

MATSQUI FIRST NATION

MATRIMONIAL REAL PROPERTY LAW

PREAMBLE-

WHEREAS the Matsqui First Nation, also known as the Matsqui Indian Band, (the “First Nation”), has an inherent right to self-government which emanates from its people, culture, language, and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;

WHEREAS our First Nation, as an aspect of our inherent right of self-government, has the jurisdiction to address real property issues such as matrimonial matters upon the breakdown of marriage and common law relationships, and this inherent right has not been extinguished;

WHEREAS our First Nation also chose to assume control of its Indian reserve lands pursuant to the *First Nation Lands Management Act*, S.C. 1999, c. 24 by entering into the *Individual Agreement on First Nation Land Management between Matsqui First Nation and Her Majesty the Queen in Right of Canada* and by adopting the Land Code.

WHEREAS section 40 of the Land Code requires our Nation to adopt this Law;

WHEREAS our First Nation encourages its members to resolve any matrimonial property issues internally, with the assistance of family, other community members or other individuals before turning to the courts;

WHEREAS our First Nation wishes to see matrimonial real property disputes resolved in a way that is as fair as possible to both spouses, and wherever possible, in a way that is in keeping with the best interests of their children;

WHEREAS our First Nation has chosen for this Law to apply to common law married spouses and same-sex couples;

WHEREAS it is essential to the health and survival of our First Nation that we maintain our community and existing lands; and

WHEREAS this Law will apply in conjunction with applicable federal and provincial laws concerning the division of personal property, real property off-reserve, spousal support, child support, and divorce.

NOW THEREFORE the First Nation hereby enacts the following Law:

PART I

INTERPRETATION AND APPLICATION

A. Short Title

1. This Law may be cited as the "Matsqui First Nation Matrimonial Property Law".

B. Interpretation

2. For the purposes of this Law, the following definitions shall apply:

"Certificate of Home Ownership" means the certificate registered in the Matsqui Lands Register evidencing ownership of the house located on a portion of First Nation Land by a Member pursuant to the provision of the Matsqui First Nation Policies and Procedures or an allocation under the Land Code. No ownership will be legally valid and enforceable unless a Certificate of Home Ownership has been registered in the name of the Member;

"Child" means a person under the age of nineteen (19) who is

- (a) the offspring of at least one Spouse, or
- (b) adopted, under Canadian law or Aboriginal custom, by at least one Spouse and it includes "children";

"Common-law Marriage" means two individuals not married to each other that have continuously lived together as Spouses for a period of not less than five years;

"Council" means the lawfully elected Council of the First Nation;

"Councillor" means a lawfully elected Councillor of the First Nation;

"Court" means the Supreme Court of British Columbia;

"Divorce Act" means the *Divorce Act*, R.S.C., 1985, c. 3 (2nd Supp.) as amended over time or any future law enacted in replacement of it;

"Domestic Contract" means:

- (a) an agreement between Spouses, entered into when they were married or when they intended to marry, made in writing and signed by the parties and witnessed by an individual who is at least 19 years of age, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of Matrimonial Property;
- (b) an agreement between Spouses who are living together in a marriage-like relationship, entered into during the Relationship or in contemplation of the

Relationship, made in writing and signed by the parties and witnessed by an individual who is at least 19 years of age, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of Matrimonial Property; or

- c) a separation agreement between Spouses who are living separate and apart, made in writing and signed by the parties and witnessed by an individual who is at least 19 years of age, in which they agree on their respective rights and obligations on separation with respect to the possession or division of Matrimonial Property;

“Eligible Voter” means, for the purpose of voting in respect of land matters under the Land Code, a member who is eligible to vote under the Matsqui First Nation Custom Election Regulations and Procedures;

“Family Relations Act” means the *Family Relations Act*, R.S.B.C., 1996 c. 128 as amended from time to time or any future law enacted in replacement of it;

“First Nation” means the Matsqui First Nation;

“First Nation Land” means any portion of a the First Nation’s reserve land that is subject to the Land Code;

“First Nation Land Register” means the register maintained by the Department of Indian Affairs and Northern Development under clause 51.1 of the Framework Agreement;

“Framework Agreement” means the Framework Agreement on First Nation Land Management entered into between the Government of Canada and fourteen First Nations on February 12, 1996, as amended;

“Governing Body” means the Governing Body established under clause 2.1 of Appendix K of the Matsqui First Nation Custom Election Regulations and Procedures;

“Immediate Family” means, in respect of an individual, the individual’s parent, Spouse, sister, brother or child;

“Individual Agreement” means the Individual First Nation Agreement made between the First Nation and Her Majesty in right of Canada in accordance with clause 6.1 of the Framework Agreement;

“Instrument” means a formal legal document;

“Interest in First Nation Land” means any lease or sub-lease or easement held by either or both spouses held under *Matsqui First Nation Land Code*, but does not include rental agreements for First Nation property. For greater certainty, where

there is a Matrimonial Home affixed to the Matsqui Nation Land that is the subject of the Interest, the Interest includes only the Matrimonial Home and not the land;

“Land Code” means the *Matsqui First Nation Land Code*;

“Lands Committee” means the Matsqui Lands Committee established under section 14.1 of the Land Code;

“Lands Manager” means the First Nation employee responsible for administration of First Nation Land;

“Law” means this Matrimonial Real Property Law;

“Licence on Matsqui First Nation Land” means any permit or licence held by either or both spouses held under *Matsqui First Nation Land Code*, but does not include rental agreements for First Nation property;

“Matrimonial Home” means an affixed dwelling that is ordinarily used for a family purpose and is:

- (a) owned by one or both Spouses as evidenced by a Certificate of Home Ownership, and
- (b) located on First Nation Land;

“Matrimonial Property” means:

- (a) an Interest in First Nation Land or a Licence of First Nation Land that is held by one or both Spouses and that was acquired during the Relationship;
- (b) any increased value during the course of the Relationship of an Interest in First Nation Land that is held by one or both Spouses and that was acquired prior to the Relationship;
- (c) Matrimonial Homes;
- (d) but does not include an Interest in First Nation Land of Licences on First Nation Land that was received by way of gift or inheritance by only one Spouse from a third person or by only one Spouse together with one or more family members, unless the Interest in First Nation land includes a Matrimonial Home;

“Matsqui Lands Register” means the register of First Nation Lands which is part of the First Nations Land Register established and maintained by Canada and held in the Registry at the National Capital Region;

“Meeting of Members” means a meeting under section 25 of the Land Code;

“Member” means a person whose name appears on the First Nation’s membership list;

“Relationship” means

- (a) in the case of married Spouses, the period during which the Spouses are married;
- (b) in the case of common law Spouses, the period during which the Spouses continuously live together, starting five (5) years after they began living together;

“Spouse” means a person who is married to another person, whether by custom, religious or civil ceremony, and includes a Spouse by Common-law Marriage; and

“Sub-Lease” means Leasehold in which the person transferring the interest is the lessee in a prior existing Lease.

C. Application

- 3. This Law applies only to First Nation Land.
- 4. This Law does not apply to an Interest in First Nation Land or Licence on First Nation Land held by one or both Spouses where neither Spouse is a Member.
- 5. For greater certainty,
 - (1) a Spouse cannot commence legal proceedings after the death of the other Spouse under this Law, and his or her rights in relation to an Interest in First Nation Land, a Licence on First Nation Land or a Matrimonial Home will instead be determined by the applicable law governing the estate of the deceased Spouse; and
 - (2) where a Spouse dies, the other Spouse may continue any legal proceedings under this Law which were started before the death of that Spouse.

PART II - DOMESTIC CONTRACTS

6. Subject to sections 7, 8 and 9, a provision in a Domestic Contract that reflects the agreement of the Spouses with respect to an Interest in First Nation Land, a Licence on First Nation Land or a Matrimonial Home is valid, binding, and enforceable by the Court, whether the Spouses entered into the Domestic Contract before or after this Law came into force.

7. If the Domestic Contract transfers an Interest in First Nation Land, a partial Interest in First Nation Land, a Licence on First Nation Land, in whole or in part, or a

Certificate of Home Ownership, it must be registered in the Matsqui Lands Register in order to be enforceable.

8. A Domestic Contract may provide an Interest in First Nation Land or grant rights to a Matrimonial Home to a Spouse or Child who is not a Member, but such Interest in First Nation Land and such rights shall not in any case be greater than a life estate measured by the life of the individual intended to enjoy it. For greater certainty, a provision creating, or intended to create, any greater interest than a life estate in respect of a non-Member is void.

9. Subject to this Law, the Court may, on application by a Spouse, set aside a Domestic Contract or any provision therein concerning an Interest in First Nation Land, a Licence on First Nation Land or a Matrimonial Home upon making a determination that:

- (1) a Spouse failed to disclose to the other Spouse any material information in respect of his or her Interest in First Nation Land, a Licence on First Nation Land or a Matrimonial Home;
- (2) a Spouse did not understand the nature or consequences of the Domestic Contract or provision;
- (3) the Domestic Contract or provision is unconscionable, was entered into under duress, or on the basis of undue influence or fraud; or
- (4) any other common law requirement or statutory for a legal and binding contract has been breached or has not been met.

10. Section 9 only applies to formerly married Spouses who have been divorced for less than two years and to Spouses who have been living separate and apart for less than one year.

Part III

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 their Interest in First Nation Land, a License on First Nation Land or Matrimonial Property, shall utilize mediation in order to resolve the issues in dispute.

12. For the purposes of this Part, the Lands Committee shall provide a list of five qualified mediators to the Governing Body.

13. Spouses who do not have or are unable to conclude a Domestic Contract may jointly initiate mediation, in which case it is intended that the Spouses utilize the services of a mediator whose name appears on the list referred to in section 12.

14. The mediator shall proceed expeditiously with the mediation and shall use his or her best efforts to assist the Spouses to resolve all issues in dispute affecting an

Interest in First Nation Land, a Licence on First Nation Land or Matrimonial Property.

15. Where the mediation is successful, the agreement of the Spouses shall be reduced to writing in a Domestic Contract, and the Domestic Contract shall expressly provide that each Spouse waives all rights to challenge its provisions under section 9.

16. Where the mediation is successful, the mediator shall report that fact to the Lands Manager who shall notify the Lands Committee and the Governing Body.

17. Where the mediation is unsuccessful, the mediator shall deliver to each of the Spouses and to the Lands Manager, unless the Lands Manager is in a conflict of interest due to one of the Spouses being a Member of his or her Immediate Family, in which case it will be delivered to the Governing Body, a confidential report on the mediation and the points remaining in dispute between the Spouses.

18. For greater certainty, nothing in this Part is intended to limit the right of a Spouse to seek other or further alternative dispute resolution or resolution by the Court.

PART IV

ACCESS TO ARBITRATION OR A COURT OF COMPETENT JURISDICTION

A. General Rules

19. Where Spouses are unable to resolve their differences regarding any matter addressed in this Law, they may refer the matter to binding arbitration or apply to the Court for a resolution of their dispute.

20. (1) Any Spouse who seeks a court order based on any provision in this Law, must promptly serve the Lands Manager with a copy of the documents filed with the Court, who will convey them to the Governing Body;

(2) At the request of the Governing Body, the Court shall, before making its decision, allow the Governing Body to make representations with respect to the cultural, social and legal context that pertains to the application and to present its views about whether or not the order sought should be made.

21. When a Court makes any order under this Law, the Spouse in whose favour the order is made shall provide, without delay, a copy of the order to the Lands Manager who shall convey it to the Governing Body.

B. Ownership and Division of Matrimonial Property

22. Sections 19 and 20 only apply to formerly married Spouses who have been divorced for less than two years and to former common law Spouses who have been living separate and apart for less than one year.

23. (1) Subject to this Law, the Court may make any determination concerning interests in Matrimonial Property and the division of those interests and may make orders or declarations that are necessary, reasonable or

ancillary to give effect to the determination, including, in appropriate circumstances:

- (a) a declaration as to whether the property at issue is in fact Matrimonial Property;
 - (b) if a Spouse is a Member, an order that Matrimonial Property be transferred to that Spouse exclusively or proportionally;
 - (c) an order that one Spouse lease a Matrimonial Home to the other Spouse for a fixed period of time, subject to such conditions as the Court deems just in all the circumstances;
 - (d) an order that a Member Spouse make a compensatory payment to the Spouse who is not a Member to recognize the contribution which the non-Member Spouse has made to the acquisition, upkeep, or betterment of the Matrimonial Property;
 - (e) an order that restrains either Spouse from disposing of or transferring their interest in the Matrimonial Property, either legally or beneficially, pending the trial of the action; or
 - (f) an order that one Spouse pay compensation to the other Spouse if an interest in a Matrimonial Property has been disposed of, for the purpose of dividing the Matrimonial Property;
 - (g) any appropriate equitable order where one Spouse has intentionally, recklessly, or fraudulently depleted or diminished the value of the Matrimonial Property.
- (2) For greater certainty, the Court may not make any declaration or order that provides a person who is not a Member with any permanent Interest in First Nation land or any permanent interest in a Matrimonial Home.
 - (3) In making any order under subsection (1)(a)-(g), the Court shall begin with the presumption that each Spouse is entitled to an equal share of the Matrimonial Property, or in the case of a Spouse who is not a Member, an equal share of the value of the Matrimonial Property, and then consider whether this presumption should be varied in light of any of the following factors:
 - (a) the date when the Matrimonial Property was acquired or disposed of;
 - (b) the duration of the Relationship;
 - (c) the duration of the period during which the Spouses have lived separate and apart;
 - (d) the needs of each Spouse to become or remain economically independent;

- (e) direct financial contributions of each Spouse toward the acquisition, upkeep, improvement or betterment of the Matrimonial Property;
 - (f) the direct or indirect contribution of each Spouse to the acquisition, upkeep, improvement or betterment of the Matrimonial Property, including through child rearing responsibilities.
 - (g) any relevant order or award that the Court is making or has previously made for the Spouses pursuant to the *Family Relations Act* or the *Divorce Act*.
 - (h) provisions for the care of a Child who resides in the Matrimonial Home or utilizes the Matrimonial Property; and
 - (i) any other factor which the Court considers relevant to an equitable division of the Matrimonial Property.
- (4) In making any compensation order under subsection (1)(f), the Court shall:
- (a) not make any order until it has been provided with at least one valuation of the Matrimonial Property that has been prepared by a qualified appraiser, and which accounts for the limitations on the rights associated with the Matrimonial Property; and
 - (b) not make an order if a Spouse who is a Member demonstrates that the order is likely to force that Spouse to move out of the Matrimonial Home, unless the Court concludes that the order is unlikely to cause the other Spouse undue hardship.

24. Where the interest of a Spouse in Matrimonial Property is held through a corporation or other entity, the Court may order that he or she transfer shares in the corporation, or an interest in that other entity to the other Spouse.

25. Nothing in this Law relieves a party of the requirement to observe the rules and procedures of the Court.

26. Where any order is made under subsection 23(1) which transfers the ownership of an Interest in First Nation Land, a Licence on First Nation Land or a Certificate of Home Ownership, the Spouse who benefits from that order shall promptly provide a copy of the order to the Lands Manager who will register the order in the First Nation Lands Register. The Lands Manager and registrar of the First Nation Lands Register shall take all steps as are necessary to give effect to the order.

C. Matrimonial Home

27. Subject to the provisions below, both Spouses have an equal right to occupy the Matrimonial Home.

28. No Spouse shall dispose of or encumber a Matrimonial Home unless:

- (1) the other Spouse joins in the instrument or consents to the transaction;

- (2) the other Spouse has released all rights to the Matrimonial Home by way of an enforceable Domestic Contract; or
- (3) a Court order has authorized the transaction or has released the Matrimonial Home from the application of this section.

29. If a Spouse disposes of or encumbers a Matrimonial Home in contravention of section 28, the transaction may be set aside on an application to the Court.

PART V

AMENDING PROCEDURES

30. (1) The Governing Body may adopt minor amendments to the Law by unanimous decision at a duly convened meeting.
- (2) For the purpose of subsection (1), minor amendments include:
- (a) amendments to correct typographical errors;
 - (b) amendments required to reference any relevant new or amended First Nation laws;
 - (c) amendments ordered by any court of competent jurisdiction; and
 - (d) amendments which serve to clarify the Law, where there is no reasonable dispute about the intention underlying the original provision.
- (3) This Law may only undergo substantive amendments by the consent of the majority of First Nation eligible voters at a meeting convened by the Governing Body for the purpose of amending this Law provided that thirty percent (30%) of the First Nation Eligible Voters are present and over fifty percent (50%) of those at the meeting vote in favour of the amendments.
- (4) The Governing Body shall provide to Members, in writing, the wording of the proposed amendment and the date for the Members' meeting at least fourteen (14) days before the meeting.

PART VI

GENERAL PROVISIONS

31. If any provision or set of provisions in this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid provision(s) will, wherever possible, be severed from and not affect the remaining provisions of this Law.

32. (1) A person commits an offence by refusing or neglecting, without

reasonable excuse, to comply with any Court order made against that person under the provisions of this Law.

- (2) A Court order, certified by a proper officer of the Court, is proof of the order in a prosecution under this section.
- (3) A person is liable, on summary conviction under subsection 32(1) of this Law, to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both.
- (4) A fine payable under this section shall be remitted to the First Nation by the Court, after reasonable Court costs have been deducted.

Adopted on October 29,2012