



INFORMATION ON SPOUSAL RIGHTS TO THE FAMILY HOME ON RESERVES

Couples who live on a reserve have fewer rights with respect to the family home when a marriage or common-law relationship ends than people who live off a reserve.

This pamphlet explains the issue. The information in this publication should not be considered legal advice. For help with your own situation, you may want to contact a lawyer or go to a legal aid office.

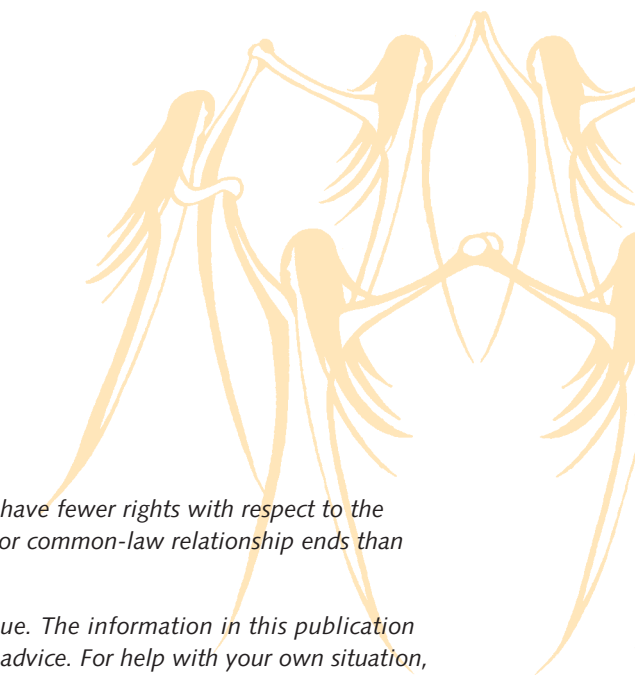
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Renseignements sur les droits des conjoints concernant la maison familiale
dans les réserves



1. Introduction

The pamphlet explains the rights of each spouse, during a marriage/common-law relationship and after it breaks down, to property that belongs to either or both spouses, especially the family home.

This information will help people to understand and be able to discuss the law in this area. It is not legal advice. For advice on your own situation, you may want to see a lawyer or go to a legal aid office.

2. What is matrimonial property?

Matrimonial property can be property owned by one or both spouses. Many belongings can be considered matrimonial property – things like money in a bank account, furniture, boat or car. The family home, which includes the house and the land, is also considered matrimonial property.

3. What is a Certificate of Possession?

This is a document that is issued by the Department of Indian Affairs and Northern Development to show that an individual Band member is entitled to occupy and possess a specific piece of reserve land that was allotted to the member by Band Council.

4. What rights and protections does matrimonial property law provide and who can access those rights?

When a couple decides to separate, questions or disagreements can arise about how to divide the property that the spouses own individually or together.

All provinces and territories have made laws on how to divide the property of spouses when they separate. This kind of law is often called matrimonial property law. Matrimonial property law includes the rights of spouses to certain kinds of property like the family home.

All provinces and territories have laws that recognize the equal rights of each spouse to:

- a) the division of the value of matrimonial property;
- b) the possession of the family home (regardless of whether one or both spouses' names are on the ownership document or on the lease); and
- c) the sale of matrimonial property, including the home.

All provinces and territories extend these rights to married couples. Only some provinces and territories extend the same rights to couples (including same-sex couples) who live together.

5. Does provincial/territorial matrimonial property law apply on reserves?

The short answer is yes and no. In other words, some rights and protections under provincial/territorial matrimonial property law apply on reserves and some do not.

6. What part of provincial/territorial matrimonial property law applies on reserves?

Provincial/territorial law can be used to assist couples living on reserves to determine how to divide the *overall value* of all matrimonial property (house, cash, cars, etc.). Either spouse can ask a court to decide what his or her share of the couple's matrimonial property will be. Usually, matrimonial property is divided equally. The court can order one spouse to pay the other a sum of money to make an equal division of the couple's total matrimonial property (sometimes called an order of compensation).

However, obtaining the compensation ordered by the court can be difficult on reserves. For couples living off reserves, obtaining compensation is easier because the court can order the sale of the property and a sharing of the money received from the sale to achieve an equal division of matrimonial property between the spouses. There is no law the court can use to force the sale of a home on a reserve.

7. What part of provincial/territorial matrimonial property law does not apply on reserves?

It is important that couples on a reserve know that provincial/territorial laws cannot change the rights of individual Band members to their land. This means that if a Certificate of Possession has been issued to only one spouse for land where the family home is located, the other spouse will not be able to obtain even temporary possession of the home, even if that spouse has custody of the children. If both spouses have their names on the Certificate of Possession, neither spouse can prevent, even temporarily, the other spouse from staying in the family home. Off reserves, courts can decide which spouse gets to stay in the family home, regardless of whose name is on the legal documents.

On a reserve, the spouse that does not have his or her name on the Certificate of Possession cannot prevent the other spouse from selling the family home during a marriage or after a separation. Off reserves, spouses do have some protection in these situations whether or not their name is listed on the legal documents to the family home.

On some reserves, couples do not have a Certificate of Possession for their family home. Instead they are using the land according to traditional Band practices, sometimes called custom allotment. Spouses in this situation may also encounter problems like those mentioned above if they try to use provincial/territorial matrimonial property law to decide issues relating to the family home.

8. What if my spouse and I don't own our home on a reserve?

Many people rent their homes. Provincial/territorial matrimonial laws dealing with rental homes do not apply on a reserve. For example, a spouse cannot get a court order preventing the other spouse from staying in the rental home.

9. What if I am Aboriginal but live off the reserve?

If the home is located off the reserve, provincial/territorial matrimonial property laws will apply.

10. Does the *Indian Act* provide rules on how to divide property when a marriage breaks down?

No. There is nothing in the *Indian Act* about the rights of spouses to matrimonial property when a marriage or common-law relationship breaks down.

11. Can the Band Council pass a law on matrimonial property?

The *Indian Act* allows Band Councils to make by-laws about certain things, however, matrimonial property is not one of them.

For First Nations that are operating under the *First Nations Land Management Act* or have negotiated a self-government agreement on the subject, the Band Council can pass some laws on the division of matrimonial property.

12. What can be done? What changes are needed?

The Government of Canada is working with First Nations to help find a solution. Until then, the courts are limited in resolving conflicts over family homes on reserves. Couples can try to reach an agreement between themselves about a fair division of their property although this is often difficult.

If you would like to share your views on this issue, you may contact Indian and Northern Affairs Canada (INAC) as follows:

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Other sources of information:
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French: www.ainc-inac.gc.ca/wige/mrp/index_f.html