

**MITAANJIGAMIING FIRST NATION
MATRIMONIAL REAL PROPERTY LAW**



Purpose of MRP Law

The primary purpose of this law is to deal with Matrimonial Real Property situated in Mitaanjigamiing First Nation (hereinafter referred to as "MFN") in the event of the breakdown of a marriage or common-law relationship, or upon the death of a spouse.

This law applies to interests in or claims dealing with Family Homes located in MFN as defined herein.

Subject to its terms, this law shall not be construed as limiting or precluding 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 personal property or other entitlements or obligations of spouses.

Subject to this law, MFN may deal with interests in land or homes in MFN held by either spouse or both spouses, in a manner consistent with this law, relating to the ownership, possession or occupancy of real property or the division of interests in real property in MFN.

In this Law, reference to the masculine includes the feminine, and references to the singular include the plural.

Preamble

WHEREAS: Mitaanjigamiing First Nation (hereinafter referred to as “MFN”) has used and occupied its reserve lands since 1873;

WHEREAS: MFN has pursuant to Treaty No. 3 reserved certain lands for the exclusive use and benefits of its members;

WHEREAS: MFN has the inherent right to govern itself, its members and its lands;

WHEREAS: MFN desires to provide a law appropriate to its culture and traditions with respect to 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: MFN has the inherent right to govern itself, its members and its lands;

WHEREAS: MFN governs itself in accordance with the Seven Grandfather Teachings;

- a) Respect – Manaach`idiwin;
- b) Honesty – Gwekwaadiziwin;
- c) Wisdom – Gikendaasowin;
- d) Bravery – Zoongide`win;
- e) Humility – Dabaasendizowin;
- f) Love – Zaagi`idiwin;
- g) Truth – Debwewin;

WHEREAS: MFN values fairness, equality, and family preservation;

WHEREAS: MFN intends to provide equal rights, remedies, and protections to each spouse who has or claims interests in the matrimonial home situated in MFN, upon the breakdown of their marriage or common-law relationship;

WHEREAS: MFN does not wish to be bound by the default provisions of the federal *Family Homes on Reserves and Matrimonial Interests and Rights Act* (Canada);

WHEREAS: the MFN Matrimonial Real Property Law supersedes the federal *Family Homes on Reserves and Matrimonial Interests and Rights Act* and any provincial matrimonial property laws;

WHEREAS: while MFN allows non-member spouses to reside in MFN, non-members acquire no rights to the land;

WHEREAS: the best interests and welfare of the children, including their safety, comfort, and the right to remain in the matrimonial home where appropriate and desirable, shall

WHEREAS: the best interests and welfare of the children, including their safety, comfort, and the right to remain in the matrimonial home where appropriate and desirable, shall be of paramount consideration in the exercise of determining the rights and interests of spouses and to the interpretation and application of this law;

WHEREAS: MFN intends to respect the following principles for the use and occupancy of matrimonial real property on MFN land and the division of interests in that home, upon the breakdown of a marriage or common-law relationship;

- i) the right of the spouses in a marriage or common-law relationship to make their own agreement as to the disposition of interests in matrimonial real property on the First Nation in the event of the breakdown of the relationship;
- ii) to encourage the use of mediation where the parties have not or are unable to reach their own agreement upon the breakdown of the relationship;

WHEREAS: the MFN Council or its designate has the authority to implement and enforce an agreement reached between the spouses or through the Dispute Resolution Process regarding the matrimonial home as long as agreements and decisions are consistent with existing MFN Laws;

THEREFORE BE IT RESOLVED: that this Law, submitted to the MFN members by the Chief and Council, is approved and enacted, and shall be effective as of the date of the Community vote on the law and being approved by the Minister of Indigenous Services Canada.

The Chief and Council of Mitaanjigamiing First Nation enact as follows:

Title

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

Definitions

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

“**Act**” means the *Family Homes on Reserves and Matrimonial Interests or Rights Act*. (Canada)

“**Applicant**” means a person who has submitted an application to settle a dispute between spouses concerning the family home situated within MFN.

“**By-Law Officer**” means officers as appointed from time to time by Chief and Council.

“**Council**” means the Chief and Council of MFN.

“**Band Council Resolution**” means a resolution of the Council.

“**Canada**” means Her Majesty the Queen in Right of Canada.

“**Child**” means:

- a) a child of the spouses born in or out of wedlock;
- b) a child adopted by the spouses in accordance with the law of a province or territory or in accordance with aboriginal custom;
- c) a child of one spouse and adopted by the other spouse; or
- d) a child whom the spouses have demonstrated a settled intention to treat as their child.

“**Committee**” means the Dispute Resolution Committee.

“**Common-Law Partner**” means an individual who, in respect of another person, is not married to the other person but has been living together with another person in a marriage-like relationship continuously for a period of at least two (2) years.

“**Common-Law Relationship**” means the relationship between two (2) common-law partners who are cohabiting together in a conjugal relationship and includes same-sex

relationships, provided neither person also has another legal spouse and “Common-Law Relationship” shall have a corresponding meaning.

“**Court**” means the Ontario Superior Court of Justice.

“**Dependent**” means a person under the age of 18 years who has not withdrawn from, or a person 18 years of age or older who is unable by reason of illness or disability to withdraw from, the care and control of his/her parents or his/her legal guardian.

“**Dispose**” includes to give, to sell, to exchange, or any other method of disposal or instrument, including a will.

“**Dispute Resolution**” means the dispute resolution services as defined in this Law.

“**Dispute Resolution Committee**” means the Dispute Resolution Committee established by Chief and Council who are authorized to make decisions under this Law.

“**Domestic Contract**” means a cohabitation agreement, a marriage contract, a prenuptial contract, a separation agreement or any other contract regarding the rights and obligations of the parties during marriage or cohabitation or upon separation or death of one or both of them.

“**Family Home**” means a structure,

- a) where the spouses habitually reside or, if they are separated or one of them has died, where they habitually resided on the day on which they separated or the death occurred; and
- b) in which at least one spouse has any right or interest or that was allocated to at least one of the spouses by Mitaanjigamiing First Nation.

“**Family Real Property**” means a real property right or interest held by at least one of the spouses that was:

- a) acquired during the marriage or common-law relationship; or
- b) acquired before the marriage or common-law relationship, but in specific contemplation of the marriage or relationship.

“**First Nation Law**” means the body of all effective laws and by-laws enacted by MFN.

“**Indian Act**” means the *Indian Act*, R.S.C. 1985, as amended from time to time.

“**Interest in Land in Mitaanjigamiing First Nation**” includes any legal or equitable interest in the ownership, occupation or possession by either spouse or both spouses, in land in MFN.

“**Improvements to the Home**” means any improvements to the Family Home that were made while the couple was in a relationship.

“Marriage” means the union of two (2) persons and includes marriages that are solemnized by a traditional, customary, religious or civil ceremony, and/or a Common-Law Relationship provided neither person also has another legal spouse and “Married” shall have a corresponding meaning.

“Member” means a person whose name appears on the Membership List of MFN.

“Mitaanjigamiing First Nation Land” means Rainy Lake 18C Indian Reserve.

“Non-member” means a person whose name does not appear in the Membership List of MFN.

“Parent” in respect of a child, means the child’s natural parent, adopted parent, step-parent, and a person who has demonstrated a settled intention to treat the child as a child of his or her family, except under an arrangement where the child is placed in a foster home by a person having lawful custody.

“Peace Officer” means a person referred to in paragraph C of the definition of “peace officer” in section 2 of the *Criminal Code of Canada*.

“Resident” means a person who has been granted permission to reside in MFN.

“Right of Interest” means the right or interest held by a person other than MFN in a structure on MFN land or in any fixture or other property permanently affixed to MFN land, including,

- a) the right or interest a person has to or in a structure that was built by, paid for by or purchase by a person other than MFN,
- b) a fixture or improvement to land, if the fixture or improvement was built by, paid for by or purchased by a person other than MFN.

“Safe house” means a structure owned by MFN that has been dedicated to housing individuals who require short-term emergency housing as a result of marital disputes.

“Spouse” means an individual who, in respect of another person,

- a) is married to the other person,
- b) has in good faith entered into a marriage with the other person that is void; or
- c) is a common-law partner of the other person.

“Voters” means a person whose name appears in the Membership List and has attained the age of eighteen years.

Rules of Interpretation

- 3.1** For greater certainty, the rules in sections 3.2 to 3.10 apply to the interpretation and application of this Law.
- 3.2** A person ceases to be considered a child upon reaching the age of eighteen (18) years of age unless he or she is dependent upon one of the spouses for care or financial support because he or she is suffering from an illness or disability.
- 3.3** A marriage is valid if performed in accordance with the law of a province or territory or in accordance with Indigenous custom.
- 3.4** The sex or gender of a person is not relevant to the interpretation of “spouse” or “common-law partner” or to the application of this law.
- 3.5** A common-law relationship is considered to start when the common-law partners begin living together with each other in a marriage-like relationship.
- 3.6** Persons are deemed to have lived separate and apart for any period during which they:
- a) lived apart and either of them had the intention to live separate and apart from the other,
or
 - b) continued to live together but their marriage or common-law relationship had ended.
- 3.7** A period during which persons have lived separate and apart shall not be considered to have been interrupted or terminated only because they resumed living together for the purpose of reconciliation during one or more periods totaling not more than one hundred twenty (120) days.
- 3.8** If a family home is also normally used for more than just a residential purpose, the rules on family homes include only the portion of the structure that may be reasonably be regarded as necessary for the residential purpose.
- 3.9** Family real property does not include any asset acquired by a spouse by way of gift or inheritance unless it can be shown that the gift or inheritance was devised or made with the intention of benefitting both spouses.
- 3.10** This Law does not limit or preclude any right or remedy available under any other law, including the common-law or the legislation of the First Nation, the province or Canada with respect to personal property.

Application of the Law

- 4.1 This law may be cited as the Mitaanjigamiing First Nation Matrimonial Real Property Law.
- 4.2 This Law applies in respect of:
- a) the use, enjoyment, occupation, and possession of family homes on MFN land; and
 - b) the rights and interests of spouses in structures on MFN land and fixtures or other property permanently affixed to MFN land.
- 4.3 For greater certainty, the Law does not apply to the division of any traditional or customary right of a member of MFN to occupy or possess land, as opposed to a structure on land or a fixture or other property permanently affixed to land.
- 4.4 This Law applies to spouses only if at least one of them is a member of MFN.
- 4.5 This Law applies in respect of rights and interests acquired both before and after this Law takes effect.

Domestic Agreements

- 5.1 A Domestic Agreement between spouses shall have no force or effect to the extent that the agreement restricts any rights or benefits provided under this law.

Use, Enjoyment and Occupation of a Family Home

- 6.1 A family home is for the use, enjoyment, and occupation of the spouses and their children.
- 6.2 The right of a spouse or child to use, enjoy, and occupy the family home is a personal right that is enforceable only against each other.
- 6.3 The right of a child to use, enjoy and occupy the family home is;
- a) paramount over the right of a spouse to use, enjoy and the occupy the family home; and
 - b) continues until the Dispute Resolution Committee makes an order, or other accommodation is arranged, in the best interests and welfare of the child.

Restrictions on Disposition of Family Home

- 7.1 No spouse shall dispose of or encumber a right or interest in a family home unless
- a) the other spouse joins in the instrument or consents to the transaction;
 - b) the Council consents to or authorizes the transaction or releases the property from the application of this section.
- 7.2 Any disposition or encumbrance contrary to section 7.1 has no effect.
- 7.3 For greater certainty, any sale or encumbrance is subject to any other applicable law of the First Nation.

Application for Exclusive Occupation of Family Home

- 8.1 The Dispute Resolution Committee may on application by a spouse whether or not that person is a member of MFN or an Indian, order that:
- a) one spouse and child be given exclusive rights to use, enjoy and occupy the Family Home or part of it for the period that the Committee directs;
 - b) a spouse or other person preserve and deliver up the Family Home and its contents to their spouse and child;
 - c) a spouse or other person does not disturb the occupants of the Family Home;
 - d) a spouse make periodic payments to the other spouse for exclusive use, enjoyment and occupation;
 - e) all or part of the contents of the Family Home remain in the home or be removed from the home;
 - f) a spouse pay for all or part of the repairs and maintenance of the Family Home and other related liabilities, or to make periodic payments to the other spouse for these purposes; and
 - g) exclusive occupation extends to the portion of any land that is contiguous to the Family Home and that it is necessary for the use and enjoyment of the Family Home.

8.2 When making an order under section 8.1, the Committee shall consider all of the circumstances of the parties including:

- a) the best interests and welfare of any affected children and their paramount right to use, occupy, and enjoy the family home;
- b) any existing order under this Law and any existing support orders;
- c) the financial position and medical condition of the spouses;
- d) the availability of other suitable and affordable accommodation;
- e) any risk of violence or harm to a spouse or child or another person occupying the family home;
- f) the length of time each spouse has resided in the family home;
- g) whether any third party holds a right or interest in the family home;
- h) 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;
- i) any other exceptional circumstances related to a person, other than the spouses or children, who is occupying the family home;
- j) the collective rights of the First Nation and any entitlement or financial interest of the First Nation in or to the family home.

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

8.4 If an order under this section is needed urgently, the application may be made to a quorum of Council who may make an interim order until the full application can be heard, and a final decision rendered by the Committee.

8.5 An interim order under section 8.4 shall not be more than 30 days.

8.6 For greater certainty, an order made under section 8.1 does not,

- a) change who holds rights 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 to a named beneficiary under the will or to a beneficiary on intestacy.
- 8.7** An order under section 8.1 cannot grant exclusive occupation to a spouse for more than one year without the consent of Council, but the order may be renewed by the Committee, on application, for successive periods not exceeding one year.
- 8.8** Notwithstanding section 8.7, the Committee may grant an exclusive occupation order to a spouse for a period exceeding one year if minor children reside in the family home until such time as the children reach the age of 18.

Emergency Protection Orders

- 9.1** A spouse, whether or not that person is a member of MFN or an Indian, may make an application to the quorum of Council for an emergency protection order without the other spouse being present or notice of the application being provided to them.
- 9.2** An emergency protection order granted under this section shall be valid for a three-month period, subject to any conditions that the Council specifies.
- 9.3** The spouse who has been granted the emergency protection order may apply to the Council for an extension of that order while it remains in effect.
- 9.4** In order for the Council to grant an order under this section, the Committee must be satisfied that:
- a) family violence has occurred; and
 - b) the order is immediately required due to the urgency of the situation and to ensure the protection of those persons who are at risk of further harm or of property that is at risk of damage.
- 9.5** A By-Law Officer, Peace Officer, or any other person may make the application under this section on behalf of the affected spouse if they have been provided with the spouse's consent to do so.
- 9.6** In deciding whether or not to grant an emergency protection order, Council shall take into account the following factors:
- a) the history and nature of the family violence;

- b) whether there is an immediate danger to the person or property that is at risk;
- c) the best interests of any children of either spouse;
- d) the interests of any third parties, such as any elderly persons, who habitually reside in the Family Home;
- e) whether any third party holds an interest or right in or to the Family Home; and
- f) the existence of exceptional circumstances that require the removal of a third party from the Family Home.

9.7 An order granted under this section may contain the following:

- a) a provision granting the applicant exclusive occupation of the Family Home and access to that home;
- b) a provision requiring the Applicant's spouse and any other person specified in the order who habitually resides in the Family Home, to vacate the home either immediately or within a specified period, and prohibiting them from re-entering the home for the duration of the order;
- c) a provision directing a By-Law Officer or Peace Officer to remove the Applicant's spouse or other specified person from the Family Home pursuant to the terms of the order;
- d) a provision prohibiting the Applicant's spouse or other specified person from attending near the Family Home;
- e) a provision directing a Peace Officer or By-Law Officer to accompany the Applicant's spouse or other specified person to the Family Home in order to supervise the removal of personal belongings,
- f) any other provision that Council considers necessary for the immediate protection of the persons or property who may be at risk of harm.

9.8 An order under this section shall take effect once notice of it has been served on the person against whom the order was made.

9.9 Any person against whom an order under this section is made, may apply to the Council to have the order varied or revoked.

- 9.10** An application to vary or revoke an order under this section may only be made within two weeks after the day on which the notice of the order was received, or within any further time that Council allows.
- 9.11** Council may confirm, vary, or revoke the order where an application has been made under section 9.9.

Safe house

- 10.1** A spouse, whether or not that person is a member of MFN or an Indian, may make an application to Council for an order allowing them to reside in a safe house if that member is in need of temporary emergency housing as a result of marital disputes.
- 10.2** An order under section 10.1 shall be valid for the following periods, subject to any conditions that Council specifies:
- a) One hundred twenty (120) days if the spouse has minor children; or
 - b) Sixty (60) days if the spouse does not have minor children.
- 10.3** In deciding whether or not to grant an order under section 10.1, Council shall take into account the following factors:
- a) The best interests of the applicant's minor children;
 - b) Whether there is any risk of violence or harm to an applicant spouse or child;
 - c) Whether the applicant spouse has been granted an emergency protection order under section 9;
 - d) Whether the applicant spouse has been displaced from their family home due to an exclusive occupation order under section 8;
 - e) Whether the safe houses are occupied at the time of the application;
 - f) The financial position of the Applicant spouse; and
 - g) Any other factor deemed relevant by Council.

Division of Family Real Property Upon the Breakdown of a Marriage or Common-Law Relationship

- 11.1** A spouse may apply to the Committee to divide the value of their Family Real Property upon the breakdown of the marriage or common-law relationship.
- 11.2** Each spouse is entitled to an equal share of the value of their Family Real Property.
- 11.3** For greater certainty, when dividing or sharing the value of Family Real Property, the rights and interests in a structure cannot be transferred to or held by a person who is not a member of Mitaanjigamiing First Nation, though they remain entitled to a share of the value of any family real property.
- 11.4** Despite section 11.2, the Committee may divide the family real property into unequal shares or adjust any payments, if the Committee decides that equal shares would be unfair or inequitable after considering the following:
- a) the best interests and welfare of any affected child, including the need to provide accommodation and proper support to any affected children;
 - b) any payments payable for the support of a child and any financial responsibility related to the care and upbringing of the child;
 - c) any agreement between one or both spouses and a third party;
 - d) the length of time that the spouses have lived together;
 - e) the length of time, if any, that the spouses have lived separate and apart;
 - f) any significant change in the value of the interests or rights in question between the day for fixing the value date and the day on which the order is made;
 - g) whether one spouse has exclusive occupation of the family home by agreement or order;
 - h) any contribution, whether financial or in some other form, made directly or indirectly by a third party on behalf of a spouse to the acquisition, disposition, operation, management or use of the property;
 - i) any direct or indirect contribution made by one spouse to the career or career potential of the other person;

- j) the extent to which the financial means and earning capacity of each spouse have been affected by the responsibilities and other circumstances of the marriage or common-law relationship;
 - k) any substantial gift of property by a spouse to a third party or any transfer of property by a spouse to a third party other than a bona fide purchaser for value;
 - l) any previous distribution of property between the spouses by gift or agreement or pursuant to an order of the Committee;
 - m) any tax liability that may be incurred by a spouse as a result of any transfer or sale of property or any order made by a Committee;
 - n) any dissipation or reduction in the value of the property caused by a spouse;
 - o) any financial or other interests of the First Nation or third parties in the family real property;
 - p) any debts or liabilities of a spouse, including debts paid during the course of the marriage or common-law relationship;
 - q) the value of other property that is subject to division or has been divided under the applicable family law of a province or territory;
 - r) any other relevant fact or circumstance.
- 11.5** No application may be made under section 10.1 more than three years after the day the spouses lived separate and apart.

Compensation for Other Real Property

- 12.1** If one spouse has a right or interest that is not Family Real Property, such as a structure, fixture, or other property, the other spouse is entitled upon division of the real property to compensation for that right or interest in accordance with section 13.1.

Death of a Spouse or Common-Law Partner

- 13.1** Upon the death of a spouse or common-law partner, the survivor is entitled, on application made under this section, to an amount equal to one half of the value, on the valuation date, of the interest or right that was held by the deceased individual in or to the family home, and

to other real property rights or interests that were held by the deceased individual on reserve, besides those of in the family home, in the same manner as provided under section 14.1.

- 13.2** An applicant for an order under this section must, without delay, send a copy of the application to the following persons:
- a) where the applicant is the survivor, to the executor of the will or the administrator of the estate, if the applicant knows who those persons are, or
 - b) where the applicant is the executor of a will or an administrator of an estate, to the survivor.
- 13.3** On application by an executor of a will or an administrator of an estate, the Committee may, by order, vary the amount owed to the survivor under this section.
- 13.4** No application may be made under section 13.1 more than three years after the death of a spouse.
- 13.5** On application under this section, the Committee may, by order, determine any matter in respect of the survivor's entitlement under this section, including:
- a) determining the amount payable to the survivor, and;
 - b) providing for the method or combination of methods of payment of that amount to the survivor.
- 13.6** An executor of a will or an administrator of an estate must not proceed with the distribution of the estate until one of the following occurs:
- a) the survivor consents in writing to the proposed distribution,
 - b) the three year period has expired without an application having been made, or
 - c) an application under this section has been disposed of.
- 13.7** Section 13.6 does not prohibit reasonable advances being provided to survivors or other dependents of the deceased spouse or common-law partner for their support.
- 13.8** A surviving spouse who is a non-member and is occupying the family home when the member spouse dies is entitled to continue to occupy the family home as follows:
- a) For non-member spouses who do not have any minor children a minimum of 180 days; and

- b) For non-member spouses who have minor children, either when the spouse remarries or the children reach the age of eighteen (18), whichever occurs first.

13.9 The Committee may, on application by a surviving spouse whether or not that person is member of MFN or an Indian, order that the survivor be granted exclusive occupation of the family home and reasonable access to that home, subject to any conditions and for the period that the Committee specifies.

13.10 In making an order under section 13.9, the Committee 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 First Nation member to maintain a connection with that First Nation;
- b) the terms of the will;
- c) the collective interests of First Nation members in their reserve lands and the representations made by the council of the First Nation on whose reserve the family home is situated with respect to the cultural, social and legal context that pertains to the application;
- d) the medical condition of the survivor;
- e) the period during which the survivor has habitually resided on the reserve;
- f) the fact that the family home is the only property of significant value in the estate;
- g) the interests of any person who holds or will hold an interest or right in or to the family home;
- h) the interests of any elderly person or person with a disability who habitually resides in the family home and for whom the survivor is the caregiver;
- i) the existence of exceptional circumstances that necessitate the removal of a person from the family home in order to give effect to the granting to the survivor of exclusive occupation of that home, including the fact that the person has committed acts or omissions that constitute family violence, or reasonably constitute psychological abuse, against the survivor, any child in the charge of the survivor, or any other family member who habitually resides in the family home; and
- j) the views of any person who received a copy of the application, presented to the Committee in any form that the Committee allows.

Valuation of Rights and Interests

- 14.1** Unless the Committee determines that another value is more appropriate, rights and interests must be valued at the amount mutually agreed upon by the spouses. If the spouses cannot agree upon the value of the right or interest, the calculation in subsection 14.1(a) shall be used:
- a) one half of the amount by which it appreciated in value from the beginning of the marriage or common-law relationship to the valuation date, subtracted by any amounts paid by the spouse for improvements to it and any liability incurred to make those payments. This calculation shall be conducted by an appraiser whom the spouses mutually agree upon at their own cost.
- 14.2** For greater certainty, the value of a structure, fixture or other property affixed to land does not mean its insured value or the value of an equivalent one off-reserve.
- 14.3** The date for determining the value of rights and interests is the earliest of the following dates;
- a) the date a divorce is granted;
 - b) the date the marriage is declared a nullity;
 - c) the date the spouses began to live separate and apart;
 - d) the date on which a spouse manifested the intention not to continue the marriage or common-law relationship;
 - e) the date one spouse dies;
 - f) the date an application is made to the Committee for:
 - i. exclusive occupation of the family home;
 - ii. division of family real property; or
 - iii. Irresponsible depletion.

Mediation

- 15.1** Spouses who have a dispute about matters under this Law should make a reasonable attempt to resolve it through the efforts of a mutually agreed upon mediator in a process that accords with the traditions, customs, and practices of MFN.
- 15.2** Mediation does not prevent a party from seeking a remedy from the Committee or Council, especially in urgent circumstances where interim orders may be required.
- 15.3** The Council shall create and maintain a roster of designated community members/elders able to act as mediators available to spouses to assist them in resolving disputes about matters under this Law and a current copy of that roster shall be posted at the administration office in MFN.
- 15.4** A spouse may request mediation by filing a notice of request for mediation with Chief and Council in the designated form and with proof of notice having been provided to the other spouse.
- 15.5** It is the responsibility of the spouse requesting mediation to ensure that the notice referred to in section 15.4 is served on the other spouse at least 20 days in advance of the mediation session.

Powers of the Dispute Resolution Committee

- 16.1** The Committee may, on application:
- a) determine whether or not a structure is a family home and if so, its extent;
 - b) authorize the disposition or encumbrance of the family home without the consent of a spouse, if the spouse:
 - i. cannot be found or does not contest the application;
 - ii. is not capable of giving or withholding consent; or
 - iii. is unreasonably withholding consent;
 - c) declare as of no effect and set aside any sale or encumbrance of a family home made in contravention of section 7.1;

- d) make any order that it considers necessary to stop or restrict the irresponsible depletion of family real property;
- e) determine what is Family Real Property, and any other right or interest;
- f) determine the value and the date for fixing the value of a right or interest under section 14;
- g) determine the amount payable by one spouse to the other;
- b) provide the method by which the amount payable is to be settled, including:
 - i. payment of the amount in a lump sum;
 - ii. payment of the amount by installments;
 - iii. the transfer of a right or interest, subject to section 10.3;
 - iv. the set-off or compensation of any amounts owed by one spouse to the other; or
 - v. any combination of the methods referred to in subparagraphs (i) to (iv).

General Provisions for Orders

- 17.1** The Committee may make any order under this Law and give such directions as are necessary for those purposes except for an order under section 8.4, 9 or 10 which may only be made by Council.
- 17.1** The Committee may attach any conditions it considers appropriate to its decision or order under this Law and give such directions as are necessary for those purposes.
- 17.2** The Committee may, on application, make a decision or order under one section of this Law, make a decision or order under another section, or combine them.
- 17.3** In determining the best interests and welfare of a child, the Committee shall also consider:
 - a) the possible disruptive effects on the child of a move to other accommodations; and
 - b) the child's views and preferences, if they can be reasonably ascertained.

- 17.4 The Committee may, on application, confirm, vary, or revoke any order or decision made under this Law, except for an order under section 8.4, 9 or 10 which may only be made by Council.

Administration

- 18.1 A copy of this Law appearing to be certified as a true copy by an officer of Mitaanjigamiing First Nation is proof of the original without proof of the officer's signature or official character.
- 18.2 The Council shall ensure a copy of this Law, as amended from time to time, 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. The Council shall also ensure that a Committee is in place at all times.
- 18.3 An Applicant who obtains an order or decision under this Law shall, without delay, send a copy of it to the MFN Land Manager.

Appeals

- 19.1 An appeal from an order under this Law does not operate as a stay or suspend the operation of the order unless the Judge bearing the matter decides otherwise.

Enforcement

- 20.1 A Peace Officer may arrest without warrant any person the officer believes on reasonable and probable grounds to have contravened an order for exclusive occupation.
- 20.2 A Peace Officer or By-Law officer may assist in making an application on behalf of a spouse or child with that person's consent, or if that person does not consent, with leave of the Committee.
- 20.3 A Peace Officer or By-Law Officer shall, on the request of an Applicant or if directed by the Committee, assist in the enforcement of any order made under this Law, including:
- a) serving notice of an order or decision upon any person; and

b) accompanying the Applicant or any specified person to the Family Home or other location in order to supervise compliance with the order of the decision.

20.4 Any person who contravenes the provisions of an order or decision made under this Law is guilty of an offence and is liable upon summary conviction:

a) in the case of a first offence, to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding three months, or to both; or

b) in the case of a subsequent offence, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year, or to both.

Amendment or Repeal

21.1 This Law may be amended or repealed only by a subsequent law made by the Chief and Council, after having put an amendment or repeal to a vote by eligible members of the Mitaanjigamiing First Nation community in attendance at the final community meeting on this issue.

21.2 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.

21.3 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 Mitaanjigamiing First Nation to inform its members of:

a) the time and place of all meetings where amendments to this law shall be discussed;

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 under sections 21.4 and 21.5.

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

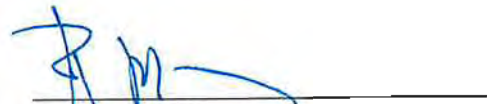
21.5 An amendment or repeal of this Law is not valid unless approved by a majority of the eligible members who participated in the final meeting.

Coming Into Force

22.1 This Law comes into force on this 16th day of October 2019.


Chief Janice Henderson


Councillor Darlene Whitecrow


Councillor Roy Morrison