



Information on the proposed Family Homes on Reserves and Matrimonial Interests or Rights Act



What is matrimonial real property?

Matrimonial real property refers mainly to the family home where both spouses or common-law partners live during a marriage or common-law relationship. Generally speaking, provincial and territorial laws protect the matrimonial real property rights and interests of both spouses during a relationship, or in the event of separation, divorce or death. Under these laws, for instance, both spouses must share the money if their family home is sold. These laws also permit a judge to order a spouse to temporarily leave the family home, particularly in cases of domestic violence and physical abuse.

An intolerable and inexcusable situation:

These laws do not apply, however, on reserves; spouses who live in communities governed by the *Indian Act* have no such protection. And the *Indian Act* is silent on the issue. Until matrimonial real property laws are in place, spouses living on reserves will face an intolerable and inexcusable situation: in the event of separation, divorce or death, the law does not protect their matrimonial real property rights and interests. This means that:

- A spouse can sell an on-reserve family home and keep all of the money.
- One spouse can bar the other spouse from their on-reserve family home.
- In cases of domestic violence and physical abuse, a court cannot order one spouse to leave an on-reserve family home, even on a temporary basis.

As a result, relationship breakdowns in First Nation communities can sometimes lead to homelessness and poverty, particularly for women and children.

How would the proposed legislation address the problem?

This legislation will fill the legislative gap by providing women, children and families living on reserves with **immediate** protections and rights. The legislation will apply unless or until a First Nation establishes its **own** matrimonial real property law.

A mechanism for First Nations to establish matrimonial real property laws:

The legislation includes a mechanism for First Nations to establish their own matrimonial real property laws. The content and structure of a community-specific matrimonial real property law requires only an agreement between the members of a First Nation and the First Nation government. In other words, a First Nation must gain the support of a majority of registered members through a fair and democratic vote. All members of voting age, regardless of whether they live on or off the reserve, must have an opportunity to vote on the proposed matrimonial real property law, which will be overseen by an independent verification officer. Once the community has approved the law, it will apply on the reserve lands of that First Nation. Neither the Minister of Indian Affairs and Northern Development nor the department would have any role in reviewing, cancelling, disallowing or altering the First Nation laws.

Immediate basic rights for community members:

Until First Nations establish their own matrimonial real property laws, the Family Homes on Reserves and Matrimonial Interests or Rights Act provides immediate protection of basic rights on reserves similar to those available to other Canadians. For example:

Emergency Protection Order

- In cases of domestic violence or abuse, a court can bar a spouse or common-law partner from the family home on an urgent basis.

Family Home

- A court can order a spouse or common-law partner to leave the family home for a specific period of time.
- A family home cannot be sold without the consent of both spouses.

Division of on-reserve Matrimonial Interests or Rights

- In the event of separation, divorce or death, both spouses or common-law partners must share equally in the value of the family home, along with all other matrimonial interests and rights.
- A court may order the transfer of matrimonial interests and rights from one member spouse or common-law partners to the other member spouse along with, or instead of, financial compensation.
- A court can enforce written agreements that set out the amounts that each spouse or common-law partner is entitled to receive



What the Bill does not do:

The Bill **does not** allow non-Indians and non-members to gain permanent rights to reserve land. In other words, non-Indians and non-members may occupy the family home only temporarily.

The Bill **does not** allow non-members to make money from the value of reserve land. In other words, non-members can not sell the land or the family home or benefit from the increased value of the land.

The Bill **does not** allow the Minister of Indian Affairs and Northern Development nor the department to have any role in reviewing, cancelling, disallowing or altering First Nation laws. In other words, the development of a matrimonial real property law is between a First Nation government and its community members.

To keep up to date on the progress of the proposed legislation or for more information about matrimonial real property please visit our website:

www.ainc-inac.gc.ca/wige/mrp/index-eng.asp