

# **Bingwi Neyaashi Anishinaabek Matrimonial Real Property Law**

## **Executive Summary**

**June 19, 2015**

**Prepared by Dominique Nouvet,  
legal counsel for Bingwi Neyaashi Anishinaabek**

This Executive Summary identifies key features of the draft Bingwi Neyaashi Anishinaabek (“**BNA**”) Matrimonial Real Property Law (“**Law**”). It does not summarize all of the provisions, so readers are encouraged to review the Law itself and attend the July 18 community meeting for a more detailed understanding of the Law.

### **Application of the Law**

This Law applies on reserve only (section 1.4). The main purpose of the Law is to set rules for what happens to private interests in reserve land that are held by one or both spouses, such as Certificates of Possession, or leases (“**Matrimonial Property**”), when their relationship breaks down. The Law does not deal with real property off-reserve. The Law does not address other aspects of family law disputes, such as personal property (like cars, boats, savings), child custody, or child/spousal support. Those other aspects of family law disputes will continue to be covered by federal and provincial family laws.

With one exception, the Law does not cover the situation where a Spouse dies and leaves behind Matrimonial Property: that situation remains covered by the *Indian Act* (section 1.6). The one exception is that the Law gives all survivor Spouses the right to remain in the family home (“**Matrimonial Home**”) for 180 days after the death of their Spouse, whether or not the surviving Spouse owns the Matrimonial Home or is a BNA member (“**Member**”).

Except for Emergency Protection Orders, the Law only covers privately-held reserve lands, not rental properties. The Law applies to married and common law spouses, though the Law specifies that some parts are restricted to married spouses or spouses with children.

### **Domestic Contracts**

Spouses, including ex-spouses, may agree in writing on what happens to their Matrimonial Property and/or the family home (“**Matrimonial Home**”) should their relationship break down in a contract (“**Domestic Contract**”). Domestic Contracts will be enforceable in court unless they are set aside for being contrary to the law of contracts (e.g. where one Spouse tricked the other, or forced the other to sign the Contract), and as long as the Domestic Contract does not

permanently transfer reserve land to a non-Member (section 3.2). Non-Members cannot receive permanent interests in reserve land because the BNA Land Code prohibits this.

The Law requires Spouses to have a Domestic Contract that addresses the occupation and possession of their Matrimonial Home both during the relationship and if ever the relationship breaks down in order to do either of the following things:

- acquire an interest in BNA land from BNA; or
- register an interest in BNA land for residential purposes (section 3.1).

Spouses must prove the existence of their Domestic Contract provisions regarding occupation and possession of the Matrimonial Home to the BNA Lands Department (section 3.1).

### **Court Applications for Division/Compensation of Matrimonial Property**

Where married spouses or spouses who have been divorced for less than 2 years cannot agree on what happens to their Matrimonial Property and on whether to compensate the spouse who does not own the Matrimonial Property, they can apply to the court to settle their dispute (section 4.1). Common law spouses do not have access to this remedy and must protect their rights through Domestic Contracts.

Part 4 of the Law sets out the options, rules and principles for settling disputes about Matrimonial Property division and compensation for married spouses who have separated or divorced. Subject to these options, rules and principles, the court will decide each case on its own facts. Here are some key provisions regarding court orders for property division and compensation:

- If both spouses own the Matrimonial Property, the court may order that the full interest be transferred to one of the spouses (section 4.3(d)).
- The court may order that the spouse who owns the Matrimonial Property pay compensation to the non-owner spouse to recognize that spouse's contribution to the acquisition, upkeep and/or improvement of the Property during the relationship, including child rearing contributions (section 4.3(e)).
- The only court remedy for spouses who do not own or co-own the Matrimonial Property is financial compensation.

## **Matrimonial Home and Exclusive Occupation Orders**

Part 5 is about the Matrimonial Home specifically. Where the spouses are married or are living with one or more children, both spouses have the right to occupy (i.e. live in) the Matrimonial Home (sections 5.2 and 5.3).

Section 5.9 allows spouses (including ex-spouses) to apply to court for an Exclusive Occupation Order to live in the Matrimonial Home without the other spouse where all of the following circumstances apply:

- the applicant spouse is the primary caregiver of a Member child;
- the child is under the age of 18, pursuing full-time studies, or a dependent of the applicant due to illness or disability;
- the Order is in the best interests of the child; and
- the Order would not conflict with a Domestic Contract.

If an applicant spouse gets an Exclusive Occupation Order, all children under the care of that Spouse will be able to remain in the Matrimonial Home while the order is in force, whether or not they are Members (Section 5.11).

## **Emergency Protection Orders**

Part 6 of the Law allows any spouse living on reserve, or any person on their behalf, to apply to court for an Emergency Protection Order in cases of family violence. This Part of the Law applies to private and rental housing. The court may make an Emergency Protection Order where family violence has occurred and the Order is needed to protect the spouse or a child living in the house (section 6.3). These orders will be enforceable by peace officers (section 6.6). The maximum length of the order is 90 days (section 6.4), with the possibility of renewal for up to another 90 days (section 6.10).

## **Amendments to the Law**

The BNA Council may make minor amendments to the BNA Law without a community vote (section 7.1). Any major amendment requires a vote (section 7.2).