

About This Law

In December 2014 the federal government made new laws for homes on reserve. The law is the Family Homes on Reserves and Matrimonial Interests or Rights Act.

Under this act, if you and your spouse live on reserve and at least one of you is a member of that First Nation or a status Indian, you have rights to your family home on reserve:

- during the relationship
- if you and your spouse **separate** (break up)
- if your spouse dies

A **spouse** is the person you're married to or you live with in a common-law relationship (legally known as a marriage-like relationship).

What the act does

The act:

- gives spouses who live on reserve some of the same rights and protections to their family home as spouses who live off reserve; at least one of the spouses must be a First Nation member or **status Indian** (someone who's registered as an Indian under the Indian Act)
- gives First Nations the right to make their own matrimonial real property laws
- gives spouses who live on reserve some rights and protections until their First Nation makes its own matrimonial real property laws

The most common example of **matrimonial real property** is the family home. Matrimonial means marriage or marriage-like relationship.

Before the new laws, you and your children might have left the family home on reserve when your relationship ended. You probably would have lost your family ties, social supports, and cultural connections.

The act says it's important that children stay connected with their First Nation. This means court orders that judges make about the family home must be in the **best interests** of any children. That includes the right of a child who's a First Nation member to stay connected with their First Nation.

Who the act applies to

The act applies if:

- you live on a First Nation reserve
- you're married or have lived common law for one year or more
- at least one of you is a First Nation member or status Indian

The act applies to opposite-sex couples and same-sex couples.

The act doesn't apply to:

- First Nations who have their own matrimonial real property laws
- First Nations with a self-government agreement (unless they have reserve land and choose to follow the act)
- First Nations with land codes in place under the First Nations Land Management Act and who have their own matrimonial real property laws

For a list of First Nations who have their own matrimonial real property laws under the act, go to canada.ca/en. In the search bar, type matrimonial property laws. Click the link to the list.

Family Home and Matrimonial Interests or Rights

Under the act, **family home** means:

- the structure you and your spouse now live in on reserve
- the structure you and your spouse lived in on reserve before your relationship ended

Under the act, **matrimonial interests or rights** means your rights to any other property (not the family home) you or your spouse got:

- during your relationship
- before your relationship began, and the property went up in value during your relationship

Matrimonial interests or rights don't include interests or rights you got as a gift from someone, or in a will.

Who owns the family home

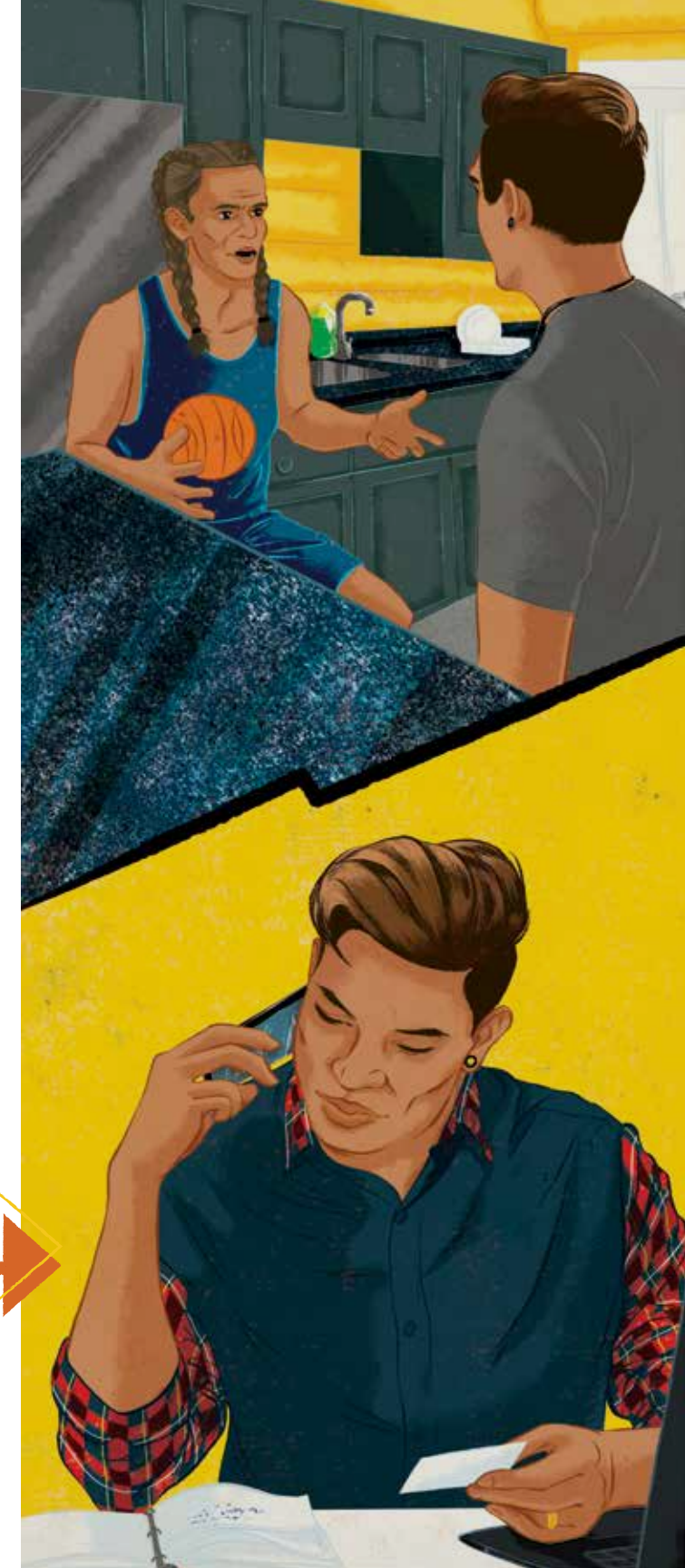
You can't sell, transfer, **encumber** (place a legal claim or financial charge, like a mortgage, against a property), or do anything that affects your interests or your spouse's interests in the family home, unless you have your spouse's **consent** (agreement). This means:

- the consent must be in writing
- your spouse must understand what they're agreeing to
- they must give their consent **freely** (they can't be tricked or forced into agreeing)

If you and your spouse can't agree about how the family home and other matrimonial interests will be divided, you can apply to court for an order to divide the property. You have to apply within three years from when you stopped living with your spouse.

Make sure you understand what to do in your situation. Talk to a lawyer. Contact Legal Aid BC to find out if you qualify for legal aid. See Get More Help for contact information.

My husband, Sam, wants me to leave our home on reserve. I don't agree with him about selling it. I phoned Legal Aid BC to find out what I can do. They said Sam has to get my consent — that means I have to agree to sell it — and Sam has to get my agreement in writing. If we can't agree and if I qualify for legal aid, they can help me with what I can do next.



If You and Your Spouse Separate

You and your spouse have equal rights to stay in the family home until you separate.

After you separate, you can apply to the court for an **exclusive occupation order**. An exclusive occupation order means you and your children can stay in the family home for a period of time, and your spouse may have to leave the family home.

For example, if you look after your children most of the time, the court may say you can stay in the family home with them to protect their best interests. Your spouse may have to move out. The court decides what's best for your children.

If your spouse is abusive

If you left your home because of **family violence** (abuse that's emotional, psychological, physical, sexual, and/or financial), you may still have the right to live in the home. It doesn't matter that you were the one to leave. It also doesn't matter whether or not you're a First Nation member or status Indian. You can:

- apply to court for an exclusive occupation order to stay in the family home, with your children
- apply to court to get your fair share of the value of the family home

Jim and I started living together last year when I moved to his reserve with my two kids. He gets mad when they make a lot of noise, and I'm afraid he might hurt them one day. If things get bad, I might have to leave with the kids, but we don't want to move back to our old reserve. A friend said I should call Legal Aid BC. I applied for legal aid and found out the court could make Jim leave the house, and me and the kids can maybe stay. The legal aid lawyer can help me with all that.



My boyfriend just died. We lived together for a long time on our reserve, but I don't know if he had a will. My kids and I want to keep living where we are. When I talked to Legal Aid BC, they told me the law says we can stay in our home for up to 180 days. The court may let us live in our home even after that. I just have to apply for what's called an exclusive occupation order. I qualify for legal aid so they can help me get the order. That's a big relief. Then I'll find out from them what to do next.

If Your Spouse Dies

Whether or not you're a First Nation member or status Indian, if your spouse dies:

- you can stay in the family home for 180 days
- if you get an exclusive occupation order, you may be able to stay in the family home for a longer period, especially if you have children
- you may get a share of the value of your matrimonial real property interests or rights if you apply to court within 10 months from the day your spouse died

If you aren't a First Nation member, property can't be transferred to you. But you may get a share in the value of your matrimonial real property.

Your rights as the surviving spouse may also be affected if your spouse has a legal will, or by estate rules under the Indian Act.



Get More Help

Aboriginal Legal Aid in BC
aboriginal.legalaid.bc.ca

This website has information, videos, and free publications about legal issues that affect Indigenous peoples living on reserve and off reserve.

Band office

Contact your band office for more information. Find out if your community has made its own matrimonial real property laws.

Centre of Excellence for
Matrimonial Real Property
coemrp.ca
1-855-657-9992

The centre gives information on the protections and rights available to individuals and families who live on reserve.

Legal Aid BC
legalaid.bc.ca
604-408-2172 (Greater Vancouver)
1-866-577-2525 (elsewhere in BC)

You may find it difficult to figure out these matters on your own. Legal Aid BC provides legal aid if you qualify. Tell Legal Aid BC if you're leaving an abusive spouse.

  @legalaidbc

Who Can Stay in the Family Home on Reserve

If You and Your Spouse Separate / If Your Spouse Dies



Legal Aid BC

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