

## Notice of Application

The applicant must complete Form 8: Application (General), indicating when the first court date is scheduled, and Form 13.1: Financial Statement (Property and Support Claims) including information about:

- their relationship, including whether they have children;
- property owned by the couple, both on and off reserve;
- the family home on reserve;
- who else is living in the family home;
- whether there was any agreement between them, or previous court order;
- how long the applicant has resided on the reserve;
- whether either spouse has any medical condition;
- whether other suitable housing is available to either the applicant or the respondent; and
- whether there has been any family violence.

## Next Steps: Service of Documents

The applicant must serve a copy of the Application on the respondent and any other party who might be affected by the order, including any adult living in the house, and the Chief and Council. In addition to serving the Application, the applicant must also serve any supporting forms and documents they want the judge to consider including **Form 13.1: Financial Statement (Property and Support Claims)**, a blank Form 10: Answer, and the respondent's **Mandatory Information Program Notice**.

To serve a copy of the Application and supporting forms in Ontario the applicant must serve the documents by special service, which requires a person other than the applicant to serve the documents on the respondent. The person serving the documents for the applicant must be at least 18 years old and may:

- give a copy of the documents to the other person or their lawyer, provided that the lawyer is willing to write on a copy of the document that he or she accepts the document on behalf of their client
- mail a copy of the documents with Form 6: Acknowledgement of Service that the person served with the document must complete and return to the applicant
- give a copy of the documents, in an envelope addressed to the person, to an adult who lives at the address of the person to be served and then mail a copy to the address that day or the following day

## Next Steps

1. After the Application and supporting documents have been served, the person who served the documents must complete and file **Form 6B: Affidavit of Service** for each person they served. The person must sign the Affidavit of Service in front of a Commissioner for Taking Affidavits.
2. Next, the applicant must go to the courthouse and file the Affidavit of Service in the Continuing Record and update the Table of Contents.
3. The respondent can reply to the Application by completing **Form 10: Answer** and serving it on the applicant and the other parties.
4. Attend the Mandatory Information Program (MIP) then attend the first court date or case conference.
5. If the applicant is successful, he or she should provide a copy of the order to the Chief and Council of the First Nation and the Minister of Indigenous and Northern Affairs Canada

## Legal Assistance

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

The applicant or the respondent may choose to have a lawyer assist them at any point during the application. He or she would be responsible to pay the legal costs. Legal Aid may be able to assist in the process.

Contact Legal Aid Ontario at:  
<http://www.legalaid.on.ca/en/>

For more information, contact:  
**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  
Email: [info@coemrp.ca](mailto:info@coemrp.ca)



## Ontario

### Applying for an Exclusive Occupation Order for a Family Home on Reserve



A guide to navigating the Family Court rules of Ontario 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 Ontario. 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 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.

**Note: S. 41(2) states “On the council’s request, the court that is seized of the application must, before making its decision, allow the council to make representations with respect to the cultural, social and legal context that pertains to the application and to present its views about whether or not the order should be made.”**

## Application to the Family Court

All court forms for family law applications in the Superior Court of Justice can be found on the Ontario Court Forms website:

<http://ontariocourtforms.on.ca/en/family-law-rules-forms/>

**Use Form 8: Application (General) to bring an application before the Court and provide the other parties with notice.**

ONTARIO

SEAL

(Name of court) Court File Number

at Court office address Form 8: Application (General)

Applicant(s)  
Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).  
Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Respondent  
Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).  
Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

TO THE RESPONDENT(S):  
A COURT CASE HAS BEEN STARTED AGAINST YOU IN THIS COURT. THE DETAILS ARE SET OUT ON THE ATTACHED PAGES.  
 THE FIRST COURT DATE IS (date) \_\_\_\_\_ AT \_\_\_\_\_  a.m.  p.m.  
or as soon as possible after that time, at (address) \_\_\_\_\_

**Use Form 13.1: Financial Statement (Property and Support Claims) to apply for an order for exclusive occupation. List the family home under Part 4(a): Land.**

PART 4: ASSETS IN AND OUT OF ONTARIO

If any sections of Parts 4 to 9 do not apply, do not leave blank, print "NONE" in the section.

The date of marriage is: (give date) \_\_\_\_\_

The valuation date is: (give date) \_\_\_\_\_

The date of commencement of cohabitation is (if different from date of marriage): (give date) \_\_\_\_\_

PART 4(a): LAND

Include any interest in land owned on the dates in each of the columns below, including leasehold interests and mortgages. Show estimated market value of your interest, but do not deduct encumbrances or costs of disposition; these encumbrances and costs should be shown under Part 5, "Debts and Other Liabilities."

Nature & Type of Ownership (Give your percentage interest where relevant)	Address of Property	Estimated Market Value of YOUR Interest		
		on date of marriage	on valuation date	today
		\$	\$	\$
15. TOTAL VALUE OF LAND		\$	\$	\$