as may be prescribed. S.N.W.T. 1995,c.25,s.6; S.Nu. 2000,c.15,s.7.

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 a duplicate record of the instrument or caveat for inspection.

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. S.N.W.T. 1995,c.25,s.7; S.Nu. 2008,c.7,s.8.

Copies

34. A Registrar who has been requested to provide a copy of an instrument or caveat that has been filed or registered in the land titles office of that Registrar shall provide a copy of the original or duplicate record of the instrument or caveat.

S.N.W.T. 1995,c.25,s.8.

Certified copies

35. (1) A Registrar who has been requested to provide a certified copy of an instrument or caveat that has been filed or registered in the land titles office of that Registrar shall provide, under seal, a copy of the original or duplicate record of the instrument or caveat, certified by the Registrar to be a true copy of the original.

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. S.N.W.T. 1995,c.25,s.9.

Certificate respecting writ book and general register

36. On 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.

Substitute instrument or caveat

37. (1) Where a Registrar is satisfied that a document, instrument or caveat has been destroyed or lost, the Registrar may create a substitute for or a copy of the document, instrument or caveat from the information contained in the records and duplicate records of the Registrar.

Force and effect of substitute

(2) Where a substitute for or a copy of the document, instrument or caveat is made under subsection (1), it has, without further proof, the same force and effect as the original document, instrument or caveat. S.N.W.T. 1995,c.25,s.10.

Court order respecting lost instrument

38. (1) On the application of a person having an interest in land affected by a document, instrument or caveat, the Nunavut Court of Justice may make any order respecting the loss or destruction of the document, instrument or caveat that it considers appropriate where a Registrar

- (a) is requested to produce the document, instrument or caveat;

- (b) informs the person that he or she is unable to produce the document, instrument or caveat by reason that it has been destroyed or lost; and
- (c) is not taking reasonable steps to create a substitute for or copy of the document, instrument or caveat.

Originating notice

(2) An application under subsection (1) shall be made by originating notice.
S.N.W.T. 1995,c.25,s.10; S.Nu. 2008,c.7,s.8.

Certificates of Title

Form

39. (1) A certificate of title must be in the prescribed form.

Replacement of worn or damaged certificate

(2) A Registrar may cancel a certificate of title and duplicate certificate of title and issue a new certificate of title and duplicate certificate of title where the certificate of title is

- (a) worn or damaged;
- (b) subject to a significant number of instruments that have been discharged or caveats that have been withdrawn; or
- (c) difficult to reproduce.

Where no duplicate certificate

(3) A Registrar shall not issue a duplicate certificate of title under subsection (2) where a duplicate certificate had not been issued in respect of a certificate of title cancelled under subsection (2).

Certified copy to owner

(4) Where a Registrar cancels a certificate of title under subsection (2), the Registrar shall, at no cost, provide a certified copy of the new certificate of title to the owner. S.N.W.T. 1995,c.25,s.11; S.Nu. 2008,c.7,s.8.

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.

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.

Numbers of certificate of title

(2) A Registrar issuing a certificate of title referred to in subsection (1) shall note on the certificate of title of the transferor, the number of the new certificate of title issued in the name of the transferee and, on the certificate of title of the transferee, the number of the certificate of title of the transferor.

Amendment of certificate of title

41.1. Where, under any provision of this Act, a Registrar is required to issue a new certificate of title, the Registrar may instead issue an amended certificate of title, and the amended certificate of title is as valid for all purposes as a new certificate of title.

S.Nu. 2000,c.15,s.8.

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.

Easement

43. Where a Registrar registers a transfer creating a utility easement as defined in subsection 76(4), the Registrar shall, on the written request of the owner of the utility easement, issue a certificate of title to that person.

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.

Duplicate certificates

45. (1) A Registrar who issues a certificate of title to an owner shall issue a duplicate certificate if the owner requests the duplicate certificate in writing, and pays the prescribed fee.

Notation where no duplicate certificate

(2) Where a Registrar has issued a certificate of title, and is not required to issue a duplicate certificate under subsection (1), the Registrar shall enter a notation on the certificate of title that no duplicate certificate has been issued.

Cancellation or retention of duplicates

(3) An owner may provide a duplicate certificate of title to a Registrar and may request that it be cancelled, or kept by the Registrar until the owner requests that it be returned, and where an owner so requests, the Registrar shall cancel, retain or return the certificate, as the case may be.

Replacement of duplicate certificate

(4) A Registrar may cancel a duplicate certificate of title and issue a replacement duplicate certificate of title where it has become worn or damaged,

- (a) on the written request of the owner; or
- (b) if replacement of the duplicate certificate appears to the Registrar to be desirable.

S.N.W.T. 1995,c.25,s.12; S.Nu. 2000,c.15,s.9.

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.

Impersonation

(2) The Registrar may use the signature to detect any impersonation of the owner.

Consolidation of certificates of title

47. (1) On 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 issue to the owner one or more certificates of title for all the parcels of land.

Separation of certificates of title

(2) On 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 issue to the owner two or more certificates of title for all the parcels of land.

Notation on new certificates

(3) The Registrar shall enter on 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.

Replacing partially cancelled certificate

48. (1) On 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 issue to the owner a new certificate of title for the land remaining on the cancelled certificate.

Notation on new certificate

(2) The Registrar shall enter on 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.

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.

Duplicate certificate lost or destroyed

50. (1) On 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

- (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.

Notice

(2) Where a Registrar receives an affidavit referred to in subsection (1), the Registrar may

- (a) cause to be published, once a week for four weeks, a notice of the intention of the Registrar to issue a replacement duplicate certificate in a newspaper distributed nearest to the land described in the duplicate; and
- (b) post the 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.

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.

Notation on duplicate

(4) The Registrar shall indicate on a duplicate certificate issued under this section that it is a replacement duplicate.

PART III

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.

Other instruments 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.

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.

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 the memorandum relates or, in the case of a caveat, that the memorandum is of a caveat,
 - (ii) the day of registration of the instrument or caveat,
 - (iii) the number or symbol assigned to the instrument or caveat, and
 - (iv) any other information that the Registrar considers to be appropriate; and
- (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 on the duplicate certificate, if the duplicate

- (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.

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.

Application by Minister or Commissioner

Certificates of title to Her Majesty or Commissioner

57. (1) A Minister having administration of territorial lands may, where a certificate of title is not issued for the territorial lands, apply to the Registrar in whose district the lands are located to have a certificate of title issued under this Act.

Issuance of certificate of title

(2) A Registrar who receives an application under subsection (1) shall issue a certificate of title in the name of Her Majesty in right of Canada or the Commissioner, as the case may be. S.N.W.T. 1995,c.25,s.13.

Survey

58. A certificate of title shall not be issued under section 57 in respect of territorial lands unless those lands have been the subject of or included in a survey made in accordance with Part II of the *Canada Lands Surveys Act* 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. S.N.W.T. 1995,c.25,s.13.

Application to withdraw lands from Act

59. (1) Where Her Majesty in right of Canada or the Commissioner is named as the owner on a certificate of title, the Minister having administration of territorial lands may apply to the Registrar in whose district the land is located to cancel the certificate of title for the territorial lands described in the certificate of title.

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.

Effect of cancellation

(3) The land described in 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 57 is registered; or
- (b) an action for ejectment or damages referred to in subsection (4) in respect of the land is commenced.

Action for ejectment or damages

(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. S.N.W.T. 1995,c.25,s.14; S.N.W.T. 1998,c.5,s.18(5).

Encumbered Territorial Lands

Application to issue title to or lease of territorial lands subject to third party interests

59.1. (1) In the case of an application under subsection 57(1) or a lease of territorial lands for which a certificate of title is not issued, all documents filed or recorded in the property records of the Minister having administration of territorial lands may be submitted to the Registrar in whose district the land is located, notwithstanding that the

documents do not otherwise comply with the requirements of this Act, if the documents are submitted in accordance with subsection 59.2(1) together with

- (a) the application in the case of an application under subsection 57(1); or
- (b) an application under subsection 57(1) and the lease, in the case of a lease of territorial lands.

Discharged interests

(2) Where the Minister having administration of territorial lands is satisfied that a document filed or recorded in the property records of that Minister

- (a) has been wholly discharged or withdrawn by a subsequent document that has been filed or recorded, or
- (b) has expired,

that document or the subsequent document need not be submitted under subsection (1).
S.N.W.T. 1995,c.25,s.15.

Documents registered as caveats

59.2. (1) Each document submitted together with an application or lease referred to in section 59.1 shall be submitted as a caveat in the prescribed form signed by the Minister having administration of territorial lands.

Documents to be submitted in order

(2) The documents submitted under subsection (1) and the lease, where the documents are submitted together with a lease referred to in subsection 59.1(1), shall be submitted in the order in which they are filed or recorded on the property records of the Minister having administration of territorial lands.

Leases under section 107.1

(3) For the purposes of subsection (2), where the Minister having administration of territorial lands submits a lease and any amendment, assignment or transfer of the lease to be registered under subsection 107.1(3), the lease and the amendment, assignment or transfer shall be considered to have been filed or recorded together on the property records of the Minister at the time the original lease was filed or recorded.

Caveator on discharge registered as a caveat

(4) Where a document to be submitted as a caveat under subsection (1) purports to be a discharge or withdrawal, in whole or in part, of another document, the caveator shall be identified in the caveat as "the owner of the land against which the caveat is registered".

Caveator on court order registered as a caveat

(5) Where a document to be submitted as a caveat under subsection (1) is an order of the Nunavut Court of Justice in which an estate or interest in land vests in a person, absolutely or conditionally, that person shall be named in the caveat as the caveator.

Registration of caveats

(6) On receipt of an application or lease referred to in section 59.1 and one or more caveats submitted in accordance with this section, the Registrar shall register the application or lease and the caveats. S.N.W.T. 1995,c.25,s.15; S.Nu. 2008,c.7,s.8.

Effect of caveat registered under section 59.2

59.3. (1) The interest, if any, that a person named as a caveator in a caveat registered under section 59.2 has in the land and the priority of the interest as against the interest of all other persons, whether the interests of other persons are registered or not, is the same after the registration of the caveat as before the registration of the application or lease.

Memorandum of filing on records of Minister of no force or effect

(2) A memorandum that is inscribed by the Minister having administration of territorial lands on a lease of territorial lands and that is in respect of the filing or recording of a document on the property records of the Minister, which document is registered under subsection 59.2(6), is of no force or effect after the lease is registered.

Change of name not affecting validity of caveat

(3) The validity of the claim of a person named as a caveator in a caveat registered under section 59.2 is not affected where the caveat is registered at a time when the name of the caveator has changed.

No liability against government

(4) Where a caveat is registered in accordance with sections 59.1 and 59.2, no action lies against a Registrar, the assurance fund, Her Majesty in right of Canada, the Commissioner or a Minister having administration of territorial lands in respect of the submission or registration of the caveat. S.N.W.T. 1995,c.25,s.15.

Application by Owner

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 before that date passed from Her Majesty, is entitled to have the estate registered under this Act.

Application

61. Where an owner referred to in section 60

- (a) applies to the Registrar in whose district the land is located in accordance with the prescribed procedures, and
- (b) 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.

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 the acts and execute the instruments that, in accordance with this Act, are necessary to give effect to all covenants, conditions and purposes expressly contained in the instrument, or by this Act declared to be implied against such person in instruments of a similar nature.

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

- (a) 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 mortgage or special encumbrance; and
- (b) indemnify and keep harmless the transferor from and against the principal sum or other moneys secured by the instrument creating the mortgage or special encumbrance, and from and against the liability in respect of any covenant contained in the mortgage or special encumbrance or under this Act implied, on the part of the transferor.

Unregistered instruments

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 the land except a leasehold interest not exceeding three years, or to render the land liable as security for the payment of money.

Effect of registration

65. On 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 the instrument, or by this Act declared to be implied in instruments of a similar nature.

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 the land subject, in addition to the incidents implied by virtue of this Act, to the encumbrances, liens, estates or interests that are notified on the certificate of title for the land, but absolutely free from all other encumbrances, liens, estates or interests, except the estate or interest of an owner claiming the same land under a prior certificate of title issued under this Act.

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 any person through whom that person derives title, has held that possession.

Holder of prior certificate

67. A person shall be 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 the certificate of title has been surrendered and a new certificate of title has been issued on a transfer or other instrument.

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.

Implied reservations

69. The title of the land mentioned in a 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;
 - (b.1) any unregistered tax sale transfer that a taxing authority is required, under section 97.88 of the *Property Assessment and Taxation Act*, to register on behalf of the purchaser of the land;
 - (b.2) any subsisting claim of lien issued under section 97.51 of the *Property Assessment and Taxation Act* for the payment of arrears of property taxes and collection expenses in respect of the land;
 - (c) any public highway or right-of-way or other public easement, however created, on, 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.
- S.N.W.T. 1997,c.20,s.6.

Instruments operative on registration

70. Every instrument becomes operative according to the tenor and intent of the instrument, when it is registered, and on registration it creates, transfers, surrenders,

charges or discharges, as the case may be, the land or estate or interest mentioned in the instrument.

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.

Trusts

Memorandum of trust

72. (1) No memorandum or entry shall be made on a certificate of title of a 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;
- (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;
- (c) a trustee of the estate of a bankrupt; or
- (d) the trustee of a religious society or congregation holding land under the *Religious Societies Land Act*.

Treatment of instruments containing trust

(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).

Trustees

(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.

Transfer to trustees

73. (1) On 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 those words in the certificate of title issued to the owners pursuant to the transfer.

Authority to enter 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" on their certificate of title.

Effect of words

(3) After the words "No Survivorship" have been entered on a certificate of title under subsection (1) or (2) and that 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.

Commencement of proceedings

(4) The proceedings to obtain the sanction of a judge may be commenced by originating notice.

Power of judge

- 74.** (1) Before making an order referred to in subsection 73(3), the judge may
- (a) cause notice of intention of making that order to be advertised; and
 - (b) set out a period of time within which any person interested may show cause why the order should not be made.

Order

(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 any order that the judge thinks just, for the protection of the persons beneficially interested in the land or in the proceeds of the land.

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.

Notice

Definitions

75. (1) In this section,

"interest" includes any estate or interest in land; (*intérêt*)

"owner" means

- (a) the owner of an interest in whose name a certificate of title has been issued,
- (b) the owner of any other registered interest in whose name the interest is registered, or
- (c) the caveator or transferee of a caveat in whose name the caveat is registered. (*propriétaire*)

Protection of person accepting transfer, etc.

(2) Notwithstanding any rule of law or equity to the contrary, a person contracting or dealing with or taking or proposing to take a transfer, mortgage, encumbrance, lease or other interest from an owner is not, except in the case of fraud by that person,

- (a) bound or concerned, for the purpose of obtaining priority over a trust or other interest that is not registered by instrument or caveat, to inquire into or ascertain the circumstances in or the consideration for which the owner or any previous owner of the

- interest acquired the interest or to see to the application of the purchase money or any part of the money; or
- (b) affected by any actual, implied or constructive notice of a trust or other interest in the land that is not registered by instrument or caveat.

Knowledge of trust not fraud

(3) The knowledge of a person that any trust or interest not registered by instrument or caveat is in existence shall not of itself be imputed as fraud.

Retroactive effect

(4) Subsections (1) to (3) are deemed to have been in force since July 19, 1993, and to apply to every certificate of title, filing, registration and memorandum deemed by section 196 of this Act to be a certificate of title, filing, registration or memorandum under this Act.

Searches in Registry

(5) Subject to sections 36, 37, 37.1 and 49 of the *Personal Property Security Act*, a person contracting or dealing with or taking or proposing to take a transfer, mortgage, encumbrance, lease or other interest from an owner, is not, except in case of fraud by that person,

- (a) bound to search the Registry, as defined in that Act; or
- (b) affected by any actual, implied or constructive notice of a financing statement registered under that Act.

Effect of knowledge of registration

(6) The knowledge that a financing statement is registered under the *Personal Property Security Act* shall not of itself be imputed as fraud. S.N.W.T. 1995,c.25,s.16; S.N.W.T. 1998,c.5,s.18(7); S.N.W.T. 1994,c.8,s.80(4).

PART IV

INSTRUMENTS AND CAVEATS

Transfers

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 that land is intended to be created or transferred, the owner shall execute a transfer in the prescribed form.

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.

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 the description that is necessary to identify that land; and
 - (b) contain an accurate statement of the estate, interest or easement intended to be created or transferred.
 - (c) **repealed, S.Nu. 2000,c.15,s.10.**

Transfer of easement to oneself

(3.1) An owner may transfer a right-of-way, restrictive covenant or other easement to himself or herself and that right-of-way, restrictive covenant or easement may be registered under this Act.

Easements not merging

(3.2) Where dominant and servient tenements are registered in the name of the same person, a right-of-way, restrictive covenant or easement referred to in subsection (3.1) is not merged by reason of the common ownership.

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;
 - (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
 - (i) the generation, manufacture, distribution or supply of electrical power,
 - (ii) the irrigation or other agricultural use of land, or
 - (iii) the supplying of water; or
 - (e) to do those other things in respect of land that may be prescribed.
- S.N.W.T. 1995,c.25,s.17; S.Nu. 2000,c.15,s.10; S.Nu. 2008,c.7,s.8.

Words of limitation

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.

Estoppel

(2) Nothing in subsection (1) precludes any transfer from operating by way of estoppel.

Effect of words of limitation

(3) The introduction of any words of limitation into any transfer or devise of any land has the same force and meaning as the same words of limitation would have if used by way of limitation of any personal estate. S.Nu. 2008,c.7,s.8.

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 that easement or incorporeal right on the existing certificate of title of the other land.

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.

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.

Effect of registration

(3) On 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.

Statutory vesting

79.1. Where land has vested in a person by virtue of an Act of Nunavut, an Act of Canada or an Act of the Northwest Territories or proceedings under an Act of Nunavut, an Act of Canada or an Act of the Northwest Territories, and no other express authority or procedure exists for making the necessary entries, cancellations or issues of new instruments, the Registrar in whose district the land is located shall, on receipt of a notice in the prescribed form executed by the person, make the entries, cancellations and issues

of new instruments that the Registrar would have made if there had been a transfer of the land to that person. S.N.W.T. 1995,c.25,s.18; S.Nu. 2008,c.7,s.8.

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.

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.

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.

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.

Effect of notice

82. A Registrar, who has given notice to an owner under subsection 81(1), 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.

Withdrawal of plan requirement

83. (1) A Registrar may, at any time, withdraw the requirement to submit a plan referred to in section 81.

Duties of Registrar

- (2) A Registrar who withdraws the requirement to submit a plan shall
- (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.

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

- (a) be certified correct in the prescribed form and made by a Canada Lands Surveyor; and
- (b) meet the prescribed requirements.

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;
- (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.

Subdivision by transfer

86. (1) Subject to subsection (2), a Registrar shall not accept a transfer of

- (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

- (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 in the certificate of title.

Exemptions

(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
- (b) the ownership of part of a lot or other parcel created by a registered plan of survey to a person who owns an adjacent part of the same lot or parcel.

Condominium plan

87. A Registrar shall not accept a plan as defined in the *Condominium Act* 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.

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.

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,

- (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
- (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.

Plan requirements

- 90.** (1) 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;
 - (b) where the plan is not for dealings respecting an estate or interest in mines and minerals, be
 - (i) signed by the fee simple owner of every lot or other parcel created by the plan, and
 - (ii) approved by the Minister responsible for the *Planning Act* or a person designated by the Minister to approve such a plan;
 - (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;
 - (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;
 - (e) be certified correct in the prescribed form and made by a Canada Lands Surveyor; and
 - (f) be prepared in accordance with the prescribed procedures and meet the prescribed requirements.

Where notice filed under *Personal Property Security Act*

(2) Notwithstanding paragraphs (1)(c) and (d), a plan of survey referred to in section 88, where transfers are submitted with the plan under paragraph 89(a) or (b), need not be signed by a person who has filed a notice under section 49 of the *Personal Property Security Act*. S.N.W.T. 1994,c.8,s.80(5).

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.

Deemed refusal

(2) An owner, lessee or encumbrancee shall be deemed to have refused to sign a plan of survey where the owner who directed the plan to be prepared

- (a) personally serves the owner, lessee or encumbrancee with or sends by registered mail to the current post office address for the owner, lessee or encumbrancee as shown in the records of the Registrar, a request to sign the plan; and
- (b) does not receive a response to the request within 30 days of the request being served or sent.

Grounds for granting order

(3) 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 or for other grounds that the judge considers appropriate.

Duty after registration of plan

92. On the registration of a plan of survey referred to in section 88 and any transfers under section 89, the Registrar shall,

- (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
- (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,

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.

Surveys of metes and bounds descriptions

92.1. A Registrar may cancel the existing certificate of title for land described by metes and bounds and issue a new certificate of title with a description of the land referring to the whole of a lot or other parcel shown on a plan of survey, where the Registrar is

satisfied that the lot or other parcel shown on the plan of survey accurately depicts the land described by metes and bounds and the plan of survey

- (a) is submitted by an owner as required by the Registrar under section 80 or 81; or
- (b) is submitted by an owner under section 88.
S.N.W.T. 1995,c.25,s.19.

Plans of survey previously registered

92.2. On the written request of the owner of the whole of a lot or parcel shown on a plan that was not binding on the person who filed or registered the plan before the coming into force of this Act, a Registrar may cancel the existing certificate of title and issue a new certificate of title with a description of the land referring to the lot or other parcel shown on the plan. S.N.W.T. 1995,c.25,s.19.

Application

- 93.** (1) This section does not apply to
- (a) a transfer to which section 86 applies; or
 - (b) a plan as defined in the *Condominium Act* referred to in section 87.

Dealing of less than whole lot

(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

- (a) less than a lot or other parcel created by a plan of survey that has been filed or registered, and
- (b) less than the land of the owner of the interest as registered on the certificate of title,

unless the Registrar approves of a land description in the dealing that refers to a lot or other parcel created by

- (c) a plan commonly known as an "explanatory plan" or other administrative plan prepared under the *Canada Lands Surveys Act* that has been filed, or
- (d) a descriptive plan.

Descriptive plan

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.

Plan requirements

- 95.** A descriptive plan submitted under section 94 must be
- (a) approved by the Minister responsible for the *Planning Act* 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.

Encumbrance against less than whole lot

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

- (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.

Mechanics' lien

(2) A Registrar shall not accept for filing a mechanics' lien against land for which there is no certificate of title where the land description in the lien describes a parcel by metes and bounds.

Descriptive plan

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.

Plan requirements

98. A descriptive plan referred to in section 97 must

- (a) be certified correct in the prescribed form and made by a Canada Lands Surveyor; and
- (b) meet the prescribed requirements.

Restriction on issuance of certificate of title

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.

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 in the certificate of title or a plan registered against the certificate of title.

Exemption

- (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.

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.

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.

Correction of plans by judge

102. (1) On 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.

Terms and conditions

(2) An order granted under subsection (1) may be on terms and conditions as to costs and other matters that the judge considers proper.

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.

Plans prepared under Acts of Canada

103. A plan that has been

- (a) prepared in accordance with the provisions of an Act of Canada, and
- (b) sent, under or in accordance with those provisions, to the Registrar in whose district the lands shown on the plan are located,

must be dealt with and recognized by the Registrar, insofar as it is capable of being dealt with and recognized, as if it had been prepared in accordance with this Act.

Plans of surrendered Indian reserves

104. A plan that has been

- (a) attested by the signature of the Minister or Deputy Minister of Indian Affairs and Northern Development,
- (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 *Indian Act* (Canada), and
- (c) sent to the Registrar in whose district the lands shown on the plan are located,

must be dealt with and recognized by the Registrar, insofar as it is capable of being dealt with and recognized, as if it had been prepared in accordance with this Act.

Substitution of plan

105. Where a Registrar receives a plan from the federal Minister of Natural Resources that is, by virtue of the *Canada Lands Surveys Act*, to be substituted for all or corresponding portions of a plan previously sent to the Registrar by the Minister, the Registrar shall

- (a) file or register the new plan giving it a new plan number;
- (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
- (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.

S.Nu. 2008,c.7,s.8.

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* 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.

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.

Requirements

(2) A lease referred to in subsection (1) must refer to the certificate of title of the land intended to be dealt with or give the description that is necessary to identify that land. S.Nu. 2000,c.15,s.11.

Leases of territorial lands

107.1. (1) This section applies to a lease of territorial lands where

- (a) the lease has been amended or the interest of the lessee has been assigned or transferred to another person;
- (b) the lease and any amendments, assignments or transfers have been filed or recorded on the property records of the Minister having administration of territorial lands; and
- (c) a certificate of title has not been issued for the land.

Leases, amendments, transfers and assignments

(2) The Minister having administration of territorial lands may submit a lease and any amendment, assignment or transfer of the lease to the Registrar in whose district the land is located.

Registration requirements

(3) A Registrar may register and deal with the lease and any amendment, assignment or transfer of the lease as if they together comprised one document, notwithstanding that one or more of the documents do not comply with the other provisions of this Act, where

- (a) the documents are submitted together with an application of the Minister having administration of territorial lands to have a certificate of title issued under subsection 57(1);
- (b) the Registrar is satisfied as to the validity of the execution of each document;
- (c) in the case of one or more documents purporting to be an assignment or transfer of the interest of the lessee, the documents are accompanied by an affidavit of an individual whose affidavit the Registrar is prepared to accept stating that the most recent assignee or transferee is fulfilling all of the obligations of the lessee under the lease;
- (d) the Minister having administration of territorial lands has consented to each document to which the Minister is not a party; and
- (e) the effect of the documents taken together would be a lease substantially complying with the requirements of this Act.

No effect on rights between parties

(4) Nothing in this section affects the rights and obligations of the parties to each document as between the parties.

Lease referring to provisional plan

(5) Where the land in a lease referred to in subsection (1) is described by reference to a provisional plan of survey and the lease has not been amended to describe the land by reference to a plan of survey that has been registered, the Registrar may accept the lease for registration under subsection (3) if the Registrar is satisfied that the land described by reference to the provisional plan of survey is the same as the land shown on a plan of survey which has been registered.

Powers of attorney

(6) Where a lease or an amendment, assignment or transfer of a lease has been executed by an attorney for one of the parties to the document, the Registrar may file the power of attorney in the general register.

Interest of person taking interest from assignor not invalid

(7) Where a lease and an assignment or transfer of the lease are registered under subsection (3), the interest of a person taking an interest in land from an assignor or transferor of the lease is not invalid by reason of the fact that the lease and assignment or transfer of the lease are registered as if they together comprised one document.

Memorandum of filing on records of Minister of no force or effect

(8) A memorandum that is inscribed by the Minister having administration of territorial lands on a lease of territorial lands and that is in respect of an amendment, assignment or transfer of the lease filed or recorded on the property records of the Minister is of no force or effect after the lease is registered under subsection (3).

Fees payable

(9) The fees payable on the filing of one or more documents that a Registrar may register as if they comprised one document shall be calculated as if each document was registered as a separate document. S.N.W.T. 1995,c.25,s.20.

Right to purchase

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

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
- (b) observes the other covenants expressed and implied in the lease,

the lessor is bound to execute a transfer to the 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.

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 before the lease is registered or subsequently adopts the lease.

Duty of Registrar in case of re-entry

110. (1) The Registrar in whose office a lease is registered, on 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 on the certificate of title affected by the lease, and the estate of the lessee in that land immediately terminates.

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.

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. S.Nu. 2008,c.7,s.8.

Short form of covenants

111. (1) Where, in a 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 a lease to insert any words or number from Schedule A.

Effect

(2) Words that are construed to be in a lease by subsection (1) shall be deemed to be 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.

Modification of covenants

(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.

Surrender of lease

112. (1) Where a lease has been surrendered, other than through the operation of a surrender in law, either the lessee or the lessor under the surrendered lease may submit to a Registrar a surrender of the lease in the prescribed form.

Where lease registered as a section 59.2 caveat

(1.1) Subject to subsection (2) the Registrar shall accept a surrender of lease submitted in accordance with subsection (1) notwithstanding that the surrendered lease is registered as a caveat under section 59.2.

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.

Encumbrance under subsection (2)

(2.1) For the purpose of subsection (2) an encumbrance does not include a caveat registered under section 59.2 where the document attached as the caveat is the surrendered lease or an amendment, assignment or transfer of the surrendered lease.

Effect of registration

(3) On 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 and may

discharge any caveats registered under section 59.2 that relate to the surrendered lease. S.Nu. 2000,c.15,s.12.

Mortgages and Special Encumbrances

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.

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.

Contents of instrument

(3) A mortgage referred to in subsection (1) and a special encumbrance referred to in subsection (2) must

- (a) refer to the certificate of title in which the estate or interest intended to be dealt with is held or give the description that is necessary to identify the land in which that estate or interest is held; and
- (b) contain an accurate statement of the estate or interest intended to be mortgaged or encumbered.
- (c) **repealed, S.Nu. 2000,c.15,s.13.**
S.Nu. 2000,c.15,s.13; S.Nu. 2008,c.7,s.8.

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 and the owner requests the return of the duplicate certificate. S.Nu. 2000,c.15,s.14.

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.

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 on 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 on the land to view and inspect the state of repair of the buildings or improvements.

Short form of covenants

117. (1) Where, in a 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 a mortgage to insert any words or number from Schedule B.

Effect

(2) Words that are construed to be in a mortgage by subsection (1) shall be deemed to be 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.

Modification of covenants

(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.

Proceedings to enforce

118. Proceedings shall be had and taken in the Nunavut Court of Justice

- (a) to enforce payment of moneys secured by a mortgage or special encumbrance;
- (b) to enforce the observance of the covenants, agreements, stipulations or conditions contained in a mortgage or special encumbrance;
- (c) for the sale of the land mortgaged or encumbered;
- (d) to foreclose the estate, interest or claim of any person in or on the land mortgaged or encumbered; or
- (e) to redeem or discharge any land from a mortgage or special encumbrance referred to in paragraphs (a) to (d).

S.Nu. 2008,c.7,s.8.

Registration of discharge

119. (1) On

- (a) 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 that instrument from the whole or any part of the principal sum or annuity secured by that instrument, or
- (b) on proof being made to the satisfaction of a judge of the payment of all or part of the moneys due on a 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 the 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) On 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 the principal sum or annuity, or, as the case may be, for the part of the principal sum or annuity mentioned in the memorandum as discharged.

Extinction of an annuity

120. (1) On proof

- (a) of the death of the annuitant or of the occurrence of the event or circumstance on 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
- (b) 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, on the order of a judge, make a memorandum on the certificate of title, that the annuity or sum of money is satisfied and discharged.

Effect of memorandum

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

Order for payment into bank

121. (1) Where

- (a) a mortgagor becomes entitled to pay off the mortgage money;
- (b) the registered mortgagee is absent from Nunavut, and
- (c) 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 the 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 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.

Accrual of interest

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

S.Nu. 2008,c.7,s.8.

Memorandum

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

Effect

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

Notice to mortgagee

- (3) The Registrar shall send a notice of the discharge to the mortgagee when presented with the order and receipt referred to in subsection (1).

Effect of payment

- (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 the mortgage other than the amount so paid.

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.

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.

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.

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.

Memorandum

- (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.

Transfer instead of discharge

125. Where a mortgagor is entitled to a discharge of a mortgage, but requests the mortgagee to transfer the mortgage to a person named by the mortgagor, the mortgagee shall provide the mortgagor with a transfer of the mortgage to the person named by the mortgagor.

Effect of registration of transfer

126. (1) On the registration of a transfer of any mortgage, special encumbrance or lease, the estate or interest of the transferor, as set out in that instrument, with all rights, powers and privileges belonging or appertaining to the transferor, passes to the transferee, and the 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 that instrument.

Rights of transferee

(2) By virtue of the registration of a transfer of a mortgage, special encumbrance or lease, the right to sue on 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 the transfer in any such debt, sum of money, annuity or damages, transfers so as to vest those rights and that interest in law in the transferee.

Trusts

(3) Nothing in subsection (2) 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.

Powers of Attorney

Filing powers of attorney

127. (1) Where a person, by executing a power of attorney, authorizes and appoints any person to act for or on behalf of the person with respect to the transfer or other dealing with land, in accordance with this Act, the power of attorney may be filed in a land titles office.

Declarations

(1.1) A springing power of attorney shall not be accepted for filing in accordance with subsection (1) unless accompanied by a certified copy of the declaration or declarations required by subsections 3(3) and (4) or section 4 of the *Powers of Attorney Act*.

Memorandum

(2) A Registrar shall not make a memorandum of any power of attorney on a certificate of title.

Rights of owner

(3) The execution or filing of a power of attorney does not in any way affect the right of the owner of any land subject to the power of attorney to transfer or otherwise deal with that land. S.Nu. 2005,c.9,s.29(2),(3).

128. Repealed, S.Nu. 2000,c.15,s.15.

Revocation

129. (1) The Registrar may file the revocation or a notice of the termination of a power of attorney in the general register if the Registrar is satisfied that the revocation or notice contains a description of the power of attorney that is sufficient to identify it, where a power of attorney filed in a land titles office is

- (a) revoked, in the case of any power of attorney; or
- (b) terminated on the occurrence of one of the events or circumstances described in section 16 of the *Powers of Attorney Act*, in the case of a springing or enduring power of attorney.

Evidence of termination

(2) A notice of the termination of a power of attorney submitted for filing under subsection (1) must be accompanied by evidence, satisfactory to the Registrar, that the power of attorney has been terminated.

Effect of revocation

(3) Where a revocation or a notice of the termination of a power of attorney has been filed, a Registrar shall not accept a transfer or other instrument signed in accordance with that power of attorney after the execution of the revocation or the date of termination specified in the notice. S.Nu. 2005,c.9,s.29(4).

Transmission

Transmission application

130. (1) Where

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

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

Documents

(2) The applicant shall produce to the Registrar at the time of making the application

- (a) the probate of the will of the deceased owner or encumbrancee;

- (b) letters of administration of the deceased owner or encumbrancee;
 - (c) the order of the Nunavut Court of Justice authorizing the applicant to administer the estate of the deceased owner or encumbrancee; or
 - (d) a copy, certified by the Nunavut Court of Justice, of the probate, letters of administration or order, as the case may be.
- S.Nu. 2008,c.7,s.8.

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 shall be 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 a new certificate of title to the personal representative as the executor or administrator of the estate of the deceased owner.

Transmission of interest or encumbrance

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

Memorandum

(2) The memorandum must state that the personal representative as the executor or administrator of the estate of the encumbrancee or deceased owner, is the owner of the encumbrance or interest.

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, on the trusts and for the purposes that apply by this Act or by law, and subject to any trusts and equities on which the deceased owner or encumbrancee held the land, interest or encumbrance.

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 shall be deemed to be the absolute and beneficial owner of the land, interest or encumbrance. S.Nu. 2008,c.7,s.8.

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.

Powers of judge

(2) The judge, on reasonable cause being shown, may name a suitable person to replace the personal representative and on 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,

- (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
- (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.

Effect of compliance with order

(3) On 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 shall be deemed to be the owner of the land, interest or encumbrance, as the case may be. S.Nu. 2008,c.7,s.8.

Application by surviving joint tenant

136. (1) On 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.

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.

Registration of application

(3) On the surviving owner submitting an application that meets the requirements of subsection (2), the Registrar shall

- (a) register the application; and
- (b) 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.

Effect of registration

(4) On 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.

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 office of the Sheriff.

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.

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.

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 on the certificate of title, express that the certificate or instrument is subject to the writ.

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 that 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.

Satisfaction of writ

139. (1) On 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 that land, the Registrar shall make

- (c) a memorandum of the certificate or order on every certificate of title affected by the certificate or order on 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.

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.

Sale by Sheriff

Confirmation of sale by Sheriff

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.

Registration of 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, on 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, register the transfer unless registration is in the meantime stayed by the order of a judge.

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.

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.

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 that notice.

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.

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 an order as to the costs of all parties to the sale and of the application for its confirmation that the judge thinks just. S.Nu. 2008,c.7,s.8.

Caveats

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,

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 that land shall be issued, until the caveat has been withdrawn or has lapsed, unless the instrument or certificate of title is expressed to be subject to the claim of the caveator as stated in the caveat.

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.

Agent

(2) An agent of the caveator may execute a caveat and the affidavit verifying the claim of the caveator.

Transfer of caveat

144.1. (1) A caveator may transfer the caveat by executing a transfer of caveat in the prescribed form.

Registration of transfers

(2) On receipt of a transfer of caveat, the Registrar of the district in which the land is located shall register the transfer of caveat in the same manner as mortgages, special encumbrances and leases are registered.

Effect of registration of transfers of caveats

(3) On the registration of a transfer of a caveat, the transferee

- (a) becomes the caveator;
- (b) has the same priority with respect to other instruments and caveats registered against the land as the original caveator had when the caveat was registered; and

- (c) has all the rights granted by this Act to a caveator and is subject to all liabilities imposed by this Act on a caveator.
S.N.W.T. 1995,c.25,s.21.

Caveat of registrar

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.

Notice

146. On 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.

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 the caveat is registered, except subject to the claim of the caveator.

Summons of caveator

148. (1) An owner or other person claiming land that is subject to a caveat may, by summons, call on a caveator to attend before a judge to show cause why the caveat of the caveator should not be withdrawn.

Power of judge

(2) The judge may, on proof that the caveator has been summoned and on the evidence that the judge requires, make an order that the judge considers proper.

Lapse of caveat

149. (1) 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 send by registered mail to the current post office address for the caveator as shown on the records of the Registrar, or otherwise serve on 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 mailed or served,

- (a) the caveator takes proper proceedings in a court of competent jurisdiction to establish the claim of the caveator; and
- (b) an order is registered restraining the Registrar in whose office the caveat is registered from issuing a certificate or otherwise dealing with the land.

Caveats registered under section 59.2

(2) An owner or other person may not send a notice referred to in subsection (1) to a person named as a caveator in a caveat registered under section 59.2 by registered mail to the current post office address shown on the records of the Registrar, or to an alternate post office address, except with the approval of:

- (a) the Registrar pursuant to section 149.1; or

- (b) a judge of the Nunavut Court of Justice pursuant to section 180. S.N.W.T. 1995,c.25,s.22; S.Nu. 2002,c.15,s.16.

Service by mail for caveats registered under section 59.2

149.1. (1) An owner or other person claiming an interest in land may apply to a Registrar for approval of service of a notice referred to in subsection 149(1) by registered mail to a specified post office address of a person named as caveator in a caveat registered under section 59.2.

Review of application by Registrar

(2) The Registrar may approve service at the specific post office address identified in the application if the Registrar is satisfied that service by registered mail at this address will likely be effective.

Notice by registered mail

(3) Where an owner or other person claiming an interest in land sends a notice referred to in subsection 149(1) by registered mail to a post office address approved by the Registrar under subsection (2) within 30 days of the date of the Registrar's approval, the notice shall be deemed to have been sent in accordance with subsection 149(1).

Content of application to approve address

(4) An application under subsection (1) must

- (a) be in the prescribed form; and
- (b) be accompanied by a statutory declaration in which someone with knowledge of the facts declares that he or she believes that service by registered mail at the proposed address will likely be effective to serve notice on the person named in the caveat, and declares his or her reasons for forming that belief.

S.Nu. 2000,c.15,s.17.

Memorandum of lapse

150. (1) On the mailing or service 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 sent or served 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.

Effect of memorandum

(2) On 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 caveat of a Registrar, may, by notice to the Registrar in the prescribed form, withdraw his or her caveat at any time.

Agent

- (2) An agent of a caveator may execute a withdrawal of caveat.

Exception

- (3) Subsection (2) does not apply to a caveat registered under section 59.2.
S.N.W.T. 1995,c.25,s.23.

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 behalf of the caveator.

Withdrawal of section 59.2 caveats by current lessee

- 152.1.** (1) The present lessee of a parcel of land may, by notice to a Registrar in the prescribed form, withdraw a caveat that is registered under section 59.2 as if the lessee were the caveator named in the caveat to be withdrawn if:
- (a) the caveat to be withdrawn was filed on behalf of a prior lessee under the present lessee's lease; and
 - (b) the present lessee holds the total interest remaining under the lease.

Accompanying information

- (2) A withdrawal under subsection (1) must be accompanied by:
- (a) a certificate in the prescribed form from the owner of the fee simple estate in the leased parcel of land certifying that the lessee is the holder of the entire interest remaining under the lease; and
 - (b) the consent of the holder of any mortgages, charges or other encumbrances registered against the parcel of land.
- S.Nu. 2000,c.15,s.18.

Further caveat

153. After a caveat has been removed by order of a judge or has been withdrawn or lapsed, it is not lawful for the caveator, or for anyone on behalf of the caveator, 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.

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.

Exception

- (1.1) Subsection (1) does not apply to a person named as a caveator in a caveat registered under section 59.2.

Caveats registered under section 59.2

(1.2) A person named as a caveator in a caveat registered under section 59.2 is liable to make compensation, including costs, to any other person who has sustained damage by the registration of the caveat where the person named as the caveator

- (a) does not have an estate or interest in the land; and
- (b) on receipt of a request by any interested person to withdraw the caveat, fails to take reasonable steps to withdraw the caveat.

Recovery of costs

(2) The compensation, with costs, may be recovered by proceedings at law.

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. S.N.W.T. 1995,c.25,s.24.

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.

Requirements

(2) The application must contain evidence, satisfactory to the Registrar, that the change of name is recognized in law.

PART V

FEES AND ASSURANCE FUND

Fees

156. (1) Subject to subsection (2), before a Registrar

- (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,

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

Credit

(2) A Registrar may

- (a) accept payment of prescribed fees by a credit card where the Comptroller General, appointed under the *Financial*

- Administration Act*, has entered into an agreement respecting the acceptance of that credit card; and
- (b) extend credit to a person or law firm in respect of prescribed fees where an agreement respecting credit and the payment of prescribed fees, approved by the Comptroller General, has been entered into by that person or law firm and the Inspector.

Valuation of land

157. (1) Where the prescribed fee is based on the value of the land, the value shall be ascertained by the affidavit of the applicant, owner or person acquiring the 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.

Certificate

(2) If the Registrar is not satisfied as to the correctness of the value set out in the affidavit, the Registrar may require the applicant, owner or person acquiring the land to produce a certificate of the value, under the signature of a sworn valuator appointed by a judge.

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.

Assurance fund

158. (1) The assurance fund is established.

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.

Special purpose fund

(3) The assurance fund is a special purpose fund as defined in the *Financial Administration Act*.

Investments

(4) The Minister of Finance shall invest money standing to the credit of the assurance fund in certificates, securities and investments described in paragraphs 57(1)(a), (b) and (c) of the *Financial Administration Act*.

Disposal of investments

(5) The Minister of Finance may dispose of certificates, securities and investments referred to in subsection (4).

Interest

(6) Interest on money invested under subsection (4) forms part of the assurance fund.

Disbursement

(7) No person shall make a disbursement from the assurance fund except in accordance with this Act and the *Financial Administration Act*.

Fees transferred to assurance fund

159. A Registrar must transfer to the assurance fund

- (a) the percentage of the fee collected for the performance of a duty that is prescribed for that duty;
- (b) the percentage of the fee collected for the filing or registration of an instrument or a caveat that is prescribed for that instrument or caveat; or
- (c) the fee prescribed as the amount payable to the assurance fund for the filing or registration of an instrument or a caveat.

S.N.W.T. 1995,c.25,s.25.

Liability of assurance fund

160. (1) The assurance fund is not, under any circumstances, liable for compensation for any loss, damage or deprivation occasioned by

- (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,

unless it is proved that the person liable for compensation and damages is dead, has absconded from Nunavut 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.

Limit of liability

(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).

S.Nu. 2008,c.7,s.8.

Recovery of money paid out of assurance fund

161. (1) Whenever an amount has been paid out of the assurance fund on account of a 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.

Proof of debt

(2) In an action referred to in subsection (1), a certificate signed by the Minister of Finance of the payment out of the assurance fund is sufficient proof of such debt.

If debtor is not in Nunavut

162. (1) Where an amount has been paid out of the assurance fund on account of a person who

- (a) has absconded or who cannot be found within Nunavut, and
- (b) has left real or personal estate within Nunavut,

a judge may, on the production of a certificate signed by the Minister of Finance stating 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 that person for the amount so paid out of the assurance fund, together with the costs of the application.

Judgment

(2) The judgment referred to in subsection (1) is final subject only to the right to have the judgment opened up on the same grounds as the grounds for setting aside a judgment by default.

Execution

(3) The judgment shall be signed in the same manner as a final judgment by default in an adverse action and execution may issue immediately. S.Nu. 2008,c.7,s.8.

PART VI

REMEDIAL PROCEEDINGS

Ejectment

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

- (a) a mortgagee as against a mortgagor in default;
- (b) an encumbrancee of a special encumbrance as against an encumbrancer in default;
- (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 that owner through fraud;
- (e) a person deprived of or claiming any land included in any grant or certificate of title of other land by misdescription of that other land or of its boundaries, as against the owner of that other land; or
- (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.

Absolute bar and estoppel

(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.

Damages

Indemnification of person deprived of land

164. (1) After a certificate of title has been issued for any land, any person deprived of the land

- (a) because of fraud,
- (b) by the registration of any other person as owner of the 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
- (d) in any other case,

may,

- (e) if the land has been included in two or more grants, and
- (f) in any other case,

bring and prosecute an action at law for the recovery of damages against the person on whose application the erroneous registration was made or who acquired title to the land in question through such fraud, error, omission or misdescription.

Liability for damages

(2) Except in the case of

- (a) fraud, or
- (b) 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,

such person, on 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 this Act.

Assurance fund

(3) 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.

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 of the purchaser or the mortgagor of the 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 section 164 is dead or cannot be found within Nunavut, 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 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 section 164, 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, on 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. S.Nu. 2008,c.7,s.8.

Action for omissions of officers

167. (1) Any person

- (a) 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, or
- (b) 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 on the certificate or on 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.

Recovery of damages out of 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.

Notice

(3) Notice in writing of every action referred to in subsection (1), and the cause of the action, shall be served on the Registrar who is named as nominal defendant at least 90 days before the commencement of the action.

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.

Taxation of costs

(2) The costs of defending the action, when taxed, shall be levied in the name of the nominal defendant, by the same process of execution as in ordinary civil cases.

Limitation period

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 six years from the date of that deprivation.

Persons under 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 the 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. S.Nu. 2008,c.7.s.8.

PART VII

PROCEEDINGS BEFORE A JUDGE

Decision of Registrar

Appeal from Registrar

171. (1) A person who is dissatisfied with an act, omission, refusal, decision or direction of a Registrar, may require the Registrar to set out, in writing, the grounds of

that act, omission, refusal, decision or direction, and the person may apply to a judge, by originating notice, setting out the grounds of the dissatisfaction.

Powers of judge

(2) A judge, having caused the Registrar to be served with a copy of the originating notice, has jurisdiction to hear the matter, and to make an order, including an order as to the costs of the parties, that the circumstances of the case require.

Reference by Registrar

Power of Registrar to 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,
- (c) where a question arises respecting the making of an entry in the day-book, general register or writ book, or a memorandum on 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,

refer the question in the prescribed form to a judge.

Powers of judge

(2) Where a question mentioned 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.

Answer

(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 commenced for that purpose.

Effect of answer

(4) The answer to the question has the same force and effect as an order of the judge.

Return of Duplicate or Other Instrument

Demand for delivery of 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

- (a) any duplicate certificate or other instrument has been issued in error, or contains any misdescription of land or boundaries,
- (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
- (d) any duplicate certificate or instrument is fraudulently or wrongfully retained,

the Registrar may, by written demand in the prescribed form, to be served on such person or to be sent by registered mail to that person, require the person to whom the 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 that 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 on 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) On the appearance before the judge of any person summoned or brought up by virtue of a warrant, the judge may examine the person on 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) On 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 the person to the nearest jail for a 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 order of judge

(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 90 days after the time of mailing the demand in the prescribed form referred to in subsection 173(1) to the person have elapsed before the duplicate certificate or other instrument has been delivered to the Registrar, the judge may direct the Registrar

- (a) to 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;
- (b) to substitute and issue, if necessary, a duplicate certificate or other instrument; and
- (c) to make the memorandum that the circumstances of the case require.

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;
- (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.

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,

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, namely,

- (c) the order must not be submitted for registration unless a plan of survey prepared in accordance with paragraphs 90(e) and (f) is submitted to the Registrar with the order, and
- (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.

Exemptions

- (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
 - (ii) a lot or other parcel created by a registered descriptive plan required by the Registrar under section 80 or 81.

Conditions respecting plans

- 177.** (1) Subject to subsection (2), an order of a judge that directs a Registrar
- (a) to register an instrument or caveat, or
 - (b) to 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, namely,
- (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,
 - (d) the Registrar shall not register the order until a plan that complies with the requirements of the Registrar is submitted for registration, and
 - (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.

Exemptions

- (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
 - (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 who is
- (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
 - (c) absent from Nunavut,
- may, by order directed to a Registrar, prohibit the registration of an instrument signed by the person.

Duration and conditions

(2) The prohibition contained in the order may be for the time and subject to the conditions that the judge considers proper. S.Nu. 2008,c.7,s.8.

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 considers 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

- (a) notice of the time and place of the hearing be given;
- (b) the notice is to be served personally on the persons that the judge directs or left at their usual place of residence;
- (c) the notice is to be posted at the place or places and for the periods of time that the judge may set out;
- (d) the notice be published in a newspaper or newspapers and for the time that the judge directs; or
- (e) the notice may be given by one or more, or 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 the parties are not within Nunavut or cannot be found so as to be personally served, the judge may direct that any party outside Nunavut may be served personally, or in either case may direct substitutional service within or outside Nunavut in the manner that the judge considers proper, or that publication of notice in the manner that the judge may direct may be sufficient service or may grant an order dispensing with service. S.Nu. 2000,c.15,s.19; S.Nu. 2008,c.7,s.8.

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 an action for an alleged breach of a 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 an instrument is executed by more than one party, the covenants to be implied in the instrument by this Act shall be construed to be several and not to bind the parties jointly.

Use of name of owner

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 commence 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.

Indemnification

(2) An owner referred to in subsection (1) is, in any case, entitled to be indemnified in the same manner as a trustee would, before January 1, 1895, have been entitled to be indemnified in a similar case of the name of the trustee being used in any such action, suit or proceeding by the trustee's *cestui que trust*.

Evidentiary value of certificate 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 the certificate of title, so long as the certificate remains in force and uncanceled under this Act,

conclusive evidence in all courts as against all persons and Her Majesty in right of Canada that the person named in the certificate of title is entitled to the estate or interest specified in the certificate of title with respect to the land described in the certificate, subject to the exceptions and reservations implied under this Act.

Abatement of proceedings

184. Proceedings under this Act do not abate and are not suspended by a 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, on the application of any interested person, as under the circumstances the judge thinks just, and may for that purpose require the production of evidence and notices to be given, that the judge thinks necessary.

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.

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 the judge considers it proper, by summons under his or her signature and seal, require the personal attendance of any person to testify as to the matter of the inquiry or of any person to be cross-examined on his or her affidavit.

Failure of person to attend

187. (1) If a person named in a summons under section 186 fails to attend at the time and place specified by the summons, then on due proof under oath that the person has been duly served with the summons and that proper conduct money was paid or tendered to the person, the judge may issue a warrant authorizing the Sheriff or any peace officer to apprehend the person and bring the person before the judge for examination and to keep the person in custody until the person is examined.

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 Nunavut Court of Justice.

Costs

(3) The costs incidental to an inquiry referred to in section 186 are in the discretion of the judge, and shall be taxed by the Clerk of the Nunavut Court of Justice in which the inquiry was held, as much as possible, in accordance with the tariff provided for civil causes in the Nunavut Court of Justice.

Recovery of costs

(4) Judgment must be signed in the Nunavut Court of Justice 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 Nunavut Court of Justice as on an ordinary judgment in the Nunavut Court of Justice. S.Nu. 2008,c.7,s.8.

Security for costs by non-resident

188. (1) Where
(a) any proceeding is taken under this Act, whether by motion or summons, or by the filing of a caveat, lien authorized by statute to

- be filed in a land titles office, or copy of a writ of execution or other writ against land, or other proceeding; and
- (b) any party to the proceeding or the person on whose behalf or against whose interest the caveat, lien, execution or proceeding has been filed is not a resident of Nunavut,

a judge may, on 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 the order, in prosecuting or resisting the proceeding, or in removing or maintaining the caveat, lien, execution or proceeding.

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.

Stay of proceedings

(3) The order issued under subsection (1) may provide for a stay of proceedings.

Practice and procedure

(4) The practice and procedure for obtaining an order under subsection (1) and giving security shall be, as much as possible, the same as on an application for security for costs in civil causes in the Nunavut Court of Justice.

Costs

(5) The judge may order the costs incident to an application or order to be taxed and recovered as is provided for costs in subsections 187(3) and (4). S.Nu. 2008,c.7,s.8.

Power to award costs

189. (1) A judge may order costs to be paid by or to any person that is a party to any proceeding under this Act.

Liability of applicant

(2) An applicant under this Act is prima facie liable to pay all costs, charges and expenses incurred by or in consequence of the application, except where

- (a) parties object whose rights are sufficiently secured without their appearance; or
- (b) any costs, charges or expenses are incurred unnecessarily or improperly.

Erroneous certificate

190. A 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 that 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.

Proof

191. In all matters before a judge where proof is required, the proof may be taken by affidavit or by oral evidence, as may be ordered by a judge.

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.

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 the Court of Appeal may either dispose of the matter or refer it back to the judge with the direction that the Court of Appeal thinks proper.

Appeal

Appeal from decision of judge

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.

Practice on appeal

(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).

PART VIII

GENERAL

Regulations

Regulations

195. The Commissioner, on the recommendation of the Minister, may make regulations

- (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;
- (b.1) prescribing conditions for the purposes of section 20.1, including prescribing instruments and caveats or classes of instrument or caveat that may not be accepted under that section;

- (c) prescribing the days and hours that a land titles office is required to be open to the public;
- (d) prescribing the fees for
 - (i) any duty performed by a Registrar under this Act, the regulations or any other enactment, and
 - (ii) the filing or registration under this Act or any other enactment of any instrument or caveat;
- (d.1) prescribing the period of time, referred to in subsection 32.2(2), after which an original document, instrument or caveat may be destroyed;
- (e) prescribing the fee, the manner of calculating the fee or the percentage of a fee that must be transferred into the assurance fund for the performance of a duty or the filing or registration of any instrument or caveat;
- (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;
- (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;
- (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
- (k) respecting any other matter that the Commissioner considers necessary or advisable for carrying out the purposes and provisions of this Act.

S.N.W.T. 1995,c.25,s.26; S.Nu. 2000,c.15,s.20.

Transitional

Existing certificates of title

196. Every certificate of title that has been granted and every duplicate that has been issued under the *Land Titles Act* (Canada) and every filing, registration or memorandum made under the *Land Titles Act* (Canada) shall be deemed to be a certificate of title, duplicate, filing, registration or memorandum under this Act.

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 112(3) of the *Land Titles Act* (Canada) is terminated.

Lapse of caveat

198. Where a person has served or mailed a notice in Form 30 under section 139 of the *Land Titles Act* (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.

Assurance fund

199. The money in the assurance fund continued under the *Land Titles Act* (Canada) that is attributed to fees collected by the Registrar of Titles responsible for the Nunavut Registration District under that Act must be deposited in the assurance fund established under this Act. S.Nu. 2008,c.7,s.8.

SCHEDULE A

(Subsection 111(1), (3), paragraph 195(i))

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.

2. Will fence

2. The covenantor, and the executors, administrators or transferees, of the covenantor, will, during the continuance of the said term, erect and put on the boundaries of the said land or on those boundaries on which no substantial fence now exists, a good and substantial fence.

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.

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.

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 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 of the premises that is an annoyance, nuisance, grievance, damage or any disturbance of the occupiers or owners of the adjoining lands and properties.

SCHEDULE B

(Subsection 117(1), (3), paragraph 195(i))

SHORT COVENANTS IN MORTGAGE

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. |
| 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. |
| 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. |
| 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. 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.

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.

S.Nu. 2008,c.7,s.8.

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