



Province of Alberta

DOWER ACT

Revised Statutes of Alberta 2000 Chapter D-15

Current as of November 1, 2010

Office Consolidation

© Published by Alberta Queen's Printer

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Regulations

The following is a list of the regulations made under the *Dower Act* that are filed as Alberta Regulations under the Regulations Act

Alta. Reg.	<i>Amendments</i>
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Dower Act

Forms	39/2000	354/2003, 5/2011
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DOWER ACT

Chapter D-15

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “Court” means the Court of Queen’s Bench;
- (b) “disposition”
 - (i) means a disposition by act inter vivos that is required to be executed by the owner of the land disposed of, and
 - (ii) includes
 - (A) a transfer, agreement for sale, lease for more than 3 years or any other instrument intended to convey or transfer an interest in land,
 - (B) a mortgage or encumbrance intended to charge land with the payment of a sum of money, and required to be executed by the owner of the land mortgaged or encumbered,
 - (C) a devise or other disposition made by will, and
 - (D) a mortgage by deposit of certificate of title or other mortgage that does not require the execution of a document;

- (c) “dower rights” means all rights given by this Act to the spouse of a married person in respect of the homestead and property of the married person, and without restricting the generality of the foregoing, includes
- (i) the right to prevent disposition of the homestead by withholding consent,
 - (ii) the right of action for damages against the married person if a disposition of the homestead that results in the registration of the title in the name of any other person is made without consent,
 - (iii) the right to obtain payment from the General Revenue Fund of an unsatisfied judgment against the married person in respect of a disposition of the homestead that is made without consent and that results in the registration of the title in the name of any other person,
 - (iv) the right of the surviving spouse to a life estate in the homestead of the deceased married person, and
 - (v) the right of the surviving spouse to a life estate in the personal property of the deceased married person that is exempt from seizure under writ proceedings;
- (d) “homestead” means a parcel of land
- (i) on which the dwelling house occupied by the owner of the parcel as the owner’s residence is situated, and
 - (ii) that consists of
 - (A) not more than 4 adjoining lots in one block in a city, town or village as shown on a plan registered in the proper land titles office, or
 - (B) not more than one quarter section of land other than land in a city, town or village.

RSA 2000 cD-15 s1;RSA 2000 c16(Supp) s44

Disposition Prohibited Without Consent

Disposition prohibited without consent

2(1) No married person shall by act inter vivos make a disposition of the homestead of the married person whereby any interest of the

married person will vest or may vest in any other person at any time

- (a) during the life of the married person, or
- (b) during the life of the spouse of the married person living at the date of the disposition,

unless the spouse consents to the disposition in writing, or unless the Court has made an order dispensing with the consent of the spouse as provided for in section 10.

(2) Notwithstanding subsection (1), the consent of the spouse of a married person is not required when the married person is required by the operation of regulations under the *Agricultural and Recreational Land Ownership Act* and section 35 of the *Citizenship Act* (Canada) to make a disposition of the homestead.

(3) A married person who makes a disposition of a homestead in contravention of this section is guilty of an offence and liable to a fine of not more than \$1000 or to imprisonment for a term of not more than 2 years.

RSA 1980 cD-38 s2;1994 c23 s50

Duration of Homestead

Duration of homestead

3(1) When land becomes the homestead of a married person it continues to be the married person's homestead within the meaning of this Act until the land ceases to be a homestead pursuant to subsection (2), notwithstanding the acquisition of another homestead or a change of residence of the married person.

- (2)** Land ceases to be the homestead of a married person
- (a) when a transfer of the land by that married person is registered in the proper land titles office,
 - (b) when a release of dower rights by the spouse of that married person is registered in the proper land titles office as provided for in section 7, or
 - (c) when a judgment for damages against that married person is obtained by the spouse of the married person pursuant to sections 11 to 17 in respect of any land disposed of by the married person and is registered in the proper land titles office.

(3) When a disposition of a homestead is made by an agreement for sale, lease, mortgage, encumbrance or other instrument that does not finally dispose of the interest of the married person in the homestead, an order of the Court dispensing with the consent of the spouse of the married person to the disposition extinguishes the dower right of the spouse in the homestead to the extent only that the voluntary consent of the spouse to the disposition would have done.

RSA 1980 cD-38 s3

Consents

Consent

- 4(1)** A consent required for the disposition inter vivos of the homestead shall be contained in or annexed to the instrument by which the disposition is effected and whenever that instrument is produced for registration under the *Land Titles Act*, the consent shall be produced and registered with it.
- (2)** The consent in writing of the spouse of the married person to any disposition shall, in the prescribed form, state that the spouse consents to the disposition of the homestead and has executed the consent for the purpose of giving up the life estate of the spouse and other dower rights of the spouse in the homestead to the extent necessary to give effect to the disposition.
- (3)** When the consent is contained in the instrument, the signature of the spouse to the instrument is a sufficient signature to the consent as well as to the instrument.
- (4)** The consent may be contained in or written or endorsed at the end of or at any place on the instrument and the signature of the spouse to the consent is a sufficient signature to the instrument as well as to the consent.
- (5)** When the consent is annexed to the instrument, the spouse shall sign both the consent and the instrument.
- (6)** The Registrar of Land Titles before registering a disposition of land that
- (a) does not purport to be consented to under this Act, and
 - (b) is not accompanied with an order of the Court dispensing with the consent,

shall require an affidavit of the owner in the prescribed form supported by any other evidence by affidavit or otherwise that the Registrar may prescribe.

(7) Notwithstanding subsection (6), when the disposition is executed under a power of attorney, the party executing the disposition, if that party is acquainted with the facts, may make the affidavit.

RSA 1980 cD-38 s4;1985 c48 s1

Acknowledgment by spouse

5(1) When the spouse of a married person executes a consent to a disposition as required under this Act or executes a disposition containing the consent, the spouse shall acknowledge apart from the married person

- (a) that the spouse is aware of the nature of the disposition,
- (b) that the spouse is aware that the *Dower Act* gives the spouse a life estate in the homestead and the right to prevent disposition of the homestead by withholding consent,
- (c) that the spouse consents to the disposition for the purpose of giving up, to the extent necessary to give effect to the disposition, the life estate and other dower rights given by the *Dower Act* in the homestead, and
- (d) that the spouse is executing the document freely and voluntarily without any compulsion on the part of the married person.

(2) The acknowledgment may be made before a person authorized to take proof of the execution of instruments under the *Land Titles Act*, and a certificate of the acknowledgment in the prescribed form shall be endorsed on or attached to the disposition executed by the spouse.

(3) The Court on being satisfied of the due execution of a consent and the making of an acknowledgment, whether the consent was executed and the acknowledgment made within or outside Alberta, may authorize the registration of the disposition notwithstanding that the proof of the execution of the consent or of the making of the acknowledgment is defective.

RSA 1980 cD-38 s5

Homestead sold under agreement of sale

6(1) When a homestead has been sold under an agreement of sale and

- (a) the spouse entitled to dower rights has consented to it and given the acknowledgment required by this Act,
- (b) the Court has dispensed with the consent of the spouse to the sale, or
- (c) a subsisting release of dower rights was registered at the time of the execution of the agreement of sale,

no further signature or acknowledgment of the spouse is required on a transfer of the homestead in fulfilment of the terms of the agreement of sale.

(2) On the transferee filing

- (a) the agreement of sale accompanied with
 - (i) the consent and the acknowledgment in the prescribed forms,
 - (ii) the order dispensing with the consent of the spouse, or
 - (iii) the consent and acknowledgment required by chapter 206 of the Revised Statutes of Alberta, 1942, if executed before September 1, 1948,
- (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 this Act and paying the prescribed fees, the Registrar shall issue a certificate of title in favour of the transferee.

RSA 1980 cD-38 s6

Releases**Release of dower rights**

7(1) When a married person owns a homestead, the spouse of the married person may execute a release of dower rights in the prescribed form.

(2) A release of dower rights shall be supported by the affidavit of the spouse in the prescribed form.

(3) A release of dower rights and supporting affidavit shall be executed and sworn to by the spouse

- (a) apart from the married person in whose favour the release is made, and
- (b) before a solicitor, barrister, lawyer or attorney-at-law residing in Alberta, or residing in any other province, realm and territory, state or country, other than the solicitor or the partner or employee of the solicitor acting for the married person in whose favour the release is made.

(4) On the registration of a release of dower rights in the proper land titles office,

- (a) the land described in the release ceases to be a homestead,
- (b) the spouse of the married person ceases to have any dower rights in the land described in the release, and
- (c) the Registrar shall endorse a memorandum of the release of the dower rights on the certificate of title.

RSA 1980 cD-38 s7

Caveat

8(1) When a release of dower rights in respect of the land of a married person has been registered under section 7, the spouse of the married person may execute and register a caveat against the land at any time before a transfer transferring that land is registered in the proper land titles office and, on being registered,

- (a) the Registrar shall cancel the release of dower rights, and
- (b) the spouse is entitled, except as otherwise provided in this Act, to dower rights in that land to the same extent as if the release of dower rights had never been registered.

(2) The dower rights to which the spouse becomes entitled under subsection (1) are subject to any rights that have accrued to or been acquired by a person in the land in good faith and for valuable consideration before the filing of the caveat.

RSA 1980 cD-38 s8

Agreement releasing dower rights

9(1) When a married person owns a homestead, the spouse of the married person may execute an agreement releasing to the married person the dower rights in the homestead that are given to the spouse by this Act.

(2) The agreement

- (a) shall be in writing,
- (b) shall be for valuable consideration and the consideration shall be expressed in the agreement,
- (c) shall be acknowledged by the spouse releasing the dower rights
 - (i) apart from the married person with whom the agreement is being made, and
 - (ii) before a solicitor, barrister, lawyer or attorney-at-law residing in Alberta, or residing in any other province, realm and territory, state or country, other than the solicitor or the partner or employee of the solicitor acting for the married person with whom the agreement is made,
- (d) shall be signed by the spouse releasing the dower rights in the presence of the person before whom the acknowledgment was made,
- (e) may be contained in or form part of a separation or other agreement, and
- (f) may be general in character applying to all homesteads of the married person, or may be specific applying only to a described homestead.

(3) A certificate of acknowledgment in the prescribed form shall be signed by the person before whom the acknowledgment was made and shall be endorsed on or attached to the agreement.

RSA 1980 cD-38 s9

Dispensing with Consent**Application to dispense with consent**

10(1) A married person who wishes to make a disposition of the married person's homestead and who cannot obtain the consent of the married person's spouse

- (a) when the married person and the married person's spouse are living apart,
- (b) when the spouse has not since the marriage lived in Alberta,
- (c) when the whereabouts of the spouse is unknown,
- (d) when the married person has 2 or more homesteads,
- (e) when the spouse has executed an agreement in writing and for valuable consideration to release the claim of the spouse to dower pursuant to section 9, or
- (f) when the spouse is a mentally incompetent person or a person of unsound mind for whom
 - (i) a trustee under the *Adult Guardianship and Trusteeship Act* does not have authority to make a disposition of the homestead, and
 - (ii) a certificate of incapacity is not in effect under the *Public Trustee Act*,

may apply to the Court for an order dispensing with the consent of the spouse to the proposed disposition.

(2) When the Court is satisfied

- (a) that the spouse has not since the marriage lived in Alberta, or
- (b) that the whereabouts of the spouse is unknown,

it may dispense with the giving of notice of the application for the order or give any other direction relating to the service of notice that to it appears proper.

(3) When the spouse is a mentally incompetent person or a person of unsound mind for whom there is no trustee under the *Adult Guardianship and Trusteeship Act* and for whom a certificate of incapacity is not in effect under the *Public Trustee Act*, notice of an application to dispense with the consent of the spouse shall be served in the manner provided by the *Alberta Rules of Court* for the service of statements of claim on such persons.

(4) On the application, the Court may hear any evidence and consider any matters that in its opinion relate to the application,

and without restricting the generality of the foregoing, it may consider

- (a) in the case of a husband and wife who are living apart, the circumstances of the separation and the financial resources of the parties and their mode of life,
- (b) in the case of a married person with 2 or more homesteads, the homestead the spouse of the married person would prefer the married person to retain, and
- (c) in the case of a spouse who has executed in writing and for valuable consideration an agreement to release the claim of the spouse to dower, whether the other provisions of the agreement have been performed and whether the consideration has been paid.

(5) The Court may by order dispense with the consent of the spouse if in the opinion of the Court it appears fair and reasonable under the circumstances to do so.

(6) The Court may make the order without imposing any conditions or may make the order on any terms and conditions relating to notice, payment into court or otherwise as the Court in the circumstances thinks proper.

(7) On the order being made and filed, together with the disposition, with the Registrar of Land Titles, the Registrar on payment of the proper fees shall register the disposition in the same manner as if the spouse of the married person had consented to it.

RSA 2000 cD-15 s10;2008 cA-4.2 s129;2009 c53 s50

Remedy of Spouse

Action for damages

11(1) A married person who without obtaining

- (a) the consent in writing of the spouse of the married person, or
- (b) an order dispensing with the consent of the spouse,

makes a disposition to which a consent is required by this Act and that results in the registration of the title in the name of any other person, is liable to the spouse in an action for damages.

(2) The amount of the damages for which the married person is liable to the spouse is a sum equivalent to

- (a) 1/2 of the consideration for the disposition made by the married person, if the consideration is of a value substantially equivalent to that of the property transferred, or
- (b) 1/2 of the value of the property at the date of the disposition,

whichever is the larger sum.

(3) If the married person dies, the action for damages may be commenced, or continued against the executors or administrators of the estate of the deceased married person, but the liability of the executors or administrators in the action is limited to the assets of the estate that are undistributed at the time of the service of the statement of claim on the executors or administrators or any of them.

(4) No action for damages shall be commenced except

- (a) within 6 years from the discovery by the spouse of the disposition, and
- (b) within 2 years from the death of the married person.

RSA 1980 cD-38 s11

Registration of copy of judgment

12(1) When a spouse recovers a judgment against the married person pursuant to section 11, the married person on producing proof satisfactory to the Registrar of Land Titles that the judgment has been paid in full may register a certified copy of the judgment in the proper land titles office.

(2) On the registration of the certified copy of the judgment, the spouse ceases to have any dower rights in any land registered or to be registered in the name of the married person and the land ceases to be a homestead for the purposes of this Act.

RSA 1980 cD-38 s12

Payment from General Revenue Fund

13(1) When

- (a) a spouse recovers a judgment against the married person pursuant to section 11,
- (b) the amount of the judgment is not paid, and

- (c) the assets of the judgment debtor that are liable to be sold or applied in satisfaction of the judgment or of the balance owing on the judgment are insufficient to satisfy the judgment or balance owing on the judgment,

the spouse may apply to the Court for an order directing payment of the unsatisfied judgment out of the General Revenue Fund.

(2) The application shall be served

- (a) on the Registrar of Land Titles, and
- (b) on the Minister of Justice and Attorney General,

30 days before the date on which the application is returnable.

RSA 2000 cD-15 s13;2009 c53 s50

Evidence required

14 On the hearing of the application, the applicant, unless the Court in its discretion otherwise orders, shall

- (a) show that the applicant has obtained a judgment as set out in section 11 and state the amount of it and the amount owing on it at the date of the application,
- (b) show that the applicant has issued a writ of enforcement, and that
 - (i) a civil enforcement agency has made a return showing that no goods of the judgment debtor that are liable to be seized in satisfaction of the judgment debt could be found, or
 - (ii) the amount realized on the sale of goods seized or otherwise realized under the writ was insufficient to satisfy the judgment, stating the amount so realized, and the balance remaining due on the judgment after application on it of the amount realized,
- (c) show either
 - (i) that the applicant has pursuant to the law for that purpose caused the judgment debtor to be examined touching the judgment debtor's estate and effects and the judgment debtor's property and means, or
 - (ii) that the applicant is unable to examine the judgment debtor and why the applicant is unable to do so,

- (d) show that the applicant has made searches and inquiries to ascertain whether the judgment debtor is possessed of assets, real or personal, that are liable to be sold or applied in satisfaction of the judgment, and
- (e) show that by those searches, inquiries and examination
 - (i) the applicant has learned of no assets, real or personal, possessed by the judgment debtor and liable to be sold or applied in satisfaction of the judgment debt, or
 - (ii) the applicant has learned of certain assets, which the applicant must describe, owned by the judgment debtor and liable to be seized or applied in satisfaction of the judgment, and has taken all necessary actions and proceedings for the realization of it, and that the amount realized by it was insufficient to satisfy the judgment, stating the amount so realized, and the balance remaining due on the judgment after application of the amount realized.

RSA 1980 cD-38 s14;1994 cC-10.5 s122

Order directing payment from General Revenue Fund**15** If the Court is satisfied

- (a) of the truth of the matters shown by the applicant as required by section 14,
- (b) that the applicant has taken all reasonable steps to learn what means of satisfying the judgment are possessed by the judgment debtor, and
- (c) that there is good reason for the belief that the assets of the judgment debtor that are liable to be sold or applied in satisfaction of the judgment or of the balance owing on it are insufficient to satisfy the judgment or the balance owing on it,

the Court may make an order directing payment of the unsatisfied judgment out of the General Revenue Fund.

RSA 1980 cD-38 s15;1994 c31 s5

Registration of copies of judgment

16(1) The spouse shall register forthwith in the proper land titles office certified copies of the judgment and of the order directing

payment of the unsatisfied judgment out of the General Revenue Fund.

(2) On the registration of the certified copies of the judgment and order in the proper land titles office, the spouse ceases to have any dower rights in any land registered or to be registered in the name of the married person and the land ceases to be a homestead for the purposes of this Act.

(3) On proof of the registration of the certified copies of the judgment and the order in the proper land titles office, and on receipt of a certified copy of the order, the Minister responsible for this Act shall pay the amount so ordered to be paid out of the General Revenue Fund and on paying that amount the Minister responsible for this Act is entitled to an assignment of the judgment and is subrogated to all the rights of the spouse who recovered the judgment.

RSA 2000 cD-15 s16;2006 c23 s24

Application of the Land Titles Act

17 The provisions of the *Land Titles Act* relating to recovery from the General Revenue Fund apply to applications for payment out of the Fund pursuant to this Act insofar as those provisions are not varied by the provisions of this Act.

RSA 1980 cD-38 s17;1994 c31 s5

Life Estate to Survivor

Life estate to surviving spouse

18 A disposition by a will of a married person and a devolution on the death of a married person dying intestate is, as regards the homestead of the married person, subject and postponed to an estate for the life of the spouse of the married person, which is hereby declared to be vested in the surviving spouse.

RSA 1980 cD-38 s18

Election of homestead by surviving spouse

19(1) The rights of a surviving spouse under section 18 in no case apply to more than one homestead, and if a married person dies owning 2 or more homesteads, the surviving spouse shall in writing, signed by the spouse, elect the homestead in which the life estate is claimed.

(2) The election shall be addressed to the Registrar of the proper land titles office and shall be in the prescribed form.

(3) If a married person dies owning 2 or more homesteads, no homestead belonging to the deceased married person shall be transferred or otherwise disposed of by the executor or administrator of the estate of the deceased married person until the executor or administrator has registered in the proper land titles office the election of the surviving spouse.

(4) If the surviving spouse neglects or refuses to make an election, the executor or administrator may, at the expiration of 3 months after the date of the death of the married person, apply to the Court for an order designating the homestead to which the dower rights of the surviving spouse attach.

(5) The executor or administrator shall register any order made pursuant to subsection (4) with the Registrar of the proper land titles office.

RSA 2000 cD-15 s19;2009 c53 s50

Effect of registering election, etc.

20 On the registration of

- (a) an election, or
- (b) an order designating the homestead of a deceased married person,

all other land belonging to the deceased married person and not designated in the election or the order is deemed not to be a homestead within the meaning of this Act, and the executor or administrator may transfer or dispose of it without any consent from the surviving spouse.

RSA 1980 cD-38 s20

Execution of consent

21(1) When a disposition of the homestead of a deceased married person is made during the lifetime of the surviving spouse, the spouse shall execute the consent in the prescribed form.

(2) The Registrar of Land Titles before registering a disposition of land that is made by the executor or administrator of the estate of a deceased married person, and that

- (a) does not purport to be consented to under this Act by the surviving spouse, and
- (b) is not accompanied with an order of the Court dispensing with the consent of the surviving spouse,

shall require from the executor or administrator an affidavit in the prescribed form.

RSA 1980 cD-38 s21;1985 c48 s1

Order dispensing with consent

22 In a case where the deceased person while alive could have made an application for an order dispensing with the consent of the spouse to a disposition, the executor or administrator of the estate of the deceased married person may apply to the Court for an order dispensing with the consent of the surviving spouse to a disposition.

RSA 2000 cD-15 s22;2003 cF-4.5 s117;2009 c53 s50

Personal property

23(1) When a life estate in the homestead vests in the surviving spouse on the death of a married person, the surviving spouse also has a life estate in the personal property of the deceased that is, pursuant to Part 10 of the *Civil Enforcement Act*, free from seizure under a writ of enforcement in the surviving spouse's lifetime and the surviving spouse is entitled to the use and enjoyment of that personal property.

(2) If a dispute arises as to the articles that are included in the personal property referred to in subsection (1), the question shall be submitted to the Court.

RSA 2000 cD-15 s23;2009 c53 s50

General

Mines and minerals

24(1) The dower rights given to the spouse of a married person by this Act apply to mines and minerals contained in a homestead, and no married person shall make a disposition of mines and minerals contained in or forming part of a homestead without obtaining in accordance with this Act the consent in writing of the spouse of the married person.

(2) Nothing in this section gives the spouse of a married person a dower interest in mines and minerals contained in any certificate of title registered in the name of the married person other than the certificate of title to the homestead, and no consent or acknowledgment under this Act is required to the disposition of those mines and minerals or any interest in them.

(3) Notwithstanding sections 13 to 16, no order may be made directing payment out of the General Revenue Fund of any

damages awarded to the spouse of a married person by reason of a disposition by the married person of mines and minerals, whether the disposition was of mines and minerals only or of the homestead including mines and minerals.

(4) When pursuant to section 11 a spouse recovers a judgment against a married person in respect of a disposition by the married person of the homestead including mines and minerals and the judgment is not paid, an order made directing payment of the unsatisfied judgment out of the General Revenue Fund shall relate only to that portion of the awarded damages that is based on the value of the surface rights of the homestead excluding the value of the mines and minerals, and shall so relate only to the extent that that portion of the damages remains unpaid.

RSA 1980 cD-38 s24;1994 c31 s5

Non-application of Act

25(1) When a married person is a joint tenant, tenant in common or owner of any other partial interest in land together with a person or persons other than the spouse of that married person, this Act does not apply to that land and it is not a homestead within the meaning of this Act nor does the spouse have any dower rights in it.

(2) When a married person and the married person's spouse are joint tenants or tenants in common in land, the execution of a disposition by them constitutes a consent by each of them to the release of their dower rights and no acknowledgment under this Act is required from either of them.

RSA 1980 cD-38 s25

Married persons

26 This Act applies to all married persons whether or not they have attained the age of 18 years, and for the purposes of this Act and every matter or thing done under or by virtue of its provisions, a married person of whatever age is deemed to be an adult.

RSA 1980 cD-38 s26

Regulations

27 The Lieutenant Governor in Council may make regulations prescribing forms for the purposes of this Act.

RSA 1980 cD-38 s27

