



Developing a Matrimonial Real Property Law

Engagement Survey #3
November, 2015

St. Mary's First Nation is developing a matrimonial real property law. Your input is important and will help shape the future of this community.

We do not foresee any risks to completing this survey. It is completely voluntary. You can stop at any time and you do not have to answer any question that you do not want to. Your answers will be grouped with those of other participants so no one will be able to trace your answers back to you specifically.

What is Matrimonial Real Property?

Matrimonial real property is a legal term to describe property that a couple gains or builds up while they are married or in a common law relationship. Matrimonial real property on reserve includes the family home and may include land held by a couple with a Certificate of Possession or custom allotment.

Domestic Contracts

1. *A domestic contract is a written marriage contract made by spouses when they married where the spouses agree on how to divide their matrimonial real property if they decide to separate. Sometimes domestic contracts are called prenuptial agreements.*

Do you agree with this sentence? A member of St. Mary's First Nation (SMFN) who has a spouse who is not a member will not be given at house on SMFN land unless the member has a domestic contract that talks about what will happen with the family home if the relationship ends. *Please tick one box only.*

- I agree with this sentence
- I disagree with this sentence

2. If you agree with the sentence in Question 1, do you think that the member who has a non-member spouse should have to give a copy of the domestic contract to SMFN, especially if the domestic contract talks about transferring an interest in SMFN land?

For example, the domestic contract might talk about the transfer of interest in SMFN land. As an example: a domestic contract could say that the member would like the non-member spouse to stay in the family home until s/he no longer wants to live there and that when the non-member spouse leaves, the house would transfer to the member's child who is also a member of SMFN. Because this scenario involves transferring the interest in SMFN house to a non-member temporarily (but potentially for a long time), do you think the domestic contract should be registered with SMFN?

Please tick one box only.

- I don't think a domestic contract is necessary, as I noted in Question #1
- Yes, I think the member should have to give a copy of the domestic contract to SMFN
- No, I do not think the member should have to give a copy of the domestic contract to SMFN
- Other: _____

3. Do you think that a member of SMFN who has a spouse who is not a member of SMFN should have to make a spousal residence agreement?

A spousal residence agreement is an agreement signed between the spouses and St. Mary's First Nation as an extra part of a domestic agreement. The spousal residence agreement would explain the terms of use for non-members and reallocation of matrimonial real property on St. Mary's land if a marriage or common law relationship ends.

Please tick one box only.

- Yes, I think that there should be a spousal residence agreement in cases where one person in the marriage/common law relationship is not a member of SMFN
- No, I do not think that there should be a spousal residence agreement in cases where one person in the marriage/common law relationship is not a member of SMFN

Mandatory Separation Period

4. Do think that couples who want to separate or divorce should have to live apart for a period of time in order to make sure that the relationship is 'really over'? *Please tick one box only.*

- Yes
- No

5. If you answered 'yes' to Question 4, how long should this 'cooling off' period be? In other words, how long do you think the spouses should have to live apart before they declare that their relationship is 'really over'? *Please tick one box only.*

- I don't think there should be a cooling off period, as I noted in Question #4
- 6 months
- 1 year
- Other: _____

6. If you think it's okay to have a cooling off period, do you think that the couple should have to tell SMFN in order to 'start the clock'? *Please tick one box only.*

- I don't think there should be a cooling off period, as I noted in Question #4
- Yes, I think the couple should have to notify SMFN to start the clock
- No, I do not think the couple should have to notify SMFN to start the clock
- Other: _____

Inheritance

7. Do you agree with this sentence? If a spouse inherits land as a gift from a family member or if a spouse co-inherits land as a gift with other family members, that land should stay with in the family and a divorcing spouse should not be able to claim in interest in that inherited land. This provision would not apply to an interest that is a family home though. *Please tick one box only.*

- I agree with this sentence
- I disagree with this sentence

Violation of the SMFN Matrimonial Real Property Law

8. Do you think that there should be a penalty for someone who violates the SMFN matrimonial real property law? *Please tick one box only.*

- Yes, I think there should be a penalty for breaking this law
- No, I do not think there should be a penalty for breaking this law

9. If you think that a person who breaks the SMFN matrimonial real property law should face a penalty, what kind of penalty should there be? *Please tick all that apply.*

- I do not think there should be a penalty for breaking this law, as I noted in Question #8
- There should be a fine of not more than \$500
- There should be a fine of not more than \$1,000
- There should be a fine of not more than \$5,000
- Community service should be part of the penalty or they should do community service if they cannot afford to pay the fine
- The person should not be able to get any services or help from SMFN for a set period of time like not more than 3, 6 or 12 months
- A penalty should include imprisonment if the person cannot pay a fine
- Other: _____

Determining a Spouse's Interest in Family Property

10. What kinds of things should be considered when a court (or a dispute resolution committee) determines a spouse's interest in family property? *Please tick all that apply.*

- The extent to which the interest in St. Mary's land was gotten through an inheritance or gift
- When the interest was received or disposed of
- How long the relationship lasted
- How long spouses have lived separate and apart
- What each spouse needs to become or to stay economically independent
- What each spouse contributed financially to obtaining or improving the family property
- Non-monetary contributions each spouse made in obtaining, improving, or increasing the value of the interest, including household management or child rearing
- Any order or award made under the *New Brunswick Family Services Act* about custody, child support, spousal support or division of family assets
- Any other situation or factors in relation to the interest in St. Mary's First Nation lands that a court or dispute resolution committee may wish to consider
- Other: _____

Exclusive Occupation Orders

11. Do you think that the SMFN matrimonial real property law should include a part about exclusive occupation orders? *An exclusive occupation order is when a former spouse can live in the family home for a period of time and the other spouse has to vacate.*

- Yes, I think the SMFN law should have a part about exclusive occupation orders and it should apply to all couples
- No, I do not think the SMFN law should have a part about exclusive occupation orders
- Other: _____

12. What kinds of things should be considered when a court or a dispute resolution committee is trying to decide whether to apply an exclusive occupation order? *Please tick all that apply.*

- I do not think there exclusive occupation orders should be allowed under this law, as I noted in Question #11
- Any existing orders against any of the spouses
- The financial situation of both spouses
- The medical condition of the spouses
- Any domestic contract between the spouses
- How long the couple lived in the family home
- The availability of other suitable and affordable accommodation
- Any family violence
- Other: _____

13. Do you think that the parent that has custody of the children should have exclusive occupation of the family home, even if that parent is not a member of St. Mary's First Nation? *In other words, do you think that the parent who takes care of the children should be allowed to stay in the family home even if that parent is not a member of SMFN? Please tick one box only.*
- The parent who has the children should stay in the family home even if that parent is not a member of SMFN
 - Spouses who are not members of SMFN should not be able to stay in the family home even if they have custody of the children
 - If the children are members of SMFN, the parent who has custody should be able to stay in the family home until the children have reached a certain age and then the house should transfer to the children who are members
 - If the children and the parent who has custody are not members of SMFN, they should not be able to stay in the family home on SMFN
 - Other: _____
14. If you think that the parent that has custody of the children (even if the parent is not a member of SMFN) should have exclusive possession of the family home, how long should she or he be able to stay in that house? *Please tick one box only.*
- I do not think that the spouses who are not members should be able to stay in the family home even if they have custody of the children, as I noted in Question #13
 - The parent with custody should be allowed to stay in the family home until the youngest child has reached the age of majority (19 years old)
 - The parent with custody should be allowed to stay in the family home until the youngest child has had the chance to finish their high school education
 - The parent with custody should be allowed to stay in the family home until the youngest child has had the chance to finish their first university or college education
 - Other: _____
15. What if some or all of the children are not members of SMFN? Would you change your answer in terms of how long the parent that has custody should be allowed to stay in the house? *Please tick one box only.*
- My answer would be the same as I answered above in Question #14; it doesn't matter whether the parent with custody is a member of St. Mary's First Nation or not
 - My answer is different if the parent with custody is not a member of St. Mary's. If the parent with custody is not a member of St. Mary's First Nation, then I think that the rule should be:

16. If a parent who is not a member of SMFN is allowed to live in a house on SMFN with his or her member children after a divorce, should that non-member parent have to pay rent or should she or he be allowed to live their without paying rent because the children are members of St. Mary's? *Please tick one box only.*
- I do not think that non-members should be able to live in SMFN houses even if they have custody, as I noted in Question #13
 - The non-member parent should pay rent even though the children are members
 - The non-member parent should not pay rent
 - Other: _____

17. Do you think that spouses of deceased members of St. Mary's First Nation should have the right to live in the house on St. Mary's First Nation after their St. Mary's spouse dies? *Please tick one box only.*

- Yes, a spouse of a deceased member should be able to live in their family home after their spouse dies
- No, a spouse of a deceased member should not be able to live in their family home after their spouse dies

18. If you think that a non-member spouse of a St. Mary's member who has died should be able to stay in their family home, how long do you think they should be able to do that? *Please tick one box only.*

- I do not think that a spouse of a deceased member should be able to live in their family home after their spouse dies, as I noted in Question #17
- Until the surviving, non-member spouse dies
- 20 years
- Other: _____

19. Comments or additional thoughts? *If you would like to enter your name for a \$100 draw prize, please write your name, phone number and email in the comments box (under any comments you may have).*

Name for draw: _____

Contact number/email for draw: _____

Comments:

For more information about the matrimonial real property process, please to <http://www.stmarysfirstnation.com/index.html> or call Erica Paul at (506) 458-9511.

Thank you.