

**ALDERVILLE FIRST NATION MATRIMONIAL REAL PROPERTY LAW**

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## Table of Contents

Preamble	3
Part 1 Title	5
Part 2 Definitions, Interpretation and Application	5
Part 3 Domestic Agreements and Mediation	9
Part 4 Family Homes	11
Part 5 Protection Orders	12
Part 6 Exclusive Occupation Orders	12
Part 7 Division of the Value of the Family Home and Matrimonial Interests or Rights	15
Part 8 General	18
Part 9 Amendment or Repeal	19
Part 10 Coming into Force	20

## Preamble

**WHEREAS** Alderville First Nation has from time immemorial used and occupied its lands;

**WHEREAS** Alderville First Nation has the inherent right to govern itself, its members and its lands;

**WHEREAS** Alderville First Nation has an unextinguished right to self-determination, as affirmed by the *United Nations Declaration on the Rights of Indigenous Peoples*, which includes the right to govern itself, its members and its lands;

**WHEREAS** Alderville First Nation has an unextinguished and inherent right of self-governance which emanates from its people, culture, land and Aboriginal and treaty rights, which are recognized by section 35 of the *Constitution Act, 1982*;

**WHEREAS** Alderville First Nation, has pursuant to the *Indian Act*, reserved certain lands for the exclusive use and benefit of its members;

**WHEREAS** Alderville First Nation desires to protect its members living on its reserve lands in accordance with its culture and traditions;

**WHEREAS** section 7 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* recognizes the jurisdiction of the First Nation to enact a First Nation law that applies during a relationship, when that relationship breaks down or on the death of a spouse or common-law partner, respecting the use, occupation and possession of family homes on its reserves and the division of the value of any interest or rights held by the spouses or common-law partners in or to family homes on reserves;

**WHEREAS** Alderville First Nation does not wish to be bound by the default provisions of the federal *Family Homes on Reserves and Matrimonial Interests or Rights Act*;

**WHEREAS** Ontario laws respecting family homes and real property do not apply to Alderville First Nation lands;

**WHEREAS** Alderville First Nation has always resolved issues relating to family homes and real property located on Alderville First Nation lands with its own customs, traditions and practices, which have evolved over time;

**WHEREAS** Alderville First Nation desires to provide a law appropriate to our culture and traditions respecting the use, enjoyment and occupation of family homes on its reserve lands and the division of real property rights or interests held by spouses or common-law partners on reserve lands;

**WHEREAS** upon the breakdown of a marriage or common-law relationship, Alderville First Nation intends to provide rights and remedies, without discrimination on the basis of sex, to spouses and common-law partners who have or claim interests or rights to family homes located on Alderville First Nation lands;

**WHEREAS** Alderville First Nation recognizes that spouses and common-law partners have a right to enter into domestic agreements that set out their respective rights and obligations upon separation, divorce or death with regard to their family home located on Alderville First Nation lands and to resolve their disputes regarding such matters amicably; and

**WHEREAS** Alderville First Nation believes that the best interests and welfare of all children must be paramount when determining the rights and interests of spouses and common-law partners and that family homes should be a place of safety and comfort for children.

The Chief and Council of Alderville First Nation enacts as follows:

**PART 1 TITLE**

1. The title of this Law is the *Alderville First Nation Matrimonial Real Property Law*.

**PART 2 DEFINITIONS, INTERPRETATION AND APPLICATION**

2. For purposes of understanding, the following definitions apply:

“**Act**” means the *Family Homes on Reserves and Matrimonial Interests or Rights Act*;

“**Alderville First Nation land**” Includes lands set apart by Canada for the use and benefit of Alderville First Nation, including Reserves 37 and 37A and any other lands that might be added in the future, within the meaning of subsection 91(24) of the *Constitution Act, 1867* and section 2(1) of the *Indian Act*;

“**Alderville-owned home**” means a home occupied by spouses or common-law partners that is registered in the name of Alderville First Nation,

“**child**” or “**children**” means the offspring of at least one of the spouses or common-law partners who is under the age of eighteen (18) years whether they are:

- a) born in or out of wedlock; or
- b) adopted under Canadian law by one of the spouses or common-law partners; or
- c) being cared for in a Customary Care or Customary Care like agreement that is in compliance with protocols and regulations in which Alderville First Nation is a signatory; or
- d) who is attending a post-secondary institution up to age twenty (20) years full time.

“**Certificate of Possession**” means a Certificate of Possession issued to a member who is lawfully in possession of Alderville First Nation lands by virtue of section 20(2) of the *Indian Act*.

“**common-law partner**” means:

- a) two (2) persons who are not married to each other or in a domestic partnership and who have lived together for a period of not less than five (5) years in a conjugal relationship; and
- b) two (2) persons who are not married to each other and who live together in a conjugal relationship and who have a child of the relationship;

“**Council**” means the Council of Alderville First Nation or any successor elected government of Alderville First Nation;

“**court**” means the Superior Court, the Ontario Court of Justice, or any other court(s) that replaces it for dealing with family law matters;

**“dispose”** means to give, sell, exchange, or to conduct any other method of disposal or to execute a land instrument, including a will, that has the effect of transferring an interest or right;

**“domestic agreement”** means a written agreement that is signed by two (2) parties in front of a witness in which the parties agree on their respective rights and obligations with regard to the family home:

- a) during their marriage or common-law relationship;
- b) on separation;
- c) on the annulment or dissolution of their marriage; or
- d) on the death of one or both of them.

**“ex parte”** means without having to give notice or an opportunity for argument to the other party;

**“extended family”** means parents, grandparents, aunt or uncle, brother or sister, niece or nephew, grandchild, cousin;

**“family home”** means an interest or right in real property located on Alderville First Nation land that:

- a) is registered in the name of at least one (1) spouse or common-law partner in the Lands Register;
- b) is habitually resided in by the two (2) spouses or common-law partners, or if they have separated or one (1) of them has died, they habitually resided in on the day on which they separated or the death of one (1) of them occurred; and
- c) was either:
  - a. acquired during the relationship; or
  - b. acquired before the relationship, but in specific contemplation of the marriage or common-law relationship; and,
- d) does not include a family home or any real property in Alderville First Nation lands that is received through an inheritance or gift, unless it can be shown that the inheritance or gift was intended to be held by the spouses or common-law partners together.

**“family violence”** means any of the following acts or omissions committed by a spouse or common-law partner against the other spouse or common-law partner, any child in the charge of either spouse or common-law partner, or any other person who habitually resides in the family home, whether or not such act or omission occurs in the family home:

- a) an intentional application of force without lawful authority or consent, excluding any act committed in self-defence;
- b) an intentional or reckless act or omission that causes bodily harm or damage to property;
- c) an intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or damage to property;

- d) sexual assault, sexual abuse or the threat of either;
- e) forcible confinement without lawful authority; or
- f) criminal harassment;

**“First Nation”** means a Band within the meaning of the *Indian Act*;

**“INAC”** means the federal department of Indigenous and Northern Affairs Canada;

**“Indian Act”** means the *Indian Act*, R.S.C., 1985, c.1-5;

**“interest or right”** means:

- a) a right to possession, with or without a Certificate of Possession, allotted in accordance with section 20 of the *Indian Act*; and
- b) a lease under section 53 or 58 of the *Indian Act*;

**“Lands Register”** means the lands register established and maintained by INAC as required under section 21 of the *Indian Act* and section 25(1) of the *First Nations Land Management Act*;

**“Law”** means this *Alderville First Nation Matrimonial Real Property Law*;

**“marriage”** means two (2) persons who are married to each other in accordance with federal law and conducted according to the laws of a province or territory, or in accordance with traditional ceremony;

**“matrimonial interests or rights”** means interests or rights, other than interests or rights in or to the family home, held by at least one of the spouses or common-law partners:

- a) that were acquired during the conjugal relationship;
- b) that were acquired before the conjugal relationship but in specific contemplation of the relationship; or
- c) that were acquired before the conjugal relationship but not in specific contemplation of the relationship and that appreciated during the relationship.

It excludes interests or rights that were received from a person as a gift or legacy or on devise or descent, and interests or rights that can be traced to those interests or rights;

**“member”** means a person whose name appears on the membership list of Alderville First Nation in accordance with section 11 of the *Indian Act*;

**“Peace Officer”** means a person referred to in paragraph (c) of the definition of “peace officer” in section 2 of the *Criminal Code*;

**“real property”** means immovable property such as land or a building or an object that, though one time a chattel, has become permanently affixed to land or a building;

**“spouse”** means a person who:

- a) is married to another person, whether by traditional ceremony, religious ceremony or civil ceremony; or
- b) has entered into a marriage that is void or voidable, in good faith on the part of the person relying on this clause to assert any right under this Law;

**“survivor”** means the person who is still alive after the death of their spouse or common-law partner;

**“traditional ceremony”** means a marriage that is conducted according to Aboriginal custom; and,

**“will”** means a will of a member of Alderville First Nation setting forth the manner in which his or her property will be distributed upon death.

3. For greater certainty, the definition of spouse and reference to common-law partners in this Law includes:

- a) spouses or common-law partners of the same gender;
- b) relationships entered into before this Law took effect; and
- c) former spouses or common-law partners for the purposes of enforcing rights or obligations under this Law so long as the application by the former spouse or common-law partner is commenced within one (1) year of the relationship ending.

4. This Law will be interpreted in a fair and liberal manner.

5. The principles set out in the Preamble to this Law may be used to interpret this Law.

6. In this Law;

- a) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but not limited to”;
- b) headings and subheadings are for convenience only and do not form a part of this Law and in no way define, limit, alter or enlarge the scope or meaning of any provisions of this Law;
- c) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;
- d) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular;
- e) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine.

7. Where any law or regulation of Canada or the Province of Ontario or any other Alderville First Nation law applies to any matter covered by this Law, compliance with this Law does not relieve any person from also complying with the provisions of the other applicable laws or regulations.



8. This Law does not limit or preclude any right or remedy otherwise available to persons who are or may be affected by it pursuant to any other law applicable on the breakdown of a marriage or common-law relationship with respect to property other than the family home and real property located on Alderville First Nation lands, or other entitlements or obligations of spouses.

9. This Law does not limit or preclude the use of any method of alternative dispute resolution by spouses or common-law partners.

10. The structures, organizations and procedures established by or under this Law must be interpreted in accordance with the culture, traditions and customs of the Alderville First Nation, unless otherwise provided.

11. This Law aims to assert and protect the Aboriginal and Treaty rights that pertain to Alderville First Nation and its members.

12. This Law applies in respect of:

- a) the use, enjoyment, occupation and possession of family homes and matrimonial interests or rights located on Alderville First Nation land; and
- b) the interests and rights of spouses and common-law partners in or to the family home and matrimonial interests or rights located on Alderville First Nation lands.

13. This Law applies to spouses or common-law partners if at least one of them is a member.

14. This Law applies in respect of rights and interests acquired both before and after this Law takes effect.

15. This Law does not apply to bank accounts, household goods, or other personal property. It only applies to a family home and matrimonial interests or rights located on Alderville First Nation.

16. For greater certainty, this Law does not apply to an interest or right in or to a family home or matrimonial interest or rights that is held by either spouse or common-law partner, or both spouses or common-law partners, where neither spouse or common-law partner is a member.

17. If any provision of this Law is held invalid by a court of competent jurisdiction, the invalid provision will, wherever possible, be severed from and not affect the remaining provisions of this Law.

18. This Law does not apply to custody of any children, child support or spousal support.

### **PART 3 DOMESTIC AGREEMENTS AND MEDIATION**

19. Spouses and common-law partners may make a domestic agreement that sets out the division of the value of their interests and rights in or to a family home and matrimonial interests or rights in a manner that is different than the manner provided for under this Law.

**20.** The court has authority, on application by a spouse or common-law partner who is a party to a domestic agreement, to vary the terms of that domestic agreement where the court is satisfied that the division of the values of interests or rights in or to a family home and matrimonial interests or rights under that domestic agreement would be unfair or unconscionable because:

- a) a party to that agreement failed to disclose to the other party all of that party's interests and rights in or to a family home and matrimonial interests or rights or other real property located on or off Alderville First Nation lands; or
- b) a party to that agreement failed to disclose to the other party any material information in respect of that party's interests and rights in or to a family home and matrimonial interests or rights or real property located on or off Alderville First Nation lands; or
- c) a party to that agreement did not understand the nature or consequences of the provision in that agreement.

**21.** A domestic agreement is only enforceable if:

- a) it is made in writing;
- b) it is signed and dated by the parties; and
- c) the signatures of the parties are witnessed.

**22.** Notwithstanding section 19, a provision in a domestic agreement that gives, awards or acknowledges lawful possession of a family home and matrimonial interests or rights to a person who is not a member is void.

**23.** This Part applies whether the parties entered into a domestic agreement on, before or after the date that this Law comes into force and effect.

**24.** A spouse or common-law partner who is a party to a domestic agreement may sign and register in the Lands Register, in a form prescribed by Council, a notice that sets out:

- a) the full name and last known address of each spouse or common-law partner who is a party to the domestic agreement;
- b) a description of the family home to which the domestic agreement relates; and
- c) the provisions of the domestic agreement that relate to the family home.

**25.** Spouses and common-law partners who have a dispute about matters under this Law may make a reasonable attempt to resolve that dispute through the use of a mutually agreed upon mediator.

**26.** Mediation does not prevent a party from seeking a remedy from a court, especially in urgent circumstances.

#### **PART 4 FAMILY HOMES**

**27.** Subject to any Alderville First Nation laws relating to the use and occupation of Alderville First Nation lands, each spouse or common-law partner has a right to occupy the family home or Alderville-owned home during the relationship, whether or not that person is a member.

**28.** The right of a child to use, enjoy and occupy the family home is:

- a) paramount over the right of a spouse or common-law partner to use, enjoy and occupy the family home; and
- b) continues until the court makes an order, or other accommodation is arranged, in the best interests and welfare of the child.

**29.(1)** When a spouse or common-law partner dies, a survivor who holds an interest or right in or to the family home has a right to occupy the family home for as long as the survivor so chooses.

**(2)** A spouse or common-law partner who exercises their right under subsection (1) to occupy the family home following the death of their spouse or common-law partner must, until the date they vacate the family home:

- a) maintain the reasonable care, cleanliness, and sanitary standards throughout the family home;
- b) maintain the family home in substantially the same condition as it is in at the time the person begins to exercise their right under subsection (1);
- c) make minor repairs;
- d) repair damage to the family home that is caused by the actions, omissions, recklessness or neglect of the survivor or a person permitted in the family home by the survivor; and
- e) if applicable, pay all mortgage or other payments owed on the family home.

**30.** No spouse or common-law partner will dispose of or encumber a right or interest in the family home and matrimonial interests or rights unless:

- a) the other spouse or common-law partner joins in the instrument or provides free and informed written consent to the transaction;
- b) the other spouse or common-law partner has released all rights or interests in the family home and matrimonial interests or rights by a domestic agreement; or
- c) the Council consents to or authorizes the transaction or releases the property from application of this Part.

**31.** Any disposition or encumbrance contrary to section 30 has no effect.

**32.** For greater certainty, any sale or encumbrance of a family home is subject to any other applicable law of the First Nation.

**33.** A spouse or common-law partner who has not provided free and informed written consent to a transaction for which consent is required by either this Law or by a domestic agreement may,

without prejudice to any other right, claim damages from the other spouse or common-law partner.

34. A spouse or common-law partner who disposes of or encumbers their interest or right in or to a family home and matrimonial interests or rights has the burden of proving that the other spouse or common-law partner provided free and informed written consent to the disposition or encumbrance.

35.(1) A court may, on application by a spouse or common-law partner who holds an interest or right in or to a family home and matrimonial interests or rights, grant an order authorizing that person to dispose of or encumber the family home and matrimonial interests or rights without the required consent of their spouse or common-law partner subject to any conditions the considers appropriate.

(2) A court may only make an order under subsection (1) in favour of a spouse or common-law partner if it is satisfied that the other spouse or common-law partner:

- a) cannot be found;
- b) is not capable of consenting; or
- c) is unreasonably withholding consent.

#### **PART 5 PROTECTION ORDERS**

36. A spouse or common-law partner may make an *ex parte* application for a protection order and may do so even if that person has been forced to vacate the family home or Alderville-owned home because of family violence.

37.(1) A spouse or common-law partner may make an application to the court for any of the following protection orders:

- a) Restraining order;
- b) Peace bond; or
- c) Bail conditions or Terms of Release

(2) A protection order made under subsection (1) must not exceed one hundred and eighty (180) days.

38. A spouse or common-law partner applying for a protection order may also apply for an Exclusive Occupation Order according to the terms set out in Part 6.

#### **PART 6 EXCLUSIVE OCCUPATION ORDER**

39. A spouse or common-law partner, who is not a member, but who is deemed the primary care giver, may apply to the court for an order granting that person exclusive occupation of a family home upon breakdown of their marriage or common-law relationship where there are dependent children. The spouse or common-law partner may only occupy the family home until

such a time as the child, or the youngest child in the case of more than one child, reaches the age of eighteen (18) years or up to age twenty (20) years if the child is attending a post-secondary institution full time.

**40. (1)** An applicant under section 39 must, without delay, serve a copy of the application on:

- a) Council;
- b) any person who is eighteen (18) years of age or older, whom the applicant is seeking to have vacated from the family home; and
- c) any person who holds an interest or right in or to the family home.

**(2)** Any person who has been served a copy of an application under subsection (1) has a right to appear before the court and make submissions with regard to their interests or rights in or to the family home.

**41. (1)** A court may make an order that grants the applicant exclusive occupation of a family home and reasonable access to that home, subject to any conditions set out in section 42, and for any period of time that the court determines is reasonable in the circumstances.

**(2)** Pending the determination of an application made under section 37, the court may make an interim order to the same effect as an order under subsection (1).

**42.** An order under section 41 may contain a provision requiring any or all of the following:

- a) the applicant's spouse or common-law partner to vacate the family home, immediately or within a specified period of time, and prohibiting them from re-entering the home;
- b) the applicant's spouse or common-law partner to preserve the condition of the family home until that person vacates it;
- c) the applicant to make payments to their spouse or common-law partner toward the cost of other accommodation; or
- d) either spouse or common-law partner to pay for all or part of the repair and maintenance of the family home and for other liabilities arising in respect of the family home, or to make payments to the other spouse or common-law partner for those purposes.

**43.** When making an order under section 41, the court must consider all the circumstances of the parties, including:

- a) the best interests and welfare of any affected children and their paramount right to use, enjoy and occupy the family home;
- b) any existing orders under this Law and any existing support orders;
- c) the financial position and medical condition of the spouses;
- d) the provisions of any domestic agreement;
- e) any representations made by Council with respect to the cultural, social and legal context that pertains to the application;
- f) availability of other suitable accommodation that is situated on Alderville lands;

- g) any risk of violence or harm to a spouse or child or another person occupying the family home;
- h) any acts or omissions by one of the spouse or common-law partners that reasonably constitute psychological abuse against the other spouse or common-law partner;
- i) any child in the charge of either spouse or common-law partner or any other family member who habitually resides in the family home;
- j) the length of time each spouse has resided in the family home;
- k) whether any third party holds a right or interest in the family home;
- l) the interests of any elderly person, or person with a disability, who habitually resides in the family home, if one of the spouses is that person's caregiver;
- m) any other exceptional circumstances related to a person, other than the spouses or children, who is occupying the family home; and
- n) the collective rights of the First Nation and any financial interest of the First Nation in the family home.

**44.** If there are no children, the spouse or common-law partner who is a member will be given exclusive occupation of the family home and the non-member spouse will be required to vacate the family home with division of the value of the family home in accordance with Part 7 of this Law.

**45.** The court will decide who has exclusive occupation of the family home in the event that both parties are First Nation members. The spouse or common-law partner who must vacate the home is entitled to a division of the value of the family home in accordance with Part 7 of this Law.

**46.** An existing protection order in favour of or against one of the spouses or common-law partners is revoked when the court makes an order under Part 6, except to the extent specified by the court in either order.

**47.(1)** Subject to subsection (2), a person who is granted an order under section 42 must, without delay serve a copy of the order on those persons who are entitled to receive a copy of the application.

**(2)** If directed by the court, a peace officer must serve a copy of an order made under section 41 on those persons who are entitled to receive a copy of the application.

**48.** If there has been a material change in circumstances, any of the following persons may apply to a court to have an order made under section 41 varied or revoked;

- a) any person in whose favour or against whom an order made under section 41 is made;
- b) any person specified in an order made under section 41; or
- c) the holder of an interest or right in or to the family home to which an order made under section 41 or relates.

**49.(1)** An applicant under section 50 must, without delay, send a copy of the application to:

a) the court that made the order;

- a) Council;
- b) if the applicant is a person in whose favour an order was made under section 41, to the person against whom the order was made;
- c) if the applicant is a person against whom an order was made under section 41, to the person in whose favour the order was made;
- d) any person who is named in the order made under section 41; and
- e) any person who holds an interest or right in or to the family home to which the order made under section 41 relates.

(2) Any person who is entitled to be served a copy of an application under subsection (1) has a right to appear before the court and make submissions with regards to their interests or rights in or to the family home.

50. The court may, by order, confirm, vary or revoke an order made under section 41 or this section.

51. In confirming, varying or revoking an order under section 60, the court must consider:

- a) all evidence that it relied on at the hearing in which the order was made under section 42;
- b) all evidence regarding a material change in circumstances; and
- c) the considerations set out in section 43.

52.(1) Subject to subsection (2), a person who is granted an order under section 50 must, without delay, serve a copy of the order on those persons who are entitled to receive a copy of the application.

(2) If directed by the court, a peace officer must serve a copy of an order made under section 50 on those persons entitled to receive a copy of the application.

53. If the family home is occupied under a rental or lease agreement, the terms of the rental or lease agreement apply to the persons granted exclusive occupancy during the period of the order.

54. For greater certainty, an Exclusive Occupation Order made under Part 6 does not:

- a) change who holds a right or interest in or to the family home; and
- b) prevent an executor of a will or an administrator of an estate from transferring such an interest or right to a named beneficiary under the will or to a beneficiary on intestacy.

## **PART 7 DIVISION OF THE VALUE OF THE FAMILY HOME AND MATRIMONIAL INTERESTS OR RIGHTS**

55. A spouse or common-law partner may apply to the court to divide the value of their family home and matrimonial interests or rights:

- a) on the breakdown of the marriage or common-law relationship; or
- b) on the death of the other spouse.

**56.** An applicant under this Part must, without delay, serve a copy of the application they are making to their spouse or common-law partner.

**57.** An application under section 55 must be made within two (2) years after the day on which the relationship ended.

**58.** A court may make an order to determine any matter in respect of each spouse's or common-law partner's entitlement under section 58, including:

- a) the amount payable by one spouse or common-law partner to the other; and
- b) that the amount payable be settled by
  - (i) payment of the amount in a lump sum,
  - (ii) payment of the amount by instalments,
  - (iii) the set-off or compensation of any amounts owed by one spouse or common-law partner to the other, or
  - (iv) any combination of the methods referred to in subparagraphs (i) to (iii).

**59.** For the purposes of section 60 (1) & (2), "valuation date" means the earliest of the following days:

- a) the day on which they separated with no reasonable prospect of reconciliation;
- b) the day on which a judgement granting their divorce is rendered;
- c) the day on which their marriage was declared a nullity;
- d) the day on which one of the spouses made an application related to the consequences of the breakdown of marriage;
- e) the day on which one of the spouses dies; and
- f) the day on which one of the spouses is granted an order under section 59.

**60. (1)** When a marriage relationship breaks down or upon the death of a spouse, the spouse or surviving spouse is entitled to an amount equal to one-half (1/2) of the value of the family home and matrimonial interests or rights on the valuation date.

**(2)** Where a common-law partner has significantly contributed to the increase in the value of the family home and matrimonial interests or rights during the common-law relationship, they are entitled to one-half (1/2) the increase in value of the family home and matrimonial interest or rights on the valuation date.

**61. (1)** Subject to subsection (3), the assessment of the family home and matrimonial interests or rights will be valued at the cost of selling or replacing the family home and matrimonial interests or rights, minus the following amounts:



- a) the amount of any accrued depreciation applicable to it;
- b) the amount of any outstanding debts or other liabilities assumed for acquiring it; and
- c) the amount of any outstanding debts or other liabilities assumed for improving or maintaining it.

(2) The assessment in subsection (1) will be conducted by an Alderville First Nation approved appraiser and the cost of such an assessment will be the responsibility of the spouse or common-law partner seeking the valuation.

(3) Despite subsection (1), spouses or common-law partners may enter into a domestic agreement determining the value of a family home and matrimonial interests or rights on any basis they desire to make such a determination.

(4) A party to a domestic agreement made under subsection (3) has a right to register that domestic agreement in the Lands Register.

62. On application by a spouse or common-law partner who has initiated an application under this Part, a court may make any order it considers necessary to protect and preserve an interest or right in or to the family home and matrimonial interests or rights until a final determination is made under this Part.

63. (1) If spouses or common-law partners enter into a domestic agreement that:

- a) sets out the amount to which each is entitled with respect to the family home and matrimonial interests or rights and how to settle the amount payable by one of the methods referred to in subparagraphs 58(b)(i), (ii) or (iii) or any combination of those methods; or
- b) sets out that one of the spouses or common-law partners will have a right to exclusive occupation of the family home and matrimonial interests and rights for a specified period of time following the separation of the spouses or common-law partners or the death of a spouse or common-law partner,

a court may, on application by one of them, make an order to enforce that domestic agreement if the court is satisfied that the consent of both parties to the domestic agreement is free and informed, and that the domestic agreement is not unconscionable, having regard for the factors listed in section 21.

(2) A court may on application by a party to a domestic agreement, set aside a provision in a domestic agreement with respect to a family home and matrimonial interests or rights:

- a) if a party to that contract failed to disclose to the other party all of their interests in Alderville First Nation land, or any material information in respect of those interests;
- b) if a party did not understand the nature or consequences of the provisions; or
- c) otherwise in accordance with the law of contract.

**(3)** A party to a domestic agreement made under subsection (1) has a right to register that domestic agreement in the Reserve Lands Register.

**64.** A court cannot force the sale of the matrimonial home unless both spouses or common-law partners agree to the sale and to divide the proceeds according to Part 7 of this Law.

#### **PART 8 GENERAL**

**65. (1)** On the request of Council, the court that is seized of the application must allow 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 will be made.

**(2)** Where Council makes representations under subsection (1), the Court must consider such representations in making an order under this Law.

**66.** Unless otherwise required by this Law, when the court makes an order under this Law that is not an order under section 49, the person in whose favour the order is made must send, without delay, a copy of the order to the Council.

**67.** An action or proceeding will not be instituted against a peace officer for any act or omission done in good faith in the execution or intended execution of the peace officer's duties under this Law.

**68.** An order made under any of Parts 5 to 7 will not:

- a) change who holds an interest or right in or to the family home; or
- b) prevent an executor of a will or an administrator of an estate from transferring an interest or right in or to the family home to a named beneficiary under the will or to a beneficiary on intestacy

**69.** When an order made under any of Parts 5 to 7 grants an exclusive occupation of the family home to a spouse, common-law partner or survivor who is not a lessee under the lease for the family home, the spouse, common-law partner or survivor is bound by the lease during the period of the order and is responsible for the obligations under the lease of the lessee.

**70.** Any person who contravenes an exclusive occupation order made under section 41 or section 50 is guilty of an offence.

**71.(1)** A person who is found guilty of an offence under section 71 is punishable on summary conviction and liable to a fine not exceeding two thousand dollars (\$2,000) or to imprisonment for a term not exceeding three (3) months, or to both.

**(2)** A fine imposed under subsection (1) is payable to Alderville First Nation.

**72.** The Council may make regulations that the Council considers necessary for carrying out the purposes and provisions of this Law, including regulations making rules that are applicable to any proceedings under this Law and prescribing anything that by this Law is to be prescribed.

73. A copy of this Law appearing to be certified as true copy by an officer of Alderville First Nation is proof of the original without proof of the officer's signature or official character.

74. The Council must ensure that a copy of this Law, as amended from time to time, is on the Alderville First Nation website and is available for public inspection at locations designated by the Council and may make it public by any other means of communication that the Council considers appropriate.

**75.(1) On application by a spouse or common-law partner who is neither a First Nation member nor an Indian and in whose favour an order is made under subsection 59, Council may, on behalf of the person, enforce the order on Alderville First Nation lands as if the order had been made in favour of the First Nation.**

**(2) If the Council notifies the person that it will not enforce the order or does not enforce it within a reasonable period after the application is made, a court may, on application by the spouse or common-law partner, vary the order to require the spouse or common-law partner against whom the order was made to pay into court the amount payable that was specified in the order, if the court is satisfied that it is necessary for the enforcement of the order.**

#### **PART 9 AMENDMENT OR REPEAL**

76. The Council must hold at least three meetings that are open to all members to consider and discuss any amendment or repeal of this Law.

77. The Council must, at least 30 days in advance of the first meeting, take reasonable measures that are in accordance with the traditions, customs and practices of Alderville First Nation to inform its members of:

- a) the time and place of all the meetings;
- b) their right to attend and participate in these meetings;
- c) a summary of the proposed amendments or repeal; and
- d) the requirements for approval.

78. Every member who is 18 years of age or over, whether or not resident on Alderville First Nation land, is eligible to vote on whether to approve the amendment or repeal.

79. An amendment or repeal of this Law is not valid unless approved by a majority of the eligible members who participated in the final meeting.

80. Council may approve minor amendments to the Law by Band Council Resolution. Minor amendment means an amendment that:

- a) corrects typographical errors;
- b) renumbering to harmonize with other laws;

- c) is required to reference any relevant new or amended Alderville First Nation or other applicable laws;
- d) is ordered by any Court; or
- e) serves to clarify the Law, where there is no reasonable dispute about the intention underlying the original provision.

#### **PART 10 COMING INTO FORCE**

**81.** This Law will come into force and have the force of law on the date that is both:

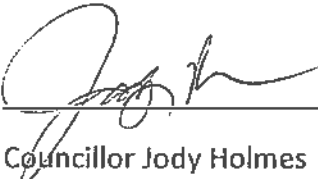
- a) approved by Alderville First Nation members; and
- b) approved by Council

THIS LAW IS HEREBY DULY APPROVED by the Council on 25<sup>th</sup> day of September 2017, at Alderville First Nation, Ontario


A quorum of Council consists of 3 members of Council.

  
\_\_\_\_\_  
Chief James R. Marsden

  
\_\_\_\_\_  
Councillor Julie Bothwell

  
\_\_\_\_\_  
Councillor Jody Holmes

  
\_\_\_\_\_  
Councillor Pam Crowe

  
\_\_\_\_\_  
Councillor David Simpson