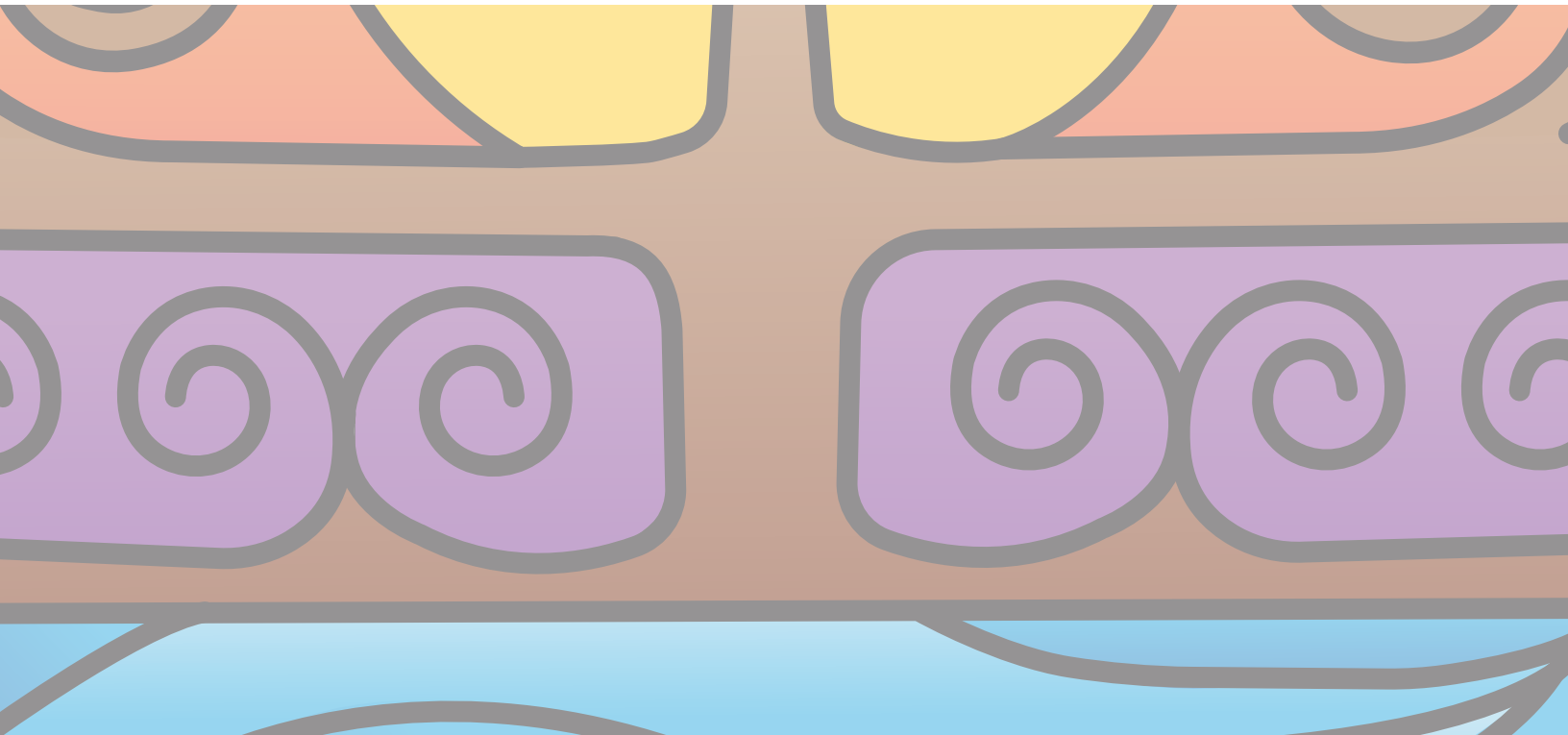
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MATRIMONIAL PROPERTY RIGHTS ON RESERVE

In a marriage or common-law relationship, couples often share property, like a home, called “matrimonial property.” When the relationship ends through separation, divorce, or death, questions can arise about **what happens to that property.**



If you are living off-reserve, provincial or territorial laws will tell you what happens to the matrimonial property. However, if you are living on-reserve, **federal** laws apply.

Specifically, the *Family Homes on Reserves and Matrimonial Interests or Rights Act* **(FHRMIRA)** allows First Nation communities to create their own laws about matrimonial property on reserve. It also provides default rules that apply if a First Nation community has not yet passed its own laws.

As of late 2025, all Wolastoqey First Nations in New Brunswick use the FHRMIRA's default rules. This could change if a community passes its own law. Always check with your local Band Office for updates. The following sections will highlight some important rights that may apply to you under the FHRMIRA rules.

Who Does the FHRMIRA Apply to?

This law applies to **individuals in marriages or common-law relationships living on reserve lands.** It is particularly relevant to those who are separating, divorcing, or dealing with the death of a partner and need information about their rights to matrimonial property. This includes both Band members and non-members, as well as those with or without Indian status.

A common-law partner is someone who has been living together with another person in a romantic, marriage-like relationship, and they have lived together continuously for at least one year. Common-law partners have many of the same legal rights as married spouses, especially regarding the family home and matrimonial property.



Equal Rights to the Family Home

A “family home” is defined in the FHRMIRA as a structure on reserve land where a couple “habitually resides”. This could be a house, apartment, or mobile home, but **it does not include the land on which the structure is located.** This is because the FHRMIRA recognizes that reserve lands are different from structures on the land. The lands are set aside specifically for the use and benefit of the First Nation community.

Under the FHRMIRA, both partners have certain equal rights to the family home. For instance:

- Both partners have a right to live in the family home during their relationship, **regardless of Band membership or Indian status.**
- During a relationship, the family home can’t be sold, transferred, or mortgaged without both partners’ written consent.
    - If one partner handles a transaction involving the family home without the other’s consent, the court can cancel the transaction or order a payment.

Note that First Nation communities have authority under the *Indian Act* to govern residency and trespass on-reserve through by-laws, which may change how the FHRMIRA applies. This will depend on the language of the by-law and how it is implemented. It is important to get specific legal advice for your scenario.



What if I Am Facing Abuse From My Partner?

In cases of family violence, a partner or someone on their behalf, can apply to the court for an Emergency Protection Order **(EPO)**. Under the FHRMIRA, "family violence" includes assault, damage to property, threats, sexual abuse, and criminal harassment. Family violence does **not** require criminal charges to have been laid.

An EPO is an urgent, short-term court order. It lasts for up to **90 days**, with the possibility of extension. It is one tool to protect against family violence. An EPO can do things like:

- Allow one partner to **exclusively** occupy the home;
- Remove an abusive person from the family home; and
- Prevent that person from re-entering the family home or being near the home.

When deciding whether to grant an EPO, the court will consider factors such as:

- History and nature of family violence;
- The best interests of any children involved (including the interest of Indigenous children to maintain a connection with their community); and
- The interests of any elderly person or residents with disabilities who live in the family home.

You do **not** need to tell your partner that you are applying for an EPO against them. However, once the judge grants the EPO, a peace officer will "serve" (deliver) the EPO to your partner (or whoever the EPO is ordered against). In some cases, the EPO will also be sent to another judge for review. The judge will either agree there was enough evidence to support an EPO or hold another hearing. If there is another hearing, the EPO will continue to apply until a court says differently.

Failing to follow an EPO can result in fines or jail time.

What if I Separate From My Partner, or My Partner Passes Away?

Occupation of the Family Home

If you break up with your partner:
There may be a dispute about who is allowed to stay in or access the family home, or when someone needs to leave the home. If you cannot agree with your partner on these issues, you can ask the court to make an Exclusive Occupation Order **(EOO)**.

An EOO can be a short-term or long-term order. It can address things like:

- Who can stay in or leave the family home, and by what certain time;
- Payments for the costs of alternative accommodation; and
- Payments for costs of repairing or maintaining the family home.

When deciding whether to grant an EOO, the court will consider similar factors to an EPO, such as the best interests of any child living at the home. It is usually in the best interests of the child that their parent continues to live with them, which may weigh in favour of an EOO. Having said this, the court will also consider factors like:

- Any previous agreements between the partners about the family home;
- The partners' financial and medical situations;
- Whether there are other housing options on reserve;
- Any psychological abuse against anyone who lives in the family home; and
- The First Nation community's collective interest in their reserve lands.



If a partner passes away:
And the survivor does not hold any interest or right in the family home, the surviving partner still has the right to live in the family home for **180 days**, whether or not the survivor is a Band member or a status Indian. This is only a right to **occupy** the home. It does not mean the surviving spouse now **owns** the family home or has any other rights or interest in the home or land. If the survivor wishes to stay longer than 180 days, they can apply to the court for an order, with the court considering similar factors as for an EOO.

If the survivor does hold an interest or right in the family home, they may be able to stay in the home for longer than 180 days. This will depend on what type of co-ownership rights they had. Consulting a lawyer is advised in these situations.

The rights described in this section apply even if someone is not a First Nation Band member or if they do not have Indian status under the *Indian Act*.



Division of the Matrimonial Property

If you break up with your partner or your partner passes away, you are generally entitled to 50% of the value of whatever interest or right the partner holds in the family home (i.e. the structure(s) situated on a reserve). This is true even if you are not a Band member of the First Nation community, or do not have Indian status.

If the family home is a band-owned or allocated structure, you will likely need to look at the specific housing agreement between your partner and the Band, any relevant housing or residency bylaws, to determine if and to what extent your partner had any right or interest in the family home.

Generally, you may also get 50% of the value of matrimonial property **other than the family home**. This includes things that you or your partner may have bought for the relationship, or during the relationship (such as a car or furniture). This does not include things received as gifts or through inheritance meant for one partner only.

However, when it comes to reserve **lands**, there are different rights for members and non-members. Reserve lands are set aside for a specific First Nation community to use and benefit from. So, only members of that First Nation community can get any value from their partners' rights or interests in reserve lands.

Dividing up matrimonial property can be complicated and often depends on the specific facts in each case.

This description is only a general overview. It is best to consult a lawyer for specific advice on your situation.



Confirming Compensation Through an Agreement or in Court

You can enter into an agreement with your partner to receive compensation for matrimonial property. You may use methods like mediation or your community's traditional dispute resolution processes to come to an agreement with your partner. If your partner later does not follow the agreement, you can ask the court to enforce the agreement. The court would confirm the agreement if both parties gave free and informed consent and if the agreement is fair.

If you cannot agree with your partner about compensation, you can bring a claim in court. Generally, you must bring this claim within **three years** of separating from your partner. In special circumstances, the court may extend the deadline.

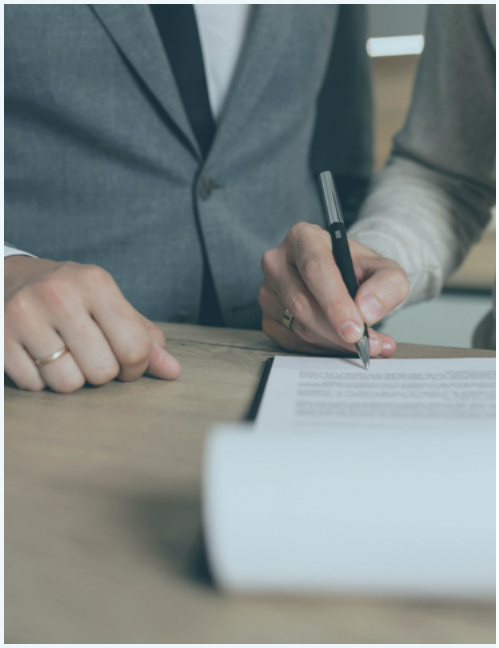
If your partner passes away, you must apply to the court to claim your rights or ask for financial compensation **within 10 months** of your partner's passing. Extensions may be allowed in special cases, like if you were not aware of your rights or of the death.

What Does Compensation Look Like?

How Is Matrimonial Property Valued?

The value of matrimonial property is based on what a buyer would reasonably pay for something similar, considering any debts attached to it.

The surviving partner and the estate executor can agree on a different way to determine this value.



Form of Compensation

Compensation from the deceased partner's estate can be paid as a lump sum or in installments. First Nation Band members may also be compensated through the transfer of an interest or right to a structure or land on reserve of their First Nation. In contrast, non-members can only be compensated in money.

If both a separated spouse and a common-law partner survive, the common-law partner has priority when receiving payments from the estate. An "estate" is everything someone owns at the time of their death. This includes their money, property, possessions, and any debts that they owe. When someone passes away, their estate is managed and distributed according to their will or the law if there is no will.

"Distributing an estate" means dividing and giving out the deceased person's assets (money, property, and belongings) to the people or organizations entitled to receive them. It also means paying off any debts or taxes the deceased owed before giving out what remains. The executor or administrator of the estate (the person managing the property after death) cannot divide or hand out the property until:

- The survivor agrees to the proposed distribution in writing; or
- The 10 months (or any extended time) pass without the survivor making a claim.

When someone passes away, their estate includes all their assets, including matrimonial property. If the will or estate distribution doesn't align with the surviving partner's rights under matrimonial property laws (for example, if the will leaves everything to someone else), the survivor can make a claim to ensure they get their fair share of the matrimonial property.

The estate might lose value while a survivor's claim is being processed because money from the estate could be used to pay debts, taxes, or ongoing expenses like legal fees or property maintenance. A survivor can apply to a court to prevent the estate from depleting matrimonial property while their claim is being processed.

Limits of Compensation

If the court grants the survivor financial compensation under FHRMIRA for the family home or other property, **the survivor cannot claim additional compensation for the same property** through the deceased's will or under the *Indian Act.* However, the survivor can still inherit other assets that are not related to the matrimonial property.

Courts can also change how much a survivor receives if:

- There are previous agreements or court orders that already divided the property; or
- Awarding the full amount would be unfair ('unconscionable') considering various factors, including, but not limited to, whether the deceased's children are adequately provided for or if other circumstances make the full award unreasonable.

For More Information

For more information, contact the appropriate employee at your local Band Office, or check out the following websites:

- Government of Canada
  Matrimonial real property on reserve
- Government of Canada
  First Nations with Matrimonial Real Property Laws Under the Family Homes on Reserves and Matrimonial Interests or Rights Act
- Government of Canada
  Family Homes on Reserves and Matrimonial Interests or Rights Act

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