

2016 Bill 5

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Second Session, 29th Legislature, 65 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 5**

## **SENIORS' HOME ADAPTATION AND REPAIR ACT**

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THE MINISTER OF SENIORS AND HOUSING

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 5

2016

### SENIORS' HOME ADAPTATION AND REPAIR ACT

(Assented to \_\_\_\_\_, 2016)

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HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

#### **Definitions**

**1** In this Act,

- (a) “eligible owner” means an owner who
  - (i) in the case of a loan, meets the applicable eligibility requirements referred to in section 2(1)(a) or (b), or
  - (ii) in the case of a grant, meets the applicable eligibility requirements referred to in section 5(1);

- (b) “eligible residence” means a residential property that is located in Alberta;
- (c) “grant” means a grant referred to in section 5(1);
- (d) “loan” means a loan referred to in section 2(1);
- (e) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act.

### **Loan**

**2(1)** Subject to subsection (2) and the regulations, the Minister may make a loan to the owners of an eligible residence for the purpose of making repairs, renovations or adaptations to the residence that are reasonably necessary for the maintenance, structural integrity or energy efficiency of the eligible residence or for the health, safety or mobility of the occupants if the eligible residence is the primary residence of

- (a) an owner
  - (i) who is registered under the *Land Titles Act* as an owner of the fee simple estate in the land of the eligible residence or who has an ownership interest, referred to in the regulations, in the land of the eligible residence,
  - (ii) who has attained the age of 65 years, unless excepted under the regulations, and
  - (iii) who meets the income and other eligibility requirements provided for by the regulations,

or

- (b) an owner
  - (i) who is registered under the *Land Titles Act* as an owner of the fee simple estate in the land of the eligible residence or who has an ownership interest, referred to in the regulations, in the land of the eligible residence,

- (ii) who is the surviving spouse or adult interdependent partner of a deceased recipient of a loan made in respect of the eligible residence that was outstanding on the recipient's death and who ordinarily resided in the eligible residence at the time of the recipient's death,
- (iii) who has attained the age of 55 years, unless excepted under the regulations, and
- (iv) who meets the requirements referred to in clause (a)(iii).

**(2)** The Minister may make a loan in respect of an eligible residence only if

- (a) the owners' equity in the eligible residence expressed as a percentage of the value of the eligible residence, as determined in accordance with the regulations, equals or exceeds the prescribed percentage, and
- (b) the Minister considers that the value of the owners' equity in the eligible residence is sufficient to repay the amount of the loan together with interest and any administration or enforcement costs.

**(3)** In determining whether to make a loan under this section, the Minister shall have regard to the reasonableness of the fees and charges paid or estimated to be charged for the repairs, renovations or adaptations and the range of fees and charges commonly charged for those types of repairs, renovations or adaptations.

**(4)** The amount of a loan, together with interest, is a debt owing to the Crown in right of Alberta.

**(5)** A loan is subject to the terms and conditions provided for by the regulations.

**(6)** The Minister, in consultation with the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for the *Financial Administration Act*, shall periodically determine the rate of interest applicable to loans based on an estimate of the Government's cost of funding loans under this Act, including the cost of making and administering the loans.

### **Security for loan**

**3(1)** The amount of a loan, together with interest, is a charge on the eligible residence in respect of which the loan is made.

**(2)** The Minister may file a caveat, in a form prescribed by the Minister, in the land titles office against the certificate of title for the eligible residence in respect of which the loan is made.

**(3)** On the registration of a caveat filed under subsection (2), the charge under subsection (1) has the same priority as a mortgage under the *Land Titles Act* and may be enforced in the same manner as a mortgage.

**(4)** Part 10 of the *Civil Enforcement Act* does not apply to proceedings under subsection (3).

**(5)** Notwithstanding subsection (3), if

(a) the Minister has filed a caveat under this section,

(b) subsequent to the caveat's being registered another person gains title to the eligible residence pursuant to

(i) a foreclosure action, or

(ii) an action for specific performance,

and

(c) an amount remains owing to the Crown in right of Alberta with respect to the loan for which the caveat was registered,

that caveat shall remain registered against the certificate of title of the eligible residence until the amount owing is paid to the Crown in right of Alberta.

**(6)** Notwithstanding section 138 of the *Land Titles Act*, a caveat registered pursuant to this section does not lapse and shall not be cancelled or withdrawn except on the Minister's request to withdraw the caveat.

**(7)** No fees are payable to the Registrar for the registration or withdrawal of a caveat under this section.

### **Repayment of loan**

**4(1)** Subject to subsection (3) and the regulations, the amount of a loan that is outstanding, together with interest, becomes due and payable on demand by the Crown in right of Alberta, which demand may be made on or after the earliest of the following:

- (a) the date on which the eligible residence in respect of which the loan was made ceases to be the primary residence of the eligible owner to whom the loan was made, or if the loan was made to more than one eligible owner, the date on which the eligible residence ceases to be the primary residence of the last eligible owner;
- (b) the date of the death of the eligible owner, or if the loan was made to more than one eligible owner, the date of the death of the last eligible owner;
- (c) the date of the transfer or sale of the eligible residence in respect of which the loan was made;
- (d) a date set by the Minister on the occurrence of an event or circumstance provided for by the regulations.

**(2)** The owners of the eligible residence, or their personal representatives as defined in the *Wills and Succession Act*, shall, in accordance with the regulations, give notice of the occurrence of an event or circumstance referred to in subsection (1)(a) to (d) to the Minister.

**(3)** The Minister may demand immediate repayment of a loan, together with interest, if the Minister is satisfied that an individual to whom the loan was made gave false, inaccurate or misleading information to the Minister in respect of the loan.

**(4)** If a loan is due and payable and is not paid, a mortgagee of the eligible residence may pay any amount owing in respect of the loan and add that amount to the amount owing to the mortgagee under the mortgage.

### **Grant**

**5(1)** The Minister may, in accordance with the regulations, make a grant to an owner of an eligible residence for the purpose of making essential repairs to the eligible residence if

- (a) the eligible residence is the owner's primary residence,

- (b) the owner
  - (i) is registered under the *Land Titles Act* as an owner of the fee simple estate in the land of the eligible residence or has an ownership interest, referred to in the regulations, in the land of the eligible residence,
  - (ii) has a life estate in the land of the eligible residence registered under the *Land Titles Act*,
  - (iii) in the case of an eligible residence that is a mobile home that is located on land in which the owner does not have an interest referred in subclause (i) or (ii), has an interest as an owner of the mobile home, or
  - (iv) has an ownership interest, referred to in the regulations, in the eligible residence,
- (c) the owner does not qualify for a loan,
- (d) the owner has attained the age of 65 years,
- (e) it would cause hardship to the owner if the grant were not made, and
- (f) the owner meets the income and other eligibility requirements set out in the regulations.

**(2)** A grant may not be assigned or given as security and a transaction that purports to assign a grant or give a grant as security is void.

**(3)** An individual who receives a grant for which the individual is not eligible shall, as soon as possible, repay the amount of the grant to the Minister.

**(4)** If an individual receives a grant for which the individual is not eligible, the amount of the grant may be recovered as a debt due to the Crown in right of Alberta in proceedings commenced

- (a) at any time, if that individual made a wilful misrepresentation or committed fraud for the purpose of receiving the grant, or
- (b) if clause (a) does not apply, within 6 years of the receipt of the grant.



(5) If an individual who receives a grant for which the individual is not eligible is or subsequently becomes a beneficiary under the *Seniors Benefit Act*, the amount of the grant may be deducted and retained out of any benefit payable to the individual under that Act.

#### **Review**

6 If an individual is refused a loan or a grant the individual may, in accordance with the regulations, request a review of that decision.

#### **Right to cancel certain contracts**

7(1) In this section and sections 8 and 9, “supplier” means a person who, in the course of the person’s business, provides services or both goods and services to consumers for the repair, renovation or adaptation of residences and includes any salesperson, employee, representative or agent of the person.

(2) Nothing in this section or sections 8 and 9 or the regulations restricts, limits or derogates from any legal, equitable or statutory right or remedy that a consumer may have, including, without limitation, a right or remedy under the *Fair Trading Act*.

(3) Subject to the regulations, before entering into a contract with a consumer for the provision of services, or for the provision of both goods and services, or for the provision of goods in conjunction with a contract for the provision of services, for the repair, renovation or adaptation of a residence, the supplier must make reasonable efforts

- (a) to advise the consumer that this Act provides for loans to individuals who meet the eligibility requirements for the loans to cover the costs of repairs, renovations or adaptations to eligible residences that are reasonably necessary for the maintenance, structural integrity or energy efficiency of the eligible residences or for the health, safety or mobility of the occupants,
- (b) to advise the consumer that if the consumer’s application for a loan to cover some or all of the costs of the services, or of the goods and services, is received by the department administered by the Minister within 45 days of the date of the contract, this section gives the consumer the right to cancel the contract in certain circumstances, and

(c) in accordance with the regulations, to give the consumer a statement of cancellation rights that meets the requirements of the regulations.

(4) Whether or not a supplier has complied with subsection (3), but subject to subsections (5) to (7) and the regulations, a consumer may, at no cost or penalty to the consumer, cancel a contract, whether written or oral, entered into with a supplier for the provision of services, or for the provision of both goods and services, or for the provision of goods in conjunction with a contract for the provision of services, for the repair, renovation or adaptation of the consumer's primary residence if

- (a) the consumer's application for a loan is received by the department administered by the Minister within 45 days of the date of the contract, and
- (b) the consumer is notified that the consumer's application for a loan is not approved.

(5) The consumer may cancel a contract under subsection (4) within 30 days after the day the consumer receives notice that the consumer's application for a loan is not approved.

(6) Subsection (4) does not apply if the consumer initials a written statement that

- (a) includes a statement of the cancellation rights provided by this section that conforms with the requirements set out in the regulations, and
- (b) states that the consumer requests the supplier to provide the goods or services whether or not the consumer applies for or receives a loan under this Act and that the consumer is waiving the consumer's right to cancel the contract under this section.

(7) Subsection (4) ceases to apply at the time the consumer accepts delivery of the goods or provision of the services, in whole or in part.

#### **Method of contract cancellation**

**8(1)** A contract is cancelled under section 7 on the giving of a notice of cancellation in accordance with this section.

(2) A notice of cancellation may be expressed in any way as long as it indicates the intention of the consumer to cancel the contract.

(3) The notice of cancellation may be given by any means, including, but not limited to, personal service, registered mail, courier or fax, or by any other method, including orally, by which the consumer can provide evidence of the date that the consumer cancelled the contract.

(4) Where the notice of cancellation is given other than by personal service or orally, the notice of cancellation is deemed to be given when sent.

(5) The notice of cancellation may be sent or delivered to the supplier at the address set out in the contract or, if the contract is not in writing or the consumer did not receive a copy of the contract or the address of the supplier was not set out in the contract, the consumer may send or deliver the notice of cancellation

- (a) to an address of the supplier on record with the Government of Alberta,
- (b) to an address of the supplier known by the consumer, or
- (c) to the salesperson of the supplier at an address known by the consumer.

(6) If the consumer is unable to find an address referred to in subsection (5), the consumer may send or deliver the notice to any place designated by the regulations.

**Effect of contract cancellation and responsibility of supplier**

**9(1)** Subject to the regulations, a cancellation of a contract in accordance with sections 7 and 8 operates

- (a) to cancel the contract, or
- (b) when the contract is an offer to buy, to withdraw the offer,

as if the contract never existed.

(2) Subject to the regulations, a cancellation of a contract in accordance with sections 7 and 8 also operates to cancel

- (a) any related transaction for the provision of goods or services,
- (b) any guarantee given in respect of money payable under the contract, and
- (c) any security given by the consumer or a guarantor in respect of money payable under the contract,

as if it never existed.

**(3)** Subject to the regulations, where credit is extended or arranged by the supplier, the credit contract is conditional on the contract whether or not the credit contract is a part of or attached to the contract, and if the contract is cancelled, that cancellation has the effect of cancelling the credit contract as if the credit contract had never existed.

**(4)** Within 15 days after a contract is cancelled, the supplier shall refund to the consumer all money paid to the supplier by the consumer.

#### **Limitation of liability**

**10** No action or other proceeding lies against the Crown, the Minister, a delegate of the Minister or a person acting under the Minister's direction or authorization for anything done or omitted to be done in good faith in the exercise or purported exercise of any power or in the performance or purported performance of any duty or function under this Act or the regulations.

#### **Regulations**

**11** The Lieutenant Governor in Council may make regulations

- (a) respecting loans, including, without limitation, regulations
  - (i) respecting the making of loans under section 2, including applications for loans and limits on the making of loans,
  - (ii) respecting eligibility requirements for loans, including income requirements,
  - (iii) respecting the determination of the value of an eligible residence and of the owners' equity in the

eligible residence and prescribing a percentage for the purposes of section 2(2),

- (iv) respecting terms and conditions applicable to loans, including accounting, reporting or record requirements, and the payment, repayment, enforcement and duration of loans,
  - (v) respecting exceptions for the purposes of section 2(1)(a)(ii) and (b)(iii),
  - (vi) respecting events or circumstances for the purposes of section 4(1)(d) and respecting notices under section 4(2),
  - (vii) respecting types of repairs, renovations or adaptations for which loans may be made and types of repairs, renovations or adaptations for which loans may not be made, and
  - (viii) respecting limits on the amount of a loan or the cumulative amount of loans that may be made to an eligible owner;
- (b) respecting grants, including, without limitation, regulations
- (i) respecting eligibility requirements for grants, including income requirements,
  - (ii) respecting terms and conditions applicable to grants, including accounting, reporting or record requirements and the payment, repayment and recovery of grants,
  - (iii) respecting types of repairs for which grants may be made and types of repairs for which grants may not be made, and
  - (iv) respecting limits on the amount of a grant or the cumulative amount of grants that may be made to an eligible owner;
- (c) respecting the payment of a loan or grant to another person on behalf of an eligible owner;

- (d) respecting ownership interests for the purposes of section 2(1)(a)(i) or (b)(i) or 5(1)(b)(i) or (iv);
- (e) respecting reviews under section 6, including requests for reviews;
- (f) respecting the duties of suppliers under section 7(3), including regulations providing that those duties do not apply to certain suppliers or respecting circumstances in which those duties do not apply;
- (g) respecting the cancellation of contracts and the effects of the cancellation of contracts under sections 7 to 9, including, without limitation, regulations
  - (i) respecting the statement of cancellation rights under section 7(3)(c),
  - (ii) respecting the right of consumers to cancel contracts under section 7(4), including regulations limiting the right of consumers to cancel contracts,
  - (iii) designating places for the purposes of section 8(6), and
  - (iv) respecting the effects of cancellation under section 9, including regulations limiting the effects of cancellation in particular circumstances;
- (h) defining any word or expression used but not defined in this Act;
- (i) respecting the collection, use and disclosure of personal information for the purposes of this Act;
- (j) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable for carrying out the intent and purpose of this Act.

**Coming into force**

**12** This Act comes into force on Proclamation.



