

# St. Mary's First Nation Development of a Matrimonial Real Property Policy

## Which Governments can Make Matrimonial Real Property Laws?

In Canada, the provincial or territorial governments usually make matrimonial property laws. Some of these provincial or territorial rights and protections apply on reserve and some do not. For example, provincial/territorial laws can be used to help spouses living on reserve to determine how to divide the overall value of all matrimonial property (like a house). A spouse can ask a provincial or territorial court to determine his or her share of the value of couple's matrimonial property. A provincial or territorial court can also order one spouse or common-law partner to pay the other a sum of money to make an equal division of the value of couple's total matrimonial property. However, a provincial or territorial court cannot apply provincial laws to force the sale of a home on a reserve or re-allocate rights of possession or occupation of a home. Provincial or territorial laws cannot change the rights of individual First Nation members to reserve land.

So, in December 2013, the federal government passed a law (called the *Family Homes on Reserves and Matrimonial Interests or Rights Act*), which created provisional or temporary rules for dealing with matrimonial real property on reserve. The provisional rules came into force on December 16, 2014. These provisional rules apply to First Nations who have not yet developed their own matrimonial real property law. Once a First Nation develops and passes its own matrimonial real property law, the provisional rules will no longer apply.