



The Homestead Act by Doug Paterson, Q.C.

This old-sounding Act has important and common applications today.

I usually explain to people that on the prairies in the late 1800's, all property was put in the husband's name and women had few options or say in the matter. So if a man bargained away or sold the home farm on a whim, the wife and kids were out. The legislature therefore wanted to inject some justice and fairness and came up with the homestead rights concept.

Nowadays, for example, if a house is in the wife's or female common-law partner's name and she wants to start a business requiring a loan, the lender will probably want some accommodation (mortgage) loan security on her family's house. Once the mortgage documents are processed by her lawyer, they must be signed not only by her, but by her spouse/partner. If he thinks she's crazy and will lose her shirt and opposes the plan, the lady may coerce or abuse him into agreeing. But, once he goes to the solicitor to sign, he will be alone with the solicitor,

the borrower-spouse being told to wait in the foyer. When alone, the solicitor will review the Homestead Declaration with the spouse/partner. There it will be revealed he is against it and doesn't want to jeopardize his family's homestead (house) but is being forced to sign. At that point, the solicitor will end the loan process and the deal stops unless and until acceptable arrangements are made.

A "homestead" is defined as being occupied by the couple, with land of not more than 6 lots (city) or a maximum of 320 acres (rural) or the condo unit registered.

You can only have one homestead at a time. Only one spouse or common-law partner at a time may have homestead rights. Later homestead rights of subsequent spouses/partners cannot be exercised until all prior spouses'/partners' rights have been handled under the Act.

You need not be 18 years of age to have homestead rights, just married or common-law.

So you cannot divest your homestead unless your spouse/common-law partner properly consents under the Act – this is the main feature of the Act.

Beware that a change of residence by a couple does not mean the end of homestead rights in the former residence. They can only go to the new residence if the rules and procedures and documents under the Act are properly fulfilled.

If the owner of the homestead dies, the surviving spouse/partner with homestead rights, if the homestead had not been properly changed prior to death, may elect which one he/she wants, subject to certain time restraints.

If a spouse/partner's consent regarding a homestead is needed, and that person is mentally incompetent and where they have been separated for more than 6 months, then a Court Order is needed.

If an owner of a residence

makes a fraudulent statement or wrongful transfer of land so as to bypass their spouse's/partner's homestead rights, that person may be sued for damages by the spouse/partner.

An owner's spouse/partner may register his/her rights by caveat (or notice against title) to claim an interest regarding their homestead rights.

The real nub and purpose of the Act is this:

“when an owner dies leaving a surviving spouse or common-law partner who has homestead rights in the property, that person is entitled to a life estate in the homestead as fully and effectually as if the owner had by will left that spouse or common-law partner a life estate in the homestead.”

Equally important, any attempt by a deceased to give away to someone else the homestead property is subject to the surviving spouse's/partner's rights to that homestead.