



Fisher River

— CREE NATION

FISHER RIVER CREE NATION MATRIMONIAL REAL PROPERTY LAW

COMMON DEFINITIONS

- **“Real Property”**: property that stays in one place and cannot be moved, like land or a house.
- **“Matrimonial” or “Family” Real Property**: real property like a land or a house that two people share during their marriage or common-law relationship. If the relationship ends through divorce or death, this property may need to be divided.

BACKGROUND

- For those who live **off-reserve**, how Matrimonial Real Property is divided is determined by the laws of the province ([*The Family Property Act*](#)).
- For those who live **on-reserve**, provincial Matrimonial Real Property laws do not apply. As a result, the government enacted legislation in 2013 to address this gap in the law.

Family Homes on Reserves and Matrimonial Interests or Rights Act

In 2013, the *Family Homes on Reserves and Matrimonial Interests or Rights Act* was created by Canada. It sets out rules for division of matrimonial real property until/if a First Nation creates their own law. These rules include:

- **Equal Occupation**: both partners have an equal right to live in the family home during the relationship.
- **Protection of the Family Home**: the family home cannot be sold, transferred or mortgaged without the written consent of both partners, even if one of the partners is not a First Nations member.
- **Exclusive Use of the Home**: courts can grant one partner exclusive use of the home if there is family violence or other urgent reasons.
- **Division of Property**: the value of the home and other shared property may be divided fairly between partners if both are First Nation members. Courts can transfer land ownership and provide financial compensation.
- **Survivor Protections**: when a partner dies, the survivor has the right to stay in the family home for 180 days and can apply for a long-term occupation or a share of the property's value instead of inheriting through the estate.

- **Valuation of Interests or Rights:** what the assets are worth is based on what a buyer would pay for a comparable product, taking into account any liabilities or debts.
- **Dispute Resolution:** partners can agree on property matters through mediation or traditional dispute resolution, with court enforcement if needed.

How Does a First Nation Establish their Own Matrimonial Real Property Law?

The process for a First Nation to enact their own Matrimonial Real Property law is as follows:

- ⇒ Notify the Attorney General of Manitoba that the First Nation will be enacting its own law;
- ⇒ Inform eligible voters on and off-reserve of the details of the proposed law and their right to vote on the proposed law;
- ⇒ Notify eligible voters through posting a notice of the date, time and place of the vote;
- ⇒ Submit the laws for approval of the eligible voters through a vote;
- ⇒ Once approved, notify the minister about the results of the vote; and
- ⇒ Send a copy of the approved law to the Minister of Indigenous Services Canada and the Attorney General of Manitoba.

SUMMARY OF FRCN'S DRAFT MATRIMONIAL REAL PROPERTY LAW

Heading	Summary	Location
Preamble	Introductory statements that <ul style="list-style-type: none"> • affirm FRCN's inherent right to self-governance and control over its land and family homes; and • outline the intent of the law, which is to govern the use, enjoyment and occupation of Family Homes and the division of Real Property rights and interests on reserve land. 	pages 2-3
Title	The title of the law is <i>Fisher River Cree Nation Matrimonial Real Property Law</i> .	page 3, section 1
Definitions	Defines key terms used in the law like "Spouse", "Common-Law Partner", and "Family Real Property".	pages 3-6, section 2
Rules of Interpretation	Explains how to read and apply the law by explaining the meaning of terms and the circumstances when they apply.	pages 6-7, section 3
Application of the Law	The law applies to spouses, where at least one of them is a member of FRCN, and family homes and Family Real Property on FRCN land.	page 7, section 4

Purpose	The purpose of the law is to manage and divide Family Real Property on FRCN Lands if a marriage or Common-Law relationship has ended, or a spouse has passed away.	page 8, section 5
Domestic Agreements	Encourages spouses to sign written agreements about how to handle their property that may be different from what is contained in the law.	page 8, section 6
Use, Enjoyment and Occupation of a Family Home	Confirms that spouses and their children have a right to live in the family home, and that the children's needs take priority.	page 8, section 7
Restrictions on Disposition of a Family Home	A spouse is unable to sell, transfer or mortgage the family home without the other spouse's consent or a proper legal process.	page 9, section 8
Application for Exclusive Occupation of a Family Home	Enables spouses to apply to the court for the right to live in the family home alone, often to protect children. Allows courts to order support for upkeep, bills, or other relevant expenses.	page 10, section 9
Emergency Protection Orders	To protect children and vulnerable individuals immediately, the law allows judges to order an abusive person to leave the family home.	pages 11-12, section 10
Division of Family Real Property Upon the Breakdown of a Marriage or Common-Law Relationship	Sets out rules for dividing Family Real Property: <ul style="list-style-type: none"> • When a relationship ends, the value of the Family Real Property is usually split equally. • A non-member spouse cannot own Nation land but is entitled to a fair share of the property's value. 	pages 12-14, section 11
Compensation for Other Real Property	If one spouse's property isn't considered Family Real Property, the other spouse may still get compensated for any increase in its value or money spent on improvements.	page 14, section 12
Death of a Spouse or Common-Law Partner	If one spouse passes away, the other spouse can claim half the value of the deceased spouse's Real Property on FRCN land. A surviving non-member spouse can remain in the home for at least 180 days, or longer if caring for disabled children or allowed by Council.	pages 14-15, section 13

Valuation of Rights and Interests	Addresses how to calculate a home or building's worth, usually starting with the replacement costs minus depreciation and debts	page 16, section 14
Mediation	If there is a dispute under this law, spouses must try to settle matter through a mediator before going to court unless there is a need for a court order.	pages 16-17, section 15
Powers of the Court	The court can determine what would be a family home, set aside unfair deals, and settle disagreements on property value and division. The court may also order payments or transfers to ensure fairness.	pages 17-18, section 16
General Provisions for Orders	The court can add conditions, combine orders, change or cancel them, but that any decision must consider the well-being of children first.	page 18, section 17
Administration	FRCN will make the law available for public viewing, and any court orders affecting property must be sent to the Land Manager to keep records up to date.	page 18, section 18
Appeals	Individuals may challenge (appeal) court orders made under this law. However, the order typically stays in effect unless the a judge says otherwise.	page 19, section 19
Enforcement	Police can arrest someone who disobeys a court order and can help enforce orders by supervising the removal of people or property. Not following an order can result in a fine, jail time, or both.	page 19, section 20
Amendment or Repeal	Requires changes or cancellations of this law to be approved by a majority vote of eligible FRCN members. Outlines which edits can be made without a new vote.	pages 19-20, section 21
Coming into Force	States the exact date when the law officially starts to apply.	page 20, section 22

NEXT STEPS

The next steps in FRCN's process for passing the law, and ensuring that it reflects the needs of FRCN members, is as follows:

