



MATRIMONIAL REAL PROPERTY LAW

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TABLE OF CONTENTS

PART 1	TITLE	2
PART 2	DEFINITIONS	2
	Relationship Between Spouses.....	5
PART 3	APPLICATION OF LAW	5
	Only to Reserve Land	5
	Only to Members and Their Spouses	5
	Only to Family Homes and Matrimonial Property	5
	Federal and Provincial Laws.....	5
	Protection of Personal Information	6
	Does Not Apply to Wills and Estates	6
	Continuation Where Spouse Dies During Proceedings.....	6
	Subsection 89(1) of the <i>Indian Act</i>	6
PART 4	DOMESTIC CONTRACTS	6
	Court May Set Aside or Vary Agreements.....	7
	Past and Future Agreements Valid.....	7
PART 5	ACCESS TO THE COURT	8
	Cooperative Dispute Resolution Encouraged.....	8
	General Access to Court	8
	Time Limit for Bringing an Application	8
	Notice to All Affected Persons.....	9
	Court Orders	9
	Certain Orders Prohibited	9
	Court May Vary Orders	10
	Council May Make Representations	10
PART 6	FAMILY HOME	10
	How to Determine Family Home	10
	Equal Rights.....	10
	Limits on Sales and Encumbrances	11
PART 7	DIVISION OF MATRIMONIAL PROPERTY OR COMPENSATION IN LIEU	11

PART 8	EXCLUSIVE OCCUPATION ORDERS	14
PART 9	EMERGENCY PROTECTION ORDER	15
PART 10	OCCUPATION OF FAMILY HOME UPON DEATH OF A SPOUSE	17
PART 11	AMENDING AND REPEALING PROCEDURES.....	17
PART 12	OFFENCES AND PENALTIES	18
PART 13	GENERAL PROVISIONS Interpretation	18
	Certain Pre-Relationship Gifts and Inheritances Exempt.....	18
	Rights of Non-Members Non-Transferable	19
	Date Law Comes Into Force	19

TK’EMLUPS TE SECWEPENC
MATRIMONIAL REAL PROPERTY LAW

PREAMBLE

WHEREAS the **Tk’emlúps te Secwépenc** are Secwepenc people, who maintain a self-sufficient government with a sustainable economy, a distinctive language, a powerful spirituality, and a rich culture within a defined territory which pre-dates the establishment of Canada and continues to exist;

WHEREAS the **Tk’emlúps te Secwépenc** has a sacred duty, in the spirit of our ancestors, to protect and enhance our traditional laws and teachings to create and maintain a harmonious, respectful and balanced self-sustaining community for the well-being and long term benefit of all our members and future generations;

WHEREAS **Tk’emlúps te Secwépenc**’s inherent right of self-government, including its right to adopt this Law, is an existing Aboriginal right recognized and affirmed under section 35 of the *Constitution Act, 1982* and is confirmed by the *United Nations Declaration on the Rights of Indigenous Peoples*, and in particular Articles 3, 4, 5, 8(1) and 34;

WHEREAS **Tk’emlúps te Secwépenc**, as an aspect of its inherent right of self-government, has established and maintained its own laws and processes for resolving real property issues such as disputes that arise regarding the division and distribution of matrimonial property upon the breakdown of marriage and common law relationships since time immemorial and continues to have the authority to do so;

WHEREAS **Tk’emlúps te Secwépenc** encourages its members to resolve any matrimonial property issues internally, with the assistance of traditional counseling, family or other community members, or through mediation;

WHEREAS **Tk’emlúps te Secwépenc** wishes to see matrimonial real property disputes resolved in a way that, first, is in keeping with the best interests of our children, second, does not jeopardize the ability of our members to reside on our reserves and to hold real property on reserve, and third, is fair to both spouses; and

WHEREAS the federal government of Canada has enacted Bill S-2, the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, to address certain family law matters on First Nation reserves that are not addressed by any provincial or territorial law, or by the *Indian Act*, and Bill S-2 empowers First Nations to enact their own laws to address these same matters;

NOW THEREFORE Tk’emlúps te Secwépenc hereby enacts the ***Tk’emlúps te Secwépenc Matrimonial Real Property Law***.

PART 1 TITLE

- 1.1 This Law may be cited as the “**Tk’emlúps te Secwépemc** *Matrimonial Real Property Law*.” or the “*TteS Matrimonial Real Property Law*”.

PART 2 DEFINITIONS

- 2.1 In this law:

“**child**” means a person who is under the age of 19 and who has not withdrawn from parental control, or who is over the age of 19 but unable, by reason of illness, disability or other cause, to withdraw from parental control or to obtain the necessities of life, and who is:

- (a) the biological child of at least one spouse,
- (b) adopted, under Canadian law or Aboriginal custom, by at least one spouse,
- (c) the step-child of at least one spouse where that spouse is the primary caregiver of the child, or
- (d) any child for whom either or both spouses stand in the place of parents,

and “**children**” shall have a corresponding meaning;

“**council**” means the duly elected chief and council of **Tk’emlúps te Secwépemc**;

“**court**” means any federal or provincial court of competent jurisdiction, or any traditional court or tribunal of **Tk’emlúps te Secwépemc** or of the Secwépemc people;

“**dependent**” means any person residing with a member who is over the age of 19 but unable, by reason of illness, disability or other cause, to withdraw from parental control or to obtain the necessities of life, and is dependent upon the member for his or her care and wellbeing.

“**divorce proceeding**” has the meaning ascribed to it in s. 2(1) of the *Divorce Act*, R.S.C., 1985, c. 3;

“**domestic contract**” means an agreement made between two persons who are spouses or who intend to become spouses, in which they agree on their respective rights and obligations under the relationship or on separation, on the annulment or dissolution of the relationship, or on death, including:

- (a) ownership in or division of matrimonial property,
- (b) support obligations,
- (c) the right to direct the education and moral training of their children,
- (d) the right to custody of or access to their children, and
- (e) any other matter in the settlement of their affairs,

and includes an agreement between the spouses to amend or rescind a domestic contract.

“family home” means a dwelling where the spouses habitually reside, or which was mutually intended by the spouses to be the family home where one or both of them would habitually reside, or if the spouses have ceased to cohabit or one of them has died, the dwelling where they habitually resided on the day on which they ceased to cohabit or the death occurred and is:

- (a) owned exclusively by one or both Spouses, and
- (b) need not be affixed but is situated on TteS land,

but does not include a dwelling that is ordinarily used for a family purpose and was inherited by or gifted to only one spouse, regardless of when it was inherited or gifted;

“family member”, with respect to a person, means:

- (a) the person’s spouse or former spouse,
- (b) a person with whom the person is living, or has lived, in a marriage-like relationship for a period of at least one year,
- (c) a parent or guardian of the person’s child or dependent,
- (d) a person who lives with, and is related to:
 - (i) the person, or
 - (ii) a person referred to in any of paragraphs (a) to (c), or
 - (iii) the person’s child,

and includes a child or dependent who is living with, or whose parent or guardian is, a person referred to in any of paragraphs (a) to (d);

“family violence” includes:

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm;
- (b) sexual abuse of a family member;
- (c) psychological or emotional abuse of a family member by any means whether directly or indirectly, including, without limitation, through social media, technological devices or other communication technologies, where such abuse includes without limitation:
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member’s financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property; and
- (d) in the case of a child or dependent, direct or indirect exposure to family violence;

“interest in TteS land” means any certificate of possession, allotment, lease, permit or any other equivalent instrument, but does not include rental agreements for homes owned by TteS or other TteS property. For greater certainty, where there is a family home affixed to TteS land that is the subject of an interest in TteS land, the interest includes both the land and the family home;

“life estate” means the grant of an interest in TteS land that is limited to or measured by the life of the person holding it;

“matrimonial property” means:

- (a) an interest in TteS land that is held by one or both spouses and that includes a family home,
- (b) an interest in TteS land that does not include a family home, is held by one or both spouses, was acquired during the relationship, and was not gifted to or inherited by only one spouse, or
- (c) any increase in value of an interest in TteS land that was acquired by either spouse prior to the relationship, except for a family home or an interest in TteS land that was gifted to or inherited by only one spouse, where the increase in value occurred during the course of the relationship;

“mediation process” means a dispute resolution process in which a third party assists the parties to a dispute to negotiate a resolution to their dispute where the third party may be:

- (a) a family law mediator who is qualified in accordance with the *Family Law Act Regulation* BC Reg 347/2012, as amended from time to time; or
- (b) a person recognized by the parties as having authority under TteS laws and traditions to assist the parties in negotiating and formalizing a resolution to their dispute.

“member” means a person whose name appears or is entitled to appear on the TteS membership list;

“rented family home” means a rental unit owned by TteS that is the dwelling where the spouses habitually reside, or if the spouses have ceased to cohabit, the dwelling where they habitually resided on the day on which they ceased to cohabit;

“spouse” means a person who:

- (a) is married to another person, whether by a customary Aboriginal, religious, civil or other ceremony, or
- (b) is living or has lived with another person in a marriage-like relationship for a continuous period of at least one year (i.e. “common-law partners”), and

includes a former spouse.

“TteS” or “First Nation” means **Tk’emlúps te Secwépemc**, a “band” within the meaning of the *Indian Act*;

“**TteS land**” means all lands currently set apart by Canada for the use and benefit of TteS and any future additions to TteS’s reserves.

Relationship Between Spouses

- 2.2 A relationship between spouses begins on the earlier of the following:
- (a) the date on which they began to live together in a marriage-like relationship; or
 - (b) the date of their marriage.
- 2.3 For the purposes of this law,
- (a) spouses may be separated despite continuing to live in the same residence; and
 - (b) the court may consider, as evidence of separation:
 - (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and
 - (ii) an action, taken by a spouse, that demonstrates the spouse’s intention to separate permanently.

PART 3 APPLICATION OF LAW

Only to Reserve Land

- 3.1 This law only applies to TteS land and does not apply to the remainder of TteS’s territory.

Only to Members and Their Spouses

- 3.2 This law only applies where at least one spouse is a member.
- 3.3 This law only applies to members and their spouses in relation to a break-down of a marriage or a common-law relationship, or the death of a spouse.
- 3.4 This law does not apply to a family home or matrimonial property on TteS land that is held by either spouse, or both spouses, where neither spouse is a member.

Only to Family Homes and Matrimonial Property

- 3.5 This law applies only to family homes and matrimonial property, except where explicitly stated, and not to other interests in or on TteS land.

Federal and Provincial Laws

- 3.6 Subject to this law, existing TteS laws, Secwepemc customs and traditional laws, the common law, federal and provincial laws relating to divorce and separation still apply and, for greater certainty:
- (a) the British Columbia *Family Law Act*, SBC 2011, c. 25, as amended, and the Canada *Divorce Act*, 1985, c. 3 (2nd Supp.), as amended, apply as modified by this law and to the extent possible subject to this law and the *Indian Act*, RSC 1985, c. I-5;

- (b) nothing in this law limits the application of valid and applicable federal or provincial laws in respect of matrimonial causes or any rights or remedies available in those laws, except to the extent that such laws deal expressly or implicitly with family homes or TteS land, and to that extent this law shall apply; and
- (c) unless otherwise specified in this law, nothing in this law relieves either spouse of the requirement to observe the rules and procedures of a court in relation to matrimonial causes.

3.7 Despite section 3.6, the fact that a family home does not include future or contingent interests in TteS land shall not be taken to confer jurisdiction upon a court over those interests under this law.

Protection of Personal Information

3.8 All personal information of any person that is collected for the purpose of this law by TteS, or by AANDC or any other federal work, undertaking or business is protected under applicable federal laws, including the *Personal Information Protection and Electronic Documents Act*, and the *Privacy Act*, both as amended from time to time.

Does Not Apply to Wills and Estates

- 3.9 Unless otherwise provided in a specific provision, this law does not apply to wills and estates.
- 3.10 For greater certainty, a spouse does not have an election, on the death of the other spouse, to claim, take or pursue an interest in TteS land held by the other spouse under this law, and his or her interest will be determined by the will or administration of the estate of the deceased spouse.

Continuation Where Spouse Dies During Proceedings

3.11 Despite sections 3.8 and 3.9, where a proceeding has been commenced under Part 3 of this law, and either spouse dies before all issues relating to the matrimonial home have been determined by a court, the surviving spouse may continue the proceeding.

Subsection 89(1) of the *Indian Act*

3.12 This law applies despite subsection 89(1) of the *Indian Act*.

PART 4 DOMESTIC CONTRACTS

- 4.1 Subject to this law and all applicable laws, a provision in a domestic contract that reflects the agreement of the spouses with respect to an interest in TteS land, including a family home or matrimonial property, is valid, binding and enforceable providing it has been:
 - (a) made in writing,
 - (b) signed by the parties, and
 - (c) witnessed by one or more persons who are at least 19 years of age.

- 4.2 A domestic contract may provide an interest in TteS land, including the right to exclusively occupy a family home, to a spouse, child or dependent who is not a member, but such interest and such rights shall not in any case be greater than a life estate measured by the life of the individual intended to enjoy it.
- 4.3 A provision in a domestic contract is void if it purports to give, transfer, award, acknowledge or create an allotment, certificate of possession, or any interest in TteS land equivalent to an allotment or certificate of possession, that is greater than a life estate for a person who is not a member.

Court May Set Aside or Vary Agreements

- 4.4 Subject to this law, a court may, on application, set aside or vary a domestic contract or any provision therein concerning an interest in TteS land or a family home upon making a determination that:
- (a) a spouse failed to disclose to the other spouse all of that spouse's interests in TteS land or a family home, or any material information in respect of those interests;
 - (b) a spouse did not understand the nature or consequences of the domestic contract or provision;
 - (c) there is evidence of abuse, coercion, undue influence or fraud, or that a spouse did not voluntarily enter into the domestic contract or provision; or
 - (d) otherwise in accordance with the common law or the law of equity of contract.
- 4.5 Subject to section 4.6, section 4.4 only applies to
- (a) married spouses;
 - (b) common-law spouses;
 - (c) formerly married spouses who have been divorced for less than 2 years; and
 - (d) former common-law Spouses who have been living separate and apart for less than 2 years.
- 4.6 Where the time limit described in section 4.5 has expired:
- (a) a formerly married spouse or former common law spouse may apply to the court for permission to bring a late claim under section 4.5 on the basis of compelling circumstances;
 - (b) the court shall determine whether the evidence establishes sufficiently compelling reasons for the delay to allow it to proceed, taking into account any prejudice that the other spouse will suffer from the delay in the application; but
 - (c) in no case shall the court allow late claims to proceed where the formerly married spouses have been divorced for over 5 years or where the former common law spouses have been living separate and apart for over 5 years.

Past and Future Agreements Valid

- 4.7 This Part applies whether the parties entered into the domestic contract on, before, or after the date that this law comes into force and effect.

PART 5 ACCESS TO THE COURT

Cooperative Dispute Resolution Encouraged

- 5.1 Before proceeding to court, spouses are strongly encouraged to try to resolve their differences regarding any matter addressed in this law by agreement, including through cooperative discussion, participation in a mediation process or participation in any other form of alternative dispute resolution, unless one spouse is experiencing or has recently experienced family violence.
- 5.2 Any spouse may contact the TteS Social Development Department for counselling referrals and resources and for information and resources relating to mediation and dispute resolution, but for greater certainty, neither the TteS Social Development Department nor TteS has any obligation to ensure or provide mediation processes or alternative dispute resolution services and spouses who participate in any mediation processes or other alternative dispute resolution processes are solely responsible for any costs incurred in respect thereof.
- 5.3 No materials submitted by spouses to the mediation process for the purpose of resolving a dispute under this law shall be released to any person or agency, except where such disclosure is required under a court order or the express wording of a statute.

General Access to Court

- 5.4 Where spouses are unable to resolve their differences regarding any matter addressed in this law, they may apply to the court for a resolution of their dispute.
- 5.5 In the event of the breakdown of a marriage or a common-law relationship, a spouse may apply to a court to:
- (a) enforce a domestic contract;
 - (b) determine a dispute in relation to a family home; or
 - (c) deal with any matter provided for under this law.
- 5.6 When a proceeding related to the consequences of the breakdown of a spouse's relationship is pending, including a divorce proceeding, the court that has jurisdiction to hear and determine the matter, or that is seized of the matter, has jurisdiction to hear and determine an application made under this law.
- 5.7 The court shall adjudicate a dispute under this law with regard to any decisions and orders previously rendered by Canadian courts that settle related family law matters for the spouses, such as divorce, child custody, spousal support, child support, division of personal property or division of real property off-reserve.

Time Limit for Bringing an Application

- 5.8 A spouse seeking to apply for an order under this Part must apply:
- (a) before his or her divorce, or within one year after his or her divorce has been granted by a court; or
 - (b) before his or her separation, or within two years after the date on which the spouses ceased to cohabit.

Notice to All Affected Persons

- 5.9 Any person initiating a proceeding or making an application to the court under this law, in addition to complying with the notice provisions set out in the rules regarding the practice and procedure in the court, must also provide notice of the proceeding or application to all affected persons, for greater certainty:
- (a) to any person against whom the applicant is seeking to have an order made and to any other person who would be specified in or bound by such an order;
 - (b) to council and to any person who holds an interest or right in or to the family home, rented family home, matrimonial property, or interest in TteS land that is the subject matter of the proceeding or application; and
 - (c) where the proceeding or application involves a deceased person:
 - (i) if the applicant is the survivor, to the executor of the will or the administrator of the estate of the deceased person, or to the Minister if applicable, or
 - (ii) if the applicant is the executor of the will or administrator of the estate, to the survivor, and to the Minister if applicable.
- 5.10 Section 5.9 does not apply in the case of ex parte applications for emergency protection orders made under Part 9 of this law.

Court Orders

- 5.11 Regardless of which spouse holds a family home, a court may, on application:
- (a) order the delivering up, safekeeping and preservation of the family home;
 - (b) direct that one spouse be given exclusive possession, consistent with this law, of the family home, for such period as the court may direct to a maximum of the
 - (c) time limits set out in sections 8.1, 8.2, 9.4 and 9.5 and release any other aspect or encumbrance relating to the family home from the application of this Part;
 - (d) authorize a disposition or encumbrance consistent with TteS law of a spouse's interest in a family home, subject to the other spouse's right of exclusive possession as ordered;
 - (e) make any interim or temporary order to give effect to the purposes of this law or to protect the rights of a spouse; and
 - (f) make any ancillary order, including an order as to costs, that the court deems necessary to give effect to this law.

Certain Orders Prohibited

5.12 No order shall be made under this Part:

- (a) in respect of a certificate of possession or allotment in favour of a spouse who is not a member; or
- (b) that results in a sale, partition or transfer of a certificate of possession or allotment.

Court May Vary Orders

5.13 A court may, on application, vary any declaration or order granted under this Part if:

- (a) there is a material change in circumstance;
- (b) there is evidence of fraud, abuse or coercion; or
- (c) the court determines that fairness or equity justify a variance.

Council May Make Representations

5.14 At the request of council, the court that is seized of the application must, before making its decision, allow the council to make representations with respect to the cultural, social and legal context that pertains to the application and to present its views about whether or not the order sought should be made.

5.15 When the court makes any decision or order under this law, the spouse in whose favour the decision is made shall promptly provide a copy of the decision or order to the council.

PART 6 FAMILY HOME

How to Determine Family Home

6.1 Whether or not a structure or interest is a family home is a question of fact.

6.2 Where part of a family home is normally used for a purpose other than residential purposes, including carving or cultural uses, storage, rental, or commercial purposes, the family home includes only that part of the structure or structures that may reasonably be regarded as necessary for use and enjoyment as a family residence.

Equal Rights

6.3 Subject to the limitations inherent in the nature of TteS land, paragraphs 4.3 and 5.12, and to other factors set out in this law;

- (a) both spouses have an equal right to possession of a family home; and
- (b) each spouse is entitled to half the value of the family home.

6.4 A spouse with rights under section 6.3 also has equal rights of redemption or relief against forfeiture.

6.5 Where a person or entity proceeds to realize upon an encumbrance or execution against a family home or an interest that affects the family home, both spouses have a right of

redemption or relief against forfeiture for the family home and both are entitled to notice respecting the claim and its enforcement or realization.

Limits on Sales and Encumbrances

- 6.6 No spouse shall dispose of or encumber a family home unless:
- (a) the other spouse consents;
 - (b) the other spouse joins in the instrument of disposal or encumbrance;
 - (c) the other spouse has released all rights in respect of the disposition or encumbrance by domestic contract;
 - (d) a court order has authorized the transaction; or
 - (e) a court has released the family home from the application of this section.
- 6.7 If a spouse disposes of or encumbers a family home in contravention of section 6.6, the court may, on application:
- (a) set aside the disposal or encumbrance, or
 - (b) order the spouse to pay compensation to the other spouse.
- 6.8 Section 6.7(a) does not apply where the person holding the disposition or encumbrance at the time of the application to the court acquired the disposition or encumbrance for value, in good faith and without notice at the time of acquiring, or making an agreement to acquire the disposition or encumbrance, that the property was a family home.
- 6.9 A court may, on application authorize a disposition or encumbrance of a family home, provided that such disposition or encumbrance is otherwise authorized under this law, if the court finds that the spouse whose consent is required cannot be found or is not available, is not capable or giving or withholding consent, or is unreasonably withholding consent, and the court may prescribe conditions including the provision of other comparable accommodation, or payment in place of it, that the court deems appropriate.

PART 7 DIVISION OF MATRIMONIAL PROPERTY OR COMPENSATION IN LIEU

- 7.1 Subject to section 7.2, Part 7 only applies to:
- (a) formerly married spouses who have been divorced for less than 1 year; and
 - (b) former common-law spouses who cohabited in a marriage-like relationship for at least 1 year and who have been living separate and apart for less than 1 year.
- 7.2 Where a time limit described in section 7.1 has expired:
- (a) a spouse may apply to the court for permission to bring a late claim under Part 7 on the basis of compelling circumstances; and

- (b) the court shall determine whether the evidence establishes sufficiently compelling reasons for the delay to allow it to proceed, taking into account any prejudice that the other spouse will suffer from the delay in the proceeding; but
- (c) in no case will the court allow late claims to proceed where the spouses have been divorced for over 5 years or have been living separate and apart for over 5 years.

7.3 Subject to this law, the court may make determinations concerning interests in and the division of value of matrimonial property and may make orders that are necessary, reasonable or ancillary to give effect to the determination, including, but not necessarily limited to:

- (a) a declaration as to whether people are spouses or former spouses;
- (b) a declaration as to whether the property at issue is in fact matrimonial property;
- (c) a declaration as to whether a structure is in fact a family home;
- (d) a declaration as to the ownership of an interest in TteS land;
- (e) where both spouses own the matrimonial property, order that one spouse transfer the matrimonial property to the other spouse exclusively;
- (f) where both spouses are members, an order that one spouse lease an interest in TteS land or a family home to the other spouse for a fixed period of time, subject to such conditions as the court deems just in all the circumstances and taking into account the best interests of any children living in the family home;
- (g) an order granting an easement or access for a specified period of time across a certificate of possession or allotment held of shared by one spouse for the purpose of enabling the other spouse to access the family home;
- (h) an order that restrains either spouse from disposing of or transferring his or her interest in the matrimonial property, either legally or beneficially, pending the resolution of the spouses' matrimonial property dispute; or
- (i) an order directing one or both spouses to pay specified amounts of money in relation to rent, lease, mortgage, tax, utilities or other payments relating to the family home;
- (j) an order that one spouse pay compensation to the other spouse to recognize the contribution which the other spouse has made to the acquisition, upkeep and/or improvement of the family home or matrimonial property;
- (k) an order that one spouse pay compensation to the other spouse if the family home or matrimonial property has been encumbered or disposed of;
- (l) any appropriate equitable order where one spouse has intentionally, recklessly, or fraudulently damaged, encumbered or disposed of the family home or matrimonial property.

7.4 In making any order under sections 7.3(e), (h), (j), and (l) the court shall begin with the presumption that each spouse is entitled to an equal share of the value of the family home or the matrimonial property, and then shall consider whether this presumption should be varied in light of any of the following factors:

- (a) the date on which the matrimonial property was acquired or disposed of;
- (b) the duration of the relationship;
- (c) the duration of the period during which the spouses have lived separate and apart;
- (d) the needs of each spouse to become or remain economically independent;
- (e) direct or indirect financial contributions of each spouse toward the acquisition, upkeep, improvement or increased value of the matrimonial property;
- (f) the direct or indirect non-financial contribution of each spouse to the acquisition, upkeep, improvement or increased value of the matrimonial property, including through child-rearing responsibilities;
- (g) the amount of any outstanding debt or other liabilities assumed by either spouse to acquire, maintain, or improve the matrimonial property;
- (h) any relevant order or award by a court regarding the spouses' family law matters;
- (i) any other factor that the court considers relevant to an equitable division of the family home or matrimonial property.

7.5 In making any compensation order under section 7.3(k), the court shall:

- (a) not make any order until it has been provided with at least one valuation of the family home or matrimonial property that has been prepared by a qualified appraiser, and which accounts for the limitations on the ownership rights associated with the family home or matrimonial property and, in particular, the feasibility of selling or leasing the family home or matrimonial property or replacing it with a new interest in TteS land; and
- (b) not make an order if the spouse who holds the interest(s) in TteS land demonstrates that the order is likely to force him or her to sell or otherwise alienate the family home or matrimonial property.

7.6 Prior to making an order under sections 7.3(e), (h), or (j), the court may require the spouses to provide it with at least one valuation of the matrimonial property or any component thereof.

7.7 All appraisals provided pursuant to section 7.6 must be prepared by a qualified appraiser and account for the limitations on the ownership rights associated with the matrimonial property and, in particular, the feasibility of selling or leasing the matrimonial property or replacing it with a new interest in TteS land.

7.8 The spouses are responsible to pay the costs of any appraisals obtained pursuant to subsection 7.6 and shall share such costs equally unless otherwise ordered by the court.

7.9 The court may vary the apportionment of the costs of any appraisal required pursuant to subsection 7.6 between the spouses if in the court's reasonable opinion the presumptive equal division would result in undue hardship or inequity to one of the spouses.

7.10 Where the interest of a spouse in matrimonial property is held through a corporation, the court may order that he or she transfer shares in the corporation to the other spouse.

PART 8 EXCLUSIVE OCCUPATION ORDERS

- 8.1 A court may, on application by a spouse, make an order that the applicant be granted exclusive occupation of and reasonable access to a family home or rented family home subject to any conditions and for the period of time specified by the court.
- 8.2 An order made under section 8.1 in relation to a rented family home may be for a period of time specified by the court, or up to the end of the term of the rental agreement, whichever period of time is shorter, and must require compliance with the rental agreement for the duration of the order.
- 8.3 A spouse making an application under section 8.1 must provide the court with:
- (a) any domestic contract made between the spouses;
 - (b) any relevant order or award made by a court regarding the spouses' family law matters, including any order concerning custody of and/or access to any child;
 - (c) any further evidence required to establish that the applicant is the primary caregiver of any child; and
 - (d) in the case of a rented family home, a copy of the rental agreement.
- 8.4 An order made under section 8.1 may specify any terms that the court deems appropriate, including:
- (a) a provision requiring the applicant's spouse and any specified person to vacate the family home immediately, or within a specified period, and prohibiting them from re-entering the home;
 - (b) a provision requiring the applicant's spouse to preserve the condition of the family home until that person vacates it;
 - (c) the extent to which the contents of the family home are to remain in the family home for the duration of the exclusive occupation order;
 - (d) a provision directing the applicant to make payments to the other spouse toward the reasonable costs of other accommodation;
 - (e) a provision requiring either spouse to pay for all or part of the repair and maintenance of the family home and of other liabilities arising in respect of the family home, or to make payments to the other spouse for these purposes; and
 - (f) a provision that the order is subject to variation if there is a change of primary caregiver for a child affected by the order.
- 8.5 In making an order under section 8.1, the court must consider, among other things:
- (a) the best interests of any children who habitually reside in the family home, including the interest of any child who is a member to maintain a connection with TteS;
 - (b) the age of any children for whom the applicant spouse is the caregiver;
 - (c) the terms of any domestic contract or other agreement between the spouses;

- (d) the collective interests of TteS members in TteS land and any representations made by council with respect to the cultural, social and legal context that pertains to the application;
- (e) the period during which the applicant has habitually resided on TteS land;
- (f) the financial situation and the medical condition of the spouses;
- (g) the availability of other suitable accommodation that is situated on TteS land;
- (h) any existing order made on a matter related to the consequences of the breakdown of the relationship;
- (i) any family violence, including any acts or omissions by one of the spouses that reasonably constitute psychological abuse against the other spouse, any child in the charge of either spouse, or any other family member who habitually resides in the family home;
- (j) the existence of exceptional circumstances that necessitate the removal of a person other than the applicant's spouse from the family home in order to give effect to the granting to the applicant of exclusive occupation of that home;
- (k) the interests of any dependent, elderly person or person with a disability who habitually resides in the family home and for whom either spouse is the caregiver;
- (l) the fact that a person, other than the spouses, holds an interest or right in or to the family home;
- (m) the views of any person who received a copy of the application, presented to the court in any form that the court allows; and
- (n) in the case of a rented family home, the terms of the rental agreement.

8.6 Any person in whose favour or against whom an order is made under sections 8.1 to 8.5, any person specified in the order, or the holder of an interest or right in or to the family home may apply to the court to have the order varied or revoked if there has been a material change in circumstances. The court may, by order, confirm, vary or revoke the order.

PART 9 EMERGENCY PROTECTION ORDER

- 9.1 The court may, on ex parte application by a spouse, make an emergency exclusive occupation order for the family home, rented family home or other dwelling where that person habitually resides in favour of that spouse, whether or not the spouse is a member and whether or not a child is involved, if the judge is satisfied that:
- (a) family violence has occurred; and
 - (b) the order should be made without delay, because of the seriousness or urgency of the situation, to ensure immediate protection of the person who is at risk of harm or property that is at risk of damage.
- 9.2 The spouse may make the application even if that person has been forced to vacate the matrimonial home as a result of family violence.

- 9.3 A peace officer or other person may also make the application on behalf of the spouse with that person's consent, or if that person does not consent, with leave of the court granted in accordance with this law.
- 9.4 An order made under section 9.1 in relation to a family home may be for a period of up to 90 days.
- 9.5 An order made under section 9.1 in relation to a rented family home may be for a period of up to 90 days, or to the end of the term of the rental agreement, whichever period of time is shorter.
- 9.6 An order made under section 9.1 must include a provision directing a peace officer to enforce any provision of the order if requested to do so by the applicant spouse.
- 9.7 An order made under section 9.1 may include any or all of the following additional provisions:
- (a) a provision required the respondent spouse and any other person to vacate the family home or rented family home and prohibiting them from returning to the home for the duration of the order;
 - (b) a provision directing a peace officer to remove the respondent spouse and any other person from the family home or rented family home;
 - (c) a restraining order;
 - (d) a provision directing a peace officer to escort the person who is required to vacate back to the family home or rented family home to supervise the removal of personal belongings; or
 - (e) any other provision that the court considers necessary for the immediate protection of any person who is at risk.
- 9.8 In making an order under sections 9.1 to 9.7 , the court must consider, among other things:
- (a) the history and nature of the family violence;
 - (b) the existence of immediate danger to the person who is at risk of harm or property that is at risk of damage;
 - (c) the best interests of any child in the charge of either spouse, including the interest of any child who is a member to maintain a connection with TteS;
 - (d) the interests of any dependent, elderly person or person with a disability who habitually resides in the family home or rented family home and for whom either spouse is the caregiver;
 - (e) the fact that a person, other than the spouses, holds an interest or right in the family home or rented family home;
 - (f) the period during which the applicant has habitually resided on TteS land; and
 - (g) the existence of exceptional circumstances that necessitate the removal of a person other than the applicant's spouse from the family home or rented family home in order to give effect to the granting of the order, including the fact that the

person has committed acts or omissions constituting family violence against the applicant, any child in the charge of either spouse, or any other person who habitually resides in the family home or rented family home.

- 9.9 In deciding whether to grant an order under sections 9.1 to 9.7, the court is not bound by the terms of any domestic contract made between the spouses.
- 9.10 Any person in whose favour or against whom an order is made under sections 9.1 to 9.7, or any person specified in the order may apply to the court to have the order varied or revoked within the time determined by the court or, if no time limit is stipulated, within 30 days of written notice of the order having been received, or at any time if there has been a material change in circumstances..
- 9.11 Where an order made under sections 9.1 to 9.7 concerns a rented family home or other dwelling where the applicant spouse habitually resides, the council or the owner of the interest in TteS land subject to the order may apply to the court at any time to have the order varied or revoked, subject to any restrictions imposed on those parties by the terms of the order.
- 9.12 The court may, by order, confirm, vary or revoke the order, and may extend the duration of the order beyond the maximum period of time referred to in sections 9.3 and 9.5.

PART 10 OCCUPATION OF FAMILY HOME UPON DEATH OF A SPOUSE

- 10.1 When a spouse dies, the surviving spouse and any child and/or dependent for whom the surviving spouse is primary caregiver, may continue to occupy the family home for a period of 180 days after the day on which the death occurs, regardless of whether the spouse is a member or holds an interest in or right to the family home.

PART 11 AMENDING AND REPEALING PROCEDURES

- 11.1 The council may make amendments to this law that do not change the substance of this law by band council resolution made at a duly convened meeting of council. Such revisions include, but are not necessarily limited to:
- (a) corrections to clerical, grammatical or typographical errors;
 - (b) minor improvements to the language of the Law that bring out more clearly the intent of TteS without changing the substance of any provision;
 - (c) changes as may be required to reconcile seemingly inconsistent provisions;
 - (d) amendments to reference any relevant new or amended TteS laws; and
 - (e) amendments ordered by any court of competent jurisdiction.
- 11.2 Council may make substantive amendments to this law as long as the following steps have been followed:
- (a) council approves the proposed amendment in principle at a duly convened meeting of council;

- (b) council makes the wording of the proposed amendment available for members to review;
 - (c) council consults with members about the proposed amendments by holding a minimum of two community meetings over a period of at least three months;
 - (d) council finalizes the wording of the proposed amendment in response to the consultation with members and the proposed amendment receives at least one reading in a duly convened meeting of council;
 - (e) the proposed amendment receives at least one reading at a duly convened general band meeting and is approved by a quorum of the members in attendance at the general band meeting; and
 - (f) council adopts the amendments by band council resolution made at a duly convened meeting of council.
- 11.3 An amendment to this law comes into force upon passage of the band council resolution adopting the amendment in accordance with section 11.1 in the case of a minor amendment, and section 11.2 in the case of a substantive amendment.
- 11.4 This law may be repealed in its entirety if a majority of at least 25 percent of TteS's eligible voters vote in favour of repealing the law.
- 11.5 If TteS intends on repealing this law under section 11.4, the council must before proceeding with the repeal vote, take reasonable measures that are in accordance with TteS's practices to locate eligible voters and inform them of their right to vote, the means of exercising that right and the consequences of repealing the law.

PART 12 OFFENCES AND PENALTIES

- 12.1 A person who, without reasonable excuse, contravenes an order made by a court pursuant to this law is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both.
- 12.2 A fine payable under section 12.1 shall be remitted to TteS by the court, after reasonable court costs have been deducted.

PART 13 GENERAL PROVISIONS Interpretation

- 13.1 Headings in this law are for reference only and do not form part of this law.
- 13.2 All provisions of this law are severable. If a court of competent jurisdiction determines that any provision of this law is invalid or inapplicable, the provision shall be severed from the law and the remainder of the law shall remain in force with any necessary revisions.

Certain Pre-Relationship Gifts and Inheritances Exempt

- 13.3 An interest and the value of the interest in TteS land:
- (a) received prior to the relationship, and

- (b) received as a gift or inheritance by one spouse only from a third person who is a family member, or by one spouse only together with one or more family members,

shall be deemed, subject to proof to the contrary, to have been transferred with the intention that the interest in TteS land should continue to be held within that family exempt from any claim of the other spouse.

13.4 The exemption in subsection 13.3:

- (a) does not apply with respect to an interest in TteS land that is a family home, and
- (b) only applies to the value of the gift or inheritance prior to the relationship.

Rights of Non-Members Non-Transferable

13.5 A non-member who is granted interim occupation or possession rights on TteS land under this law cannot dispose of, transfer, or assign those rights or pass them to heirs in a will.

13.6 As soon as the non-member ceases to personally use or occupy the subject lands, or the term of the order expires, the non-member’s rights of use and occupancy in the subject lands are deemed to be terminated.

Date Law Comes Into Force

13.7 This law shall come into force on the date it is approved in accordance with the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, SC 2013, c. 20.

BE IT KNOWN that this Law, cited as the **Tk’emlúps te Secwépemc (“TteS”)** First Nation Matrimonial Real Property Law, is hereby ENACTED by Council at a duly convened meeting held this _____{date} day of _____{month}, 2015.

Chief Shane Gottfriedson

Councillor Rosanne Casmir

Councillor Katy Gottfriedson

Councillor Ed Jensen

Councillor Jeanette Jules

Councillor Richard Jules

Councillor Colleen Mosterd-McLean

Councillor Fred Seymour