

# *The Homesteads Act*

*being*

Chapter 69 of *The Revised Statutes of Saskatchewan, 1920*  
(Assented to November 10, 1920).

**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 69

### An Act respecting Homesteads

#### Short title

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

1919-20, c.66, s.1; R.S.S. 1920, c.69, s.1.

#### Interpretation

2 In this Act, unless the context otherwise requires, the expression:

##### “Homestead”

1. “**Homestead**” means a homestead under the provisions of paragraphs 9 and 10 of section 2 of *The Exemptions Act*, and, except for the purposes of section 9 and form C in the schedule hereto, it shall also include any property which has been such a homestead at any time within the period of one year immediately preceding the date of the transfer or other instrument referred to in section 3:

Provided that a homestead under said paragraph 10 shall not for the purposes of this Act be restricted in value to \$3,000.

1919-20, c.66, s.2; R.S.S. 1920, c.69, s.2.

#### Wife to sign instruments affecting homesteads

3(1) Every transfer, agreement of sale, lease or other instrument intended to convey or transfer any interest in a homestead to any person other than the wife of the owner, and every mortgage or incumbrance intended to charge a homestead in favour of any such person with the payment of a sum of money, shall be signed by the owner and his wife, if he has a wife, and she shall appear before a district court judge, local registrar of the Court of King’s Bench, registrar of land titles or their respective deputies, or any justice of the peace, or before any solicitor other than the solicitor who prepared the document, his partner or clerk, and, upon being examined separate and apart from her husband, she shall acknowledge that she understands her rights in the homestead and signs the said instrument of her own free will and consent and without compulsion on the part of her husband:

Provided that, in case an examination is taken outside Saskatchewan such examination shall be taken and acknowledgment made before a person authorised to take affidavits under the provisions of section 57 of *The Land Titles Act*.

(2) Where the wife of the owner is living apart from her husband under circumstances disentitling her to alimony, or is a lunatic or person of unsound mind, a judge of the Court of King’s Bench may, on the application of any person interested, by order to be made in a summary way and upon such evidence as to him may seem meet, dispense with the signature and acknowledgment of the wife, upon such terms and conditions as may appear just.

(3) Where the wife is a lunatic or person of unsound mind, notice of every such application shall be served in the manner provided by the rules of the Court of King’s Bench for the service of a writ of summons on a lunatic or person of unsound mind.

(4) Upon such order being filed with the registrar of land titles, and upon payment of the proper fees, the registrar shall register the transfer, agreement, lease, mortgage, incumbrance or other instrument.

1919-20, c.66, s.3; R.S.S. 1920, c.69, s.3.

**Declaration by wife**

4 Every such transfer, agreement, lease, mortgage, incumbrance or other instrument shall contain a declaration by the wife (form A), which declaration may be annexed to or indorsed on the instrument, that she has executed the same for the purpose of relinquishing her rights to the homestead.

1919-20, c.66, s.4; R.S.S. 1920, c.69, s.4.

**Certificate by officer**

5 There shall be annexed to or indorsed on the transfer, agreement, lease, mortgage, incumbrance or other instrument, a certificate (form B) to be signed by the officer taking the same, to the effect that he has examined the wife separate and apart from her husband, that she understands her rights in the homestead and that she signs such instrument of her own free will and consent and without any compulsion on the part of her husband.

1919-20, c.66, s.5; R.S.S. 1920, c.69, s.5.

**Transfer otherwise executed**

6(1) Every transfer, agreement of sale, lease or other instrument intended to convey or transfer an interest in land, and every mortgage or incumbrance, which does not comply with the provisions of the last two preceding sections shall be accompanied by an affidavit of the maker (form C) either that the land described in such instrument is not his homestead, or that he has no wife.

(2) If the party executing such instrument is acting under a power of attorney, he may, if acquainted with the facts, make the said affidavit in lieu of his principal.

(3) No transferee, mortgagee, incumbrancee, lessee or other person acquiring an interest under any such instrument shall be bound to make inquiry as to the truthfulness of the facts alleged in the affidavit herein provided to be made or in the certificate of examination in form B, and upon delivery of an instrument purporting to be completed in accordance with this Act the same shall become valid and binding according to its tenor save as in section 8 hereinafter provided.

1919-20, c.66, s.6; R.S.S. 1920, c.69, s.6.

**Wife may file caveat**

7 The wife of the owner of a homestead may file a caveat to protect her rights in the same. Such caveat (form D) shall be filed free of charge.

1919-20, c.66, s.7; R.S.S. 1920, c.69, s.7.

**Fraud by transferee**

8 Knowledge on the part of the transferee, purchaser, mortgagee, incumbrancee or lessee that the land described in such instrument is the homestead of the party making the same and that he has a wife who is not a party thereto, shall be fraud, and in an action by the wife any such instrument or the certificate of title issued thereon to any person affected by such fraud may be set aside and cancelled.

1919-20, c.66, s.8; R.S.S. 1920, c.69, s.8.

**Widow's rights preserved**

**9** On the death of the owner of a homestead the same shall vest in his personal representative, subject to the provisions of section 6 of *The Exemptions Act*; and during the time said homestead is exempt from seizure under execution, as provided by said section 6, and notwithstanding any provision in the last will and testament of said owner, the foregoing provisions of this Act shall except where the widow is the personal representative apply *mutatis mutandis* as if the personal representative were the owner and the widow (if the owner has left a widow) were the wife of such owner, and the declaration and certificate to accompany the transfer, lease, mortgage, incumbrance or other instrument, as the case may be, shall be to the same effect as the declaration and certificate provided for in sections 4 and 5, and the affidavit of the transferor to be furnished to the registrar where the circumstances require it shall be to the same effect as the affidavit contained in form C.

1919-20, c.66, s.9; R.S.S. 1920, c.69, s.9.

**Certain instruments to be valid**

**10** No transfer, mortgage or incumbrance taken before the fourteenth day of March, 1916, shall be invalid as against a transferee, mortgagee or incumbrancee in good faith and without knowledge that any of the provisions of this Act have not been complied with or as against his representatives, successors or assigns.

1919-20, c.66, s.10; R.S.S. 1920, c.69, s.10.

**Act not to apply to sales to railway companies**

**11(1)** The provisions of this Act shall not apply to a transfer, agreement of sale, assignment or other instrument intended to convey or transfer to a railway company land or an interest therein required for the construction, maintenance or operation of the railway.

(2) Where the land to be dealt with is shown upon a plan of lands required by the railway company, approved by the Board of Railway Commissioners for Canada and registered, the registrar of land titles for the land registration district in which the land lies shall register such instrument of transfer.

(3) In other cases such instrument shall be registered only when accompanied by an affidavit testifying that the deponent is the right of way or purchasing agent of the company, as the case may be, and that the lands described in the instrument are required for the construction, maintenance or operation of the railway, and when otherwise in conformity with the provisions of *The Land Titles Act*.

1919-20, c.66, s.11; R.S.S. 1920, c.69, s.11.

**Married woman *sui juris***

**12** This Act shall apply to all wives, whether or not they have attained the age of 21 years, and for the purposes of this Act and every matter or thing done under or by virtue of its provisions, a married woman of whatever age shall be deemed to be *sui juris*.

1919-20, c.66, s.12; R.S.S. 1920, c.69, s.12.

HOMESTEADS

FORM A

(Section 4)

DECLARATION BY WIFE

I, \_\_\_\_\_ wife of the above  
(or within) named \_\_\_\_\_ do hereby declare that I have  
executed this \_\_\_\_\_ for the purpose of relinquishing all  
my rights to said homestead in favour of \_\_\_\_\_

.....

\_\_\_\_\_

FORM B

(Section 5)

CERTIFICATE

I, \_\_\_\_\_ Judge of the District  
Court for \_\_\_\_\_ (or as the case may be) do  
hereby certify that I have examined \_\_\_\_\_  
wife of \_\_\_\_\_ the owner in the within (or annexed) \_\_\_\_\_  
separate and apart from her said husband, and she acknowledges to me that she  
signed the same of her own free will and consent and without any compulsion on the  
part of her husband and for the purpose of relinquishing her rights in the homestead  
in favour of \_\_\_\_\_ and further that she was aware of what her rights  
in said homestead were.

.....

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FORM C

(Section 6)

AFFIDAVIT

I, \_\_\_\_\_ of \_\_\_\_\_  
in the Province of Saskatchewan, (*description*) make oath and say as follows:

1. I am the transferor (lessor, mortgagor or incumbrancer, *or as the case may be*) or the agent acting under power of attorney in my favour dated the \_\_\_\_\_ day of \_\_\_\_\_ granted by the transferor (lessor, mortgagor or incumbrancer, *or as the case may be*) named in the within transfer, lease, mortgage or incumbrance (*or as the case may be*), and I say that no part of the said land is my homestead (*or the homestead of the transferor, lessor, mortgagor or incumbrancer, or as the case may be*), or has been my homestead (*or the homestead of the transferor, lessor, mortgagor or incumbrancer, or as the case may be*) at any time within the period of one year immediately preceding the execution of this instrument.

*Or,*

1. I am the transferor (lessor, mortgagor or incumbrancer, *or as the case may be*) or the agent acting under power of attorney in my favour dated the \_\_\_\_\_ day of \_\_\_\_\_ granted by the transferor (lessor, mortgagor or incumbrancer, *or as the case may be*) named in the within transfer (lease, mortgage or incumbrance, *or as the case may be*), and I say that I have (*or such transferor, lessor, mortgagor or incumbrancer, or as the case may be, has*) no wife.

Sworn before me at \_\_\_\_\_  
in the Province of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_\_.  
} .....

.....  
*Registrar, Commissioner (or as the case may be)*

FORM D

(Section 7)

CAVEAT

To the Registrar \_\_\_\_\_ District.

Take notice that I, *A. B.* of \_\_\_\_\_ in the Province of Saskatchewan, wife of *C. D.* of the same place (*description*), claiming a right to (*here describe the land and refer to the certificate of title*) on the ground that such land is the homestead of the said *C. D.*, forbid the registration of any transfer or other instrument affecting such land or the granting of a certificate of title thereto except subject to the claim herein set forth.

My address is: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

.....  
*Signature of caveator or her agent.*

I, the above *A. B.* (*or M. N.* agent for the above *A. B.*) of (*residence and description*) make oath and say:

- 1. That the allegations in the above caveat are true in substance and in fact, to the best of my knowledge, information and belief.

Sworn before me at \_\_\_\_\_  
in the Province of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_\_.

.....  
*Registrar, Commissioner (or as the case may be)*