

MRP LAW-MAKING WORKBOOK



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Centre of Excellence for Matrimonial Real Property



National Aboriginal Land Managers Association

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For enquiries about obtaining copies of this workbook or other reference materials about matrimonial real property, please visit our website at www.coemrp.ca
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MRP LAW-MAKING WORKBOOK

Preamble

The federal *Family Homes on Reserves and Matrimonial Interests or Rights Act* (FHRMIRA) and its Provisional Federal Rules (PFR) came fully into effect as of December 16, 2014.

FHRMIRA applies to all First Nations with reserve land with the following exceptions:

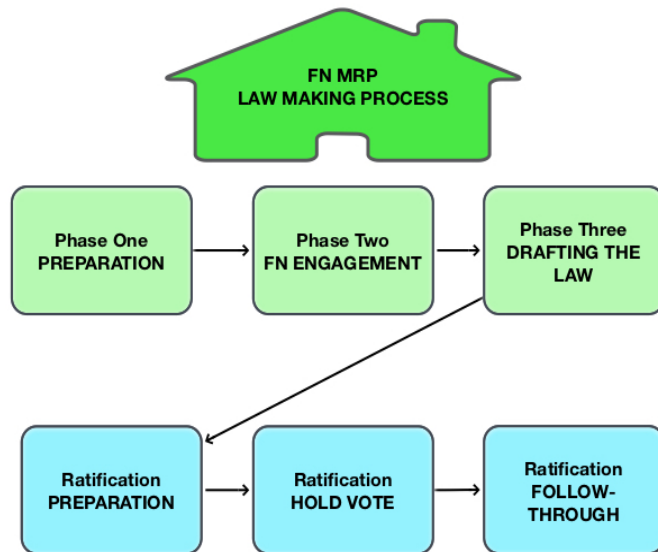
- First Nations that have enacted their own matrimonial real property laws under FHRMIRA.
- Operational First Nations with land codes and an MRP law in place under the *Framework Agreement on First Nations Land Management* (FAFNLM).
- First Nations with reserve lands and a Self Government Agreement in effect who have jurisdiction over land management.

As of 2018, the great majority of First Nations are bound by the rules and regulations of FHRMIRA and its Provisional Federal Rules. Any First Nation is free to develop and adopt its own MRP Law in accordance with FHRMIRA, FAFNLM, or its own Self-Government Agreement..

This Workbook was created by the Centre Of Excellence For Matrimonial Real Property as an aide to examining the policy issues inherent in crafting an effective MRP law. It should be used in conjunction with the COEMRP's **MRP Toolkit** and the **MRP Policy & Law-Making Guide**.



The MRP law-making process can be envisioned by this diagram...



As with the development of any new law, it should be done with a great deal of thought, consultation and care. It takes time, leadership and commitment to achieve satisfactory results. First Nations who wish to develop their own MRP law should contact the MRP Special Project Officer at the COEMRP to determine if funds are available to assist First Nations in the development and implementation of their community MRP law.

Basic Principles

Principle: a moral rule or belief that helps you know what is right and what is wrong, and that influences your actions.

Some of the governing principles that should to be taken into account when forming a First Nation MRP law might include:

- Reserve lands are held in trust for future generations and the collective well-being.
- There are intrinsic responsibilities in relation to the lands and all living creatures on it.
- If spouses separate or divorce, the best interests of the children is most important.
- Children should have the right to reside in the matrimonial family home until they reach the age of majority or until other suitable arrangements are made for them.
- Whenever possible disputes between spouses should be resolved amicably through mediation or community dispute resolution processes.

HOW TO USE THIS WORKBOOK

This Workbook:

- Presents the major sections of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* (FHRMIRA) in **plain language**. **For all purposes of interpreting and applying the law, users should consult the authoritative text of FHRMIRA.**
- Raises various policy considerations or questions (*shown in italics*).
- Includes a “checkbox” to indicate that the section is to be kept as is with no changes suggested.
- Provides a space to write in alternative wording.
- Provides a space to articulate the reasons for the alternative wording.

Please note that the person using this Workbook is not expected to be a lawyer or to draft the legal wording of the proposed MRP law for their First Nation. The proposed MRP law would be drafted much later by, and in consultation with legal counsel. Use this Workbook to help frame the policy discussion; to capture ideas; and to generate involvement from community leaders and members. It can be used by a single individual or it can be used to capture the consensus thinking from a discussion group or team.

FHRMIRA is not prescriptive. Your law can be drafted to reflect your needs, values, and customs.

Any law-making process requires that ideas and concepts will have to be discussed, debated, and refined over and over. MRP law is no different and, indeed, given that it deals with some of the most personal and important aspects of the members’ lives, it will take great time and effort to be finally ratified by the Community. And depending on your land regime, you have the options as shown in the charts below:

Indian Act
1. Use PFRs
2. Enact MRP law pursuant to FHRMIRA

FAFNLM
1. Use PFRs
2. Enact MRP law pursuant to FHRMIRA
3. Enact MRP law pursuant to Land Code

Self-Government (with reserve lands)
1. Use PFRs
2. Enact MRP law pursuant to FHRMIRA
3. Enact MRP law pursuant to Self-Government Agreement

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Interpretations and Definitions

<p>"Common-law partners" means persons who have been living together in a conjugal relationship for at least one year. <i>How many years of cohabitation are required to count as common-law?</i> <i>Note that FHRMIRA provides similar protections to spouses and common-law partners. Some jurisdictions provide different rights. For instance, some provinces define a common-law partner relationship as three years unless a child has resulted, in which case it is one year. Will your law address this issue? Will the provisions of the MRP law apply just to married couples or also to common-law couples?</i> <i>How will your law address traditional/custom marriages?</i></p>		<p><i>Note: The one-year period of living together is the same as in the Indian Act (Canada). A First Nation could change this period, but would have to assess the implications of any difference between the Law and the effects of the Indian Act.</i></p>	
<p>"Council" means "council of the band" in the <i>Indian Act</i>.</p>	✓		
<p>"Court" means a superior court in a province. <i>Should the community consider including a clause for mandatory dispute resolution at the community prior to going to an outside court?</i></p>	✓		
<p>"CP" means a Certificate of Possession that is a document giving evidence of a member's right to lawful possession of reserve lands pursuant to the <i>Indian Act</i>.</p>	✓		

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<p>"Designated judge" means a justice of the peace or judge designated by the provincial Lieutenant-Governor-in-Council under this Act.</p>	✓		
<p>"Domestic Agreement" means a signed document made by the spouses where they agree on their rights and obligations. <i>Can the terms of a domestic contract between spouses override the provisions of the First Nation MRP law?</i></p>			
<p>"EPO", an "Emergency Protection Order", means an order issued by the courts to protect the family members from violence, and the home from damage. <i>Given that family breakdowns are a hard reality, what provisions need to be put in place to protect people during such breakdowns? How prepared is your community to deal with potential situations of family violence?</i> <i>NOTE: not all provinces/territories have designated judges for purposes of granting an EPO under section 16 of FHRMIRA. It is important to determine if section 16 EPOs are accessible in your province/territory.</i></p>			

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<p>"EOO", an "Exclusive Occupation Order", means an order providing for the sole occupancy of the home to one of the spouses for a set period of time. It does not involve a change in ownership. <i>Will your MRP law include Exclusive Occupation Orders, whereby a court or a dispute resolution process can determine if one spouse is granted the exclusive right to occupy the matrimonial home for a defined period of time?</i></p>			
<p>"Family home" means the family matrimonial home (the structure only, not the land) situated on a reserve where the spouses or common-law partners normally live. It need not be affixed to land (e.g. a mobile home). If part of the home is used for work, only the residential part is included. <i>How will you treat situations where the family home is situated on a larger piece of property, for example, is a home sitting on 100 acres of land to be treated the same as a home sitting on a single acre?</i> <i>How will you treat situations where the family home is used for other purposes, e.g., the operation of a family-run business?</i></p>			
<p>"First Nation" means a band under the <i>Indian Act</i>.</p>	<p>✓</p>		
<p>"First Nation member" means a person who is on the band list of a First Nation or who is entitled to have their name on that list.</p>			

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<p>"Interest or right" means</p> <p>(a) the following rights or interests referred to in the <i>Indian Act</i>:</p> <ul style="list-style-type: none"> (i) a right to possession, Certificate of Possession or Certificate of Occupation allotted in accordance with s. 20 of the <i>Indian Act</i>, (ii) a permit referred to in s. 28(2) of the <i>Indian Act</i>, and (iii) a lease under ss. 53 or 58 of the <i>Indian Act</i>; 				
<p>(b) a right or interest on a reserve:</p> <ul style="list-style-type: none"> • subject to a land code or First Nation law under the <i>First Nations Land Management Act</i>, • any First Nation law enacted under a self-government agreement with Canada, • any land governance code or Kanesatake Mohawk law under the <i>Kanesatake Interim Land Base Governance Act</i> ; and 				
<p>(c) a right or interest on a reserve</p> <ul style="list-style-type: none"> • in or to a structure recognized by the First Nation, or • recognized by a court order under s. 48. <p><i>Does your First Nation have different kinds of interest, such as rent-to-own agreements, or a right to occupancy based on a BCR, or other custom or traditional practice?</i></p> <p><i>How will your FN law deal with those other kinds of interests or rights to land or structures?</i></p>				

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<p>"Matrimonial interests or rights" means real property rights or interests held by a spouse or common-law partner, other than the family home. To be considered matrimonial, these interests and rights must have been</p> <ul style="list-style-type: none"> (a) acquired during the conjugal relationship; (b) acquired before the conjugal relationship but in specific contemplation of the relationship; or (c) are not covered by (a) or (b) but appreciated in value during the relationship. <p>They do not include anything received as gifts or an inheritance.</p>			
<p>"Minister" means the Minister of Indigenous and Northern Affairs Canada.</p>	<p>✓</p>		
<p>"MRP" or "Matrimonial Real Property", means the immovable property used by a couple and the family, the most common example being a family home and the land it is situated on.</p>			
<p>"Peace officer" has the same meaning as a "peace officer" under the <i>Criminal Code</i>.</p> <p><i>How is your reserve policed?</i></p> <p><i>What new demands will an MRP law place on police services?</i></p> <p><i>You may want to include a police representative on the committee, or provide a copy of the draft MRP law to your local policing agency for their review and comment.</i></p>			

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"Personal property" means movable assets, such as cars, money in the bank, household goods.				
"Real property" means immovable property, the most common example being a house and the land it is situated on.				
"Spouse" means either of two persons who have entered in good faith into a marriage that is voidable or void.				
"Survivor" means the spouse or common-law partner of a deceased Indian. <i>What happens when there are both? Perhaps someone who never divorced has been living in a common-law relationship for several years.</i>				

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Application

SECTIONS 6: SPOUSES OR COMMON-LAW PARTNERS

6. This Act applies to spouses or common-law partners only if at least one of them is a First Nation member or an Indian.
Do you want your law to apply to non-member status Indians renting homes or leasing lands on your reserve?

Enactment of First Nations Laws

SECTIONS 7: POWER OF FIRST NATIONS

7. (1) A First Nation has the power to enact laws respecting

- the use, occupation and possession of family homes on its reserve(s)
- dividing the value of any rights or interests held by spouses or common-law partners in or to lands and structures on its reserve(s).

These laws apply during the conjugal relationship, on breakdown of the relationship or on the death of a spouse or common-law partner.
Do you want your law to apply in all these circumstances?

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<p>7. (2) These laws must include procedures for amending and repealing them and may also include</p> <p>(a) administrative provisions; and</p> <p>(b) provisions for enforcing certain court orders.</p> <p><i>How will the MRP law be amended once it is adopted if deemed necessary?</i></p>		✓		
<p>7. (3) A First Nation must notify the provincial Attorney General when it intends to enact laws.</p>		✓		
<p>7. (4) The federal <i>Statutory Instruments Act</i> does not apply to First Nation laws. [This means that there is no need to get federal approval for these laws.]</p>		✓		

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Family Home (Sections 13-27)

SECTIONS 13-15: FAMILY HOME OCCUPATION

Section 13 - During Conjugal Relationship			
<p>13. Each spouse or common-law partner may occupy the family home during the conjugal relationship, whether or not that person is a First Nation member or an Indian.</p> <p><i>How will this right be protected?</i></p> <p><i>Are your policies in alignment with this law, e.g., housing, residency, membership policies?</i></p>			
Section 14 - After Death			
<p>14. When a spouse or common-law partner dies, a survivor who does not hold an interest or right in or to the family home may occupy that home for a period of 180 days after the day on which the death occurs, whether or not the survivor is a First Nation Member or an Indian.</p> <p><i>Will you include a similar provision?</i></p> <p><i>What is a reasonable period of time to allow a survivor to deal with the loss of a spouse/partner and make other living arrangements if necessary?</i></p> <p><i>Should this period be flexible if there are children involved?</i></p> <p><i>Is this a right that the First Nation wants to protect? If so, how will this right be protected?</i></p>			

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Section 15 – Disposition of Family Home			
<p>15. (1) Subject to the <i>Indian Act</i>, a spouse or common-law partner must not dispose of or encumber [e.g. a mortgage] the family home during the conjugal relationship without the free and informed consent in writing of the other spouse or partner.</p> <p><i>How will you ensure that this requirement is met or that this right is protected (e.g., provide a consent form)?</i></p> <p><i>How will you meet this consent obligation if there are non-registered interests?</i></p>			
<p>15. (2) A court may set aside a disposition or encumbrance contrary to s. 15(1) and impose conditions on any future transaction. The spouse or partner must apply to the court.</p> <p><i>Whereas the model law makes this rule absolute, if someone disposes or encumbers the family home without consent, then the transaction is null and void. The rule is absolute. This is a possible option for a First Nation to think about.</i></p>			
<p>15. (3) The disposition or encumbrance cannot be set aside if some other person paid for it in good faith.</p> <p><i>How will the rights of third-party individuals be respected or protected?</i></p> <p><i>How will you treat a disposition if no consent was given (could it be null and void)?</i></p>			

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<p>15. (4) A spouse or common-law partner who did not consent to the transaction may claim damages from the other spouse or partner.</p> <p><i>Is there potential for financial compensation in lieu of real property division?</i></p> <p><i>Should the starting amount for compensation be equal to one half of the interest in on-reserve matrimonial property, from which an adjudicator can deviate based on relevant considerations? ... and ...</i></p> <p><i>Will your law only provide for compensation, or could the transaction be revoked?</i></p>				
<p>15. (5) The spouse or common-law partner who made the transaction is the one who must prove they got consent.</p>				
<p>15. (6) A court may allow a spouse or common-law partner to dispose of or encumber the family home without getting consent if the other spouse or common-law partner</p> <ul style="list-style-type: none"> • cannot be found, • is not capable of consenting, or • is unreasonably withholding consent. <p><i>What is a reasonable period of time to meet such conditions?</i></p>				

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SECTIONS 16-19: FAMILY HOME - EMERGENCY PROTECTION ORDER (EPO)

Not all provinces have designated judges for the purpose of issuing an EPO under section 16 of *FHRMIRA*.

It is important to determine if these EPOs are accessible in your province.

If your province has no designated judges, you may need to consult the provincial regulations.

Will the community include this in their own law where a designated judge has been appointed in the province?

16. (1) A spouse or common-law partner may apply to the court for an emergency protection order. The application may be made without notice to the other spouse or common-law partner. The order may last for up to 90 days and may contain one or more provisions in s. 16(5).
The judge may make the order if satisfied that
(a) family violence has occurred; and
(b) the order should be made because of the seriousness or urgency of the situation to protect persons or property.

16. (2) A spouse or common-law partner may apply to the court, even if he or she was forced to leave the family home as a result of family violence.

16. (3) A peace officer or other person may apply for the emergency protection order on behalf of the spouse or common-law partner with that person's consent. If consent is not given, they may apply with permission of the judge. The judge must follow federal regulations on this point.

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<p>16. (4) The judge must consider the following:</p> <ul style="list-style-type: none"> (a) the history and nature of the family violence; (b) the existence of immediate danger to persons at risk of harm or property at risk of damage; (c) the best interests of any child in their care, including a child's interest in keeping a connection with their First Nation; (d) the interests of any elderly person or disabled person who normally lives in the family home and who is cared for by either spouse or common-law partner; (e) whether someone else holds a right or interest in or to the family home; (f) how long the applicant has lived on the reserve; and (g) any exceptional circumstances that justify removing someone else from the family home (e.g. family violence, psychological abuse). 				

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<p>16. (5) The order may:</p> <ul style="list-style-type: none"> (a) give the applicant exclusive occupation of the family home and reasonable access to the home; (b) require any person to leave the family home and not come back; (c) direct a peace officer to evict the other spouse or common-law partner and any other person from the family home; (d) prohibit any person who was required to leave the family home from going near the family home; (e) direct a peace officer to accompany the other spouse or common-law partner or other person in order and supervise the removal of their personal belongings; and (f) order anything else the judge considers necessary to protect persons or property at risk. <p><i>Consider situations where there may be more than one home on a lot, or where the home is on common band lands, or where there are multiple families residing in one home.</i></p>				
<p>16. (6) Everyone named in the order must obey it when they learn of it.</p> <p><i>What will be the penalties under your law for breaching the order?</i></p>				
<p>16. (7) A peace officer must give a copy of the order to the persons named in the order, either directly or in another way allowed by the court. The peace officer must inform the applicant as soon as each person receives a copy.</p>				

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16. (8) The peace officer is not personally liable for anything done (or not done) in good faith.				
16. (9) In this section, "family violence" means any of the following things done by one spouse or common-law partner against the other, a child cared for by either them, or any other person who normally lives in the family home: (a) wilful and unlawful force, (not including self-defence); (b) intentionally or recklessly causing bodily harm or damage to property; (c) intentionally or recklessly doing (or threatening) something that causes a reasonable fear of bodily harm or damage to property; (d) sexual assault, sexual abuse or threatening to do either of those things; (e) unlawful forcible confinement; or (f) criminal harassment.				
17. (1) The justice of the peace or judge must forward a copy of the order under s. 16 and all the supporting materials to the court.				
17. (2) The court must review the order within three working days or as soon as a judge becomes available.				
17. (3) The court, after reviewing the order and the materials, must: (a) confirm the order, if satisfied that it was supported by sufficient evidence; or (b) order a new hearing of the matter by the court, if not satisfied that it was supported by sufficient evidence.				

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<p>17. (4) The court must notify the parties and any person named in the order of its decision and of any resulting procedures.</p> <p><i>What will be the penalties under your law for breaching the order?</i></p>				
<p>17. (5) A confirmed order is deemed to be an order of the court.</p>				
<p>17. (6) Even if the court orders a new hearing, the order remains effective unless the court orders otherwise.</p>				
<p>17. (7) The new hearing must consider</p> <ul style="list-style-type: none"> • the materials present at the original hearing • any new evidence presented at the new hearing, and • any evidence about the collective interests of First Nation members. 				
<p>17. (8) At the new hearing, the court may confirm, change or revoke the order under s. 16 and make it last longer than the 90-day period [s. 16(1)].</p>				
<p>17. (9) An application made under s. 18 must be considered at the new hearing, unless the new hearing has already begun.</p>				
<p>18. (1) Any person involved in an emergency protection order [ss. 16 or 17] can apply to the court to have it changed or revoked. The application must be made</p> <ul style="list-style-type: none"> (a) within 21 days after receiving notice of the order, or within any longer time that the court allows; and (b) at any time, if the situation has changed significantly. 				

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<p>18. (2) The court may confirm, change or revoke the order and may make it last longer than the 90-day period [s. 16(1)].</p>				
<p>18. (3) The court hearing must consider</p> <ul style="list-style-type: none"> • the materials present at the original hearing, • any new evidence presented at the new hearing, and • any evidence about the collective interests of First Nation members. 				
<p>19. (1) Subject to s. 19(2), the court may order:</p> <p>(a) a ban on the public attending all or part of a s. 17 new hearing or a s. 18 hearing;</p> <p>(b) a publication ban on the identity of a party, witness or child; and</p> <p>(c) a disclosure ban on any related information in a court document or record.</p>				
<p>19. (2) The court may only make the order under s. 19(1) if satisfied that</p> <p>(a) it is necessary for the safety of a party or witness or the safety or physical or emotional well-being of a child; or</p> <p>(b) protecting a party, witness or child from undue hardship or adverse effect outweighs the public's right to the information.</p>				

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SECTIONS 20-21: EXCLUSIVE OCCUPATION ORDER

20. (1) A court may order that exclusive occupation of and reasonable access to the family home be given to a spouse or common-law partner – whether or not the person is a First Nation member or an Indian. The court may attach conditions to and limit the time of the order.

Will these provisions need to be amended with respect to your position on common-law partners?

Do these provisions include band-owned homes versus privately owned homes, or leases, or rentals?

Do you want to include a timeframe within which applicants must apply?

20. (2) The court may make a temporary exclusive occupation order, before deciding whether to make the main order under s.20(1)

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<p>20. (3) The court must consider the following when making an exclusive occupation order:</p> <ul style="list-style-type: none">(a) the best interests of any children who normally live in the family home, including a child's interest in maintaining a connection with their First Nation;(b) the terms of any agreement between the spouses or common-law partners;(c) the collective interests of First Nation members in their reserve(s) and the views of the council regarding the cultural, social and legal context;(d) how long the applicant has lived on the reserve;(e) the financial situation and the medical condition of the spouses or common-law partners;(f) the availability of other suitable housing on the reserve;(g) any existing order related to the breakdown of the conjugal relationship;(h) any family violence;(i) any psychological abuse by one of the spouses or common-law partners against the other, any child in their care, or any other family member who normally lives in the family home;(j) any exceptional circumstances that justify removing someone else from the family home (e.g. family violence, psychological abuse);(k) the interests of any elderly person or disabled person who normally lives in the family home and who is cared for by either spouse or common-law partner;(l) whether someone else holds a right or			
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<p>interest in or to the family home; and (m) the views given by any other person the court allows.</p> <p><i>Consider the size of the land that the home is situated on, as well as situations where there may be more than one home on a lot, or where the home is on common band lands, or where there are multiple families residing in one home.</i></p> <p><i>With regard to s. 20(3)(c) above, refer to s. 41.</i></p>			
<p>20. (4) The order may:</p> <p>(a) require any person to leave the family home and not come back;</p> <p>(b) require the other spouse or common-law partner to preserve the family home until they leave;</p> <p>(c) direct the applicant to pay the other spouse or common-law partner for the cost of other housing; and</p> <p>(d) requiring either spouse or common-law partner to pay costs for repair and maintenance of the family home and other related costs.</p> <p><i>The order could contain a provision that outlines the area of land to which the order applies, e.g., one acre where the house is located versus twenty acres. In other words, “What is reasonably necessary for the enjoyment of the property?”</i></p>			
<p>20. (5) When the court makes the exclusive occupation order under this section, any previous order made under ss. 16-18 is revoked, unless the court says otherwise.</p>			

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<p>20. (6) If the situation changes significantly, any party or person named in the order, or who holds a right or interest in or to the family home, may apply to the court to have the order changed or revoked. The court will then confirm, change or revoke the order.</p>				
<p>20. (7) Anyone who applies for an order under this section must send a copy of it without delay</p> <ul style="list-style-type: none"> • to any adult who is being asked to leave the family home, • to any person who holds a right or interest in or to the family home, and • to any other person specified in the court’s rules. 				
<p>21. (1) If a spouse or common-law partner dies, the survivor can apply to the court for exclusive occupation. This includes survivors who are not members or Indians. The court may order that the survivor get exclusive occupation of and reasonable access to the family home, subject to the conditions and time specified by the court. <i>Do you want to include a timeframe within which applicants must apply?</i></p>				
<p>21. (2) The court may make a temporary exclusive occupation order, before deciding whether to make the main order under s. 21(1).</p>				

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<p>21. (3) The court must consider the following when making an exclusive occupation order:</p> <ul style="list-style-type: none"> (a) the best interests of any children who normally live in the family home, including a child's interest in maintaining a connection with their First Nation; (b) the terms of the will; (c) the terms of any agreement between the spouses or common-law partners; (d) the collective interests of First Nation members in their reserve(s) and the views of the council regarding the cultural, social and legal context; (e) the medical condition of the survivor; (d) how long the survivor has lived on the reserve; (g) whether the family home is the only property of significant value in the estate; (h) the interests or rights of any other person in or to the family home; (i) the interests of any elderly person or disabled person who normally lives in the family home and who is cared for by either spouse or common-law partner; (j) any exceptional circumstances that justify removing someone else from the family home (e.g. family violence, psychological abuse); and (k) the views given by any other person the court allows. <p><i>Consider the size of the land that the home is situated on, as well as situations where there may be more than one home on a lot, or where the</i></p>			
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<i>home is on common band lands, or where there are multiple families residing in one home. With regard to s. 21(3)(d) above, refer to s. 41.</i>			
21. (4) The order may require: (a) the survivor to preserve the condition of the family home; (b) any person to leave the family home and not come back; and (c) the executor or administrator handling the estate or a person with an interest or right in or to the family home to pay for the costs of the repair and maintenance of the family home and other related liabilities.			
21. (5) The survivor must notify the other parties without delay about the order. However, a peace officer must give a copy of the order to those persons if the court directs.			
21. (6) If the situation changes significantly, any party or person named in the order, or who holds of a right or interest in or to the family home, may apply to the court to have it changed or revoked. Court will then confirm, vary or revoke the order.			
21. (7) Anyone who applies for the order must send a copy of the court application without delay to <ul style="list-style-type: none"> • the executor or administrator handling the estate, if known to the applicant, • the Minister, • any adult who is being asked to leave the family home, • any person who holds a right or interest in or to the family home, and • any other person specified in the court's rules. 			

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SECTIONS 22-27: OTHER PROVISIONS

<p>22. A court has authority to decide that family violence has occurred regardless of any criminal proceeding.</p>	<p>✓</p>		
<p>23. An exclusive occupation order [ss. 16-18, 20 or 21] does not</p> <ul style="list-style-type: none"> • change who holds a right or interest in or to the family home, • prevent an executor or administrator handling the estate from transferring the right or interest to a beneficiary, or • prevent a court from ordering the transfer of the right or interest [ss. 31 or 36]. 	<p>✓</p>		
<p>24. The person who got an order under ss. 17, 18 or 20 must give notice of the order without delay to anyone named in the order. However, a peace officer must give a copy of the order to those persons if the court directs.</p>	<p>✓</p>		
<p>25. The family home includes all the adjacent land necessary to use and enjoy it, if the family home was allotted under s. 20 of the <i>Indian Act</i>. [See: ss. 16, 20 and 21]. <i>How will you treat situations where the family home is situated on a larger piece of property (for example, is a home sitting on 100 acres of land to be treated the same as a home sitting on one acre)?</i> <i>How will you define reasonable access?</i></p>			

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<p>26. A spouse, common-law partner or survivor who is granted an exclusive occupation (ss. 16-18, 20 or 21) is bound by any lease given to another, during the order.</p>				
<p>27. Any person who disobeys an order under ss. 16-19, s. 20(4)(a) or s. 21(4)(b) is guilty of an offence punishable on summary conviction and is liable</p> <p>(a) for a first offence, to a maximum fine of \$2,000 or to imprisonment for a maximum term of three months, or to both; or</p> <p>(b) for a subsequent offence, to a maximum fine of \$5,000 or to imprisonment for a maximum term of one year, or to both.</p> <p><i>What will be the penalties for offences to these provisions?</i></p> <p><i>What type of agreement will you negotiate with the court to administer and enforce your law?</i></p> <p><i>If there are fines, to whom is the fine or a portion of it, paid?</i></p>				

Division of the Value of Matrimonial Interests or Rights (Sections 28-40)

SECTIONS 28-33: BREAKDOWN OF A CONJUGAL RELATIONSHIP

<p>28. (1) When a conjugal relationship breaks down, each spouse or common-law partner is entitled to receive one half of the value in or to the right or interest held by at least one of them, in the family home as well as other compensation under ss. 28(2) and (3). The values are calculated as of the valuation date. The spouse or partner must make an application under s. 30.</p> <p><i>Instead of half the value, could it be some other value? For example, maybe it is based on when the property was acquired, or on the length of the relationship, or on an increase in value during the relationship.</i></p> <p><i>When do common-law partners have a right to share in the division of matrimonial property?</i></p> <p><i>Will the MRP law encourage spouses to have recourse to community dispute resolution services before heading to adjudication or court?</i></p> <p><i>What dispute resolution methods will be encouraged?</i></p>		
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<p>28. (2) A spouse or common-law partner who is a member of a First Nation is entitled to additional compensation totalling the amounts in s. (a) plus (b) plus (c):</p>				
<p>(a) One half of the value of matrimonial rights or interests in or to lands and structures acquired both</p> <ul style="list-style-type: none"> • during the relationship, and • before the relationship (but in specific contemplation of the relationship); 				
<p>(b) the larger of the amounts in s. (i) and (ii):</p> <p>(i) One half of the amount by which the value of the matrimonial rights or interests in or to lands and structures acquired before the relationship (but not in specific contemplation of the relationship) increased between the day when the conjugal relationship started and the valuation date, and</p> <p>(ii) an amount equal to the difference between</p> <ul style="list-style-type: none"> • any payments made by the spouse or common-law partner towards improvements made to these lands and structures, and • the amount of debt outstanding for making those payments as of the valuation date; and <p><i>NOTE: Your First Nation legal counsel might consider a simpler calculation.</i></p>				

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<p>(c) if the lands and structures referred to in s. (b)(i) did not increase in value during the relationship, an amount equal to the difference between</p> <ul style="list-style-type: none"> • any payments made by the survivor towards improvements made to these lands and structures, and • the amount of debts outstanding for making those payments as of the valuation date. <p><i>Will your law include improvements to band-owned homes?</i></p> <ul style="list-style-type: none"> • <i>What about the equity accrued in a rent-to-own home or a mortgaged property?</i> 				
<p>28. (3) A spouse or common-law partner who is NOT a member of the First Nation, is entitled to additional compensation totalling the amounts in s. (a) plus (b) plus (c) below:</p> <p><i>This may be an important aspect of a First Nation MRP law. While non-members cannot own property on reserve, they can be financially compensated for their contribution to the couple's property. Deciding how to strike the balance between compensating non-members and ensuring that members retain possession of their allotment may be the hardest policy choice in developing an MRP law.</i></p>				
<p>(a) One half of the value of matrimonial rights or interests in or to structures only [<i>not lands</i>] acquired both</p> <ul style="list-style-type: none"> • during the conjugal relationship, and • before the conjugal relationship (but in specific contemplation of the relationship); 				

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<p>(b) the larger of amounts in s.(b)(i) and (b)(ii): (i) One half of the amount by which the value of the matrimonial rights or interests in or to structures only [<i>not lands</i>] acquired before the relationship (but not in specific contemplation of the relationship) increased between the day when the relationship started and the valuation date, and (ii) an amount equal to the difference between</p> <ul style="list-style-type: none"> • any payments made by the survivor towards improvements made to these structures, and • the amount of debts outstanding for making those improvements as of the valuation date; and <p><i>NOTE: Your First Nation legal counsel might consider a simpler calculation.</i></p>			
<p>(c) the amounts of s. (c)(i) plus s. (c)(ii): (i) for lands (other than the family home) acquired</p> <ul style="list-style-type: none"> • during the relationship, • before the relationship (but in specific contemplation of the relationship) or that increased in value during the relationship, <p>an amount equal to the difference between</p> <ul style="list-style-type: none"> • payments made by the spouse or common-law partner towards improvements made to these lands, and • the amount of debts outstanding for making those improvements as of the valuation date, and <p>(ii) for structures acquired before the conjugal relationship (but not in specific contemplation of the relationship) that did not increase in</p>			

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<p>value during the relationship, an amount equal to the difference between</p> <ul style="list-style-type: none"> • any payments made by the survivor towards improvements made to these structures, and • the amount of debts outstanding for making those improvements as of the valuation date. 			
<p>28. (4) The value of the above rights or interests is the difference between</p> <p>(a) the amount a buyer would reasonably be expected to pay for comparable rights or interests to the ones at issue; and</p> <p>(b) the amount of any debts outstanding for acquiring those rights or interests or to improve or maintain the lands and structures.</p> <p><i>Will your First Nation have a different method of calculating value (e.g., replacement cost less depreciation)?</i></p>			
<p>28. (5) Spouses or common-law partners may agree on another way to value their rights or interests.</p> <p><i>If you agree with the general rule of upholding domestic contracts, there are generally certain exceptions where private contracts are not enforceable, such as grossly unfair contracts, contracts involving deceit or intimidation, and contracts that contain illegal provisions. If your MRP law will recognize the principle that domestic contracts are enforceable, will this apply just to married couples or to common-law couples as well?</i></p>			

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<p>28. (6) In this section, "valuation date" means</p> <p>(a) in the case of spouses, the earliest of the following days:</p> <ul style="list-style-type: none"> (i) the day they separated, with no reasonable prospect of reconciliation, (ii) the day they divorced, (iii) the day when the marriage was declared a nullity, (iv) the day when a spouse made an application to court about the breakdown of the marriage, and (v) the day when a spouse made a successful application to restrain actions that will decrease the value of the family home and the matrimonial rights or interests; or <p>(b) in the case of common-law partners, the earliest of the following days:</p> <ul style="list-style-type: none"> (i) the day when a common-law partner showed they did not want to continue the relationship, (ii) the day when a common-law partner made an application to court about the breakdown of the relationship, and (iii) the day when a common-law partner made a successful application to restrain actions that will decrease the value of the family home and the matrimonial rights or interests. <p><i>How will you determine the valuation date?</i></p>			

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<p>29. If a spouse or common-law partner applies, a court may change the amount owed [s. 28] if that amount is unjust given the following factors:</p> <ul style="list-style-type: none"> (a) the applicant’s financial responsibility for the children; (b) the amount of debts of each spouse or common-law partner; (c) any significant change in the value of the rights or interests between the valuation date and the day the order was made; (d) whether a spouse or common-law partner can get exclusive occupation of the family home by agreement or order; (e) the availability of comparable housing; (f) the length of their relationship; (g) any agreement between the spouses or common-law partners; (h) whether the value of the rights or interests is less because of something done by the other spouse or common-law partner, e.g. selling for too little, actions that will decrease the value of the rights or interests, and improperly selling or encumbering; or (i) anything else decided by the court. 			
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FHRMIRA VERSION (PLAIN LANGUAGE)		KEEP AS IS ✓	CHANGE THE WORDING TO:	REASON FOR THE CHANGE
<p>30. (1) If a spouse or common-law partner applies within 3 years after no longer living together, a court may decide any matter about what they owe each other [ss. 28 and 29] including the following:</p> <ul style="list-style-type: none"> (a) the amount payable by a spouse or common-law partner to the other; and (b) the following methods for settling the amount payable: <ul style="list-style-type: none"> (i) payment of a lump sum, (ii) payment by instalments, (iii) transferring a right or interest [s. 31], (iv) setting-off any amounts owed by a spouse or common-law partner to the other, or (v) any combination of the above methods. <p><i>Is three years the most appropriate period within which to make an application?</i></p>				
<p>30. (2) If a spouse or common-law partner applies after the 3-year period, a court may extend the 3-year period however long it considers appropriate, if the court is satisfied that the applicant did not apply on time because</p> <ul style="list-style-type: none"> (a) the delay was beyond the applicant's control; or (b) the applicant only became aware of the rights or interests after the 3-year period had expired. <p><i>Will you provide an option for extending the deadline?</i></p>				

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<p>31. (1) If a spouse or common-law partner who is a First Nation member applies, a court may transfer to him or her the following rights or interests:</p> <ul style="list-style-type: none"> • a right to possession of land or structures allotted under s. 20 of the <i>Indian Act</i> (with or without a Certificate of Possession or a Certificate of Occupation), • a right or interest (on reserve) subject to a land code or First Nation law under the <i>First Nations Land Management Act</i>, • a right or interest (on reserve) subject to any First Nation law enacted under a self-government agreement with Canada, • a right or interest (on reserve) subject to any land governance code or Kanesatake Mohawk law enacted under the <i>Kanesatake Interim Land Base Governance Act</i>, • another right or interest (on reserve) in or to a structure recognized by the First Nation, or • a right or interest (on reserve) recognized by a court order under s. 48. <p>Before making the transfer, the court must be satisfied that</p> <p>(a) the spouses or common-law partners already freely agreed in writing to the transfer and the agreement is not unjust considering the factors in s. 29;</p> <p>(b) the applicant already held the right or interest while living together; or</p>				

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<p>(c) the transfer is appropriate because the spouses or common-law partners hold more than one such right or interest.</p> <p><i>If both spouses are members, do you want to provide for the possibility of a court order to transfer land to one spouse?</i></p>				
<p>31. (2) The court's power to order a transfer under s. 31(1)</p> <p>(a) can be made despite ss. 24 and 49 of the <i>Indian Act</i>;</p> <p>(b) is subject to any land code or First Nation's law under the <i>First Nations Land Management Act</i>;</p> <p>(c) is subject to any First Nation law enacted under a self-government agreement with Canada; and</p> <p>(d) is subject to any land governance code or Kanesatake Mohawk law under the <i>Kanesatake Interim Land Base Governance Act</i>.</p>				
<p>32. If a spouse or common-law partner applies, a court may make any order it considers necessary to restrain actions that will decrease the value of the family home and the matrimonial rights or interests in order to protect the following:</p> <p>(a) the potential right or interest the applicant might get from a court under ss. 20 or 31; or</p> <p>(b) the value of the rights or interests used to calculate what might be payable to the applicant under s. 30.</p>				

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<p>33. If the spouses or common-law partners come to an agreement that sets out the amount payable to each other and the methods for settling the amount by at least one of the methods referred to in s. 30(1)(b)(i), (ii) or (iv), a court may enforce that agreement if</p> <ul style="list-style-type: none"> • the party's consent to the agreement was free and informed, and • the agreement was not unjust. 				
<p>SECTIONS 34-40: DEATH OF A SPOUSE OR COMMON-LAW PARTNER</p> <p>This section provides an option for survivors to choose between FHRMIRA and the Indian Act, where the intestacy provisions or the Will don't adequately address the value of the matrimonial real property. This choice must be made within 10 months of the date of death.</p> <p><i>Will your law include a similar option?</i></p>				
<p>34. (1) When a spouse or common-law partner dies, the survivor is entitled to receive one half of the value of the deceased spouse or partner's right or interest in the family home as well as other compensation under s. 34(2) and s. 34(3). The values are calculated as of the valuation date. The survivor must make an application under s. 36.</p> <p><i>Instead of half the value, could it be some other value? For example, maybe it is based on when the property was acquired, or on the length of the relationship, or on an increase in value during the relationship.</i></p> <p><i>Will your law include improvements to band-owned homes?</i></p> <p><i>What about the equity accrued in a rent-to-own home?</i></p>				

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<p>34. (2) A survivor who is a member of the First Nation is entitled to additional compensation totalling the same amounts as in s. 28 (2).</p>				
<p>34. (3) A survivor who is NOT a member of the First Nation is entitled to additional compensation totalling the same amounts as in s. 28(3). <i>This may be an important aspect of a First Nation MRP law. While non-members cannot own property on reserve, they can be financially compensated for their contribution to the couple's property. Deciding how to strike the balance between compensating non-members and ensuring that members retain possession of their allotment may be the hardest policy choice in developing a MRP law.</i></p>				
<p>34. (4) The rights or interests are valued the same way as in s. 28(4).</p>				
<p>34. (5) The survivor and the executor or administrator handling the estate may agree on another way to value the above rights or interests. <i>Normally the survivor has up to ten months to make the decision on whether to follow the terms of the Will or make another deal. What timeframe will your law allow?</i></p>				

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<p>34. (6) The "valuation date" for the purposes of this section means</p> <p>(a) in the case of spouses, the earliest of the following days:</p> <p>(i) the day before the death of the spouse,</p> <p>(ii) the day when the spouses stopped living together because of their breakup, and</p> <p>(iii) the day when the survivor made a successful application to restrain actions that will decrease the value of the family home and the matrimonial rights or interests; or</p> <p>(b) in the case of common-law partners, the earliest of the following days:</p> <p>(i) the day before the death of the spouse, and</p> <p>(ii) the day when the survivor made a successful application to restrain actions that will decrease the value of the family home and the matrimonial rights or interests.</p> <p><i>How will you determine the valuation date?</i></p>				
<p>35. If the executor or administrator handling the estate applies, a court may change the amount owed to the survivor [s. 34] if</p> <ul style="list-style-type: none"> • the spouses or partners had already resolved the issue by agreement or court decision, or • the amount would be unjust, e.g. children of the deceased would not be adequately provided for. 				

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<p>36. (1) If the survivor applies within 10 months after the day their spouse or common-law partner died, a court may make an order about the survivor’s entitlement [ss. 34 and 35] including:</p> <p>(a) the amount payable to the survivor; and (b) the following methods for settling the amount payable:</p> <p>(i) payment of a lump sum, (ii) payment by instalments, (iii) if the survivor is a First Nation member, transferring the following rights or interests:</p> <ul style="list-style-type: none"> • a right to possession of land or structures allotted under s. 20 of the <i>Indian Act</i> (with or without a Certificate of Possession or a Certificate of Occupation), • a right or interest (on reserve) subject to a land code or First Nation law under the <i>First Nations Land Management Act</i>, • a right or interest (on reserve) subject to any First Nation law enacted under a self-government agreement with Canada, • a right or interest (on reserve) subject to any land governance code or Kanesatake Mohawk law enacted under the <i>Kanesatake Interim Land Base Governance Act</i>, • another right or interest (on reserve) in or to a structure recognized by the First Nation, or • a right or interest (on reserve) recognized by a court order under s. 48; or <p>(iv) any combination of the above methods</p>			

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<p>36. (2) If the survivor applies after the 10-month period, a court may extend the 10-month period for however long it considers appropriate, if the survivor did not apply on time because:</p> <ul style="list-style-type: none"> (a) the survivor did not know of the death of their spouse or common-law partner until after the 10-month period expired; (b) the delay was beyond the survivor's control; or (c) the applicant only became aware of the rights or interests after the 10-month period had expired. 				
<p>36. (3) The court's power to order a transfer under s. (1)</p> <ul style="list-style-type: none"> (a) can be made despite ss. 24 and 49 of the <i>Indian Act</i>; (b) is subject to any land code or First Nation's law under the <i>First Nations Land Management Act</i>; (c) is subject to any First Nation law enacted under a self-government agreement with Canada; and (d) is subject to any land governance code or Kanesatake Mohawk law under the <i>Kanesatake Interim Land Base Governance Act</i>. 				
<p>36. (4) If a survivor or the executor or administrator handling the estate applies, the court may change the terms of any trust under the will in order to allow payment of the amount.</p>				

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<p>36. (5) Anyone who applies for the order must send a copy of the application without delay to the Minister, to any other person specified in the court’s rules and to:</p> <ul style="list-style-type: none"> (a) the executor or administrator handling the estate, if the applicant is the survivor and those persons are known to the survivor; or (b) to the survivor, if the applicant is the executor or administrator. 			
<p>36. (6) The executor or administrator handling the estate (or the Minister if no executor or administrator) must, without delay, send a copy of the application to the beneficiaries.</p>			
<p>37. A survivor cannot benefit from the deceased individual’s will or from ss. 48 to 50.1 of the <i>Indian Act</i> in respect of the family home or matrimonial rights or interests, once a court decides that an amount is payable to the survivor [ss. 30 or 36].</p>			
<p>38. (1) Subject to ss. 38(2), the executor or administrator handling the estate must not distribute the assets of the estate until:</p> <ul style="list-style-type: none"> (a) the survivor consents in writing to the proposed distribution; (b) the 10-month period and any extension allowed by the court have expired and no s. 36(1) application has been made within those periods; or (c) an application made under s. 36(1) is finished. 			

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<p>38. (2) Subsection 38(1) allows reasonable advances of money to be made to survivors or other dependants of the deceased spouse or common-law partner for their support.</p> <p><i>Will your law consider advances of money, and under what circumstances?</i></p>				
<p>38. (3) In a case where an amount is payable [s. 36] to two survivors (namely a common-law partner and a spouse with whom the deceased individual was no longer living), the executor or administrator handling the estate must pay the surviving common-law partner first before paying the surviving spouse.</p> <p><i>How will your law reflect paying two survivors?</i></p>				
<p>39. If a survivor applies, a court may make any order it considers necessary to restrain actions that will decrease the value of the family home and the matrimonial rights or interests in order to protect the following:</p> <p>(a) the potential right or interest the applicant might get from a court under ss. 21 or 36; or</p> <p>(b) the value of the rights or interests used to calculate what might be payable to the applicant under s. 36.</p>				
<p>40. If a survivor, and either the executor or administrator of the estate make a written agreement that sets out the amount payable to the survivor and the methods for settling the amount by at least one of the methods referred</p>				

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<p>to in s. 36(1)(b)(i) or (ii), a court may enforce that agreement if</p> <ul style="list-style-type: none"> the survivor's consent to the agreement was free and informed, and the agreement was not unjust. 				

Notice to Council and Views of Council (Sections 41-42)

<p>41. (1) Anyone who applies for an order must send a copy of the application without delay to the First Nation Council. This rule does not apply to emergency protection orders (s. 16) and confidentiality orders (s. 19).</p> <p><i>What requirements, if any, for a notice will be included in your law?</i></p>			
<p>41. (2) Before making a decision, the court must hear any representations the council wants to make regarding the cultural, social and legal context of the application and council's views on whether or not the order should be made.</p> <p><i>Do you want the First Nation Council to have a right of notice of court proceedings regarding on-reserve matrimonial real property?</i></p> <p><i>If yes, do you want the First Nation to have the right to make representation in those proceedings in order to raise community concerns and to provide relevant evidence?</i></p>			

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<p>42. Anyone who is granted a court order must send a copy of the order without delay to the First Nation Council. This rule does not apply to confidentiality orders (s. 19).</p>			
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Jurisdiction of Courts (Sections 43 – 46)

Does your First Nation have dispute resolution mechanisms or traditional dispute resolution procedures? If so, before a claimant takes an issue to Court, would you make it a requirement to exhaust those procedures first? It is important in developing your law that you have conversations with provincial justice officials so that your procedures and rules are workable.

<p>43. (1) In this section, “application” means an application for any of the following:</p> <ul style="list-style-type: none"> • setting aside a transaction involving the disposition or encumbrance of a right or interest in or to the family home (s. 15), • granting exclusive occupation of the family home (s. 20), • varying the amount owed on division of the value of matrimonial rights or interests (s. 29), • determining the amount payable to the spouse or common-law partner and the methods for settling the amount payable, when dividing the value of matrimonial rights or interests (s. 30), • transferring rights or interests (s. 31), • restraining actions that will decrease the value of the family home and the 			
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matrimonial rights or interests (s. 32), <ul style="list-style-type: none"> • enforcing a written agreement between spouse or common-law partners setting out and settling the amount payable after they stop living together (s. 33), determining whether a spouse, a common-law partner or a survivor holds a right or interest (s. 48) or • enforcing an order as if it had been made in favour of a First Nation, on the application of a person who is not a First Nation member or an Indian (s. 52). 				
43. (2) The divorce court will handle the application during the divorce proceeding.				
43. (3) During other family law proceedings (not divorce), the court handling that matter will handle the application.				
43. (4) If there are no divorce or other family law proceedings, the application will be handled by the following court: <ul style="list-style-type: none"> • the normal court in the province where the lands and structures are situated; or • if the property is in more than one province, the court in one of those provinces agreed upon by both spouses or common-law partners or if the parties cannot agree, in the province where they normally lived. 				
43. (5) If the court referred to in s. 43(3) is not a superior court, the application must be heard by the superior court of the province.				

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<p>44. (1) The court handling the distribution of property on the death of a spouse or common-law partner will handle an application made by a survivor, the executor or administrator handling the estate for</p> <ul style="list-style-type: none"> • granting exclusive possession of the family home (s. 21), • varying the amount owed when dividing the value of matrimonial rights or interests (s. 35), • determining the amount payable and the methods for settling the amount after dividing the value of matrimonial rights or interests (s. 36), • restraining actions that will decrease the value of the family home and matrimonial rights or interests (s. 39), or • a written agreement between a survivor and the executor or administrator handling the estate that sets out the amount payable to the survivor and methods for settling the amount (s. 40). 				
<p>44. (2) If no court is handling the application referred to in s. 44(1), the application will be handled by the following court:</p> <ul style="list-style-type: none"> • the normal court in the province where the lands and structures are situated; or • if the property is situated in more than one province, the court in one of those provinces agreed upon by both spouses or common-law partners or if the parties cannot agree, in the province where they normally lived. 				

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<p>44. (3) If the court referred to in s. 44(1) is not a superior court, the court handling the application must be the superior court of the province, unless the Minister has consented to that court or directed the matter to that court [s. 44 of the <i>Indian Act</i>].</p>				
<p>45. Any application can be heard together with another application, except the following:</p> <ul style="list-style-type: none"> • applications for emergency protection orders (s. 16), • applications to vary or revoke orders of a designated judge (s. 18), and • applications for confidentiality orders (s. 19). 				
<p>46. (1) An order made in a divorce proceeding under this Act is appealed in the same way any order under the <i>Divorce Act</i>.</p>				
<p>46. (2) Any other order made under this Act may be appealed to the normal appeal court, except the following:</p> <ul style="list-style-type: none"> • emergency protection orders (s. 16) • orders sent to the court of jurisdiction of the designated judge for review (s. 17), • applications to vary or revoke orders of a designated judge (s. 18) and • confidentiality orders (s. 19). 				

Rules of Court (Section 47)

It is important in developing your law that you have conversations with the courts in your province/territory so that your procedures and rules are workable with theirs.

<p>47. (1) These definitions apply in s. 47: “appellate court” means the court that hears an appeal from a court. “competent authority” means the body, person or group that makes the procedural rules for a court or an appellate court.</p>	✓		
<p>47. (2) The competent authority may make rules of procedure for cases involving EPOs, including rules for:</p> <ul style="list-style-type: none"> (a) regulating the court’s practice and procedure, including the addition of parties to the proceedings; (b) hearing family law proceedings without an oral hearing; (c) regulating the court’s sittings; (d) fixing and awarding of costs; (e) prescribing and regulating the duties of officers of the court; (f) the transfer of proceedings under this Act to or from the court; and (g) prescribing and regulating other related matters. 	✓		
<p>47. (3) A competent authority’s power to make rules must be exercised in the same way as other court rules in the province.</p>	✓		
<p>47. (4) The <i>Statutory Instruments Act</i> (Canada) applies to the rules made by a competent authority (other than a judicial or quasi-judicial body).</p>	✓		

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Other Provisions (Sections 48–52)

<p>48. A court can decide whether a spouse, a common-law partner, a survivor or a deceased party’s estate holds a right or interest in or to a land or structure.</p>			
<p>49. (1) An application by a spouse or common-law partner to divide the value of matrimonial rights or interest (ss. 29-33) may be continued by or against the executor or administrator handling the estate, if at least one party dies before the application is heard.</p> <p><i>The Indian Act will continue to apply after you enact your MRP law, noting that FHRMIRA affords new rights and protections to survivors.</i></p>			
<p>49. (2) If the survivor dies before the application is heard, the executor or administrator handling the survivor’s estate may carry on applications on the following matters:</p> <ul style="list-style-type: none">• determining the amount payable and the methods for settling the amount after dividing the value of matrimonial rights or interests (s. 36),• restraining actions that will decrease the value of the family home and matrimonial rights or interests (s. 39), or a written agreement between a survivor and the executor or administrator that sets out the amount payable to the survivor and methods for settling the amount (s. 40).			

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<p>49. (3) If the survivor dies before the application is heard, the executor or administrator handling the estate on the following matters may carry on application against the executor or administrator if the survivor dies before the application is heard:</p> <ul style="list-style-type: none"> • varying the amount owed after dividing the value of matrimonial rights or interests (s. 35), or • enforcing a written agreement between a survivor and the executor of the will or the administrator of the estate that sets out the amount payable to the survivor and methods on settling the amount payable (s. 40). 				
<p>50. Anyone who applies for the order must send a copy of the order without delay (except a confidentiality order s. 19) to the Minister [<i>if the reserve is managed under the Indian Act</i>], or the council of the First Nation if</p> <ul style="list-style-type: none"> (a) its reserve is subject to a land code under the <i>First Nations Land Management Act</i>; (b) its reserve is on the Minister's list [s. 12(5)]; or (c) its land is the Kanesatake Mohawk interim land base under the <i>Kanesatake Interim Land Base Governance Act</i>. 				
<p>51. Provincial laws of evidence apply to proceedings under this Act.</p>				

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<p>52. (1) The council may enforce the following orders on request by a person who is not a First Nation member or an Indian:</p> <ul style="list-style-type: none"> • orders on the amount payable to the spouse, common-law partner or survivor [ss. 30(1) & 36(1)]; • orders on how the amount will be paid [ss. 30(1) & 36(1)]; • orders enforcing a written agreement on the amount payable and the methods for paying it [s. 33 & 40]; • <i>Will you include this option in your MRP law?</i> 			
<p>52. (2) If council does not enforce the order, the court may require the person against whom the order was made to pay the amount into court.</p>			

Additional Provisions Provisions you may wish to add to best reflect your traditions, customs, and practices.	

