

Staying in the Family Home on Reserve

Who this is for

This fact sheet is for you if:

- you have left an abusive relationship, or are thinking of leaving;
- you have shared (or are sharing) a home on reserve with your partner; and
- you have questions about your right to stay in the family home on reserve.

In this fact sheet, **partner** means the person who you are or were married to, you live or lived with in a marriage-like relationship, or you have a child with.

Who can stay in the family home

Whether or not you can stay in the family home after separating from your partner depends on:

- if you have the right to live on the reserve,
- who has rights to the land your home is on,
- the kind of housing you live in, and
- the band's policies on the reserve where you live.

Who has the right to live on reserve

To stay in the family home, it is helpful to have the right to live on reserve.

- If you are a band member, you have the right to live on reserve.
- If you are not a band member, but have signed a rental agreement with the band, you have the right to live on reserve.

If you do not have the right to live on reserve, it is unlikely that you can stay in the family home. But if you live in **capital** or **social housing**, you may be able to go to court to get money from your partner for your share of the house. This is called **compensation**. See "Types of housing on reserve."

Who has rights to the land

Your right to stay in the family home on reserve also depends on who has rights to the land your home is on. There are different kinds of land rights on reserve.

- **Indian Act land** is reserve land that a band does not own, but has the right to use under the federal Indian Act. For this reason, the band cannot sell land to band members, but can allow a band member to live on and use the land and/or live in a house on the land. The band member who has this right gets a Certificate of Possession, or Certificate of Occupation.

If you live on Indian Act land, find out whose name is on the Certificate of Possession or Occupation. Ask your band housing officer or chief and council. Or call the Indian Lands Registry at Aboriginal Affairs and Northern Development Canada at **1-800-567-9604** (no charge) or TTY at **1-866-553-0554** (no charge).

If your partner's name is on a Certificate of Possession, he or she can sell his or her interest without your agreement. This means that even if you are a band member, you may not have the right to stay on the land and/or live in the family home.

- **Traditional land** is reserve land that belongs to a particular family through tradition or custom recognized by the band. Ask your band chief or council if there is a written record of who the band gave the right to live on traditional land.
- **General band land** is held by the band for all band members. If you do not live on Indian Act or traditional land, you probably live on general band land. In this case, your right to stay in your home on reserve depends on band policies and the type of housing you live in — capital, social, or rental housing.

Types of housing on reserve

There are different types of housing on reserve. If you are not sure what type of housing you live in, ask your band.

- **Capital housing** is housing that you and/or your partner pay for with a loan or a subsidy from the band. Although you and/or your partner own the house, you may have a rental agreement with the band to live on general band land.

If you are an **individual tenant** (you alone have a rental agreement with the band), you can probably stay in the family home.

You *may* be able to stay in the home if you are a **joint tenant** with your partner (both your names are on the rental agreement with the band). You probably cannot stay in the family home if you are not an individual or joint tenant.

Even if you cannot stay in the family home, you may have the right to get compensation for a share of the home. You will need to talk to a lawyer who knows about family and property law on reserve.

- **Social housing** is paid for by the band through Canada Mortgage and Housing. While you live in the house, you and/or your partner pay the mortgage to the band. When the house is paid for in full, the band transfers possession to you and/or your partner.

If the band has transferred possession to you and/or your partner, you have the same rights as someone who has capital housing (see above).

If you are still paying the mortgage to the band, or you do not have a rent-to-own agreement with the band, you have the same rights as someone in band-owned rental housing (see below).

- **Band-owned rental housing** is housing that you and your partner rent from the band.

If you signed a rental agreement with the band, find out what it says will happen if you and your partner separate. Also find out what band policy says will happen if partners in rental or social housing separate.

For example, the band's policy may say that if the children live with you, you can stay in the home and have it put in your name.

Some First Nations are taking control of their own reserve lands under a BC law called the First Nations Land Management Act. This law says a band can decide how reserve land is distributed when partners divorce or separate. Find out if your band is using this law.

Help from BC courts

Under BC law, the courts cannot decide who can stay in the family home on reserve. Federal law (the Indian Act) and band policies decide this.

Even if you do not have the right to stay in capital or social housing, you can go to Supreme Court and ask the judge to order that you get compensation for a share of the home's value (either sale or rental value). The judge may order this to make sure that family property is divided fairly. These orders do not affect the title or ownership rights of individual pieces of reserve land.

Get legal advice from a lawyer who knows about family and property law on reserve.

Community help

Because you are in an abusive relationship, you may feel ashamed, afraid, and alone. Abuse in relationships is *not* a private family matter. Whether you want to stay in the relationship or leave, you can get help for yourself and your children. If you are leaving an abusive partner, it is important to have a personal safety plan. See the fact sheet *Safety Planning*.

- A transition house worker or Native courtworker can help you make a safety plan. For information about how to contact them, call VictimLink BC at **1-800-563-0808** (no charge, 24 hours every day).
- Talk to your band housing officer, or chief and council. They may help you keep or get back your home if your children are living with you.

Legal help

Legal Services Society (legal aid)

604-408-2172 (in Greater Vancouver)

1-866-577-2525 (no charge, elsewhere in BC)

- For free services like the Family LawLine, advice from **family duty counsel** (lawyers) at courts, a lawyer if you cannot afford one, and legal aid information, see www.legalaid.bc.ca
- See free legal information at www.familylaw.lss.bc.ca.

Lawyer Referral Service

604-687-3221 (in Greater Vancouver)

1-800-663-1919 (call no charge, elsewhere in BC)

- Gives you the name of a lawyer to discuss the legal problem with you for \$25 plus taxes (first half hour). You can then hire this lawyer or ask for another name. This might be good to do if you do not have possession of a capital or social home and want information about getting compensation for a share of the home's value.

Your Aboriginal community

- You may be able to get legal help from your friendship centre, your band's social development office, and/or an Aboriginal delegated agency.
- Call VictimLink BC (below phone number) for the name of a Native courtworker near you who can help.

More information

- *Surviving Relationship Violence and Abuse* (booklet) www.legalaid.bc.ca/publications (click "Abuse & family violence")
- VictimLink BC (family violence phone service for confidential help and information) **1-800-563-0808** (call no charge, 24 hours every day)
- BC government website about support services www.domesticviolencebc.ca
- Legal aid website — Aboriginal section www.legalaid.bc.ca/aboriginal
- Links to brochures about abuse in same-sex relationships www.legalaid.bc.ca/publications (click "Gays, lesbians, trans, & bisexuals")

This fact sheet explains the law in general. It is not intended to give you legal advice on your particular problem. This fact sheet is one of a series produced by the Legal Services Society. Other fact sheets in this series (some are in several languages):

- **What Is Abuse?**
- **Women Abused by Their Partners**
- **Men Abused by Their Partners**
- **If Your Sponsor Abuses You**
- **Safety Planning**
- **Getting Help from the Police or RCMP**
- **Protection Orders**
- **Parenting**
- **What to Do About Money**
- **The Criminal Court Process**



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