

U.S. Government Land Laws in Nebraska, 1854-1904

INTRODUCTION

When Nebraska Territory was created in 1854, a vast tract of public land became available for settlement. During the ensuing half century, much of this land passed to private ownership under the Preemption Act of 1841, the Homestead Act of 1862, the Timber Culture Act of 1873, and the Kinkaid Act of 1904. Additional large acreages were reserved to the state as educational endowment land or granted to railroads as construction subsidies and subsequently sold to settlers.

Interest in family and social history has stimulated the use of federal land records by genealogists and local historians. Land records often aid in establishing or confirming information about an individual or family and reflect the settlement patterns in a community or locality. Yet government land records can sometimes be difficult to use or understand. Prior to beginning research in the records, the researcher should have some familiarity with the specific laws and procedures involved in acquiring a patent to a portion of the public domain.

This guide summarizes some of these laws and procedures and indicates the kinds of information which may be found within government land records. The focus is on the most familiar provisions of the Preemption, Homestead, Timber Culture, and Kinkaid Acts. A detailed study of these laws, their benefits, and their shortcomings, is not within the scope of this leaflet. There are a multitude of scholarly monographs and government publications which deal in depth with the disposal of the public domain of the United States.

THE PREEMPTION ACT OF 1841

Between 1854 and 1863, the most common type of land entry in Nebraska was the preemption claim under the Act of 1841. This law and its later amendments allowed settlers to file a preemption on up to 160 acres of surveyed or unsurveyed land and to receive title after paying a minimum price per acre established by the Government. As long as the settler complied with the terms of the act, his claim "preempted" subsequent claims against the tract. The Preemption Act remained in effect until repealed in 1891.

Filing a Preemption - Claimants had to be twenty one years of age, head of a family, and a U.S. citizen (aliens who had filed a declaration of intention to become a citizen-"first papers"-could file legal claims). The first step in filing a preemption entry was the completion of a declaratory statement at the land office. The declaratory statement (shown as "D.S." in the tract books) was merely a sworn statement signed by the settler which indicated that he or she had settled on a given tract of land and was declaring intention to claim said tract under the preemption law. This statement required the name of the claimant, residence, age, date of actual settlement, and a description of the tract.

When filing a preemption on a tract of "offered" lands, that is, lands formerly offered at a public sale and not sold, the declaratory statement had to be filed at the land office within thirty days of

actual settlement. When preempting a tract of land surveyed but not previously offered at public auction, i.e. "unoffered" lands, an individual had three months after actual settlement in which to file his declaratory statement. On unsurveyed lands, the declaratory statement was required to be filed within three months after the land office had received an approved plat (survey) of the township in which the claim was located. In such cases, it was possible for the settler to have "squatted" on a tract for some time prior to actually filing a preemption declaratory statement. Regardless of the time limit, a filing fee was required at the time the declaratory statement was made.

Preemption Proof - For preemptions, as well as other entries under the federal land laws, the settler was required to give proof that he or she had complied with the legal provisions of the law before receiving title to the land from the government. Hence the term "proving up". Preemptions on "offered" lands required proof and final payment within one year after the date of settlement indicated on the declaratory statement. At that time, the settler was required to complete a form known as a preemption proof, secure the testimony of two witnesses on a similar form, and pay for the land with cash, military bounty warrants, or agricultural college scrip, at the government price, usually \$1.25 per acre. This price was \$2.50 per acre on lands within alternate sections of railroad land grants (double minimum lands). Preemption proofs on "unoffered" or unsurveyed lands were required within thirty months after the expiration of the three-month period allowed for the filing of the declaratory statement. Other requirements for making proof were the same. Notice of intent to "prove up" was required to be published each week for not less than thirty days in a legal newspaper near the land. This provided notice to anyone who had an adverse claim to the specific tract so that a contest could be filed.

THE HOMESTEAD ACT OF 1862

This act is probably the most familiar of the various laws under which public land was acquired in Nebraska. Its effective date was January 1, 1863, and the site for the "first" homestead is commemorated by the Homestead National Monument near Beatrice, Nebraska.

The Homestead Act was designed to make land available "free" to those who would live on and cultivate a tract for a period of time, usually five years. Though the filing provisions were similar to the pre-emption requirements, there was no per-acre payment required for the land itself. An individual meeting certain requirements could claim up to 160 acres and not less than forty acres of available public land.

Filing a Homestead entry - The settler was required to complete an application affirming that he or she was age twenty-one or the head of a family, a U.S. citizen or had declared intention to become one, not already the owner of 320 acres of land within the United States, that he had not quit or abandoned land owned by him in the same state or territory, and that the homestead would be for his exclusive use. The entry was then recorded in the records of the land office upon payment of a filing fee. If actual residence had not been established, the settler had six months in which to do so.

Homestead Proof - In order to make final proof on a homestead, the settler had to reside upon and cultivate the land for five years. Certain special acts extended the residency period in the

event of grasshopper devastations or drought. After the residency period had been satisfied, an additional two years was allowed in which to make final proof, or a total of seven years from the date of entry.

The first step in making proof was to file notice of intention which was to be published in a legal newspaper nearest the land once each week for a period of thirty days. If there were no contests against the homesteader's claim, the final proof could be made. This was done at the land office or at a court of record nearest the land, when travel to the land office involved too great a distance. Like a pre-emption proof, the homesteader completed an affidavit "proving" that he had met the legal requirements and two witnesses completed similar forms testifying to the facts offered in proof of the claim. Homestead proofs required that the applicant be a citizen of the United States.

Homestead proofs (as well as preemption proofs) normally provided name, age, family status, citizenship, P.O. address, mortgages, date of settlement, description and value of improvements, date residency was established, and a description of cultivation or use of the land. The statements of the witnesses provided essentially the same information as corroborative evidence.

If the proof was satisfactory, the land office issued the final certificate, a copy of which was sent to the Commissioner of the General Land Office. This office then issued the patent (the well-known homestead document which is often found among family papers). Several months might elapse from the time the final certificate was issued until the patent was delivered to the homesteader. The deed to the property was recorded by the county register of deeds in the county where the land was located.

Soldier's Homesteads - Among the more common variants of the homestead law were the benefits granted to the Union soldiers who had served in the Civil War. A soldier with at least ninety days of service, or his widow and minor children, was entitled to deduct his time of service from the five-year residency requirement. If the soldier had been discharged due to wounds or service-connected disability, he could deduct the whole period of his enlistment, rather than the period actually served. In no case, however, could the homestead residency requirement be reduced by more than four years. In making proof, the individual had to give evidence of his military service.

Commuted Homesteads - If a settler desired, he could pay cash for his homestead and receive title to it without fulfilling the five-year residency requirement. In order to commute the homestead, an individual must have resided on, and cultivated, the land for not less than six months. A proof was required in the same form as for pre-emption filings and the settler paid the government price per acre for the land. Cash, military bounty warrants, or agricultural college scrip could be used. An individual who commuted a homestead entry could not move from the tract and legally file a preemption claim.

Preemptions changed to Homesteads - After a person had filed a pre-emption declaratory statement, he could change the filing into a homestead. The time during which the settler had resided on his pre-emption could be credited to the period of residence and cultivation required under the Homestead Act. Other requirements of the homestead law had to be fulfilled as well.

THE TIMBER CULTURE ACT OF 1873

This act was designed to promote tree-planting in the treeless areas of the West. Of all the land laws affecting Nebraska, the Timber Culture Act was perhaps the least successful and subject to many abuses. The author of the act was U.S. Senator Phineas W. Hitchcock of Nebraska. The Timber Culture Act was repealed in March, 1891.

Requirements for filing a Timber Culture entry

Originally, a timber claim could be filed by anyone. In 1874, the act was amended to require claimants to meet the same age and citizenship qualifications as the pre-emption and homestead acts. Not more than 160 acres could be claimed. Later amendments to the law made it possible for the total acres claimed to be in several smaller tracts as long as the aggregate did not exceed 160 acres. Timber claims did not require residence on the land. No more than one 160 acre timber claim was permitted in each section.

The original law provided for the planting of forty acres of trees on each 160 acres. This requirement was later reduced to ten acres, to be planted according to the following guidelines: When 160 acres were claimed, at least five acres were to be plowed during the first year. During the second year, this plowed acreage was to be cultivated and a second five acres plowed. In the third year, the initial five acres was planted to trees and the second five acres cultivated. The fourth year required the planting of trees on the second five acres, making a total of ten acres in trees. Not less than 2,700 trees were to be planted on each of the ten acres, or a total of 27,000 trees! If less than 160 acres were claimed, the acreage of trees was reduced proportionately. Non-compliance with the tree planting procedures made the timber claim subject to cancellation after one year. Certain exceptions or extensions were allowed in the event of destruction of the plantings by grasshoppers or the failure of seeds or cuttings to germinate.

Timber Culture Proofs - At the end of eight years from the date of entry, the settler could make final proof if the necessary conditions had been fulfilled. Five additional years were allowed to make proof, or a total of thirteen years from the date of entry. The claimant had to prove the trees had been planted and cultivated and that not less than 675 living trees per acre had survived. An affidavit or "timber culture proof" had to be completed by the claimant and two witnesses. Such proofs provided less personal information than did homestead or preemption proofs and more details about the planting and cultivation of the trees required under the act. Final certificate and patents were issued as they were under the other land laws.

RELINQUISHMENTS

All claims under the Homestead, Preemption and Timber Culture Acts were subject to relinquishment: that is, the claimant gave up any claim to the land which then reverted to the government, subject to further entry. It was illegal to speculate in public lands by filing a claim only for the purpose of relinquishing the tract to another person in return for payment. Despite this prohibition, the relinquishment proviso offered many opportunities for abuse and fraud. Numerous individuals claimed land without any intention to "prove up" and held it in order to "sell a relinquishment" to a second claimant. Often, the local real estate agent would act as the

middleman in such transactions by placing prospective settlers in contact with the speculator. The land agent himself probably was involved in the speculative scheme.

In order to avoid an overt violation of the law against claiming public lands for speculative purposes, the speculator would offer to sell the improvements on the tract (if any), such as a well, or a house, to the new settler. Once the money had changed hands, the claim would be relinquished at the land office and filed on immediately by the other party. The laws against speculation in public lands, as well as many other provisions of the federal land laws, were almost impossible to enforce.

THE KINKAID ACT OF 1904

The Kinkaid Act of 1904, authored by Nebraska Congressman Moses P. Kinkaid, was a special homestead law which applied only to the western and central portions of Nebraska (primarily the Sand Hills). This act allowed 640 acre homesteads in the designated areas, except for lands set aside as being suitable for irrigation. The act was an effort to respond to the fact that 160 acre tracts were far too small for productive agriculture and ranching in the relatively arid Sand Hills and high plains regions of Nebraska.

Filing a Kinkaid entry - The essential age and citizenship requirements were the same as the Homestead Act. Under the Kinkaid Act, persons not already having exercised their homestead privilege could enter an entire 640 acre claim. Those previously having a homestead entry were permitted to claim additional land not to exceed a total of 640 acres. Final proof on lands under the Kinkaid act could not be consummated until at least five years after the entry, regardless of the status of a former or existing homestead entry. Military service credit could be used to reduce the residency requirements, but Kinkaid homesteads could not be commuted for cash.

Kinkaid Proofs - Since the Kinkaid act was an amended version of the Homestead Act, legal requirements for making final proof were the same.

OTHER METHODS OF ACQUIRING GOVERNMENT LANDS

Purchase at Public Auction - Permitted when lands were "offered" at auction to the highest bidder, pursuant to presidential proclamation or public notice in accordance with General Land Office regulations.

Direct "Private Entry" - Direct purchase was permitted on lands formerly offered at public auction and not sold. The purchase price was payable immediately in cash, military bounty warrants, or agricultural college scrip, at a rate not less than \$1.25 per acre. In Nebraska, there was only a limited quantity of land which could be acquired by direct private entry. One example was land included within the former Pawnee Reservation (present Nance County). This land was first offered at public auction. When large quantities remained unsold, the remainder was subject to private entry.

INDIVIDUAL RIGHTS UNDER THE LAND LAWS

Each qualified individual was entitled to a single homestead, preemption, or timber culture right. Once a person had made entry on land under any of these laws, he had exhausted his rights under that particular law. He could not legally relinquish or sell a claim and file a new entry. This prohibition was often abused or ignored for speculative purposes.

USING THE GOVERNMENT LAND RECORDS

The Nebraska State Historical Society holds a set of original tract books used by the government land offices to record claims under the various land laws. A duplicate set or sets is also available in federal custody. The tract books at the Nebraska State Historical Society were received in the 1930's.

Entries in the tract books are recorded according to the legal description of land. The basic units under the American system of land surveys are section, township, and range. A township normally consists of thirty-six sections (one square mile each). Each section contains 640 acres or four quarter sections of 160 acres.

Tracts of land are described according to their location within townships and ranges. Ranges are vertical rows of townships measured east and west of the sixth principal meridian which divides Nebraska roughly from Yankton, South Dakota on the north, through Columbus, and forms the boundary between Thayer and Jefferson Counties on the south. Each township in a particular range is numbered beginning from the baseline which forms most of the southern border of Nebraska. Therefore, the fourth township north of the baseline and adjacent to the sixth meridian on the west would be recorded as Township Four North, Range One West. All townships in Nebraska are designated as "Townships North."

In order to locate entries in the tract books, it is necessary to know at least the township and range number, or to determine this data from plats or atlases. Once an approximate or exact legal description of the land is known, a chart available at the Nebraska State Historical Society will indicate which tract book includes the appropriate entries.

Once the particular tract book is selected, it is necessary to refer to the township and range designations which appear on each pair of facing pages. Without an exact legal description, it may be necessary to search all thirty-six sections in a given township or townships to find the entry being sought. Entries for three sections are located on each pair of facing pages.

INFORMATION PROVIDED IN THE TRACT BOOKS

The extreme left-hand column will indicate the type of land entry. Homesteads are usually identified by the designation "Home.," "Hd.," "H," or "H.A.," Preemptions may be recorded as "Pre." or "P.A." "T.C." is almost always the standard designation for entries under the Timber Culture Act. When none of these symbols appears, the land may have been entered by the use of military bounty warrants, agricultural college scrip (usually shown as A.C.S., Act, 1862), or by direct private entry.

Additional information for a particular entry will include the acreage entered, the name of the claimant (shown in the column marked "name of purchaser"), the date of sale, number of receipt and certificate of purchase, by whom patented, and the date of patent. Sometimes the filing date is shown in the columns marked "rate per acre" or "purchase money." Or the column marked "date of sale" may contain both the filing date and the date the final certificate was issued. Usually the date of patent is the date the settler received the patent from the government, which may have been several months after the final certificate was issued. The final certificate indicated that the settler had "proved up" and had complied with all legal requirements. Land entries commuted to cash or cancelled by relinquishment are usually indicated in the column marked "by whom patented." It is well to remember that several individuals may have made entry on a given tract, only to cancel that entry by relinquishment. The land then became subject to further entry so that several claims may be filed on the same land until someone finally received the patent.

Other land records can sometimes be found in the National Archives. These can include copies of the data furnished by the settler when making final proof. It is necessary to have the final certificate number, along with the claimant's name and a legal description of the land, when making a request for such records. For information on land records at the National Archives send your request with the above listed information to:

*Suitland Reference Branch
National Archives
Washington, DC 20409*

Subsequent sales or transfers of land originally acquired from the government are not recorded in the land office tract books. Such transactions are found in the deed records kept by the register of deeds in the various counties. Nor do the tract books show who purchased railroad lands. Sources for such data include the county deed books and the records of Burlington Railroad land sales available on microfilm at the Nebraska State Historical Society. The Union Pacific Railroad retains custody of records relating to the sale of its lands in Nebraska.

The government land records can be confusing. Staff assistance is often required to interpret them, and some of the information and the manner of its recordation may be unclear.

A NOTE ON LAND CERTIFICATES

Government land patents issued to individuals under the Homestead, Preemption, and Timber Culture Acts often are found among family memorabilia. Each certificate bears the signature of the U.S. President in office on the date the certificate was issued. A common question is whether the president personally signed each certificate. The answer is no, with the possible exception of land certificates issued early in the 19th Century. There were thousands of land certificates issued each year under the various land laws, and no president could have taken time to sign them personally. The presidential signature was affixed by a clerk in the General Land Office.

GLOSSARY OF TERMS

1. Agricultural College Scrip - issued under the Land Grant College Act of July 2, 1862, which donated 30,000 acres of public land to the states for each senator or representative in Congress. Introduced by Senator Justin Morrill of Vermont, the act was designed to provide for support of agricultural and mechanical colleges in the states. States having public lands within their borders could select lands therein. States having no public lands were issued "scrip" worth \$1.25 per acre up to the acreage of the land grant to which the state was entitled. This "scrip" was assignable and could be used as payment for pre-emptions, commuted homesteads, or direct private entry at the rate of \$1.25 per acre.

2. **Commutation** - cash payment in lieu of residency for the full term provided under the Homestead Act. If the settler did not wish to wait the required number of years, he could "commute" or purchase his claim with cash, military bounty warrants, or agricultural college scrip.

3. **Declaratory Statement** - (indicated as D.S. in the tract books) - A statement filed by the settler within a certain period after actual settlement. The declaratory statement indicated an intention to claim a specific tract under the preemption laws.

4. **"Double Minimum Lands"** - Public lands falling within the alternate sections inside the boundaries of railroad land grants. Considered more valuable, hence a minimum selling price of \$2.50 per acre.

5. **Entry** - the term used to indicate the first step in the process of claiming land under one of the various land laws. Synonymous with the terms "filing" or "filing a claim."

6. **Final Certificate** - a document issued by the land office after the claimant had completed all requirements to make final proof on a tract of land. The final certificate was sent to the General Land Office in Washington, D.C., which then issued a patent.

7. **Military Bounty Warrants** - beginning with the American Revolution and continuing through the Mexican War, Congress granted land as a bounty for military service. Bounty warrants were based on the length of service and in some cases, rank, and could be exchanged for public lands. These warrants were assignable and could be used as payment for preemptions, commuted homesteads, and direct private entry.

8. **"Minimum Lands"** - government lands available for sale at the established rate of \$1.25 per acre.

9. **"Offered Lands"** - lands which had been "offered" at public auction pursuant to presidential proclamation or public notice from the General Land Office. "Offered" lands not sold at auction or otherwise reserved or withdrawn were then subject to private entry.

10. **Patent** - the deed issued by the government for a tract of public lands claimed under the various land laws.

11. Proof - The final step in perfecting title to land entered under the government land laws. Although requirements varied, the settler was required to prove that he had complied with the legal requirements in order to receive title to his claim.

12. Proof of Publication - prior to making final proof, the claimant was required to publish notice of his intention to "prove up" once each week for a period of not less than thirty days, in a legal newspaper nearest the land.

13. Range - a vertical row of townships, measured east or west of a principal meridian. In Nebraska, ranges are numbered east and west of the sixth principal meridian which runs from Yankton, South Dakota, on the north, through Columbus, and forms the border between Thayer and Jefferson Counties on the south.

14. Relinquishment - A written statement, executed on the back of the duplicate filing receipt, which certified that a claimant desired to give up his pre-emption, homestead, or timber culture entry. The land then became subject to further entry. The register of the land office recorded the words, "cancelled by relinquishment" opposite the record of entry in the tract book.

15. Section - a primary unit of the U.S. system of land surveys, consisting of a one square mile tract containing 640 acres.

16. "Soldier's Claim" - soldiers serving a minimum of ninety days in the Union Army during the Civil War were permitted to deduct their time of service from the homestead residency requirements. If wounded, or discharged because of service-connected disability, the entire term of enlistment could be deducted.

17. Tree Claim - the popular terminology for a land entry made under the Timber Culture Act of 1873.

18. Township - a tract, usually six miles on each side, containing thirty-six square miles, or sections. Townships are numbered from south to north in Nebraska, beginning at the baseline forming the border between Nebraska and Kansas, and ascending to the Nebraska-South Dakota boundary. Abbreviated in land records as "Twp."

19. "Unoffered Lands" - lands which were subject to private entry without having first been "offered" at public auction.

Suggestions for further reading:

Dick, Everett Newfon. *The Lure of the Land: a Social History of the Public Lands from the Articles of Confederation to the New Deal*. Lincoln: University of Nebraska Press, 1970.

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Donaldson, Thomas. *The Public Domain: Its History with Statistics*. 1884. Reprint. New York and London: Johnson Reprint Corp., 1970.

Keener, John W. *Public Land Statutes of the United States*. Washington, D.C.: Government Printing Office, 1916.

Sheldon, Addison E. *Land Systems and Land Policies in Nebraska*. Nebraska State Historical Society Publications, Vol. XXII. Lincoln, 1936.

U.S. General Land Office. "Circular from the General Land Office Showing the Manner of Proceeding to obtain title to public lands . . ." Washington, D.C.: Government Printing Office, October 1880.