

Government of Yukon

Summary of a draft new Land Titles Act

2014

Justice

Summary of a draft new Land Titles Act

Table of Contents

1: INTERPRETATION	7
2: ADMINISTRATION	8
2:1 <i>Registration Districts and Land Titles Offices</i>	8
2:2 <i>Inspector, registrars and other officers</i>	8
Registrars and deputy registrars.....	8
Powers of deputy registrars.....	8
Qualifications, oath of office, conflicts	8
Liability, attendance at court, seal of office	8
2:3 <i>Records to be kept by registrar</i>	9
Instrument daybook.....	9
Plan daybook.....	9
Register of titles	9
General register	9
2:4 <i>Searches and copies of records</i>	9
Inspection of records	9
Certified copy to be admitted as evidence	9
3: GENERAL PROCEDURES AND PRINCIPLES	10
3:1 <i>Registration and filing procedures</i>	10
Time of receipt, examination.....	10
Notice of intention to reject	10
Resubmission	10
What constitutes registration	10
What constitutes filing.....	11
Keeping of plans, certificates of title and instruments	11
3:2 <i>Effect of registration</i>	11
Unregistered instruments ineffectual.....	11
Priority in order of registration.....	11
3:3 <i>Attestation and other requirements</i>	11
Witnesses.....	11
Affidavit requirements.....	12
Address requirements, technical defects	12
4: CERTIFICATES OF TITLE	12
4:1 <i>General principles</i>	12
Fee simple	12
Certificates of title for settlement land	12
Restrictions on land in one certificate	12
Certificate of title is conclusive evidence of title	13
Implied reservations, exceptions, etc.	13
4:2 <i>Duplicate certificates of title</i>	13
Cancellation of duplicate certificates.....	13
Replacement of lost, destroyed or damaged duplicate certificate	14

Summary of a draft new Land Titles Act

<i>4:3 Applications to bring land under this Act</i>	14
Plan of survey under Canada Lands Surveys Act (Canada) required	14
Land granted by Crown before first act passed	14
Untitled Canada lands, Untitled Yukon lands	14
Yukon First Nation Settlement Land	15
<i>4:4 Applications to withdraw land from under this Act</i>	15
Federal Minister, Commissioner may apply to withdraw land.....	15
Yukon First Nation may apply to withdraw land.....	15
Process for withdrawing land	15
<i>4:5 Correction or substitution of certificates of title</i>	15
Consolidation or division of certificates of title.....	15
Application to record change of name	15
Certificates of title for Commissioner’s land	16
5: PLAN OF SURVEY REQUIREMENTS	16
<i>5:1 Canada Lands Surveys Act plans</i>	16
Untitled lands; plan received without application to raise title	16
<i>5:2 Titled land; subdivision of parcel</i>	16
Requirements for plans of survey.....	16
Hooked parcels	17
Correction of plans by registrar	17
Extent of Parcels	17
<i>5:3 Air space parcels</i>	17
<i>5:4 Encumbrances affecting less than a whole parcel</i>	17
Subdivision by certain encumbrances prohibited	17
<i>5:5 Changes to registered plans</i>	18
Natural boundary changes.....	18
Conflicting descriptions.....	18
<i>5:6 Transitional provisions regarding plans</i>	18
Elimination of remainders and metes and bounds descriptions	18
Registered plans where titles never issued	18
6: REGISTRATION AND FILING OF INSTRUMENTS	19
<i>6:1 General</i>	19
Effect of registered encumbrance	19
Enforceability	19
<i>6:2 – Transfer of land</i>	19
Transfers effecting joint tenancy	20
Implied covenant of transferee	20
Trustees as joint owners	20
<i>6:3 Leases and life estates</i>	20
Subdivision, lease to purchase, mortgaged lands.....	21
Cancellation of lease	21
Implied promises in lease	21
Implied powers of lessor.....	21

Summary of a draft new Land Titles Act

Short form of promises	22
6:4 Easements, restrictive covenants and other agreements	22
Grant of easement or restrictive covenant.....	22
Utility easements	22
Surrender of easement or restrictive covenant.....	22
Utility easements under <i>Northern Pipeline Act</i> (Canada).....	22
Party wall agreements, encroachment agreements.....	22
Development agreements	23
Declaration of building scheme	23
6:5 Mortgages and financial encumbrances.....	23
Short forms of covenants.....	23
Standard form mortgages.....	23
Enforcement or discharge of mortgage or financial encumbrance.....	23
Extinguishment of annuity.....	24
6:6 Powers of attorney.....	24
7: CLAIMS TO LAND MADE BY OTHER THAN REGISTERED OWNER.....	24
7:1 Transfer, mortgage or postponement of registered encumbrances.....	24
7:2 Caveats.....	25
Notice to caveator to prove claim	25
Lapse of caveat	25
7:3 Writs of execution and sheriff's sales	25
Satisfaction or withdrawal of writ	26
Confirmation and registration of sheriff's sale	26
7:4 Certificates of pending litigation.....	26
8: TRANSMISSION OF TITLES AND ENCUMBRANCES.....	27
Death of owner	27
Death of encumbrance holder	27
Court may change personal representative	27
9: FEES AND ESTABLISHMENT OF ASSURANCE FUND	27
10: ACTIONS FOR RECOVERY OF LAND OR DAMAGES.....	28
Recovery from the assurance fund.....	28
Assurance fund not liable	28
Limitation period.....	29
Actions against registrar	29
11: PROCEEDINGS IN COURT	29
11:1 Decisions of registrar	29
Appeal of registrar's decision	29
Registrar may refer questions to judge	29
Correction of instruments.....	29
11:2 Evidence and procedure.....	30
Implied covenants.....	30
Use of owner's or holder's name in action by beneficiary	30
Judge may prohibit dealing with land.....	30

Summary of a draft new Land Titles Act

11:3 Appeals.....	30
12: OFFENCES AND PENALTIES	30
Fraud	30
False representation	31
Tampering with land titles records	31
Penalties.....	31
13: INTERPRETATION BULLETINS AND REGULATIONS.....	31
14: AMENDMENTS TO OTHER ACTS	31
<i>Assessment and Taxation Act</i>	31
<i>Judicature Act</i>	31
<i>Municipal Act</i>	32
<i>Subdivision Act</i>	32
Other acts.....	32
15: TRANSITIONAL PROVISIONS AND COMMENCEMENT	32
Authority for regulations, transitional provisions, coming into force date	32

Summary of a draft new Land Titles Act

Background

The present land titles system in Yukon is being modernized to support the volume and complexity of real estate transactions. Updated legislation and streamlined operations in the Land Titles Office will improve levels of service to the public and facilitate stable real property and economic development.

The number, value and complexity of land transactions are expected to grow in Yukon; therefore, the ability to produce title documents and register instruments against titles must also increase to match market demands.

The *Land Titles Act*, enacted in 1898, requires manual, paper-based practices for registering and searching for land titles information. In some cases, the current land registration system has taken as long as nine weeks to complete. In other jurisdictions in Canada, registration takes place within one or two days. This is done with the help of online capabilities, which allow electronic submissions of registration documents and land title information searches. Yukon must amend its legislation in order to establish provisions for similar capabilities.

The Department of Justice has carried out a multi-year consultation with land titles stakeholders to inform the development of modernized legislation and to gain insight on how to improve Land Titles Office business processes, including the adoption of a new information management system.

A stakeholder advisory committee and drafting advisory committee was established and includes representatives of expert stakeholder groups such as the Law Society, Natural Resources Canada Surveyor General Branch and the Association of Canada Lands Surveyors. In addition, representatives of the Surveyor General Branch and Yukon's Land Titles Office meet regularly to identify issues to be addressed in the new legislation.

For more information on the Land Titles Modernization Project visit:
http://www.justice.gov.yk.ca/prog/lis/lto/land_titles_modernization.html.

New regulations

Justice will also work on regulations under this new act to establish new standard forms and requirements for plans of survey filed in the Land Titles Office. Once the act is finalized, further consultation with stakeholders will occur to discuss the contents of the regulations.

Summary of the new draft Land Titles Act

A comprehensive summary of the new draft Land Titles Act is provided in the following pages. It includes an overview of provisions that will be found in the act. Comments and questions in regards to the contents of the draft bill are invited until January 31, 2015. Justice will be continuing to work on the drafting of this bill throughout the comment period.

Summary of a draft new Land Titles Act

Do you have any comments or questions about the proposal for new legislation?

Please direct your comments and questions by email, telephone or mail to:

Email: landtitlesmodernization@gov.yk.ca
Telephone: 867-393-7081
Fax: 867-667-5200
Mail: Land Titles Modernization, Department of Justice, Government of Yukon,
Box 2703 (J-1A), Whitehorse, Yukon, Y1A 2C6

Summary of a draft new Land Titles Act

1: INTERPRETATION

Interpretation

Any reference to the registrar means the registrar of land titles. The act allows for multiple land registration districts in Yukon, if they are needed at a future date. The records of the land titles office are confirmed as being available to the public for inspection or copying, despite the provisions of other legislation.

Definitions

The new act expands and adds a number of new definitions to increase the clarity of what is required for land titles registration and to avoid disputes about the meaning of the act's provisions, including.

Air space parcel: a volumetric parcel above, below, or above and below, the surface of the ground.

Development agreement: is either: an agreement in relation to land made between the Government of Yukon and a person, as a condition of the Government of Yukon transferring the land to the person; or, an agreement made under the *Municipal Act* or the *Subdivision Act*.

Electronic: means created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those.

Note: when used as a noun, is a record of the particulars of an instrument that complies with the act.

Registered owner: means the person shown on a certificate of title as being the owner of the interest or estate in the land for which the certificate of title has been issued, whether entitled in their own right or in a representative capacity.

Subsidiary title: is title for an interest in land less than the fee simple.

Utility easement: is an easement permitted in the act for defined utilities that affects only the land in one certificate of title.

Utility right of way – is an easement affecting untitled land, more than one parcel of land for which a title has been issued or both untitled and untitled land and for which a subsidiary title can be issued.

Charge: means an instrument registered on title which transfers an interest in the land less than the whole of the estate (such as a mortgage or lien).

Public use parcel: is a parcel of land, other than a road, that is shown on a plan as a buffer, reserve, environmental reserve, greenbelt, public utility parcel, park, or other designation indicating that the parcel is dedicated for public use under the *Municipal Act* or is a reserve or public utility lands under the *Subdivision Act*.

Summary of a draft new Land Titles Act

2: ADMINISTRATION

2:1 Registration Districts and Land Titles Offices

The new act maintains Cabinet's right to establish registration districts in Yukon. There is only one district now in Yukon, the Yukon Land Registration District, which is continued. The requirement to have a Land Titles Office (or offices) is also continued, which must be kept open to the public on prescribed days and during prescribed hours. The registrar or deputy registrar must be in attendance during these times.

2:2 Inspector, registrars and other officers

Inspector of land titles

Cabinet continues to be entitled to appoint an inspector of land titles who may inspect land titles records, perform the duties and exercise the powers of a registrar and other duties as assigned by the Minister of Justice. The current qualifications for an inspector are continued: he or she must be a lawyer of at least three-years-standing in a territory or province, or notary or advocate of at least three-years-standing in Quebec.

Registrars and deputy registrars

Cabinet may appoint registrars and deputy registrars of land titles for each registration district. The requirements for the position of registrar are increased and a registrar must be: a lawyer in a territory, province or commonwealth country; a notary or advocate in Quebec; or alternately, be employed in a land titles office in Yukon and have been employed for at least 12 years.

Powers of deputy registrars

A registrar may delegate to a deputy registrar any of the duties or powers of the registrar. In addition, a deputy registrar may perform all the duties and exercise all the powers of the registrar where the registrar is ill, absent or in any way removed from office, such as in the event of retirement or suspension, etc.

Qualifications, oath of office, conflicts

The registrar and deputies may be a member of the public service, an employee of another government, or any other person that Cabinet considers to be suitable. The registrar can be removed from office at any time. They will continue to swear or affirm the oath of office and may not have any conflict of interest, such as investing in or taking securities on Yukon land, taking money to advise about Yukon land, practising as a lawyer or conveyance of land, etc. However, a new provision specifically allows an inspector, registrar or deputy registrar employed by the Surveyor General of Canada to carry on their duties under the *Canada Lands Surveys Act* (Canada) in a Yukon Land Titles Office.

Liability, attendance at court, seal of office

An inspector, registrar or deputy registrar is not personally liable for their acts or omissions done in good faith in the exercise of their powers or duties under the act. In addition, they are not bound by a subpoena, order or summons issued from a court in a civil matter if it means they must leave the Land Titles Office unattended by a registrar or deputy, or if it asks for land titles

Summary of a draft new Land Titles Act

documents to be removed from that office. Instead, the individuals or any of the documents required may be examined by a judge in the Land Titles Office itself.

The registrar must have a seal of office, which is used to validate certificates of title, certified copies and general register certificates. If and when Yukon begins to use electronic documentation in the Land Titles Office, the registrar may use an alternate method of validation for them and regulations will set out how that will be done.

2:3 Records to be kept by registrar

The new act would allow any of the records of the Land Titles Office to be received, issued and kept in written form, electronic form or any other form that the registrar considers appropriate so long as they are accessible and capable of being printed.

Instrument daybook

The registrar must keep an instrument daybook to record each instrument submitted, the date and time it was received and its record number in chronological order. The record number is entered in the daybook. When the instrument is registered, its record number is then called the instrument number or the instrument's registration number.

Plan daybook

The registrar also keeps a plan daybook to record each plan of survey submitted, the date and time it was received and its record number in chronological order. Once it is registered, the number is called a plan number or the plan's registration number.

Register of titles

The registrar keeps a further register of titles in which every certificate of title is kept. The number assigned to a certificate of title may be referred to as its title number.

General register

The registrar also keeps a general register in which other instruments that do not describe land are kept. Examples are powers of attorney, letters of administration and letters probate, and writs of execution or other writs affecting land.

2:4 Searches and copies of records

Inspection of records

Anyone may request a plan, certificate of title or instrument (or a copy or certified copy) be produced for inspection, and a registrar may produce a copy of it. Anyone may also ask for a certificate that sets out all the instruments that are filed in the general register in a specified name that are undischarged.

Certified copy to be admitted as evidence

A certified copy of a plan, certificate of title, or instrument are admissible as evidence in the same way as the original would be.

Summary of a draft new Land Titles Act

3: GENERAL PROCEDURES AND PRINCIPLES

3:1 Registration and filing procedures

Time of receipt, examination

Submissions for registration to the Land Title Office will be by an application, and the application may be for a single document, or it may be for a package of instruments and a plan to be considered together. In that case, the package is considered as a whole, and if any part of it is to be rejected, the whole package will be rejected.

The registrar must note the date, hour and minute of receipt on every instrument and every plan submitted to the Land Titles Office and must establish the standards (a checklist) that will be used to assess plans and instruments, and make them available to the public.

Notice of intention to reject

If, in the opinion of the reviewer, the submission:

- a) does not substantially conform to the form or requirements set out in regulations;
- b) is incomplete; or
- c) is unfit for registration for any other reason,

the reviewer must promptly give notice to the submitter of the intention to reject, including reasons for the rejection and the requirements that must be met in order to register the instrument or the plan.

The submitter may then withdraw the instrument or plan or submit a request for review. A request for review must include a written statement explaining their view of the matter and must address the reasons given for the rejection. If the submitter does not respond within a set number of days (to be determined in regulations), the registrar will reject the submission. Where the submitter requests a review, the registrar has a period of time to accept or finally reject the submission. The registrar's decision may be appealed to the Supreme Court.

Resubmission

If the instrument or plan is either rejected or withdrawn, the registrar will note that in the daybook and return the submitted material. If the material is later resubmitted, it is a new submission with new numbers.

What constitutes registration

A plan of survey is registered when the plan's registration number is entered in the plan daybook and on the plan; then certificates of title are issued for the parcels created by the plan.

An application for a certificate of title or transfer of land is registered when a certificate of title is issued; its provisional record number then becomes the title number and the registrar signs and seals the certificate of title. Other instruments are registered when a note is entered on title and signed by the registrar. The new act allows for registration by electronic means of future electronic instruments.

Summary of a draft new Land Titles Act

What constitutes filing

A plan is filed when it is entered in the plan daybook. A filed plan is not reviewed by the registrar and is not considered registered. If a person wishes a filed plan to be registered, an application for registration must be made and a new copy of the plan submitted. An instrument is filed when a note of it is entered in the general register and signed (or otherwise validated) by the registrar. The note will state the record number of the instrument, its general nature, the date and time of registration, the party and any instructions. The date and time of registration or filing is the date and time entered in the daybook for the instrument. Plans are submitted to the Land Titles Office for filing when there is no intention to raise title to the land shown but there may be a legislative requirement to send the plan to the Land Titles Office.

Keeping of plans, certificates of title and instruments

Registered plans, certificates of title, registered or filed instruments, cancelled and cancelled duplicate certificate of title are kept in the Land Titles Office. Plans that are filed but not registered in the Land Titles Office may be kept there or sent to another office of government.

The registrar may assign a number to a parcel of land to facilitate the identification of the parcel and may require that it be set out as part of the description of the land in a plan or instrument that affects that land.

3:2 Effect of registration

Unregistered instruments ineffectual

After a certificate of title has been issued for land, no instrument is effective until it is registered, as against any good-faith transferee of the land under this act. An exception to this rule is that a lease of less than three years is effective if there is actual occupation under the lease. Every instrument takes effect on registration and the note made by the registrar of that instrument on a certificate of title is conclusive evidence that the instrument has been registered.

Priority in order of registration

instruments registered as against the same parcel of land have priority according to the time of registration. Except in cases of fraud, anyone who deals with a registered owner of land or the holder of a registered encumbrance does not need to concern themselves with the circumstances of registration. Any methods of acquiring a right in or over land by prescription are abolished.

3:3 Attestation and other requirements

Witnesses

Instruments submitted for registration or filing must be signed in the presence of a witness, except on:

- a grant;
- an application by the Commissioner;
- an instrument under a corporate seal;
- a certified copy of an order of a judge;
- a writ of execution or other writ affecting land;

Summary of a draft new Land Titles Act

- a transfer of an estate or interest in land by the sheriff under seal; or
- other instrument the registrar considers appropriate.

The witness must sign their name as witness and make an affidavit. A witness may not be a party to the instrument or their spouse. The registrar may require proof that the witness is at least 19 years of age.

Affidavit requirements

If an instrument is executed in Yukon, an affidavit in support may be made before a person who can do this under the *Evidence Act* such as a judge of the territorial court, a clerk or deputy clerk of the Supreme Court, a sheriff or member of the RCMP, or a lawyer.

Address requirements, technical defects

Every instrument must have a post office address for notices required under the act, which are to be sent by registered mail to that mailing address. A purchaser or encumbrance holder (such as a mortgagee or lien holder) is not affected if a required notice is not sent or not received. Documents or actions under the act are not invalid because of technical irregularities or any mistake as long as the substantial justice of the matter is not affected.

4: CERTIFICATES OF TITLE

4:1 General principles

Fee simple

The draft legislation proposes that when a fee simple title has been registered, a ““subsidiary certificate of title” may also be issued for certain defined “lesser estates” in that fee simple. These are a life estate, a leasehold estate or a utility right-of-way.

The certificate of title will contain a note by the registrar of instruments, dealings and other matters affecting the land that are required by the act. Subsidiary certificates of title are subject to any instrument previously registered on the underlying title.

Certificates of title for settlement land

A Yukon First Nation’s Fee Simple Settlement Land is already registered in the Land Titles Office but the bill provides that a First Nation will also be able to register its Category A or B Settlement Land in the Land Titles Office in accordance with regulations. The certificate of title for that parcel must state the parcel number assigned to it in the final agreement and identify whether the land is Category A, Category B or fee simple settlement land.

Restrictions on land in one certificate

A certificate of title may not include more than 800 acres of land or parcels that are described in different registered plans. In addition, the land within the parcel must be all one attached portion of land (contiguous), unless the separate segments are shown as one parcel on the plan of survey that creates the parcel. This might occur where there is a public laneway, path or stream of water running through the parcel.

Summary of a draft new Land Titles Act

Certificate of title is conclusive evidence of title

A certificate of title is conclusive proof that the person named in the certificate is entitled to the land described in it, subject to the exceptions and reservations in the act and except where the registered owner gained title as a result of a fraud in which he or she was involved. Priority between persons claiming to be the owner of the same interest in the same land under different certificates of title is determined by reference to the earliest grant or certificate of title. A misdescription of boundaries or parcels on the title does not mean that the title holder owns the incorrectly described land.

Implied reservations, exceptions, etc.

The owner's title to land is subject to any reservations or exceptions in the original grant of the land from the Crown or from the Commissioner; unpaid taxes under Yukon's *Assessment and Taxation Act*; any public highway, right-of-way or other public easement; any subsisting lease for up to three years if there is actual occupation; writs affecting the land filed in the general register; and implied easements under the *Condominium Act*.

If the land is settlement land of a Yukon First Nation, title is subject to any rights, interests and any other conditions, that apply to the land under the Yukon First Nation's final agreement or self-government agreement.

The registrar may not make a note on a certificate of title of a trust, whether expressed, implied, or constructive, except to identify a registered owner as a trustee. Otherwise, the registrar must treat any instrument containing a notice of trust as if there were no trust.

4:2 Duplicate certificates of title

The registrar may issue a duplicate certificate of title to the registered owner if requested in writing by the owner or ordered by a judge. Any note on the certificate of title must also be entered on the duplicate. The registrar may require proof of identity from the registered owner.

If the deputy does not issue a duplicate certificate of title at the time the original certificate is issued, they must enter a note on the original certificate that no duplicate certificate has been issued. The owner may request the duplicate certificate at a later time and, if that happens, the note is cancelled. The registrar may, but is not required to, keep a duplicate certificate of title at the Land Titles Office; if she does so at the request of the registered owner, it is entirely at the owner's risk.

The new act would allow for an electronic duplicate certificate of title if and when Yukon moves to electronic documents, as permitted in regulations.

Cancellation of duplicate certificates

The registrar may cancel a duplicate certificate of title at the written request of the registered owner or when the land or an encumbrance on it is transferred. The registered owner can request in writing that it not be cancelled.

Summary of a draft new Land Titles Act

The registrar is entitled to require the duplicate certificate to be delivered before registering an instrument on that title. Exceptions are a writ; certificate or order issued by a judge or other registration required by a judge; a builder's lien or discharge of one; a transfer by a sheriff; a transfer on the sale of land for taxes; or other instruments specified in regulations.

Replacement of lost, destroyed or damaged duplicate certificate

The registrar can replace the duplicate certificate if requested by the registered owner and on production of an affidavit explaining the loss or destruction of the duplicate certificate. The registrar must enter a note of the loss or destruction on the title. Unless the registrar is satisfied that the loss or destruction is genuine, he/she may published a notice of intention to issue a replacement duplicate certificate before doing so. The registrar may also refuse to issue a replacement if she has reason to believe that the duplicate is not lost or destroyed. The registrar enters a note on the replacement duplicate certificate.

The registrar may also may cancel a duplicate certificate of title and issue a replacement where it is worn or damaged.

4:3 Applications to bring land under this Act

Plan of survey under Canada Lands Surveys Act (Canada) required

The registrar can accept an application to bring land under the new *Land Titles Act*, and thereby into the land titles system, only if it has been surveyed under the *Canada Lands Surveys Act* (or under a future Yukon act if responsibility for surveying land should be transferred to the Yukon government).

In order to register a survey, a certificate of title must be raised for every parcel created by the survey. In this circumstance, the registrar reviews the plan (in accordance with a "checklist" to be in regulations) to determine if it is acceptable for registration.

Land granted by Crown before first act passed

The new act continues to allow a certificate of title to be issued if ownership was granted by the Crown; by letters patent; or otherwise, before January 1, 1887, so long as the applicant can meet the prescribed standards for establishing ownership.

Untitled Canada lands, Untitled Yukon lands

A federal minister can issue a grant for untitled land in Yukon. The registrar will register the grant and issue a certificate of title in the name of the Crown. The parcel can then be transferred to a purchaser. Similarly, the registrar can also accept a notification issued under the *Lands Act* or the *Territorial Lands (Yukon) Act* for untitled Yukon land. The registrar would register the notification and issue a certificate of title in the name of the Commissioner. The land can then be transferred to a purchaser.

Summary of a draft new Land Titles Act

Yukon First Nation Settlement Land

A Yukon First Nations may apply under the new act to have a certificate of title issued in its name for its fee simple interest in its settlement land or for Category A or B Settlement Land, as permitted by the regulations.

4:4 Applications to withdraw land from under this Act

Federal Minister, Commissioner may apply to withdraw land

If land in Yukon is titled to the Crown and a federal Minister has administration and control of it, the federal Minister may apply to withdraw the land from under the new act. Similarly, if land in Yukon is titled to the Crown, the Commissioner, or the Government of Yukon and the Commissioner has administration and control of it, the Commissioner may apply to withdraw the land from under the new act.

Yukon First Nation may apply to withdraw land

Yukon First Nations with a final agreement that provides for category A or B settlement land may apply to the registrar to withdraw Category A or B Settlement Land that is registered land from under the new act if a certificate of title has been issued in the name of the Yukon First Nation, the Commissioner or the Crown or a federal Minister.

Process for withdrawing land

On application by a federal Minister, the Commissioner or a Yukon First Nation, the registrar will cancel the certificate of title for the land and remove it from the register of titles; enter a note of the withdrawal on the applicable plan; advise the Surveyor General of the withdrawal; and comply with any other requirements in regulations. She may do this only if there are no encumbrances registered on title. The land then ceases to be subject to the act unless and until a new application for registration is registered, or alternately, an action for recovery of the land is made in the courts.

4:5 Correction or substitution of certificates of title

Consolidation or division of certificates of title

A registered owner may apply to consolidate contiguous (connecting) parcels that are created by the same registered plan and owned by the same owner. Where one certificate of title has been issued for two or more parcels owned by the same owner, the registered owner may apply to divide the parcels into two or more titles. The registrar must enter a note on each certificate of every instrument affecting the parcel or parcels and on both the new certificates and the cancelled certificates.

The registrar may partially cancel or wholly cancel certificates where a transfer of land is for less than all the parcels in a certificate of title. This applies also to an instrument registered on a certificate and an instrument filed in the general register.

Application to record change of name

A registered owner whose name has changed can apply to have a new certificate of title issued in the new name, with evidence satisfactory to the registrar that the change of name is

Summary of a draft new Land Titles Act

recognized in law. Similarly, a person can apply to have their new name noted on an instrument on title or in the general register.

Certificates of title for Commissioner's land

The registrar may, without any application, replace a certificate of title issued in the name of Yukon Government, Government of Yukon, Government of the Yukon or Commissioner of the Yukon with a new certificate in the name of the Commissioner of Yukon.

If an instrument in a name other than that of the Commissioner of Yukon is submitted for registration, the registrar can register it in the name of the Commissioner of Yukon and use that name for any note relating to the instrument on a title. Land registered in the name of the Commissioner of Yukon is held by the Commissioner on behalf of the Government of Yukon. The registrar must obtain and cancel the duplicate certificate, if there is one, before canceling a certificate of title in this situation.

5: PLAN OF SURVEY REQUIREMENTS

5:1 Canada Lands Surveys Act plans

Untitled lands; plan received without application to raise title

If the registrar receives copy of a plan of survey without also receiving an application to raise title for every parcel created by the plan, he/she will enter its receipt in the general register, but she must not review or register the plan. That plan is filed and not registered.

The plan may be stored in the Land Titles Office or it may be sent to another office of government.

5:2 Titled land; subdivision of parcel

A registered owner may apply to subdivide a titled parcel or parcels by submitting an application and a plan of subdivision. The registrar then cancels the original title and removes it from the register of titles. The registrar issues new certificates of title for each of the new lots shown on the plan of subdivision in the same name as that on the cancelled plan.

The registrar must not accept a transfer of land if the effect of registration would be to subdivide the land. The legislation would allow the registrar to regularize the results of past transfers, which created subdivisions, along with remainders. One certificate of title can be issued for either:

- all portions of a parcel that were previously titled under different certificates, or
- two or more adjacent portions that were previously titled under different certificates.

Requirements for plans of survey

To be registered, a plan of survey must comply with the provisions of the *Canada Lands Survey Act*; be prepared to the satisfaction of the registrar and in accordance with any regulations under the Land Titles Act ; and be in a medium or format approved by the registrar. It must be approved by the registered owner and all encumbrance holders unless the requirement for the

Summary of a draft new Land Titles Act

encumbrance holder to approve is exempted by regulation. If an encumbrance holder does not approve the plan, the registered owner can apply for a court order dispensing with the approval. The registrar may ask the person submitting the plan to explain its particulars.

Hooked parcels

The new act allows for parcels to consist of separate segments that the plan shows are “hooked” to each other where the segments would form one parcel if they were not separated by a public road or other public area running through the parcel, and the registrar is satisfied that it is a viable parcel of benefit to the community.

Correction of plans by registrar

The registrar is allowed to correct mistakes or defects in a plan submitted for registration, so long as the correction does not have the effect of changing any boundary. The registrar must send a notice of the correction to the Surveyor General and anyone else who would be interested or affected.

Extent of Parcels

The fact that a plan of survey is registered in the Land Titles Office and that the registrar has issued certificates of title for the parcels on the plan, does not guarantee the extent of those parcels.

5:3 Air space parcels

A registered owner can subdivide land to create air space parcels by submitting an application and an air space plan of survey. An air space parcel can be created only on a single parcel of titled land, it must have the approval of the applicable planning officer, and the plan must be certified by a surveyor.

The registrar then cancels the existing certificate of title and replaces it with a new one for each air space parcel shown on the plan and for the land parcel without its air space. If the old certificate of title is only partially cancelled, the registrar notes on it the number assigned to the air space certificates, and notes on the air space certificates the number assigned to the partially cancelled certificate of title. This will make cross referencing easier.

For the purposes of the new act, air space for which a certificate of title has been issued may be transferred, encumbered, etc., and may be subdivided; however, it does not create any easement of any kind in respect of the land above, below or beside the air space parcel, nor does it imply a restrictive covenant.

5:4 Encumbrances affecting less than a whole parcel

Subdivision by certain encumbrances prohibited

In order for the registrar to register an encumbrance that affects less than all of the land for which a certificate of title has been issued, the affected area must have one or more parcels created by a registered plan of survey. Also, the encumbrance may not be one that would have

Summary of a draft new Land Titles Act

the ability to subdivide the land. The registrar can accept an explanatory plan to register those encumbrances or an instrument sketch as part of the instrument to which it is attached.

5:5 Changes to registered plans

A judge may order that registration of a plan be cancelled or amended on application by the registrar, the Surveyor General, a surveyor, the registered owner or an encumbrance holder. The registrar then enters a note on the plan and on each certificate of title affected by the plan and sends a copy to the Surveyor General and to any other affected person.

Natural boundary changes

If a natural boundary of a parcel changes due to accretion, erosion or other event, the owner can submit a plan of survey showing the new boundaries. The owner must include a judge's order confirming the new boundaries. Alternatively, the owner must provide other satisfactory evidence to the registrar, including the approvals of the owner, encumbrance holders and the Surveyor General of Canada. If the original boundary adjoined untitled land, the Commissioner of Yukon or the federal Minister responsible for the land (as applicable) must also consent. The registrar then cancels the existing certificate of title and issues a new one in accordance with the boundaries shown on the new plan.

Conflicting descriptions

In the event of a conflict between the area described in a plan of survey and that described in a title, the parcel of land consists only of the area or volume of land as established by the monuments or coordinates in the plan of survey by which that parcel is created. The plan of survey is no more or less, even if the certificate of title or an instrument describes a different area or volume.

5:6 Transitional provisions regarding plans

Elimination of remainders and metes and bounds descriptions

Where the existing registered plan of survey for a parcel of land creates an untitled remainder on the plan, the registrar may require an owner to submit a new plan of survey or an explanatory plan before accepting any instrument affecting that parcel. Likewise, where a certificate of title has been issued for land described by metes and bounds, the registrar may require an owner to submit a new plan of survey or an explanatory plan before accepting any instrument affecting that parcel. In each case, the registrar may give a notice (and may withdraw the notice) to a registered owner of the requirement and specifying the plan to be submitted.

Registered plans where titles never issued

If a plan of survey was registered in the past but no title has ever been raised for any parcel created by the plan, the registrar may, at the request of the owner and affected encumbrance holders, or on his/her own initiative, cancel the registration of the plan. The registrar would enter a note to that effect on the plan and in the plan daybook.

Alternately, if there was a prior registered plan, he/she may issue certificates of title for each parcel created by the most recent plan and cancel any certificates of title for the same land as it

Summary of a draft new Land Titles Act

is shown on the prior registered plan. Where the register has no certificates of title for any parcel created by the plan, the plan's registration may be cancelled.

A plan that has had its registration cancelled will become a filed plan.

6: REGISTRATION AND FILING OF INSTRUMENTS

6:1 General

Land described in instruments must comply with any regulations and be satisfactory to the registrar. Every instrument transferring or encumbering titled land has the following implied covenant by the registered owner:

The registered owner will do all acts and execute all instruments as, in accordance with this act, are necessary to give effect to all promises, conditions, and purposes expressly set out in the instrument, or declared by this act to be implied in instruments of a similar nature.

Effect of registered encumbrance

A registered encumbrance has effect as a charge and does not operate as a transfer of an estate or interest in the land. Exceptions are:

- where it is provided for in the new act or regulations, or
- a certificate of title for an estate or interest created by the encumbrance is issued by the registrar as a subsidiary title and the record number of the certificate of title is noted on the encumbrance.

An agreement by the owner and an encumbrance holder to amend an encumbrance may be registered as an encumbrance itself, and take priority as of the date the agreement is registered.

Enforceability

Registration of an encumbrance is not a determination by the registrar of its essential nature or its enforceability. Any provision in an encumbrance that violates the protections against discriminate in the *Human Rights Act* is void.

6:2 – Transfer of land

In order to transfer titled land, the owner must state that the entire estate or interest for which the certificate of title has been issued is to be transferred; describe each instrument registered on the certificate and direct whether it is to be transferred or cancelled; include the words "as joint tenants" after naming the transferees, if that is the intention, or alternately, words specifying the undivided interest that each transferee is to hold as tenants in common.

The registrar then cancels the certificate of title of the transferor (and duplicate certificate if there is one) either wholly or partially according to the transfer of land and the registered plan of survey and issues a new certificate of title to the transferee

Summary of a draft new Land Titles Act

Transfers effecting joint tenancy

The registrar must not register a transfer that has the effect of severing a joint tenancy, unless all the joint tenants either execute the transfer or give their written consent. Alternately, the registrar may sever a joint tenancy if all the joint tenants who have not either executed the transfer or given written consent have had written notice of the transfer.

A transfer of land operates as an absolute transfer of all the 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, and no words of limitation are necessary.

Implied covenant of transferee

The following covenant is implied in every transfer of land if a mortgage is registered on title:

The transferee will pay the principal money, interest, annuity, or rent charge secured by the mortgage, at the rate and at the time specified in the instrument creating it.

The transferee will indemnify and keep harmless the transferor from and against the principal sum or other moneys secured by the instrument creating the mortgage, and from and against the liability in respect of any covenant contained in the mortgage or implied under this act, on the part of the transferor.

Trustees as joint owners

If a transfer of land is to joint owners as trustees, the transferor may insert the words “no survivorship” in the transfer and the registrar must enter those words on the certificate of title. Similarly, the trustees may, in writing, authorize the registrar to enter the words “no survivorship” on the certificate of title.

The words “no survivorship” on the certificate means that it is not lawful for any number of joint owners less than all of them to transfer or otherwise deal with the land, without obtaining an order from a judge. If that should happen, the judge may require notice of intention of the order to be published in the media and set a period of time in which anyone interested may show cause why the order should not be made. The judge may order the land to be transferred to a new owner or owners, solely or jointly with or replacing any existing owners, or any other order the judge thinks proper.

6:3 Leases and life estates

The registered owner of a fee simple estate is entitled to lease the land for a life or lives, or for a term. The lease must describe all the land that is intended to be leased, describe any registered encumbrances and specify whether the lease is subject to the encumbrance(s) or if they will be cancelled. The lease may specify that the lessees hold “as joint tenants” if that is the intention. Alternately, if the lessees are intended to hold as tenants in common in unequal proportions, the lease must include words specifying the undivided interest that each lessee is to hold. If these requirements are not met, the lease or life estate may be registered only as an encumbrance. A lease for a term of three years or less may be registered as an encumbrance by the lessee if it is in the prescribed form.

Summary of a draft new Land Titles Act

Otherwise, the registrar must register the lease as an encumbrance on the registered fee simple estate and issue a subsidiary certificate of title for the leasehold or life estate. She must include on the certificate for the fee simple estate the number of the subsidiary certificate of title, and on the subsidiary certificate of title the number of the certificate for the fee simple estate, so that reference can be easily be made from one to the other.

Subdivision, lease to purchase, mortgaged lands

A lease that effects a subdivision may not be registered. A lease may include the right for the lessee to purchase the land described in the lease if the land described is a parcel created by a registered plan of survey. No lease of land that is subject to a registered mortgage is valid and binding against the mortgagee, unless the mortgagee consents.

Cancellation of lease

The registrar must cancel the registration of a lease by entering a note on the certificate of title if requested by the owner after the term of the lease expires, on proof satisfactory to the registrar of lawful re-entry by the owner, or on registration of a surrender of lease. On cancellation, the parties to the lease are not released from their liability for the breach of any agreement in the lease.

Implied promises in lease

The following promises by the lessee are implied in every lease other than a tenancy agreement under the *Residential Landlord and Tenant Act*, unless the lease states otherwise:

- the lessee will pay the rent reserved by the lease at the times mentioned in the lease, and all rates and taxes that may be payable in respect of the leased land during the continuance of the lease; and
- the lessee will, at all times during the continuance of the lease, keep and, at the termination thereof, yield up the leased land in good and tenantable repair, accidents and damage to buildings from fire, storm and tempest or other casualty and reasonable wear and tear excepted.

Implied powers of lessor

In every lease, unless the lease says otherwise, there are implied powers in the lessor:

- the lessor in person or through their agents may enter on the leased land and view its state of repair, and may serve on the lessee, or leave at the lessee's latest or usual place of residence or on the leased land, a written notice of any defect, requiring the lessee within a reasonable time, to be mentioned in the notice, to repair the defect, to the extent the tenant is bound to do so; and
- if the rent or any part of it is in arrears for a period of two months, or if default is made in the fulfilment of any promise in the lease on the part of the lessee, whether expressed or implied, and is continued for a period of two months, or if the repairs required by the notice referred to in paragraph (a) are not completed within the time specified in the notice, the lessor may enter on and take possession of the leased land.

Summary of a draft new Land Titles Act

Short form of promises

The new act allows for a short form of lease by providing a schedule of the full legal meaning of certain terms such as “will not, without leave, assign or sublet” and “will not carry on” which can then be incorporated by reference into the lease agreement.

6:4 Easements, restrictive covenants and other agreements

Grant of easement or restrictive covenant

To make titled land subject to an easement or restrictive covenant, the registered owner must execute a grant of easement or restrictive covenant. These must contain an accurate statement of the interests, or rights, intended to be granted or restricted and be accompanied by a plan of survey. The plan may be an explanatory plan if less than the whole of the land is to be subject to the easement or restrictive covenant. An owner may grant an easement or restrictive covenant to himself/herself.

Utility easements

A registered owner may grant to themselves or another person a “utility easement,” on, over or under the land for the construction of transportation systems, pipes or wires, electrical power, water supply, drainage, for flood control, etc. The utility easement runs with the land. The registrar enters a note of it on the certificate of title.

Surrender of easement or restrictive covenant

The owner of the land or the grantee of the utility easement may apply to have the utility easement surrendered, but the registrar may not accept it unless consent to the surrender is submitted with it by the owner of each encumbrance against the easement.

Utility easements under *Northern Pipeline Act* (Canada)

Utility easements under *Northern Pipeline Act* (Canada) referred to in section 48 of the current act will be continued.

Party wall agreements, encroachment agreements

A party wall agreement may be registered by the owner of an affected parcel. It must describe the adjoining parcels of land sufficiently to identify them and describe the rights and obligations intended to be created. The party wall agreement is annexed to the land and runs with it. Registered owners are not liable for any breach of the party wall agreement that occurs after they cease to be the registered owner.

Similarly, an encroachment agreement may be registered if it sufficiently describes the adjoining parcels and the rights and obligations intended to be created. It is registered on the title for all affected parcels and runs with the land. A registered owner is not liable for a breach of the encroachment agreement that occurs after they cease to be the registered owner. The agreement may be surrendered.

Summary of a draft new Land Titles Act

Development agreements

A development agreement may be submitted for registration by a public authority if it sufficiently describes the land and the rights and obligations intended to be created. It is registered on the title for all affected parcels, is annexed to the land and runs with it. A registered owner is not liable for a breach of the agreement that occurs after they cease to be the registered owner. The agreement may be surrendered in the same manner as an easement or restrictive covenant.

Declaration of building scheme

The registered owner of two or more parcels of land may register a declaration of a building scheme (a statutory building scheme) if they intend to sell one or more of the parcels and want to impose restrictions consistent with a general scheme of development on all of the parcels. It is registered on the title for all affected parcels, is annexed to the land and runs with it. The registrar may register a discharge or a modification of the building scheme with the consent of all affected registered owners and encumbrance holders.

6:5 Mortgages and financial encumbrances

The registered owner of titled land may execute a mortgage in the prescribed form in order to charge that land. They may execute a financial encumbrance in the prescribed form in order to make titled land security for an annuity, rent, charge, or sum of money. In every mortgage a covenant is implied against the mortgagor in possession that the mortgagor will repair and maintain all buildings or improvements, and that the mortgagee may enter the land to inspect the state of repair.

On registration of the mortgage, the mortgagee obtains priority according to the time of registration for all advances and obligations secured in accordance with the terms of the mortgage. A mortgagor may apply for an order to allow him to pay off a mortgage if the registered mortgagee is absent from Yukon.

Short forms of covenants

The new act would allow for a short form of covenants by providing a schedule of the full legal meaning of certain terms such as “has good title to the said land” and “that on default the mortgage shall have quiet possession of the land” etc.

Standard form mortgages

A person may submit a standard form mortgage to the registrar for registration and provisions of the standard form mortgage may then be incorporated by reference into and form the basis of a valid mortgage of land registered in the Land Titles Office.

Enforcement or discharge of mortgage or financial encumbrance

The Yukon Supreme Court has exclusive jurisdiction to hear proceedings to enforce a mortgage or financial encumbrance or to enforce the agreements or conditions contained in them, for the sale, foreclosure of the mortgaged or encumbered lands, or to redeem or discharge the land. On proof of payment of the mortgage or financial encumbrance, the registrar enters a note on the certificate of title that it is discharged wholly or partially, as the case may be.

Summary of a draft new Land Titles Act

Extinguishment of annuity

Similarly, the registrar may enter a note on the certificate of title that an annuity or sum of money is satisfied and discharged on proof of the death of the annuitant or of an event that makes the sum of money no longer payable and that arrears and interest are satisfied.

6:6 Powers of attorney

A registered owner may execute a specific power of attorney that appoints someone to act in the owner's place for the registered property or any part of it. The owner may also execute a general power of attorney in which the land is not specifically mentioned. The registrar registers the specific power of attorney by entering a note on title and files a general power of attorney in the general register. To revoke a specific power of attorney, a revocation form is registered against the applicable certificate(s) of title. For a general power of attorney, the revocation form is filed in the general register.

An irrevocable power of attorney may be given by a corporation in respect of a registered mortgage or encumbrance. If it is to take effect when certain conditions occur (such as default), the mortgagee or encumbrancee must certify that the conditions have occurred and that at least 15 days notice has been given to the corporation of the intention to invoke the power of attorney. The registrar notes the certification on title, and the owner's right to deal with the property is suspended. The certificate must be withdrawn when the applicable conditions no longer exist.

7: CLAIMS TO LAND MADE BY OTHER THAN REGISTERED OWNER

7:1 Transfer, mortgage or postponement of registered encumbrances

A lease, mortgage, financial encumbrance or utility easement that has been registered on title may be transferred. The transfer is registered in the same manner as the instrument being transferred would be registered and has priority according to the time of registration. A mortgagee may transfer only a part of the sum secured by the mortgage and the part so transferred continues to be secured by the mortgage. It may be given priority over the remaining part, may be deferred, or may continue to rank equally with it under the security of the original mortgage, as stated in the transfer.

On such a transfer, all rights, powers, and privileges of the transferor (including the right to sue on it) as set out in the instrument, pass to the transferee, and the transferee becomes subject to all of the requirements and liabilities as if he/she were named in the instrument.

In order to mortgage the interest of a lessee under a registered lease in favour of a mortgagee, the lessee must execute a mortgage as prescribed. To make the interest of a lessee under a registered lease a security in favour of an encumbrancee, the lessee must execute a financial encumbrance as prescribed. A mortgage or financial encumbrance of a lease is registered by entering a note of it on title.

Summary of a draft new Land Titles Act

Anyone entitled to the benefit of a registered instrument may postpone their rights under that instrument by registering a postponement agreement as prescribed. The agreement is registered by the registrar entering a note on title.

7:2 Caveats

Anyone may submit a caveat in the prescribed form claiming to be entitled to an interest or estate in titled land under an unregistered instrument; by operation of law, under an execution when the execution creditor seeks to affect land in which the execution debtor is interested; and otherwise as the registrar considers proper.

Only one caveat may be submitted for each claim. The caveat must be verified by an affidavit of the caveator and state the nature of the interest claimed and grounds for the claim. It must sufficiently identify the land and provide a Yukon address where notices can be sent. The registrar must promptly give notice of the caveat to the registered owner.

Registration of the caveat is not an admission or agreement on the part of the registrar that the interest claimed by the caveator is an interest or estate in land.

Notice to caveator to prove claim

As long as the caveat remains in force, the registrar must not register a transfer or any instrument affecting the land except subject to the claim in the caveat. The registered owner may serve on the person registering the caveat a notice requiring him/her to prove the claim in the caveat before a judge. The judge may make any order he/she considers proper.

Lapse of caveat

If an owner has given the caveator notice to prove their claim and the caveator does not do so by registering (within three months of being served notice) an order of a judge or a certificate of pending litigation, the caveat lapses and that lapse is noted by the registrar on the title. A caveator may withdraw their caveat at any time, but a judge may order the caveator to pay the costs of the caveatee. After a caveat is withdrawn, lapsed or removed, the same person is not entitled to lodge a further caveat for the same matter, unless the registrar or a judge allows it.

Anyone who has sustained damage as a result of a wrongly submitted caveat or without reasonable cause may recover damages from the caveator in court. A caveat may be transferred and the transferee has the same priority as the original caveator had when the caveat was registered.

The registrar may sign and register a caveat if, in their opinion, the title has been issued in error; an error was made in the registration of a transfer or other instrument or in a note; or to prevent a fraud, the contravention of an enactment or other improper dealing.

7:3 Writs of execution and sheriff's sales

No land is bound by a writ affecting it until the writ is filed in the Land Titles Office. A sheriff must promptly submit to the registrar a copy of a writ with all its endorsements certified by the

Summary of a draft new Land Titles Act

sheriff, on payment of the prescribed fee. The registrar files the writ by entering a note in the general register.

Any title issued for that property and any transfer, encumbrance or other instrument executed by the execution debtor, are subject to the rights of the execution creditor under the writ. The writ ceases to bind the land at the expiration of the prescribed period after the writ was filed, unless the writ is renewed.

Satisfaction or withdrawal of writ

On the satisfaction or withdrawal of a writ filed in the Land Titles Office, the sheriff must promptly submit a certificate to that effect to the registrar. On receipt of a judge's order showing the expiration, satisfaction, or withdrawal of a writ, the registrar must file the order in the general register if the writ was filed in the general register, and enter a note on the certificate of title to the effect of the order. The writ then ceases to bind or affect the land.

Confirmation and registration of sheriff's sale

Any sale of titled land by a sheriff must first be confirmed by a judge. If the land is sold by the sheriff, the registrar must, no sooner than four weeks after receiving a court certified copy of the order and a transfer of land in the prescribed form, register the transfer (unless she receives an order of a judge staying the transfer). The transfer must be registered within two years of the date of the order confirming the sale. If it is not registered within two years, the transfer ceases to be valid.

Any person interested in the sale may apply to confirm a sale of land by a sheriff, on notice to the owner. If a sale of land is not confirmed by a judge, any purchase money paid by the purchaser must be refunded to them.

7:4 Certificates of pending litigation

Anyone who is a party to an action in which the person claims an interest or estate in land may submit a certificate of pending litigation issued by the court to be registered against title. The registrar enters a note on title and gives notice to the registered owner. As long as the registered certificate remains in force, the registrar may not register a transfer or other instrument affecting the land except subject to the outcome of the litigation.

If the certificate was submitted wrongly or without reasonable cause, the submitter is liable to compensate any person who has sustained damage, with costs. Compensation and costs will be determined by the judge acting in the litigation, where both persons are parties to the litigation to which the certificate pertains. The registrar will cancel the registration of the certificate of pending litigation on receiving a certificate from the clerk of the court when the proceedings for which the certificate was granted is either discontinued or dismissed, or if the certificate is withdrawn.

Summary of a draft new Land Titles Act

8: TRANSMISSION OF TITLES AND ENCUMBRANCES

Death of owner

When a registered owner dies, their interest in land vests in their personal representative, who must apply to the registrar to be registered as owner in a representative capacity. The personal representative submits an application; the grant of probate of the owner's will; and letters of administration or an order of the court authorizing the applicant to administer the estate of the deceased owner. The registrar enters a note on title, cancels the title in the name of the deceased owner, and issues a new certificate of title to the personal representative. The title of the personal representative takes effect from the date of death.

Death of encumbrance holder

Similarly, when the holder of a registered encumbrance dies, their charge on or interest in the land vests in their personal representative. The representative must submit an application, the grant of probate, and letters of administration or order of the court.

The probate of a will granted in any province of Canada or the United Kingdom is sufficient. A person registered in place of a deceased owner or encumbrance holder holds the land or encumbrance on the trusts and for the purposes that are applicable by the new act or by law, and subject to any trusts and equities to which the deceased was subject.

Court may change personal representative

Any person beneficially interested in the land or encumbrance may apply to a judge to have the land or encumbrance taken out of the hands of the personal representative and transferred to someone else. A personal representative may make a valid transfer to themselves in their personal capacity. If the deceased held the land or the encumbrance holder as a joint tenant with another owner or holder, the surviving joint tenant may apply to the registrar to be registered as the sole owner or holder.

9: FEES AND ESTABLISHMENT OF ASSURANCE FUND

The current assurance fund is continued. It is a fund of the Yukon Consolidated Revenue Fund and must be managed in accordance with the regulations and the *Financial Administration Act*. It is to be used only to compensate owners and other persons for damages and costs suffered in the situations described in the new act.

A schedule of fees will be established in the regulations. The registrar is prohibited from accepting any plan of survey or instrument for filing or registration, or performing any duty or any service until the registrar has received the prescribed fee and the prescribed assurance fund fee. However, any person or law firm may establish a prepaid account with the Land Titles Office against fees that may be charged. The registrar must account for all fees received and pay the money into the Consolidated Revenue Fund in accordance with the *Financial Administration Act*.

10: ACTIONS FOR RECOVERY OF LAND OR DAMAGES

A certificate of title bars an action against the registered owner for ejectment or the recovery of land. There are five exceptions:

1. an encumbrance holder against a registered owner in default of the obligations secured by the encumbrance where the encumbrance allows that;
2. a person deprived of their title by fraud against someone who acquired the title through fraud;
3. a person deprived of their title against a subsequent owner who is not a bona fide transferee for value from a fraudster;
4. A person deprived of title where that person acquired title by misdescription of land or of its boundaries; and
5. Where two or more grants or two or more certificates of title are registered under this act for the same land.

Recovery from the assurance fund

A person who is barred from bringing an action for damages or an action for ejectment or recovery of land may bring an action against the registrar, as nominal defendant, for damages if the loss results from an error by any person employed in a Land Titles Office or the registration of another person as owner of the land. Notice in writing of such a claim and the cause of it must be served on the registrar at least three months before the the action is started.

After a parcel of land has been titled, a person deprived of the land as a result of fraud, registration of another person as owner, error, misdescription or other cause may bring an action for damages against the person who acquired title to the land. Where that person is dead or cannot be found in Yukon, the action may be brought to recover the damages and costs from the assurance fund. If all or part of the damages and costs awarded cannot be recovered from the defendant, the Minister of Finance must pay the amount from the assurance fund.

Assurance fund not liable

The assurance fund is not liable for any loss, damage or deprivation caused by a breach of trust by the owner, if the same land is included in two or more grants from the Crown, or land is included in the same certificate of title with other land, through misdescription of the boundaries or parcels. If a claim against the assurance fund fails, the plaintiff is liable for the registrar's court costs for defending the action.

An amount paid out of the assurance fund on account of a person may be recovered from the person by a court action in the name of the registrar. If that person is dead, the amount may be recovered from their estate.

Despite the *Limitation of Actions Act*, a judgment given in an action for money paid out of the assurance fund does not expire.

Summary of a draft new Land Titles Act

Limitation period

No action for damages resulting from deprivation of land may be brought against the registrar or the assurance fund unless it is started within two years from the date the deprivation is discovered by the claimant. However, a person under a legal disability may bring the action within six years from the date on which the disability ceases.

Actions against registrar

An action against the registrar must be brought in the name of the registrar's office and is not affected by a vacancy or a change of officer. The Minister of Justice may settle claims against the registrar by admitting the claim with a reasonable sum for costs and authorizing payment out of the assurance fund.

11: PROCEEDINGS IN COURT

11:1 Decisions of registrar

Appeal of registrar's decision

There are new provisions in the bill for a person who is dissatisfied with a registrar's decision or action to require the registrar to set out, in writing, the grounds for it. The registrar must provide those written reasons. If the person is dissatisfied with the grounds provided they can apply to a judge to have it reviewed. The judge has jurisdiction to make any order the judge considers proper, including an order for costs.

Registrar may refer questions to judge

The registrar may refer any question to a judge about the registrar's duties and functions; the interpretation of instruments; persons entitled; the extent of right or interest; the power or authority of any person or class of persons; how notes should be entered; or any uncertainty about how the registrar should deal with any matter. The judge may summons any person to appear and show cause.

Correction of instruments

If the registrar determines that an instrument has been issued in error or contains a misdescription or a note entered or omitted from an instrument is in error, he/she may correct, cancel or complete the instrument. The registrar may give notice to any interested person and must keep a record of the original words and mark the date when the correction was made.

The registrar may demand the return of a duplicate certificate or instrument so that it may be cancelled, corrected, or completed if there is an error on it; it is fraudulently retained; it needs a note entered on it; or to wholly or partially cancel it. If a person does not comply with a demand to return the duplicate, the registrar may apply to a judge to issue a summons for that person to appear and show cause. If the person does not attend as summoned, the judge may issue a warrant directing the person to be apprehended and brought before the judge.

The judge may order the person to deliver up the duplicate. If a person neglects or refuses to be put under oath, to be examined, to answer any questions under oath, or to deliver up the

Summary of a draft new Land Titles Act

duplicate after being ordered to do so, the judge may sentence the person to a maximum of six months in jail.

If the person has absconded so that the summons cannot be served or if the duplicate has not been returned within three months from the demand, a judge may direct the registrar to cancel, correct or complete the duplicate certificate or instrument, or any note entered on it, and issue a new duplicate if necessary.

11:2 Evidence and procedure

If a matter is submitted to a judge by a registrar or other person under this act, the ordinary rules of evidence and procedure of the court will apply unless the new act provides otherwise.

Implied covenants

A covenant or power declared by the new act to be implied in an instrument may be negated or modified by an express declaration in the instrument. In an action for an alleged breach of an implied covenant, the covenant may be set out in the same manner as if it had been set out expressly in the transfer or other instrument. Implied covenants in a transfer or instrument executed by more than one person are several and do not bind the parties jointly.

Use of owner's or holder's name in action by beneficiary

On an application of a person interested in a parcel of land or encumbrance, the registered owner of the land or holder of the registered encumbrance is bound to allow their name to be used in the action.

Judge may prohibit dealing with land

A judge may prohibit any dealing with land in a case in which it appears that an error has been made by an misdescription of the land or otherwise, and it is necessary to prevent any improper dealing with the land.

11:3 Appeals

An order or decision of a judge under this act may be appealed by the inspector, a registrar, or a person directly interested in the order or decision to the Yukon Court of Appeal within the prescribed time. A judge may refer any matter under the new act to the Court of Appeal, which may either dispose of the matter or refer it back to the judge with directions.

No document or proceeding under the act is invalid because of any informality or technical irregularity, or of any mistake not affecting the substantial justice of the matter.

12: OFFENCES AND PENALTIES

Fraud

A person commits an offence who fraudulently procures, or participates or colludes in fraudulently procuring an order of a judge. Any order of a judge procured by fraud and the

Summary of a draft new Land Titles Act

issuance or cancellation of a certificate of title, or note entered, as directed by the order is void as between all persons who participated or colluded in the fraud.

False representation

A person commits an offence who knowingly and with intent to deceive makes a material false statement in an instrument or in an affidavit or conceals from a judge or land titles employee a material document, fact, matter or information. Participating or colluding in these things is also an offence.

An act or thing done or obtained by means of false representation is void, except in respect of a purchaser in good faith and for valuable consideration.

Tampering with land titles records

A person commits an offence who without lawful authority destroys, alters, or removes from where it is stored or recorded, any record of the land titles office.

Penalties

The penalty for these offences is a fine of not more than \$10,000 or imprisonment for a term of not more than 6 months, or both, in addition to every other penalty the person may be liable to under the *Criminal Code* or other law. An offender may also be sued in civil court. Section 3 of the *Summary Convictions Act* does not apply.

13: INTERPRETATION BULLETINS AND REGULATIONS

The registrar may issue interpretation bulletins as prescribed in regulations.

Cabinet is entitled to make any rules and regulations it consider necessary for giving effect to the new act and for the carrying out of its provisions.

14: AMENDMENTS TO OTHER ACTS

Assessment and Taxation Act

Amends will require that an air space parcel, for which a certificate of title is issued, to be separately assessed for taxation purposes if it is not owned by the same person to whom the certificate of title for the ground beneath the parcel is issued.

Judicature Act

Amendments will allow a body corporate formed under Yukon law to acquire and hold property, rights and interests in joint tenancy in the same manner as an individual, and to create a joint tenancy for property with one or more other bodies corporate or individuals.

However, the conditions and restrictions that apply to the acquisition and holding of property, rights or interests by a body corporate in severalty apply also to the acquisition and holding of property, rights or interests by a body corporate in joint tenancy. This will apply retroactively to

Summary of a draft new Land Titles Act

property, rights and interests acquired by a body corporate before this provision comes into force.

Municipal Act

Amendments to the *Municipal Act* will give the term “subdivision” the same meaning as in the new act, and the terms “instrument” and “plan of survey” will have the same meaning as in the *Land Titles Act*. Further amendments affect subdivisions that are created by registration of a plan or instrument in the Land Titles Office.

Subdivision Act

The definition of “subdivision” is amended to mean the adjusting or realigning of an existing property line; the division of an existing parcel of land into two or more new parcels, including parcels that are units within the meaning of the *Condominium Act*; or the creation of a new parcel of land from existing parcels of land. “Instrument” and “plan of survey” are also redefined to have the same meaning as in the *Land Titles Act*.

Further amendments make the *Subdivision Act* apply to subdivisions that are created by registration of a plan or instrument in the Land Titles Office. The term “shall be deemed to be a covenant running with the land on its being registered” is replaced with “may be registered as an encumbrance against the land.”

New provisions will provide that if the provision of a reserve is deferred, the approving officer shall include the requirement that the provision of a reserve in part or in full be deferred.

Other acts

Further consequential amendments to other legislation may be necessary to fully implement the new Land Titles Act.

15: TRANSITIONAL PROVISIONS AND COMMENCEMENT

Authority for regulations, transitional provisions, coming into force date

The bill also allows for the power to make regulations, transitional provisions and establishing when the new act will come into force.