

## Next Steps: Service of Documents

Once the Applicant has completed the Originating Application and filed it with the court, he or she will need to “serve” the Respondent with a copy of:

- (A) Notice to the Respondent and Originating Application (**Form 56A.06A**)
- (B) Property Statement (**Form 56A.27C**)

Your documents must be served on the Respondent by personal service. The Respondent is the other party in a court case. In an application for exclusive possession of the matrimonial home, the Respondent would be the person’s ex-spouse or ex-partner. Personal service means that the documents must be handed to the Respondent in person.

“Personal Service” can be done in a number of ways:

1. By a process server. The Supreme Court Registry can provide you with a list of process servers. Process servers must complete an Affidavit of Service. The form for the Affidavit of Service is included in this kit. It is your responsibility to ensure that the Affidavit of Service is filed with the Court to prove the documents were properly served.
2. By any other person. Any person, **other than yourself** and is **18 years of age or older**, may serve documents on the other party by personal service. Personal service means that the person serving the documents must identify your spouse/partner as being the person to be served and deliver the documents to them. This can be done by handing the documents to the person to be served or, if they will not accept the documents, by setting them down in front of him/her. The person serving the documents must be able to identify the person being served, either through personal knowledge or receipt of identification. An Affidavit of Service must be sworn by the person who did the service and filed with the Court.

Originating Application can be found here: <http://www.court.nl.ca/supreme/family/forms/Form56A06A.pdf>

The Family Court has developed a number of self-help kits for various types of applications. While not directly dealing with Exclusive Occupation applications, this kit will be helpful in preparing and filing your application: [http://www.court.nl.ca/supreme/family/Orig\\_App\\_Self\\_Help\\_Kit\\_Parents.pdf](http://www.court.nl.ca/supreme/family/Orig_App_Self_Help_Kit_Parents.pdf)

## Next Steps

Once you have served the first copy of all of your documents on the Respondent, you must file a copy of the Affidavit of Service with the Court. You or the person who served the Respondent can file the Affidavit of Service. Once the Affidavit is filed, the Court will forward your matter to Family Justice Services (FJS).

Once the Court receives proof that the Respondent has been served with your application, the Court will forward your application and documentation to Family Justice Services (FJS). FJS will contact you to schedule an intake appointment within 1-2 weeks of receiving your application from the Court.

After the intake appointment, a note will be sent to court by FJS and a court date will be set. The Applicant and Respondent will receive a notice of the court date. At court the Applicant can present the reasons for his/her claim to exclusive occupation of the family home. If the Applicant is successful a copy of the order must be provided 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.**

Legal Aid may be able to assist in this process. Contact the Newfoundland and Labrador Legal Aid Commission at:

Kevin O’Shea  
Grand Falls-Windsor  
Phone: 709-489-9081  
Location: 7A Queensway Drive, Grand Falls-Windsor

Provincial Director’s Office:  
Phone (Toll-Free): 1-800-563-9911  
Email: [nlac@legalaid.nl.ca](mailto:nlac@legalaid.nl.ca)  
Location: 251 Empire Avenue, St. John’s



# Newfoundland

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



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

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

## 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 Newfoundland. 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.

## Jurisdiction

Miawpukek First Nation and other Newfoundland and Labrador First Nations are outside the Family Court’s judicial area and expanded service area, so any proceedings under the FHRMIRA would happen in Supreme Court General Division (sometimes referred to as Trial Division) (according to the Judicature Act, 43.2 (c)). Currently, the closest Supreme Court is located in Gander. The Family Rules still apply according to 56A.02(1) and 56A.01(c). The new Rules, have incorporated “applications made under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*” to the list of matters to which the Family Law Rules apply.

## Application to the Family Court

A person trying to get a judge’s order for exclusive occupation of their family home is called the “applicant.” The applicant needs to prepare and submit an Originating Application to the Supreme Court, indicating that they want to apply for “exclusive possession of the matrimonial home.” The **Originating Application** form can be found at any Supreme Court, or can be accessed online: <http://www.court.nl.ca/supreme/family/forms/Form56A06A.pdf>

The Applicant must complete **Form 56A.06A (the Originating Application)**. As well, the Applicant must also complete the **“Notice to Respondent”** is included within **Form 56A.06A**. The Applicant must also prepare and submit a **property statement in Form 56A.27C**. This form “must” be submitted along with the **Originating Application**. Form 56A.27C can be found at any Supreme Court or online here: [http://www.court.nl.ca/supreme/family/forms/Form56A\\_27C.pdf](http://www.court.nl.ca/supreme/family/forms/Form56A_27C.pdf)

**Section 13 of the Originating Application** is the **“Property Section”** and it must be completed as part of an application for exclusive occupation of the family (or matrimonial) home. In Section 13 B., the applicant can state the reasons for their claim. In presenting the reasons for their request for exclusive occupation of the family home, the Applicant may include information about:

- the family home on reserve;
- who lives in the family home;
- whether there was any agreement between them, or previous court order; (agreement about possession of the house? Or a general separation agreement?)
- 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.

**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.”**