



# Soowahlie First Nation

Law No. 2017-68

# Spousal Real Property Law

January 2018

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**WHEREAS** the Soowahlie First Nation has an inherent right to self-govern which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the Constitution Act, 1982;

**AND** the Soowahlie First Nation has taken control of Reserve lands and resources pursuant to the Framework Agreement on First Nation Land Management and has enacted the Soowahlie Land Code effective (date)

**AND** under the Framework Agreement on First Nations Land Management and the Soowahlie Land Code, Soowahlie agreed to enact rules and procedures applicable on the breakdown of a marriage to the use, occupancy and possession of Soowahlie Lands, and the division of interests in that land;

**AND** Soowahlie intends to provide rights and remedies, without discrimination in the basis of sex, to Spouses who have claim interests in Soowahlie Lands upon the breakdown of their marriage;

**AND** many aspects of federal and provincial laws in relation to divorce already apply on Indian Reserves and Soowahlie intends this Law to supplement federal and provincial laws in key areas where there are gaps;

**AND** Soowahlie intends to respect the following general principles with respect to the use, occupancy, and possession of matrimonial real property on Soowahlie Lands, and the division of interests in that land on the breakdown of marriage:

- a) The children of the Spouses, if any, should have the opportunity to remain in the Matrimonial Home if possible;
- b) Each Spouse should have an equal right to possession of the Matrimonial Home;
- c) Each Spouse should be entitled to half of the value (an undivided half interest as a tenant in common in) of the Matrimonial Home;
- d) The rules and procedures shall not discriminate on the basis of sex;
- e) The Matrimonial Home may be dealt with separately from any CP or Allotment land on which it is located;
- f) Only Members of the Soowahlie First Nation are entitled to hold a CP or an Allotment on the Soowahlie Lands; and
- g) CP's and Allotments will not be transferred from a Member who held them prior to the marriage;

**AND** Soowahlie further intends to respect the following procedural principles with respect to the use, occupancy and possession of matrimonial real property on Soowahlie Lands, and the division of interests in that land on the breakdown of marriage:

- a) The right of the Spouses to make their own pre-nuptial, marriage or separation agreements to deal with Interests in Soowahlie Lands;
- b) To encourage mediation where the parties have not or are unable to reach their own agreement as described above; and

- c) The right of the parties to have access to Court to deal with their property rights, entitlements and obligations on the breakdown of their marriage, subject to Soowahlie law where their property includes an interest in Soowahlie Lands.

**NOW THEREFORE this Soowahlie First Nation Spousal Real Property Law is hereby enacted as a Law of the Soowahlie First Nation.**

**PART 1 – NAME**

- 1.1 This Law may be cited as the Soowahlie First Nation Spousal Real Property Law.

**PART 2 – DEFINITIONS**

- 2.1 For the purposes of this Law, terms have the same definitions as in the Land Code;

- 2.2 For the purposes of this Law, the following definitions apply:

“Child” means a person under the age of nineteen (19) who is:

- a) The offspring of at least one Spouse, or
- b) Adopted, under the Canadian law or Aboriginal custom, by at least one Spouse and includes “children”;

“Common-law Marriage” means two people not married to each other, who have lived together in a marriage-like relationship for a period of not less than ten years;

“Court” means any other federal or provincial court of competent jurisdiction;

“Interest” is as defined in the Land Code but includes equitable interests in Soowahlie Lands held by a Spouse and excludes CP’s and Allotments;

“Land Code” means the Soowahlie Land Code;

“Life Estate” means a right of a Spouse or Child to occupy the Matrimonial Home for the rest of their life;

“Matrimonial Home” means a family home affixed to Soowahlie Lands 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, but excludes the land or CP or Allotment on which the home is situated;

“Pre-Nuptial, Marriage, or Separation Agreement” means an agreement in writing signed by the parties and by a witness in which the parties agree on their respective rights and obligations under the marriage or on separation, with respect to the possession, use or division of an Interest in Soowahlie Lands, and includes:

- a) A pre-nuptial entered into between Spouses who intended to marry or live in a Common-Law Marriage;
- b) A Marriage Agreement entered into between Spouses who intend to marry or live in a Common-law Marriage;

- c) A Separation Agreement entered into between Spouses who are married to each other and are living separate and apart;

“Primary Care” means physical custody or day-to-day care of a Child;

“Spouse” means a person who is married to another person of the same or opposite sex in a civil or religious ceremony, and includes:

- a) A Spouse by Common-law Marriage; and
- b) A former Spouse after the marriage has been dissolved by decree absolute of divorce or by judgement of nullity.

### PART 3 – APPLICATION OF LAW

#### Only to Reserve Land

- 3.1 This Law applies only to Soowahlie Lands which are Reserves and not to the rest of Soowahlie Territory.

#### Only to Members and their Spouses

- 3.2 This Law applies only to Soowahlie Members and their Spouses in relation to a breakdown of a marriage or Common-law Marriage.
- 3.3 This Law does not apply to a Matrimonial Home held by either Spouse, or both Spouses, where neither Spouse is a Member.

#### Only to Matrimonial Homes

- 3.4 This Law applies only to Matrimonial Homes and, except where explicitly stated, not to other Interests in or on Soowahlie Lands as defined in the Soowahlie Land Code or in this Law.

#### Federal and Provincial Laws

- 3.5 The British Columbia Family Relations Act, R.S.B.C. 1996 c. 128 and the Canada Divorce Act, 1985, c. 3 (2<sup>nd</sup> Supp.) apply as modified by this Law and to the extent possible subject to this Law, the Land Code, and the common law.
- 3.6 Despite paragraph 3.5, the fact that a Matrimonial Home does not include future or contingent Interests in Soowahlie Lands shall not be taken to confer jurisdiction upon a Court over those Interests under this Law.
- 3.7 Nothing in this Law limits the application of valid and applicable federal or provincial laws in respect of matrimonial causes or any rights or remedies available in those laws, except to the extent that such laws deal expressly or implicitly with Matrimonial Homes or Soowahlie Lands, and to that extent this Law shall apply.
- 3.8 Unless otherwise specified in this Law, nothing in this Law relieves either Spouse of the requirement to observe the rules and procedures of a Court in relation to matrimonial causes.

Does Not Apply to Will and Estates

- 3.9 Unless otherwise provided in a specific provision, this Law does not apply to wills and estates. 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 Soowahlie Lands 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 deceased spouse.

Continuation Where Spouse Dies During Proceedings

- 3.10 Despite paragraph 3.9 where a proceeding has been commenced under Part 6 of this Law, and either Spouse dies before all issues relating to the Matrimonial Home have been determined by a Court, the surviving Spouse may continue the proceeding.

Subject to other Soowahlie Laws

- 3.11 The rights and remedies recognized in this Law are subject to any Laws passed by Soowahlie under Part 3 of the Land Code in relation to:
- a) The removal and punishment of persons trespassing on Soowahlie Lands or frequenting Soowahlie Lands for prohibited purposes,
  - b) Prevention of nuisance, or
  - c) Protection of the community.

Subsection 89(1) of the Indian Act

- 3.12 This Law applies despite subsection 89(1) of the Indian Act.

**PART 4 – PRE-NUPTIAL, MARRIAGE, AND SEPARATION AGREEMENTS**

- 4.1 It is the purpose and intention of this Law to respect written agreements between Spouses or people intending to become Spouses as to the use, possession, occupancy, disposition or partition of an Interest in Soowahlie Lands, including Matrimonial Home.

Registration of Agreements

- 4.2 All Spouses are encouraged to register their Pre-Nuptial, Marriage or Separation Agreements.
- 4.3 A Spouse may submit an application to the Lands Manager to register a Pre-Nuptial, Marriage or Separation Agreement in the First Nations Lands Registry.
- 4.4 A Pre-Nuptial or Marriage Agreement may contain a provision asserting that a structure is a Matrimonial Home.
- 4.5 The Lands Manager will register any Pre-Nuptial, Marriage or Separation Agreement submitted under paragraph 4.3 provided that:
- a) The application provides an original agreement or a certified true copy;
  - b) The agreement is submitted by a Spouse and signed and dated by both Spouses with their signatures notarized;
  - c) The application provides proof of membership in the Soowahlie First Nation of at least one of the Spouses;
  - d) The applicant pays the prescribed fee, if any;

- e) The agreement provides the legal description of any interest referred to in the agreement and proof of title; and
- f) For each interest referred to in the agreement:
  - i. The applicant provides proof that they or their spouse are the sole owner of the interest or,
  - ii. If an interest in the agreement is shared with other parties, a signed and notarized statement from each other shared interest-holders stating that they do not object to the interest being included in the agreement.

#### Agreements Valid and Binding

**4.6** Subject to this Law and all applicable laws, a provision in a Pre-Nuptial, Marriage, or Separation Agreement that reflects the agreement of the spouses with respect to an interest in Soowahlie Lands, including a Matrimonial Home, is valid, binding and enforceable.

#### Interests, Rights and Life Estates to non-Members

**4.7** A Pre-Nuptial, Marriage or Separation Agreement may provide an interest or grant rights to a Matrimonial Home to a Spouse or Child who is not a Member but such interests and rights shall not in any case be greater than a Life Estate and any such interest or right that is greater than a Life Estate in respect of a non-Member is void.

**4.8** Despite paragraphs 4.6 and 4.7, any provision in a Pre-Nuptial, Marriage or Separation Agreement is void if it purports to give, transfer, award, acknowledge or create an Allotment or a CP in favour of a Spouse who is not a Member.

#### Court May Set Aside or Vary Agreements

**4.9** Subject to this Law, a Court may, on application, set aside or vary a provision of a Pre-Nuptial, Marriage, or Separation Agreement with respect to a Matrimonial Home:

- a) If a Spouse failed to disclose to the other Spouse all of that Spouse's interests in Soowahlie Lands, or any material information in respect of those interests;
- b) If a Spouse did not understand the nature of consequence of the provision;
- c) If there is evidence of abuse or coercion; or
- d) Otherwise in accordance with the common law or equity or contract.

#### Past and Future Agreements Valid

**4.10** This Part applies whether the parties entered into the Pre-Nuptial, Marriage or Separation Agreement on, before or after the date that this Law comes into force and effect.

### PART 5 – MATRIMONIAL HOME

#### How to Determine Matrimonial Home

- 5.1** Whether or not a structure or interest is a Matrimonial Home is a question of fact.
- 5.2** Where part of a Matrimonial Home is normally used for a purpose other than residential purposes, the Matrimonial Home includes only that part of the structure or structures that may reasonably be regarded as necessary for use and enjoyment as the family residence.



Equal Rights

5.3 Subject to the limitations inherent in the nature of Soowahlie Lands and paragraphs 4.7 and 6.21 [no transfer of CP's] and to other factors set out in this Law:

- a) Both Spouses have an equal right to possession of a Matrimonial Home; and
  - b) Each Spouse is entitled to half of the value of the Matrimonial Home.
- 5.4 A Spouse with rights under paragraph 5.3 also has equal rights of redemption or relief against forfeiture:
- a) Where a person or entity proceeds to realize upon an encumbrance or execution against a Matrimonial Home or an Interest that affects the Matrimonial Home, both Spouses have a right of redemption or relief against forfeiture for the Matrimonial Home and are both entitled to notice respecting the claim and its enforcement or realization.

Limits on Sales and Encumbrances

- 5.5 No Spouse shall dispose of or encumber a Matrimonial Home unless:
- a) The other Spouse consents;
  - b) The other Spouse joins in the instrument of disposal or encumbrance;
  - c) The other Spouse has released all rights in respect of the disposition or encumbrance by Pre-Nuptial, Marriage or Separation Agreement;
  - d) A Court order has authorized the transaction; or
  - e) A Court has released the Matrimonial Home from the application of this section.

PART 6 – ACCESS TO COURT

Cooperative Dispute Resolution Encouraged

- 6.1 Spouses are encouraged to resolve their differences regarding any matter addressed in this Law through cooperative discussion and mediation or alternative dispute resolution.
- 6.2 Any Spouse may contact the Lands Manager of the Soowahlie Administration Office for information and resources relating to mediation and dispute resolution.

General Access to Court

- 6.3 Where Spouses are unable to resolve their differences regarding any matter addressed in this Law, they may apply to the Court for a resolution of their dispute.
- 6.4 In the event of the breakdown of a marriage or a Common-Law Marriage, a Spouse may apply to a Court to:
- a) Enforce a Pre-Nuptial, Marriage or Separation Agreement,
  - b) Determine a dispute in relation to a Matrimonial Home, or
  - c) Deal with any matter provided for under this Law.

Time Limit

- 6.5 A Spouse seeking to apply for an order under this Part must apply before their divorce or within one year after their divorce has been granted by a Court.



### Types of Orders; Powers of Court

6.6 Subject to this Law, the Land Code, and the common law, a Court may, on application, make any order in relation to a Matrimonial Home held by a Spouse, or by both Spouses, that the Court could make in respect of a Matrimonial Home situated off of Soowahlie Lands in the province of British Columbia.

### Emergency Orders

6.7 The Court may, on *ex parte* application by a Spouse, make an emergency exclusive occupation order for the Matrimonial Home in favour of that Spouse for a period of up to 90 days, whether or not the Spouse is a Member and whether or not a Child is involved, if the Court concludes that:

- a) A provision requiring the Spouse of the applicant Spouse and any other person to vacate the Matrimonial Home and prohibiting them from returning to the Matrimonial Home for the duration of the order;
- b) A provision directing a peace officer to remove the applicant's Spouse and any other person from the Matrimonial Home;
- c) A restraining order;
- d) A provision directing a peace officer to escort the person who is required to vacate back to the Matrimonial Home to supervise the removal of personal belongings; or
- e) Any other provision that the Court considers necessary for the immediate protection of any person who is at risk.

6.10 Any person in whose favour or against whom an order is made under paragraph 6.7 may apply to the Court to have the order varied or revoked at any point while the order remains in force.

### Court Orders

6.11 If a Spouse disposes of or encumbers a Matrimonial Home in contravention of paragraph 5.5, a Court may, on application:

- a) Set aside the disposal or encumbrance; or
- b) Order the Spouse to pay compensation to the other Spouse.

6.12 Paragraph 6.11 a) does not apply where the person holding the disposition or encumbrance at the time of the application to the Court acquired the disposition or encumbrance at the time of the application to the Court acquired the disposition or encumbrance for value, in good faith and without notice at the time of acquiring, or making an agreement to acquire the disposition or encumbrance, that the property was a Matrimonial Home.

6.13 Regardless of which Spouse holds a Matrimonial Home, a Court may, on application:

- a) Order the delivering up, safekeeping and preservation of the Matrimonial Home;
- b) Direct that once Spouse be given exclusive possession, consistent with this Law, of the Matrimonial Home, for such period as the Court may direct, and release any other aspect or encumbrance relating to the Matrimonial Home from the application of this Part;

- c) Authorize a disposition or encumbrance consistent with Soowahlie law of a Spouse's Interest in a Matrimonial Home, subject to the other Spouse's rights of exclusive possession as ordered;
  - d) Make any interim or temporary order to give effect to the purposes of this Law or to protect the rights of a Spouse; and
  - e) Make any ancillary order, including an order as to costs that the Court deems necessary to give effect to this Law.
- 6.14 A Court, in considering whether to direct that one Spouse have exclusive possession of a Matrimonial Home, shall be guided by the principle that the parent with Primary Care 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, provided that this is consistent with the best interests of the child or children.
- 6.15 Where both Spouses share joint custody of a child or children, the principle set out in paragraph 6.14 shall be adapted to favour the Spouse who has Primary Care.
- 6.16 In applying the principle set out in paragraph 6.14, a Court may have regard to the fact that one or more of the children are not Members.
- 6.17 Subject to this Law, a Court may make any determination about a Matrimonial Home and may make orders that are necessary, reasonable or related to give effect to the determination, including:
- a) A declaration as to whether a structure is a Matrimonial Home;
  - b) An order that a Matrimonial Home be transferred to one Spouse exclusively;
  - c) An order that a Matrimonial Home be subject to a lease by one Spouse to the other Spouse for a term of months or years, subject to such terms and conditions as the Court deems just, taking into account the best interests of any children living in the Matrimonial Home, and not exceeding 20 years;
  - d) An order granting an easement or access for a specified period of time across a CP or Allotment held or shared by one Spouse for the purpose of enabling the other Spouse to access the Matrimonial Home;
  - e) An order that restrains either Spouse from disposing of or transferring a Matrimonial Home or an interest in it, either legally or beneficially, pending the divorce trial;
  - f) An order directing one or both Spouses to pay specified amounts of money in relation to rent, lease, mortgage, tax, utilities or other payments relating to the Matrimonial Home;
  - g) An order that a Matrimonial Home be partitioned, or partitioned and sold, which may include an order specifying how the proceeds of the sale are to be divided;
  - h) An order that one Spouse make compensation payment to the other Spouse to recognize the contribution which the other Spouse has made to the acquisition, rent, mortgage payments, upkeep and/or improvement of the Matrimonial Home;
  - i) An order that one Spouse pay compensation to the other spouse if the Matrimonial Home or an Interest has been encumbered or disposed of; or
  - j) Any appropriate equitable order where one Spouse has intentionally, recklessly, or fraudulently damaged, encumbered or disposed of the Matrimonial Home or an Interest relating to it.

- 6.18 In making any order under paragraph 6.17, the Court shall begin with the presumption that each Spouse is entitled to an equal share of the Matrimonial Home or the value of the Matrimonial Home, and then shall consider whether this presumption should be varied in light of any of the following factors:
- a) The date when the matrimonial Home was acquired or disposed of;
  - b) The duration of the marriage or Common-law Marriage;
  - 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



**SOOWAHLIE INDIAN BAND**  
**BAND COUNCIL RESOLUTION**  
**RESOLUTION DE CONSEIL DE BANDE**



**#572**

Chronological no. – N° consecutive  
 2017-68  
 File reference no. – N° de référence du dossier

NOTE: The words "from our band funds", "capital" or "revenue" whichever is the case, must appear in all resolutions requesting expenditures from band funds  
 NOTA: Les mots "des fonds de notre bande", "capital" ou "revenue" selon les cas doivent paraître dans tous les résolutions portant sur des dépenses à même les fonds des bandes

Cash free balance

The council of the / Le conseil de  
**SOOWAHLIE INDIAN BAND**  
 Capital account / Compte capital \$ \_\_\_\_\_

Date of duly convened meeting / Date de l'assemblée dument convoquée  
 January 11, 2018  
 Province / B.C.  
 Revenue account / Compte revenu \$ \_\_\_\_\_

**WHEREAS** the Soowahlie First Nation has an inherent right to self-govern which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the Constitution Act, 1982;  
**AND** the Soowahlie First Nation has taken control of Reserve lands and resources pursuant to the Framework Agreement on First Nation Land Management and has enacted the Soowahlie Land Code effective (date)  
**AND** under the Framework Agreement on First Nations Land Management and the Soowahlie Land Code, Soowahlie agreed to enact rules and procedures applicable on the breakdown of a marriage to the use, occupancy and possession of Soowahlie Lands, and the division of interests in that land;  
**AND** Soowahlie intends to provide rights and remedies, without discrimination in the basis of sex, to Spouses who have claim interests in Soowahlie Lands upon the breakdown of their marriage;  
**AND** many aspects of federal and provincial laws in relation to divorce already apply on Indian Reserves and Soowahlie intends this Law to supplement federal and provincial laws in key areas where there are gaps;  
**AND** Soowahlie intends to respect the following general principles with respect to the use, occupancy, and possession of matrimonial real property on Soowahlie Lands, and the division of interests in that land on the breakdown of marriage:

- a) The children of the Spouses, if any, should have the opportunity to remain in the Matrimonial Home if possible;
  - b) Each Spouse should have an equal right to possession of the Matrimonial Home;
  - c) Each Spouse should be entitled to half of the value (an undivided half interest as a tenant in common m) of the Matrimonial Home;
  - d) The rules and procedures shall not discriminate on the basis of sex;
  - e) The Matrimonial Home may be dealt with separately from any CP or Allotment land on which it is located;
  - f) Only Members of the Soowahlie First Nation are entitled to hold a CP or an Allotment on the Soowahlie Lands; and
  - g) CP's and Allotments will not be transferred from a Member who held them prior to the marriage;
- AND** Soowahlie further intends to respect the following procedural principles with respect to the use, occupancy and possession of matrimonial real property on Soowahlie Lands, and the division of interests in that land on the breakdown of marriage:
- a) The right of the Spouses to make their own pre-nuptial, marriage or separation agreements to deal with interests in Soowahlie Lands;
  - b) To encourage mediation where the parties have not or are unable to reach their own agreement as described above; and
  - c) The right of the parties to have access to Court to deal with their property rights, entitlements and obligations on the breakdown of their marriage, subject to Soowahlie law where their property includes an interest in Soowahlie Lands.

**NOW THEREFORE this Soowahlie First Nation Spousal Real Property Law is hereby enacted as a Law of the Soowahlie First Nation.**

Quorum: THREE (3)  
*K. Kelly*  
 (Councillor - Conseiller)

*Brenta Wallace*  
 (Chief - Chef)  
*M. Wallace*  
 (Councillor - Conseiller)

(Councillor - Conseiller)

FOR DEPARTMENTAL USE ONLY – RÉSERVÉ AU MINISTRE			
Expenditure - Depenses	Authority (Indian Act section) – Autorité (Article sur la loi des Indiens)	Expenditure - Depenses	Source of Funds Sources des fonds
			Capital Revenu - Revenue
Recommending officer – Recommandé par		Recommending officer – Recommandé par	
Signature	Signature	Signature	Signature
Date	Date	Date	Date