

# 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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c/o National Aboriginal Lands Managers Association  
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For more information, visit [www.aadnc.gc.ca/MRP](http://www.aadnc.gc.ca/MRP)  
contact [mrp-bim@aadnc-aandc.gc.ca](mailto:mrp-bim@aadnc-aandc.gc.ca) about the Act.