

Purpose of this Pamphlet

While there are a number of applications that may be made under the Act, this pamphlet is designed to provide information about only one: an application for an order for exclusive occupation of the family home on reserve in Alberta. This pamphlet is not intended to be legal advice. Nor is it intended to give you detailed instructions. Rather, it is to give you a sense of the steps that will need to be taken and some ideas for further help.

Before considering whether to make an application to the Court, there are other options for resolution that should be considered. Resolution and Court Administration Services, part of Alberta Justice and Solicitor General, can provide you with information about options. Information about Resolution and Court Administration Services can be found at:

<http://www.alberta.ca/rcas>

The Act contains many definitions and procedural steps that need to be considered, so you should read it when thinking about making an application. In addition, the Alberta Rules of Court govern the practice and procedure in the Court of Queen's Bench of Alberta. You should read the rules that talk about making an application with an Originating Application. The Rules can be found at:

http://www.qp.alberta.ca/documents/rules2010/Rules_vol_1.pdf

If you are the Applicant and you are successful, the Court will grant an Exclusive Occupation Order. Serve a copy of the Order on any person against whom the Order is made and any person specified in the Order. However, if the Court directs, a peace officer must serve a copy of the Order. Also, send a copy of the Order to the Council.

Legal Assistance

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

Either party may choose to have a lawyer assist them at any point during the process and, in such case, will be responsible to pay the legal costs.

Legal Aid may be available to help.

Contact Legal Aid Alberta:

<http://www.legalaid.ab.ca>

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
Website: www.coemrp.ca



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



Information about 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 Homes on Reserves and Matrimonial Interests or Rights Act (the "Act") came into force on December 16, 2013. The Act applies to married couples and common-law partners living on a reserve, where at least one of them is a First Nation member.

The Act is designed to provide basic protection and rights to people living on reserves regarding the family home and other matrimonial interests and rights:

- during a conjugal relationship,
- in the event of a breakdown of that relationship, and
- on the death of their spouse or common-law partner.

The Act has two main purposes:

- It confirms a power for First Nations to enact their own laws relating to matrimonial real property; and
- It sets out rules relating to matrimonial real property that apply to residents on reserve lands of First Nations that do not enact their own laws. These are called provisional federal rules.

The provisional federal rules deal with:

- Rights to occupy the family home;
- The distribution of matrimonial real property on the breakdown of a conjugal relationship or the death of a spouse or common-law partner; and
- Granting of emergency protection orders (EPOs) in situations of family violence (but only where judges have been designated to hear such applications).

Exclusive Occupation

In certain communities, the Chief and Council or its delegated authority can make decisions about who can occupy homes on its reserve. However, the Act gives a spouse or common-law partner resident on reserve the right to apply for exclusive occupation of the family home.

An Exclusive Occupation Order may:

- Be for a short or long period of time;
- Allow one spouse or common law partner to exclusively stay in the family home on reserve; and
- Exclude the other spouse or common law partner from coming to the family home on reserve or only allow them on the premises under certain conditions.

You can apply for an Exclusive Occupation Order for a family home on reserve if you are a spouse or common law partner whether or not you have band membership or Indian status. And, you can apply for, an Exclusive Occupation Order if the family home is Band owned, leased or owned privately.

An Exclusive Occupation Order does not change who owns the family home.

Applying for an Exclusive Occupation Order

If you are making an application, you are called an Applicant. An application for an Exclusive Occupation Order must be made to the Court of Queen's Bench of Alberta.

Use an Originating Application to make an application where no action related to the property under the federal Act has been started. If an action has been started, then an Application form would be used.

An **Originating Application Form** can be found on the Alberta Court's website:

<https://albertacourts.ca/docs/default-source/Court-of-Queen's-Bench/CTS3777.pdf>

The Originating Application Form includes spaces to provide information such as the when the matter will be in Court, what the Court is being asked for (in this case it will be for an Exclusive Occupation Order, either interim or final), what Act is being relied on (the Family Homes on Reserves and Matrimonial Interests or Rights Act, s. 20) and the Affidavit or other evidence to be relied on.

The Court will want to know certain things about your family situation to decide whether an Exclusive Occupation Order should be granted. The facts relied on should be written down in a sworn Affidavit. Some facts to consider including are:

- your relationship with the other party, and whether there are children of the relationship;
- whether you, the other party, or your children, are members of the First Nation;
- who resides in the family home (i.e. whether there is an elder or disabled person residing in the home) and who has responsibility for their care;
- whether either of you has a medical condition;

- whether there was any agreement between the two of you, or previous court orders arising from the breakdown of your relationship;
- how long you have lived on the reserve;
- whether other suitable housing is available to either of you;
- your financial circumstances and the financial circumstances of the other party;
- any property owned by the two of you both on and off reserve (including the First Nation);
- anyone else who has an interest in the family home on reserve;
- whether there has been any family violence and / or psychological abuse; and
- whether the two of you have attempted mediation.

An **Affidavit Form** can be found on the Alberta Courts website:

<https://albertacourts.ca/forms/CTS3819.pdf>

Next Steps: Service of Documents

You must arrange to have a copy of the Originating Application and Affidavit served on anyone who might be affected by the order at least 10 days before the court date. This includes the other party, any adult living in the home, and the Chief and Council.

Generally speaking, the documents must be personally served by giving a copy of the documents to that person. An Affidavit of Service must be sworn by the person

who served the documents and filed with the Court of Queen's Bench.

An **Affidavit of Service Form** can be found on the Alberta Courts website:

<https://albertacourts.ca/docs/default-source/default-document-library/generic-affidavit-of-service.doc?sfvrsn=0>

Defendant's Response

If you have been served with a copy of the application, you are called a Respondent. If you want to respond to the application, you can swear, file and serve an Affidavit on the Applicant within a reasonable time before the Originating Application is scheduled to be heard. You must also file an Affidavit of Service with the Court of Queen's Bench.

Applicant's Reply

The Applicant may prepare a second Affidavit but only to respond to anything new in the respondent's Affidavit.

Court

Go to court at the date and time set out in the application

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."