

*Nipissing First Nation  
Matrimonial Real Property Law*

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Preamble

- A. Whereas the Nipissing First Nation has taken control of its reserve lands and resources pursuant to the *Framework Agreement on Nipissing First Nation land Management*, and has enacted the *Nipissing First Nation land Management Code* which came into force and effect on July 1, 2003;
- B. And whereas, pursuant to the *Framework Agreement*, the First Nation agreed to enact rules and procedures, applicable on the breakdown of a marriage, to the use, occupancy and possession of Nipissing First Nation land, and the division of interests in the said land;
- C. And whereas the Nipissing First Nation intends to provide rights and remedies, without discrimination on the basis of sex, with respect to spouses who have or claim interests in Nipissing First Nation land upon the breakdown of their marriage;
- D. And whereas the Nipissing First Nation intends to respect the following principles with respect to the use, occupancy of matrimonial real property on Nipissing First Nation land, and the division of interests in that land on the breakdown of a marriage:
- i) Firstly, the right of the parties to a marriage to make their own agreement as to the disposition of interests in Nipissing First Nation land in the event that their marriage breaks, or has broken down;
  - ii) Secondly, the value of mediation where the parties have not or are unable to reach their own agreement as described above; and
  - iii) Thirdly, the right of the parties to have access to a court of competent jurisdiction to deal with all their property rights, entitlements and obligations on the breakdown of their marriage, subject to First Nation law where their property includes an interest in Nipissing First Nation land.
- E. And whereas it is also the desire of the Nipissing First Nation to insure the Nipissing First Nation land remains for the use and benefit of its members for all time.

**IT IS THEREFORE ENACTED AS LAW OF THE NIPISSING FIRST NATION:**

**PART ONE**  
**APPLICATION OF LAW**

1. This law may be cited as the *Nipissing First Nation Matrimonial Real Property Law*.
2. This law applies only to interest in, or claimed pursuant to this law in, Nipissing First Nation land as that term is defined in the *Nipissing First Nation Land Management Code*.
3. Subject to its terms, this law shall not be construed as limiting or 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 with respect to any property other than interests in Nipissing First Nation land, or other entitlement or obligations of spouses.
4. For the purposes of this law, the following definitions shall apply:
  - (1) **“child”** includes a child born out of wedlock, a legally adopted child and a child adopted in accordance with the *Nipissing First Nation Band Custom Adoption*.
  - (2) **“Council”** means the Chief and Council of the Nipissing First Nation
  - (3) **“domestic contract”** includes:
    - (a) A **“marriage contract”** entered into between two people who are married to each other, or intend to marry, made in writing and signed by the parties and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of interests in Nipissing First Nation land; and
    - (b) A **“separation agreement”** entered into between two people who are married to each other and are living separate and apart, made in writing and signed by the parties and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of interests in Nipissing First Nation land.
  - (4) **“interest in Nipissing First Nation land”** includes any legal or equitable interest held in possession by either spouse, or both spouses, in Nipissing First Nation land.
  - (5) **“Chief and Council”** means the Chief and Council of Nipissing First Nation;

- (6) **“matrimonial home”** means an interest in Nipissing First Nation land that is or, if the spouses have separated, was at the time of separation, ordinarily occupied by the person and his or her spouse as their family residence; and, where a parcel of Nipissing First Nation land that is an interest in Nipissing First Nation land for purposes of this law includes a matrimonial home and is normally used for a purpose other than residential, the matrimonial home is only the part of the interest in Nipissing First Nation land that may reasonably be regarded as necessary to the use and enjoyment of the family residence.
- (7) **“member”** means a person who is defined as a “member” by the terms of the *Nipissing First Nation Membership Code*
- (8) **“spouse”** means a person who:
- (a) is married to another, whether by a traditional customary, religious or civil ceremony, and includes a Spouse by Common-Law Partnership; or
- (b) have together entered into a marriage that is voidable or void, in good faith on the part of a person relying on this clause to assert any right under this law.
5. For greater certainty, a spouse does not have an election, on the death of the other spouse, to claim, take or pursue an interest in Nipissing First Nation land held by the other spouse under this law, and his or her interest will be determined by the will or administration of the estate of the other spouse.

## **PART TWO**

### **DOMESTIC CONTRACTS**

6. It is the purpose and intention of this law to respect the agreement of the parties to a marriage as to the use, possession, occupancy, disposition or partition of an interest in Nipissing First Nation land, including an interest that is a matrimonial home.
7. Subject to this Part, a provision in a domestic contract that reflects the agreement of the parties with respect to an interest in Nipissing First Nation land, including an interest that is a matrimonial home, is valid, binding and enforceable.
8. (1) Notwithstanding section 7, a provision in a domestic contract that would give, award, acknowledge or create an interest in Nipissing First Nation land greater than a life estate to occupy or possess the matrimonial home in Nipissing First Nation land, in favour of a spouse who is not a member, is void.

- (2) In applying this section, a valid life estate to possess or occupy an interest in Nipissing First Nation land may be measured only by the life of the person intended to enjoy it.
9. Subject to this law, a court of competent jurisdiction may, on application under Part Four, set aside a provision of a domestic contract with respect to an interest in Nipissing First Nation land:
- (a) if a party failed to disclose to the other all of his or her interests in Nipissing First Nation land, or any material information in respect of those interests,
- (b) if a party did not understand the nature or consequences of the provision, or
- (c) Otherwise in accordance with the law of contract.
10. This Part applies whether the domestic contract was entered into by the parties on, before or after the date that this law comes into force and effect.

### **PART THREE**

#### **COMPULSORY FIRST NATION MEDIATION**

11. It is the intention of this Part that spouses who, on the breakdown of their marriage, do not have and are unable to conclude a domestic contract with respect to interests in Nipissing First Nation land, submit to mediation in respect of interests in Nipissing First Nation land under the direction of the Council of the Nipissing First Nation.
12. The Chief and Council is authorized by this law to create and maintain a roster of qualified mediators available to spouses to assist them in resolving disputes about interests in Nipissing First Nation land, and a current copy of that roster shall be posted in the office of the Lands Manager of Nipissing First Nation.
13. Spouses who do not have or are unable to conclude a domestic agreement may initiate their own mediation with respect to interests in Nipissing First Nation land and it is recommended that they use the services of a mediator whose name appears on the roster of qualified mediators.
14. A spouse who does not have and is unable to conclude a domestic agreement with the other spouse may request mediation by filing a notice of request for mediation, in the designated form and with proof of service on the other spouse, with the Lands Manager.

15. It is the responsibility of the spouse requesting mediation to ensure that the notice referred to in section 14 is served on the other spouse before it is delivered to the Lands Manager. For greater certainty, service may be affected by personal service, by delivery to a solicitor representing the other spouse in the matter of the breakdown of the marriage, as provided in a domestic contract, or by registered mail to the address where the other spouse is known or believed to be residing. Service by registered mail shall be deemed to be effected four days after the day the notice is mailed. By advertisement in local newspaper of last location of residence.
16. Upon receipt of a notice of request for mediation, the Lands Manager shall forthwith deliver it to the Chief and Council, which is authorized to arrange for a qualified mediator to be available to the parties within 30 days after the notice referred to in section 14 is filed. That period may be extended by the Chief and Council:
  - (a) at the joint request of the parties; or
  - (b) where the Chief and Council is unable to secure the services of a qualified mediator to be available to the parties within the 30 days period.
17. Notice of an appointment for mediation shall be delivered to both spouses by the Chief and Council no later than 10 days before the date of the appointment, and a copy of the notice shall also be delivered to the Lands Manager.
18. A spouse who receives a notice of appointment with a mediator has a duty to attend the mediation.
19. Each spouse is obliged to pay his or her equal share of the costs of mediation.
20. The mediator shall proceed expeditiously with the mediation and use best efforts to assist the parties in resolving any and all issues with respect to interests in Nipissing First Nation land.
21. Where the mediation is successful, the agreement of the parties with respect to interest in Nipissing First Nation land shall be reduced to writing in a separation agreement, and that agreement shall expressly provide that each party waives all rights to challenge its provisions pursuant to section 9.
22. A separation agreement for the purposes of section 21 shall include provision for all interests in Nipissing First Nation land held by either spouse, or both spouses, and shall be a sufficient domestic contract for purposes of this law if it deals only with those interests.

23. Where mediation is successful, the mediator shall report this fact to the Chief and Council, which in turn shall notify the Lands Manager of the successful mediation.
24. Where the mediation is unsuccessful, the mediator shall deliver a confidential report to the parties and to the Chief and Council upon the mediation and the points remaining in dispute between the parties with respect to interests in Nipissing First Nation land.
25. At the conclusion of an unsuccessful mediation under this Part, the Chief and Council shall provide a certificate to the parties and to the Lands manager, which may be:
  - (a) a certificate of compliance with this Part; or
  - (b) a certificate of waiver in favour of the spouse requesting the mediation in circumstances where the Chief and Council reasonably concludes that the other spouse cannot be located, is avoiding or ignoring service of documents or otherwise refused to participate in the mediation.
26. For the purposes of this Part, the Chief and Council is authorized to prescribe rules, procedures and forms as necessary.

## **PART FOUR**

### **ACCESS TO A COURT OF COMPETENT JURISDICTION**

#### **A. GENERAL RULES**

27. For the purposes of this Part, “**court of competent jurisdiction**” and “**court**” refer to the Ontario Superior Court of Justice or the Unified Family Court in Ontario
28. For greater certainty, no court other than a court of competent jurisdiction shall exercise jurisdiction under this law in respect of interests in Nipissing First Nation land
29.
  - (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 Nipissing First Nation land provided that he or she has first complied with Part Three.
  - (2) The Court shall enquire into the particulars of any mediation, or attempted mediation and may, in appropriate circumstances, direct that the parties participate in a mediation with respect to any interests in Nipissing First Nation land on such terms and conditions as the court deems fit.



30. Subject to this law, a court of competent jurisdiction may deal with interests in Nipissing First Nation land held by either spouse, or both spouses, in a manner consistent with the provisions of the *Family Law Act*, (Ontario) relevant 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.
31. Notwithstanding section 30, the fact that an interest in Nipissing First Nation land does not include future or contingent interests in Nipissing First Nation land shall not be taken to confer jurisdiction upon a court over such interests under this law.
32. Notwithstanding section 31, the rules applicable under this law to interests in Nipissing First Nation land received by way of gift or inheritance apply, except with respect to an interest in Nipissing First Nation land that is a matrimonial home.
33. Notwithstanding section 32 the court may make any appropriate and equitable order on the ground of unconscionability where a spouse has intentionally, recklessly or fraudulently depleted his or her net family property that is an interest in Nipissing First Nation land.
34. Subject to this law, the court may make any order in relation to interests in Nipissing First Nation land held by a spouse, or by both spouses, including in appropriate circumstances:
  - (a) an order that an interest in Nipissing First Nation land be transferred to a spouse absolutely, where permitted under this law,
  - (b) an order that an interest in Nipissing First Nation land 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 the circumstances; or
  - (c) an order that an interest in Nipissing First Nation land held by both spouses be partitioned or partitioned and sold.
35. An order shall not be made under paragraph 34 (a) in favour of a spouse who is not a member.
36. Where an order is made under paragraph 34(a), the Lands Manager of the Nipissing First Nation may make provision for a survey and for the allocation of the costs of the transaction unless the court has already made an order to that effect.

37. Subject to this law, a spouse may apply to the court for determination of a question between him and her and his or her spouse in relation to the right to possession of an interest in Nipissing First Nation land, and the court may make:
- (a) an order declaring the right of possession to the interest in Nipissing First Nation land, and
  - (b) any order that could be made under section 34 in respect of that interest in Nipissing First Nation land.
38. Where the interest of a spouse in Nipissing First Nation land is held through a corporation, the court may order that he or she transfer shares in the corporation to the other spouse or have the corporation issue shares in the corporation to the other spouse.
39. An order shall not be made under this Part so as to require the sale of an operation business or farm on Nipissing 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.
40. Where a proceeding has been commenced under this Part, and either spouse dies before all issues relating to interests in Nipissing First Nation land have been disposed of by the court, the surviving spouse may continue the proceeding against the estate of the deceased spouse.
41. For greater certainty, a "spouse" for the purposes of applying for relief from a court includes a former spouse after the marriage has been dissolved by decree absolute of divorce or by judgment of nullity.
42. 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.
43. 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 deal expressly or implicitly with interests in Nipissing First Nation land and to that extent this law applies.
44. It is the intention of this law that all rights, entitlements and obligations of spouses be dealt with equitably on the basis of totality of their circumstances, including rights, entitlements and obligations in respect of interest in Nipissing First Nation land, but subject to the special provisions set out in this law.

**B. MATRIMONIAL HOME**

45. Whether or not an interest in Nipissing First Nation land is a matrimonial home is a question of fact, and, for greater certainty, the provisions of the *Family Law Act* (Ontario) dealing with the designation of a matrimonial home do not apply in respect of interests in Nipissing First Nation land.
46. Both spouses have an equal right to possession of a matrimonial home.
47. When only one spouse holds an interest in Nipissing First Nation land that is a 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 contract or court order provides otherwise.
48. No spouse shall dispose of or encumber an interest in Nipissing First Nation land that is a matrimonial home unless:
  - (a) the other spouse joins in the instrument or consents to the transaction;
  - (b) the other spouse has released all rights in respect of that interest by domestic contract; or
49. If a spouse disposes of or encumbers an interest in Nipissing First Nation land that is a matrimonial home in contravention of section 48, 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.
50. When a person proceeds to realize upon an encumbrance or execution against an interest in Nipissing First Nation land that is a matrimonial home, the spouse who has a right of possession under section 47 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.
51. The court may, on the application of a spouse or a person claiming an interest in Nipissing First Nation land that is a matrimonial home:
  - (a) make a declaration whether or not the interests in Nipissing First Nation land is a matrimonial home;


- (b) authorize a disposition or encumbrance of the interest in Nipissing First Nation land, provided that such disposition or encumbrance is otherwise authorized under First Nation law, 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, and the court may prescribe conditions including the provision of other comparable accommodation, or payment in place of it, that the court considers appropriate; or
  - (c) dispense with a notice required to be given under section 50;
  - (d) make an order under section 49, subject to such terms and conditions as the court determines to be equitable and just in all the circumstances.
52. Regardless of which spouse holds an interest in Nipissing 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 Nipissing First Nation land that is a matrimonial home;
  - (b) direct that one spouse be given exclusive possession of the interest in Nipissing First Nation land that is a matrimonial home, or part of it for such period as the court may direct consistent with this law, and release any other interest in Nipissing First Nation land that is a matrimonial home from the application of this part;
  - (c) authorize a disposition or encumbrance consistent with First Nation law of a spouses interest in Nipissing First Nation land that is a matrimonial home, subject to the other spouse's right of exclusive possession as ordered;
  - (d) where it appears that a spouse has disposed of or encumbered an interest in Nipissing 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 Nipissing First Nation land is not a matrimonial home direct the other spouse to substitute other interests he or she holds in Nipissing 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.

53. A court, in considering whether to direct that one spouse have exclusive possession of an interest in Nipissing First Nation land that is a matrimonial home shall be guided by the principle that the custody parent of a child should have exclusive possession of the family residence for a period of sufficient time to ensure that the child, or the youngest child if there is more than one child, reaches the age of majority, provided that observance of this principle is consistent with the best interests of the child.
54. Where both parents share joint custody of a child or children, the principle set out in section 53 shall be adapted to favour the spouse with whom the child or children principally reside, and if the child or children reside substantially equal periods of time with both spouses, then the principle shall be neutral as between them
55. In applying the principles set out in section 53 and 54, the court may have regard to the fact that one or more of the minor children are not members.

#### **PART FIVE** **GENERAL PROVISIONS**

56. An interest in Nipissing First Nation land received by way of a gift or inheritance by one spouse only from a third person who is a family member, or by one spouse only together with one or more members of that family, shall be deemed, subject to proof to the contrary, to have been transferred with the intention that the interest should continue to be held within that family exempt from any claim of the other spouse, and subject to the intention that the interest, the income from the interest and the value of the interest are to be excluded from the transferee spouse's net family property.
57. The possession of an interest in a matrimonial home on Nipissing First Nation under this law by a person who is not a member is not assignable and shall be deemed to terminate when that person ceases to use or occupy that interest personally.
58. (1) A person who contravenes an order made by a court of competent jurisdiction pursuant to this law in relation to an interest in Nipissing First Nation land is guilty of an offence and liable, on summary conviction, 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.
- (2) A fine payable under this section shall be remitted to the Nipissing First Nation by the court, after reasonable court costs have been deducted.

This law shall come into force and effect on the June day of 19th 2007.


  
\_\_\_\_\_  
Chief Marianna Couchie

  
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Deputy Chief Meriza George

  
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Councillor Rick Stevens

  
\_\_\_\_\_  
Councillor Michael Restoule

  
\_\_\_\_\_  
Councillor Darrell McLeod

  
\_\_\_\_\_  
Councillor Doug Chevrier

  
\_\_\_\_\_  
Councillor June Commanda

\_\_\_\_\_  
Councillor Perry McLeod-Shabogesic



BAND COUNCIL RESOLUTION

Council of the Nipissing First Nation

Chronological Number  
LNS 2130

Date of July convened meeting June 9 2007

DO HEREBY RESOLVE

FIRST NATION

**MATRIMONIAL REAL PROPERTY LAW**

WHEREAS Nipissing First Nation has taken control of its reserve lands and resources pursuant to the Framework Agreement on First Nation Land Management, enacted the Nipissing First Nation Land Code which came into force and effect on July 1 2003.

AND WHEREAS pursuant to the Framework Agreement the First Nation agreed to enact rules and procedures, applicable on the breakdown of a marriage to the use occupancy and possession of First Nation land, and the division of interests in that land, by amendment to its Land Code or by First Nation law.

AND WHEREAS Nipissing First Nation intends to honour its undertaking to provide rights and remedies to the use, occupancy or possession of matrimonial real property on Nation land, and the division of interests in that land on the breakdown of a marriage:

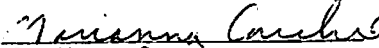
AND WHEREAS Nipissing First Nation intends to respect the following principles with respect to the use, occupancy or possession of matrimonial real property on Nation land, and the division of interests in that land on the breakdown of a marriage.


Firstly, the right of the parties to a marriage to make their own agreements as to the disposition of interests in First Nation land in the event that their marriage does, or has broken down.

Secondly, the value and necessity for mediation where the parties have not or are unable to reach their own agreement as described above and

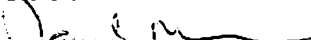
Thirdly, the right of the parties to have access to a court of competent jurisdiction to deal with all of their property, rights, entitlements and obligations on the breakdown of their marriage, subject to First Nation law where their property includes interest in Nation land.

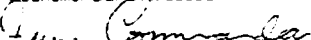
IT IS THEREFORE ENACTED AS A LAW OF NIPISSING FIRST NATION

  
Chief Marianna Couchie

  
Deputy Chief Mariza George


  
Councillor Rick Stevens

  
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