

JUNE 24, 2004

TO ALL REAL ESTATE BROKERS, AUTHORIZED OFFICIALS AND SALESPERSONS



NOTICES AND TRANSACTIONS

Effective June 30, 2004, a new *Homesteads Act* was proclaimed. The Act provides a non-owning spouse, including a non-owning common-law partner, with specific rights to homestead property. A non-owning spouse or common-law partner is the party whose name is not registered as a co-owner on the certificate of title for the property. If the property is co-owned by both parties, as joint tenants or tenants in common, as evidenced by both parties appearing on title, then *The Homesteads Act* does not apply.

A common-law partner is defined as: another person who, with the person, registered the common-law relationship with the Vital Statistics Agency; or another person who, not being married to the person, cohabited with him or her in a conjugal relationship for a period of at least three years, commencing either before or after June 30, 2004.

In conjunction with the new *Homesteads Act* amendments to *The Real Estate Brokers Act* were enacted. These amendments provide for the consent of the spouse or common-law partner who is not on title before disposing of the property.

The Real Estate Salesperson's Responsibility

Until the required consent is provided, an agreement of purchase and sale may be avoided by either buyer or seller. If the sellers of the property are married or in a common-law relationship and if the property falls within the definition of homestead and if title to the property is in joint names, then the spouses are parties to the disposition as co-owners and formal consent is not required. If, however, title to the property is in the name of only one spouse or common-law partner, then formal consent to disposition is required by the non-owning spouse. If the latter is the case, it is necessary to determine if there is more than one spouse or common-law partner with homesteads rights and, if so, determine which spouse has the homestead rights as it is the spouse or common-law partner with homesteads rights who must execute the consent.

It is recommended that the Seller's Homesteads Act Statements section of the Offer to Purchase be completed, since the statements provide evidence as to whether *The Homesteads Act* would apply to a particular transaction. This portion of the offer is completed after the offer or counter offer is accepted by the seller(s). The seller(s) must sign in the presence of a witness. The witness must be a person entitled to take affidavits under the Manitoba Evidence Act, which includes a Commissioner for Oaths or a Notary Public.

The **Homesteads Act Consent to Disposition and Acknowledgement** statement, **Schedule A** for residential form of offers to purchase and **Schedule B** for condominium form of offers to purchase, must be completed if the residence is a homestead and title to the property is not registered in both spouses' name or common-law partner's name. This portion of the offer should be completed at the time the offer is accepted by the seller or at the time a counter offer is made by the seller. The spouse or common-law partner must sign in the presence of a witness. The witness must be a person entitled to take affidavits under The Manitoba Evidence Act which includes a Commissioner for Oaths or a Notary Public.

The only way that a real estate salesperson can know with certainty whether the property is co-owned or not is by conducting a title search of the property in the Land Titles Office. If the owners are relying upon a Power of Attorney appointment to execute the sale and transfer documents, salespeople should be aware that an individual appointed as an attorney for his or her spouse is unable under The Homesteads Act to provide the necessary homestead consent or release for his or her spouse.

Note: It will be a matter of considerable convenience for real estate salespersons to be Commissioners for Oaths to act as witnesses in these declarations.

It will be necessary to use these schedules after June 30, 2004 which replaces all *Homesteads Act* Statement forms and Consent forms in the residential and condominium offers to purchase. Enclosed are copies of the applicable forms. These forms may also be obtained from The Manitoba Real Estate Association or through The Manitoba Securities Commission's web site; www.mbsecurities.ca

W.D. Baluk
Registrar
The Real Estate Brokers Act