

Penticton Indian Band Draft Matrimonial Real Property Law

When a Marriage Breaks Down.



Matrimonial Real Property Law

Matrimonial Real Property Law (MRPL) is the name of the proposed law governing Penticton Indian Band lands if a marriage between a Penticton Indian Band member and a non-member or member breaks up. If both spouses are non-members, this law does not apply.

This law would provide new ways to divide spousal interests in reserve land, upon marriage breakdown.

The most important thing to note in the new law is that a non-member could have legal rights to the matrimonial home or property after the breakdown of a marriage, although a non-member still cannot have a permanent interest in Reserve land.

Where appropriate, courts would have the power to:

- stop a member from selling, leasing or transferring their right to occupy reserve land, without the consent of his or her non-member spouse.
- grant interim or permanent possession of the family home to a non-member spouse, usually until children have reached the age of majority; and,
- order the sale of the family home for the purpose of fairly dividing matrimonial property.

Questions & Answers

Penticton Indian Band is required to develop Matrimonial Real Property Law within twelve months of enacting a Land Code or by December 2014 if it does not enter into Land Code. If Penticton Indian Band does not enact a MRPL, it will be bound by the new federal *Family Homes on Reserves and Matrimonial Interests or Rights Act* unless it adopts its own law.

Does the MRPL apply if only one spouse is a Member?

Yes, the MRPL applies.

What if a dispute has gone to court and a spouse dies before the matter is resolved?

The surviving spouse can continue the court action against the estate of the spouse that died.

What if a spouse has Interests in Penticton Indian Band Land through a “corporation” (a company)?

The court has the right to order the spouse to transfer shares in the company to the other spouse, or the court can order the company to transfer shares to the other spouse.

What if the Interest in Penticton Indian Band Land is a business or farm?

Unless there is no other reasonable, fair option, the court will not order the business or farm to be sold, and will not make an order that significantly harms the business or farm.

Does the MRPL apply if neither spouse is a Member?

No, the MRPL does not apply. In that case, issues related to marriage breakdown would fall under the provincial laws that govern marriage breakdown.

My spouse and I share joint custody of the children. How will this affect possession of the Matrimonial Home?

If the children spend more time living with one spouse, then the court will be more likely to give exclusive possession of the Matrimonial Home to that spouse. If the children spend the same amount of time living with each spouse, then the court will not favour one spouse over the other.

The Matrimonial Real Property Law

Purpose of the Matrimonial Real Property Law (the “MRPL”)

- the Penticton Indian Band Land Code requires that, within 12 months after the Land Code comes into force, Penticton Indian Band enact a law that contains “rules and procedures applicable on the breakdown of a marriage, to the use, occupancy and possession of Penticton Indian Band First Nation Land and to the division of interests in that land”.
- to ensure that spouses who have interests in Penticton Indian Band Land have legal rights and remedies when their marriages break down
- to ensure that spouses of both sexes are treated equally, and without discrimination

Guiding Principles

- children have the right to live in the family home until they become adults
- decisions must be based on the best interests of the children
- as a starting point, each spouse should:
 - 1) have an equal right to the family home, and
 - 2) be entitled to one-half of the family home as a “tenant in common”. (In family law, where spouses have a tenancy in common, they are each considered to own an exact half of that property, separate from the other person’s half. A tenant in

common may choose to sell his or her share in that property independently from other owners. A tenant in common who is a member can also pass on their share in a will.)

- only Penticton Indian Band members can have permanent interests in Penticton Indian Band land
- when a marriage breaks down, the spouses have the right to make their own agreement about how their interests in Penticton Indian Band land will be divided
- mediation is strongly encouraged, but spouses also have the right to go to court

Application and Jurisdiction of the MRPL

- the MRPL applies only to interests that one or both spouses have, or claim to have, in Penticton Indian Band land
- the MRPL does not apply to:
 - 1) non-Penticton Indian Band land, or
 - 2) personal property (such as household items and furniture), whether located on or off Penticton Indian Band land

and it has no impact on how those issues are decided under other laws that apply to marriage breakdowns

- the MRPL only applies to spouses. A spouse is:
 - a) a person who is or was married to a person of the same or opposite sex in a traditional, religious, or civil ceremony,

- b) a person who, in good faith, entered into a marriage that is, or can be declared, invalid (a “voidable or void” marriage), or
- c) a person who has lived with another person in a registered domestic partnership or common-law relationship.
- the MRPL does not apply where neither spouse is a Penticton Indian Band member.

Rights to Penticton Indian Band Land

- At most, a spouse who is a non-member can only receive a “life interest” in Penticton Indian Band land. This means that the spouse will have the interest for his/her entire life, but when s/he dies, the interest in the land will NOT go to his/her estate, but will go back to the spouse who is a Member or their heirs.
- A non-member cannot sell, assign or transfer an Interest in Penticton Indian Band Land. Once s/he no longer lives in or uses the Interest, s/he has no more rights to that Interest.

Interspousal Contracts

- The MRPL permits agreements between the spouses, called “Interspousal Contracts”. Interspousal Contracts include pre-nuptial agreements, marriage agreements, and separation agreements, whether they were made before or after the MRPL was enacted.
- An Interspousal Contract that deals with an Interest in Penticton Indian Band Land is legally binding and enforceable, so long as it complies with the MRPL.

- In certain circumstances, a spouse could apply to court to have some or all of an Interspousal Contract “set aside” (declared invalid).

Mediation

- “Mediation” is one way of resolving disputes between parties. In mediation, a neutral third person called the “mediator” meets with the parties together, and sometimes separately, to help them find a solution to their problem that meets the needs of both parties. Mediation is usually cheaper and faster than going to court, but it is not binding.
- Under the MRPL, mediation is encouraged.
- Unless they have agreed otherwise, the spouses will each pay for half the cost of the mediation.

Court

- If the spouses
 - 1) do not agree on how to divide an Interest in Penticton Indian Band Land, or
 - 2) do not have an Interspousal Contract, and
 - 1) have not been able to resolve the issue through mediation, or
 - 2) the court has ruled that they do not have to undergo mediation,then they have the right to bring the issue to court.
- The court is guided by

- 1) the MRPL, and
 - 2) the parts of the Nova Scotia family law rules that relate to the ownership, possession or occupancy of real property, the division of interests in real property, and net family property representing the value of interests in real property.
- The court can make the same orders about Interests in Penticton Indian Band Land as it can about all other “real property” (land) in Nova Scotia, EXCEPT that a court cannot grant more than a “life interest” to a non-Member spouse.

The “Matrimonial Home”

- This refers to the family home – the home in which the spouses lived during their marriage.
- If part of the Matrimonial Home, or part of the land on which the Matrimonial Home sits, is used for another purpose (for example, if a business is located in the home, or if a farm operates on the site of the home), then the Matrimonial Home will only include the part that is necessary for use as a residence.
- There are special rules that apply to a Matrimonial Home, and so the court determines whether an Interest in Penticton Indian Band Land is also a Matrimonial Home.
- The starting point is that both spouses have an equal right to possession of a Matrimonial Home, but there are several exceptions:
 - 1) If only one spouse holds the interest to the Matrimonial Home (e.g. the CP is only in the name of one spouse), then the other spouse does not

have a right of possession to the Matrimonial Home.

- 2) The court has the power to give one spouse “exclusive possession” to the Matrimonial Home. (This means that the spouse will be the only one who is allowed to live in, and/or own, the Matrimonial Home).
 - 3) In general, the parent who has custody of the children will be given exclusive possession of the Matrimonial Home:
 - a) as long as this is in the best interests of the children, and
 - b) if so, until
 - i) the youngest child is 19, and
 - ii) the children have had the “opportunity to complete their education”
- Unless both spouses agree, or unless the court has made an order, neither spouse can sell, mortgage, or transfer the Matrimonial Home.

This booklet is made available to you by the Penticton Indian Band Governance Committee. It is split into a Question & Answer section followed by a simplified version of the draft law.

Quick Reference Guide:

Matrimonial Real Property Law (MRPL):

This is the working name for the draft family law governing interests in Penticton Indian Band lands when marriages break down. This will only come into force after community consultation and if a Land Code is enacted or if the community chooses to enact the Law under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

On-Reserve Matrimonial Real Property:

The reserve land(s) owned by one or both partners in the relationship.

Marriage:

In this booklet, the word 'marriage' is used to describe either legal marriage or registered domestic partnership and includes same-sex spouses.

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