

MISSISSAUGA FIRST NATION
MATRIMONIAL REAL PROPERTY LAW

Whereas the Mississauga First Nation has entered into the *Framework Agreement on First Nation Land Management* with Canada dated February 12, 1996, as amended, and which was ratified on behalf of the Government of Canada by the *First Nations Land Management Act*;

And Whereas the Mississauga First Nation, ratified their Land Code on July 18, 2009, for the purposes of setting out principles, guidelines and processes by which Mississauga First Nation will exercise control and management over its lands and resources consistent with the *Framework Agreement on First Nation Land Management* and the *First Nations Land Management Act*;

And Whereas the Mississauga First Nation Land Code took effect as of October 19, 2009 pursuant to the ratification of the members of Mississauga First Nation;

THEREFORE IT IS HEREBY ENACTED AS LAW OF THE MISSISSAUGA FIRST NATION.

1. Title

Title

1.1 This Law will be cited as the *Mississauga First Nation Matrimonial Real Property Law*.

2. Interpretation

Definitions

2.1 The following definitions apply in this Matrimonial Real Property Law:

“**Child**” includes a child born in or out of wedlock, legally adopted child and a child adopted in accordance to Indian Custom which means a child who is raised by another family member.

“**Cohabit**” means to live together in a conjugal relationship, whether within or outside marriage.

“**Chief & Council**” or “**Council**” means the Chief and Council of Mississauga First Nation

“**Domestic/Marriage Contract**”, for the purposes of this Law, has the same meaning as defined under Part IV of the Ontario *Family Law Act* as amended from time to time.

“Matrimonial home” means the home that is, or if the spouses have separated, was at the time of separation, their matrimonial home as defined under the Ontario *Family Law Act* as amended from time to time.

“Member” means a person whose name appears or is entitled to appear on the Mississauga First Nation Band Membership List.

“Personal property” means property other than the Matrimonial home or real estate and may include household items, vehicles, boats, bank accounts, etc.

“Spouse” means a person who is married to another, whether by a traditional, religious or civil ceremony and includes any person who is cohabiting with an individual in a conjugal relationship for a continuous period of no less than one year immediately prior to the time a common-law marriage is claimed

3. Application

3.1 This Law applies only to interests in the Matrimonial home.

3.2 Subject to its terms, this Law shall not be construed as 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, other than the interests in the Matrimonial home or other entitlements or obligations of spouses.

4. Domestic/Marriage Contracts

4.1 This Law shall recognize Domestic or Marriage Contract as defined by the Ontario *Family Law Act* to determine the division of assets But does not include Mississauga First Nation land other than the Matrimonial home.

5. Court of Competent Jurisdiction

5.1 In the event of the breakdown of his or her marriage, a spouse may apply to a court of competent jurisdiction to determine disputes in relation to interests in the Matrimonial home.

5.2 Subject to this law, a court of competent jurisdiction may deal with Matrimonial homes on First Nation land held by either spouse, or both spouses, in manner consistent with the provisions of the *Family Law Act* (Ontario) relevant to the ownership, possession or occupancy of Matrimonial homes.

5.3 Notwithstanding Section 5.2, the fact that an interest in First Nation land does not include future or contingent interests in First Nation land shall not be taken to confer jurisdiction upon a court over such interests under this Law.

- 5.4 Subject to this Law, the court may make an order in relation to Matrimonial homes on Mississauga First Nation land held by a spouse or by both spouses, including in appropriate circumstances;
- a) An order that the Matrimonial home be transferred to a spouse absolutely where permitted under this Law and the Land Code.
 - b) An order that the Matrimonial home be subject to a lease by one spouse to the other for a term of years subject to such conditions as the court deems just in all circumstances or;
 - c) An order that a Matrimonial home held by both spouses be partitioned or partitioned and sold.
- 5.5 An order shall not be made under Section 5.4 (a) in favour of a spouse who is not a member of Mississauga First Nation.
- 5.6 Where an order is made under Section 5.4 c) for the partition of an interest in Mississauga First Nation land, the Lands and Resources Committee and Land & Resources department of Mississauga First Nation shall assist in the transaction, which shall not include providing funding for the transfer, and may make a provision for the survey and for the allocation of the costs of the transaction unless the court has already made an order to that effect.
- 5.7 Where an order is made under Section 5.4 c) for the sale of an interest in Mississauga First Nation land, that the sale shall be made by a band member auction directed by the Lands and Resources Committee and Land & Resources department, and which shall result in a fair value for the interest and also for the recovery of the costs of the transaction, unless the court has already made an order to that effect.
- 5.8 An order shall not be made under Section 5.4 so as to require the sale of an operating business or farm in Mississauga First Nation land or so as to impair seriously its operation unless there is no reasonable alternative method of achieving an equitable result between the parties.
- 5.9 Where a proceeding has been commenced in accordance with this Law and either spouse dies before all issues relating to interests in Matrimonial home have been disposed of by the court, the surviving spouse may continue the proceeding against the estate of the deceased spouse.
- 5.10 Nothing in this Law relieves a party of the requirement to observe the rules and procedures of a court of competent jurisdiction in relation to matrimonial causes.

- 5.11 Nothing in this Law limits the application of valid laws of Ontario and Canada in respect of matrimonial causes, except to the extent that such laws deals expressly or implicitly with interests in Mississauga First Nation land and to the extent this Law applies.
- 5.12 It is the intention of this Law that all rights, entitlements and obligations of spouses are dealt with equitably on the basis of the totality of their circumstances, including rights, entitlements and obligations in respect of interests in the Matrimonial home on Mississauga First Nation land, but subject to the special provisions set out in this Law.
- 5.13 Subject to limitations inherent in the nature of Mississauga First Nation land, both spouses have an equal right to possession of a Matrimonial home.
- 5.14 When only one spouse holds an interest in Matrimonial home, the other spouse's right of possession is:
- a) Personal against the spouse who holds the interest; and,
 - b) Ends when they cease to be spouses unless a Domestic/Marriage Contract or court order provides otherwise.
- 5.15 No spouse shall dispose or encumber an interest in a Matrimonial home unless:
- a) The other spouse joins in the instrument or consents to the transaction; or,
 - b) The other spouse has released all rights in respect of that interest by Domestic/Marriage Contract; or,
 - c) A court order has authorized the transaction or has released the interest in Matrimonial home from the application of this section.
- 5.16 If a spouse disposes of or encumbers an interest in First Nation land that is a Matrimonial home in contravention of Section 5.15, the transaction may be set aside on an application to the court unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice, at the time of acquiring it or making an agreement to acquire it, that the property was a Matrimonial home.
- 5.17 When a person proceeds to realize upon an encumbrance or execution against an interest in First Nation land that is a Matrimonial home, the spouse who has a right of possession under section 5.18 has the same right of redemption or relief against forfeiture as the other spouse and is entitled to the same notice respecting the claim and its enforcement or realization.
- 5.18 The court may, on the application of a spouse or a person claiming an interest in First Nation land that is a Matrimonial home:
- (a) make a declaration whether or not the interest in First Nation land is a Matrimonial

home;

- (b) authorize a disposition or encumbrance of the interest in First Nation land, provided that such disposition or encumbrance is otherwise authorized under the First Nation's law, including without limitation, the Land Code, if the court finds that the spouse whose consent is required cannot be found or is not available, is not capable of giving or withholding consent, or is unreasonably withholding consent, then the court may make an order that the court considers appropriate including the provision of other comparable accommodation, or payment in place of it;
- (c) dispense with a notice required to be given under section 5.20; or,
- (d) make an order under section 5.19, subject to such terms and conditions as the court determines to be equitable and just in all the circumstances.

5.19 Regardless of which spouse holds an interest in Mississauga First Nation land that is a Matrimonial home, the court may, on application:

- a) Order the delivering up, safekeeping and preservation of the interest in Mississauga First Nation land that is a Matrimonial home;
- b) Direct that one spouse be given exclusive possession of the Matrimonial home, or part of it, for such period as the court may direct, and is consistent with this Law;
- c) Authorize a disposition or encumbrance, consistent with the First Nation's laws including, without limitation, the Land Code, of a spouse's interest in Mississauga First Nation land that is a Matrimonial home;
- d) Where it appears that a spouse has disposed of or encumbered an interest in Mississauga First Nation land that is a Matrimonial home in a fraudulent manner calculated to defeat the rights of the other spouse under this Law, or has falsely and knowingly represented, in connection with a disposition or encumbrance that the interest in Mississauga First Nation land is a Matrimonial home, direct the other spouse to substitute other interests he or she holds in Mississauga First Nation land for the Matrimonial home, subject to such conditions as the court considers appropriate;
- e) Make any interim or temporary order to give effect to the purposes of this Law or to protect the rights of a spouse or;
- f) Make any ancillary order which the court deems necessary to give effect to this Law.

5.20 A court, in considering whether to direct that one spouse have exclusive possession of an interest in Mississauga First Nation land that is a Matrimonial home, shall be guided by the principle that the custodial parent of a child, where the child is a registered Bandmember, should have exclusive possession of the family residence for a period

sufficient to ensure that the child or the youngest child if there are more than one child, reaches the age of majority and has the opportunity to complete his or her grade 12 education, provided that observance of this principle is consistent with the best interests of the child.

When making an order under this section, the court shall make an order or orders relating to the payment of operation expenses, financing, mortgage or lease payments and maintenance costs of the Matrimonial home as is fair and reasonable in all of the circumstances.

- 5.21 Where both parents share joint custody of a child or children, who is/are Registered Band member(s), the principle set out in Section 5.20 shall be adapted to favour the spouse with whom the child or children principally reside and if the child resides substantially equal periods of time with both spouses then the principle shall be neutral as between them.
- 5.22 Even if one or more of the children are not Band members, the court will apply the principles set out in Sections 5.20 and 5.21, providing that at least one child is a Band member.
- 5.23 A person who contravenes an order made by the court of competent jurisdiction pursuant to this Law, in relation to an interest in the Matrimonial home is guilty of an offence and liable to a fine of not more than \$5,000.00 or to imprisonment for a term of not more than three months or to both.

BE IT KNOWN that this Law entitled “Mississauga First Nation Matrimonial Real Property Law is hereby;

Read a first time by Council at a duly convened meeting held on the ____ day of _____ 2012;

Read a second time at a Membership Meeting held on the ____ day of _____, 2012

Read a third time and referred to a Membership Meeting for ratification by Electors on the _____ day of _____, 2012;

Enacted by Council at a duly convened meeting held on the ____ day of _____, 2012.

Signed by the following members of Council:

Chief

Councillor

Councillor

Councillor

MFN Real Property Law August 8, 2012

Councillor

Councillor

Councillor

Councillor

Councillor