

Date: _____ Name: _____ 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 (519-534-1689) or cell (519-379-8414) 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

The *Family Homes on Reserves and Matrimonial Interests or Rights Act (Canada)* states “When a spouse or common-law partner dies, the surviving spouse or partner may occupy the family home for a period of 180 days. This includes non-members and non-Indians.”

Rights of Occupation of the Matrimonial Home at Death of Spouse

12. Should the non-member spouse have a right to reside in the matrimonial home after their member spouse dies?

- Yes No

13. If the non-member spouse is allowed to live in the home after their member spouse dies, how long should they be allowed to reside there immediately after the death?

- 2 months 6 months Longer
 As long as the spouse is guardian of their band member children

14. What if there is a band mortgage or lease or rent agreement on the home? Who will pay these monthly fees after the death of a spouse?

- The estate (if able)
 Surviving spouse (as their rent) until such time that heirs occupy the home
 Heirs
 Depends on who is living in the home

Background

Sections 16 to 19 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act (Canada)* outline a number of provisions under Emergency Protection Orders. Essentially a spouse or partner may apply personally, or someone may apply on their behalf. Judges are required to follow federal regulations and have a number of points to consider. There are several orders that a judge may make to protect persons and/or children that may be involved. A person may also apply to the courts to have an emergency protection order changed or revoked. There may be a publication ban or public banned from attending court in order to protect identities of the involved spouses/partners, witnesses, or child(ren). A copy of the relevant sections is attached as Appendix B.

Emergency Protection Orders (generally short-term)
15. What rights do you want to give spouses at the start of an Emergency Protection Order? Check all that apply. <input type="checkbox"/> Emergency Funding <input type="checkbox"/> Police Protection <input type="checkbox"/> Habitation in the home <input type="checkbox"/> Court Ordered Restraining Order
16. How long will the Emergency Protection Order last? <input type="checkbox"/> Until order is restored <input type="checkbox"/> Until the court has ruled
17. What will the court consider when deciding a request for an Emergency Protection Order? <input type="checkbox"/> Need for police protection (domestic violence, children, etc.) <input type="checkbox"/> No court involvement, First Nation will control <input type="checkbox"/> Other _____

Background

The *Family Homes on Reserves and Matrimonial Interests or Rights Act (Canada)* provides that the court must consider a number of issues in granting exclusive occupation of the family home and outlines some of the items that an order may include. There may be conditions and a time limit imposed by the court. A grant of exclusive occupation does not change who holds a right or interest in or to the family home. Any person who disobeys an emergency protection order or an order to leave the family home and not come back is guilty of a punishable offence and may be fined up to \$5000 and/or imprisoned up to one year.

18. In the event that an Emergency Protection Order expires for a non-member spouse, do you want that non-member spouse to be able to apply for an exclusive occupation order (longer time to exclusively reside in the home) for the on-reserve home?
<input type="checkbox"/> Yes, automatically <input type="checkbox"/> Yes, by agreement with the First Nation <input type="checkbox"/> No

19. What types of things should be considered when deciding on ordering an exclusive occupation order after an Emergency Protection Order expires? Check all that apply.

- Best interests of the child(ren)
- Interests of elderly occupying in the home
- Terms of agreement between spouses
- Financial situation(s)
- Collective interests of First Nation (council input)
- Medical issues of applicant(s)
- History of family violence or abuse
- Other _____

Comments/Suggestions

Thank you for your time!

APPENDIX B

SECTIONS 16-19: EMERGENCY PROTECTION ORDER

16. (1) A spouse or common-law partner may apply to the court for an emergency protection order. The application may be made without notice to the other spouse or common-law partner. The order may last for up to 90 days and may contain one or more provisions in s. 16(5). The judge may make the order if satisfied that

- (a) family violence has occurred; and
- (b) the order should be made because of the seriousness or urgency of the situation to protect persons or property.

(2) A spouse or common-law partner may apply to the court, even if he or she was forced to leave the family home as a result of family violence.

(3) A peace officer or other person may apply for the emergency protection order on behalf of the spouse or common-law partner with that person's consent. If consent is not given, they may apply with permission of the judge. The judge must follow federal regulations on this point.

(4) The judge must consider the following:

- (a) the history and nature of the family violence;
- (b) the existence of immediate danger to persons at risk of harm or property at risk of damage;
- (c) the best interests of any child in their care, including a child's interest in keeping a connection with their First Nation;
- (d) the interests of any elderly person or disabled person who normally lives in the family home and who is cared for by either spouse or common-law partner;
- (e) whether someone else holds a right or interest in or to the family home;
- (f) how long the applicant has lived on the reserve; and
- (g) any exceptional circumstances that justify removing someone else from the family home (e.g. family violence, psychological abuse).

(5) The order may:

- (a) give the applicant exclusive occupation of the family home and reasonable access to the home;
- (b) require any person to leave the family home and not come back;
- (c) direct a peace officer to evict the other spouse or common-law partner and any other person from the family home;
- (d) prohibit any person who was required to leave the family home from going near the family home;

- (e) direct a peace officer to accompany the other spouse or common-law partner or other person in order and supervise the removal of their personal belongings; and
- (f) order anything else the judge considers necessary to protect persons or property at risk.

(6) Everyone named in the order must obey it when they learn of it.

(7) A peace officer must give a copy of the order to the persons named in the order, either directly or in another way allowed by the court. The peace officer must inform the applicant as soon as each person gets a copy.

(8) The peace officer is not personally liable for anything done (or not done) in good faith.

(9) In this section, "family violence" means any of the following things done by one spouse or common-law partner against the other, a child cared for by either them, or any other person who normally lives in the family home:

- (a) wilful and unlawful force, (not including self-defence);
- (b) intentionally or recklessly causing bodily harm or damage to property;
- (c) intentionally or recklessly doing (or threatening) something that causes a reasonable fear of bodily harm or damage to property;
- (d) sexual assault, sexual abuse or threatening to do either of those things;
- (e) unlawful forcible confinement; or
- (f) criminal harassment.

17. (1) The justice of the peace or judge must forward a copy of the order under s. 16 and all the supporting materials to the court.

(2) The court must review the order within three working days or as soon as a judge becomes available.

(3) The court, after reviewing the order and the materials, must:

- (a) confirm the order, if satisfied that it was supported by sufficient evidence; or
- (b) order a new hearing of the matter by the court, if not satisfied that it was supported by sufficient evidence.

(4) The court must notify the parties and any person named in the order of its decision and of any resulting procedures.

(5) A confirmed order is deemed to be an order of the court.

(6) Even if the court orders a new hearing, the order remains effective unless the court orders otherwise.

(7) The new hearing must consider

- the materials present at the original hearing,
- any new evidence presented at the new hearing, and
- any evidence about the collective interests of First Nation members.

(8) At the new hearing, the court may confirm, change or revoke the order under s. 16 and make it last longer than the 90-day period [s. 16(1)].

(9) An application made under s. 18 must be considered at the new hearing, unless the new hearing has already begun.

18. (1) Any person involved in an exclusive occupation order [ss. 16 or 17] can apply to the court to have it changed or revoked. The application must be made

- (a) within 21 days after receiving notice of the order, or within any longer time that the court allows; and
- (b) at any time, if the situation has changed significantly.

(2) The court may confirm, change or revoke the order and may make it last longer than the 90-day period [s. 16(1)].

(3) The court hearing must consider

- the materials present at the original hearing,
- any new evidence presented at the new hearing, and
- any evidence about the collective interests of First Nation members.

19. (1) Subject to s. 19(2), the court may order:

- (a) a ban on the public attending all or part of a s. 17 new hearing or a s. 18 hearing;
- (b) a publication ban on the identity of a party, witness or child; and
- (c) a disclosure ban on any related information in a court document or record.

(2) The court may only make the order under s. 19(1) if satisfied that

- (a) it is necessary for the safety of a party or witness or the safety or physical or emotional well-being of a child; or
- (b) protecting a party, witness or child from undue hardship or adverse effect outweighs the public's right to the information.