



August 2022

Dear Nawash Member,

Over the past two years our MRP Coordinator and Committee have worked to obtain your input into our Matrimonial Real Property Law (MRP Law). The results of numerous surveys were used to determine the principles that our law will be based on. The reason for this work was so that we could create and enact a law that is relevant to us as members of the Chippewas of Nawash Unceded First Nation. Once this law is enacted, we will no longer be subject to the rules of the Family Homes on Reserves and Matrimonial Rights or Interests Act (FHRMIRA) that was enacted by the Government of Canada in December of 2014.

This booklet includes:

1. An Executive Summary, which is a brief explanation of the larger law document;
2. A copy of draft #1 of the proposed MRP law;
3. A table which provides the original FHRMIRA language, our proposed language for our law, and the reason for the changes being made.

Community meetings will be held on October 13, 14, and 15 and you are encouraged to come out to ask questions and provide feedback. Please watch the newsletter for more details on these meetings. Our MRP Committee, MRP Coordinator, and Band Lawyer will be there to answer any questions and help you understand what this means for us. If you cannot attend or prefer to ask your questions anonymously, please contact the MRP Coordinator at the band office to submit your questions for the meeting.

We hope to see you there and work together to truly make this "Our Law, Our Way".

Yours truly,

Gimaa Kwe (Chief) Veronica Smith



**Draft Matrimonial Real Property (MRP) Law  
Chippewas of Nawash Unceded First Nation**

**Executive Summary**

**RECITALS/INTRODUCTION**

This section is intended to provide any court interpreting the law with a clear statement of the intentions of the First Nation, and the powers they are using. This section contains statements about Chippewas of Nawash Unceded First Nation (CNUFN) and their rights to self-governance and stewardship of their lands. It indicates that the First Nation intends that certain of Canadian and Provincial laws will have no effect once this Matrimonial Real Property Law is adopted by CNUFN. It also provides statements as to the wish to adopt a law which will reflect CNUFN values. The steps taken to confirm membership approval of the law are clearly stated, including the holding of a referendum and the results of such referendum.

**Part 1.0 TITLE**

This section formally sets the name the Law.

**Part 2.0 DEFINITIONS, INTERPRETATION and APPLICATION**

A list of terms are defined with their meanings to be used when applying the Law. Additionally, there are guidelines for how the law is to be interpreted or understood, and how it should be applied. The purpose of the law is expressed as providing for the use, occupation and possession of family homes on reserves.

**Part 3.0 FAMILY HOME**

Spouses have equal rights to occupy and use the home during their relationship, with the rights of children to occupy the home being more important than the rights of either parent. Details on when occupation rights end (i.e., upon divorce) are included as well.

This section outlines how and under what circumstances a spouse or partner may dispose of or encumber the home (i.e., by sale or transfer, or by mortgage); and that such disposal or encumbrance must be with the agreement of the other spouse or partner. The consequences of failing to obtain consent of the other spouse or partner are explained, as well as circumstances under which a transaction may be made without consent.

In this part, the situations under which an Emergency Protection Order of up to 90 days may be issued, and how they may be obtained or applied to a given situation are set out. The section sets some of the matters a judge must consider when issuing such an Order including any history of, and the nature of, any family violence, the existence of danger to others in the home, the best interests of children, and the interests of any elderly living in the home, among others.

Emergency Orders must be reviewed by a court within 3 working days, or as soon as a judge is available. Family Violence is defined and an outline is included of what must be considered by the courts in issuing orders due to family violence. The law sets out the consequences, fines or imprisonment, for ignoring or contravening such an order.

Exclusive Occupation Orders are defined, including what courts must consider when issuing such an order, and the orders that a court can make. In the event a situation changes after such an order is issued, there are provisions for changing or revoking an Exclusive Occupation Order.

In the event of the death of a spouse or partner, the surviving spouse may apply for Exclusive Occupation of the family home. This is subject to certain conditions and several issues to be considered by the courts include best interests of children, elderly, disabled, terms of a will or cohabitation agreement, medical condition of survivor and how long they may have lived on the reserve (in the case of a non-member). In all instances the cultural, social, and legal context must be considered.

#### **Part 4.0 DIVISION OF THE VALUE OF FAMILY HOME**

If a relationship breaks down, this section outlines the options for calculating a division of value of the family home. It defines “valuation date” for the purposes of this division, as well as setting out how the starting value of the family home is to be determined. Conditions the court may consider are listed, and a time limit for making a claim is set.

If a spouse or partner passes away, this section outlines the method for calculating the value of the family home in the event the surviving spouse or partner is not a member and therefore not eligible to assume ownership of the home. It also provides a time limit for the surviving spouse to make a claim.

In either a breakdown or death of a spouse or partner, if there is an existing cohabitation agreement, the courts must consider this as long as the agreement was signed with free and informed consent. Courts must hear any representations from Council regarding the cultural, social, and/or legal context of the application, as well as Council’s views on whether or not the order should be made.

In events of a dispute, traditional dispute resolution will be attempted, followed by any alternate dispute resolution methods enacted by CNUFN, with the courts being the final resolution, except as the dispute relates to emergency protection or exclusive occupation under the Law.

Other provisions include guidelines for how matters will be managed in the event there is a dispute but the person passes away prior to the dispute being resolved.

### **Part 5.0 TRANSITIONAL PROVISIONS**

This section provides guidelines for whether a case falls under the current provisional federal rules (the government's existing FHRMIRA law) or whether the MRP Law would govern.

### **Part 6.0 AMENDMENT OR APPEAL**

The law will be reviewed on a regularly scheduled basis of at least every five years, unless it is deemed necessary to do this sooner for any of the listed reasons. If deemed appropriate, the law may be revised or repealed, and the guidelines for doing this are clearly described in this section. Members will vote on any amendments or repealing of the law. Minor revisions do not need to be voted on and these are listed.

### **Part 7.0 COMING INTO FORCE**

This final section outlines how the start date of the MRP Law is determined.



**Chippewas of Nawash Unceded First Nation Matrimonial Real Property Law**

WHEREAS the Chippewas of Nawash Unceded First Nation (hereinafter referred to as the “CNUFN”) has from time immemorial used and occupied its lands; and,

WHEREAS the CNUFN has the inherent right to govern itself, its members, and its lands;

WHEREAS the CNUFN has an unextinguished right to self-determination, as affirmed by the United Nations Declaration on the Rights of Indigenous Peoples, which includes the right to govern itself, its members and its lands; and,

WHEREAS the CNUFN has an unextinguished and inherent right of self-governance which emanates from its people, culture, land and Aboriginal and treaty rights, which are recognized by section 35 of the *Constitution Act, 1982*; and,

WHEREAS the CNUFN reserve land, the Neyaashiinigiing Reserve, has never been ceded and continues to be held for the exclusive use and benefit of its members and is also considered to be a reserve pursuant to the *Indian Act*; and,

WHEREAS the CNUFN desires to protect its members living on its reserve lands in accordance with its culture and traditions; and,

WHEREAS the CNUFN has agreed to enact rules and procedures applicable on the breakdown of a marriage on the use, occupancy and possession of land in the CNUFN, and the division of interests in that land or property; and,

WHEREAS it is also the desire of the CNUFN to ensure the land in the Neyaashiinigiing Reserve remains for the use and benefit of its members for all time; and,

WHEREAS a person who is not included on the CNUFN Membership list cannot own an interest in land in the Neyaashiinigiing Reserve; and,

WHEREAS this CNUFN Matrimonial Property Law supersedes and replaces the *Family Homes on Reserves and Matrimonial Interests and Rights Act* (hereinafter referred to as “*FHRMIRA*”), provincial matrimonial laws, any agreements made between matrimonial partners and portions of wills that relate to Matrimonial Real Property on the Neyaashiinigiing Reserve; and,

WHEREAS Ontario laws respecting family homes and real property do not apply to reserve lands; and,

WHEREAS the CNUFN does not wish to be bound by the default provisions of the federal *FHRMIRA*; and,

WHEREAS the CNUFN has always resolved issues relating to family homes and real property located on CNUFN lands with its own customs, traditions and practices, which have evolved over time; and,

WHEREAS the CNUFN desires to provide a law appropriate to our culture and traditions respecting the use, enjoyment and occupation of family homes on its reserve lands and the division of real property rights or interests held by spouses or common-law partners on reserve lands; and,

WHEREAS upon the breakdown of a marriage or common-law relationship, the CNUFN intends to provide rights and remedies, without discrimination on the basis of sex, to spouses and common-law partners who have or claim interests or rights to family homes located on CNUFN lands; and,

WHEREAS the CNUFN recognizes that spouses and common-law partners have a right to enter into domestic agreements that set out their respective rights and obligations upon separation, divorce, or death with regard to their family home located on CNUFN lands and to resolve their disputes regarding such matters amicably; and

WHEREAS CNUFN believes that the best interests and welfare of all children must be paramount when determining the rights and interests of spouses and common-law partners and that family homes should be a place of safety and comfort for children; and,

WHEREAS the CNUFN wishes to make provision for member children of the spouses ending their relationship to reside in the Matrimonial home as set out in this Law; and,

WHEREAS non-member spouses, given their inability to own a legal interest in First Nation land, should receive some monetary compensation from the member spouse for any equity in the home or any improvements to the home since they moved into the home, but not the reserve land; and,

WHEREAS the CNUFN Council or its designate has the authority to implement the agreement reached between the spouses, or through any Dispute Resolution Process in place at that time, about the matrimonial home as long as agreements and decisions are not inconsistent with this and any other laws of the CNUFN; and,

WHEREAS the *FHRMIRA* recognizes the jurisdiction of the CNUFN to enact its own laws that apply during a relationship, when that relationship breaks down, or on the death of a spouse or common-law partner, respecting the use, occupation and possession of family homes on its reserves and the division of the value of any interest or rights held by the spouses or common-law partners in or to family homes on reserves; and,

WHEREAS the following steps were taken to confirm that the membership of CNUFN approves of this law,

1. The membership of the CNUFN was notified of the law, the date of a referendum on the adoption of this law, and how they could participate in that referendum as follows,
  - a) the draft law and the notice of referendum were posted on the CNUFN official web page as of \_\_\_\_, 2022, and remained there until after the referendum was closed;
  - b) a digital copy of the draft law and the notice of referendum were sent to all members who subscribe to the CNUFN Members' Newsletter on \_\_\_\_, 2022;



- c) the draft law and notice of referendum were posted on the CNUFN Council Facebook page as of \_\_\_\_, 2022 and remained there until after the referendum was closed;
  - d) the draft law and the notice of referendum was posted at the Band Administration Office, along with a notice that copies of the law were available by request as of \_\_\_\_, 2022; and
  - e) by mailing a copy of the draft law and the notice of referendum to each eligible voting member of CNUFN.
2. A community meeting was held at \_\_\_\_, where members were advised on the contents of this Law and they were allowed to pose questions about the affect of this Law;
  3. The referendum on the adoption of this law was held, and members of CNUFN who were 18 at the close of the referendum were allowed to vote in person, by mail-in ballots, or through digital voting mechanism, with the voting closing on \_\_\_\_, 2022; and,
  4. The result of the referendum was that \_\_\_\_% of all members of CNUFN members who were 18 or older at of the closing date of the referendum cast a vote, and \_\_\_\_% voted in favour of adopting the within law;

**NOW, THEREFORE**, the Chief and Council of CNUFN hereby enact as follows:

## **PART 1.0 TITLE**

The title of this Law is the *CNUFN Matrimonial Real Property Law*.

## **PART 2.0 DEFINITIONS, INTERPRETATION AND APPLICATION**

### **2.1 Definitions**

The following definitions apply in this Law,

1. *Child* means a person who is less than 18 years of age, and who is the biological or adoptive child of a spouse within the meaning of this law;
2. *Common-law partners* mean:
  - a) Two (2) persons who are not married to each other or in a domestic partnership and who have lived together for a period of not less than four (4) years in a conjugal relationship; or
  - b) Two (2) persons who are not married to each other and who live together in a conjugal relationship and who have a child or children of the relationship;
3. *Council* means the CNUFN Council which has the same meaning as the expression “council of the band” in subsection 2(1) of the *Indian Act*;

4. *Court*, unless otherwise indicated, means, in respect of a province, the court referred to in any of paragraphs (a) to (e) of the definition of *court* in subsection 2(1) of the *Divorce Act*;
5. *CNUFN* is Chippewas of Nawash Unceded First Nation, an indigenous nation that has used and occupied the Neyaashiinigmiing Reserve since time immemorial, which is also a “band” within the meaning of the *Indian Act*, and which is represented by its Council;
6. *Domestic Agreement* means a written agreement that is signed by two (2) parties in front of a witness in which the parties agree on their respective rights and obligations with respect to the family home and any other on property or interest covered by this law:
  - a) during their marriage or common-law relationship,
  - b) on separation,
  - c) on the annulment or dissolution of their marriage, or
  - d) on death of one or both of them;
7. *Elderly* means a person who is 65 years old, or older;
8. *Emergency Protection Order* or *EPO* means an order issued by a court pursuant to s.3.4 hereinbelow to protect the family members from violence and/or the Family Home from damage;
9. *Exclusive Occupation Order* or *EOO* means an order issued by the court pursuant to s.3.6 hereinbelow providing an exclusive right to the sole occupancy of the Family Home to one of the spouses for a set period of time. For clarity, an EOO does not grant or affect a change in ownership over the Family Home.
10. *Family Home* means the family matrimonial home located on the Neyaashiinigmiing Reserve that:
  - a) is normally resided in by the two (2) spouses or common-law partners, or if they have separated or one (1) of them has died, it was normally resided in by them on the day on which they separated or the death of one (1) of them occurred; and
  - b) includes lands, buildings and fixtures registered in the name of at least one (1) spouse or common-law partner in the Lands Register, as well as homes that are not fixtures to land, such as mobile homes;
  - c) if the structure is normally used for a purpose in addition to a residential purpose, family home only includes the portion of the structure that may reasonably be regarded as necessary for the residential purpose;
  - d) may be held under the following interests or rights referred to in the *Indian Act*:
    - (i) a right to possession, with a Certificate of Possession or a Certificate of Occupation, allotted in accordance with section 20 of that Act,
    - (ii) a permit referred to in subsection 28(2) of that Act, and
    - (iii) a lease under section 53 or 58 of that Act; or,

- (iv) an interest or right in or to reserve land that is subject to any CNUFN land code or First Nation law as defined in subsection 2(1) of the *First Nations Land Management Act*, to any CNUFN law enacted under a self-government agreement to which Her Majesty in right of Canada is a party;
  - e) is occupied by the spouses or common-law partners under a lawful and binding lease;
  - f) may be an interest or right in or to a structure — that need not be affixed but that must be situated on reserve land that is not the object of an interest or right referred to in paragraph (a) — which interest or right is recognized by a court order made under section 48 of the *Indian Act*.
- 11. *First Nation* means the Chippewas of Nawash Unceded First Nation.
- 12. *Indian Act*, means the *Indian Act*, R.S.C., 1985, c. I-5;
- 13. *Judge* means any of the following persons who are authorized by the lieutenant governor in council of the province to act as a judge for the purposes of this Act:
  - a) a justice of the peace appointed by the lieutenant governor in council of the province;
  - b) a judge of the court in the province; or
  - c) a judge of a court established under the laws of the province;
- 14. *Member* or *First Nation member* means a person whose name appears on the CNUFN band list, as defined in the *Indian Act*, or who is entitled to have their name appear on that list. A *Non-Member* is a person who is not on the membership list of the CNUFN and who is not entitled to have their name on that list;
- 15. *Minister* means the Minister of Indigenous Services Canada, or such other Minister as the Government of Canada may determine who fulfills the same purposes;
- 16. *Neyaashiinigiing Reserve* is the unceded reservation lands of the CNUFN, which were formerly known as the Cape Croker Indian Reserve No.27;
- 17. *Normally Reside* means, for the purpose of determining the Family Home under this law, the home where the spouses or common-law partners resided together most often over the preceding 12 months, however, if the couple sold what was their Family Home less than 12 months from the end of their conjugal relationship, it means the home where the couple resided together most often between the sale and the end of their conjugal relationship. For clarity, time spent away from the home by one spouse for employment purposes does not change that spouse's residence;
- 18. *Peace officer* means a person referred to in paragraph (c) of the definition peace officer in section 2 of the *Criminal Code*;
- 19. *Spouse* means a person who:
  - a) is married to another person, whether by traditional ceremony, religious ceremony, or civil ceremony; or

- b) is a common-law partner; or,
- c) in good faith on the part of the person relying on this clause to assert any right under this law has entered into a marriage that is void or voidable;

20. *Survivor* means the spouse or common-law partner of a deceased person.

## **2.2 Words and expressions**

Unless the context otherwise requires, words and expressions used in this law have the same meaning as in the *Indian Act*.

## **2.3 Agreement between spouses or common-law partners**

For greater certainty, for the purposes of this law, an agreement between spouses or common-law partners includes an agreement reached through the use of traditional dispute resolution or any other dispute resolution process in place at the time.

## **2.4 Former spouse or common-law partner**

A spouse or common-law partner includes a former spouse or common-law partner when using the term *Family Home* and *Rights and Interests* in subsection 2.1.(9) and (12), 2.3, 2.6, 3.2 (3) and (5), 3.4, 3.6, 3.8(5), Part 4, 4.4, 4.6(1) and (2), and 5.1 of this law.

## **2.5 Term not restrictive**

The use of the term *application* to describe a proceeding in a court under this law must not be construed as limiting the name under which and the form and manner in which that proceeding may be taken in that court, and the name, manner and form of the proceeding in that court are those that are provided for by the rules regulating the practice and procedure in that court.

## **2.6 Purpose**

The purpose of this law is to provide for the use, occupation and possession of family homes on Neyaashiinigmiing Reserve. This law applies during a conjugal relationship, on breakdown of the relationship, or on the death of a spouse or common-law partner.

For greater certainty,

- a) this Law does not affect title to Neyaashiinigmiing Reserve lands;
- b) Neyaashiinigmiing Reserve lands continue to be set apart for the use and benefit of the First Nation; and
- c) Neyaashiinigmiing Reserve continues to be lands reserved for the Indians within the meaning of Class 24 of s. 91 of the *Constitution Act, 1867*.

This Law applies to spouses or common-law partners where at least one of them is a Member.

## **PART 3.0**

### **FAMILY HOME**

#### **3.1 Occupation**

1. Each spouse or common-law partner has an equal right to occupy the family home during the relationship, whether or not that person is a member.
2. The right of a child to use, enjoy and occupy the family home is:
  - a) paramount over the right of a spouse or common-law partner to use, enjoy and occupy the family home; and
  - b) continues until the court makes an order, or other accommodation is arranged, in the best interests and welfare of the child.
3. When a spouse or common-law partner dies, a non-member survivor has a right to occupy the family home for up to 180 days after the death.
4. The right to occupy the family home ends upon,
  - a) the finalization of the divorce;
  - b) if there are no children of the common law relationship, 90 days after one of the parties determines the relationship has ended;
  - c) if there are children of the common-law partners residing with the common-law partners, then one (1) year after one of the parties determine the relationship has ended or the member partner dies; or
  - d) the date agreed to by the parties in a domestic contract or separation agreement; or,
  - e) where clause 3.1(3) applies, 180 days after the death of the partner.

#### **3.2 Dispose or Encumber**

1. No spouse or common-law partner will dispose of or encumber a right or interest in the family home unless:
  - a) the other spouse or common-law partner is a party to or provides free and informed written consent to the transaction; or
  - b) the other spouse or common-law partner has released all rights or interests in the family home by a domestic agreement.
2. Any sale or encumbrance of a family home is subject to any other applicable laws of CNUFN.
3. If a spouse or common-law partner disposes of or encumbers a right or interest in the family home without the free and informed consent in writing from the other spouse or partner, the transaction may be declared invalid or void by a judge of competent jurisdiction.
4. The spouse or common-law partner who made the transaction is the one who must prove they secured the required consent from the other partner.

5. 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,
  - a) cannot be found,
  - b) is not capable of consenting, or
  - c) is unreasonably withholding consent.

### **3.3 Residency After Breakup or Death of Spouse or Common-law Partner**

After a marriage or common-law marriage is dissolved, including where that happens due to the death of a spouse or common-law partner, a non-member spouse or common-law partner who no longer has a lawful right to reside on the Reserve may apply to Band Council and request permission to reside on the reserve under the applicable Band policy or by-law, and which policy shall consider,

- a) any member children in their custody, and the interests of the child(ren) to reside in the CNUFN community; and,
- b) the age and length of time the non-member has resided within the First Nation community,

however, all decisions of Council in respect of residency on the Reserve are discretionary on the part of Council. For clarity, a non-member does not have a right to reside in the community, unless expressly stated herein.

### **3.4 Emergency Protection Order**

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.3.4(5). The judge may make the order if satisfied that,
  - a) family violence has occurred;
  - b) there is a need for police protection; and
  - c) the order should be made because of the seriousness or urgency of the situation to protect persons or property from imminent harm or danger.
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.
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.

### **3.5 Family Violence and Review of Emergency Orders**

1. 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.
2. The justice of the peace or judge must forward a copy of the order under s.3.4(5) and all the supporting materials to the court.

3. The court must review the order within three working days or as soon as a judge becomes available.
4. 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.
5. The court must notify the parties and any person named in the order of its decision and of any resulting procedures.
6. A confirmed order is deemed to be an order of the court.
7. Even if the court orders a new hearing, the order remains effective unless the court orders otherwise.
8. The new hearing must consider,
  - a) any evidence about the collective interests of First Nation members;
  - b) the materials presented at the original hearing; and,
  - c) any new evidence presented at the new hearing.
9. At the new hearing, the court may confirm, change, or revoke the order under s.3.4(5) and make it last longer than the 90-day period.
10. An application made under s.3.5(11) must be considered at the new hearing unless the new hearing has already begun.
11. Any person involved in an exclusive occupation order issued under ss. 3.4 or 3.6 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.
12. The court may confirm, change, or revoke the order and may make it last longer than the 90-day period outlined in s.3.4(1).
13. The court hearing must consider,
  - a) any evidence about the collective interests of First Nation members;
  - b) the materials presented at the original hearing; and,
  - c) any new evidence presented at the new hearing.
14. Subject to s.3.5(15), the court may order:
  - a) a ban on the public attending all or part of a s.3.5(4)(b) new hearing or a s.3.6 hearing;
  - b) a publication ban on the identity of a party, witness, or child; or,
  - c) a disclosure ban on any related information in a court document or record.



15. The court may only make the order under s.3.5(14) if satisfied that,
  - a) it is necessary for the safety of a party or witness or safety, 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.
16. Any person who contravenes an Emergency Protection Order is guilty of an offence. A person who is found guilty of an offence is punishable on summary conviction and liable to a fine not exceeding two thousand dollars (\$2,000) or imprisonment for a term not exceeding three (3) months, or both.

### **3.6 Exclusive Occupation Order**

1. A spouse or common-law partner may apply to the court for an order granting that person exclusive occupation of a family home upon breakdown of their marriage or common-law relationship where there are dependent children.
2. The spouse or common-law partner may apply for an order of exclusive occupation of the family home until their right to occupy the family home ends under s.3.1(4) of this law.
3. The court may make a temporary exclusive occupation order, before deciding whether to make the main order under s.3.6(4).
4. The court *must* consider the following when making an exclusive occupation order:
  - a) the best interests of any child(ren), particularly any member child(ren);
  - b) the best interests of any elderly also residing in the home;
  - c) any history of family violence or abuse; and
  - d) any medical issues of the applicant(s).

The court may also consider:

- a) the collective interests of First Nation members in their reserve(s) and the views of the council regarding the cultural, social and legal context;
- b) the terms of any agreement between the spouses or common-law partners; and,
- c) the financial situation of the spouses or common-law partners; and/or

The order may:

- a) require any person to leave the family home and not come back;
- b) require the other spouse or common-law partner to preserve the family home until they leave;
- c) direct the applicant to pay the other spouse or common-law partner for the cost of other housing; and
- d) requiring either spouse or common-law partner to pay costs for repair and maintenance of the family home and other related costs.

5. When the court makes the exclusive occupation order under this section, any previous order made under ss.3.4(5) or 3.5(9) is revoked, unless the court says otherwise.
6. If the situation changes significantly, any party or person named in the order, or who holds a right or interest in or to the family home, may apply to the court to have the order changed or revoked. The court will then confirm, change, or revoke the order.
7. An applicant under this section must, without delay, serve a copy of the application on,
  - a) Council;
  - b) any person who is eighteen (18) years of age or older, whom the applicant is seeking to have vacated from the family home; and
  - c) any person who holds an interest or right in to the family home.

### **3.7 Occupancy After Death of a Spouse or Partner**

1. If a spouse or common-law partner dies, the non-member survivor can apply to the court for exclusive occupation. This includes survivors who are not members of the First Nation. The court may order that the survivor get exclusive occupation of and reasonable access to the family home until the spouse or common-law partner's right to occupy the family home ends under s.3.1(4), subject to the conditions and time specified by the court.
2. The court may make a temporary exclusive occupation order, before deciding whether to make the main order under s.3.7(1).
3. The court must consider the following when making an exclusive occupation order after the death of a spouse or common-law partner:
  - a) the best interests of any children who normally live in the family home, including a child's interest in maintaining a connection with their First Nation;
  - b) the interests of any elderly person or disabled person who normally lives in the family home;
  - c) the terms of the will;
  - d) the terms of any agreement between the spouses or common-law partners, if applicable;
  - e) the medical condition of the survivor;
  - f) how long the survivor has lived on the reserve;
  - g) whether the family home is the only property of significant value in the estate;
  - h) the interests or rights of any other person in or to the family home; and
  - i) the views of the Council regarding the cultural, social and legal context.
4. In the event of death of a spouse or common-law partner, the survivor is required to maintain the condition of the family home and to maintain any payments with respect to rent or loans on the home.

5. The survivor must quickly notify the other parties about the order. However, a peace officer must give a copy of the order to those persons if the court directs.
6. If the situation changes significantly, any party or person named in the order, or who holds a right or interest in or to the family home, may apply to the court to have it changed or revoked. The court will then confirm, vary or revoke the order.
7. Anyone who applies for the order must quickly send a copy of the court application to,
  - a) the executor or administrator handling the estate, if known to the applicant,
  - b) the Minister,
  - c) any adult who is being asked to leave the family home,
  - d) any person who holds a right or interest in or to the family home, and
  - e) any other person specified in the court's rules.
8. If there are no children, the non-member spouse or common-law partner will be required to vacate the family home within 90 days and remains entitled to the division of the value of the family home in accordance with Part 4 of this law.
9. The court will decide who has exclusive occupation of the family home in the event that both parties are First Nation members. The spouse or common-law partner who must vacate the home is entitled to a division of the value of the family home as set out in Part 4 of this law.

### **3.8 Other Provisions**

1. A court has authority to decide that family violence has occurred regardless of any criminal proceeding.
2. An exclusive occupation order under this law does not,
  - a) change who holds a right or interest in or to the family home,
  - b) prevent an executor or administrator handling the estate from transferring the right or interest to a beneficiary, or
  - c) prevent a court from ordering the transfer of the right or interest as allowed in this law.
3. The person who secures an order under ss.3.4(5), 3.5(9) or 3.6(4) must quickly give notice of the order to anyone named in the order. However, a peace officer must give a copy of the order to those persons if the court directs.
4. The family home includes all the adjacent land necessary to use and enjoy it if the family home was allotted under s.20 of the *Indian Act*.
5. A spouse, common-law partner or survivor who gets an exclusive occupation under this law is bound by any lease or mortgage given to another, during the order.

## **PART 4.0**

### **DIVISION OF THE VALUE OF FAMILY HOME**

#### **4.1 Breakdown of a Conjugal Relationship**

1. A spouse or common-law partner may apply to the court to divide the value of their family home,
  - a) on the breakdown of the marriage or common-law relationship; or
  - b) on the death of the other spouse or common-law partner.
2. When a conjugal relationship breaks down, each spouse or common-law partner is entitled to the following value of the family home,
  - a) In the event that the family home was acquired during the course of the conjugal relationship, or in specific contemplation of the marriage or common-law relationship,
    - (i) one half of the value of the equity in the family home on the valuation date; or
    - (ii) in the case of one spouse or common-law partner being a non-member, the non-member is entitled to one half of the depreciated value of any renovations or investments in the family home made by the couple during the conjugal relationship, not including the costs of reasonable property maintenance;
  - b) In the event the family home was previously owned by one spouse or common-law partner, the other spouse or common-law partner shall be entitled to one half of,
    - (i) the difference between the value of the family home at the start of the conjugal relationship and the current market value of the family home on the valuation date, less any outstanding debts against the family home; or
    - (ii) in the case of one spouse or common-law partner being a non-member, the non-member shall be entitled to half the depreciated value of any renovations or investments in the family home made by the couple during the conjugal relationship, not including the costs of reasonable property maintenance
  - c) In the event the family home was inherited by one spouse or common-law partner, then other spouse or common-law partner shall be entitled to one half of the depreciated value of any renovations or investments to the home made during the conjugal relationship.
3. In the event of the death of a spouse or common-law partner where the survivor is a non-member, the survivor will be entitled to their rights as set out in s.4.1(2) against the estate of the deceased.
4. Spouses or common-law partners may agree on another way to value their rights or interests in a domestic or cohabitation contract provided each spouse or common-law partner has received independent legal advice prior to signing such contract.

5. In this section, "valuation date" means the earliest of,
  - a) the day on which they separated with no reasonable prospect of reconciliation;
  - b) the day on which a judgement granting their divorce is rendered;
  - c) the day on which their marriage was declared a nullity;
  - d) the day on which one of the spouses made an application related to the consequences of the breakdown of marriage;
  - e) the day on which one of the spouses or common-law partners dies; or
  - f) the day on which one of the spouses or common-law partners is granted an order under this section.
  
6. The starting value for the family home shall be determined as of the earliest of either:
  - a) the date co-habitation commenced or a marriage took place; or,
  - b) the date on which the property was assumed in anticipation of a relationship or marriage;but where the home is acquired during the marriage or common-law relationship, it shall be the date the home was purchased.
  
7. If a spouse or common-law partner applies, a court may change the amount owed under this Part if that amount is unjust given the following factors:
  - a) the applicant's financial responsibility for the children;
  - b) the amounts 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 domestic 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 determined by the court.
  
8. If a spouse or common-law partner applies within one (1) year after no longer living together, a court may decide any matter relating to what they owe each other under ss.4.1(2) and 4.1(7), 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,

- (iv) setting-off any amounts owed by a spouse or common-law partner to the other, or
  - (v) any combination of the above methods.
9. If a spouse or common-law partner applies after the one (1) year period, a court may extend the one (1) 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 one (1) year period had expired.
  10. If a spouse or common-law partner who is a CNUFN member applies, a court may transfer to him or her the following rights or interests,
    - a) a right to possession of land or structures allotted under s. 20 of the *Indian Act* (with or without a Certificate of Possession),
    - b) another right or interest (on reserve) in or to a structure, or
    - c) a right or interest (on reserve) recognized by a court order under s.48 of the *Indian Act*.

Before making the transfer, the court must be satisfied that that it is necessary for the equitable division of net family property between the spouses or common-law partners.

The court's power to order a transfer under s.4.1(10) can be made despite ss. 24 and 49 of the *Indian Act*;

11. 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 in order to protect the following,
  - a) the potential right or interest the applicant might get from a court under an exclusive possession order or transfer under this law; or
  - b) the value of the rights or interests used to calculate what might be payable to the applicant under s.4.1(2).
12. 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.4.1(8), a court may enforce that agreement if,
  - a) the party's consent to the agreement was free and informed, and
  - b) the agreement was not unjust.

#### **4.2 Death of a Spouse or Common-Law Partner**

1. In the event of the death of a spouse or common-law partner where both parties in the couple are members, and where the deceased member's will bequeaths the home to someone other than their surviving spouse or common-law partner, the survivor shall be entitled the value as described in section 4.1(2) from the deceased spouse or common-law partner's estate.

2. In the event of the death of a spouse or common-law partner where the survivor is a non-member, the survivor shall be entitled to enforce their rights under section 4.1(2) against the deceased spouse or common-law partner's estate.
3. The survivor and the executor or administrator handling the estate may agree on another way to value the family home.
4. In the case of the death of a spouse or common-law partner, the "valuation date" shall in all cases, be the earlier of,
  - a) the day before the death of the spouse or common-law partner, or
  - b) the day when the survivor made a successful application to restrain actions that will decrease the value of the family home.
5. If the executor or administrator handling the estate applies, a court may change the amount owed to the survivor if,
  - a) the spouses or common-law partners had already resolved the issue by agreement or court decision, or
  - b) the amount would be unjust, e.g., children of the deceased would not be adequately provided for.
6. If the survivor applies within one (1) year after the day their spouse or common-law partner died, a court may make an order in relation to the survivor's entitlement including,
  - a) the amount payable to the survivor, and
  - b) the following methods for settling the amount payable,
    - (i) payment of a lump sum,
    - (ii) payment by instalments,
    - (iii) if the survivor is a First Nation member, transferring the following rights or interests,
      - 1) 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), or,
      - 2) another right or interest (on reserve),
      - 3) any combination of the above methods.
7. If the survivor applies after the one (1) year period, a court may extend the one (1) year period for however long it considers appropriate, if the survivor did not apply on time because,
  - a) the survivor did not know of the death of their spouse or common-law partner until after the one (1) year period expired,
  - b) the delay was beyond the survivor's control, or
  - c) the applicant only became aware of the rights or interests after the one (1) year period had expired.
8. The court's power to order a transfer under s.4.2(6) can be made despite ss. 24 and 49 of the *Indian Act*.

9. If a survivor or the executor or administrator handling the estate applies, the court may change of the terms of any trust under the will in order to allow payment of the amount ordered under s.4.2(6).
10. Anyone who applies for the order must quickly send a copy of the application to the Minister, to any other person specified in the court's rules and to,
  - a) the executor or administrator handling the estate, if the applicant is the survivor and those persons are known to the survivor, or
  - b) to the survivor, if the applicant is the executor or administrator.
11. The executor or administrator handling the estate (or the Minister if no executor or administrator has been lawfully appointed) must quickly send a copy of the application to the beneficiaries.
12. A survivor cannot benefit from the deceased individual's will under ss. 48 to 50.1 of the *Indian Act* in respect of the family home, once a court decides that an amount is payable to the survivor under this law.
13. Subject to s.4.6(1), the executor or administrator handling the estate must not distribute the assets of the estate until,
  - a) the survivor consents in writing to the proposed distribution,
  - b) the one (1) year period and any extension allowed by the court have expired and no s.4.2(7) application has been made within those periods, or
  - c) an application made under s.4.2(6) is finished.
14. Section 4.2(13) does not prohibit reasonable advances of money from the estate, if any, to be made to survivors or other dependents of the deceased spouse or common-law partner for their support.
15. If a survivor applies, a court may make any order it considers necessary to restrain the improvident depletion of the family home in order to protect the following:
  - a) the potential right or interest the applicant might get from a court under of exclusive occupation or s.4.2(6); or
  - b) the value of the rights or interests used to calculate what might be payable to the applicant under s.4.2(6).
16. If a survivor, and either the executor or administrator of the estate make a written agreement that sets out the amount payable to the survivor and the methods for settling the amount by at least one of the methods referred to above, a court may enforce that agreement if the survivor's consent to the agreement was free and informed, and the agreement was not unjust. To clarify, a survivor should seek independent legal advice prior to signing a written agreement.

#### **4.3 Notice to Council and Views of Council**

1. Anyone who applies for an order under this law must send a copy of the application without delay to CNUFN Council. This rule does not apply to emergency protection orders.



2. Before making a decision, the court must hear any representations the Council wants to make regarding the cultural, social and legal context of the application and Council's views on whether or not the order should be made.
3. Anyone who is granted a court order must send a copy of the order without delay to CNUFN Council.

#### **4.4 Jurisdiction of Courts**

The parties to a dispute under this law must utilize traditional dispute resolution methods first, followed by any alternate dispute resolution options enacted by CNUFN at that time, before seeking a remedy in court for a right under this law, except in relation to orders of emergency protection or exclusive occupation under this Law.

#### **4.5 Rules of Court**

1. These definitions apply in s.4.5:
  - a) “*appellate court*” means the court that hears an appeal from a court.
  - b) “*competent authority*” means the body, person or group that makes the procedural rules for a court or an appellate court.
2. The competent authority may make rules of procedure for cases involving emergency protection orders, including rules for,
  - a) regulating the court’s practice and procedure, including the addition of parties to the proceedings,
  - b) hearing family law proceedings without an oral hearing,
  - c) regulating the court’s sittings,
  - d) fixing and awarding of costs,
  - e) prescribing and regulating the duties of officers of the court,
  - f) the transfer of proceedings under this Act to or from the court, and
  - g) prescribing and regulating other related matters.
3. A competent authority’s power to make rules must be exercised in the same way as other court rules in the province.

#### **4.6 Other Provisions**

1. In the event of a dispute, the court may decide whether a spouse, a common-law partner, a survivor, or a deceased party’s estate holds a right or interest in or to any land or structure that is the family home.
2. An application by a spouse or common-law partner to divide the value of the family home may be continued by or against the executor or administrator handling the estate, if at least one party dies before the application is heard.
3. If the survivor dies before the application is heard, the executor or administrator handling the survivor’s estate may carry on applications on the following matters,
  - a) determining the amount payable and the methods for settling the amount after dividing the value of the family home, or

- b) restraining the improvident depletion of the family home, or a written agreement between a survivor and the executor or administrator that sets out the amount payable to the survivor and methods for settling the amount.
  - c) varying the amount owed after dividing the value of the family home, or
  - d) enforcing a written agreement between a survivor and the executor of the will or the administrator of the estate that sets out the amount payable to the survivor and methods on settling the amount payable.
4. Anyone who applies for the order must send a copy of the order without delay to Council.
5. Provincial laws of evidence apply to proceedings under this law.
6. The Council may enforce the following orders on request by a person who is not a First Nation member or an Indian,
  - a) orders on the amount payable to the spouse, common-law partner or survivor,
  - b) orders on how the amount will be paid, or
  - c) orders enforcing a written agreement on the amount payable and the methods for paying it.
7. If Council does not enforce the order, the court may require the person against whom the order was made to pay the amount into court.

## **PART 5.0 TRANSITIONAL PROVISIONS**

### **5.1 FHRMIRA**

Before the MRP Law is in force,

- a) the provisional federal rules (*FHRMIRA* ss.13-52) on dividing of the value of matrimonial rights or interests (ss. 28-33) apply to spouses or common-law partners if the Valuation Date is before this law comes into force, and
- b) the following provisional federal rules apply to survivors, if those sections had already begun to apply to that First Nation when the death occurred,
  - the occupation of the family home for a period of time after the day a spouse or common-law partner died (s. 14),
  - the exclusive occupation of the family home after a spouse or common-law partner died (s. 21), and
  - the provisions regarding dividing the value of matrimonial rights or interest when a spouse or common-law partner dies (s. 34-40).

## 5.2 MRP

When the MRP law is in force,

- a) proceedings started under the federal provisional rules must be completed under those rules,
- b) the rule on getting an authorization for or setting aside a transaction involving the disposition or encumbrance of a right or interest in or to the family home (s. 15 of FHRMIRA) continues to apply, if the rules still applied when the transaction occurred, and proceedings are governed by the notice, jurisdiction and practice and procedure and other requirements in ss. 41-51 of FHRMIRA,
- c) the federal provisional rules on dividing the value of matrimonial rights or interests (ss. 28-33 of FHRMIRA) continue to apply if the rules still applied as of the Valuation Date, and proceedings are governed by the notice, jurisdiction, practice and procedure and other requirements in ss. 41-52 of FHRMIRA, and
- d) the following rules continue to apply to survivors, if the death occurred before this MRP law was in force,
  - the occupation of the family home after a spouse or common-law partner dies (s. 14 of FHRMIRA),
  - the exclusive occupation of the family home after a spouse or common-law partner dies (s. 21 of FHRMIRA),
  - dividing the value of matrimonial rights or interest in after a spouse or common-law partner dies (s. 34-40 of FHRMIRA), and proceedings under ss. 21, 35, 36, 39 or 40 of FHRMIRA are governed by, the rule that a right or interest in or to the family home is not affected by an order under ss. 16-18, 20 or s. 21 of FHRMIRA and is transferrable (s. 23 of FHRMIRA),
  - the rule that the exclusive occupation of the family home includes adjacent property (s. 25 of FHRMIRA),
  - the rule that a spouse or common-law partner or survivor who is granted exclusive occupation of the family home is bound by a lease (s. 26 of FHRMIRA),
  - the provision of offences for disobeying orders (s. 27 of FHRMIRA), and
  - the notice, jurisdiction, practice and procedure and other requirements (s. 41-52 of FHRMIRA).

## PART 6.0 AMENDMENT OR REPEAL

### 6.1 Amendment or Repeal

1. Council must hold at least three meetings that are open to all members to consider and discuss any proposed major amendment or repeal of this Law.
2. Council must, at least 30 days in advance of the first meeting, take reasonable measures that are in accordance with the traditions, customs and practices of Chippewas of Nawash Unceded First Nation to inform its members of:
  - a) the time and place of all the meetings;

- b) their right to attend and participate in these meetings;
  - c) a summary of the proposed amendments or repeal; and
  - d) the requirements for approval.
3. An amendment or repeal of this Law is not valid unless approved by Band Council Resolution at a duly called and convened Council meeting, and by a majority vote of the eligible members who participated in the final meeting held under s.6.1(1).
  4. Every member who is 18 years of age or over, whether or not resident on Chippewas of Nawash Unceded First Nation land, is eligible to vote at the final community meeting on whether to approve the amendment or repeal.
  5. Council may approve minor amendments to the MRP Law by Band Council Resolution. Minor amendment means an amendment that:
    - a) corrects typographical errors;
    - b) renumbers to harmonize with other laws;
    - c) is required to reference any relevant new or amended Chippewas of Nawash Unceded First Nation or other applicable laws;
    - d) is ordered by any Court; or
    - e) serves to clarify the Law, where there is no reasonable dispute about the intention underlying the original provision.
  6. This Law will be reviewed by Chief and Council at least once every five (5) years, unless an earlier review is deemed necessary for any of the reasons listed above.

## **PART 7.0 COMING INTO FORCE**

### **7.1 Force**

This Law will come into force and have the force of law on the date that is both:

- a) approved by Chippewas of Nawash Unceded First Nation members; and
- b) approved by Council BCR.

Comparison of the existing  
Family Homes on Reserves and Matrimonial Interest or Rights Act  
(FHRMIRA)  
to the proposed  
Chippewas of Nawash Unceded First Nation Matrimonial Real Property Law  
(MRP)

The FHRMIRA was put into place by the Government of Canada in 2014 to govern how the family home on a reserve is managed on break-up of a relationship or on death of a spouse. By adopting its own MRP Law, First Nations will no longer be governed by the provisional federal rules of the FHRMIRA and will instead have their own laws to govern these matters, based on their own principles.





<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
<b>Section 2: Definitions, Interpretation, and Application</b>		
<p>"Common-law partners" means persons who have been living together in a conjugal relationship for at least one year.</p>	<p>"common-law partner" means:</p> <ul style="list-style-type: none"> <li>a) Two (2) persons who are not married to each other or in a domestic partnership and who have lived together for a period of not less than four (4) years in a conjugal relationship;</li> <li>b) Two (2) persons who are not married to each other and who live together in a conjugal relationship and who have a child or children of the relationship;</li> </ul>	<p>Survey responses indicated 30% supported 3 years and a further 48% supported more than 3 years. Some comments suggested 5 years or even more. The committee decided to settle on 4 years.</p>
<p>"Domestic Agreement" means a signed document made by the spouses where they agree on their rights and obligations.</p>	<p>"Domestic Agreement" means a written agreement that is signed by two (2) parties in front of a witness in which the parties agree on their respective rights and obligations with respect to the family home and any other on property or interest covered by this law:</p> <ul style="list-style-type: none"> <li>a) during their marriage or common-law relationship,</li> <li>b) on separation,</li> <li>c) on the annulment or dissolution of their marriage, or</li> <li>d) on death of one or both of them;</li> </ul>	<p>If a Domestic Agreement is entered into by the two parties, it must be compliant with current MRP law and band policies/regulations.</p>
<p>"Family home" means the family matrimonial home (the structure only, not the land) situated on a reserve where the spouses or common-law partners normally live. It need not be affixed to land (e.g. a mobile home). If part of the home is used for work, only the residential part is included.</p>	<p>"Family home" means the family matrimonial home located on the Neyaashiinigiing Reserve that:</p> <ul style="list-style-type: none"> <li>a) is normally resided in by the two (2) spouses or common-law partners, or if they have separated or one (1) of them has died, it was normally resided in by them on the day on which they separated or the death of one (1) of them occurred; and</li> <li>b) includes lands, buildings and fixtures registered in the name of at least one (1) spouse or common-law partner in the Lands Register, as well as homes that are not fixtures to land, such as mobile homes;</li> <li>c) if the structure is normally used for a purpose in addition to a residential purpose, family home only includes the portion of the structure that may reasonably be regarded as necessary for the residential purpose;</li> </ul>	<p>To make it clear and specific.</p>

<p><b>FHRMIRA VERSION (PLAIN LANGUAGE)</b></p>	<p><b>CHANGE THE WORDING TO:</b></p>	<p><b>REASON FOR THE CHANGE</b></p>
	<p>d) may be held under the following interests or rights referred to in the <i>Indian Act</i>:</p> <ul style="list-style-type: none"> <li>(i) a right to possession, with a Certificate of Possession or a Certificate of Occupation, allotted in accordance with section 20 of that Act,</li> <li>(ii) a permit referred to in subsection 28(2) of that Act, and</li> <li>(iii) a lease under section 53 or 58 of that Act; or,</li> <li>(iv) an interest or right in or to reserve land that is subject to any CNUFN land code or First Nation law as defined in subsection 2(1) of the <i>First Nations Land Management Act</i>, to any CNUFN law enacted under a self-government agreement to which Her Majesty in right of Canada is a party;</li> </ul> <p>e) is occupied by the spouses or common-law partners under a lawful and binding lease;</p> <p>f) may be an interest or right in or to a structure — that need not be affixed but that must be situated on reserve land that is not the object of an interest or right referred to in paragraph (a) — which interest or right is recognized by a court order made under section 48 of the <i>Indian Act</i>.</p>	
<p>"Member" – new definition</p>	<p>"Member" or <i>First Nation member</i> means a person whose name appears on the CNUFN band list, as defined in the <i>Indian Act</i>, or who is entitled to have their name appear on that list. A <i>Non-Member</i> is a person who is not on the membership list of the CNUFN and who is not entitled to have their name on that list.</p>	<p>To add definitions of member and of non-member.</p>
<p>"Spouse" means either of two persons who have entered in good faith into a marriage that is voidable or void.</p>	<p>"Spouse" means a person who:</p> <ul style="list-style-type: none"> <li>a) Is married to another person, whether by traditional ceremony, religious ceremony, or civil ceremony, or</li> <li>b) is a common-law partner; or,</li> <li>c) in good faith on the part of the person relying on this clause to assert any right under this law has entered into a marriage that is void or voidable.</li> </ul>	<p>To expand and clarify based on survey results.</p>



<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
"Survivor" means the spouse or common-law partner of a deceased Indian.	"Survivor" means the spouse or common-law partner of a deceased person.	To change reference to "Indian" to "person".
<b>Purpose &amp; Application</b>		
	This law and rules apply: <ul style="list-style-type: none"> <li>• During a conjugal relationship</li> <li>• On breakdown of the conjugal relationship</li> <li>• On the death of a spouse or common-law partner.</li> </ul>	Adapted from FHRMIRA
	For greater certainty, <ol style="list-style-type: none"> <li>(a) this Law does not affect title to Neyaashiinigiing Reserve lands;</li> <li>(b) Neyaashiinigiing Reserve lands continue to be set apart for the use and benefit of the First Nation; and</li> <li>(c) Neyaashiinigiing Reserve continues to be lands reserved for the Indians within the meaning of Class 24 of s. 91 of the <i>Constitution Act, 1867</i>.</li> </ol>	Adapted from FHRMIRA
6. This Act applies to spouses or common-law partners only if at least one of them is a First Nation member or an Indian.	This MRP Law applies to spouses or common-law partners where at least one of them is a Member.	To simplify and make reference to MRP law instead of FHRMIRA Act.
<b>Section 3: Occupation of Family Home</b>		
13. Each spouse or common-law partner may occupy the family home during the conjugal relationship, whether or not that person is a First Nation member or an Indian.	<b>3.1 Occupation</b> Each spouse or common-law partner has a right to occupy the family home or band-owned home during the relationship, whether or not that person is a member.  The right of a child to use, enjoy and occupy the family home is: <ol style="list-style-type: none"> <li>a) paramount over the right of a spouse or common-law partner to use, enjoy and occupy the family home; and</li> <li>b) continues until the court makes an order, or other accommodation is arranged, in the best interests and welfare of the child.</li> </ol>	To add reference to children.

<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
<p>14. When a spouse or common-law partner dies, a survivor who does not hold an interest or right in or to the family home may occupy that home for a period of 180 days after the day on which the death occurs, whether or not the survivor is a First Nation Member or an Indian.</p>	<p><b>3.3 After Breakup or Death</b>                      After a marriage or common-law marriage is dissolved, including where that happens due to the death of a spouse or common-law partner, a non-member spouse or common-law partner who no longer has a lawful right to reside on the Reserve may apply to Band Council and request permission to reside on the reserve under the applicable Band policy or by-law, and which policy shall consider,</p> <ul style="list-style-type: none"> <li>a) any member children in their custody, and the interests of the child(ren) to reside in the CNUFN community; and,</li> <li>b) the age and length of time the non-member has resided within the First Nation community,</li> </ul> <p>however, all decisions of Council in respect of residency on the Reserve are discretionary on the part of Council. For clarity, a non-member does not have a right to reside in the community, unless expressly stated herein.</p>	<p>Revised as per survey responses to prioritize children’s rights to remain in the home and/or community.</p>
<p>15. (1) Subject to the <i>Indian Act</i>, 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.</p>	<p><b>3.2 Dispose or Encumber</b>                      (a) No spouse or common-law partner will dispose of or encumber a right or interest in the family home unless:</p> <ul style="list-style-type: none"> <li>i) the other spouse or common-law partner is a party to or provides free and informed written consent to the transaction; or</li> <li>ii) the other spouse or common-law partner has released all rights or interests in the family home and matrimonial interests or rights by a domestic agreement.</li> </ul> <p>Any sale or encumbrance of a family home is subject to any other applicable laws of CNUFN.</p>	<p>To expand for clarity and to ensure the home may not be disposed of without consent of both spouses or partners as per survey results. Surveys showed that 78% prefer there to be written agreement or consent to such disposition.</p>
<p>15. (2) A court may set aside a disposition or encumbrance contrary to s. 15(1) and impose conditions on any future transaction. The spouse or partner must apply to the court.</p>	<p>(b) If a spouse or common-law partner disposes of or encumbers a right or interest in the family home without the free and informed consent in writing from the other spouse or partner, the transaction may be declared invalid or void by a judge of competent jurisdiction.</p>	<p>From survey responses, 84% of respondents support having the transaction declared invalid.</p>

<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
<b>Section 3.4: Emergency Protection Orders (EPO)</b>		
(NOTE: Ontario does not have designated judges for the purpose of issuing an EPO. This section was created in the anticipation that such judges may at some point be designated and the MRP law would not need to be revised to accommodate this.)		
<p><b>16.</b> (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).</p> <p>The judge may make the order if satisfied that</p> <ul style="list-style-type: none"> <li>(a) family violence has occurred; and</li> <li>(b) the order should be made because of the seriousness or urgency of the situation to protect persons or property.</li> </ul>	<p>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. 3.4(5).</p> <p>The judge may make the order if satisfied that</p> <ul style="list-style-type: none"> <li>a) family violence has occurred;</li> <li>b) there is a need for police protection; and</li> <li>c) the order should be made because of the seriousness or urgency of the situation to protect persons or property.</li> </ul>	<p>To expand slightly for clarity</p>
	<p>The court may confirm, change, or revoke the order and may make it last longer than the 90-day period outlined in s.3.4(1).</p>	<p>To provide guidance on timing.</p>
	<ol style="list-style-type: none"> <li>1. Subject to s.3.5(15), the court may order:                         <ul style="list-style-type: none"> <li>a) a ban on the public attending all or part of a s.3.5(4)(b) new hearing or a s.3.6 hearing;</li> <li>b) a publication ban on the identity of a party, witness, or child; or,</li> <li>c) a disclosure ban on any related information in a court document or record.</li> </ul> </li> <li>2. The court may only make the order under s.3.5(14) if satisfied that,                         <ul style="list-style-type: none"> <li>a) it is necessary for the safety of a party or witness or safety, physical or emotional well-being of a child; or</li> <li>b) protecting a party, witness, or child from undue hardship or adverse effect outweighs the public's right to the information.</li> </ul> </li> </ol>	<p>As per survey responses, with particular concern for the welfare of any children.</p>

<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
	Any person who contravenes an Emergency Protection Order is guilty of an offence. A person who is found guilty of an offence is punishable on summary conviction and liable to a fine not exceeding two thousand dollars (\$2,000) or imprisonment for a term not exceeding three (3) months, or both.	Proposed new in order to give some consequences to contravening an order.
<b>Sections 3.6: Exclusive Occupation Order</b>		
<p><b>20. (1)</b> A court may order that exclusive occupation of and reasonable access to the family home be given to a spouse or common-law partner – whether or not the person is a First Nation member or an Indian. The court may attach conditions to and limit the time of the order.</p>	<p>A spouse or common-law partner, who is not a member, but who is deemed the primary care giver to dependent children, may apply to the court for an order granting that person exclusive occupation of a family home upon breakdown of their marriage or common-law relationship where there are dependent children.</p> <p>The spouse or common-law partner may occupy the family home for up to one (1) year during which time they may apply for residency on the reserve.</p>	To explain situations where a non-member may be granted exclusive occupation and for how long that may last.
<p><b>20. (2)</b> The court may make a temporary exclusive occupation order, before deciding whether to make the main order under s.20(1).</p>	<p>The court may make a temporary exclusive occupation order, before deciding whether to make the main order.</p> <p>If there are no children, the spouse or common-law partner who is a member will be given exclusive occupation of the family home and the non-member spouse will be required to vacate the family home within 90 days.</p>	To tighten up exclusive occupancy rules re: non-members.
<p><b>20. (3)</b> The court must consider the following when making an exclusive occupation order:</p> <ul style="list-style-type: none"> <li>(a) the best interests of any children who normally live in the family home, including a child's interest in maintaining a connection with their First Nation;</li> <li>(b) the terms of any agreement between the spouses or common-law partners;</li> <li>(c) the collective interests of First Nation members in their reserve(s) and the views of the council regarding the cultural, social and legal context;</li> <li>(d) how long the applicant has lived on the reserve;</li> <li>(e) the financial situation and the medical condition of the spouses</li> </ul>	<p>The court <i>must</i> consider the following when making an exclusive occupation order:</p> <ul style="list-style-type: none"> <li>a) Best interests of any child(ren), particularly any member child(ren);</li> <li>b) Best interests of any elderly also residing in the home;</li> <li>c) Any history of family violence or abuse; and</li> <li>d) Any medical issues of the applicant(s).</li> </ul> <p>The court <i>may</i> also consider:</p> <ul style="list-style-type: none"> <li>a) the terms of any agreement between the spouses or common-law partners;</li> <li>b) the financial situation of the spouses or common-law</li> </ul>	To simplify and to provide a list of the considerations identified in surveys as most important items to be considered.

<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
<p>or common-law partners;                      (f) the availability of other suitable housing on the reserve;                      (g) any existing order related to the breakdown of the conjugal relationship;                      (h) any family violence;                      (i) any psychological abuse by one of the spouses or common-law partners against the other, any child in their care, or any other family member who normally lives in the family home;                      (j) any exceptional circumstances that justify removing someone else from the family home (e.g. family violence, psychological abuse);                      (k) 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;                      (l) whether someone else holds a right or interest in or to the family home; and                      (m) the views given by any other person the court allows.</p>	<p>partners; and/or                      c) the collective interests of First Nation members in their reserve(s) and the views of the council regarding the cultural, social and legal context.</p>	
<p><b>20.</b> (7) Anyone who applies for an order under this section must send a copy of it without delay</p> <ul style="list-style-type: none"> <li>• to any adult who is being asked to leave the family home,</li> <li>• to any person who holds a right or interest in or to the family home, and</li> <li>• to any other person specified in the court's rules.</li> </ul>	<p>An applicant under this section must, without delay, serve a copy of the application on:</p> <ul style="list-style-type: none"> <li>a) Council;</li> <li>b) any person who is eighteen (18) years of age or older, whom the applicant is seeking to have vacated from the family home; and</li> <li>c) any person who holds an interest or right in or to the family home.</li> </ul> <p>The court will decide who has exclusive occupation of the family home in the event that both parties are First Nation members. If there are no children, the spouse or common-law partner who is a member will be given exclusive occupation of the family home and the non-member spouse will be required to vacate the family home with division of the value of the family home in accordance with this law.</p>	<p>To expand for clarity and in keeping with concerns for children or elderly.</p>

<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
<p><b>21. (3)</b> The court must consider the following when making an exclusive occupation order:</p> <ul style="list-style-type: none"> <li>(a) the best interests of any children who normally live in the family home, including a child's interest in maintaining a connection with their First Nation;</li> <li>(b) the terms of the will;</li> <li>(c) the terms of any agreement between the spouses or common-law partners;</li> <li>(d) the collective interests of First Nation members in their reserve(s) and the views of the council regarding the cultural, social and legal context;</li> <li>(e) the medical condition of the survivor;</li> <li>(d) how long the survivor has lived on the reserve;</li> <li>(g) whether the family home is the only property of significant value in the estate;</li> <li>(h) the interests or rights of any other person in or to the family home;</li> <li>(i) 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;</li> <li>(j) any exceptional circumstances that justify removing someone else from the family home (e.g. family violence, psychological abuse); and</li> <li>(k) the views given by any other person the court allows.</li> </ul>	<p><b>On Death of a Spouse</b></p> <p>The court must consider the following when making an exclusive occupation order after the death of a spouse:</p> <ul style="list-style-type: none"> <li>a) the best interests of any children who normally live in the family home, including a child's interest in maintaining a connection with their First Nation;</li> <li>b) the interests of any elderly person or disabled person who normally lives in the family home;</li> <li>c) the terms of the will;</li> <li>d) the terms of any agreement between the spouses or common-law partners, if applicable;</li> <li>e) the medical condition of the survivor;</li> <li>f) how long the survivor has lived on the reserve;</li> <li>g) whether the family home is the only property of significant value in the estate;</li> <li>h) the interests or rights of any other person in or to the family home; and</li> <li>i) the views of the council regarding the cultural, social and legal context.</li> </ul>	<p>These items are in order of importance according to the survey results.</p>
<p><b>21. (4)</b> The order may require:</p> <ul style="list-style-type: none"> <li>(a) the survivor to preserve the condition of the family home;</li> <li>(b) any person to leave the family home and not come back; and</li> <li>(c) the executor or administrator handling the estate or a person with an interest or right in or to the family home to pay for the costs of the repair and maintenance of the family home and other related liabilities.</li> </ul>	<p>In the event of death of a spouse or partner, the survivor may be required to maintain the condition of the family home and to maintain any payments with respect to rent or loans on the home.</p>	<p>To tighten up and clarify as per results from surveys that the remaining spouse maintain the home and continue to pay rent/loans as may be applicable.</p>
	<p>If there are no children, the spouse or common-law partner who is a member will be given exclusive occupation of the family home and the non-member spouse will be required to vacate the family home with division of the value of the family home in accordance with Section _____ of this law.</p>	<p>New</p>
	<p>The court will decide who has exclusive occupation of the family home in the event that both parties are First Nation members. The spouse or common-law partner who must vacate the</p>	<p>New</p>

<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
	home is entitled to a division of the value of the family home as set out in Section ____ of this law.	
	22. For greater certainty, an Exclusive Occupation Order does not: <ul style="list-style-type: none"> <li>a) change who holds a right or Interest in or to the family home; or</li> <li>b) prevent an executor of a will or an administrator of an estate from transferring such an interest or right to a named beneficiary under the will or to a beneficiary on intestacy.</li> </ul>	New
<b>Section 4.1: Division of the Value of Family Home</b>		
	A spouse or common-law partner may apply to the court to divide the value of their family home: <ul style="list-style-type: none"> <li>a) on the breakdown of the marriage or common-law relationship; or</li> <li>b) on the death of the other spouse.</li> </ul>	New
<b>28.</b> (1) When a conjugal relationship breaks down, each spouse or common-law partner is entitled to receive one half of the value in or to the right or interest held by at least one of them, 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.	When a conjugal relationship breaks down, each spouse or common-law partner is entitled to: <ul style="list-style-type: none"> <li>a) In the event that the home was acquired during the course of the conjugal relationship, or in specific contemplation of the marriage or common-law relationship:                             <ul style="list-style-type: none"> <li>i. one half of the value of the equity in the family home on the valuation date; or</li> <li>ii. in the case of one spouse or common-law partner being a non-member, the non-member is entitled to one half of the depreciated value of any renovations or investments in the family home made by the couple during the conjugal relationship, not including the costs of reasonable property maintenance,</li> </ul> </li> <li>b) In the event the home was previously owned by one spouse or common-law partner, the other spouse or common-law partner shall be entitled to one half of</li> </ul>	To simplify the calculation of what each spouse takes from a broken relationship.

<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
	(i) the difference between the value of the family home at the start of the conjugal relationship and the current market value of the family home on the valuation date, less any outstanding debts against the family home; or  (ii) in the case of one spouse or common-law partner being a non-member, the non-member shall be entitled to half the depreciated value of any renovations or investments in the family home made by the couple during the conjugal relationship, not including the costs of reasonable property maintenance  c) In the event the family home was inherited by one spouse or common-law partner, then other spouse or common-law partner shall be entitled to one half of the depreciated value of any renovations or investments to the home made during the conjugal relationship.	
<b>28. (2)</b> A spouse or common-law partner who is a member of a First Nation is entitled to additional compensation totalling the amounts in s. (a) plus (b) plus (c):	Remove	Calculation simplified as per above.
(a) One half of the value of matrimonial rights or interests in or to lands and structures acquired both <ul style="list-style-type: none"> <li>• during the relationship, and</li> <li>• before the relationship (but in specific contemplation of the relationship);</li> </ul>	Remove	Calculation simplified as per above.
(b) the larger of the amounts in s. (i) and (ii): <ul style="list-style-type: none"> <li>(i) One half 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</li> <li>(ii) an amount equal to the difference between                             <ul style="list-style-type: none"> <li>• any payments made by the spouse or common-law partner towards improvements made to these lands and structures, and</li> </ul> </li> </ul>	Remove	Calculation simplified as per above.



<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
<ul style="list-style-type: none"> <li>the amount of debt outstanding for making those payments as of the valuation date; and</li> </ul>		
<p>(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</p> <ul style="list-style-type: none"> <li>any payments made by the survivor towards improvements made to these lands and structures, and</li> <li>the amount of debts outstanding for making those payments as of the valuation date.</li> </ul>	Remove.	Calculation simplified as per above.
<p><b>28.</b> (3) A spouse or common-law partner who is NOT a member of the First Nation, is entitled to additional compensation totalling the amounts in s. (a) plus (b) plus (c) below:</p>	Remove	Calculation simplified as per above.
<p>(a) One half of the value of matrimonial rights or interests in or to structures only [<i>not lands</i>] acquired both</p> <ul style="list-style-type: none"> <li>during the conjugal relationship, and</li> <li>before the conjugal relationship (but in specific contemplation of the relationship);</li> </ul>	Remove	Calculation simplified as per above.
<p>(b) the larger of amounts in s.(b)(i) and (b)(ii):</p> <p>(i) One half of the amount by which the value of the matrimonial rights or interests in or to structures only [<i>not lands</i>] 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</p> <p>(ii) an amount equal to the difference between</p> <ul style="list-style-type: none"> <li>any payments made by the survivor towards improvements made to these structures, and</li> <li>the amount of debts outstanding for making those improvements as of the valuation date; and</li> </ul>	Remove	Calculation simplified as per above.
<p>(c) the amounts of s. (c)(i) plus s. (c)(ii):</p> <p>(i) for lands (other than the family home) acquired</p> <ul style="list-style-type: none"> <li>during the relationship,</li> <li>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</li> </ul>	Remove	Calculation simplified as per above.

<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
<ul style="list-style-type: none"> <li>• payments made by the spouse or common-law partner towards improvements made to these lands, and</li> <li>• the amount of debts outstanding for making those improvements as of the valuation date, and</li> </ul> (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 <ul style="list-style-type: none"> <li>• any payments made by the survivor towards improvements made to these structures, and</li> <li>• the amount of debts outstanding for making those improvements as of the valuation date.</li> </ul>		
<b>28.</b> (4) The value of the above rights or interests is the difference between <ul style="list-style-type: none"> <li>(a) the amount a buyer would reasonably be expected to pay for comparable rights or interests to the ones at issue; and</li> <li>(b) the amount of any debts outstanding for acquiring those rights or interests or to improve or maintain the lands and structures.</li> </ul>	Remove	Calculation simplified as per above.
<b>28.</b> (5) Spouses or common-law partners may agree on another way to value their rights or interests.	Spouses or partners may agree on another way to value their rights or interests in a domestic or cohabitation contract provided each spouse or partner has received independent legal advice prior to signing such contract.	To introduce domestic contract idea. Surveys indicate support for domestic contracts.
<b>28.</b> (6) In this section, "valuation date" means <ul style="list-style-type: none"> <li>(a) in the case of spouses, the earliest of the following days:                             <ul style="list-style-type: none"> <li>(i) the day they separated, with no reasonable prospect of reconciliation, (ii) the day they divorced,</li> <li>(iii) the day when the marriage was declared a nullity,</li> <li>(iv) the day when a spouse made an application to court about the breakdown of the marriage, and</li> <li>(v) the day when a spouse made a successful application to restrain actions that will decrease the value of the family home and the matrimonial rights or interests; or</li> </ul> </li> <li>(b) in the case of common-law partners, the earliest of the following days:                             <ul style="list-style-type: none"> <li>(i) the day when a common-law partner showed they did not</li> </ul> </li> </ul>	In this section, "valuation date" means either <ul style="list-style-type: none"> <li>a) the day on which they separated with no reasonable prospect of reconciliation;</li> <li>b) the day on which a judgement granting their divorce is rendered;</li> <li>c) the day on which their marriage was declared a nullity;</li> <li>d) the day on which one of the spouses made an application related to the consequences of the breakdown of marriage;</li> <li>e) the day on which one of the spouses dies; or</li> <li>f) the day on which one of the spouses is granted an order under this section.</li> </ul>	To lay out when calculation of the valuation of a home starts.

<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
<p>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 actions that will decrease the value of the family home and the matrimonial rights or interests.</p>	<p>The starting value is the earlier of either:</p> <ul style="list-style-type: none"> <li>• the date co-habitation commenced or a marriage took place; or</li> <li>• the date on which the property was assumed in anticipation of a relationship or marriage.</li> </ul>	
<p><b>30.</b> (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 instalments,                      (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.</p>	<p>If a spouse or common-law partner applies within one (1) year after no longer living together, a court may decide any matter relating to what they owe each other under ss.4.1(2) and 4.1(7), including the following:</p> <p>a) the amount payable by a spouse or common-law partner to the other; and</p> <p>b) the following methods for settling the amount payable:</p> <ul style="list-style-type: none"> <li>(i) payment of a lump sum,</li> <li>(ii) payment by installments,</li> <li>(iii) transferring a right or interest,</li> <li>(iv) setting-off any amounts owed by a spouse or common-law partner to the other, or</li> <li>(v) any combination of the above methods.</li> </ul>	<p>To reduce term to apply, as per surveys.</p>
<p><b>30.</b> (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.</p>	<p>If a spouse or common-law partner applies after the one (1) year period, a court may extend the one (1) year period by one (1) further year, 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 1-year period had expired.</p>	<p>To tighten up the time frame in which a spouse or partner may apply.</p>
<p><b>31.</b> (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:</p> <ul style="list-style-type: none"> <li>• a right to possession of land or structures allotted under s. 20 of the <i>Indian Act</i> (with or without a Certificate of Possession or a Certificate of Occupation),</li> <li>• a right or interest (on reserve) subject to a land code or First</li> </ul>	<p>If a spouse or common-law partner who is a CNUFN member applies, a court may transfer to him or her the following rights or interests:</p> <ul style="list-style-type: none"> <li>• a right to possession of land or structures allotted under s. 20 of the <i>Indian Act</i> (with or without a Certificate of Possession),</li> <li>• another right or interest (on reserve) in or to a structure</li> </ul>	<p>To make specific to CNUFN</p>

<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
<p>Nation law under the <i>First Nations Land Management Act</i>,</p> <ul style="list-style-type: none"> <li>• a right or interest (on reserve) subject to any First Nation law enacted under a self-government agreement with Canada,</li> <li>• a right or interest (on reserve) subject to any land governance code or Kanesatake Mohawk law enacted under the <i>Kanesatake Interim Land Base Governance Act</i>,</li> <li>• another right or interest (on reserve) in or to a structure recognized by the First Nation, or</li> <li>• a right or interest (on reserve) recognized by a court order under s. 48.</li> </ul> <p>Before making the transfer, the court must be satisfied that</p> <p>(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;</p> <p>(b) the applicant already held the right or interest while living together; or</p> <p>(c) the transfer is appropriate because the spouses or common-law partners hold more than one such right or interest.</p>	<p>recognized by the First Nation, or</p> <ul style="list-style-type: none"> <li>• a right or interest (on reserve) recognized by a court order under s.39 of the <i>Indian Act</i>.</li> </ul> <p>Before making the transfer, the court must be satisfied that it is necessary for the equitable division of net family property between the spouses or common-law partners.</p>	
<p><b>31.</b> (2) The court's power to order a transfer under s. 31(1)</p> <p>(a) can be made despite ss. 24 and 49 of the <i>Indian Act</i>;</p> <p>(b) is subject to any land code or First Nation's law under the <i>First Nations Land Management Act</i>;</p> <p>(c) is subject to any First Nation law enacted under a self-government agreement with Canada; and</p> <p>(d) is subject to any land governance code or Kanesatake Mohawk law under the <i>Kanesatake Interim Land Base Governance Act</i>.</p>	<p>The court's power to order a transfer under s. 26(1) can be made despite ss. 24 and 49 of the <i>Indian Act</i>.</p>	<p>To simplify.</p>
<p><b>Section 4.2: Division of Value – On Death of a Spouse or Common-Law Partner</b></p>		
<p><b>34.</b> (1) When a spouse or common-law partner dies, the survivor is entitled to receive one half of the value of the deceased spouse or partner's right or interest in the family home as well as other compensation under s. 34(2) and s. 34(3). The values are calculated as of the valuation date. The survivor must make an application under s. 36.</p>	<p>In the event of the death of a spouse or partner where both parties in the couple are members, and where the deceased member's will bequeaths the home to someone other than their surviving spouse, the survivor shall be entitled to either half of the increase in value as described in section 4.1(2) from the deceased spouse or common-law partner's estate.</p> <p>In the event of the death of a spouse or partner where the</p>	<p>To simplify calculations, if applicable, on death of a spouse.</p>

<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
	survivor is a non-member, the survivor shall be entitled to enforce their rights under section 4.1(2) against the deceased spouse or common-law partner's estate.	
<p><b>34.</b> (6) The "valuation date" for the purposes of this section means</p> <p>(a) in the case of spouses, the earliest of the following days:</p> <p>(i) the day before the death of the spouse, (ii) the day when the spouses stopped living together because of their breakup, and</p> <p>(iii) the day when the survivor made a successful application to restrain actions that will decrease the value of the family home and the matrimonial rights or interests; or</p> <p>(b) in the case of common-law partners, the earliest of the following days:</p> <p>(i) the day before the death of the spouse, and</p> <p>(ii) the day when the survivor made a successful application to restrain actions that will decrease the value of the family home and the matrimonial rights or interests.</p>	<p>In the case of the death of a spouse or partner, the "valuation date" shall in all cases, be</p> <p>(i) the day before the death of the spouse or partner, and</p> <p>(ii) the day when the survivor made a successful application to restrain actions that will decrease the value of the family home and the matrimonial rights or interests.</p>	<p>To lay out valuation date criteria to be used on death of a spouse or partner</p>
<p><b>36.</b> (1) If the survivor applies within 10 months after the day their spouse or common-law partner died, a court may make an order about the survivor's entitlement [ss. 34 and 35] including:</p> <p>(a) the amount payable to the survivor; and</p> <p>(b) the following methods for settling the amount payable:</p> <p>(i) payment of a lump sum, (ii) payment by instalments,</p> <p>(iii) if the survivor is a First Nation member, transferring the following rights or interests:</p> <ul style="list-style-type: none"> <li>• a right to possession of land or structures allotted under s. 20 of the <i>Indian Act</i> (with or without a Certificate of Possession or a Certificate of Occupation),</li> <li>• a right or interest (on reserve) subject to a land code or First Nation law under the <i>First Nations Land Management Act</i>,</li> <li>• a right or interest (on reserve) subject to any First Nation law enacted under a self-government agreement with Canada,</li> <li>• a right or interest (on reserve) subject to any land governance code or Kanesatake Mohawk law enacted under the</li> </ul>	<p>If the survivor applies within one (1) year after the day their spouse or common-law partner died, a court may make an order about the survivor's entitlement including:</p> <p>(a) the amount payable to the survivor; and</p> <p>(b) the following methods for settling the amount payable:</p> <p>(i) payment of a lump sum,</p> <p>(ii) payment by instalments,</p> <p>(iii) if the survivor is a First Nation member, transferring the following rights or interests:</p> <ul style="list-style-type: none"> <li>• a right to possession of land or structures allotted under s. 20 of the <i>Indian Act</i> (with or without a Certificate of Possession or a Certificate of Occupation),</li> <li>• another right or interest (on reserve), or</li> <li>• any combination of the above methods.</li> </ul>	<p>To simplify and make specific to CNUFN</p>

<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
<p><i>Kanesatake Interim Land Base Governance Act</i>,</p> <ul style="list-style-type: none"> <li>• another right or interest (on reserve) in or to a structure recognized by the First Nation, or</li> <li>• a right or interest (on reserve) recognized by a court order under s. 48; or</li> </ul> <p>(iv) any combination of the above methods</p>		
<p><b>36.</b> (2) If the survivor applies after the 10-month period, a court may extend the 10-month period for however long it considers appropriate, if the survivor did not apply on time because:</p> <ul style="list-style-type: none"> <li>(a) the survivor did not know of the death of their spouse or common-law partner until after the 10-month period expired;</li> <li>(b) the delay was beyond the survivor's control; or</li> <li>(c) the applicant only became aware of the rights or interests after the 10-month period had expired.</li> </ul>	<p>If the survivor applies after the one (1) year period, a court may extend the period up to one (1) additional year, if the survivor did not apply on time because:</p> <ul style="list-style-type: none"> <li>(a) the survivor did not know of the death of their spouse or common-law partner until after the one (1) year period expired;</li> <li>(b) the delay was beyond the survivor's control; or</li> <li>(c) the applicant only became aware of the rights or interests after the one (1) year period had expired.</li> </ul>	<p>To change the length of the term period as per surveys.</p>
<p><b>36.</b> (3) The court's power to order a transfer under s. (1)</p> <ul style="list-style-type: none"> <li>(a) can be made despite ss. 24 and 49 of the <i>Indian Act</i>;</li> <li>(b) is subject to any land code or First Nation's law under the <i>First Nations Land Management Act</i>;</li> <li>(c) is subject to any First Nation law enacted under a self-government agreement with Canada; and</li> <li>(d) is subject to any land governance code or Kanesatake Mohawk law under the <i>Kanesatake Interim Land Base Governance Act</i>.</li> </ul>	<p>The court's power to order a transfer under s.4.2(6) can be made despite ss. 24 and 49 of the <i>Indian Act</i>.</p>	<p>To simplify.</p>
<p><b>38.</b> (1) Subject to ss. 38(2), the executor or administrator handling the estate must not distribute the assets of the estate until:</p> <ul style="list-style-type: none"> <li>(a) the survivor consents in writing to the proposed distribution;</li> <li>(b) the 10-month period and any extension allowed by the court have expired and no s. 36(1) application has been made within those periods; or</li> <li>(c) an application made under s. 36(1) is finished.</li> </ul>	<p>Subject to ss.4.6(1), the executor or administrator handling the estate must not distribute the assets of the estate until:</p> <ul style="list-style-type: none"> <li>(a) the survivor consents in writing to the proposed distribution;</li> <li>(b) the one (1) year period and any extension allowed by the court have expired and no s. 4.2(7) application has been made within those periods; or</li> <li>(c) an application made under s. 4.2(6) is finished.</li> </ul>	<p>To change the term period.</p>
<p><b>38.</b> (2) Subsection 38(1) allows reasonable advances of money to be made to survivors or other dependents of the deceased spouse or</p>	<p>Subsection 4.2(13) does not prohibit reasonable advances of money from the estate, if any, to be made to survivors or other</p>	<p>To clarify</p>

<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
common-law partner for their support.	dependents of the deceased spouse or partner for their support.	
<p><b>40.</b> If a survivor, and either the executor or administrator of the estate make a written agreement that sets out the amount payable to the survivor and the methods for settling the amount by at least one of the methods referred to in s. 36(1)(b)(i) or (ii), a court may enforce that agreement if</p> <ul style="list-style-type: none"> <li>• the survivor’s consent to the agreement was free and informed, and the agreement was not unjust.</li> </ul>	<p>If a survivor, and either the executor or administrator of the estate make a written agreement that sets out the amount payable to the survivor and the methods for settling the amount by at least one of the methods referred to above, a court may enforce that agreement if the survivor’s consent to the agreement was free and informed, and the agreement was not unjust. To clarify, a survivor should seek independent legal advice prior to signing a written agreement.</p>	<p>To add the condition of obtaining legal advice.</p>
<b>Section 4.3: Notice to Council and Views of Council</b>		
<p><b>41.</b> (1) Anyone who applies for an order must send a copy of the application without delay to the First Nation Council. This rule does not apply to emergency protection orders (s. 16) and confidentiality orders (s. 19).</p>	<p>Anyone who applies for an order must send a copy of the application without delay to CNUFN Council. This rule does not apply to emergency protection orders.</p>	<p>To tighten up a bit for clarity.</p>
<p><b>42.</b> Anyone who is granted a court order must send a copy of the order without delay to the First Nation Council. This rule does not apply to confidentiality orders (s. 19).</p>	<p>Anyone who is granted a court order must send a copy of the order without delay to CNUFN Council.</p>	<p>To clarify and tighten up.</p>
<b>Section 4.4: Jurisdiction of Courts</b>		
<p><b>43.</b> (1) In this section, “application” means an application for any of the following:</p> <ul style="list-style-type: none"> <li>• setting aside a transaction involving the disposition or encumbrance of a right or interest in or to the family home (s. 15),</li> <li>• granting exclusive occupation of the family home (s. 20),</li> <li>• varying the amount owed on division of the value of matrimonial rights or interests (s. 29),</li> <li>• determining the amount payable to the spouse or common-law partner and the methods for settling the amount payable, when dividing the value of matrimonial rights or interests (s. 30),</li> <li>• transferring rights or interests (s. 31),</li> </ul>	<p>CNUFN members shall attempt to utilize traditional dispute resolution methods first, followed by any alternate dispute resolution options enacted by CNUFN at that time.</p>	<p>Alternate dispute resolution procedures can be created at a later date and referenced or incorporated in the MRP law.</p>



<b>FHRMIRA VERSION (PLAIN LANGUAGE)</b>	<b>CHANGE THE WORDING TO:</b>	<b>REASON FOR THE CHANGE</b>
<ul style="list-style-type: none"> <li>• restraining actions that will decrease the value of the family home and the matrimonial rights or interests (s. 32),</li> <li>• enforcing a written agreement between spouse or common-law partners setting out and settling the amount payable after they stop living together (s. 33), determining whether a spouse, a common-law partner or a survivor holds a right or interest (s. 48) or</li> <li>• enforcing an order as if it had been made in favour of a First Nation, on the application of a person who is not a First Nation member or an Indian (s. 52).</li> </ul>		
<b>Section 4.6: Other Provisions</b>		
<b>48.</b> A court can decide whether a spouse, a common-law partner, a survivor, or a deceased party's estate holds a right or interest in or to a land or structure.	In the event of a dispute, the court may decide whether a spouse, a common-law partner, a survivor, or a deceased party's estate holds a right or interest in or to any land or structure that is the family home.	Revised the wording slightly.
<b>50.</b> Anyone who applies for the order must send a copy of the order without delay (except a confidentiality order s. 19) to the Minister [ <i>if the reserve is managed under the Indian Act</i> ], or the council of the First Nation if <ul style="list-style-type: none"> <li>(a) its reserve is subject to a land code under the <i>First Nations Land Management Act</i>;</li> <li>(b) its reserve is on the Minister's list [s. 12(5)]; or</li> <li>(c) its land is the Kanesatake Mohawk interim land base under the <i>Kanesatake Interim Land Base Governance Act</i>.</li> </ul>	Anyone who applies for the order must send a copy of the order without delay to Council.	To simplify.
<b>Additional Sections</b>		<b>Reason for Addition</b>
<b>TRANSITIONAL PROVISIONS</b> <b>FHRMIRA</b> 1. <u>Before</u> the MRP Law is in force, <ul style="list-style-type: none"> <li>a) the provisional federal rules (FHRMIRA ss. 13-52) on dividing of the value of matrimonial rights or interests (ss. 28-33) apply to spouses or common-law partners if the Valuation Date is before this law comes into force, and</li> </ul>		To provide a clear outline of which matters will be managed under FHRMIRA rules and which will be managed under MRP rules during the transition to all matters being entirely managed under the jurisdiction of the MRP.



Additional Sections	Reason for Addition
<p>b) the following provisional federal rules apply to survivors, if those sections had already begun to apply to that First Nation when the death occurred,</p> <ul style="list-style-type: none"> <li>• the occupation of the family home for a period of time after the day a spouse or common-law partner died (s. 14),</li> <li>• the exclusive occupation of the family home after a spouse or common-law partner died (s. 21), and</li> <li>• the provisions regarding dividing the value of matrimonial rights or interest when a spouse or common-law partner dies (s. 34-40).</li> </ul> <p><b>MRP</b></p> <p>1. When the MRP law is in force,</p> <p>a) proceedings started under those federal provisional rules must be completed under those rules,</p> <p>b) the rule on getting an authorization for or setting aside a transaction involving the disposition or encumbrance of a right or interest in or to the family home (s. 15 of FHRMIRA) continues to apply, if the rules still applied when the transaction occurred, and proceedings are governed by the notice, jurisdiction and practice and procedure and other requirements in ss. 41-51 of FHRMIRA,</p> <p>c) the federal provisional rules on dividing the value of matrimonial rights or interests (ss. 28-33 of FHRMIRA) continue to apply if the rules still applied as of the Valuation Date, and proceedings are governed by the notice, jurisdiction, practice and procedure and other requirements in ss. 41-52 of FHRMIRA, and</p> <p>d) the following rules continue to apply to survivors, if the death occurred before this MRP law was in force,</p> <ul style="list-style-type: none"> <li>• the occupation of the family home after a spouse or common-law partner dies (s. 14 of FHRMIRA),</li> <li>• the exclusive occupation of the family home after a spouse or common-law partner dies (s. 21 of FHRMIRA),</li> <li>• dividing the value of matrimonial rights or interest in after a spouse or common-law partner dies (s. 34-40 of FHRMIRA), and proceedings under ss. 21, 35, 36, 39 or 40 of FHRMIRA are governed by, the rule that a right or interest in or to the family home is not affected by an order under ss. 16-18, 20 or s. 21 of FHRMIRA and is transferrable (s. 23 of FHRMIRA),</li> <li>the rule that the exclusive occupation of the family home includes adjacent property (s. 25 of FHRMIRA),</li> <li>• the rule that a spouse or common-law partner or survivor who is granted exclusive occupation of the family home is bound by a lease (s. 26 of FHRMIRA),</li> <li>• the provision of offences for disobeying orders (s. 27 of FHRMIRA), and</li> </ul>	

Additional Sections	Reason for Addition
<ul style="list-style-type: none"> <li>• the notice, jurisdiction, practice and procedure and other requirements (s. 41-52 of FHRMIRA).</li> </ul>	
<p><b>AMENDMENT OR REPEAL</b></p> <ol style="list-style-type: none"> <li>1. Council must hold at least three meetings that are open to all members to consider and discuss any proposed major amendment or repeal of this Law.</li> <li>2. Council must, at least 30 days in advance of the first meeting, take reasonable measures that are in accordance with the traditions, customs and practices of Chippewas of Nawash Unceded First Nation to inform its members of:                         <ol style="list-style-type: none"> <li>a) the time and place of all the meetings;</li> <li>b) their right to attend and participate in these meetings;</li> <li>c) a summary of the proposed amendments or repeal; and</li> <li>d) the requirements for approval.</li> </ol> </li> <li>3. Every member who is 18 years of age or over, whether or not resident on Chippewas of Nawash Unceded First Nation land, is eligible to vote on whether to approve the amendment or repeal.</li> <li>4. An amendment or repeal of this Law is not valid unless approved by a majority vote of the eligible members who participated in the final meeting.</li> <li>5. Council may approve minor amendments to the Law by Band Council Resolution. Minor amendment means an amendment that:                         <ol style="list-style-type: none"> <li>a) corrects typographical errors;</li> <li>b) renumbering to harmonize with other laws;</li> <li>c) is required to reference any relevant new or amended Chippewas of Nawash Unceded First Nation or other applicable laws;</li> <li>d) is ordered by any Court; or</li> <li>e) serves to clarify the Law, where there is no reasonable dispute about the intention underlying the original provision.</li> </ol> </li> <li>6. This Law will be reviewed by Chief and Council at least once every five (5) years, unless an earlier review is deemed necessary for any of the reasons listed above.</li> </ol>	<p>To provide a process whereby amendments (major or minor) to the law may be undertaken or a repeal of the law enacted; and to provide a standardized mandatory timeline for review of the law.</p>
<p><b>COMING INTO FORCE</b></p> <p>This Law will come into force and have the force of law on the date that is both:</p> <ol style="list-style-type: none"> <li>a) approved by Chippewas of Nawash Unceded First Nation members; and</li> <li>b) approved by Council</li> </ol>	<p>To outline the conditions on which the law will come into force.</p>





For more information or to ask any questions,

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