

# **Tk'emlúps te Secwépemc's Matrimonial Real Property Law Executive Summary**

## **Introduction:**

Until recently, there have not been any laws dealing with matrimonial real property that were applicable on reserve. These matters are generally addressed through provincial legislation, but provincial laws cannot apply to reserve lands. In December, 2014, a new federal law came into force that addresses issues regarding matrimonial real property on reserve (*Family Homes on Reserves and Matrimonial Interests or Rights Act*, SC 2013, c. 20). The federal law also grants authority to First Nations to create their own laws to address these issues instead of relying on the federal law.

Tk'emlúps te Secwépemc (TteS)'s Technical Advisory Committee has worked with legal counsel to prepare a draft TteS Matrimonial Real Property Law (the "TteS MRP Law"). The TteS MRP Law is to ensure that on reserve real property (lands and structures attached to lands) held by spouses in a marriage or in a common-law relationship can be fairly dealt with if the relationship ends in a way that is consistent with TteS traditional laws and values. Once approved by the membership, the TteS MRP Law will replace the federal law. The TteS MRP Law balances the goals of treating both spouses fairly, promoting the best interests of children, and protecting the right of TteS members to reside on TteS reserves. The TteS MRP Law protects TteS interests by ensuring that non-members cannot get permanent interests in TteS reserve lands. It also protects the interests of spouses and children by allowing non-members to hold certain non-permanent interests in TteS reserve lands in limited circumstances; some examples of which are set out below.

## **Key Points:**

- Applies equally to married and common-law spouses (see "spouse" in Part 2).
- Only applies to family homes and matrimonial property on TteS reserve land, where at least one spouse is a member, and where the marital or common-law relationship has broken down or a spouse has died (sections 3.1, 3.2, 3.3, 3.5).
- A non-member spouse cannot receive a permanent interest in TteS reserve land (sections 4.2, 4.3, 5.12). A permanent interest is an interest that can be passed on in a will to heirs.
- A non-member spouse can obtain a temporary right to live in a matrimonial home on TteS reserve land in limited circumstances, for example through a domestic contract (Part 4) or a court order (sections 7.3, 8.1, 9.1), or when a spouse passes away (section 10.1).
- Spouses may enter into a domestic contract setting out how their matrimonial property will be dealt with during and after the relationship (section 4.1).

- Encourages spouses to resolve their differences through agreement, including cooperative discussion, mediation or alternative dispute resolution before seeking recourse in the courts (section 6.1).
- When a marital or common-law relationship ends, a spouse may apply to a court to enforce a domestic contract or deal with any matter provided for under the TteS MRP Law (section 5.5).
- If a dispute is brought before the courts under the TteS MRP Law, Council has standing to appear before the court to describe the unique cultural, social and legal circumstances involved with reserve lands, and TteS's members' collective interests in these lands and to present its views about whether the order sought should be made (section 5.14).
- Both spouses have an equal right to possession of a family home and each spouse is entitled to half of the value of the family home, subject to certain limitations (section 6.3).
- The court can make a number of different orders concerning the division of matrimonial property. For example, it can order that ownership of the matrimonial property be transferred to one spouse exclusively, if both spouses are members (section 7.3(e)).
- In certain circumstances, the court can make an order granting exclusive occupation or a matrimonial home to a spouse for a period of time specified by the court, even if that spouse is a non-member (Part 8).
- If family violence has occurred and a person requires immediate protection, the court can make an order granting emergency exclusive occupation of a matrimonial home to a spouse for up to 90 days, regardless of whether the spouse is a member (section 9.1).
- The Council may make minor amendments to the TteS MRP Law by band council resolution (section 11.1). The Council may make substantive amendments only if it first consults with and gets approval of the membership as set out in the TteS MRP Law (section 11.2).
- The TteS MRP Law can be repealed if a majority of at least 25 percent of TteS's eligible voters vote in favour of repealing it (section 11.4).