

Summary
Provisional Federal Rules
Family Homes on Reserves and Matrimonial Interests or Rights Act (the Act)

Introduction:

Under the Act, the provisional federal rules provide basic rights and protections to individuals on reserves during a marriage or common-law relationship, in the event of a relationship breakdown, and on the death of a spouse or common-law partner. The provisional federal rules include the following rights and protections:

Key Points:

- Equal right to occupancy of the family home: provides spouses or common-law partners with an equal entitlement to occupancy of the family home until such time as they cease to be spouses or common-law partners.
- Requirement of spousal consent for the sale or disposal of the family home: provides spouses or common-law partners with protection that the family home cannot be sold or otherwise disposed of or encumbered during the marriage or common-law relationship without the free and informed written consent of the spouse or common-law partner, regardless of whether that spouse or common-law partner is a First Nation member.
- Emergency protection order: allows a court to order that a spouse or common-law partner be excluded from the family home on an urgent basis (in situations of family violence).
- Exclusive occupation order: enables courts to provide short to long-term occupancy of the family home to the exclusion of one of the spouses or common-law partners. The duration of this order could range from a set number of days to a longer period, such as until dependent children reach the age of majority.
- Entitlement of each member spouse or common-law partner to an equal division of the value of the family home and any other matrimonial interests or rights: ensures that the proven value of a couple's matrimonial interests or rights in, or to, the family home and other structures and lands on the reserve are shared equally on the breakdown of a relationship.
- Order for the transfer of matrimonial real property between member spouses or common-law partners: allows a court to order the transfer, in some circumstances of the matrimonial interests or rights between member spouses or common-law partners together with, or instead of, financial compensation.
- Entitlement of surviving spouses or common-law partners: ensures that when a spouse or common-law partner dies, the surviving spouse or common-law partner may remain in the home for a specified period of time, and can apply under the federal rules for half of the value of the matrimonial real property interests or rights as an alternative to inheriting from the estate of the deceased.
- Enforcement of agreements on the division of the value of the matrimonial property: allows a court to make an order that can be used to enforce a free and informed written agreement

made by spouses or common law partners that is not unconscionable and that sets out the amount to which each is entitled and how to settle the amount.

- This Act ensures that individuals living on reserve have similar protections and rights as other Canadians. The provisional federal rules are based on common elements of various provincial and territorial matrimonial real property regimes. However, not all of these elements are appropriate for application on reserve, due to the inalienability of reserve lands and the uniquely collective nature of land and housing on reserves.
- The *Family Homes on Reserves and Matrimonial Interests or Rights Act* (the Act) provides basic protections and rights to individuals on reserves regarding the family home and other matrimonial interests or rights during a relationship, in the event of a relationship breakdown, and on the death of a spouse or common-law partner. These protections will either be through First Nations' laws or provisional federal rules.
- Under the provisional federal rules, a spouse or common-law partner can apply for an emergency protection order to stay in the family home at the exclusion of the other spouse in situations of family violence. Additionally, the provisional federal rules allow for courts to provide short to long-term occupancy of the family home to the exclusion of one of the spouses or common-law partners.
- Aboriginal Affairs and Northern Development Canada is supporting the implementation of the Act by funding the Centre of Excellence for Matrimonial Real Property, an arm's length organization that will support First Nations in the application of the Act, including the development of their own on-reserve matrimonial real property laws. Furthermore, the Government of Canada will continue to promote the Act by disseminating relevant communications products, ensure police officers working on reserves will be trained to enforce the law, as well as distribute education materials for legal experts to promote informed decisions under the legislation.
- Once a First Nation's matrimonial real property law or the provisional federal rules are in place, individuals living on reserves will have matrimonial real property rights that they did not have before. The provisional federal rules may be accessed by those who need them, in circumstances that require the protection offered by the court system, but this does not mean that individuals must access the court system in order to resolve matrimonial real property issues. Many individuals may be able to come to agreement on division of property or temporary exclusive occupation of the family home through mediation, alternative dispute resolution or existing traditional systems for resolution. However, as a result of the Act, seeking resolution through the court system is an option.
- First Nations, when developing their matrimonial real property laws, can choose the best way to resolve issues in their community, for example through traditional dispute mechanisms or through the courts.
- Generally speaking, the protections and rights provided in the provisional federal rules will be accessible through the provincial and territorial superior courts that normally deal with family law matters.

- The intent of the Act is to provide a degree of legal certainty that will make it easier for couples to come to an agreement so they will not have to go to court. However, if on-reserve individuals feel they need to access the courts, they have to do so in the same way as those living off reserve.
- When it comes to emergency protection orders, the intent of the Emergency Protection Order Regulations of the Act is to include options to make access to justice more accessible given the rural nature of many communities. It is intended that the application can be made to the judge in person or by telecommunication systems, which includes telephone, e-mail or fax. The application can be made by the applicant or someone acting on the applicant's behalf.
- Responsibility for enforcing orders made under the provisional federal rules will vary depending on the circumstances. Pursuant to section 89 of the Indian Act, orders in favour of a non-Indian cannot be executed against property of an Indian situated on reserve. A court order for compensation between spouses or common-law partners who are Indians, whether a member of that First Nation or not, can be enforced as any other order.
- On application from a non-member or non-Indian spouse or common-law partner, the provisional federal rules provide that a First Nation council will be able to enforce a court order against a member for compensation made under the Act. If the council does not enforce the order within a reasonable period of time, a court will be able to vary the order to require the member spouse or common-law partner to pay the specified amount into the court directly.
- With respect to First Nations' own matrimonial real property laws, the power to enact First Nation laws contained in the Act enables First Nations to make laws respecting enforcement of court orders on reserve despite section 89 of the Indian Act.
- The Act respects the principle of non-alienation of reserve lands. The provisional federal rules will not lead to non-Indians or non-members acquiring permanent interests in reserve land.
- In a situation where the non-member spouse has made direct contributions to improvements made to the family home or other structures, a court will be able to order that they be compensated.
- A court cannot force the sale of a home on a reserve.
- When in force the provisional federal rules in the Act will not apply to the value of the lands that have been allotted according to custom as these allotments are not recognized as legal holdings by the federal government. However, they will apply to structures on custom allotments which are recognized by First Nations or by the courts.
- The protections provided by the federal provisional rules in the Act will apply to family homes and other matrimonial interests or rights that are leased. If a spouse or common-law partner is granted exclusive occupation of the home, that individual will be bound by the lease and required, for example, to pay the rent.
- The provisional federal rules provide that each spouse or common-law partner, whether a member of the First Nation or not, and whether a status Indian or not, is entitled to half of the value of the interests in or rights to the family home and other matrimonial interests or rights on reserve which were acquired during the relationship. Value is based on what a buyer would reasonably be expected to pay a seller for comparable interests and/or rights.

- It is intended that the Emergency Protection Order Regulations to this Act will include provisions concerning applications made pursuant to the provisional federal rules that will increase access to justice in remote areas. For example, it is expected that individuals will be able to apply for an emergency protection order by telephone, email or fax.
- Should a spouse or common-law partner not be able to apply for an emergency protection order in person, a peace officer or other person may apply on behalf of that spouse or partner to ensure the immediate protection of the person or property at risk of harm. In situations where the applicant spouse or common-law partner has not provided consent to apply for an emergency protection order, the designated judge may grant leave in accordance with the regulations to the Act for an application to be made on behalf of that spouse or common-law partner.
- During the time period of an emergency protection order, the spouse or common-law partner will be able to apply for exclusive occupation of the family home.