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# TORRENS ACT

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## CHAPTER 235.

[S. B. No. 1—McCarten.]

### REGISTRATION OF LAND AND THE TITLE THERETO.

An Act Concerning the Registration of Land and the Title Thereto in the State of North Dakota.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. Real estate situated in any county in the state may be registered under the provisions of this chapter in the manner herein provided.

§ 2. Registered land shall be subject to the same burdens and incidents which attach by law to unregistered land. This chapter shall not operate to relieve registered land, or the owners thereof from any rights, duties or obligations incident to, or growing out of the marriage relation or from liability to attachment on mesne process, or levy on execution, or from liability to any lien or charge of any description whatever, created or established by law upon the land, or the buildings situated thereon, or the interest of the owner of such land or buildings. It shall not operate to change the laws of descent or the rights of partition between co-tenants, or the right to take the land by eminent domain. It shall not operate to relieve such land from liability to be taken or recovered by any assignee or receiver under any provision of law relative thereto, and shall not operate to change or affect any other rights, burdens, liabilities or obligations created by law and applicable to unregistered land except as otherwise expressly provided herein. No title to registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession.

§ 3. An application for registration may be made by any of the following persons:

First, the person or persons who singly or collectively own the land. Tenants in common shall join in the application.

Second, the person or persons who singly or collectively have the power of disposing of the land.

Third, infants and other persons under disability, by their guardian, duly appointed by the proper probate court in this State.

Fourth, a Corporation, by its proper officer or by an agent duly authorized by the Board of Directors.

Fifth, any executor or administrator duly appointed by the proper Probate Court in this State. The person in whose behalf the application is made shall be named as applicant.

§ 4. No land, the title to which is derived from any tax or local assessment sale, shall be registered until such title has been adjudged to be valid by a court of competent jurisdiction, and a certified copy of the decree duly recorded with the Register of Deeds; provided, however, that any person may make the application when for at least fifteen years the land has been in the adverse possession of the applicant or those through whom he claims title.

No lesser estate than a fee simple, and no mortgage, lien or other charge upon land, shall be registered, unless the estate in fee simple therein is registered; but the fact that the estate or interest of the applicant is subject to any outstanding lesser estate or to a mortgage, or other charge or lien, shall not prevent its registration.

§ 5. The application shall be in writing, and shall be signed and verified by the applicant, or by his agent thereunto lawfully authorized in writing. If the application is signed and verified by any agent, except an officer of a Corporation, the authority of such agent shall be executed and acknowledged in the manner required in the execution and acknowledgment of a deed, and shall be recorded with the Register of Deeds for the County wherein the land is situated, before the filing of the application. If the application is made by a Corporation, it shall be verified by some officer of the corporation. If the applicant is married, the husband or wife of the applicant shall assent thereto in writing by duly acknowledged endorsement thereon, or by a separate instrument duly acknowledged and filed with the application.

§ 6. The application shall set forth substantially:

First, the full name, age and residence of the applicant. If the application is made by any person acting in behalf of another, the application shall likewise state the full name and residence of the person so acting, and the capacity in which he acts.

Second, whether the applicant is or is not married, and if married the full name of the husband or wife. It shall also state that the applicant is under no disability and whether the applicant has ever been divorced, and if so, when, where and by what court the divorce was granted.

Third, a correct description of the land, together with the assessed valuation thereof, exclusive of improvements, according to the last official assessment.

Fourth, the estate or interest of the applicant in the land, and whether or not it is subject to an estate of homestead.

Fifth, the names of all persons or parties except the applicant, who appear of record, or who are known to the applicant to have or to claim any right, title, estate, lien or interest in the land.

Sixth, whether the land is occupied or unoccupied. If occupied by any other person than the applicant, it shall state the full name and address of such occupant, and the nature of the estate, inter-

est, lien or charge which such occupant or occupants have, or claim to have, in the land.

Seventh, whether the land is subject to any lien or incumbrance, recorded or unrecorded, together with the character and the amount of the same and the name and postoffice address of each holder thereof. If recorded, it shall state the place, book and page of record.

Eighth, whether any person, other than the applicant, has or claims to have any estate or interest in the land, either in law or equity in possession, remainder, reversion or expectancy, together with the full name and address of every such person and the nature and character of such estate or interest.

Ninth, if the application is on behalf of a minor, it shall state the age of such minor, and that a duly certified copy of the letters of guardianship has been recorded with the Register of Deeds in the county wherein the land is situated.

Tenth, when the place of residence of any person whose residence is required to be given is unknown to the applicant, it may be so stated in the application, and also that after due and diligent search the applicant has been unable to ascertain the same.

Eleventh, if it is desired to fix and establish the boundary lines of the land, the full names and postoffice addresses of all owners of adjoining lands which are in any manner effected thereby shall be fully stated; otherwise the decree shall not have the effect to fix or determine the boundary line.

Any person having or claiming any right, title, interest or estate in land or any lien or charge upon or against the same, may assent in writing to the registration thereof, and the person thus assenting need not be named as a defendant in the registration proceeding, or, if already named as a defendant therein, need not be served with a summons therein. Such assent shall be executed and acknowledged in the manner now required by law for the execution and acknowledgment of a deed, and shall be filed with the Clerk of the Court.

§ 7. If the applicant is not a resident of the State of North Dakota, he shall file for record with the Register of Deeds a written agreement, duly executed and acknowledged, appointing an agent residing in the State. He shall state therein the full name and postoffice address of such agent, and shall therein agree that the service of any legal process in proceedings under or growing out of any application shall be of the same legal effect when made on said agent as if made on the applicant within the State. If the agent so appointed dies or removes from the State, the applicant shall at once appoint another agent in like manner, and, if he fails to do so, the court may in its discretion dismiss the application. In any subsequent application made by the same applicant, he may refer to such written authority so recorded, provided the same is sufficiently comprehensive to include such subsequent application.

§ 8. Any number of adjoining tracts of land in the same county

and owned by the same person and in the same right, or any number of tracts of land in the same county having the same chain of title, and belonging to the same person, may be included in one application.

§ 9. Amendments to the application, including joinder, substitution or discontinuance as to parties, may be allowed by the court at any time upon terms that are just and reasonable, but all amendments shall be in writing and signed and verified like the original application.

§ 10. The application for registration shall be addressed to the District Court and for the County wherein the land described therein is situated. The District Court shall have original exclusive jurisdiction thereof, and all proceedings thereunder, and shall have full power to inquire into the title of said land, and any right, title, interest or estate therein, and any lien, charge or incumbrance thereon. By its decree, it shall adjudge and determine the title to said land, the nature, character, extent and amount of all liens and incumbrances thereon, the priority as between the same, and shall remove all clouds from the title. The District Court shall have full power and authority to make all necessary orders, judgments and decrees and for these purposes the courts shall be always open.

§ 11. The application shall be filed with the clerk of the District Court, who shall docket the same in a book to be known as the "Land Registration Docket." The application shall be entitled (here insert name of applicant), applicant to have registered the title to (here insert the description of land), applicant, against (here insert the names of all persons named in the application and in the order of the court directing the issuing of the summons as being in possession of the land, or having any lien, incumbrance, right, title, interest or estate therein), also "all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate described in the application herein," defendants. All orders judgments and decrees of the court in said proceeding shall be minuted in such docket. All final orders or decrees shall be recorded by the clerk and proper reference made thereto in such docket. At the time of the filing of the application with the clerk a copy thereof duly certified by him shall be filed for record with the Register of Deeds, and shall have the force and effect of a *lis pendens*. The applicant shall file with the clerk, as soon after the filing of the application as is practicable, an abstract of title to the land described in the application, satisfactory to the examiner. If required so to do by the examiner, the applicant shall likewise cause the land to be surveyed by some competent surveyor, and file with the clerk a plat of the land duly certified by such surveyor.

§ 12. The judges of the district court shall appoint one or more competent attorneys in each county within their respective districts to be examiners of titles and legal advisors to the regis-

trar in said county. The examiners of titles shall hold office subject to the will and discretion of the district court by which they are appointed. Their compensation shall be fixed and determined by the said court and shall be paid in the same manner as the compensation of other county employees is paid.

§ 13. Immediately after the filing of the abstract of title the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine the title to the land described in the application, and into the truth of all matters set forth therein. He shall ascertain whether or not the land is occupied, and, if occupied, he shall ascertain the nature thereof, and by what right the occupation is held. He shall also ascertain whether or not any judgments or decrees exist which may be a lien upon the land. He shall search all public records, and fully investigate all facts pertaining to the title which may be brought to his notice, and shall file in the case a full report thereof together with his opinion upon the title. The court shall not be bound by any report of the examiner of titles, but may require further or other proof. An examiner of titles shall have full power to administer oaths and examine witnesses concerning any matter involved in his investigation of titles. In such manners he shall possess the same authority as is vested by law in referees appointed by the district court.

Whenever in the opinion of the examiner, the state has any interest in or lien upon the land, he shall state the nature and character thereof in his report, and in such cases the state shall be joined as a party, and named in the summons as a party thereto, in order that its interest, estate and lien may be defined or preserved.

The clerk shall give notice to the applicant of the filing of such report. If the report of the examiner is adverse to the applicant, he shall have a reasonable time in which to proceed further or to withdraw his application.

This election shall be made in writing and filed with the clerk.

Examiners shall, upon the request of the registrar, advise him upon any act or duty pertaining to the conduct of his office, or prepare the form of any memorial to be made or entered by the registrar.

§ 14. If in the opinion of the examiner, the applicant has a title to the land proper for registration, or if the applicant after an adverse opinion of the examiner, elects to proceed further, the applicant shall file with the clerk a certified petition praying that a summons may be issued in said proceeding. The court shall thereupon examine all the files and records of said proceeding, and shall by its order direct that a summons be issued therein. This order shall contain the name and address so far as known, of every person who is to be joined as a party to said proceeding, including all persons named in the application or found by the report of the examiner to be in possession of the land, or as having any right, title, interest or estate therein, or any lien or incumbrance upon or

against the same, together with the name and address of all other persons or parties whom the court in said order may direct to be joined therein. The parties thus named in the order of the court shall be and shall be known as defendants. While the cause is pending before the examiner of titles, or at any time before final decree, and whenever after initial registration a tract of land is subdivided the court may require the land to be surveyed by a competent surveyor, appointed by the court, who shall file a plat of such land, duly certified, with the registrar.

§ 15. The summons shall be subscribed by the clerk and shall be directed to the defendants, and shall require them to appear and answer the application of the applicant, within twenty (20) days after the service of the summons, exclusive of the day of such service. It shall be served in the manner provided by law for the service of a summons in civil actions in the district court, except as herein otherwise provided. It shall be served upon the state by delivering a copy thereof to the attorney general, who shall transmit the same to the county attorney of the county in which the land described therein is situated, and thereupon such county attorney shall appear in said proceeding, and represent the state therein. It shall be served on all persons who are not residents of the state and upon "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," by publishing the same in a newspaper printed and published in the county wherein the application is filed, once each week for three consecutive weeks. The clerk shall also, within twenty days after the first publication of the summons, send a copy thereof by mail to all defendants who are not residents of the state, and whose place of address is known to applicant, or stated in the application, or in the order directing the issuance of the summons. The certificate of the clerk that he has mailed the summons, as herein provided, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner, and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant, and proof of the service shall be made in the same manner as in civil actions. The summons shall be substantially in the following form, namely:

SUMMONS IN APPLICATION FOR REGISTRATION OF LAND.

State of North Dakota,            }  
County of.....                    } ss:

The District Court.....Judicial District.

In the matter of the application of (name of applicant) to register the title to the following described real estate situated in..... county, North Dakota, namely: (Description of land.)

Applicant.

vs.

(Names of Defendants), and "all other persons or parties unknown

claiming any right, title, estate, lien or interest in the real estate described in the application herein."

Defendants.

"The State of North Dakota to the above named defendants:

"You are hereby summoned and required to answer the application of the applicant in the above entitled proceeding and to file your answer to the said application in the office of the clerk of said court, in said county, within thirty (30) days after the service of this summons upon you, exclusive of the day of such service, and, if you fail to answer the said application within the time aforesaid, the application in this proceeding will apply to the court for the relief demanded therein.

"Witness.....clerk of said court, and the seal thereof, at.....in said county, this.....day of  
.....A. D. 19.....

(Seal)

.....  
"Clerk."

When the summons has been served as herein provided, the court shall be deemed to have acquired jurisdiction of the subject matter of the proceeding, and of all persons whatsoever, who have, or may have, any right, title, interest or estate in the real estate described in the application, or any lien or charge whatsoever upon or against the same.

By the phrase in the summons "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," all the world are made parties defendant, and shall be bound and concluded by the decree.

§ 16. Any person claiming any right, title, estate or interest in or lien upon the land, whether named in the summons or not; may file an answer therein, within the time named in the summons, or within such further time as may be allowed by the court. The answer shall state all objections to the application, and shall set forth the right, title, estate, interest or lien claimed by the party filing the same, and shall be signed and verified by the defendant, or by some person in his behalf.

§ 17. Upon the petition of the applicant, or of any person interested in the proceedings, the court shall appoint a disinterested person to act as guardian ad litem for minors, and other persons under disability, and for all persons not in being, who may appear to have any interest or lien upon land. The compensation of the guardian shall be determined by the court, and paid by the applicant as part of the expenses of the proceeding.

§ 18. If no person appears and answers within the time named in the summons, or allowed by the court, the court may, at once, upon the motion of the applicant, no reason to the contrary appearing, and upon satisfactory proof of the applicant's right thereto, make and file its order and decree confirming the title of the applicant and ordering the registration thereof.

§ 19. When an answer is filed, the case shall be tried by the court in like manner as an ordinary civil action. The court may refer the case, or any part thereof to one of the examiners, as referee, to hear the parties and their evidence, and make report thereon to the court. Any report of an examiner shall have the same weight as that of a referee appointed by the district court. After the filing of such report, the court may order such other or further hearing of the cause before the court, or before the examiner, and may require such other or further proof by either or any of the parties to the cause as it shall deem proper.

§ 20. If the court shall find after hearing that the applicant has not a title proper for registration, an order shall be entered dismissing the application which may be without prejudice.

The applicant may upon motion dismiss the application at any time before the final decree is entered upon such terms as shall be fixed by the court.

§ 21. If, after hearing, the court finds that the applicant has a title proper for registration, whether as stated in his application or otherwise, it shall make and file its decree therein, confirming the title of the applicant and ordering the registration thereof. Provided that no final decree of registration shall be entered until proof is made by certificate from the proper officer that all taxes and levies assessed on said land, and then due or delinquent have been paid in full. Except as herein otherwise provided, every decree of registration shall bind the land described therein, and shall forever quiet the title thereto, and shall be forever binding and conclusive upon all persons, whether mentioned by name in the summons, or included in the phrase "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," and such decree shall not be opened, vacated or set aside by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding at law or in equity for opening, vacating, setting aside or reversing judgments and decrees, except as herein especially provided.

The decree shall forever determine, bind and conclude all the right, title, interest, estate or lien in the land described therein of the husband or wife of any defendant acquired or growing out of the marriage relation in like manner as if such husband or wife had been expressly named in said decree.

§ 22. Every decree of registration shall bear the date, hour and minute of its entry and shall be signed by the judge of the district court. It shall state the age of the owner of the land, and whether married, or unmarried, and, if married, the name of the husband or wife; if the owner of the land is under disability, it shall state the nature thereof. It shall contain an accurate description of the land as finally determined by the court, and shall set forth the estate of the owner and also, in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments and other incumbrances, including

rights of husband and wife, if any, to which the land or the owner's estate is subject, and shall contain any other facts properly to be determined by the court. Immediately upon the filing of the decree of registration, the clerk shall file a certified copy thereof with the registrar.

§ 23. The obtaining of a decree of registration, and the receiving of a certificate of title, shall be deemed as an agreement running with the land, and binding upon the applicant, and his successors in the title, that the land shall be and forever remain registered land, and subject to the provisions of this act, and to all acts amendatory thereof. All dealings with the land, or any estate or interest therein, and all liens incumbrances and charges upon the same, after the land has been registered, shall be expressly subject to the terms and provisions of this Chapter.

§ 24. Every person receiving a certificate of title pursuant to a decree of registration, and every subsequent purchaser of registered land, who receives a certificate of title in good faith and for a valuable consideration, shall hold the same free from all incumbrances, and adverse claims, excepting only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the office of the registrar, and also excepting any of the following rights or incumbrances subsisting against the same, if any, namely:

1. Liens, claims or rights, arising or existing under the laws or the Constitution of the United States, which the state cannot require to appear on record.

2. The lien of any tax or special assessment of which the land has not been sold at the date of the certificate of title.

3. Any lease for a period not exceeding three years, when there is actual occupation of the premises thereunder.

4. All rights in public highways upon the land.

5. Such right of appeal, or right to appear and contest the application as is allowed by this Chapter.

§ 25. Any person having any right, title, or interest in or lien upon the land upon whom the summons has not been personally served, and who had no notice or knowledge of the filing of the application or of the pendency of such proceeding prior to the entry of the decree therein, may at any time within ninety (90) days after the entry of such decree and not afterwards, file his duly certified petition setting forth such facts and praying for leave to file his answer therein. If the court is satisfied of the truth of the matters set forth in such verified petition, it shall make an order permitting such petitioner to answer the application. Upon the filing of such answer, and upon not less than ten (10) days' notice to the applicant, and to such other persons or parties as the court may order, and in such manner, as it may direct, the court shall proceed to review the case, and, if satisfied that its decision or decree ought to be opened, it shall so order. Thereupon the court shall proceed to hear and try the case DE NOVO,

and to make such further order, decision or decree therein as shall be according to equity.

§ 26. Any person who shall acquire any right, title, interest or estate in the land subsequent to the filing of the copy of the application for registration with the register of deeds, and prior to the entry of the decree in the registration proceeding, shall at once appear and answer as a party defendant in such proceeding, and the right, title, interest, estate or lien of such person shall be subject to the order or decree of the court.

§ 27. No decree of registration heretofore entered, and no original certificate of title heretofore issued pursuant thereto, shall be adjudged invalid or set aside unless the action in which the validity of such decree of registration, or original certificate of title issued pursuant thereto, is called in question, be commenced, or the defense alleging the invalidity thereof be interposed within six (6) months from the date when this law takes effect. No decree of registration hereafter entered, and no original certificate of title hereafter issued pursuant thereto, shall be adjudged invalid or set aside, unless the action in which the validity of such decree, or of the original certificate of title issued pursuant thereto, is called in question, be commenced, or the defence alleging the invalidity thereof interposed, within six (6) months from the date of such decree.

No action or proceeding, either at law or in equity for the recovery of any right, title, interest or estate in registered land adverse to the title established and adjudicated by any original decree of registration heretofore entered shall be maintained unless such action is commenced within six months from the date when this law takes effect, and no action or proceeding for the recovery of any right, title, interest or estate in registered land adverse to the title established by any original decree of registration hereafter entered shall be maintained, unless such action is commenced within six months from the date of such original decree.

No action or proceeding for the enforcement or foreclosure of any lien or charge upon or against registered land, which existed at the date when any original decree of registration was heretofore entered and which was not recognized and established by such decree, shall be maintained, unless such action or proceeding is commenced within six months from the date when this law takes effect. No action or proceeding for the enforcement or foreclosure of any lien or charge upon or against registered land, in existence at the date of any original decree or registration hereafter entered, and which is not recognized and established by such decree, shall be maintained, unless such action or proceeding is commenced within six months from the date of such original decree.

No such action or proceeding shall be commenced by any person who is bound by the decree. Nothing herein shall apply

to any action or proceeding now pending in the courts of this state or affect any rights already barred when this law takes effect.

§ 28. An appeal may be taken to the supreme court from any order or judgment of the district court under this act as follows:

First. From any final decree within six months from the date thereof. Upon appeal from such decree, the supreme court may review any intermediate order involving the merits or necessarily affecting the decree.

Second. From any order granting or denying an application to open, vacate or set aside such decree, within thirty days from the date of the filing of such order.

Third. From any order granting or refusing a new trial, or from any order involving the merits of the proceeding, or some part thereof within thirty days from the filing of such order.

All appeals from any order or decree in any proceeding under this Chapter shall be taken upon such notice, terms and conditions as are now provided by law for the taking of appeals in civil actions.

§ 29. Registers of deeds shall be the registrars of titles in their respective counties.

§ 30. Before entering upon the duties of his office, the registrar of titles shall execute a bond to the state for such amount and with such sureties as may be determined by the board of county commissioners. Such bond shall be approved by the district court, and filed in the office of the secretary of state, and shall be conditioned for the faithful discharge of his duties. A copy of said bond shall be filed and entered upon the records of the court.

§ 31. The registrar of titles shall be at all times under the control of the court, which may adopt such rules governing the conduct of his office as it may deem wise. Every registrar of titles shall have an official seal.

§ 32. The registrar of titles may, in his discretion, appoint one or more deputy registrars of titles, who may also be deputy registers of deeds, to act in his stead. Deputy registrars shall act in the name of the registrar, and their acts shall be his acts. The registrar shall be liable for any neglect or omission of a deputy, to the same extent as for his own neglect or omission. The registrar may, with the consent of the board of county commissioners, employ such clerks as may be required to properly perform the duties of his office.

§ 33. Immediately upon the filing of the decree of registration with the registrar, he shall proceed to register the title pursuant to the terms of the decree in the manner herein provided.

He shall keep a book known as the "Register of Titles," wherein he shall enter all first and subsequent certificates of title by binding or entering them therein, in the order of their numbers, beginning with number one. The entering of the certificate of title in the register of titles shall constitute the act of registration. The term "certificate of title" shall be deemed to include all mem-

orials and notations thereon, and each certificate of title shall contain proper blanks for the entry of the memorials and notations thereon. Each certificate shall constitute a separate page of such book, and all memorials and notations that may be entered by the registrar shall be entered by him upon the page whereon the latest certificate of title relating to the land affected is entered.

§ 34. The certificate of title shall contain the name and residence of the owner, a description of the land, and of the estate of the owner therein, and shall by memorial contain a description of all encumbrances, liens and interest to which the estate of the owner is subject. It shall state his age, and if under disability the nature thereof. It shall also state whether or not the owner is married, and, if married, the name of the husband or wife. In case the land is held in trust or subject to any condition or limitation, it shall state the nature and character thereof. It shall be substantially in the following form:

CERTIFICATE OF TITLE.

No. ....

First Certificate of Title, pursuant to the order of the District Court, ..... Judicial District, County of ..... and State of North Dakota, dated ..... 19.....

REGISTRATION.

State of North Dakota,            {  
County of .....                    } ss.

This is to certify that ..... of the ..... of ..... County of ..... and State of ..... is now the owner of an estate, to-wit: ..... of and in the following described land, situated in the county of ..... and State of North Dakota, to-wit: .....

Subject to the incumbrances, liens and interest noted by memorial underwritten or indorsed hereon; and subject to the following rights or incumbrances subsisting, as provided in the thirty-fourth section of "An act concerning the registration of land and the title thereto" of the Session Laws of the State of North Dakota, for the year 1917, namely:

1. Liens, claims or rights arising under the laws or the Constitution of the United States, which the statutes of this state cannot require to appear of record.
2. Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.
3. Any lease for a period not exceeding three years, when there is actual occupation of the premises under the lease.
4. All public highways embraced in the description of the lands included in the certificates shall be deemed to be excluded.
5. Such right of appeal or right to appear and contest the application as is allowed by law.

That the said..... is of the age of.....years,  
 is.....married.....and is under.....  
 disability. In Witness whereof, I have hereunto subscribed my  
 name and affixed the seal of my office, this.....day of.....,  
 19.....

.....  
 Register of Titles,

In and for the County of.....and State of North  
 Dakota.

All certificates issued subsequent to the first certificate of title shall be in like form except that they shall be entitled "Transfer from number (here give the number of the next previous certificate relating to the same land)," and shall also contain the words, "originally registered (date, volume, and page of registration)."

§ 35. The original certificate of title in the register of titles, any copy thereof duly certified by the registrar, or by his deputy, and authenticated by his seal, and likewise the owner's duplicate certificate of title shall be received in evidence in all the courts of this state, and shall after the expiration of the time herein limited to bring action or to contest the title of the registered owner be conclusive evidence of all matters and things contained therein. In case of variance between the owner's duplicate certificate and the original certificate of title, the original certificate shall prevail.

Deeds, mortgages, leases, or other conveyances of real estate, or letters of attorney authorizing the same, and all instruments in any manner affecting the title to registered land, together with any notations, indorsements or memorials upon the same made by the registrar of titles, as required by law, heretofore or hereafter filed with the registrar, shall be received in evidence in all the courts of this state, without further or other proof, and shall be prima facie evidence of the contents thereof. Duly authenticated copies of said instruments, or any of them, may likewise be received in evidence in any court of this state with like force and effect, as the original instruments.

§ 36. The registrar shall likewise keep tract indexes, in which he shall enter an accurate description of all registered land, together with the names of the respective owners thereof and a reference to the volume and page of the register of titles in which the same is registered. He shall also keep alphabetical indexes in which he shall enter in alphabetical order the names of all owners of registered land, and the names of all persons having any interest in or lien upon the same, with reference to the volume and page of the register of titles in which the certificate of title is entered as follows:

The registrar shall keep two books to be known as the Grantors' and Grantees' Books, respectively:

The registrar shall enter in each of said books in the order and manner aforesaid, and as soon as the same are received, all in-

struments affecting the title to land which are filed with him, and shall enter as far as may be the particulars of said instruments in the appropriate column of said books. The pages of each of the said books, shall be lettered in alphabetical order, a convenient number of consecutive pages being allotted to each letter of the alphabet, and each entry shall be made in the grantor's reception book under the initial letter of the grantor's surname, and in the grantee's book, under the initial letter of the grantee's surname, and all the entries under each letter shall appear in the order as to time in which the instruments were filed.

§ 37. Every instrument affecting the title to land filed with the registrar shall be numbered by him consecutively, and he shall endorse upon the same the number thereof, together with the date, hour and minute when the same is filed, and a reference to its proper certificate of title. Every such instrument shall be retained by him and shall be regarded as registered from the time of filing. When the memorial of any instrument is made upon any certificate, the date, number and time of filing thereof shall likewise be endorsed upon such certificate. All records and papers relating to registered land in the office of the registrar, shall be open to the inspection of the public at such times and under such conditions as the court may prescribe. Duplicates of all instruments, voluntary or involuntary, filed and registered with the registrar, may be presented with the originals and shall thereupon be attested and sealed by him, and endorsed with the file number, and other memoranda on the originals, and returned to the person presenting the same. The registrar shall furnish certified copies of the instruments filed and registered in his office, upon payment of a fee of 10 cents per folio, for each folio contained in such instrument.

The court shall adopt general forms of memorials and notations to be used by the registrar in registering the common forms of conveyance and other instruments.

§ 38. All notices required by this law, after the original registration, either by the registrar or by the court, shall be served on the persons to be notified in the following manner: The notice shall be served upon a resident of the state in the manner now provided by law for the service of a summons in a civil action, and the same proof of such service shall be made. It shall be served upon a person who is not a resident of the state by sending the same by mail to such person at his postoffice address, as stated in the certificate or in any registered instrument on file with the registrar. The certificate of the registrar or clerk that any notice has been mailed as foresaid shall be conclusive proof of the service of such notice, but the court may, in any case, order different or other service thereof by publication, or otherwise.

§ 39. At the time the original certificate of title is entered, the registrar shall make a duplicate thereof, endorsing across the face of such duplicate the words, "Owner's Duplicate Certificate," and shall deliver the same to the owner or his authorized attorney.

The registrar shall, in every case, whenever it is practicable so to do, take from such owner a receipt for such duplicate certificate, which shall be signed by the owner in person. Such receipt, when signed and delivered in the office of the registrar, shall be witnessed by him or his deputy. If such receipt is signed elsewhere, it shall be witnessed and acknowledged in the same manner as a deed. Such receipt shall be prima facie evidence of the genuineness of such signature.

§ 40. Where two or more persons are owners of registered land, either as tenants in common or otherwise, one owner's duplicate certificate may be issued for the entire interest in the land or separate duplicate certificates may be issued to each owner for his undivided interest therein.

§ 41. The owner of registered land holding one duplicate certificate for two or more distinct parcels of land may surrender the same, and thereupon the registrar may issue to him one or more duplicate certificates therefor. An owner of registered land holding separate duplicate certificates for several parcels of land may surrender the same, and thereupon the registrar may issue to such owner a single duplicate certificate for all of said parcels, or may issue two or more certificates including in each certificate as many parcels as such owner may desire.

§ 42. The certificate of title, when entered in the register of titles, shall relate back to and take effect as of the date of the decree of registration.

§ 43. If any duplicate certificate is lost or destroyed or cannot be produced, a duly verified statement, setting forth the facts relating thereto, may be filed with the registrar by the registered owner, or other person in interest. Upon such application, after due notice and hearing, the court may direct the registrar to issue a new duplicate certificate, containing a memorandum of the fact that it is issued in place of a lost duplicate certificate, which shall be entitled to like faith and credit as the original duplicate.

§ 44. If the registrar of titles is requested to enter a new certificate in pursuance of an instrument which purports to be executed by the registered owner, or by reason of any instrument of proceeding which divests the title of the registered owner against his consent, and the outstanding owner's duplicate certificate is not presented for cancellation when such request is made, the registrar of titles shall not enter a new certificate, until authorized so to do by order of the district court. The person who claims to be entitled thereto may make application therefor to the district court, and after due notice and hearing, the court may order the registered owner or any person withholding the duplicate certificate to surrender it, and direct the entry of a new certificate upon such surrender. If the person withholding the duplicate certificate is not amendable to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered up, the

court may by decree annul it, and order a new certificate of title to be entered.

If an outstanding mortgagee's or lessee's duplicate certificate is not produced and surrendered when the mortgage or lease is discharged, assigned or extinguished, the same proceedings may be had to obtain registration as in the case of the non-production of an owner's duplicate.

§ 45. The owner of registered land may plat the same and subdivide it into lots and blocks in like manner as in case of unregistered land. All laws with reference to the subdivision and platting of unregistered land shall apply with like force and effect to registered land, excepting only that the surveyor's plat thereof shall be filed with the registrar.

§ 46. An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same as fully as if it had not been registered. He may use any form of deed, mortgage, lease or other voluntary instrument sufficient in law for the purpose intended. No voluntary instrument of conveyance purporting to convey or affect registered land except a will, and a lease for a term not exceeding three years, shall take effect as a conveyance, or bind or effect the land, but shall operate only as a contract between the parties, and as authority to the registrar to make registration. The act of registration shall be the operative act to convey or affect the land.

§ 47. Every conveyance, lien, attachment, order, decree or judgment, or other instrument or proceeding, which would effect the title to unregistered land under existing laws, if recorded, or filed with the Register of Deeds, shall, in like manner, effect the title to registered land if filed and registered with the registrar in the county where the real estate is situated, and shall be notice to all persons from the time of such registering or filing.

§ 48. No new certificate shall be issued upon any transfer of registered land which does not divest the title in fee simple of said land, or some part thereof. All interest in registered land, less than an estate in fee simple, shall be registered by filing with the registrar the instrument which creates, transfers or claims such interest, and by brief memorandum or memorial thereof made and signed by the registrar upon the certificate of title. A similar memorandum shall also be made on the owner's duplicate. The cancellation of such interest shall be registered in the same manner.

§ 49. Every deed or other voluntary instrument which is presented for registration shall contain or have endorsed upon it the full name and postoffice address of the grantee, or other person, who acquires or claims an interest under such instrument. Any change in the postoffice address of such person shall be endorsed by the registrar upon the original instrument upon receiving a duly verified statement of such change. All names and addresses shall also be entered upon the certificates of title.

§ 50. No new certificate of title shall be entered or issued, and no memorial shall be made upon any certificate of title in pursuance of any deed or other voluntary instrument, unless the owner's duplicate is presented therewith, except in cases provided for, in this law or upon the order of the court. Whenever such order is made, a memorial thereof shall be entered, or a new certificate issued as directed thereby. Whenever any voluntary instrument is presented for registration, the production of the owner's duplicate certificate shall authorize the registrar to enter a new certificate or to make a memorial of registration in accordance with such instrument, and the new certificate or memorial shall be binding upon the registered owner, and upon all persons claiming under him in favor of every purchaser for value and in good faith. In all cases of registration which are procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice however to the rights of any innocent holder for value of a certificate of title.

§ 51. An owner of registered land who desires to convey the same, or any portion thereof, in fee, shall execute a deed of conveyance, and file the same, together with the owner's duplicate certificate, with the registrar. The registrar shall require an affidavit by the grantee, or some person in his behalf, which affidavit shall set forth the name, age and residence of the grantee, and whether the grantee is or is not married, and, if married, the name of the husband or wife. The owner's duplicate certificate and the original certificate of title shall be marked "Cancelled" by the registrar, who shall thereupon enter in the register a new certificate of title to the grantee and shall prepare and deliver to such grantee a new owner's duplicate certificate. All incumbrances, claims or interests adverse to the title of the registered owner shall be stated upon the new certificate, except so far as they may be simultaneously released or discharged. The deed of conveyance shall be filed and endorsed with the number and place of registration of the certificate. If a deed in fee is for a part only of the land described in the certificate of title, the registrar shall enter a new certificate of title and issue an owner's duplicate certificate to the grantor for that portion of the land not conveyed.

§ 52. All laws requiring deeds, plats or other instruments affecting unregistered land to bear the endorsement of the proper city or county officials showing that all taxes and assessments upon the same have been paid, shall be operative as to registered land, and all such law shall be complied with before any deed, plat or other instrument affecting registered land shall be filed with the registrar.

Whenever, by the terms of any decree of registration, any tax or local assessment lien, or the title based upon the same, is either subordinated to the title adjudicated thereby or merged therein, all such liens and titles shall be described in detail in the decree, and from and after the entry thereof such titles and liens shall be

considered as having in law been paid. A certified copy of the decree shall be filed with the County Auditor and City Treasurer in all counties where local assessments are paid to such officials; and the County Auditor and City Treasurer shall thereafter treat the liens and titles described in such decree as having in law been paid, and shall make upon the books and records of their respective offices proper entries to that effect. If any deed, plat or other instrument affecting such land is thereafter presented to the County Auditor or to the City Treasurer, upon which it is the duty of such officers to make any official endorsements they shall regard all the titles and liens described in such decree as having been legally paid and satisfied, and shall make their official endorsement upon such deed, plat or other instrument without reference or regard thereto.

§ 53. The owner of registered land may mortgage the same by deed or other instrument sufficient in law for the purpose, and such mortgage or other instrument may be assigned, extended, discharged or released, either in whole or in part, or otherwise dealt with by the mortgagee by any form of deed or instrument sufficient (in law) for that purpose. But such deed, mortgage or other instrument and all instruments assigning, extending, discharging, releasing or otherwise dealing with the same, shall be registered, and shall take effect upon the title only from the time of registration.

§ 54. The registration of a mortgage shall be made in the following manner:

The owner's duplicate certificate shall be presented to the registrar, together with the mortgage deed, or other instrument to be registered, and the registrar shall enter upon the original certificate of title and also upon the owner's duplicate certificate, a memorial for the purport of the instrument registered, the exact time of filing and the file number of same. He shall also note upon the registered instrument the time of filing and a reference to the volume and page where it is registered. The registrar shall also at the request of the mortgagee, make and deliver to him a duplicate certificate of title like the owner's duplicate certificate except that the words "Mortgagee's Duplicate" shall be written or printed diagonally across its face in large letters. A memorandum of the issuance of the mortgagee's duplicate shall be made upon the original certificate of title.

§ 55. When a mortgage, upon which a mortgagee's duplicate has been issued, is assigned, extended, or otherwise dealt with, the mortgagee's duplicate shall be presented to the registrar, together with the instrument shall be made upon the mortgagee's duplicate and upon the original certificate of title. When the mortgage is discharged or otherwise extinguished the mortgagee's duplicate shall be surrendered and stamped "Cancelled." In case only a part of the mortgage upon the land is intended to be released or discharged, a memorial of such partial release shall

be entered. The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented.

§ 56. NOTICE OF PENDENCY.] Mortgages upon registered land may be foreclosed in the same manner as mortgages upon unregistered land. It shall be sufficient to authorize the foreclosure thereof, by advertisement, if such mortgage and all assignments thereof shall have been registered, and a memorial thereof duly entered upon the certificate of title; provided, further, that when a mortgage upon registered land is foreclosed by advertisement, the notice of foreclosure shall state the date of the mortgage, when and where registered, and the fact of registration. All laws relating to the foreclosing of mortgages upon unregistered land shall apply to mortgages upon registered land, or any estate or interest therein, except as herein provided, and except that a notice of pendency of any suit or proceeding to enforce or foreclose the mortgage or other charge upon the land shall be filed with the registrar and a memorial thereof entered on the register at the time of or prior to the commencement to such action or proceeding. A notice so filed and registered shall be notice to the registrar and to all persons thereafter dealing with the land or any part thereof. When a mortgagee's duplicate certificate has been issued it shall be presented to the registrar at the time of filing and a memorial thereof entered therein. In all such foreclosures all certificates and affidavits permitted or required by law to be recorded with the register of deeds shall be filed with the registrar and registered by him.

§ 57. Any person who has by action or other proceeding to enforce or foreclose a mortgage, lien or other charge upon registered land, become the owner in fee of the land or any part thereof may have his title registered. He shall apply by duly verified petition to the Court for a new certificate of title to such land, and the court shall thereupon, after due notice to all parties in interest and upon such hearing as the court shall direct, make an order or decree for the issuance of a new certificate of title to the person entitled thereto, and the registrar shall thereupon enter a new certificate of title to the land, or of the part thereof to which the applicant is entitled, and issue an owner's duplicate as in the case of voluntary conveyance.

§ 58. A judgment or decree affecting registered land shall be registered upon the presentation of a certified copy thereof to the registrar, who shall enter a memorial thereof upon the original certificate of title, and upon the owner's duplicate, and upon any outstanding mortgagee's or lessee's duplicate, if practicable so to do. When the registered owner of such land is by such judgment or decree divested of his estate in fee therein, or any part thereof, the prevailing party shall be entitled to a new certificate of title for the land, or so much thereof as may be described in the judgment and decree, and the registrar shall enter such new certificate

of title and issue a new owner's duplicate certificate as in the case of a voluntary conveyance; provided, however, that no such new certificate shall be entered except upon application to the court and upon filing with the registrar of an order of the court directing the entry of such new certificate.

§ 59. Leases of registered land for a term of three years or more shall be registered in lieu of recording the same. All the provisions of this law relating to the registration of mortgages shall apply to the registration of leases so far as the same are applicable thereto.

§ 60. If a deed or other instrument is filed with the registrar for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest therein without the transfer thereof, the particulars of the trust, condition, limitation or other equitable interest need not be entered upon the certificate of title, but a memorial thereof may be entered by the words "in trust" or "upon condition" or other apt words, and by reference by number to the instrument authorizing or creating the same. A similar memorial shall be made upon the owner's duplicate certificate. If the instrument which creates or declares a trust or other equitable interest has already been recorded in any public office of this state, a certified copy thereof may be filed with the registrar and registered by him in lieu of the original. If the instrument which creates or declares a trust or other equitable interest contains an express power to sell, mortgage or otherwise deal with the land, such power shall be stated in the certificate of title by the words, "with power to sell" or "power to mortgage" and by apt words of description in case of other powers. No instrument which transfers, mortgages, or in any manner purports to deal with registered land held in trust shall be registered unless the power thereto enabling is expressly conferred in the instrument of trust and the court has construed the instrument in favor of the power. In such case a certified copy of such decree may be filed with the registrar, who shall make registration in accordance therewith. No transfer of registered land held in trust, or of any estate or interest therein, or of any charge or lien upon the same, shall be registered except upon the order of the district court, filed with the registrar adjudging and determining the true intent of the trust, condition or limitation, and directing such transfer, charge or dealing in accordance therewith. Such registration shall be conclusive evidence that such transfer, charge or other dealing is in accordance with the true intent and meaning of the trust, condition or limitation.

§ 61. When a new trustee of registered land is appointed a new certificate of title shall be entered in his name upon presentation to the registrar of a certified copy of the decree or other instrument appointing him, and the surrender of the duplicate certificate.

§ 62. No judgment requiring the payment of money shall be a lien upon registered land, except as herein provided. Any person claiming such lien shall file with the registrar a certified copy of the judgment together with a written statement containing a description of each parcel of land upon which the lien is claimed, and a proper reference to the certificate or certificates of title to such land. Upon filing such copy and statement, the registrar shall enter a memorial of such judgment upon each certificate designated in such statement, and the judgment shall thereupon be and become a lien upon the land described in such certificate or certificates. At any time after filing the certified copy of such judgments, any person claiming the lien may, by filing a written statement as herein provided, cause a memorial of such judgment to be entered upon any certificate of title to land not described in any previous statement and the judgment shall thereupon be and become a lien upon such land. The judgment shall survive and the lien thereof shall continue for a period of ten years from the date of said judgment and no longer. In every case where an instrument of any description or a copy of any writ, order or decree is required by law to be filed or recorded in order to create or preserve any lien, writ or attachment upon unregistered land, such instrument or copy, if intended to effect registered land, shall, in lieu of recording, be filed and registered with the registrar. In addition to any facts required by law to be stated in such instrument to entitle them to be filed or recorded they shall also contain a reference, to the number of the certificate of title of the land to be affected, and, if the attachment, charge or lien is not claimed on all the land described in any certificate of title, such instruments shall contain a description sufficient to identify the land.

§ 63. Attachments and liens of every description upon registered land shall be continued, reduced, discharged and dissolved by any method sufficient therefor in the case of unregistered land. All certificates, writings, or other instruments permitted or required by law to be filed or recorded to give effect to the enforcement, continuance, reduction, discharge, or dissolution of attachments or other liens upon unregistered land or to give notice of this same shall in the case of like liens upon registered land be filed with the registrar.

§ 64. The name and address of the plaintiff's attorney shall in all cases be endorsed upon the instrument which is registered, and he shall be deemed to be the attorney of the plaintiff until a written notice that he has ceased to be such attorney shall have been filed by registration for the plaintiff.

§ 65. A certificate of the clerk of the court in which any action or proceeding shall have been pending, or in which any judgment or decree is of record, that such action has been dismissed or otherwise disposed of, or that the judgment, decree or order has been assigned, satisfied, released or reversed, or the certificate of any sheriff, or other officer, that the levy of any exe-

cution, attachment, or other process has been released, discharged or otherwise disposed of being duly filed and noted upon the register shall be sufficient to authorize the registrar to cancel, or otherwise treat the memorial thereof according to the purport of such certificate.

§ 66. Upon the expiration of the time allowed by law for redemption of registered land, after it has been set off, or sold on execution or taken or sold for the enforcement of any lien, or charge of any nature, the person who claims under such execution, or under any certificate, deed or other instrument made in the course of proceedings to enforce such execution or lien, may apply to the court for an order directing the entry of a new certificate to him, and upon such notice as the court may require, the petition shall be heard and a proper order or decree rendered therein.

§ 67. When the owner of registered land, or of any estate or interest therein dies, having devised the same by will, the person or persons entitled thereto may file with the registrar a certified copy of such will, together with a certified copy of the order of the probate court admitting it to probate, and of the final decree of the probate court assigning the same, together with the duplicate certificate issued to the testator, and thereupon the registrar shall cancel the duplicate certificate issued to the testator, and issue a new duplicate certificate or certificates to the persons designated in such final decree. When the owner of registered land or any estate or interest therein dies, not having devised the same, the person entitled thereto by law may file with the registrar a certified copy of the final decree of the probate court assigning the same together with the duplicate certificate issued to the intestate, and thereupon the registrar shall cancel the duplicate certificate issued to the intestate, and issue a new duplicate certificate or certificates to any persons named in said final decree as being entitled thereto. If any executor or administrator with the will annexed is authorized by the terms of any will to grant, bargain, sell, convey or mortgage registered land, he may do so in the same manner as if the land were registered in his name as such executor or administrator, provided, however, that such executor or administrator shall first file with the registrar a certified copy of the order of the probate court admitting the same to probate, and of the letters testamentary or with the will annexed issued to him thereon.

§ 68. Nothing contained in this act shall impair or affect the jurisdiction of the probate court to license any executor, administrator or guardian to sell or mortgage registered land. A purchaser or mortgagee receiving a deed or mortgage executed pursuant to such license shall be entitled to register his title and to the entry of a new certificate of title or memorial or registration in the same manner as upon any similar voluntary transfer of registered land; provided that no certificates shall be issued pursuant to the provisions of this section or of the preceding section except upon the order of the district court directing the issuance thereof.

§ 69.] Any person claiming any right, title, or interest in registered land adverse to the registered owner thereof arising subsequent to the date of original registration, may, if no other provision is made in this act for registering the same, file with the registrar his verified statement in writing, setting forth fully his alleged right or interest, and how or from whom it was acquired, and a reference to the volume and page of the certificate of title of the registered owner, together with a description of the land, the adverse claimant's residence, and designating the place at which all notices may be served upon him. Such statement shall be entitled to registration as an adverse claim, and the court upon the petition of any party in interest shall grant a speedy hearing upon the validity of such adverse claim, and shall enter such decision and decree therein as justice and equity may require. If the adverse claim is adjudged to be invalid, the registration thereof shall be cancelled. The court may, in any case, award such costs and damages, including a reasonable attorney's fee, as it may deem just.

§ 70.] No erasure, alteration or amendment shall be made upon the register of titles after the entry of a certificate of title, or of any memorial thereon and the attestation of the same by the registrar, except by order of the court. A registered owner or other person in interest may, at any time apply by petition to the court, upon the grounds that the registered interest of any description, whether vested, contingent, expectant or inchoate, have terminated and ceased; or that new interest have arisen or been created which do not appear upon the certificate; or that any error or omission was made in entering a certificate or any memorial thereon, or on any duplicate; or that the name of any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated; or that a corporation which has owned registered land and has been dissolved, has not conveyed the same within three years after its dissolution; or upon any other reasonable ground, and the court may hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms, requiring security if necessary, as it may consider proper; but the provisions of this section shall not give the court authority to open the original decree of registration, and nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser who holds a certificate for value and in good faith, or of his heirs or assigns, without his or their written consent.

§ 71.] Any act which may legally be done or performed by any person under this act may be done or performed by his agent thereto duly authorized in writing. Such instrument or power of attorney shall be executed and acknowledged as now required by law in the case of a deed, and shall be filed with the registrar

and registered by him. Any instrument revoking such power of attorney shall be executed, acknowledged and registered in like manner.

§ 72.] If the land of a registered owner or any right, title, interest or estate therein is taken by eminent domain, the state or body politic, or other authority which exercises such right, shall file for registration a written instrument containing a description of the land so taken, together with the name of each owner thereof, and referring to each certificate of title by its number and place of registration in the register of titles, and stating what estate or interest in the land is taken, and for what purpose. A memorial of the right, title, interest or estate thus taken shall be made upon each certificate of title by the registrar, and if the fee is taken a new certificate shall be entered in the name of the owner for the land remaining to him after such taking. If the owner has a lien upon the land thus taken for his damages this fact shall be stated in the memorial of registration. All fees on account of any memorial of registration or entry of new certificates for land thus taken shall be paid by the state or body politic, or other authority which takes the land.

If land which was taken for public use reverts, by operation of law, to the owner or to his heirs or assigns, the district court upon the application of the person entitled to the benefits of such reversion, and after due notice and hearing, may order the entry of a new certificate of title to the person or persons entitled thereto.

§ 73.] Upon the original registration of land, and also upon the registration of any land by the heirs or devisees of any deceased person, there shall be paid to the registrar one-tenth of one per cent of the assessed value of the land, exclusive of improvements, as determined by the last official assessment for general taxation.

§ 74.] All money received by the registrar under the provision of the preceding section shall immediately be paid by him to the county treasurer as an assurance fund. The county treasurer shall invest the same upon the order of the district court, and subject to its approval. The assurance fund shall only be invested in bonds of the United States, or of the State of North Dakota, or of any County or municipality thereof. The county treasurer shall render to the district court, at least once a year, a full and detailed report, showing all receipts, disbursements and investments on account of such funds.

§ 75.] Any person who without negligence on his part, sustains any loss or damage by reason of any omission, mistake or malfeasance of the registrar or his deputy, or of any examiner or of any clerk of court or his deputy, in the performance of their respective duties under this law, and any person who without negligence on his part, is wrongfully deprived of any land or any interest therein by the registration thereof, or by reason of the registration of any other person, as the owner of such land, or by reason of any mistake, omission or misdescription in any certifi-

cate of title or in any entry or memorial or by any cancellation, in the register of titles, and who, by the provisions of this law, is precluded from bringing an action for the recovery of such land, or of any interest therein, or from enforcing any claim or lien upon the same, may institute an action in the district court to recover compensation out of the assurance fund for such loss or damage.

§ 76.] If such action is brought to recover any loss or damage occasioned solely by the registration of such land, or solely by the registration of any other person as the owner thereof, or if such action be brought for the recovery of any loss or damage occasioned solely by the omission, mistake, or malfeasance of the officers above named, or of the examiner or of any clerk of court, or his deputy, in the performance of their respective duties, the county treasurer, in his official capacity, shall be the sole defendant. If such action be brought to recover for any loss or damage occasioned either wholly or in part, by the fraud, or wrongful act of some person or persons other than the officers herein named, or to recover for any loss or damage caused jointly by the fraud, or wrongful act, and by the omission, mistake or malfeasance of the officers above named, or of any of them, and of some other person or persons, the county treasurer in his official capacity and such other person or persons shall be joined as defendants therein. In any action where there are defendants other than the county treasurer, no execution shall issue against such treasurer until execution against all other defendants against whom judgment has been recovered has been returned, unsatisfied, either in whole or in part. An officer returning such execution shall certify thereon that the amount still due upon the execution cannot be collected from them. Thereupon the court being satisfied as to the truth of said return, shall order the county treasurer to pay the amount due upon such execution out of the assurance fund. If the assurance fund is insufficient to pay the amount of any judgment in full, the unpaid balance thereof shall bear interest at the legal rate, and shall be paid out of the first moneys coming into said assurance fund. The county attorney shall defend the county treasurer in all such actions.

§ 77. No person shall recover from the assurance fund any sum whatsoever by reason of any loss, damage or deprivation occasioned solely by a breach of trust on the part of any registered owner who is a trustee, or by the improper exercise of any power of sale in a mortgage, nor shall any person recover from the assurance fund any greater sum than the fair market value of the real estate at the time of the last payment into such fund on account thereof.

§ 78.] Any action or proceeding to recover damages out of the assurance fund shall be commenced within six years from the time when the right to commence the same accrued, and not afterwards. Provided, that if, at the time the right accrued, the person entitled to bring such action or proceeding is a minor, or insane, or in prison, or absent from the United States in its service or in the service of the state, such person or any one claiming under

him may commence such action or proceeding within two years after such disability is removed.

§ 79.] Whoever fraudulently procures, or assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title, or other instrument, or of any entry in the register of titles or book kept in the office of the registrar, or of any erasure or alteration in any entry in any of said books or in any instrument authorized by this act, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement or affidavit, affecting registered land shall be guilty of a felony punishable by a fine not exceeding \$5,000 or by imprisonment not exceeding five years, or by both.

§ 80. On the filing of any application for registration the applicant shall pay the clerk of the court the sum of three dollars which shall be in full of all clerk's fees and charges in such proceeding on his behalf. Any defendant on entering his appearance shall pay a like sum, which shall be in full of all clerk's fees on his behalf.

When any number of defendants enter their appearance jointly but one fee shall be paid. Every publication in a newspaper required by law shall be paid for by the party on whose application the publication is made. The party at whose request any notice is issued shall pay for the service of same, except when sent by mail by the clerk or by the registrar.

§ 81.] The fees to be paid to the registrar to be as follows:

1. At or before the time of filing certified copy of the application for registration the applicant shall pay, if the land have an assessed valuation of (\$1,000) one thousand dollars or less, the sum of three dollars (\$3); if assessed for more, the further sum of (\$1) one dollar for each additional (\$1,000) one thousand dollars valuation, or major fraction thereof.

2. For registering each original certificate of title and issuing a duplicate thereof, two dollars (\$2).

3. For registering each transfer, including the filing of all instruments connected therewith, and the issuance and registration of the new certificate of title, three dollars (\$3).

4. For the entry of each memorial on the register, or the cancellation thereof, including the filing of all instruments and papers connected therewith and endorsements on duplicate certificate, one dollar (\$1.00) provided, that when the entry of this same memorial, or cancellation thereof is required to be made on more than two certificates held by the same owner, the fee for such entry on each certificate in excess of two, shall be twenty-five cents (25c).

5. For issuing each additional mortgagee's or lessee's duplicate, one dollar (\$1).

6. For issuing each residue certificate, two dollars (\$2).

7. For filing copy of will, with letters testamentary, or copy of letters of administration, and entering memorial thereof, two dollars (\$2).

8. For issuing separate certificates and duplicate thereof, in exchange for one certificate for two or more distinct parcels, for each exchange certificate, one dollar (\$1).

9. For each additional certificate showing condition of the register, one dollar (\$1).

10. For any certified copy of any instrument or writing on file in his office, the same fee as allowed by law to register of deeds for like services.

11. For any other service under this chapter, such fee as the court shall determine.

§ 82.] This Act shall take effect in each county in the state in the following manner: It is hereby made the duty of the Board of County Commissioners in each county of this state, when requested so to do by a petition signed by at least ten per cent of the freeholders of the county, to provide each Register of Deeds with the necessary books, supplies and stationery required by this Act on or before that date, and to fix the bond required for each registrar. It shall be the duty of each Register of Deeds in the several counties to qualify as registrar under this act by filing a bond as required by the Board of County Commissioners, and taking the oath of office as registrar. Deputy register of deeds shall qualify in like manner as their chiefs.

Approved March 8, 1917.

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## TOWNSHIPS

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### CHAPTER 236.

[H. B. No. 80—O'Connor of Pembina.]

#### COMPENSATION OF TOWNSHIP CLERK AND SUPERVISORS.

An Act to Amend and Re-enact Section 4220 of the Compiled Laws of North Dakota, for the year 1913, Relating to the Compensation of the Township Clerk and Supervisors.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That Section 4220 of the Compiled Laws of North Dakota for the year 1913, is hereby amended and re-enacted so as to read as follows:

§ 4220. COMPENSATION OF CLERK AND SUPERVISORS.] The Township Clerk and Supervisors shall receive for their services, three dollars (\$3.00) per day for each day necessarily devoted by them to the work of their offices and the further sum of five cents (5 cents) per mile for each mile actually and necessarily traveled in the performance of their duties; but no township supervisor shall receive more than fifty dollars (\$50.00) as his compensation in any one year; provided, that the township clerk shall be paid fees for the following and not a per diem: For serving notices of elec-