

WHAT LAW APPLIES TO MY SITUATION?

If your First Nation does not have their own Matrimonial Property Laws (MRP), Provisional Federal Rules apply. Check with your band office to see if they created these laws.

If your First Nation does have MRP laws, consult your band office.

Two possible results (from above process):

- Application for Emergency Protection Order (EPO)
- Application for exclusive occupation* of family home

*Exclusive occupation allows for short or long-term occupancy of the home for one spouse or common-law partner to the exclusion of the other.

What happens if my spouse dies?

Under Provisional Federal Rules, you have the right, First Nation member or not, to remain in the home for 180 days.

Whether FN member or not, you are entitled to share in the value of the interest or right in the family home held by spouse or common-law partner.

If you are a FN member and the matrimonial real property is located on your reserve, you may be entitled to share in the value of the right or interest in the land held by your spouse or common-law partner.

If you are not a FN member, real property cannot be transferred to you. However, you may be entitled to compensation.

Whether FN member or not, you may be entitled to exclusive occupation of the family home after 180 days, especially if there are children. Consult a lawyer to make sure you know if this applies to you.

Things that might affect a surviving spouse's rights:

- If they are a FN member or not
- What right or interest they and their spouse held
- If there is a valid will
- Estate rules in the *Indian Act*

The results may include a combination of the following (depending on each individual situation):

- Transfer of property
- Compensation via agreement or a court order
- Exclusive occupation of family home for a set period of time

Where can I get help?

- First, seek help in your own community. Contact your band office for more information.
- Next, consult a lawyer. These matters may be difficult to sort out on your own, so the assistance of a lawyer is important. Legal Aid may also help you pay for legal assistance.
- You can also contact The Centre of Excellence for Matrimonial Real Property for additional information. The website is: www.coemrp.ca
- The police and courts can assist you, particularly if domestic violence is present. Under the *FHRMIR Act*, courts can protect you and your property. The police are there to help enforce court orders.

NEW LAWS ABOUT MATRIMONIAL PROPERTY RIGHTS AND INTERESTS ON RESERVE

WHAT ARE THESE NEW LAWS?
HOW DO THESE LAWS AFFECT ME?



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WHAT IS THE *FAMILY HOMES ON RESERVES AND MATRIMONIAL INTERESTS OR RIGHTS (FHRMIR) ACT*?

1. What is the *Family Homes on Reserves and Matrimonial Interests or Rights (FHRMIR) Act*?

- This Act deals with specific family matters on First Nation reserves that the Indian Act and provincial and territorial laws do not address.
- It sets out rules, rights, and protections for spouses and common-law partners on reserve relating to matrimonial real property and other rights and interests.

2. Two important parts of the Act

The Act:

- Allows First Nation Councils to make laws about matrimonial real property.
- If a First Nation does not have its own laws or is creating them, Provisional Federal Rules set out laws that deal with matrimonial real property issues.

3. What is Matrimonial Real Property?

- Matrimonial Real Property is property that cannot be moved and is used by a couple and their family.
- The family home is the most common example of matrimonial real property. Land is not considered matrimonial real property.



4. Who does the Act apply to?

The Act applies to:

- Married couples living on a First Nation reserve
- Common-law partners living on a First Nation reserve

NOTE: One of the spouses or common-law partners must be First Nation

The *FHRMIR Act* was enacted in June 2013



- On December 16, 2013, First Nation Councils were given authority to create their own Matrimonial Real Property (MRP) law. Check with your band office to see if your First Nation has passed its own MRP laws. If your First Nation has created MRP laws, you will have rights and protections under those laws.

- One year later, on December 16, 2014, ALL sections of the Provisional Federal Rules found in the *FHRMIR Act* apply to ALL First Nation communities, with some exceptions, until they create their own.

- Exceptions include, First Nations who have created their own MRP laws, and First Nation communities who have signed an agreement under the *First Nation Land Management Act* or have a Self-Government Agreement. These agreements will include rules about what happens in the event of a relationship breakdown or the death of a spouse or common-law partner. Check with your band office to see if the Act applies to you.

BEFORE VS. AFTER *FAMILY HOMES ON RESERVES AND MATRIMONIAL INTERESTS OR RIGHTS (FHRMIR) ACT*

Under the new Act, if you find yourself in the midst of marriage or relationship breakdown due to domestic violence and you live on reserve, the following flowchart can help you understand the next steps and your rights and responsibilities.

Before the Act Consider the following scenario common before the new legislation

A mother and her children, after living on their First Nation for 20 years and enduring domestic violence from their husband and father, face homelessness.

Unfortunately, Emergency Protection Orders are unavailable on First Nation communities to protect her and her children.



There are also no court orders available on First Nations to give the mother and her children occupancy of the home, even temporarily. The husband and father has sole possession of the family home.

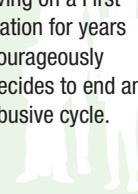
The choice: Stay in the community with no legal protection or leave everything.



This often meant women and children who were in this situation and living on a First Nation faced poverty and homelessness if they needed to leave the community, or more abuse if they had no choice but to stay.

After the Act A similar situation as the one above occurs...this time the Act deals with issues experienced by the woman and her children...

A woman who has experienced domestic violence from her common-law partner while living on a First Nation for years courageously decides to end an abusive cycle.



Now, under the Act, she can apply for a court order to get exclusive occupation of the family home for a period of time. This means the woman (and any children) would not have to leave their home or community.

Also under the Act, Emergency Protection Orders are also available. The woman in this scenario can apply for an Emergency Protection Order.

Note: If a person is married or in a common-law relationship on reserve, these laws apply to them, whether they are a member or non-member of the First Nation.

With an exclusive occupation order, her common-law partner is required to leave the family home.



Another alternative is that the woman can apply for a fair financial settlement for the family real property.

Other property such as cars, etc. is addressed by provincial family laws.

