Subject: **ADVERSE POSSESSION JUDGEMENTS**

For more information, please see: Property Rights Statutes Amendment Act, 2022

BACKGROUND

When, during a period of 10 years (1), a person has been in exclusive, continuous, open or visible and notorious (2) actual possession or occupation of land of which he is not the registered owner and which is not Crown land (3) or municipal land (4), that person may apply to the courts to recover a judgment declaring that he is entitled to the exclusive right to use the land or that he is quieted in the exclusive possession of the land. (5) The registration of the judgment results in the issuance of a new certificate of title to the person who has recovered the judgment.

This ability to acquire title through adverse possession is an exception to the main principle of a Torrens system of land registration which is that a person's ownership of land as shown on a certificate of title is indefeasible (i.e., cannot be defeated by others). One limitation which has been placed on the right to acquire title in this fashion is that the period of 10 years commences again whenever a *bona fide* purchaser for value becomes the registered owner of land. (6)

REGISTRATION PROCEDURE

1. The copy of the judgment presented for registration must be certified by the clerk of the court. The judgment must include the declaration specified above in the Background (5) and contain instructions to the Registrar for the cancellation and issuance of titles.

2. See procedure under ORD-1 with respect to compliance with section 191 of the Land Titles Act.

3. A mailing address for the person to whom the new certificate of title is being issued must be provided.

4. An affidavit of value is required for fee calculation purposes.

5. If the judgment deals with only part of the land described in the existing certificate of title, it must be checked by the Surveys section for legal description approval. See procedure under SUB-1 with respect to compliance with subdivision requirements under the Municipal Government Act.

6. See procedure under FOL-1 with respect to compliance with foreign ownership requirements.

OUTDATED

7. Any instruments or caveats endorsed against the existing certificate of title are carried forward to the new certificate of title unless the judgment contains express instructions to the contrary.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Order – New Title

The code used for registration at Land Titles is: ORDT

STATUTE AND CASE REFERENCES

Statute references are to the Land Titles Act, R.S.A. 2000, c. L-4, unless otherwise indicated.

1. s. 3(1)(b) and (4), Limitations Act, R.S.A. 2000, c. L-12
2. *Lutz v. Kawa* (1980), 13 Alta. L.R. (2d) 8 (Alta. C.A.)
3. s. 4, Public Lands Act, R.S.A. 2000, c. P-40
4. s. 609, Municipal Government Act, R.S.A 2000, c. M-26
5. s. 74
6. *Lutz v. Kawa, supra,* at p. 25

OUTDATED