

Chippewas of Nawash Matrimonial Real Property Law Creation Community Survey

Introduction

This survey has been developed by the Chippewas of Nawash Unceded First Nation to assist our members to become aware of, and decide on, what issues they would like to address within this Matrimonial Real Property Law. This law is meant to fill a gap in the Federal Legislation that addresses property rights.

Background

Off reserve, the provincial Ontario *Family Law Act* gives married spouses certain rights over the matrimonial home. These include:

A. An equal right of possession of the matrimonial home

A spouse cannot be declared a trespasser in a matrimonial home even if they are not on title of the property, and they cannot be abruptly evicted if there is a fight or even a desire to divorce.

The provincial *Family Law Act* holds that the consent of both spouses (regardless of who holds title), is required to sell, encumber (mortgage), or dispose of any part of the matrimonial home. This prevents the spouse who has title to the land from selling or transferring the home out from under the marriage.

B. A right to exclusive possession of home, emergency and longer term

If there is spousal abuse, one spouse can be given exclusive possession of the matrimonial home by the court as a safe haven.

C. A right to ½ the value of the matrimonial home

In Ontario, divorcing spouses engage in a division of matrimonial property. They equally divide any increase in net worth of each of them secured during the marriage. This is done by each spouse calculating how much they earned during the marriage and then the court orders an equalization payment from one to the other, so that each earned the same during the marriage. This calculation considers what each person brought into the marriage, including debts and liabilities, and what property each holds at the end of the marriage.

When making this matrimonial property calculation, the matrimonial home is treated different from all other property the spouses hold. Regardless of who owned it before the marriage, who paid for it, or who owns it at the end, the married spouses are entitled to ½ the equity in the matrimonial home upon divorce. The court can order that the home be sold and the proceeds divided between the parties. This is usually done to accomplish the division of property equalization.

Common law spouses are not given these rights.

As provincial law cannot affect property rights on reserve for constitutional reasons, these sections of the Ontario *Family Law Act* do not fully apply on reserve.

The Federal *Family Homes on Reserve and Matrimonial Interests and Rights Act* legislates on the issue of matrimonial real property on reserve. The law created a set of laws which apply by default but recognizes that the First Nation can create its own law to deal with these same issues.

Marital Real Property Law (MRP Law)

By reading the supplementary material and filling out the surveys, you will play a key role in identifying the principles which are important in creating our own MRP Law. The MRP Law will replace the *Family Homes on Reserve and Matrimonial Interests and Rights Act*. This MRP Law will provide the rules by which Chippewas of Nawash manage disposition of property following divorce or inheritance of real property (i.e., family home) on its reserve.