

Frequently Asked Questions about the Land Titles Assurance Fund

What is it?

The Assurance Fund is created by the *Land Titles Act* for payment of claims by people who have been deprived of their interests in land as a result of mistakes of the Registrar or wrongful acts of third parties and who are prevented by the Act from suing to recover those interests.

Why do we need it?

The land registration system used in Alberta is based on the Torrens System of land registration and operates under the legislative authority of the *Land Titles Act*. Under this system, the Government has custody of all original titles, documents and plans and has the legal responsibility for the validity and security of all registered land title information. The Government guarantees the accuracy of the title through the internal application and enforcement of laws derived from a multitude of statutes and court decisions. Land Titles conducts a careful review of documentation to ensure compliance with legal requirements prior to registration. This process is called 'document examination'. To protect genuine purchasers who are registered on title, the legislation takes away remedies for persons who have been deprived of their interests in land by wrongful acts of third parties or by mistakes of the Registrar. The function of the assurance fund under the Torrens system is to compensate for losses suffered by those persons.

What Claims may be made?

Claims to recover damages may be made in two situations:

1. Where a person has suffered loss through an omission, mistake or misfeasance of the Registrar, or
2. Where a person has been deprived of their interest in land
 - a. through bringing their land under the Act, or
 - b. by the registration of some other person as owner of their interest in the land, or
 - c. by an error, omission or misdescription in a certificate of title,and who are prevented by the Act from suing to recover that interest.

What are some examples of the types of claims that are possible?

Mistake by the Registrar

You loan money to a person to be secured by a mortgage on that person's condominium. Land Titles inadvertently registers the mortgage only against the parking stall, not the condominium proper. The owner then obtains a mortgage loan from a bank and the bank, which is unaware of your interest, registers its mortgage against both the parking stall and the condominium proper. The owner then sells the property and the bank is paid out from the sale proceeds. You have lost what should have been a registered mortgage against the condominium title and you are unable to sue to recover it due to the operation of the Act.

Land Titles Fraud

You are the registered owner of a property. Jones forges your signature on a transfer of land and transfers the property to himself. Jones then sells the property to a third party. Jones transfers title to the third party who relies on Jones's title and is not aware of the forgery. Jones disappears with the proceeds of the sale. Several months later you wonder why you didn't receive your tax notice from the City and call about it only to learn that you are not the registered owner any longer. You have lost your registered interest as owner and are unable to sue to recover it due to the operation of the Act.

How can these types of claims happen?

Land Titles occasionally receives documents that are fraudulent in nature. Many such cases involve forged signatures or wrongfully obtained corporate seals. Although Land Titles attempts to stop such documents from being registered through the document examination process, such documents from time to time are registered.

Is There a Time Limit on Making a Claim?

Claims must be made within six years of the date that the loss occurred.

Is Notice Required?

Claimants must give three months' notice of the claim to the Registrar and the Minister of Justice and Solicitor General. Notices to the Registrar may be made to:

Mezzanine Floor, John E Brownlee Building
10365 – 97 Street
Edmonton, Alberta T5J 3W7
Telephone: 780-427-2742
Attn: Executive Director of Land Titles and Surveys

Notices to the Minister of Justice and Solicitor General may be made to:

Minister of Justice and Solicitor General
424 Legislature Building
10800 - 97 Avenue
Edmonton, AB
T5K 2B6

The notice can take the form of a letter setting out the details of the claim and should include copies of any relevant documents.

What happens after notice is given?

The Registrar will review the claim and undertake an investigation of the circumstances and advise if the claim can be accepted. The Registrar has authority to approve and finalize claims that do not exceed \$1000.

If the Registrar is unable to approve the claim or the claim is for more than \$1000, the Registrar will advise.

Do I have to sue?

If the claim is for damages for loss suffered as the result of mistakes by the Registrar you will have to sue the Registrar in the Court of Queen's Bench of Alberta.

If the claim alleges that the damages for loss suffered were caused by the wrongful acts of other people, those people must be sued along with the Registrar.

Once a lawsuit is started, the matter will proceed in accordance with the Rules of Court. If at the end of the day a court finds that people other than the Registrar are liable for the damages the court will render judgment against those people. If those people are unable to satisfy a judgment then and only then will final judgment be rendered against the Registrar and the amount so ordered will be paid out of the Assurance Fund.

Legal Assistance

Generally Assurance Fund claims, particularly those that involve land titles fraud are complex and technical. It is strongly recommended that claimants retain the services of a lawyer. The Law Society of Alberta operates a Lawyer Referral Service which will provide the names of three lawyers who practice in the area and will provide an initial half hour consultation without charge. The toll free number is **1.800.661.1095**.

More Information

Contact the Registrar at:

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Edmonton, Alberta T5J 3W7
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