

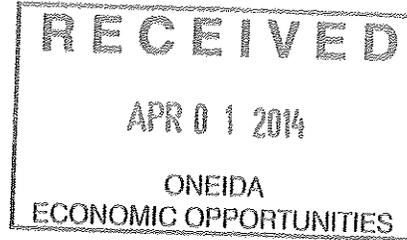


Centre of Excellence for Matrimonial Real Property

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As you may know, the federal government recently enacted the *Family Homes on Reserves and Matrimonial Interests or Rights Act* (the Act). This Act addresses a legislative gap that has been outstanding since 1986 when the Supreme Court of Canada ruled in *Paul v. Paul* and *Derrickson v. Derrickson* that provincial matrimonial real property laws cannot alter rights of possession of reserve land.

The Act applies to married couples and common-law partners living on reserve, where at least one of them is a First Nation member or an Indian. It seeks to provide basic protections and rights to individuals living on reserves regarding the family home and other matrimonial interests and rights, during a conjugal relationship, in the event of a breakdown of that relationship, and on the death of their spouse or common-law partner. The legislation sets out provisions for the enactment of First Nation laws respecting on-reserve matrimonial real property, as well as provisional federal rules to fill the legislative gap.

The provisions for the enactment of First Nations laws means communities are able to draft a matrimonial property law that addresses their particular needs and circumstances. Specifically, a First Nation may enact a law that applies:

- during a conjugal relationship;
- when that relationship breaks down; or
- on the death of a spouse or common-law partner, respecting the use, occupation and possession of family homes on its reserves and the division of the value of any interests or rights held by spouses or common-law partners in or to structures and lands on its reserves.

The Governor in Council determined December 16, 2013, as the date for when this part of the Act came into force. This gives First Nations a twelve month transition period to develop and approve, through community ratification, their own laws before the federal provisional rules apply.

In the event a community does not enact its own MRP law by December 16, 2014, substantive provisional federal rules for matrimonial real property protections and rights on reserves will be applied until a First Nation develops their own matrimonial real property law. These provisional rules provide the following rights and protections:

- *Equal right to occupancy of the family home*: provides spouses or common-law partners with an equal entitlement to occupancy of the family home until such time as they cease to be spouses or common-law partners.
- *Requirement of spousal consent for the sale or disposal of the family home*: provides spouses or common-law partners with protection that the family home cannot be sold or otherwise disposed of or encumbered during the marriage or common-law relationship without the free

and informed written consent of the spouse or common-law partner, regardless of whether that spouse or common-law partner is a First Nation member.

- *Emergency protection order*: allows a court to order that a spouse or common-law partner be excluded from the family home on an urgent basis (in situations of family violence).
- *Exclusive occupation order*: enables courts to provide short to long-term occupancy of the family home to the exclusion of one of the spouses or common-law partners. The duration of this order could range from a set number of days to a longer period, such as until dependent children reach the age of majority.
- *Entitlement of each member spouse or common-law partner to an equal division of the value of the family home and any other matrimonial interests or rights*: ensures that the proven value of a couple's matrimonial interests or rights in, or to, the family home and other structures and lands on the reserve are shared equally on the breakdown of a relationship.
- *Order for the transfer of matrimonial real property between member spouses or common-law partners*: allows a court to order the transfer, in some circumstances of the matrimonial interests or rights between member spouses or common-law partners together with, or instead of, financial compensation.
- *Entitlement of surviving spouses or common-law partners*: ensures that when a spouse or common-law partner dies, the surviving spouse or common-law partner may remain in the home for a specified period of time, and can apply under the federal rules for half of the value of the matrimonial real property interests or rights as an alternative to inheriting from the estate of the deceased.
- *Enforcement of agreements on the division of the value of the matrimonial property*: allows a court to make an order that can be used to enforce a free and informed written agreement made by spouses or common law partners that is not unconscionable and that sets out the amount to which each is entitled and how to settle the amount.

The National Aboriginal Land Managers Association (NALMA) was chosen to host the Centre of Excellence for Matrimonial Real Property (the Centre). The Centre is an arm's length First Nation organization established to: assist communities in developing their own matrimonial real property law; provide information on the protections and rights available to individuals and families living on reserve; assist with implementing the provisional federal rules; and provide research on alternative dispute resolution mechanisms.

To assist your clients in understanding the new legislation, we have included an Information Poster, Fact Sheet, and 20 copies of a "Matrimonial Real Property Rights on Your Reserve" Pamphlet. Please post and circulate as appropriate.

Should you require support or further information about any aspect of the above-mentioned material, please feel free to contact the Centre. We would be happy to hear from you and to provide any necessary assistance.

Kind Regards,

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Matrimonial Real Property Rights on Your Reserve



Matrimonial Real Property – What is it?

Matrimonial real property can include land held by one or both spouses or common-law partners and used by the family, i.e. houses, sheds, mobile homes or other structures on that land. It does not include things such as cars, money, clothing or televisions.

In the event of death, divorce or separation, people living off reserve have provincial law rights and protections regarding their family home. These provincial law rights and protections do not apply to those living on reserve.

To give people living on reserves comparable protections and rights as those living off reserve, a law was put in place on December 16, 2013, called the Family Homes on Reserves and Matrimonial Interests or Rights Act (the Act).

What Does the Act Do?

The Act gives First Nation communities the opportunity to either develop their own community matrimonial real property law or follow provisional federal rules. These rules, although intended to temporarily apply until a First Nation develops their own matrimonial real property law, can be followed for an indefinite period of time.

As of December 16, 2013, First Nation communities can make their own matrimonial real property laws under the Act. If a First Nation makes its own laws within one year (before December 16, 2014), the provisional federal rules will not apply to that community.

A First Nation may enact its own law at any time. However, on December 16th, 2014, the provisional federal rules will apply until the First Nation law comes into force.

If a community develops its own laws, the content of the law has to be agreed upon by the First Nation and its members. All members of voting age, 18 years or older, regardless of whether or not they live on or off reserve, have the opportunity to vote on the proposed law. Community members have the right to learn about the law and to be made aware when a vote on the law is taking place.

Protections

As of December 16, 2014, once the provisional federal rules are in effect, the following are examples of the protections and rights that would apply, should a First Nation community not have enacted its own community law:

Emergency Protection Orders

- In cases of domestic violence, a victim can apply to the court to remove their abusive partner from the family home. This application can be made by the victim or by someone else, such as a nurse or a social worker on behalf of the victim, without the presence of the spouse or common-law partner.

Family Home

- Either spouse or common-law partner has the right to occupy the family home during the conjugal relationship.
- A family home cannot be mortgaged or sold without the consent of both people in the relationship.
- If a marriage or common-law relationship breaks down, a spouse or common-law partner can apply to the court to have time-limited exclusive occupation of the family home. That means that a court can order a spouse or common-law partner to leave the family home for a period of time.
- On the death of a partner who held the interest in the family home, the surviving partner may live in the family home for a period of 180 days.

Division of On-Reserve Matrimonial Interests or Rights

- In the event of separation, divorce or death, both partners are entitled to half the value of the family home.
- A court can enforce written agreements that set out the amounts that each spouse or common-law partner are entitled to receive in the event of separation or divorce.

Balancing Your Rights and the Rights Of Your First Nation Community

The provisional federal rules specify:

- First Nation councils are to be notified about applications for an order made under the Act, such as an application made to the court for exclusive occupation of the family home.
- First Nation councils will not be notified in cases of emergency protection orders and confidentiality orders arising from domestic violence situations.
- Before issuing exclusive occupation orders, courts are to consider the collective interests of the First Nation members and any representations by the First Nation council with respect to that First Nation's cultural, social and legal context, etc.

What the Act Does Not Do

- Allow non-Indians or non-members to gain permanent possession of a family home;
- Give non-members of a First Nation the ability to sell reserve land; nor
- Allow the Minister of Aboriginal Affairs and Northern Development to have any role in reviewing, cancelling, rejecting or altering First Nation laws.

Support Available for You and Your Community

Centre of Excellence for Matrimonial Real Property

A Centre of Excellence for Matrimonial Real Property, hosted by the National Aboriginal Lands Managers Association (NALMA), is now available to assist First Nation Communities.

Contact the centre today!

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For more information, visit www.aadnc.gc.ca/MRP
contact mrp-bim@aadnc-aandc.gc.ca about the Act.