

Date: _____ Member #: _____

Instructions:

1. Please read each question carefully.
2. Please answer each question. If you have any questions about this survey, please feel free to contact Nuala Robinson, MRP Coordinator, at the Band Administration office or by email at mrpcoordinator@nawash.ca
3. Please provide any other comments or suggestions you may have on the last page.
4. Completed surveys may be dropped off at the Band Administration Office for Nuala Robinson, MRP Coordinator.

Background

Non-members are not allowed to 'own' land on the reserve. These questions refer to whether non-members should have any other rights under this law.

Relationships
1. Do you want to grant non-member married spouses real property rights under this law? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partial Rights (_____)
2. Do you want to grant non-member common-law spouses real property rights under this law? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partial Rights (_____)
3. How long do people have to live together to be considered common-law spouses for purposes of this matrimonial law? <input type="checkbox"/> Under 1 year <input type="checkbox"/> 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> Over 3 years

Background

The *Family Homes on Reserves and Matrimonial Interests or Rights Act (Canada)* states “Matrimonial interests or rights means real property rights or interests held by a spouse or common-law partner, other than the family home. To be considered matrimonial real property, these interests and rights must have been (i) acquired during the conjugal relationship; (ii) acquired before the conjugal relationship but in specific contemplation of the relationship; or (iii) are not covered by (i) or (ii) but appreciated in value during the relationship.” This Law does NOT apply to bank accounts, household goods, or other personal property. It only applies to real property on the reserve.

Matrimonial Home and Real Property
4. Do you agree that the primary residence of the spouses during the relationship should be considered the matrimonial home? <input type="checkbox"/> Yes <input type="checkbox"/> No
5. Would other real property besides the home (i.e. vacant land, businesses, cottages, etc.) be covered under this law as matrimonial real property? <input type="checkbox"/> Yes <input type="checkbox"/> No

Background

The *Family Homes on Reserves and Matrimonial Interests or Rights Act (Canada)* states the following:

“(1) Subject to the *Indian Act*, a spouse or common-law partner must not dispose of or encumber (e.g. a mortgage) the family home during the conjugal relationship without the free and informed consent in writing of the other spouse or partner.

(2) A court may set aside a disposition or encumbrance contrary to section 15(1) and impose conditions on any future transaction. The spouse or partner must apply to the court.

(3) The disposition or encumbrance cannot be set aside of some other person paid for it in good faith.

(4) A spouse or common-law partner who did not consent to the transaction may claim damages from the other spouse or partner.

(5) The spouse or common-law partner who made the transaction is the one who may prove they got consent.

(6) A court may allow a spouse or common-law partner to dispose of or encumber the family home without getting consent if the other spouse or common-law partner:

- Cannot be found
- Is not capable of consenting, or
- Is unreasonably withholding consent”

Disposal of Matrimonial Real Property
6. A spouse would like to sell land, mortgage it, or dispose of it. Should the other spouse have to give consent for this to happen? <input type="checkbox"/> Yes <input type="checkbox"/> No
7. If yes, what should happen if the spouse sells, mortgages, or disposes of land without their spouse's consent? <input type="checkbox"/> Impose a fine under this law <input type="checkbox"/> Declare the transaction invalid

Background

The *Family Homes on Reserves and Matrimonial Interests or Rights Act (Canada)* provides detailed information on calculating compensation to spouses or common-law partners in Sections 28 to 33 of the FHRMIRA. (Copies of the relevant sections are attached as Appendix A.)

Division of Matrimonial Real Property at Relationship Breakdown
8. In the situation that spouses cannot agree on the value of the property, should that value be determined by an independent appraisal? <input type="checkbox"/> Yes <input type="checkbox"/> No
9. The current federal law allows a non-member spouse to claim ½ value of investments into the construction and maintenance of the home during marriage. Should this arrangement be made into our law? <input type="checkbox"/> Yes <input type="checkbox"/> No
10. For relationships where both spouses are band members, do you want the First Nation to be able to order the transfer of the home to one of the two spouses to carry out property division? <input type="checkbox"/> Yes <input type="checkbox"/> No

Background

The *Family Homes on Reserves and Matrimonial Interests or Rights Act (Canada)* provides that:

- (1) If a spouse or common-law partner applies within three 3 years after no longer living together, a court may decide any matter about what they owe each other (per section 28 and 29), including the following:
 - a. The amount payable by a spouse or common-law partner to the other; and
 - b. The following methods for settling the amount payable:
 - i. Payment of a lump sum
 - ii. Payment by installments
 - iii. Transferring a right or interest (section 31)
 - iv. Setting-off any amounts owed by a spouse or common-law partner to the other, or
 - v. Any combination of the above methods.
- (2) If a spouse or common-law partner applies after the 3-year period, a court may extend the 3-year period however long it considers appropriate, if the court is satisfied that the applicant did not apply on time because:
 - a. The delay was beyond the applicant's control; or
 - b. The applicant only became aware of the rights or interests after the 3-year period had expired.

11. In the event of a relationship breakup, how long will a spouse have to make a claim for matrimonial real property?

- 6 months 12 months 18 months Other (_____)

Comments/Suggestions

Thank you for your time!

APPENDIX A

SECTIONS 28-33 of FHRMIRA: BREAKDOWN OF A CONJUGAL RELATIONSHIP

28. (1) When a conjugal relationship breaks down, each spouse or common-law partner is entitled to receive 50% of the value of the other spouse or partner's right or interest in the family home as well as other compensation under ss. 28(2) and (3). The values are calculated as of the valuation date. The spouse or partner must make an application under s. 30.

(2) A spouse or common-law partner who is a member of a First Nation gets additional compensation totalling the amounts in s. (a) plus (b) plus (c):

- (a) 50% of the value of matrimonial rights or interests in or to lands and structures acquired both
 - during the relationship, and
 - before the relationship (but in specific contemplation of the relationship);
- (b) the larger of the amounts in s. (i) and (ii):
 - (i) 50% of the amount by which the value of the matrimonial rights or interests in or to lands and structures acquired before the relationship (but not in specific contemplation of the relationship) increased between the day when the conjugal relationship started and the valuation date, and
 - (ii) an amount equal to the difference between
 - any payments made by the spouse or common-law partner towards improvements made to these lands and structures, and
 - the amount of debt outstanding for making those payments as of the valuation date; and
- (c) if the lands and structures referred to in s. (b)(i) did not increase in value during the relationship, an amount equal to the difference between
 - any payments made by the survivor towards improvements made to these lands and structures, and
 - the amount of debts outstanding for making those payments as of the valuation date.

(3) A spouse or common-law partner who is NOT a member of the First Nation, gets additional compensation totalling the amounts in s. (a) plus (b) plus (c) below:

- (a) 50% of the value of matrimonial rights or interests in or to structures only [*not lands*] acquired both
 - during the conjugal relationship, and
 - before the conjugal relationship (but in specific contemplation of the relationship);
- (b) the larger of the amounts in s. (b)(i) and (b)(ii):
 - (i) 50% of the amount by which the value of the matrimonial rights or interests in or to structures only [*not lands*] acquired before the relationship (but not in specific contemplation of the relationship) increased between the day when the relationship started and the valuation date, and

- (ii) an amount equal to the difference between
 - any payments made by the survivor towards improvements made to these structures, and
 - the amount of debts outstanding for making those improvements as of the valuation date; and
- (c) the amounts of s. (c)(i) plus s. (c)(ii):
 - (i) for lands (other than the family home) acquired
 - during the relationship,
 - before the relationship (but in specific contemplation of the relationship) or that increased in value during the relationship,an amount equal to the difference between
 - payments made by the spouse or common-law partner towards improvements made to these lands, and
 - the amount of debts outstanding for making those improvements as of the valuation date, and
 - (ii) for structures acquired before the conjugal relationship (but not in specific contemplation of the relationship) that did not increase in value during the relationship, an amount equal to the difference between
 - any payments made by the survivor towards improvements made to these structures, and
 - the amount of debts outstanding for making those improvements as of the valuation date.

(4) The value of the above rights or interests is the difference between

- (a) the amount a buyer would reasonably be expected to pay for comparable rights or interests to the ones at issue; and
- (b) the amount of any debts outstanding for acquiring those rights or interests or to improve or maintain the lands and structures.

(5) Spouses or common-law partners may agree on another way to value their rights or interests.

(6) In this section, "valuation date" means

- (a) in the case of spouses, the earliest of the following days:
 - (i) the day they separated, with no reasonable prospect of reconciliation,
 - (ii) the day they divorced,
 - (iii) the day when the marriage was declared a nullity,
 - (iv) the day when a spouse made an application to court about the breakdown of the marriage, and
 - (v) the day when a spouse made a successful application to restrain improvident depletion of the family home and the matrimonial rights or interests; or
- (b) in the case of common-law partners, the earliest of the following days:
 - (i) the day when a common-law partner showed they did not want to continue the relationship,

- (ii) the day when a common-law partner made an application to court about the breakdown of the relationship, and
- (iii) the day when a common-law partner made a successful application to restrain improvident depletion of the family home and the matrimonial rights or interests.

29. If a spouse or common-law partner applies, a court may change the amount owed [s. 28] if that amount is unjust given the following factors:

- (a) the applicant's financial responsibility for the children;
- (b) the amount of debts of each spouse or common-law partner;
- (c) any significant change in the value of the rights or interests between the valuation date and the day the order was made;
- (d) whether a spouse or common-law partner can get exclusive occupation of the family home by agreement or order;
- (e) the availability of comparable housing;
- (f) the length of their relationship;
- (g) any agreement between the spouses or common-law partners;
- (h) whether the value of the rights or interests is less because of something done by the other spouse or common-law partner, e.g. selling for too little, improvident depletion and improperly selling or encumbering; or
- (i) anything else decided by the court.

30. (1) If a spouse or common-law partner applies within 3 years after no longer living together, a court may decide any matter about what they owe each other [ss. 28 and 29] including the following:

- (a) the amount payable by a spouse or common-law partner to the other; and
- (b) the following methods for settling the amount payable:
 - (i) payment of a lump sum,
 - (ii) payment by installments,
 - (iii) transferring a right or interest [s. 31],
 - (iv) setting-off any amounts owed by a spouse or common-law partner to the other, or
 - (v) any combination of the above methods.

(2) If a spouse or common-law partner applies after the 3-year period, a court may extend the 3-year period however long it considers appropriate, if the court is satisfied that the applicant did not apply on time because

- (a) the delay was beyond the applicant's control; or
- (b) the applicant only became aware of the rights or interests after the 3-year period had expired.

31. (1) If a spouse or common-law partner who is a First Nation member applies, a court may transfer to him or her the following rights or interests:

- a right to possession of land or structures allotted under s. 20 of the *Indian Act* (with or without a Certificate of Possession or a Certificate of Occupation),
- a right or interest (on reserve) subject to a land code or First Nation law under the *First Nations Land Management Act*,
- a right or interest (on reserve) subject to any First Nation law enacted under a self-government agreement with Canada,
- a right or interest (on reserve) subject to any land governance code or Kanesatake Mohawk law enacted under the *Kanesatake Interim Land Base Governance Act*,
- another right or interest (on reserve) in or to a structure recognized by the First Nation, or
- a right or interest (on reserve) recognized by a court order under s. 48.

Before making the transfer, the court must be satisfied that

- (a) the spouses or common-law partners already freely agreed in writing to the transfer and the agreement is not unjust considering the factors in s. 29;
- (b) the applicant already held the right or interest while living together; or
- (c) the transfer is appropriate because the spouses or common-law partners hold more than one such right or interest.

(2) The court's power to order a transfer under s. 31(1)

- (a) can be made despite ss. 24 and 49 of the *Indian Act*;
- (b) is subject to any land code or First Nation's law under the *First Nations Land Management Act*;
- (c) is subject to any First Nation law enacted under a self-government agreement with Canada; and
- (d) is subject to any land governance code or Kanesatake Mohawk law under the *Kanesatake Interim Land Base Governance Act*.

32. If a spouse or common-law partner applies, a court may make any order it considers necessary to restrain the improvident depletion of the family home and the matrimonial rights or interests in order to protect the following:

- (a) the potential right or interest the applicant might get from a court under ss. 20 or 31; or
- (b) the value of the rights or interests used to calculate what might be payable to the applicant under s. 30.

33. If the spouses or common-law partners make a written agreement that sets out the amount payable to each other and the methods for settling the amount by at least one of the methods referred to in s. 30(1)(b)(i), (ii) or (iv), a court may enforce that agreement if

- the party's consent to the agreement was free and informed, and
- the agreement was not unjust.