

St. Mary's First Nation

Development of a Matrimonial Real Property Policy

What Rights and Protections do the Provisional Federal Rules of the Family Homes on Reserves and Matrimonial Interests or Rights Act Provide?

The provisional federal rules of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* apply in cases where a First Nation does not have a matrimonial real property law of its own. The “provisional federal rules provide basic real property rights and protections to individuals on reserves during a marriage or common-law relationship, in the event of a relationship breakdown, and on the death of a spouse or common-law partner.

The provisional federal rules include the following rights and protections:

- *Equal right to occupancy of the family home*: provides spouses or common-law partners with an equal entitlement to occupancy of the family home until such time as they cease to be spouses or common-law partners.
- *Requirement of spousal consent for the sale or disposal of the family home*: provides spouses or common-law partners with protection that the family home cannot be sold or otherwise disposed of or encumbered during the marriage or common-law relationship without the free and informed written consent of the spouse or common-law partner. This is regardless of whether that spouse or common-law partner is a First Nation member.
- *Emergency protection order*: allows a court to order that a spouse or common-law partner be excluded from the family home on an urgent basis (in situations of family violence).
- *Exclusive occupation order*: enables courts to provide short to long-term occupancy of the family home to the exclusion of one of the spouses or common-law partners. Since the duration of this order is at the discretion of the court, it could range from a set number of days to a longer period, such as until dependent children reach the age of majority.
- *Entitlement of each member spouse or common-law partner to an equal division of the value of the family home and any other matrimonial interests or rights*: ensures that the proven value of a couple's matrimonial interests or rights in, or to, the family home and other structures (and in some cases lands) on the reserve are shared equally on the breakdown of a relationship.
- *Order for the transfer of matrimonial real property between member spouses or common-law partners*: allows a court to order the transfer, in some circumstances, of the matrimonial interests or rights between member spouses or common-law partners together with, or instead of, financial compensation.
- *Entitlement of surviving spouses or common-law partners*: ensures that when a spouse or common-law partner dies, the surviving spouse or common-law partner may remain in the home for a specified period of time, and can apply under the federal rules for half of the value of the matrimonial real property interests or rights as an alternative to inheriting from the estate of the deceased.
- *Enforcement of agreements on the division of the value of the matrimonial property*: allows a court to make an order that can be used to enforce a free and informed written agreement made by spouses or common law partners that is not unconscionable and that sets out the amount to which each is entitled and how to settle the amount.”¹

¹ Source:

<file:///Users/user/Documents/Consulting/Projects/St.%20Mary's%20First%20Nation/Research/Frequently%20Asked%20Questions%20-%20Family%20Homes%20on%20Reserves%20and%20Matrimonial%20Interests%20or%20Rights%20Act.webarchive>; retrieved on July 30, 2015.