

Community MRP

Background

The laws surrounding what happens to real property on reserve when spouses or common law partners break up or a spouse dies, have changed. The new federal law is called the *Family Homes on Reserve and Matrimonial Interests and Rights Act* (“Federal Act”). This Federal Act applies on all reserves **unless** the First Nation community has enacted its own law. As of March 31, 2016, the following Nova Scotia First Nation communities have enacted their own Matrimonial Real Property laws - Millbrook First Nation, Paqtnkek Mi’kmaw Nation, Pictou Landing First Nation, Bear River First Nation and Sipekne’katik.

This pamphlet reviews the Matrimonial Real Property Laws (“MRP”) for the above communities. A copy of a First Nation’s MRP should be available

Exclusive Occupation Order

An Order for Exclusive Occupation can be obtained by a spouse or common law partner after the breakdown of the relationship or the death of the other spouse/ common law partner.

An Exclusive Occupation Order may:

- Be obtained for up to a maximum of one year;
- Allows one spouse or common law partner to exclusively stay in the family home on reserve; and
- Excludes the other spouse or common law partner from coming to the family home on reserve or only allows them on the premises under certain conditions.

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

consider at list of factors listed in section 8 (6) of the MRP.

Application Process

To apply for an Exclusive Occupation Order, the applicant must file appropriate documents with the Nova Scotia Supreme Court Family Division (if filing in Halifax, Sydney or Port Hawkesbury) or the Nova Scotia Supreme Court (if filing elsewhere in Nova Scotia). The person making the Application is called the “applicant” and the person who the Application is against is called the “respondent”.

- 1) First, the applicant must select the appropriate Court, being either the **Nova Scotia Supreme Court Family Division** or **Nova Scotia Supreme Court**. The applicant must complete and file Court forms for that Court. The appropriate Court forms for this



How to make an Exclusive Occupation Order for a Matrimonial Home

Bear River
Millbrook
Paqtnkek

Pictou Landing
Sipekne’katik

on their website or on request from the Band Administration Office.

Under the MRP, an Order for Exclusive Occupation can be obtained by a spouse or common law partner after the breakdown of the relationship or the death of the other spouse/ common law partner. A common law partner is someone you have been in a relationship with and resided with for 1 year or more. A spouse/common law partner can apply for Exclusive Occupation of the family home on reserve **only**: 1) if they are the custodial parent of a Band Member child; or 2) if they have Indian status and are a Band Member. The family home must be a structure on reserve lands. It must also be where the spouses or common law persons reside or habitually resided on reserve during their relationship.

Under section 8 or 9 of the MRP, an applicant spouse/common law partner can apply for Exclusive Occupation Order to the family home on reserve. An Exclusive Occupation Order can be obtained for a family home regardless of whether the family home is Band owned (section 8), Non Band owned (section 9) or leased. The Court may make an Order for Exclusive Occupation as follows:

- 1) Priority will be given to the primary custodial spouse/partner of Band Member children residing in the family home. If the spouses/partners have joint custody, the spouse/partner with Indian Status and Band Membership shall reside in the family home;
- 2) If there are no Band Member children, the spouse/partner who is both Indian Status and a Band Member shall reside in the family home; and
- 3) If both spouses/partners have Indian Status and are Band Member, the Court will

Application can be found on the Nova Scotia Family Law website: <http://www.nsfamilylaw.ca/guide-making-application-court/what-you-need-file>

- 2) The Notice of Application (or Notice of Application in Chambers), requires the applicant to outline the “**Grounds for Order**”. In addition to other important information the applicant wants the Court to know, the applicant **must include** the following as one of the grounds:
“Exclusive Occupation of the family home, pursuant to section ____ (section 8 if Band Owned Home, and section 9 if a Non Band Owned Home) of the ____ (Insert Community Name) ____ Matrimonial Real Property Law.

- 3) In addition to the above documents, the applicant must also file an **Affidavit** and a **Statement of Property**.
- Information about how to write an Affidavit can be found on the Nova Scotia Family Law website at: <http://www.nsfamilylaw.ca/guide-making-application-court/writing-affidavit-application>
 - A Statement of Property form is form FD7 in the below website link: <http://www.nsfamilylaw.ca/guide-making-application-court/supporting-documents>
- 4) The applicant should include the following information in the **Affidavit**:
- Information about their relationship, including whether they have children;
 - Information identifying their or their children's Indian Status and Band Membership;
 - Information about any property the couple own (both on and off reserve), information about the family home and who all is living within the family home;
 - How long the applicant has lived on reserve and in the family home;
 - Whether either spouse/partner has any medical conditions;
 - Other suitable housing available to either the applicant or respondent;
 - Information about any elderly person or persons with disability residing in the family home;
 - If there are any existing Court Orders or agreements between the spouses/partners; and
 - If there has been any family violence.

Next Steps: Service of Documents

The applicant must serve a copy of all the documents filed with the Court on anyone who might be affected by the Order, including the 1) the other spouse/common law partner (respondent), 2) other adults living in the family home and 3) Chief and Council (the "Required Persons").

To serve a copy:

- The applicant must arrange for the Required Persons to have notice of a court proceeding. This is done by you or someone you appoint to hand-deliver the package of documents filed with the Court directly to the Required Persons.
- The Required Persons must be served with the documents a minimum of 10 days before the hearing, or if the Court has arranged a special or appointed time to hear the Application, the Required Persons must then have 25 days' notice in advance of the scheduled Court date.
- Whoever personally delivers the documents to the person served, must complete an Affidavit of Service and file it with the Court.
- The Nova Scotia Family Law website link below provides more information about Personal Service. A form for the Affidavit of Service can also be found in the below link. <http://www.nsfamilylaw.ca/guide-filing-divorce-nova-scotia/personal-service>

Final Steps:

- A respondent and other Required Persons can reply to the Application by preparing an Affidavit, containing the same type of information. The respondent may also complete a Notice of Contest (Nova Scotia Supreme Court) or Response to the Application (Nova Scotia Supreme Court-Family Division).
- The applicant may prepare a second affidavit to respond to any affidavits filed; however, may only reply to anything new raised within these affidavits.
- Attend Court at the date and time specified in the Application.
- If the applicant is successful in obtaining and Order for Exclusive Possession, provide a copy of the Order to the Housing Department of the First Nation, to Chief and Council and to the local RCMP detachment.

Legal Assistance

The applicant or respondent may choose to have a lawyer at any point during the process and they would be responsible to pay their own legal costs.

Nova Scotia Legal Aid may be able to assist as well. To obtain contact information for the closest Nova Scotia Legal Aid Office see www.nslegalaid.ca.

Purpose of this pamphlet

This pamphlet is not intended to be legal advice. This pamphlet is to provide information on how a spouse or common law partner can apply for an Exclusive Occupation Order for a family home located on reserve in Nova Scotia, under the Bands own MRP.



The Confederacy of Mainland Mi'kmaq

For more information, contact:

The confederacy of Mainland Mi'kmaq
PO Box 1590
57 Martin Crescent
Truro, NS B2N 5V3

Phone: (902) 895-6385 or 1-877-892-2424
Fax (902) 893-1520
Web: cmmns.com