

If the Council wishes to provide its views on a pending application, Council may wish to:

- designate a writer to draft a written response, and
- ensure the designate is familiar with the applicable Provincial family court rules, and
- designate a band representative in the event a court appearance is required. This individual should be well prepared for the hearing with a written summary of the First Nation's views.

### **When might the Council support or oppose an application for exclusive occupation?**

Community input may be required in developing principles to guide the Council on the issue of applications for exclusive occupation and when they will be either supported or opposed. Council has the final discretion in how it will proceed. Important considerations may include; whether the homes on the reserve are owned by the Band, whether the land is owned by an individual or whether it is part of a family land holding, whether the homes are subject to a lease, mortgage, or a Ministerial Guarantee, etc.

### **ENFORCEMENT OF ORDERS**

The Act also provides, the Council may enforce the following orders on request by a person who is not a First Nation member or an Indian:

- orders on the amount payable to the spouse, common-law partner or survivor [ss. 30(1) & 36(1)]
- orders on how the amount will be paid [ss. 30(1) & 36(1)];
- orders enforcing a written agreement on the amount payable and the methods for paying it [s. 33 & 40].

If Council does not enforce the order, the court may require the person against whom the order was made to pay the amount into court.

### **ADDITIONAL INFORMATION AND ASSISTANCE**

If First Nation residents have specific questions regarding rights and protections available to them, they should be referred to a family law lawyer for legal advice. A list of provincial legal resources is available at [www.coemrp.ca](http://www.coemrp.ca).

For general issues and questions regarding the *Family Homes on Reserves and Matrimonial Interests or Rights Act* you may refer them to the Centre of Excellence for Matrimonial Real Property.

# ROLE OF CHIEF & COUNCIL

**Under the Provisional Federal Rules  
as contained in the Family Homes on  
Reserves and Matrimonial Interests  
or Rights Act**



### **Support Available for You & Your Community**

**Centre of Excellence for Matrimonial Real Property**  
A Centre of Excellence for Matrimonial Real Property, hosted by the National Aboriginal Lands Managers Association (NALMA), is now available to assist First Nation Communities.

#### **Contact the centre today!**

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 705-657-9992

Fax: 705-657-2999

E-mail: [info@coemrp.ca](mailto:info@coemrp.ca)

Website: [www.coemrp.ca](http://www.coemrp.ca)



## SUMMARY OF THE LEGISLATION

The *Family Homes on Reserves and Matrimonial Interests or Rights Act* (the Act) applies to married couples and common-law partners living on reserve, where at least one of them is a First Nation member or an Indian. It seeks to provide basic protections and rights to individuals living on reserves regarding the family home and other matrimonial interests and rights, during a conjugal relationship, in the event of a breakdown of that relationship, and on the death of their spouse or common-law partner.

In the event a community does not enact its own matrimonial real property (MRP) law by December 16, 2014, **Provisional Federal Rules** will be applied, with some exceptions, until a First Nation develops their own matrimonial real property law. These provisional rules provide the following rights and protections:

- equal right to occupancy of the family home (S.13)
- requirement of spousal consent for the sale or disposal of the family home (S.15)
- emergency protection order (S.16-19)
- exclusive occupation order (S.20)
- 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 (S.28)
- order for the transfer of matrimonial real property between member spouses or common-law partners (S.31)
- entitlement of surviving spouses or common-law partners (S.34-38)
- enforcement of agreements on the division of the value of the matrimonial property (S.52).

## LEARNING MORE ABOUT THE LEGISLATION

Chief and Council should familiarize themselves with the Act and how it applies to the First Nation. Arrangements can be made with your First Nation's legal advisor to provide a clearer understanding of the Council's role and responsibilities. The Council may also contact the Centre of Excellence for Matrimonial Real Property for a presentation.

**In the event a First Nation has not enacted its own MRP law by December 16, 2014, preparations should be made to respond to applications filed under the Provisional Federal Rules.**

## IMPORTANCE OF FIRST NATION VIEWS

The Act recognizes the diverse values and practices among First Nations concerning individual interests in reserve lands. For this reason, the Provisional Federal Rules included in the Act provides for First Nations to be notified in regard to any proceedings under this Act, except in the case of emergency protection and confidentiality orders. Where a community's collective interests in lands are engaged, the First Nation may make representations to the courts about the cultural, social and legal context relevant to the proceedings.

Section 41 specifies that an applicant for an order under the Act **must without delay**, send a copy of the application to the Council of any First Nation on whose reserve the structures and lands in question are situated.

Section 41(2) further states that **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.

## APPLICATIONS FOR EXCLUSIVE OCCUPATION

### What to do before any applications arrive at the Band Office.

In order to ensure fairness and transparency in proceedings, it would be a best practice for the First Nation to develop a policy and procedures for responding to any applications under this legislation. Including:

- designation of an individual to receive applications, and
- establish an internal file management system.

As an alternative, a First Nation might consider the formation of an internal management committee, framed by Terms of Reference, to develop the required policies and procedures.

### What to do when an application for exclusive occupation arrives at the band office.

Each time an application is copied to the First Nation, the designate should open a new file. Applications for exclusive occupation are sensitive files containing personal information and should be kept in a secure filing location.