

MUSKODAY FIRST NATION

MATRIMONIAL REAL PROPERTY LAW

WHEREAS the Muskoday First Nation has taken control of its reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management*, and has enacted the *Muskoday First Nation Land Management Code* which came into force and effect on January 1, 2000;

AND WHEREAS, pursuant to the *Framework Agreement*, the Muskoday First Nation agreed to enact rules and procedures, applicable on the breakdown of a marriage, to the use, occupancy and possession of Muskoday Land, and the division of interests in that land;

AND WHEREAS the Muskoday 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 Muskoday Land upon the breakdown of their marriage;

AND WHEREAS the Muskoday First Nation intends to respect the following principles with respect to the use, occupancy or possession of matrimonial real property on Muskoday 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 agreement as to the disposition of interests in Muskoday Land in the event that their marriage does, or has, broken down;

Secondly, the value of 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 Muskoday law where their property includes an interest in Muskoday Land.

IT IS THEREFORE ENACTED AS A LAW OF THE MUSKODAY FIRST NATION:

PART ONE
APPLICATION OF LAW

1. This law may be cited as the *Muskoday First Nation Matrimonial Real Property Law*.
2. This law applies only to interests in, or claimed pursuant to this law in, Muskoday Land as that term is defined in the *Muskoday 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 Muskoday Land, or other entitlements or obligations of spouses.
4. For the purposes of this law, the following definitions shall apply:
 - (1) “**child**” includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom.
 - (2) “**Council**” means the Chief and Council of the Muskoday First Nation.
 - (3) “**interspousal contract**” includes:
 - (a) a “**marriage contract**” entered into between a man and a woman 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 Muskoday Land; and
 - (b) a “**separation agreement**” entered into between a man and a woman 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 Muskoday Land.
 - (4) “**interest in Muskoday Land**” includes any legal or equitable interest held in possession by either spouse, or both spouses, in Muskoday Land.
 - (5) “**Lands Advisory Board**” means the Lands Advisory Board established under the *Framework Agreement on First Nation Land Management*.
 - (6) “**Lands Manager**” means the Lands Manager of the Muskoday First Nation.

- (7) “**matrimonial home**” means an interest in Muskoday Land that is or, if the spouses have separated, was at the time of separation, occupied by one or both spouses as the family home or that is mutually intended by the spouses to be occupied by one or both of them as the family home, and, where an interest in Muskoday 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 Muskoday Land that may reasonably be regarded as necessary to the use and enjoyment of the family residence.
- (8) “**member**” means a person who is a member or who is entitled as a right to be enrolled as a member of the Muskoday First Nation.
- (9) “**spouse**” means either of a man and woman who:
- (a) are married to each other; 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. This law does not apply to an interest in Muskoday Land held by either spouse, or both spouses, where neither spouse is a Member.
6. 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 Muskoday 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

INTERSPOUSAL CONTRACTS

7. 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 Muskoday Land, including an interest that is a matrimonial home.
8. Subject to this Part, a provision in an interspousal contract that reflects the agreement of the parties with respect to an interest in Muskoday Land, including an interest that is a matrimonial home, is valid, binding and enforceable.
9. (1) Notwithstanding section 8, a provision in an interspousal contract that would give, award, acknowledge or create an interest in Muskoday Land greater than a life

estate to occupy or possess an interest in Muskoday Land, in favor 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 Muskoday Land must be measured by the life of the person intended to enjoy it.
10. Subject to this law, a court of competent jurisdiction may, on application under Part Four, set aside a provision of an interspousal contract with respect to an interest in Muskoday Land:
 - (a) if a party failed to disclose to the other all of his or her interests in Muskoday 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.
 11. This Part applies whether the interspousal contract was entered into by the parties on, before or after the date that this law comes into force and effect.

PART THREE **MEDIATION**

12. It is the intention of this Part that spouses who, on the breakdown of their marriage, do not have and are unable to conclude an interspousal contract with respect to interests in Muskoday Land, submit to mediation in respect of interests in Muskoday Land.
13. A member of Council will meet with the spouses to explain the mediation process.
14. For the purposes of this Part, the Lands Advisory Board is authorized to:
 - (a) prescribe rules and procedures applicable to the conduct of mediation;
 - (b) develop any forms, certificates, and other documents or instruments deemed necessary or advisable; and
 - (c) determine fees, costs and consequential relief in respect of the provision of mediation services.
 - (d) create and maintain a roster of qualified mediators available to spouses to assist them in resolving disputes about interests in Muskoday Land, and a current copy of that roster shall be posted in the office of the Lands Manager of the Muskoday

First Nation.

15. Spouses who do not have or are unable to conclude a domestic agreement may initiate their own mediation with respect to interests in Muskoday Land and it is recommended that they use the services of a mediator whose name appears on the roster of qualified mediators.
16. (1) 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.

(2) The Lands Manager may assist the spouse in completing the notice of request.
17. It is the responsibility of the spouse requesting mediation to ensure that the notice referred to in section 15 is served on the other spouse before it is delivered to the Lands Manager. For greater certainty, service may be effected by personal service, by delivery to a solicitor representing the other spouse in the matter of the breakdown of the marriage, as provided in an interspousal 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.
18. Upon receipt of a notice of request for mediation, the Lands Manager shall forthwith deliver it to the Lands Advisory Board, 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 15 is filed. That period may be extended by the Board:
 - (a) at the joint request of the parties: or
 - (b) where the Board is unable to secure the services of a qualified mediator to be available to the parties within the 30 day period.
19. Notice of an appointment for mediation shall be delivered to both spouses by the Lands Advisory Board 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.
20. A spouse who receives a notice of appointment with a mediator has a duty to attend the mediation.
21. Each spouse is obliged to pay his or her equal share of the costs of mediation.
22. 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 Muskoday Land.

23. Where the mediation is successful, the agreement of the parties with respect to interests in Muskoday 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 10.
24. A separation agreement for the purposes of section 23 shall include provision for all interests in Muskoday Land held by either spouse, or both spouses, and shall be a sufficient interspousal contract for purposes of this law if it deals only with those interests.
25. Where a mediation is successful, the mediator shall report this fact to the Lands Advisory Board, which in turn shall notify the Lands Manager of the successful mediation.
26. Where the mediation is unsuccessful, the mediator shall deliver a confidential report to the parties and to the Lands Advisory Board upon the mediation and the points remaining in dispute between the parties with respect to interests in Muskoday Land.
27. At the conclusion of an unsuccessful mediation under this Part, the Lands Advisory Board 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 favor of the spouse requesting the mediation in circumstances where the Board reasonably concludes that the other spouse cannot be located, is avoiding or ignoring service of documents or otherwise refused to participate in the mediation.
28. For greater certainty, nothing in this Part is intended to deprive or limit the right of a spouse to seek any other or further alternate dispute resolution on the breakdown of his or her marriage in relation to any matter other than interests in Muskoday Land, or to restrict the parties from otherwise reaching agreement with respect to interests in Muskoday Land, provided that such agreement results in a separation agreement that meets the requirements set out in this law.

PART FOUR
ACCESS TO A COURT OF COMPETENT JURISDICTION

A: GENERAL RULES

29. For the purposes of this Part, “**court of competent jurisdiction**” and “**court**” refer to the Family Law Division of the Saskatchewan Court of Queen’s Bench.
30. For greater certainty, no court other than a court of competent jurisdiction shall exercise

jurisdiction under this law in respect of interests in Muskoday Land.

31. 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 Muskoday Land provided that he or she has first complied with Part Three or is specifically relieved of such compliance by a provision of this Part.
32. No court shall take or exercise jurisdiction under this Part without first enquiring whether or not the spouses have pursued and participated in mediation pursuant to Part Three and, if there has been no mediation, the court may direct that there be mediation pursuant to the rules of the court or pursuant to Part Three, or the court may proceed to deal with an application under this Part where the requirement for mediation may result in an injustice.
33. Subject to this law, a court of competent jurisdiction may deal with interests in Muskoday Land held by either spouse, or both spouses, in manner consistent with the provisions of the *Matrimonial Property Act, 1997* (Saskatchewan) 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.
34. Notwithstanding section 33, the fact that an interest in Muskoday Land does not include future or contingent interests in Muskoday Land shall not be taken to confer jurisdiction upon a court over such interests under this law.
35. An interest in Muskoday Land received by way of 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.
36. Section 35 does not apply with respect to an interest in Muskoday Land that is a matrimonial home.
37. Notwithstanding section 35, 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 Muskoday Land and that would otherwise be subject to the presumption set out in section 40.
38. Subject to this law, the court may make any order in relation to interests in Muskoday Land held by a spouse, or by both spouses, that the court could make in respect of real property situated in the province of Saskatchewan, but not on Muskoday Land, including, in appropriate circumstances:

- (a) an order that an interest in Muskoday Land be transferred to a spouse absolutely, where permitted under this law;
 - (b) an order that an interest in Muskoday Land be subject to a lease by one spouse to the other for a term of years subject to such terms and conditions as the court deems just in all the circumstances; or
 - (c) an order that an interest in Muskoday Land held by both spouses be partitioned or partitioned and sold.
39. An order shall not be made under paragraph 38 (a) in favor of a spouse who is not a Member.
40. Where an order is made under paragraph 38(c) for the partition of an interest in Muskoday Land, the Council shall direct the transaction and the Lands Manager may make provision for a survey and for the allocation of the costs of the transaction unless the court has already made an order with respect to costs.
41. Where an order is made under paragraph 38(c) for the sale of an interest in Muskoday Land, that sale shall be by auction directed by the Council, which shall by resolution make provision for a reserve bid representing a fair sale price for the interest, and for the allocation of costs of the transaction unless the court has already made an order to that effect.
42. Subject to this law, a spouse may apply to the court for determination of a question between him or her and his or her spouse in relation to the right to possession of an interest in Muskoday Land, and the court may make:
- (a) an order declaring the right of possession to the interest in Muskoday Land; and
 - (b) any order that could be made under section 38 in respect of that interest in Muskoday Land.
43. Where the interest of a spouse in Muskoday 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.
44. An order shall not be made under this Part so as to require the sale of an operating business or farm on Muskoday Land, or so as to impair seriously its operation, unless there is no reasonable alternative method of achieving an equitable result between the parties.

45. Where a proceeding has been commenced under this Part, and either spouse dies before all issues relating to interests in Muskoday Land have been disposed of by the court, the surviving spouse may continue the proceeding against the estate of the deceased spouse.
46. 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.
47. 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.
48. Nothing in this law limits the application of valid laws of Saskatchewan and Canada in respect of matrimonial causes, except to the extent that such laws deal expressly or implicitly with interests in Muskoday Land and to that extent this law applies.
49. It is the intention of this law that all rights, entitlements and obligations of spouses be dealt with equitably on the basis of the totality of their circumstances, including rights, entitlements and obligations in respect of interests in Muskoday Land, but subject to the special provisions set out in this law.

B. MATRIMONIAL HOME

50. Whether or not an interest in Muskoday Land is a matrimonial home is a question of fact.
51. Subject to the limitations inherent in the nature of Muskoday Land, both spouses have an equal right to possession of a matrimonial home.
52. When only one spouse holds an interest in Muskoday 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.
53. No spouse shall dispose of or encumber an interest in Muskoday 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 interspousal contract; or

- (c) a court order has authorized the transaction or has released the interest in Muskoday Land from the application of this section.
54. If a spouse disposes of or encumbers an interest in Muskoday Land that is a matrimonial home in contravention of section 53, 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.
55. When a person proceeds to realize upon an encumbrance or execution against an interest in Muskoday Land that is a matrimonial home, the spouse who has a right of possession under section 52 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.
56. The court may, on the application of a spouse or a person claiming an interest in Muskoday Land that is a matrimonial home:
- (a) make a declaration whether or not the interest in Muskoday Land is a matrimonial home;
 - (b) authorize a disposition or encumbrance of the interest in Muskoday Land, provided that such disposition or encumbrance is otherwise authorized under Muskoday 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) make an order under section 53, subject to such terms and conditions as the court determines to be equitable and just in all the circumstances.
57. Regardless of which spouse holds an interest in Muskoday Land that is a matrimonial home, the court may on application:
- (a) order the delivering up, safekeeping and preservation of the interest in Muskoday Land that is a matrimonial home;
 - (b) direct that one spouse be given exclusive possession, consistent with this law, of the interest in Muskoday Land that is a matrimonial home, or part of it for such period as the court may direct, and release any other interest in Muskoday Land that is a matrimonial home from the application of this Part;

- (c) authorize a disposition or encumbrance consistent with Muskoday law of a spouse's interest in Muskoday 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 Muskoday 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 Muskoday Land is not a matrimonial home, direct the other spouse to substitute other interests he or she holds in Muskoday 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.
58. A court, in considering whether to direct that one spouse have exclusive possession of an interest in Muskoday Land that is a matrimonial home, shall be guided by the principle that the custodial parent of a child should have exclusive possession of the family residence for a period sufficient to ensure that the child, or the youngest child if there is more than one child, reaches the age of majority and has the opportunity to complete his or her education, provided that observance of this principle is consistent with the best interests of the child.
59. Where both parents share joint custody of a child or children, the principle set out in section 58 shall be adapted to favor 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.
60. In applying the principles set out in sections 58, the court may have regard to the fact that one or more of the children are not members.

PART FIVE
GENERAL PROVISIONS

61. An interest in Muskoday Land received by way of 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.

62. The possession of an interest in Muskoday Land 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.
63.
 - (1) A person who contravenes an order made by a court of competent jurisdiction pursuant to this law in relation to an interest in Muskoday Land is guilty of an offence and liable, on summary conviction, to a fine of not more than \$5,000 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 Muskoday First Nation by the court, after reasonable court costs have been deducted.
64. **This law shall come into force and effect on the 30th day of June, 2001.**