

The Homesteads Act, 1989

being

Chapter H-5.1 of the *Statutes of Saskatchewan, 1989-90* (effective December 1, 1989) as amended by the *Statutes of Saskatchewan, 1992, c.27; 1993, c.C-26.1; 1994, c.27; 2000, c.L-5.1; 2001, c.20, 50 and 51; 2010, c.E-9.22 and c.15; 2015, c.21; and 2018, c.42.*

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER H-5.1

An Act respecting the protection of spousal rights in Homesteads

Short title

1 This Act may be cited as *The Homesteads Act, 1989*.

Interpretation

2 In this Act:

- (a) **“court”** means the Court of Queen’s Bench;
- (b) **“disposition”** means an instrument of disposition which is required to be executed by the owner of the land disposed of and includes:
 - (i) any instrument intended to convey or transfer an interest in land and includes:
 - (A) an agreement for sale;
 - (B) an easement;
 - (C) a lease;
 - (D) a *profit à prendre*;
 - (E) a quit claim; and
 - (F) a transfer;
 - (ii) a mortgage or other encumbrance intended to charge land with the payment of a sum of money;
- (c) **“homestead”** means property that is or has been occupied by both spouses as the family home at any time during their spousal relationship and that is:
 - (i) a residence, including the land appurtenant to the residence consisting of not more than 65 hectares;
 - (ii) property used for business or other purposes if a portion of the property is or has been occupied by both spouses as the family home at any time during their spousal relationship;
 - (iii) a trailer or vehicle commonly referred to as a mobile home, which is affixed to land, including the land appurtenant to the trailer or vehicle consisting of not more than 65 hectares; or
 - (iv) a unit as defined in *The Condominium Property Act, 1993*, including the owner’s share in the common property;

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- (d) **“non-owning spouse”** means a person who is not an owning spouse and who:
- (i) is the legally married spouse of an owning spouse; or
 - (ii) is cohabiting with an owning spouse or has, for a period ending within the preceding 24 months, cohabited with an owning spouse, as spouses, continuously for a period of not less than two years;
- (e) **“owning spouse”** means a spouse who is a registered owner of an interest in land.

1989-90, c.H-5.1, s.2; 1993, c.C-26.1, s.115; 1994, c.27, s.26; 2000, c.L5-1, s.314; 2001, c.50, s.6.

Duration of homestead

3 When land becomes a homestead it continues to be a homestead until:

- (a) a transfer of title, which transfers ownership of the homestead to a person other than the non-owning spouse is registered in accordance with *The Land Titles Act, 2000*;
- (b) the non-owning spouse dies;
- (c) the owning spouse and non-owning spouse:
 - (i) who were legally married, are divorced; or
 - (ii) who were spouses within the meaning of subclause 2(d)(ii), have not cohabited in the preceding 24 months;
- (d) the court orders otherwise; or
- (e) the owning spouse and non-owning spouse enter into an interspousal contract pursuant to *The Family Property Act* providing otherwise.

1989-90, c.H-5.1, s.3; 2000, c.L-5.1, s.315; 2001, c.50, s.6 and c.51, s.11.

Application

3.1 The provisions of this Act respecting the execution of dispositions as they existed on the day before the coming into force of *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001* apply with respect to dispositions executed before the day on which that Act came into force.

2001, c.50, s.6.

Multiple homesteads

4 A person may have more than one homestead.

1989-90, c.H-5.1, s.4.

Spousal consent required

5(1) No owning spouse shall make a disposition of a homestead to a person other than the non-owning spouse, unless:

- (a) the non-owning spouse consents to the disposition in accordance with sections 6 and 7; or

- (b) the court has made an order dispensing with the consent of the non-owning spouse pursuant to section 11.
- (2) Notwithstanding subsection (1), where both spouses are owning spouses of a homestead either as joint tenants or as tenants in common:
 - (a) the execution of a disposition of the homestead by them is deemed to be a consent for the purposes of this Act by each of them to the release of their homestead rights; and
 - (b) no further consent or acknowledgment under this Act, other than compliance with subsection (3), is required from either of them.
- (3) Where subsection (2) applies, an affidavit pursuant to clause 8(1)(b) shall be signed by one of the spouses.

1989-90, c.H.5.1, s.5; 1992, c.27, s.3.

Form of consent

- 6(1) No disposition of a homestead shall be made without the consent of the non-owning spouse in the form prescribed in the regulations.
- (2) The consent of the non-owning spouse mentioned in subsection (1):
 - (a) shall state that the non-owning spouse:
 - (i) consents to the disposition of the homestead; and
 - (ii) has signed the consent for the purpose of relinquishing his or her homestead rights in the property to the extent necessary to give effect to the disposition; and
 - (b) may be:
 - (i) contained in;
 - (ii) attached to; or
 - (iii) written or endorsed at any place on;
 the disposition.
- (3) Where the consent is attached to the disposition, the non-owning spouse shall sign both the consent and the disposition.
- (4) A person acting under a power of attorney shall not sign the consent required pursuant to this section.

1989-90, c.H.5.1, s.6; 1992, c.27, s.4.

Acknowledgment of consent

- 7(1) A non-owning spouse who executes a consent to a disposition of a homestead shall acknowledge separate and apart from the owning spouse that he or she:
 - (a) understands his or her rights in the homestead; and
 - (b) signs the consent to the disposition:
 - (i) of his or her own free will and consent; and
 - (ii) without compulsion on the part of the owning spouse.

- (2) The acknowledgment described in subsection (1) may be made before:
- (a) a judge of:
 - (i) the Provincial Court of Saskatchewan;
 - (ii) the court; or
 - (iii) the Court of Appeal;
 - (b) a justice of the peace appointed or continued in office pursuant to *The Justices of the Peace Act, 1988*;
 - (c) a solicitor entitled to practise law pursuant to *The Legal Profession Act*; or
 - (d) a person appointed as a notary public pursuant to *The Notaries Public Act*.
- (3) A certificate in the form prescribed in the regulations shall be signed by the person taking the acknowledgment to the effect that:
- (a) he or she has examined the non-owning spouse separate and apart from the owning spouse;
 - (b) the non-owning spouse understands his or her rights in the homestead; and
 - (c) the non-owning spouse signs the consent to the disposition of his or her own free will and consent and without any compulsion on the part of the owning spouse.
- (4) Where the disposition mentioned in subsection (1):
- (a) is a transfer to a person who holds a mortgage on the homestead; or
 - (b) is a quit claim deed in favour of the vendor of the homestead under an agreement for sale;

a certificate in the form prescribed in the regulations shall be signed by a solicitor legally entitled to practise law in or outside Saskatchewan stating that he or she has explained the purpose and effect of the disposition to the non-owning spouse separate and apart from the owning spouse and that the non-owning spouse understands the purpose and effect of that disposition.

- (5) An acknowledgment pursuant to subsection (1) which is made outside Saskatchewan shall be made before a person authorized to take affidavits pursuant to *The Land Titles Act, 2000* and the regulations made pursuant to that Act.
- (6) No person shall be qualified to take the acknowledgment of a non-owning spouse pursuant to subsection (1) or (4) when that person, his or her employer, partner or clerk has prepared the disposition in question or is otherwise interested in the transaction involved.
- (7) The certificate required pursuant to subsection (4) is in addition to the certificate required pursuant to subsection (3).

(8) Notwithstanding subsections (1) to (7), where an order of the court dispensing with consent is obtained pursuant to section 11, the certificates mentioned in this section are not required.

1989-90, c.H.5.1, s.7; 1992, c.27, s.5; 2000,
c.L-5.1, s.316; 2010, c.15, s.3.

Proof of non-application of Act

8(1) Subject to sections 24, 25 and 26, where a disposition of land is to be made that does not comply with sections 6 and 7 and an order of the court dispensing with consent has not been made:

(a) each signator of the disposition shall swear an affidavit in the form prescribed in the regulations stating that:

(i) the land described in the disposition is not his or her homestead;

(ii) he or she has no spouse;

(iii) he or she and his or her spouse have entered into an interspousal agreement pursuant to *The Family Property Act*, whether before or after the coming into force of this section, in which his or her spouse has specifically released all of his or her rights under this Act with respect to the land which is the subject of the disposition;

(iv) an order has been made by the court pursuant to *The Family Property Act*, whether before or after the coming into force of this section, declaring that his or her spouse has no rights under this Act with respect to the land which is the subject of the disposition, and either that order has not been appealed and the time for making an appeal has expired or all appeals from the order have been disposed of or discontinued; or

(v) the disposition complies with section 10; or

(b) one of the signators of the disposition shall swear an affidavit in the form prescribed in the regulations stating that his or her spouse is a registered owner of the land that is the subject of the disposition and that the spouse is a co-signator of the disposition.

(2) Notwithstanding subsection (1), where the disposition is executed:

(a) under a power of attorney;

(b) by the personal representative of a deceased owner;

(c) by the trustee in bankruptcy of the owner; or

(d) by another person who is legally authorized to execute the disposition on behalf of the owner;

the person executing the disposition may swear the affidavit if he or she is acquainted with the facts.

1989-90, c.H-5.1, s.8; 1992, c.27, s.6; 2001, c.51,
s.11.

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Consent binding according to tenor

9(1) No person acquiring an interest under a disposition is bound to inquire into the truthfulness of the facts alleged in a consent, affidavit or certificate required pursuant to this Act.

(2) Subject to section 12, a disposition which purports to be completed in accordance with this Act shall be valid and binding according to its tenor.

1989-90, c.H-5.1, s.9.

Transfer under agreement for sale

10(1) Where:

- (a) a homestead has been sold under an agreement for sale; and
- (b) a non-owning spouse, whose consent would otherwise be required to transfer the land to the purchaser under the agreement for sale, has consented in writing pursuant to section 6 and made the acknowledgment required by section 7 to the agreement for sale;

no further consent or acknowledgment is required on a transfer of the homestead in fulfilment of the terms of the agreement for sale.

(2) Repealed. 1992, c.27, s.7.

1989-90, c.H-5.1, s.10; 1992, c.27, s.7.

Application to dispense with consent

11(1) Where:

- (a) an owning spouse and non-owning spouse are living separate and apart;
- (b) the whereabouts of the non-owning spouse are unknown; or
- (c) the non-owning spouse is a person who lacks capacity;

the court, by order made in a summary way on the application of any person interested, may dispense with the consent of the non-owning spouse to the proposed disposition of a homestead.

(2) On the application the court may hear any evidence and consider any matter that in its opinion relate to the application.

(3) The court may dispense with the consent of the non-owning spouse if in the opinion of the court it would be fair and reasonable in the circumstances to do so.

(4) The court may make the order on any terms and conditions relating to notice, payment into court or otherwise as the court in the circumstances thinks proper.

(5) Repealed. 1992, c.27, s.8.

1989-90, c.H-5.1, s.11; 1992, c.27, s.8; 2015, c.21, s.21.

Fraud by transferee

12(1) Knowledge on the part of a person who acquires a right, title or interest in a homestead pursuant to a disposition that does not comply with sections 6 and 7, that:

- (a) the land described in the disposition is the homestead of the owner; and
- (b) the owner has a non-owning spouse whose consent to the disposition, by the provisions of section 5, is required but not given;

is fraud.

(2) In an action by the non-owning spouse, a disposition mentioned in subsection (1) to any person affected by the fraud may be set aside and cancelled, and any title issued pursuant to the disposition may be dealt with in accordance with *The Land Titles Act, 2000*.

1989-90, c.H-5.1, s.12; 2000, c.L-5.1, s.317.

Liability of owning spouse

12.1 An owning spouse is liable to the non-owning spouse in an action for damages, if the owning spouse makes a disposition of a homestead to which a consent is required by this Act without obtaining:

- (a) the consent of the non-owning spouse; or
- (b) an order dispensing with the consent of the non-owning spouse.

1992, c.27, s.9.

Assurance fund

13(1) The causes of action established in sections 12 and 12.1 are in addition to the rights of the non-owning spouse pursuant to Part XII of *The Land Titles Act, 2000*.

(2) For the purposes of Part XII of *The Land Titles Act, 2000*, the rights of a non-owning spouse pursuant to this Act are an interest in land.

(3) Where a non-owning spouse makes a claim for compensation pursuant to section 84 of *The Land Titles Act, 2000*, Part XII of that Act applies and must be complied with.

2000, c.L-5.1, s.318.

Registrar not obligated to verify documents

13.1 Notwithstanding any other Act or law, the Registrar of Titles is not obligated to examine a disposition to determine whether or not there has been compliance with this Act.

1992, c.27, s.10; 2000, c.L-5.1, s.319.

Spouse may register interest

14 To protect his or her rights in a homestead, a non-owning spouse may register an interest based on that right in the Land Titles Registry, accompanied by the form prescribed in the regulations for that purpose.

2000, c.L-5.1, s.320.

c. H-5.1**HOMESTEADS, 1989****Removal of interest**

15 An interest registered pursuant to section 14 is exhausted, and the Registrar of Titles may discharge the registration of the interest on receiving satisfactory proof:

- (a) of the death of the interest holder; or
- (b) that the owning spouse and interest holder:
 - (i) who were legally married, are divorced or have had their marriage annulled; or
 - (ii) who were spouses within the meaning of subclause 2(d)(ii), have not cohabited in the preceding 24 months.

2001, c.50, s.7.

Removal of interest before title issues

16 A transfer of title of a homestead that is consented to and acknowledged in accordance with this Act is, when registered in the Land Titles Registry, deemed to be a discharge of any interest registered pursuant to section 14.

2000, c.L-5.1, s.320.

Court order for removal of interest

17(1) An interest registered pursuant to section 14 may be removed by court order.

(2) A person interested in land affected by an interest registered pursuant to section 14, or a caveat filed pursuant to any previous *Homesteads Act*, may apply to the court for an order made in a summary manner directing that registration of the interest is to be discharged.

(3) On an application pursuant to subsection (2), the court may make the order requested, on any terms and conditions the court considers appropriate, where, in the opinion of the court, it is fair and reasonable to do so.

(4) Where a discharge, accompanied by the order made pursuant to subsection (3), is registered in the Land Titles Registry, any further interest registered based on the rights of the non-owning spouse named in the order is null and void unless it is accompanied by an order of the court obtained pursuant to subsection (5).

(5) On an application by a non-owning spouse for leave to register an interest mentioned in subsection (4), the court may grant the order where, in the court's opinion, it is fair and reasonable to do so.

2000, c.L-5.1, s.320.

Receiving orders

18(1) Where a trustee in bankruptcy of the property of an owning spouse is appointed, for the purposes of any dealing with the Land Titles Registry, this Act applies, with any necessary modification, as if the trustee in bankruptcy was the owning spouse and the non-owning spouse was his or her spouse.

(2) Notwithstanding section 11, the trustee in bankruptcy may apply to the court for an order dispensing with the consent and acknowledgment of the non-owning spouse to a disposition of the homestead.

(3) Clauses 20(2)(b) and (c) and subsection 20(3) apply, with any necessary modification, to an application made pursuant to this section.

1989-90, c.H-5.1, s.18; 2000, c.L-5.1, s.321.

Death of spouse

19(1) On the death of an owning spouse, the homestead vests in his or her personal representative, subject to section 87 of *The Enforcement of Money Judgments Act* or section 71 of *The Saskatchewan Farm Security Act*, as the case may be.

(2) During the time the homestead is exempt from seizure under execution as provided by the sections mentioned in subsection (1) and notwithstanding any provision in the last will and testament of the owning spouse, this Act applies, with any necessary modification, as if the personal representative were the owning spouse and the surviving spouse were his or her spouse.

(3) The consent and certificate of acknowledgment to a disposition of the homestead is to be to the same effect as the consent and certificate of acknowledgment provided for in sections 6 and 7.

(4) Where an affidavit of a registered owner of the land would be required pursuant to section 8 if the registered owner of the land were alive, the personal representative shall swear an affidavit in the form prescribed in the regulations.

(5) Subsection (2) does not apply where the personal representative or one of the personal representatives of the deceased owning spouse is the non-owning spouse.

1989-90, c.H-5.1, s.19; 1992, c.27, s.11; 2010, c.E-9.22, s.161.

Order dispensing with surviving spouse's consent

20(1) Notwithstanding section 19, the personal representative or any creditor of a deceased owning spouse may apply to the court for an order dispensing with the consent and acknowledgment of the non-owning spouse to a disposition of the homestead.

(2) Where the court is satisfied that:

(a) the homestead is not necessary for the maintenance and support of the non-owning spouse and children or non-owning spouse or children of the deceased owning spouse;

(b) a disposition of the homestead is necessary or expedient for the convenient administration of the deceased owning spouse's estate; or

(c) for any other reason, the disposition of the homestead is considered just;

the court may, on an application made pursuant to subsection (1), make an order dispensing with the consent and acknowledgment of the non-owning spouse and authorizing the personal representative to deal with the homestead in the manner and subject to the terms and conditions that the court considers just.

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(3) An application made pursuant to subsection (1) may be made on any notice that the court may direct.

(4) **Repealed.** 1992, c.27, s.12.

1989-90, c.H-5.1, s.20; 1992, c.27, s.12.

Foreclosures

21(1) No mortgagee taking proceedings for the sale or foreclosure of mortgaged land is required to join as a party:

- (a) the non-owning spouse of any party; or
- (b) the surviving non-owning spouse of a deceased party;

solely by reason of this Act.

(2) Unless the non-owning spouse or surviving non-owning spouse mentioned in subsection (1) has registered an interest pursuant to section 14 of this Act or filed a caveat pursuant to this Act or any previous *Homesteads Act*, he or she is, without being joined, bound by the judgment in the proceedings.

1989-90, c.H-5.1, s.21; 2000, c.L-5.1, s.322; 2001, c.20, s.32.

Power of court to remedy defects

22(1) Notwithstanding anything in this Act, the court may, where it is satisfied that a defect in or the absence of:

- (a) an affidavit required pursuant to section 8; or
- (b) a certificate required pursuant to section 7;

cannot be remedied by reason of the death of a person or of the whereabouts of a person being unknown after all reasonable efforts to ascertain his or her whereabouts have been exhausted, and it is just and expedient to do so, make an order dispensing with the requirement of the affidavit or certificate.

(2) An application for an order under subsection (1) may be made without notice or on any notice that the court may direct.

(3) **Repealed.** 1992, c.27, s.13.

1989-90, c.H-5.1, s.22; 1992, c.27, s.13; 2018, c.42, s.65.

Minors

23(1) This Act applies to all spouses, whether or not they have attained the age of 18 years.

(2) For the purposes of this Act and every matter or thing done under or by virtue of this Act, a spouse of whatever age is deemed to be an adult.

1989-90, c.H-5.1, s.23; 2001, c.50, s.6.

Non-application of Act

24 This Act does not apply to:

- (a) the acquisition, under the authority of any Act, of land intended for the purpose of a public highway as defined in *The Highways and Transportation Act* or to any agreement respecting that acquisition; or
- (b) a disposition made pursuant to *The Religious Societies Land Act*.

1989-90, c.H-5.1, s.24.

Easements

25(1) This Act does not apply:

- (a) to an easement or right-of-way required for the construction, maintenance or operation of a railway or gas, oil or water pipeline; or
- (b) to an easement authorized by *The Public Utilities Easements Act*.

(2) **Repealed.** 1992, c.27, s.14.

(3) **Repealed.** 1992, c.27, s.14.

1989-90, c.H-5.1, s.25; 1992, c.27, s.14; 2015, c.21, s.21.

Consent and acknowledgment not required in certain dispositions

26(1) The consent and acknowledgment of a non-owning spouse are not required where:

- (a) the owning spouse is required by operation of Part VI of *The Saskatchewan Farm Security Act* to make a disposition of the homestead; and
- (b) the Saskatchewan Farm Ownership Board has made an order requiring the disposition mentioned in clause (a).

(2) **Repealed.** 1992, c.27, s.15.

1989-90, c.H-5.1, s.26; 1992, c.27, s.15.

Rights under Act additional

27 Subject to an order to the contrary made pursuant to *The Family Property Act*, rights conferred by this Act are in addition to rights conferred under *The Family Property Act*.

1989-90, c.H-5.1, s.27; 2001, c.51, s.11.

Regulations

28 The Lieutenant Governor in Council may make regulations prescribing the forms for use pursuant to this Act.

1989-90, c.H-5.1, s.28.

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Certain transactions not affected

29 No disposition of a homestead signed before March 14, 1916, is invalid:

- (a) as against a transferee, mortgagee or encumbrancee in good faith and without knowledge that any of the provisions of this Act have not been complied with; or
- (b) as against the representatives, successors or assigns of a person described in clause (a).

1989-90, c.H-5.1, s.29.

Transitional

30(1) Notwithstanding section 31, the provisions of *The Homesteads Act* dealing with execution of dispositions as they existed on the day before the coming into force of this Act apply with respect to dispositions executed prior to the day this Act comes into force.

(2) Every caveat registered pursuant to *The Homesteads Act*, prior to the day this section comes into force, is deemed to be registered pursuant to this Act.

1989-90, c.H-5.1, s.30.

R.S.S. 1978, c.H-5 repealed

31 *The Homesteads Act* is repealed.

1989-90, c.H-5.1, s.31.

Coming into force

32 This Act or any provision of this Act comes into force on a day or days to be fixed by proclamation of the Lieutenant Governor.

1989-90, c.H-5.1, s.32.