

The application and affidavit along with a copy must be filed at the Court of Queen's Bench location closest to the applicant. You may be able to fax or email the documents to the court centre. Call the court centre in advance to determine if they will accept a faxed or emailed copy. A court date will be provided to you by court staff to fill in on the application. You are required to attend court on this date.

Notice of Application

Step 2: Service of Application and Affidavit

Unless you are asking the court to grant an order without notice to the respondent, you must serve a copy of the application on anyone affected by the Order including the applicant's spouse or partner, any other adult in the home and Chief and Council.

The applicant must arrange for a third party to personally serve the application and affidavit on anyone effected by the order by leaving a copy of the documents with the person to be served unless a court order or the Queen's Bench rules allow an alternative manner of service.

At the time of service, the person served must be asked to sign an acknowledgment of service form. Make note of the specific date the person was served and whether he or she declined to sign the acknowledgement of service form.

An **Affidavit of Service (Form 701)** must be completed and signed before a Commissioner of Oaths. This document confirms when the person was served, who served the application and affidavit, and how he or she identified the correct person to be served. The affidavit of service must be brought with you to Court on the date the Application is set to be heard.

The person served should be served at least 14 days before the hearing date unless you request in your application for less notice to be provided to the respondent.

Step 3: Attend Court

You must attend court on the date stated on the application. The court will consider your application and ask questions. If you are granted an order, you may ask the court staff for assistance in drafting the order. You will need to provide a copy of the order to the respondent, any other adult in the home and Chief and Council. You may request the court to make an order that a peace officer serve the order on these individuals.

If the order is granted on an urgent, without notice basis, the Court may grant an interim order of exclusive occupancy of the family home and set a further hearing in the future once the respondent has been served with the interim order, application and affidavit. The application will then be heard on a final basis.

Legal Assistance

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

The applicant or respondent may choose to have a lawyer assist him or her at any point in the process. He or she can hire a lawyer and pay the legal costs of that lawyer or seek assistance from **Legal Aid at 1-800-261-2960**.

If the individual does not qualify for Legal Aid, he or she may seek assistance from the **Legal Help Centre 1-204-258-3096** located at 202-393 Portage Avenue, Winnipeg, Manitoba or the **Family Justice Resource Centre in Winnipeg at 1-844-808-2313**.

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
Email: info@coemrp.ca
Website: www.coemrp.ca



Manitoba

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



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

Step 1: Prepare and File Court Documents

The person applying for exclusive occupation of the family home on reserve is called the “applicant” and the person served with a copy of the application is known as the “respondent”.

All court forms to apply for exclusive occupation can be found on the **Court of Queen’s Bench** website:

http://web2.gov.mb.ca/laws/rules/forms_e.php.

Individuals may also contact the **Legal Help Centre in Winnipeg at 1-204-258-3096** to request the necessary forms be mailed to them and for **assistance in completing the forms.**

To apply for an order for exclusive occupation, complete **Form 70E.1 – Notice of Application** for Exclusive Occupation Order and **Form 70E.2 – Affidavit**. The affidavit should contain information relating to:

- the individual’s relationship with his or her spouse or common law partner and whether they have children together;
- address and location of the family home;
- who holds possession of the home and under what authority or instrument;
- a list of individuals who reside in the home;
- whether any agreements or court order exist between the spouses/partners;
- the length of time the applicant has resided in the home;
- the monthly income of the applicant and the respondent;
- whether there is other suitable housing for the applicant or respondent to reside on reserve;
- whether there are other court proceedings occurring between the applicant and his or her spouse/partner.

The affidavit must be signed by the applicant and witnessed by a Commissioner of Oaths.