

WHITECAP DAKOTA FIRST NATION
MATRIMONIAL REAL PROPERTY LAW

WHEREAS the Whitecap Dakota First Nation has inherent rights, customs and traditions, including Aboriginal rights such as the right to self-determination;

AND WHEREAS the Whitecap Dakota 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 *Whitecap Dakota First Nation Land Code* (the “*Land Code*”) which came into force and effect on December 1, 2003;

AND WHEREAS, pursuant to section 21.6 of the *Land Code*, the Whitecap Dakota First Nation is required to enact rules and procedures, applicable on the breakdown of a marriage, to the use, occupancy and possession of Whitecap Dakota Land, and the division of Interests in that land within twelve (12) months of the coming into force of the *Land Code*;

AND WHEREAS the Whitecap Dakota First Nation intends to honour its undertaking to provide rights and remedies, without discrimination on the basis of sex, with respect to Spouses who have or claim Interests in Whitecap Dakota Land upon the breakdown of their marriage;

AND WHEREAS the Whitecap Dakota First Nation is enacting this law without prejudice to its inherent aboriginal rights in relation to jurisdiction over its people and its lands;

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

PART ONE
APPLICATION OF LAW

1. This law may be cited as the *Whitecap Matrimonial Real Property Law*.
2. This law applies only to Interests in, or claimed pursuant to this law in, First Nation Land as that term is defined in the *Land 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 Whitecap Dakota Land, or other entitlements or obligations of Spouses.

4. For the purposes of this law, the following definitions shall apply:
 - (1) “**Child**” includes a legally adopted Child and a Child adopted in accordance with Indian custom.
 - (2) “**Interspousal Contract**” means an agreement between two Spouses:
 - (a) that is in writing and signed by each Spouse in the presence of a witness;
and
 - (b) that deals with the possession, ownership or distribution of Family Property;
 - (3) “**Interest**” means any interest, right or estate of any nature in or to Whitecap Dakota Land, including a lease, easement, right of way, servitude or profit-a-prendre, but does not include title to the land;
 - (4) “**Family Home**” means real property to which an Interest has been granted by the First Nation pursuant to the *Land Code* and the *Land Law* in which one or both Spouses have an Interest and to which it has been occupied by 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.
 - (5) “**Member**” means a person whose name appears or is entitled to appear on the Whitecap Dakota First Nation Band Membership List.
 - (6) “**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 applies only with respect to Interests as granted in accordance with the *Land Code* and the *Land Law*.
6. This law does not apply to an Interest in Whitecap Dakota Land held by either Spouse, or both Spouses, where neither Spouse is a Member.
7. 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 Whitecap Dakota 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**

8. 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 Whitecap Dakota Land, including an Interest that is a Family Home.
9. Subject to this Part, a provision in an Interspousal Contract that reflects the agreement of the parties with respect to an Interest in Whitecap Dakota Land, including an Interest that is a Family Home, is valid, binding and enforceable.
10. (1) Notwithstanding section 9 and the terms of any lease agreement, a provision in an Interspousal Contract that would give, award, acknowledge or create an Interest in Whitecap Dakota Land greater than a life estate to occupy or possess an Interest in Whitecap Dakota 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 First Nation must be delimited by the life of the person intended to enjoy it.

PART THREE **ACCESS TO A COURT OF COMPETENT JURISDICTION**

A: GENERAL RULES

11. For the purposes of this Part, “**court of competent jurisdiction**” and “**court**” refer to the Saskatchewan Court of Queen’s Bench Family Law Division.
12. For greater certainty, no court other than a court of competent jurisdiction shall exercise jurisdiction under this law in respect of Interests in Whitecap Dakota Land.
13. 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 Whitecap Dakota Land.
14. Subject to this law, a court of competent jurisdiction may deal with Interests in Whitecap

Dakota Land held by either Spouse, or both Spouses, in manner consistent with the provisions of the *Family Property Act* (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.

15. Notwithstanding section 14, the fact that an Interest in Whitecap Dakota Land does not include future or contingent Interests in Whitecap Dakota Land shall not be taken to confer jurisdiction upon a court over such Interests under this law.
16. An Interest in Whitecap Dakota 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.
17. Section 16 does not apply with respect to an Interest in Whitecap Dakota Land that is a Family Home.
18. Subject to this law, the court may make any order in relation to Interests in Whitecap Dakota 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 Whitecap Dakota Land, including, in appropriate circumstances:
 - (a) an order that an Interest in Whitecap Dakota Land be transferred to a Spouse absolutely, where permitted under this law, or
 - (b) an order that an Interest in Whitecap Dakota 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.
19. An order shall not be made under paragraph 18 (a) in favour of a Spouse who is not a Member.
20. 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 Whitecap Dakota Land, and the court may make:
 - (a) an order declaring the right of possession to the Interest in Whitecap Dakota Land, and

(b) any order that could be made under section 18 in respect of that Interest in Whitecap Dakota Land.

21. Where a proceeding has been commenced under this Part, and either Spouse dies before all issues relating to Interests in Whitecap Dakota Land have been disposed of by the court, the surviving Spouse may continue the proceeding against the estate of the deceased Spouse.
22. 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.
23. Nothing in this law limits the application of valid laws of Saskatchewan and Canada in respect of Family causes, except to the extent that such laws deal expressly or implicitly with Interests in Whitecap Dakota Land and to that extent this law applies.
24. 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 Whitecap Dakota Land, but subject to the special provisions set out in this law.

B. FAMILY HOME

25. Whether or not an Interest in Whitecap Dakota Land is a Family Home is a question of fact and, for greater certainty, the provisions of the *Family Property Act* (Saskatchewan) dealing with the designation of a Family Home do not apply in respect of Interests in Whitecap Dakota Land.
26. Subject to the limitations inherent in the nature of Whitecap Dakota Land, both Spouses have an equal right to possession of a Family Home.
27. When only one Spouse holds an Interest in Whitecap Dakota Land that is a Family 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.
28. No Spouse shall dispose of or encumber an Interest in Whitecap Dakota Land that is a Family 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 Whitecap Dakota Land from the application of this section.

29. The court may, on the application of a Spouse or a person claiming an Interest in Whitecap Dakota Land that is a Family Home:

- (a) make a declaration whether or not the Interest in Whitecap Dakota Land is a Family Home;
- (b) authorize a disposition or encumbrance of the Interest in 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;

30. Regardless of which Spouse holds an Interest in Whitecap Dakota Land that is a Family Home, the court may on application:

- (a) order the delivering up, safekeeping and preservation of the Interest in Whitecap Dakota Land that is a Family Home;
- (b) direct that one Spouse be given exclusive possession of the Interest in Whitecap Dakota Land that is a Family Home, or part of it for such period as the court may direct consistent with this law, and release any other Interests in Whitecap Dakota Land that is a Family Home from the application of this Part;
- (c) authorize a disposition or encumbrance consistent with First Nation law of a Spouse's Interest in Whitecap Dakota Land that is a Family 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 Whitecap Dakota Land that is a Family 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 Whitecap Dakota Land is not a Family Home, direct the other Spouse

to substitute other Interests he or she holds in Whitecap Dakota Land for the Family 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.

31. A court, in considering whether to direct that one Spouse have exclusive possession of an Interest in Whitecap Dakota Land that is a Family 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.
32. Where both parents share joint custody of a Child or children, the principle set out in section 31 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.

PART FOUR
GENERAL PROVISIONS

33. This law shall not abrogate or derogate the inherent Aboriginal rights of the Whitecap Dakota First Nation, including the rights of self-determination.
34. The Whitecap Dakota First Nation, by enacting this law, do not affirm that this law reflects the full extent of its inherent Aboriginal rights and jurisdiction over its Members and its lands and, therefore, this law is enacted on a without prejudice basis to those inherent Aboriginal rights.
35. This law may be amended in accordance with the process outlined in the *Land Code*.
36. This law shall come into force and effect on the ____ day of December, 2004.

BAND COUNCIL CONSENT

We, the undersigned, being a quorum of the Band Council, acknowledge and declare that we have at a duly convened Band Council meeting, approved this Matrimonial Real Property Law effective the ____ day of _____, 2004.

DATED this ____ day of _____, 2004.

Chief

Councilor

Councilor

A Quorum for this Council is two (2).