

# Homestead Law and Regulations

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In their application to present needs, the laws, regulations and decisions pertaining to homestead, pre-emption and timber culture entries are most important.

On the first of January, 1863, the Homestead Law went into operation. The subject of granting free homesteads upon the public lands to actual settlers, had long been agitated, through the public press and by means of organizations effected for the object, and intended to influence legislation. The land reform had repeated and insisted on the truth of the declaration that Land, Air and Water were intended by the Creator to be alike free to all men.

That the government is satisfied, and that no detriment has resulted to its revenues from this change in the mode of disposal of the public domain, is shown by the declaration made by the commissioner of the general land office in his report, that "the demand for the benefit of the homestead laws still increases, with results showing the wisdom of the law, as a measure for quickening and expansion of the productive area and material wealth of the country, by offering lands for homes at a nominal cost, to the hardy pioneers of our American civilization."

Congress, in order that the benefits of the law might be distributed justly, has, from time to time, amended its provisions and enlarged its scope. In particular, new and most liberal provisions have been made, by which the soldier, his widow and his orphans, are permitted to receive enlarged privileges in securing homesteads, thus adding to the national recognition of the principal that every citizen of the republic is entitled to the right to make himself a home upon the public domain, the still nobler and higher doctrine that it is the nation's duty to reward the defenders of the country, and to provide homes for the families of those who gave up their lives in its defense.

The Congress of 1873 passed three separate acts enlarging the homestead privilege; one of which, containing provisions for the encouragement of timber cultivation, is calculated not only to shorten the time within which the settler may obtain a patent for his land, but also to greatly stimulate one of the most useful branches of cultivation.

The public surveys have, from year to year, been extended to meet the wants of the emigrant as he has pushed his explorations toward the frontier. And as the surveyor has gone forward with his compass and chain, followed closely by the immigrant, both have been surpassed with the beauty and richness of the country, and both have looked in vain for their western limit.

The public lands of Nebraska are classes as agricultural lands, and may be taken under either the preemption, homestead or timber culture laws.

## **First--Pre-Emption**

Every person who is the head of a family, or over twenty-one years and a citizen of the United States, or has declared his intention to become such, who does not own 320 acres of land in any State or Territory, is entitled to enter a quarter section of land under the preemption act, but no person can move off from his or her own land in the State of Nebraska upon a tract of land, and enter it under the preemption act. The rules of the General Land Office require a person to build a house and break at least ten acres of land before he can make proof and get a title to the land.

In order to take a preemption a settlement must first be made on the tract. This may be by any act that will show that labor has been done, such as breaking a piece of ground, staking out the foundation for a house, or by other act of labor that will give notice of occupancy. A reasonable time is given from the date of settlement in which to build a large house might be an unreasonable time to build a small one--or a person with ample means could reasonably build quicker than another without means.

The government lands in the State of Nebraska are "unoffered"; that is they have never been offered at public sale by a proclamation of the President of the United States. On this class of lands ninety days are given from the date of settlement in which to file a declaratory statement, which is simply a notice that the pre-emptor intends to take the land, and thirty-three months from the date of settlement in which to make proof and receive a title; but, as said before, proof may be made after six months provided a house has been built, and the pre-empting party has resided and is residing there at the date of proof, and has broken at least ten acres of land.

### **Homesteads**

Any person who is over the age of twenty-one years or is the head of a family and is a citizen of the United States, or has declared his intention to become such, under the laws thereof may take a homestead. He is required to subscribe to an oath that he takes it for his own especial benefit and not directly or indirectly for the use or benefit of the homestead act heretofore, together with the fact that he is the head of a family or over the age of twenty-one years, and that he is a citizen of the United States, or has declared his intention to become such.

He is required to commence his residence thereon within six months, and to continue until five years from the date of his entry, at which time he will, upon proof of residence and cultivation, receive a patent therefore. No specific amount of land is required to be cultivated, but it is generally held that in order to show good faith, at least ten acres should be broken and cultivated, but if a good reason can be shown why it has not been done the lack of cultivation will not be fatal to the proof. The law further provides that the party cannot be absent from the claim for a period of six months, at any one time, regardless of excuse. Two years from the expiration of the five years is given the party to make said proof, and it at the expiration of said time, upon notice being given him from the local office, he does not, within thirty days of the date of said notice, furnish the required proof, his entry shall be canceled and he again become subject to entry. If a party taking a homestead does not comply with the law his entry may be contested. The contesting party alleges in an affidavit that the homesteading party has not complied with the law, and asks for a hearing. Notice is given the adverse party, and, if the facts alleged are proven, the entry is canceled by the commissioner of the general land office, and the tract is again open to entry.

### **A Soldier's Homestead**

provides for persons who served in the late rebellion. The time served in the army is credited as a part of the five years required to be spent upon the homestead, provided that the homesteader must reside one year on the tract homesteaded.

It also provided that a soldier may file a homestead declaratory statement on a tract of land, which holds it as against any subsequent claimant for six months, but the party filing said declaratory statement must within six months appear and file his application and affidavit, and at the same time establish the fact that he was a soldier in the late rebellion. This may be done with a copy of his discharge, a certificate of the Adjutant General of the State in which he enlisted, or the affidavit of three disinterested witnesses stating the date of his enlistment, date of his discharge and the company and regiment in which he served.

He must also establish the fact that he served in the army before he is allowed to file his homestead declaration.

A homestead declaration is the only filing that can be made by power of attorney. If, for any reason, the party filing a homestead declaration desires to take another or different tract of land he may do so, instead of taking the tract upon which he filed his homestead declaration, but he can not file but one homestead declaratory statement. The land office fees for filing a homestead declaratory statement is two dollars.

Final proof on a soldier's homestead may be made at any time after the time resided upon the homestead, together with the time served in the army, makes five years, provided one year's residence has been made upon the land, or at any time thereafter within seven years from the date of the application for the homestead.

If the soldier be dead his widow may take it in his stead and it does not deprive her of the privilege, if she has taken one before in her own name, and if she is dead or has married again it may be taken by his minor orphan children. If taken by the widow, the same requirement of residence and cultivation is made as would have been made of the soldier, if living; but in the case of minor orphan children, the entry is made for them by their guardian duly appointed, and in that event cultivation only is required.

The land office fees for initiating a homestead are for minimum land, that is, land that is sold by the government at \$1.25 an acre, \$14 for a quarter section, or \$7 for 80 acres, and in double minimum, or land that is sold at \$2.50 per acre, \$18 for a quarter section, which sum is required at the time the claim is taken, and upon making final proof a

further fee of \$4.00 for a quarter section, or \$2 for 80 acres, on minimum lands; and \$8 for a quarter section, or \$4 for 80 acres, on double minimum lands.

### **Timber Claims**

Only one timber culture entry can be taken on each section. This class of entries can only be taken upon "prairie land, or land naturally devoid of timber".

A person competent to take a homestead entry is also competent to take a timber culture entry, and the same facts are required to be sworn to in the affidavit accompanying the application. The law requires that five acres be broken within the first year; that it be cultivated the second year, and planted to forest trees, or planted with the seeds of forest trees, four feet apart each way, within the third year; and that a second five acres be broken the second year, cultivated the third year, and planted as in the first instance the fourth year, and that if the ten acres be kept in a growing condition a patent shall issue for the tract at the expiration of eight years, provided not less than six hundred and seventy-five trees be found in a growing condition at the expiration of that time.

The fees of the government are the same in timber culture entries as they are in homestead entries except that there is no distinction made between minimum and double minimum lands.

Timber culture entries are contested for non-compliance with the law the same as homesteads, but in timber culture contests the contestant may file his application for the land with the affidavit of contest, and in this manner make it absolutely safe for himself; whereas in homesteads he can only make it safe by diligence in his appearance at the land office upon the receipt of the notice of its cancellation at the local land office from the general land office.

Under this law, good faith will require that if the trees, seeds, or cuttings are by any means destroyed one year, they must be replanted the next. A party will not be released from a continued attempt to promote the actual growth of timber or forest trees; a failure in this respect will subject the entry to cancellation. Only the planting of such trees, seeds, or cuttings as are properly denominated timber trees, or which are recognized as finest trees, will be considered a compliance with the law. Cottonwood is recognized as timber under the act. All entries of less than one-quarter section shall be plowed, planted, cultivated, and planted to trees, tree seeds, or cuttings in the same manner and in the proportion hereinbefore provided for in the 160 acre entry. The land office fee for an entry of more than 80 acres is \$14; for one of 80 acres or less, \$9.

The law provided that in case the trees, seeds or cuttings shall be destroyed by grasshoppers, or by extreme and unusual drought, for any year or term of years, the time for planting such trees, seeds, or cuttings shall be extended one year for every such year that they are so destroyed.

### **An Act for Relief of Settlers on Public Lands**

An Act of Congress, approved June 4th, 1880, provided for the relief of certain homestead and preemption settlers in Kansas and Nebraska. It will be seen that the provisions of this act have reference only to such lands as lie west of the sixth principal meridian in the states of Kansas and Nebraska. Lands in other States or Territories are not referred to, nor are those lands in Kansas and Nebraska which lie east of the sixth principal meridian. The lands to which its provisions apply are included in the land districts of Wichita, Salina, Concordia, Larned, Kirwin, Wa Keeney, all the districts except Topeka and Independence, in Kansas; and Niobrara, Norfolk, Lincoln, Grand Island, North Platte, Bloomington, and Beatrice, all the districts in Nebraska.

Under the provisions of this act, homestead and preemption settlers on the public lands, and preemption settlers upon Indian reservations, within the section of country indicated, who have suffered from loss or failure of crops from unavoidable causes, in the years of 1879 or 1880, may leave and be absent from their lands until the first day of October, 1881, without their right to the same being impaired thereby. The preemption settlers entitled to its benefits are allowed also an extension of time for making final proof and payment for one year from the first day of October, 1881, and where the purchase money is by law payable in installments. The law provided that the first unpaid installments. The law provided that the first unpaid installment shall be held not to be due until one year after the expiration of such leave of absence. This right of absence is not available in any case in which there has not been a loss or failure of crops from some unavoidable causes in the year 1879 or 1880. Hence when a settler not actually entitled to the benefits of this act absents himself from his claim it will be liable to be regarded as an abandonment, and adverse claims may be recognized. The settler intending to leave his claim under this act must file with the Register and Receiver of the proper district land office a written notice of his intention to do so, bearing his signature. This is a means of protection to the settlers, and is due to parties who might otherwise make adverse claims. At the date of final proof by any party who shall have availed himself of this act, he must show, by

making appear the loss or failure of crops from unavoidable cause, in 1879 or 1880, on account of which he was entitled to its benefits.

The proof should consist of the party's own testimony, corroborated by that of two or more disinterested witnesses. After a party shall have filed notice, under this act, no contest involving his right to the land can be instituted prior to the expiration of the legal term of absence to which he is entitled.

If the party should be fraudulently absent it will be a matter for investigation in the regular manner thereafter.

#### **Additional Rights to Homestead Settlers**

An Act granting additional rights to homestead settlers on public land within railroad limits was approved March 3rd, 1879. After the passage of this act, the even sections within the limits of any grant of public lands to any railroad company, or to any military road company, or to any State in aid of any railroad or military road, shall be open to settlers under the homestead laws to the extent of one hundred and sixty acres to each settler, and any person who has, under such existing laws, taken a homestead on any even section within the limits of any railroad or military road land grant, and show by existing laws shall have been restricted to eighty acres, may enter under the homestead laws an additional eighty acres adjoining the land embraced in his original entry, is such additional land be subject to entry; or if such person so elect, he may surrender his entry to the United States for cancellation, and thereupon be entitled to enter lands under the homestead laws the same as if the surrendered entry had not been made. And any person so making additional entry of eighty acres, or new entry after the surrender and cancellation of his original entry, shall be permitted so to do without payment of fees and commissions; and the residence and cultivation of such person, upon and of the land embraced in his original entry, shall be considered residence and cultivation for the same length of time upon and of the land embraced in his additional or new entry, and shall be deducted from the five years' residence and cultivation required by law.

That in no case shall patents issue upon an additional or new homestead entry under said act until the person has actually, and in conformity with the homestead laws, occupied, resided upon and cultivated the land embraced therein at least one year.

Additional land laws were passed during June, 1880. In all cases where it appears that innocent parties have paid the fees and commissions and excess payments required upon the location of claims by honorably discharged soldiers, sailors, their widows and orphan children to acquire homesteads, which said claims were found to be fraudulent and void, and the entries or locations made thereon canceled, such innocent parties shall be repaid the fees and commissions, and excess payments paid by them.

In all cases where homestead or timber cultures or desert land entries, or other public lands have been canceled for conflict, or where, from any cause, the entry has been erroneously allowed and cannot be confirmed, the person who made such entry, or to his heirs or assigns, shall be repaid the fees and commissions, amount of purchase money, and excesses paid the same, upon the surrender of the duplicate receipt and the execution of a proper relinquishment of all claims to said lands, whenever such entry shall have been duly canceled and in all cases where parties have paid double-minimum price for land which has afterwards been found not to be within the limits of a railroad land grant, the excess of one dollar and twenty-five cents per acre shall in like manner be repaid to the purchaser or to his heirs or assigns.

In all cases in which parties who regularly initiated claims to the public lands as settlers according to the provisions of the preemption or homestead laws, have become insane or shall become insane before the expiration of the time during which their residence, cultivation or improvement of the land claims by them is required by law to be continued in order to entitle them to make the proper proof and perfect their claims, it shall be lawful for the required proof and payment to be made for their benefit by any person who may be legally authorized to act for them during their disability, and their claims shall be confirmed and patented.

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