

## **The Current Status of On-Reserve Matrimonial Real Property**

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2006

In order to understand the status of on-reserve matrimonial real property, you must know what it pertains to.

By matrimonial real property, we mean, in most cases, the “family home”, which is the house the couple lived in up to the time of separation.

Under provincial law, the family home is treated differently from any other type of property in that it doesn’t matter which spouse is named on the title to the home or if one spouse brought the home into the marriage. Both spouses have an equal right to keep the home. In addition, they can deal with the home through pre-nuptial or separation agreements. If there are no agreements present, the court will determine who gets to keep the home.

However, the experience is vastly different for First Nations under the Indian Act. There is no mechanism to deal with this type of property for any type of relationship under the Indian Act. Provincial courts do not have the jurisdiction to make any decisions regarding either possession or division of the matrimonial home.

In essence, this means that if the spouse that has custody of the children in the event of separation does not have his or her name in the home’s Certificate of Possession, he or she may not have a place to live on the reserve. More often than not, the above, combined with housing shortages on reserve, will mean that he or she will have to leave the reserve.

Even when the names of both spouses are in the Certificate of Possession, if there is any dispute over who should stay in the home, the courts cannot dictate who will remain in the home. This is true even in cases of domestic violence. The courts can, however, order the other party to provide compensation to the spouse that has to leave the matrimonial home. Unfortunately, that is hard to enforce due to the laws regarding garnishments and seizure of property on reserves.

Nonetheless, First Nations who operate under Self-Government Agreements or the Land Management Act, do have some Matrimonial Property Codes or similar mechanisms in place to address the issue of on-reserve matrimonial property. And help is on the way for other First Nations through the On-Reserve Matrimonial Real Property Consultations that are happening across the country, which seeks to address the legislative gap that is present at this time.

If you would like more information regarding this topic, we have the following pamphlets available free of charge:

- On-Reserve Matrimonial Real Property,
- Information on Spousal Rights to the Family Home on Reserves, and
- After Marriage Breakdown: Information on the On-Reserve Matrimonial Home.

