



Saskatchewan

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



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

Notice of Application

The applicant must also complete **Form 15-19, Notice of Application**, indicating when the other spouse or common-law partner should come to court, and **Form 15-26B, Property Statement**. The applicant should also prepare his/her affidavit, 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 lives 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 or common-law partner 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 anyone who might be affected by the order, including any adult living in the home, and the Chief and Council.

To serve a copy of the application in Saskatchewan:

- service of a document must be effected by personal service of that document on the person to be served except where an enactment or order of the court provides otherwise; or these rules authorize service by an alternative or special mode of service
- Personal service of a document is effected by leaving a copy of the document with the person to be served
- Must be accompanied by an acknowledgement of service document, a request that the person served return the signed and completed acknowledgement of service without delay and a postage prepaid envelope addressed to the person serving the document (except where service is

Next Steps

1. The person who has been served with a copy of the application is known as a respondent. A respondent can reply to the application by preparing his/her own affidavit, containing the same type of information. The Respondent may also want to complete **Form 15-15, Answer and Counter-Petition**.
2. The applicant may prepare a second affidavit, but only to reply to anything new in the Respondent's affidavit.
3. Attend court and present the application to the court. 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.

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

Legal Assistance

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 this process. Contact Legal Aid Saskatchewan at :

<http://www.legalaid.sk.ca/>

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
KOL IRO

Phone: 1-855-657-9992 or 705-657-9992
Fax: 1-705-657-2999



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 Saskatchewan. 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 or common-law partner before he or she decides to apply for exclusive occupation. For example, the parent 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 couple 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 Court of Queen’s Bench for Saskatchewan can be found on the Law Society website:

<http://www.lawsociety.sk.ca/for-lawyers-and-students/practice-resources/queens-bench-forms-2016.aspx>

To apply for an order for exclusive occupation, use the **Petition, Form 15-6**.



PETITION FORM

On the second page of the petition, the applicant should check the “other” box near the bottom, and state that he/she is applying for an order for exclusive occupation under section 20 of the *Act*.

