

Application For Exclusive Occupation

In certain communities, the Chief and Council or its delegated authority has the ability to make decisions regarding the occupancy of homes on its reserve. Notwithstanding this recognized authority, a spouse or common-law partner resident on reserve retains the right to apply for exclusive occupation of the family home under section 20 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

Section 20(1) of the Act states:

“A court may, on application by a spouse or common-law partner whether or not that person is a First Nation member or an Indian order that the applicant be granted exclusive occupation of the family home and reasonable access to that home, subject to any conditions and for the period that the court specifies.”

Cultural, familial, and political issues may face the spouse before he or she decides to apply for exclusive occupation. For example, the spouse taking care of the children may need a stable home to raise the children until they reach the age of 18.

Before beginning a court application, it is recommended that the spouses try using alternative dispute resolution such as mediation.

Legal Assistance

This pamphlet is provided for informational purposes only and should not be considered as legal advice.

If you cannot afford a lawyer, you may be able to apply for legal aid coverage in seeking or responding to an Exclusive Occupation Order. Check at the Courthouse or with your local legal aid agent to see if a Family Law Duty Counsel may be available to help you to make or respond to any EOO application. Legal Services Society of B.C.: www.lss.bc.ca

For more information:

The Centre of Excellence for Matrimonial Real Property
c/o National Aboriginal Lands Managers Association
1024 Mississauga Street, Curve Lake, ON
K0L 1R0

Phone: 1-855-657-9992 or 1-705-657-9992
Fax: 1-705-657-2999
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Applying for an Exclusive Occupation Order for a Family Home on Reserve



A guide to navigating the Supreme Court rules of British Columbia when applying for Exclusive Occupation of the family home under section 20 of the Family Homes on Reserves and Matrimonial Interests or Rights Act

Background

The *Family Home on Reserves and Matrimonial Interests or Rights Act* (the “Act”) came into force on **December 16, 2013**. The Provisional Federal Rules (PFR’s) contained in the Act came into force **December 16, 2014** and apply (with some exceptions) to all First Nations with reserve lands. The PFR’s no longer apply to First Nations who have passed their own matrimonial real property (MRP) law, under this *Act*, or under the *First Nations Land and Management Act*. It is important to determine which rules apply in your circumstances.

NOTE: This Act only applies where the breakdown of the relationship occurred on or after December 16, 2014.

As per Clause 2.1 of the Definitions of the Act, a **family home** means a structure – that need not be affixed but that must be situated on reserve land – where the spouses or common-law partners, habitually reside or, if they have ceased to cohabit or one of them has died, where they habitually resided on the day on which they ceased to cohabit or the death occurred. If the structure is normally used for a purpose in addition to a residential purpose, this definition includes only the portion of the structure that may reasonably be regarded as necessary for the residential purpose.

Purpose of this Pamphlet

This pamphlet is to provide information on how a spouse or common-law partner can apply for an order for exclusive occupation of the **family home** on a reserve in British Columbia. An exclusive occupation order may:

- Be for a short or long period of time,
- Allows for one spouse or common-law partner to exclusively stay in the family home on reserve, and
- Excludes the other spouse or common-law partner from coming to the family home on reserve or only allows them on the premises under certain conditions.

Application to the Family Court

The B.C. Supreme Court Family Rules set out the process of seeking an order under the *Act* and define a “family law case” to include cases where orders are being sought under the *Act*

In B.C., applications for an Exclusive Occupation Order (EOO) for a Matrimonial Home on Reserve must be made to the BC Supreme Court.

B.C. Supreme Court forms can be found at: <http://supremecourtbc.ca/supreme-court-family-forms>

Applicants

Applicants should fill out and file the following documents with the court registry when they are seeking an **Exclusive Occupation Order under Section 20** of *FHRMIRA*:

1) Form 3 – Notice of Family Claim— under the B.C. Supreme Court Family Rules. Include **Schedule 4 and 5** when filling out this form.

- **Complete the information required in section 1, 2, and 3.**
- **In section (4) “Claimants Claim”** which asks you to indicate what order you are asking the court to make, check:

[x] Another order. [Schedule 5 is attached.]

- Under **Schedule 5** check **[x] other orders** and list: **An Exclusive Occupation Order under Section 20 of the *Family Home on Reserves and Matrimonial Interests or Rights Act***

2) Both applicants and respondents involved in a *FHRMIRA* order application must file **Part 3 of a Form F8 financial statement (Property).** B.C. Supreme Court Family Rule 5-1(1)(e) requires that both applicants and respondents in an application for a *FHRMIRA* order must file **Part 3 of a Form 8 Financial Statement**. Include information about all property owned on and off reserve; include specific information about the matrimonial property on reserve such as the legal status of the property (owned under Certificate of Possession, lease, held traditionally and so forth) and list all people with a legal interest in the land.

3) Form F30 – Affidavit: An affidavit (statement) must be filed with the application and should address the factors listed in Section 20(3) of the *Act* that a court will consider when deciding whether to grant an EOO. These factors include:

- Best interests of any children
- Collective interest of the First Nation
- Financial and medical situation of any of the parties;
- History of any family violence or psychological abuse;
- Other exceptional circumstances that the court should be aware of.

4) Notice of Service. Usually Service should be provided by **Personal Service (Form 15)** for a notice of family claim. Notice of Personal Service in Form 15 is usually required for a notice of family claim. In some circumstances, you can file an Form 16 Notice of Ordinary Service if the other party has provided an address for other service (such as regular mail or fax).

You must provide copies of the documents to the other party at least **30 days** before you apply for the order. You must let people know that you are applying for an EOO, and provide Notice to people who will be affected by the order, including:

- Other spouse (if living)
- Any adult living in the house (this would include other family members, elders)
- First Nation Chief and Council

5. Fees. Required fees must be filed with a Notice of Family Claim (currently around \$80 – check with the Registry about the fee amount, and process for applying to have fees waived).

Section 41(2) of the *Act* provides that on Council’s request the Court must allow the First Nation to make representation at the hearing about the cultural, social and legal context surrounding the application and to present the community’s views about whether the order should be made.

Respondents

If you have been served with a Notice that your spouse or another person intends to apply for an EOO, and if you disagree with the EOO being granted, or if you wish the court to consider information you have to add, you would file a reply.

If you are responding to an application for an EOO under Section 20 of the *FHRMIRA* filed by another party, file these forms:

- 1. Form 4 – Response to Family Claim**
- 2. Part 3 of a Form 8 Financial Statement (Property).**
- 3. Form F30 – Affidavit:**
- 4. Fees**

Next Steps – After an EOO has been granted:

After the hearing, it is the responsibility of the party who applied for the order to prepare the court order and submit it to the court registry so that it can be checked and entered. To enter an order complete this form:

Form F51 (Rule 15-1 (1)) Order made after an application: After the Court has made an Order, the successful party is responsible for filing a Form 51 (Order made after an application).

The successful applicant must also send a copy of the Court Order to the First Nation Council.

Special Circumstances:

In some circumstances, parties may wish to file an application to have the fees waived or to have an application heard quickly (without 30 days Notice) because of an emergency situation. Check with the court registry for the application process to have fees waived or to make a short notice application for urgent matters.

Revoking or Varying an EOO:

An EOO can be revoked or varied, only if there are changes in circumstances, and the other party must be given notice of the application. Applications must be made under Section 20(6) – Application to vary or revoke order.