

The Homesteads Act, 1989

The Homesteads Act, 1989 protects spouses, including common law and same sex spouses, who are not the registered owners of their homestead. A **homestead** is property that is or has been occupied by both spouses as the family home at any time during the marriage.

The Act provides that any agreement for the sale, lease, mortgage, transfer or other disposal of the homestead by the owning spouse to any person other than the non-owning spouse must be accompanied by the consent of the non-owning spouse, together with a certificate of independent legal advice.

When both spouses own the homestead, the separate acknowledgement of consent is not necessary.

When an agreement or judge's order, for instance, under The Family Property Act, removes a non-owning spouse's homestead rights, his or her consent to disposal of the homestead is no longer required.

If a non-owning spouse is wrongfully deprived of homestead rights, the owning spouse is liable in an action for damages.

The homestead occupied by a debtor is exempt from seizure and sale except where there is a court judgment for the proceeds of sale or foreclosure under a mortgage of the homestead. The non-owning spouse is bound by the sale or foreclosure judgment, without being specifically named in the action, unless they file a caveat under this Act.