

UNEDITED

# *The Homesteads Act*

*being*

Chapter 111 of *The Revised Statutes of Saskatchewan, 1953*  
(effective February 1, 1954).

FOR HISTORICAL REFERENCE ONLY

## **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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## SCHEDULE

## CHAPTER 111

### An Act respecting Homesteads

#### Short title

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

R.S.S. 1953, c.111, s.1.

#### Interpretation

2 In this Act:

#### “homestead”

1 “**homestead**” means a homestead under the provisions of paragraphs 10 and 11 of subsection (1) of section 2 of *The Exemptions Act*, and, except for the purposes of section 12 and forms C and E in the schedule hereto, includes any property which has been such a homestead at any time within the period of seven years immediately preceding the execution of the transfer, agreement, lease, mortgage or other instrument referred to in section 3:

Provided that a homestead under the said paragraph 11 shall not for the purposes of this Act be restricted in value to \$8,000.

R.S.S. 1940, c.101, s.2; 1947, c.38, s.2; R.S.S.  
1953, c.111, s.2.

#### Wife to sign instruments affecting homesteads

3(1) Every transfer, agreement of sale, lease or other instrument intended to convey or transfer an interest in a homestead to any person other than the wife of the owner, and every mortgage 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 who resides in Saskatchewan or has resided therein at any time since the marriage, and she shall appear before a district court judge, local registrar of the Court of Queen’s Bench, registrar of land titles or their respective deputies, or a solicitor or justice of the peace or notary public and, upon being examined separate and apart from her husband, she shall acknowledge that she understands her rights in the homestead and signs the instrument of her own free will and consent and without compulsion on the part of her husband:

Provided, that where an examination is taken outside Saskatchewan it shall be taken and acknowledgment made before a person authorized to take affidavits under the provisions of section 62 of *The Land Titles Act*;

Provided further that no person shall be qualified to take the acknowledgment of a wife under this section when such person, his employer, his partner or his clerk has prepared the document in question or is otherwise interested in the transaction involved.

(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 Queen’s Bench may, on the application of any person interested, by order 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 appear just.

(3) In any case in which he deems it just and expedient to do so the judge may, upon application *ex parte*, dispense with service on the wife of notice of an application under subsection (2).

(4) Subject to subsection (3), where the wife is a lunatic or person of unsound mind, notice of an application under subsection (2) shall be served in the manner provided by the rules of the Court of Queen's Bench for the service of a writ of summons on a lunatic or person of unsound mind.

(5) Upon the 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 or other instrument.

R.S.S. 1940, c.101, s.3; 1949, c.35, s.1; R.S.S. 1953, c.111, s.3.

#### **Declaration by wife**

4(1) Every such transfer, agreement, lease, mortgage or other instrument shall contain or have annexed to or endorsed or written thereon a declaration by the wife (form A) that she has executed the same for the purpose of relinquishing her rights in the homestead.

(2) If the declaration is contained in the instrument, the wife's signature to the instrument shall be a sufficient signature to the declaration, as well as to the instrument.

(3) The declaration may be endorsed or written at the end or on any part of or at any place on the instrument, and the wife's signature to the declaration shall be a sufficient signature to the said instrument as well as to the declaration.

(4) If the declaration is annexed to the instrument, the wife shall sign both the declaration and the instrument.

R.S.S. 1940, c.101, s.4; R.S.S. 1953, c.111, s.4.

#### **Certificate by officer**

5(1) There shall be annexed to or endorsed on the transfer, agreement, lease, mortgage or other instrument, a certificate (form B) 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.

(2) Where the instrument is a transfer to a person who holds a mortgage on the homestead or is a quit claim deed in favour of the vendor of the homestead under an agreement for the sale thereof, there shall also be annexed to or endorsed or written on the instrument a certificate by a practising solicitor that he has explained to the wife, separate and apart from her husband, and that she understands the purpose and effect of the instrument. No person shall be qualified to give such certificate if such person, his employer, partner or clerk has prepared the instrument or is otherwise interested in the transaction involved. The first proviso to subsection (1) of section 3 and subsections (2), (3), (4) and (5) of the said section apply *mutatis mutandis* where a certificate is required under this subsection.

R.S.S. 1940, c.101, s.5; R.S.S. 1953, c.111, s.5.

#### **Where land is sold under agreement**

6 Where land has been sold under an agreement of sale and the acknowledgment mentioned in subsection (1) of section 3 has been made upon such sale, no further signature of the wife and acknowledgment shall be required upon a transfer of the land in fulfilment of the terms of the agreement; but on the transferee filing:

- (a) the agreement of sale accompanied by a declaration (form A) and a certificate (form B);
- (b) a transfer of the land; and
- (c) an affidavit identifying the transferee as the purchaser under the agreement of sale;

and otherwise complying with the provisions of this Act and paying the prescribed fees, the registrar shall issue a certificate of title in favour of the transferee.

R.S.S. 1940, c.101, s.6; R.S.S. 1953, c.111, s.6.

#### **Instruments otherwise executed**

7(1) Every transfer, agreement of sale, lease or other instrument intended to convey or transfer an interest in land, and every mortgage, which does not comply with the provisions of sections 4 and 5, shall be accompanied by an affidavit of the maker (form C) stating either that the land described in such instrument is not his homestead and has not been his homestead at any time within the period of seven years immediately preceding the execution of the instrument, or that he has no wife, or that his wife does not reside in Saskatchewan and has not resided therein at any time since the marriage.

(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, lessee or other person acquiring an interest under such instrument shall be bound to make inquiry as to the truthfulness of the facts alleged in the affidavit hereby required 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 provided in section 11.

R.S.S. 1940, c.101, s.7; R.S.S. 1953, c.111, s.7.

#### **Wife may file caveat**

8(1) The wife of the owner of a homestead may, if she resides in Saskatchewan or has resided therein at any time since the marriage, file a caveat to protect her rights in the same. Such caveat (form D) shall be filed free of charge.

(2) On the registration of a receiving order for the estate of the owner, or of an authorized assignment for the general benefit of his creditors, the trustee in bankruptcy may file in the land titles office an affidavit stating, to the best of his knowledge and belief, whether or not the bankrupt or assignor has a wife and, if he has a wife who resides in Saskatchewan or has resided therein at any time since the marriage, giving, to the best of his knowledge and belief, her address or stating that he does not know her address.

(3) If it appears from such affidavit that the bankrupt or assignor has a wife who resides in Saskatchewan or has resided therein at any time since the marriage, and such wife has not previously filed a caveat under subsection (1), the registrar shall, by registered letter addressed to her at the address, if any, given in the affidavit of the trustee, otherwise at the address of her husband as it appears by the records of the land titles office, notify her of the registration of the receiving order or assignment, with the date of registration, and require her, if she claims that any of her husband's land is his homestead, to file a caveat in form D against such land within sixty days of the mailing of the notice.

## (4) Where:

- (a) it appears from the affidavit of the trustee that the bankrupt or assignor has no wife who resides in Saskatchewan or has resided therein at any time since the marriage, and no caveat is filed within sixty days from the date of filing the affidavit; or
- (b) no caveat is filed within sixty days of the date when a notice was mailed under subsection (3);

and a trustee, acting in good faith, proceeds to sell the land of the bankrupt or assignor, the trustee shall not be liable in damages at the suit of the wife of the bankrupt or assignor if it subsequently appears that the land sold was land in which she possessed homestead rights.

(5) On satisfactory proof of the death of the caveator being furnished to the registrar he may remove the caveat.

(6) If a caveat has been heretofore or is hereafter filed under this section and a transfer of the land signed by the caveator and accompanied by a declaration (form A) and a certificate (form B) is filed in the land titles office or an agreement of sale of the land has been signed by the caveator and the documents mentioned in clauses (a), (b) and (c) of section 6 are so filed, the registrar shall remove the caveat before issuing certificate of title.

R.S.S. 1940, c.101, s.8; R.S.S. 1953, c.111, s.8.

**When caveat lapses**

9(1) Where the wife of the owner is living apart from her husband under circumstances disentitling her to alimony, a judge of the Court of Queen's Bench may, on the application of her husband, by order to be made in a summary way and on such evidence as to him may seem meet, declare that such wife is no longer authorized to file or maintain a caveat affecting the land of the husband.

(2) On filing the order in the proper land titles office any caveat filed by the wife against lands of her husband shall lapse; and, while the order remains in force, no such caveat shall be accepted by the registrar for filing.

R.S.S. 1940, c.101, s.9; R.S.S. 1953, c.111, s.9.

**Application to lapse a caveat**

10(1) Any person interested in land affected by a caveat filed under the provisions of this Act may, at any time, apply to a judge of the Court of Queen's Bench, and the judge may, by order made in a summary manner, either *ex parte* or upon notice and upon such terms and conditions as may seem just, direct that the caveat shall lapse; and upon such order being filed in the proper land titles office the caveat shall lapse accordingly.

(2) When an order under subsection (1) has been filed, no further caveat to protect the rights of the wife in the land shall be received by the registrar unless accompanied by an order of the court or a judge.

R.S.S. 1940, c.101, s.10; R.S.S. 1953, c.111, s.10.

**Fraud by transferee**

11 Knowledge on the part of the transferee, purchaser, mortgagee or lessee that the land described in an instrument mentioned in section 3 is the homestead of the party making the same and that he has a wife who, by the provisions of section 3, is required to be but is not a party thereto, shall be fraud, and in an action by the wife such instrument or the certificate of title issued thereon to any person affected by the fraud may be set aside and cancelled.

R.S.S. 1940, c.101, s.11; R.S.S. 1953, c.111, s.11.

**Widow's rights preserved**

12 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 the homestead is exempt from seizure under execution, as provided by said section 6, and notwithstanding any provision in the last will and testament of the owner, the foregoing provisions of this Act, 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 or certificates to accompany the transfer, lease, mortgage or other instrument shall be to the same effect as the declaration and certificate or certificates 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 in form E.

R.S.S. 1940, c.101, s.12; 1947, c.38, s.3; R.S.S. 1953, c.111, s.12.

**Power of court to dispense with signatures and acknowledgement of widow**

13(1) Notwithstanding anything contained in section 12, the personal representative or any creditor of the deceased owner of a homestead may apply to a judge of the Court of Queen's Bench for an order dispensing with the signature and acknowledgment of the widow and permitting the personal representative to deal with the homestead on the ground that the property is not necessary for the maintenance and support of the widow and children or widow or children of the deceased owner or that a sale, transfer or other disposition is necessary or expedient for the convenient administration of the deceased owner's estate, or on any ground which the judge may deem just

(2) Application for an order under subsection (1) may be made upon such notice as the judge may direct.

(3) Upon such application and upon such evidence as to him may seem meet, the judge may by order dispense with the signature and acknowledgment of the widow and permit the personal representative to deal with the homestead in such manner and subject to such terms and conditions as appear just.

1942, c.21, s.2; R.S.S. 1953, c.111, s.13.

**Further powers of court**

14(1) Notwithstanding anything contained in this Act, a judge of the Court of Queen's Bench, upon being satisfied that a defect in the certificate or certificates required by section 5 or in the affidavit required by section 7 or section 12 or the absence of such certificate or certificates or affidavit cannot be remedied by reason of the death of any person or of the whereabouts of any person being unknown after all reasonable efforts to ascertain the same have been exhausted, may, in any case in which he deems it just and expedient to do so and upon such evidence as to him may seem meet, by order dispense with the said certificate, certificates or affidavit.

(2) Application for an order under subsection (1) may be made *ex parte* or upon such notice as the judge may direct.

(3) An order made under subsection (1) may be accepted by a registrar of land titles in lieu of the said certificate, certificates or affidavit.

1942, c.21, s.3; 1947, c.38, s.4; R.S.S. 1953, c.111, s.14.

**Joinder of wife as party to certain proceedings**

15 No mortgagee taking proceedings for the sale or foreclosure of mortgaged land shall be required to join as a party thereto the wife of any other party, or the widow of a deceased owner, solely by reason of anything contained in this Act, and, unless she has filed a caveat to protect her rights, such wife or widow shall, without being joined, be bound by the judgment in the proceedings.

R.S.S. 1940, c.101, s.14; R.S.S. 1953, c.111, s.15.

**Certain instruments to be valid**

16 No transfer, mortgage or encumbrance taken before to be valid the fourteenth day of March, 1916, shall be invalid 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 as against his representatives, successors or assigns.

R.S.S. 1940, c.101, s.15; R.S.S. 1953, c.111, s.16.

**Non-application of Act to sales to railway companies, etc., and to certain easement agreements**

17(1) The provisions of this Act do not apply to a transfer, agreement of sale, assignment or other instrument intended to convey or transfer to a company or municipal corporation land or an interest therein required for the agreements construction, maintenance or operation of a railway or a gas, oil or water pipe line, nor to an agreement granting to the Crown, a company or municipal corporation an easement upon, over, under or across land authorized by *The Public Utilities Easements Act*.

(2) Where the land is shown upon a plan, approved by the Board of Transport Commissioners for Canada where the transferee or grantee is a railway company or a gas or oil pipe line company, and the plan is registered, the registrar of land titles for the land registration district in which the land lies shall, subject to *The Public Utilities Easements Act*, register such instrument of transfer or agreement.



(3) In other cases the instrument or agreement shall be registered only when accompanied by an affidavit testifying that the deponent is the right of way or purchasing agent of the transferee or grantee and that the lands described in the instrument or agreement are required for the construction, maintenance or operation of a railway or a gas, oil or water pipe line or for the exercise of any of the rights and privileges arising under the agreement granting an easement, and when otherwise in conformity with the provisions of *The Land Titles Act*.

1950, c.28, s.1; R.S.S. 1953, c.111, s.17.

**Married woman *sui juris***

18 This Act applies to all wives, whether or not they have attained the age of twenty-one 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*.

R.S.S. 1940, c.101, s.17; R.S.S. 1953, c.111, s.18.

FORM A

(Sections 4, 6 and 8)

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 in said homestead in favour of \_\_\_\_\_.

FORM B

(Sections 5, 6, 7 (3) and 8)

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.

I further certify that I am not disqualified, under section 3 of *The Homesteads Act*, from taking the above acknowledgment.

## FORM C

(Section 7)

## AFFIDAVIT

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

1 I am the transferor (lessor *or* mortgagor, *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 *or* mortgagor, *or as the case may be*) named in the within transfer, lease *or* mortgage (*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 *or* mortgagor, *or as the case may be*), or has been my homestead (*or* the homestead of the transferor, lessor *or* mortgagor, *or as the case may be*) at any time within the period of seven years immediately preceding the execution of the said transfer (lease *or* mortgage, *or as the case may be*).

Or,

1 I am the transferor (lessor *or* mortgagor, *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 *or* mortgagor, *or as the case may be*) named in the within transfer (lease *or* mortgage, *or as the case may be*), and I say that I have (*or* such transferor, lessor *or* mortgagor, *or as the case may be*, *has*) no wife.

Or,

1 I am the transferor (lessor *or* mortgagor, *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 *or* mortgagor, *or as the case may be*) named in the within transfer (lease *or* mortgage, *or as the case may be*), and I say that my wife (*or* the wife of the transferor, lessor *or* mortgagor, *or as the case may be*) does not reside in Saskatchewan and has not resided therein at any time since the marriage.

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

} \_\_\_\_\_

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

## HOMESTEADS

c. 111

## FORM D

(Section 8)

## 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 transferor or her 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.* (at *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)*

\_\_\_\_\_

## FORM E

(Section 12)

## AFFIDAVIT

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

1 I am the executor of the last will and testament (*or the administrator of the estate, or as the case may be*) of, deceased, the transferor (lessor *or* mortgagor, *or as the case may be*) named in the within transfer (lease *or* mortgage, *or as the case may be*).

2 No part of the land described in the within instrument was the homestead of the said \_\_\_\_\_, deceased, at the time of his death.

or

2 The said \_\_\_\_\_, deceased, had no wife at the time of his death.

or

2 The said \_\_\_\_\_, deceased, had a wife at the time of his death but the said wife died prior to the time of the execution of the within instrument.

or

2 The land described in the within instrument was the homestead of the said \_\_\_\_\_, deceased, at the time of his death, but no part of the said land was in the use and occupation of the widow of the said \_\_\_\_\_, deceased, at the time of the execution of the within instrument and the said widow was not at the time of the execution of the within instrument in receipt of any of the rents or profits of the said land.

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

} \_\_\_\_\_

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