

NATIONAL ASSEMBLY

FIRST SESSION

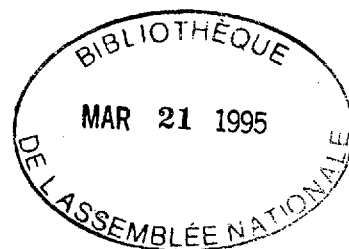
THIRTY-FIFTH LEGISLATURE

Bill 67

**An Act to amend the Act respecting
the implementation of the reform of
the Civil Code and other legislative
provisions as regards security and
the publication of rights**

Introduction

**Introduced by
Mr Paul Bégin
Minister of Justice**



**Québec Official Publisher
1995**

EXPLANATORY NOTES

This bill amends, in matters relating to the reformed law on security or on publication of rights established by the Civil Code of Québec, the rules prescribed, in particular, by the Act respecting the implementation of the reform of the Civil Code.

The bill clarifies the procedure for the registration or renewal of registration, in the new registers, of certain types of security created under the former legislation. To facilitate the publication of rights by the deposit of unabridged deeds or acts, the bill suspends the application of the rules contained in the new Civil Code that relate to restrictions on the content of applications for registration presented to the registrars charged with the land registers or that relate to the sufficiency of prescribed information or the pertinence of certain facts as regards publication. Also, the bill suspends the requirement, for the registration of real rights for which publication is required or authorized, that the nature of the right be stated in the application for registration presented to the registrar, and makes the necessary adjustments to the notion of registration which is intrinsic to the system of publication of rights.

In addition, the bill proposes a measure to cover irregularities in entries made in the land registers since the coming into force of the Civil Code of Québec and compensate any inaccuracy or insufficiency in the statement of the nature of a registered right or the extent of such a right. Also, the bill limits, until the land registers are fully in place, the requirement of certification in support of an application for the registration of rights, and adapts the rules concerning certification under the new Code to recognize the authenticity of certain acts contained in applications.

Moreover, the bill suspends or modifies, until the land registers are fully in place or a cadastral renovation is effected, certain requirements concerning the description of immovables which correspond to parts of lots, in particular to allow an immovable to be described summarily.

The bill amends the Act respecting registry offices to clarify the rules governing the provision of services free of charge by registrars and to allow information concerning immovables to be transmitted for the updating of municipal assessment rolls. The overlap between the new Civil Code and the Special Corporate Powers Act in the description of public service networks is eliminated. The special rules for the registration of deeds of acquisition under the Act respecting the acquisition of farm land by non-residents are amended to better harmonize those rules with the newly established system of publication of rights.

Lastly, the bill proposes technical and consequential amendments to bring certain legislative provisions into conformity with the reformed law on security.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting the acquisition of farm land by non-residents (R.S.Q., chapter A-4.1);
- Land Surveyors Act (R.S.Q., chapter A-23);
- Building Act (R.S.Q., chapter B-1.1);
- Act respecting registry offices (R.S.Q., chapter B-9);
- Act respecting the Caisse de dépôt et placement du Québec (R.S.Q., chapter C-2);
- Savings and Credit Unions Act (R.S.Q., chapter C-4);
- Pharmacy Act (R.S.Q., chapter P-10);
- Special Corporate Powers Act (R.S.Q., chapter P-16);
- Public Buildings Safety Act (R.S.Q., chapter S-3);
- Securities Act (R.S.Q., chapter V-1.1);
- Civil Code of Québec (1991, chapter 64);
- Act respecting the implementation of the reform of the Civil Code (1992, chapter 57).

Bill 67

An Act to amend the Act respecting the implementation of the reform of the Civil Code and other legislative provisions as regards security and the publication of rights

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING THE IMPLEMENTATION OF THE REFORM OF THE CIVIL CODE

1. Section 136 of the Act respecting the implementation of the reform of the Civil Code (1992, chapter 57) is amended

(1) by adding, at the end of the first paragraph, the following sentence: “Any such transfer not contained in an act entered either in the index of immovables in territory with a cadastral survey or in the index of names in territory without a cadastral survey requires, to conserve its rank, renewal of registration or registration, as the case may be, in the land register before *(insert here the date occurring on the 180th day after the date of coming into force of paragraph 1 of section 1 of Bill 67 of 1995)*; the renewal or registration are effected by notice.”;

(2) by replacing the words “published within thirty days after the notice of the Minister of Justice provided for in section 162” in the second, third and fourth lines of the second paragraph by the words “registered before *(insert here the date occurring on the 180th day after the date of coming into force of paragraph 2 of section 1 of Bill 67 of 1995)*”.

2. Section 138 of the said Act is amended by replacing the words “the publication of the notice of the Minister of Justice provided for in section 162” in the second and third lines of the second paragraph by the words “*(insert here the date occurring on the 180th day after the date of coming into force of section 2 of Bill 67 of 1995)*”, but the creditor may register the notice at any time before that date”.

3. Section 149 of the said Act is amended by replacing the words “summary registration in the index or register making reference to the application under which registration was required and” in the fifth, sixth and seventh lines of the first paragraph by the words “registration, in the index or register, indicating summarily the nature of the document presented and referring to the application under which registration was requested; such a registration”.

4. The said Act is amended by inserting, after section 149, the following section:

“149.1 For the period from 1 January 1994 to (*insert here the date of coming into force of this section*) and subject to the rights of third persons in good faith whose rights have been published during that period, insufficiency or inaccuracy in stating the nature or extent of a right in a registration effected under section 149 as it read on (*insert here the date of the day preceding the day on which this section comes into force*) shall not affect the rights of the parties to the application who benefit from the registration, if analysis of the application or, where the application is made by means of a summary, of the accompanying document compensates for the insufficiency or inaccuracy.”

5. Section 154 of the said Act is amended by inserting, before paragraph 1, the following paragraph:

“(0.1) in article 2934, to the publication of rights effected by their registration in the land register, it means the publication of rights effected by registration under section 149, which is effective only in respect of rights admitting or requiring publication that are mentioned in the application for registration or, where the application is made by means of a summary, in the accompanying document;”.

6. Section 155 of the said Act is amended

(1) by inserting, after paragraph 2, the following paragraphs:

“(2.1) articles 2981 and 2986 do not apply to applications for registration which relate to the land register;

“(2.2) the following provisions apply in place of the provisions of the second paragraph of article 2982:

“The application is made by presenting the act itself or an authentic extract thereof, by means of a summary of the document or, where the law so provides, by means of a notice. It contains, in

particular, the identity of the holders and grantors of the rights, the description of the property affected and any other particular prescribed by law or by the regulations under this Book.”;

“(2.3) a title registered in the appropriate register is considered to be validly published, within the meaning of articles 2988 and 2991;

“(2.4) the restrictions contained in the second paragraph of article 2991 concerning the content of applications for registration are not applicable;”;

(2) by inserting, after paragraph 4, the following paragraph:

“(4.1) the requirement contained in articles 3036 and 3037 that the measurements of an immovable be mentioned and the provisions of the second paragraph of article 3037 are not applicable in a territory that has not been the subject of a cadastral renovation;”.

7. The said Act is amended by inserting, after section 155, the following section:

“155.1 In a territory that has not been the subject of a cadastral renovation, article 3042 of the new Code does not apply where the application for registration of a transfer, cession or right referred to in the said article contains a declaration of the person authorized to expropriate the immovable or to appropriate a right of ownership therein, to the effect that the immovable, comprised of the required part and the remainder, corresponded to one or more parts of lot at the time of registration of the notice of expropriation or appropriation.”

8. Section 156 of the said Act is amended by replacing the words and figures “articles 2988 and 2991” in the third line by the words and figures “articles 2988 to 2991”.

9. The said Act is amended by inserting, after section 157, the following section:

“157.1 All movable securities created under the former legislation that were not subject to the formality of registration but which have become, under the new legislation, movable hypothecs subject to registration require, to preserve their opposability at their original rank, registration in the register of personal and movable real rights before *(insert here the date occurring on the 180th day after the date of coming into force of this section)*.

Notwithstanding article 2700 of the new Code, the period for registering the notice required by the said article to preserve such securities runs, in respect of alienations of property occurring from 1 January 1994 to *(insert here the date occurring on the 180th day after the date of coming into force of this section)*, from the latter date, whether the alienation occurs before or after the registration of the securities affected. This rule shall not prevent a creditor from registering a notice before *(insert here the date occurring on the 180th day after the date of coming into force of this section)*."

ACT RESPECTING THE ACQUISITION OF FARM LAND BY NON-RESIDENTS

10. The heading of Division IV of the Act respecting the acquisition of farm land by non-residents (R.S.Q., chapter A-4.1) is replaced by the following heading:

"APPLICATION FOR REGISTRATION OF AN ACQUISITION".

11. Section 21 of the said Act is amended by replacing the words "deed of acquisition of any farm land by a non-resident must contain" in the first line by the words "application for registration of the acquisition of farm land by a non-resident must contain".

12. Sections 22 to 24 of the said Act are replaced by the following sections:

"22. For the purposes of this Act, a person applying for the registration of an acquisition referred to in section 21 must present to the registrar, in addition to the documents required for registration, an unauthenticated copy of the deed of acquisition and an unauthenticated copy of the summary or extract where the application is made by means of a summary or extract.

"23. The registrar notifies the commission by sending it the copy presented by the applicant under section 22 not later than the fifteenth day of the month following the month of registration of the acquisition.

"24. The registrar must refuse to register the acquisition of farm land by a person who is not a resident of Québec if he ascertains that the application for registration does not contain the information required by section 21.

The registrar must also refuse to register an acquisition where the applicant does not present the copy required by section 22."

13. Section 35 of the said Act is amended by striking out subparagraph 5 of the first paragraph.

LAND SURVEYORS ACT

14. Section 52 of the Land Surveyors Act (R.S.Q., chapter A-23), amended by section 432 of chapter 57 of the statutes of 1992, is again amended by replacing the figure "791" in the fourth line of the second paragraph of subsection 1 by the figure "789".

BUILDING ACT

15. Section 50 of the Building Act (R.S.Q., chapter B-1.1) is amended by replacing the second paragraph by the following paragraph:

"The owner of an immovable charged with a legal hypothec referred to in paragraph 2 of article 2724 of the Civil Code of Québec and registered on the application of a contractor who does not hold the proper licence may apply for the cancellation of the registration of the hypothec and for the cancellation of any related registration which the contractor may have applied for."

16. Section 137 of the said Act is amended by replacing the word "privileges" in the fourth line by the words "prior claims or legal hypothecs".

ACT RESPECTING REGISTRY OFFICES

17. Section 10 of the Act respecting registry offices (R.S.Q., chapter B-9), enacted by section 447 of chapter 57 of the statutes of 1992, is replaced by the following section:

"10. No fee is exigible

(1) for the registration of a hypothec granted under the Act respecting the Société de financement agricole (chapter S-11.0101) or the Farm Credit Corporation Act (Statutes of Canada, 1993, chapter 14). However, the application for registration must indicate that the grantor operates a farming business and must make reference to the Act under which the hypothec was granted;

(2) for searches made in registry offices for the purposes of such hypothecs;

(3) for the issue by the registrar, either hand to hand or by mail, of certified statements, extracts or copies of applications for registration that relate to such hypothecs.”

18. The said Act is amended by inserting, after section 11, the following section:

“12. For the purposes of the updating of the municipal assessment roll, a person applying for the registration of the acquisition, creation, recognition, modification, transmission or extinction of the right of ownership in an immovable, of a dismemberment of that right or of a division of the object of that right must present to the registrar, in addition to the documents required for registration, an unauthenticated copy of the act evidencing the right and an unauthenticated copy of the summary or extract where the application is made by means of a summary or extract.

Where the act evidencing the right concerns immovables situated in the territory of several local municipalities, the applicant must present one copy per municipality.

The registrar shall send to the local municipality concerned, within the time fixed in the first paragraph of section 10 of the Act respecting duties on transfers of immovables (chapter D-15.1) and according to the tariff applicable to the sending of notices of transfer, the copies presented by the applicant under the first paragraph.

The provisions of this section do not apply where the act evidencing the right is a deed of transfer subject to the provisions of section 9.1 of the Act respecting duties on transfers of immovables.”

ACT RESPECTING THE CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC

19. Section 28 of the Act respecting the Caisse de dépôt et placement du Québec (R.S.Q., chapter C-2) is amended by replacing the word “privilege” in the first line of paragraph ii of subparagraph a of the second paragraph by the word “hypothec”.

SAVINGS AND CREDIT UNIONS ACT

20. Section 83 of the Savings and Credit Unions Act (R.S.Q., chapter C-4) is amended

(1) by striking out the words “privilege or” in the first line of paragraph 1 of subparagraph c of the first paragraph;

(2) by replacing the word “privilege” in the first line of paragraph 3 of subparagraph c of the first paragraph by the word “hypothec”.

PHARMACY ACT

21. Section 30 of the Pharmacy Act (R.S.Q., chapter P-10), amended by section 641 of chapter 57 of the statutes of 1992, is again amended

(1) by inserting the words “, under a movable hypothec” before the words “or under a deed of trust”;

(2) by inserting the words “the hypothecary creditor,” before the words “the assignee,”.

SPECIAL CORPORATE POWERS ACT

22. Section 43 of the Special Corporate Powers Act (R.S.Q., chapter P-16) is repealed.

PUBLIC BUILDINGS SAFETY ACT

23. Section 34 of the Public Buildings Safety Act (R.S.Q., chapter S-3) is amended by replacing the words “cost of such demolition shall be a privileged claim” in the fifth line by the words “recovery of the cost of such demolition is secured by a legal hypothec”.

SECURITIES ACT

24. Section 262 of the Securities Act (R.S.Q., chapter V-1.1) is amended by replacing the second paragraph by the following paragraph:

“The fees and expenses are deemed to constitute a prior claim, and have the same rank as expenses incurred in the common interest.”

CIVIL CODE OF QUÉBEC

25. Article 2993 of the Civil Code of Québec (1991, chapter 64) is amended by adding the following paragraph:

“However, the signature affixed by a notary to a notarial act signed before him by a party or for the closure of a notarial act carries with it the certification required by article 2988.”

TRANSITIONAL AND FINAL PROVISIONS

26. The first regulation made after (*insert here the date of assent to this Act*) to amend the Provisional Regulation respecting the land register enacted by Order in Council 1596-93 (1993, G.O. 2, 6239), is not subject to the publication requirements prescribed by section 8 of the Regulations Act (R.S.Q., chapter R-18.1).

27. The provisions of paragraph 2.3 of section 155 of the Act respecting the implementation of the reform of the Civil Code, enacted by section 6, and the provisions of section 8 have effect from 1 January 1994.

28. This Act comes into force on (*insert here the date of assent to this Act*), except for sections 1 to 9 and section 27, which will come into force on the date of coming into force of the first regulation referred to in section 26 and for section 16, which will come into force on the date of coming into force of section 137 of the Building Act.