

**KATZIE FIRST NATION**

**SPOUSAL PROPERTY LAW**

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KATZIE FIRST NATION Spousal Property Law – Enacted on: *2019-09-09*

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**KATZIE FIRST NATION**  
**SPOUSAL PROPERTY LAW**

**PREAMBLE**

- A. Katzie First Nation has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the Constitution Act, 1982;
- B. Katzie First Nation has taken over control and management of Katzie Land and resources pursuant to the Framework Agreement on First Nation Land Management and has enacted the Katzie First Nation Land Code to take effect March 29, 2017;
- C. In accordance with section 30.1 of the Land Code, the Katzie First Nation Council must enact a spousal property law providing rules and procedures applicable on the breakdown of a marriage to
  - (a) the use, occupancy and possession of Katzie Land, and
  - (b) the division of Interests in Katzie Land.
- D. The Katzie First Nation wishes to see spousal property disputes resolved in a way that is in keeping with the best interests of our children and does not jeopardize the ability of our Members to reside on our reserves and to hold real property on reserve, and is fair to both Spouses.

## PART 1 CITATION, APPLICATION, DEFINITIONS AND INTERPRETATION

### Citation

2. This Law may be cited as the Katzie First Nation Spousal Property Law.

### Definitions and Interpretation

3. (1) In this Law:

“Child” means a person who is under the age of 19 and who has not withdrawn from parental control, or who is over the age of 19 but unable, by reason of illness, disability or other cause, to withdraw from parental control or to obtain the necessities of life, and who is:

- (a) the biological Child of at least one Spouse,
- (b) adopted, under Canadian law or Aboriginal custom, by at least one Spouse,
- (c) the step-Child of at least one Spouse where that Spouse is the primary caregiver of the Child, or
- (d) any Child for whom either or both Spouses stand in the place of parents,
- (e) and “Children” has a corresponding meaning;

“Common Law Spouse” means a person who is living or has lived with another person in a marriage-like relationship for a continuous period of at least two years;

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

“Domestic Contract” means an agreement made between two persons who are Spouses or who intend to become Spouses, in which they agree on their respective rights and obligations under the relationship or on separation, on the annulment or dissolution of the relationship, or on death, including:

- (a) ownership in or division of Spousal Property,
- (f) support obligations,
- (g) the right to direct the education and moral training of their Children,
- (h) the right to custody of or access to their Children, and
- (i) any other matter in the settlement of their affairs,

and, for certainty includes an agreement between the Spouses to amend or rescind a Domestic Contract.

“Domestic Violence” includes:

- (a) physical abuse of a Family Member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm;
- (j) sexual abuse of a Family Member;
- (k) psychological or emotional abuse of a Family Member by any means whether directly or indirectly, including, without limitation, through social media, technological devices or other communication technologies, where such abuse includes without limitation:
  - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
  - (ii) unreasonable restrictions on, or prevention of, a Family Member’s financial or personal autonomy,
  - (iii) stalking or following of the Family Member, and
  - (iv) intentional damage to property; and
- (l) in the case of a Child, direct or indirect exposure to Domestic Violence;

“Emergency Protection Order” means an order referenced at section 0 of this Law;

“Exclusive Occupation Order” means an order referenced at section 34(2) of this Law;

“Family Member”, with respect to a person, means:

- (a) the person’s Spouse or former Spouse,
- (m) a person with whom the person is living, or has lived, in a marriage-like relationship for a period of at least one year,
- (n) a parent or guardian of the person’s Child,
- (o) a person who lives with, and is related to:
  - (i) the person, or
  - (ii) a person referred to in any of paragraphs (a) to (c), or
  - (iii) the person’s Child,

and includes a Child who is living with, or whose parent or guardian is, a person referred to in any of paragraphs (a) to (d);

“Interest in Katzie Land” means any Certificate of Possession, allotment, lease, permit or any other equivalent instrument granted by Katzie First Nation, but does not include rental

agreements for homes owned by Katzie First Nation or other Katzie First Nation property. For greater certainty, where there is a Spousal Home affixed to Katzie Land that is the subject of an Interest in Katzie Land, the interest includes both the land and the Spousal Home;

“Life Estate” means the grant of an Interest in Katzie Land that is limited to or measured by the life of the person holding it;

“Mediation Process” means a dispute resolution process administered [facilitated] by

- (a) a family law mediator qualified in accordance with the *Family Law Act Regulation* B.C. Reg 347/2012, as amended from time to time, who assists the parties to a dispute to negotiate a resolution to their dispute, or
- (p) a forum or body established or appointed by Council to assist the parties to a dispute to negotiate a resolution of their dispute;

“Spouse” means:

- (a) a person who is married to another person, whether by a customary indigenous, religious, civil or other ceremony, or
- (q) a Common Law Spouse, or
- (r) is a former Spouse;

“Spousal Home” means a dwelling that is ordinarily used for a family purpose and is

- (a) owned exclusively by one or both Spouses; and
- (s) situated on Katzie Land;

“Spousal Property” means:

- (a) an Interest in Katzie Land that is held exclusively by one or both Spouses, was acquired during the spousal relationship, and that was not received by way of gift or inheritance to only one Spouse; or
- (t) where the Interest in Katzie Land is held by one or both Spouses and was acquired prior to the spousal relationship or was received during the relationship by way of gift or inheritance to only one Spouse, the share of the Interest that is proportionate to any increased value in the Interest during the course of the relationship;

(2) For the purposes of this Law, terms have the same definitions as in the Land Code.

(3) A relationship between Spouses begins on the earlier of the following:

- (a) the date on which they began to live together in a marriage-like relationship; or
- (b) the date of their marriage.

- (4) For the purposes of this Law,
- (a) Spouses may be separated despite continuing to live in the same residence; and
  - (b) the Court may consider, as evidence of separation:
    - (i) communication, by one Spouse to the other Spouse, of an intention to separate permanently, and
    - (ii) an action, taken by a Spouse, that demonstrates the Spouse's intention to separate permanently.

## **PART 2 - APPLICATION OF LAW**

### **Only on Reserve Land**

4. This Law applies to all Katzie Land.

### **Only to Members and Their Spouses**

5. This Law applies to the breakdown of a marriage or common law relationship if at least one Spouse is a Member.

### **Spousal Homes and Spousal Property**

6. This Law applies only to Spousal Homes and Spousal Property except where explicitly provided.

### **No application Upon Death of Spouse**

7. (1) With the exception of enforcing rights under section 43, 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 Katzie Land or a Spousal Home will instead be determined by the applicable law governing the estate of the deceased Spouse.

(2) Despite subsection (1), if a Spouse dies, the other Spouse may continue any legal proceedings under this Law that were started before the death of that Spouse.

### **Application of Other Laws**

8. (1) This Law applies in conjunction with federal, provincial and any Laws concerning the division of personal property, real property off-reserve, spousal support, child support, and divorce.

(2) The rights and remedies provided in this Law are subject to any Laws passed by Council in relation to:

- (a) the removal and punishment of persons trespassing on Katzie Lands or frequenting Lands for prohibited purposes;



- (b) the prevention of nuisance; or
- (c) protection of the Katzie First Nation community.

### **Katzie's Rights Preserved**

9. Nothing in this Law affects the rights or priority of the Katzie First Nation if Katzie has guaranteed a mortgage or holds a mortgage or legal or financial interest in a Spousal Home.

### **Section 89(1) of the *Indian Act***

10. This Law applies despite section 89(1) of the *Indian Act*.

## **PART 3 - DOMESTIC CONTRACTS**

### **Domestic Contract Valid and Binding**

11. (1) Subject to this Law and all applicable laws, a provision in a Domestic Contract that reflects the agreement of the Spouses with respect to a Spousal Home or Spousal Property, is valid, binding and enforceable only if the Domestic Contract
- (a) is written;
  - (b) is signed by the parties; and
  - (c) was witnessed by one or more persons who are at least 19 years of age and evidenced by the witnesses' signatures.

(2) Subsection (1) also applies to a Domestic Contract that was entered into before the date this Law comes into force.

### **Entitlements to Non-Members**

12. (1) A Domestic Contract may grant an interest or rights in a Spousal Home or Spousal Property, including exclusive occupancy of a Spousal Home, to a Spouse or Child who is not a Member, but such interest and such rights must not be greater than a Life Estate measured by the life of the individual intended to enjoy it.

(2) A provision in a Domestic Contract is void if it purports to give, transfer, award, acknowledge or create an allotment, Certificate of Possession, or any Interest in Katzie Land equivalent to an allotment or Certificate of Possession, that is greater than a Life Estate for a person who is not a Member.

### **Court May Set Aside or Vary Agreements**

13. (1) Subject to this Law, a Court may, on application, set aside or vary a Domestic Contract or any provision of the contract concerning an Interest in Katzie Land or a Spousal Home based on the following:

- (a) a Spouse failed to disclose to the other Spouse all of that Spouse's Interests in Katzie Land or a Spousal Home, or any material information in respect of those interests;
- (b) a Spouse did not understand the nature or consequences of the Domestic Contract or provision;
- (c) there is evidence of abuse, coercion, undue influence or fraud, or that a Spouse did not voluntarily enter into the Domestic Contract or provision;  
or
- (d) in accordance with the common law or the law of equity of contract.

(2) Subject to subsection (3), subsection (1) only applies to:

- (a) married Spouses;
- (b) Common Law Spouses;
- (c) formerly married Spouses who have been divorced for less than two years; and
- (d) former Common Law Spouses who have been living separate and apart for less than two years.

(3) Where the time limit described in subsection (2) has expired:

- (a) a formerly married Spouse or former Common Law Spouse may apply to the Court for permission to bring a late claim under subsection (1) on the basis of compelling circumstances;
- (b) the Court will determine whether the evidence establishes sufficiently compelling reasons for the delay to allow it to proceed, taking into account any prejudice that the other Spouse will suffer from the delay in the application; but
- (c) in no case may the Court allow late claims to proceed where the formerly married Spouses have been divorced for over 5 years or where the former Common Law Spouses have been living separate and apart for over 5 years.

### **Registration of Agreements**

14. The Lands Director must register any Domestic Contract provided on application by a Spouse in the First Nations Land Registry if the following conditions are met:

- (a) the applicant provides an original agreement or a certified true copy of the Domestic Contract;
- (b) the Domestic Contract is signed and dated by both Spouses with their signatures notarized;

- (c) the applicant provides proof of membership in the Katzie First Nation for at least one Spouse named in the application;
- (d) for any Spousal Property referred to in the Domestic Contract
  - (i) the Domestic Contract includes the applicable legal description;
  - (ii) the applicant provides proof that they or their Spouse is the sole owner of the interest, or
  - (iii) if the interest is shared with other parties, a signed and notarized statement from each additional interest-holder stating that they do not object to the inclusion of the interest in the Domestic Contract; and
  - (iv) the applicant pays the applicable fee.

#### **PART 4 - ACCESS TO THE COURT**

##### **Cooperative Dispute Resolution Encouraged**

- 15. (1) A Spouse may contact the Lands Director for information and resources relating to alternative dispute resolution, including participating in a Mediation Process.  
  
(2) Despite subsection (1),
  - (a) a Spouse who participates in any Mediation Process or other alternative dispute resolution processes is solely responsible for any costs incurred in doing so;
  - (b) the Katzie First Nation is not responsible for providing alternative dispute resolution services to a Spouse.

##### **Application of Principles and Considerations**

- 16. To the extent possible, the person or body responsible for administering an alternative dispute resolution process or Mediation Process under this Law must apply any applicable principles and considerations identified in this Law.

##### **Materials Protected**

- 17. Any materials submitted by Spouses to the Mediation Process for the purpose of resolving a dispute under this Law will not be released to any person or agency, except where such disclosure is required under a Court order or the express wording of a statute.

##### **General Access to Court**

- 18. If 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.

### **Notice to Council**

19. Any Spouse who seeks a Court order based on any provision in this Law, other than an Emergency Protection Order must promptly serve the Council with a copy of the documents filed with the Court.

### **Family Law Legal Principles and Precedent**

20. The Court must adjudicate a dispute under this Law with regard to any decisions and orders rendered by a Canadian Court concerning related family law matters for the Spouses, such as divorce, child custody, spousal support, child support, division of personal property or division of real property off-reserve.

### **Submissions by Council**

21. At the request of Council, the Court must, before making its decision, allow Council 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.

### **Notice to Council**

22. When the Court makes any decision or order under this Law, the Spouse in whose favour the decision is made must promptly provide a copy of the decision or order to the Council.

### **Rules of Court**

23. Parties must observe the rules and procedures of the Court, except where they are inconsistent with this Law, in which case this Law prevails.

### **Certain Orders Prohibited**

24. A Court order must not be made under this Law:
  - (a) providing a Certificate of Possession or allotment in favour of a Spouse who is not a Member; or
  - (b) subject to section 31(1)(d), that results in a sale, partition or transfer of a Certificate of Possession or allotment.

### **Court May Vary Orders**

25. A Court may, on application, vary any declaration or order granted under this Part if:
  - (a) there is a material change in circumstance;
  - (b) there is evidence of fraud, abuse or coercion; or

## **PART 5 - SPOUSAL HOME**

### **Rights of Relief against Forfeiture**

26. (1) Spouses have equal rights of redemption or relief against forfeiture during the relationship.
- (2) Where a Person or entity proceeds to realize upon an encumbrance or execution against a Spousal Home or an Interest in Katzie Land that affects the Spousal Home, both Spouses have a right of redemption or relief against forfeiture for the Spousal Home and both are entitled to notice respecting the claim and its enforcement or realization.

### **How to Determine Spousal Home**

27. (1) The determination of whether a structure or interest is a Spousal Home is a question of fact.
- (2) Where part of a Spousal Home is normally used for a purpose other than residential purposes, including cultural uses, storage, rental, or commercial purposes, the Spousal Home includes only that part of the structure or structures that may reasonably be regarded as necessary for use and enjoyment as a family residence.

### **Equal Rights to Occupy the Spousal Home**

28. Subject to the limitations inherent in the nature of Katzie Land, sections Part 312 and Part 424, and to other factors set out in this Law, both Spouses have an equal right to occupy the Spousal Home.

### **Limits on Sales and Encumbrances**

29. (1) A Spouse must not dispose of or encumber a Spousal 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 Domestic Contract;
  - (d) a Court order has authorized the transaction; or
  - (e) a Court has released the Spousal Home from the application of this section.
- (2) If a Spouse disposes of or encumbers a Spousal Home in contravention of subsection (1), the Court may, on application:
- (a) set aside the disposal or encumbrance, or
  - (b) order the Spouse to pay compensation to the other Spouse.

(3) Subsection (2)(2)(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 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 Spousal Home.

(4) A Court may, on the application of a Spouse, authorize a disposition or encumbrance of a Spousal Home without the consent of the other Spouse if

- (a) the disposition or encumbrance is otherwise authorized under this Law;  
and
- (b) the Spouse whose consent is required
  - (i) cannot be found,
  - (ii) is not available,
  - (iii) is not capable of giving or withholding consent, or
  - (iv) is unreasonably withholding consent.

(5) A Court's order authorizing a disposition or encumbrance of a Spousal Home under subsection (4) may include conditions that the Court deems appropriate.

## **PART 6 - DIVISION OF SPOUSAL PROPERTY OR COMPENSATION IN LIEU**

### **Application**

30. (1) Subject to subsection (2), this Part only applies to:

- (a) married Spouses who are living separate and apart;
- (b) formerly married Spouses who have been divorced for less than two years as of the application date; and
- (c) former Common Law Spouses who have been living separate and apart for less than two years.

(2) Where a time limit described in subsection (1) has expired:

- (a) a Spouse may apply to the Court for permission to bring a late claim under this Part based on compelling circumstances; and
- (b) the Court will determine whether the evidence establishes sufficiently compelling reasons for the delay to allow it to proceed, taking into account any prejudice that the other Spouse will suffer from the delay in the proceeding; but

- (c) in no case will the Court allow late claims to proceed where the Spouses have been divorced for over 5 years or have been living separate and apart for over 5 years.

### **Court may make determinations**

31. (1) Subject to this Law, the Court may make determinations concerning interests in and the division of value of Spousal Property and may make orders that are necessary, reasonable or ancillary to give effect to the determination, including, but not necessarily limited to:
- (a) a declaration as to whether people are Spouses;
  - (b) a declaration as to whether the property at issue is in fact Spousal Property;
  - (c) a declaration as to the ownership of an Interest in Katzie Land;
  - (d) where both Spouses own the Spousal Property, order that one Spouse transfer the Spousal Property to the other Spouse exclusively, subject to such conditions as the Court deems just in all circumstances;
  - (e) an order that one Spouse pay compensation to the other Spouse to recognize the contribution which the other Spouse has made to the acquisition, upkeep and/or improvement of the Spousal Home or Spousal Property;
  - (f) an order that restrains either Spouse from disposing of or transferring his or her interest in the Spousal Property, either legally or beneficially, pending the resolution of the Spouses' Spousal Property dispute;
  - (g) an order that one Spouse pay compensation to the other Spouse if an Interest in Katzie Land has been disposed of or encumbered, for the purpose of recognizing the contribution that the other Spouse made to the acquisition, upkeep and/or improvement of the Spousal Property;
  - (h) any appropriate equitable order where one Spouse has intentionally, recklessly, or fraudulently damaged, encumbered, depleted or disposed of Spousal Property.

(2) For greater certainty, the Court must not make any declaration or order providing for the transfer of permanent rights in Spousal Property to a non-Member Spouse.

### **Presumption of entitlement to equal share**

32. In making any order under section 31(d), section 31(e), section 31(f) and section 31(h), the Court must begin with the presumption that each Spouse is entitled to an equal share of the value of the Spousal Home or the Spousal Property, and then must consider whether this presumption should be varied in light of any of the following factors:
- (a) the date on which the Spousal Property was acquired or disposed of;

- (b) the length of the relationship;
- (c) the length 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 or indirect financial contributions of each Spouse toward the acquisition, upkeep, improvement or increased value of the Spousal Property;
- (f) the direct or indirect non-financial contribution of each Spouse to the acquisition, upkeep, improvement or increased value of the Spousal Property, including through Child-rearing responsibilities;
- (g) the amount of any outstanding debt or other liabilities assumed by either Spouse to acquire, maintain, or improve the Spousal Property;
- (h) any relevant order or award by a Court regarding the Spouses' family law matters; and
- (i) any other factor that the Court considers relevant to an equitable division of the Spousal Property.

### **Considerations for Court orders**

33. (1) In making any compensation order under section 31(e), the Court must not make any order until the Court has been provided with at least one valuation of the Spousal Property that has been prepared by a qualified appraiser, and which accounts for the limitations on the ownership rights associated with the Spousal Property and, in particular, the feasibility of selling or leasing the Spousal Property or replacing it with a new Interest in Katzie Land.
- (2) Prior to making an order under section 31(d), section 31(g) or section 31(h), the Court may require the Spouses to provide it with at least one valuation of the Spousal Property in accordance with the requirements provided under subsection (1).
- (3) The Spouses are responsible to pay the costs of any appraisals obtained pursuant to subsections (1) or (2) and must share such costs equally unless otherwise ordered by the Court.
- (4) The Court may vary the apportionment of the costs of any appraisal required pursuant to subsections (1) or (2) between the Spouses if in the Court's reasonable opinion the presumptive equal division would result in undue hardship or inequity to one of the Spouses.
- (5) Where the interest of a Spouse in Spousal Property is held through a corporation, the Court may order the he or she transfer shares in the corporation to the other Spouse.



## PART 7 - EXCLUSIVE OCCUPATION ORDERS

### Exclusive Occupation Order

34. (1) For the purposes of this section, in addition to the meaning of the term provided under section 3(1), "Interest in Katzie Land" includes property for which the applicable Certificate of Possession has been transferred to the Katzie First Nation as security for a housing loan or mortgage that has been granted by or guaranteed by Katzie First Nation and that will be transferred to one or both Spouses upon repayment of the loan or mortgage.

(2) A Court may, on application by a Spouse, make an Exclusive Occupation Order for the Spousal Home, or other residential dwelling where that person habitually resides, including rental housing, in favour of that Spouse for a period of time specified by the Court, if this order would not conflict with a Domestic Contract and if

- (a) the applicant Spouse is a Member; or
- (b) the applicant is not a Member but is the primary caregiver of a Child of the applicant.

(3) A Spouse making an application under subsection (2) must provide the Court with the following documents:

- (a) any Court order concerning custody or access related the Child;
- (b) any Domestic Contract between the Spouses.

(4) Where there has been a relationship breakdown between Spouses and a third party becomes the primary caregiver of their Child, that primary caregiver may apply for an Exclusive Occupation Order under subsection (2) as though she or he were one of the Spouses.

(5) A third party caregiver making an application under subsection (4) must provide the Court with any Court order concerning custody or access for the Child.

### Considerations for Court orders

35. In making an Exclusive Occupation Order, the Court must consider, among other things:

- (a) the best interests of any affected Child;
- (b) the collective interests of Members in Katzie Land and any representations made by Council with respect to the cultural, social and legal context that pertains to the application;
- (c) the period during which the applicant has habitually resided on Katzie Land;
- (d) the financial situation and the medical condition of the Spouses;

- (e) the availability of other suitable accommodation that is situated on Katzie Land;
- (f) any existing order made on a matter related to the consequences of the breakdown of the relationship;
- (g) any Domestic Violence, including any acts or omissions by one of the Spouses that reasonably constitute psychological abuse against the other Spouse, any Child in the charge of either Spouse, or any other Family Member who habitually resides in the Spousal Home;
- (h) the existence of exceptional circumstances that necessitate the removal of a person other than the applicant's Spouse from the Spousal Home in order to give effect to the granting to the applicant of exclusive occupation of that home;
- (i) the interests of any elderly person or person with a disability who habitually resides in the Spousal Home and for whom either Spouse is the caregiver;
- (j) the fact that a person, other than the Spouses, holds an interest or right in or to the Spousal Home;
- (k) the views of any person who received a copy of the application, presented to the Court in any form that the Court allows; and
- (l) in the case of rental housing, the terms of the rental agreement.

### **Terms of Order**

36. (1) An Exclusive Occupation Order may specify any terms that the Court deems appropriate, including:
- (a) a provision requiring the applicant's Spouse and any specified person to vacate the Spousal Home immediately, or within a specified period, and prohibiting them from re-entering the home;
  - (b) a provision requiring the applicant's Spouse to preserve the condition of the Spousal Home until that person vacates it;
  - (c) the extent to which the contents of the Spousal Home are to remain in the Spousal Home for the duration of the exclusive occupation order;
  - (d) a provision directing the applicant to make payments to the other Spouse toward the reasonable costs of other accommodation;
  - (e) a provision requiring either Spouse to pay for all or part of the repair and maintenance of the Spousal Home and of other liabilities arising in respect of the Spousal Home, or to make payments to the other Spouse for these purposes; and

- (f) a provision that the order is subject to variation if there is a change of primary caregiver for a Child affected by the order.

(2) An Exclusive Occupation Order made in relation to rental housing may be for a period of time specified by the Court, or up to the end of the term of the rental agreement, whichever period of time is shorter, and must require compliance with the rental agreement for the duration of the order.

(3) Exclusive Occupation Orders are subject to the following time limits:

- (a) where the sole or primary purpose of the Exclusive Occupation Order is to allow a primary caregiver to raise a Child in the Spousal Home, the term of the order must expire at the latest on the date the Spouse ceases to be the primary caregiver, including when the Child turns 19; and
- (b) in the case of an Interest in Katzie Land as provided under section 34(2), if the borrower goes into default on the housing loan, the order must expire on the date default is declared.

#### **Other Parties interested in Application**

37. (1) Before applying for an Exclusive Occupation Order, the applicant must provide notice of his or her application to the following parties in accordance with the applicable rules of Court:

- (a) the respondent Spouse(s);
- (b) any other Member who holds an Interest in Katzie Land that is the subject of the application;
- (c) Council.

(2) The parties listed in subsection (1) are entitled to make submissions to the Court on the application.

#### **Application to vary or revoke an order**

38. The Court may, on application by any party listed under section 37(1), confirm, vary or revoke the Exclusive Occupation Order for which the party is concerned.

### **PART 8 - EMERGENCY PROTECTION ORDER**

#### **Emergency Protection Order**

39. (1) The Court may, on ex parte application by a Spouse, make an Emergency Protection Order for the Spousal Home or other dwelling where that person habitually resides, including rental housing, in favour of that Spouse, whether or not the Spouse is a Member and whether or not a Child is involved, if the judge is satisfied that:

- (a) Domestic Violence has occurred; and

- (b) The order should be made to help ensure the immediate protection of the Spouse or a Child who resides at the property.

(2) The Spouse may make the application even if that person has been forced to vacate the Spousal Home as a result of Domestic Violence.

(3) A peace officer or other person may also make the application on behalf of the Spouse with that person's consent, or if that person does not consent, with leave of the Court granted in accordance with this Law.

### **Terms of Order**

40. (1) Subject to subsection (2), an Emergency Protection Order made in relation to a Spousal Home may be for a period of up to 90 days.

(2) An Emergency Protection Order made in relation to rental housing may be for a period of up to 90 days, or to the end of the term of the rental agreement, whichever period of time is shorter.

(3) In deciding whether to grant an Emergency Protection Order, the Court is not bound by the provisions in any Domestic Contract between the Spouses.

(4) An Emergency Protection Order must include a provision directing a peace officer to enforce any provision of the order if requested to do so by the applicant Spouse.

(5) An Emergency Protection Order may include any or all of the following additional provisions:

- (a) a provision requiring the respondent Spouse and any other person to vacate the Spousal Home or other dwelling where that person habitually resides, including rental housing, and prohibiting them from returning to the home or dwelling for the duration of the order;
- (b) a provision directing a peace officer to remove the respondent Spouse and any other person from the Spousal Home or other dwelling where that person habitually resides, including rental housing;;
- (c) a restraining order;
- (d) a provision directing a peace officer to escort the person who is required to vacate back to the Spousal Home or other dwelling where that person habitually resides, including rental housing, 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.

### **Application to vary or revoke an order**

41. (1) The Court may confirm, vary or revoke an Emergency Protection Order on application by:

- (a) any person in whose favour or against whom an Emergency Protection Order is made; or
- (b) any person specified in the order.

(2) Subject to subsection (3), an application under subsection (1) must be made within the time specified in the order, or if no time is stipulated, within 30 days of written notice of the order having been received, or at any time if there has been a material change in circumstances.

(3) If an Emergency Protection Order concerns rental housing and the Interest subject to the order is held by a Person other than the Katzie First Nation, the owner of the Interest may apply to the Court at any time to have the order varied or revoked, subject to any restrictions imposed on those parties by the terms of the order.

### **Renewing an Emergency Protection Order**

42. (1) A person who obtains an Emergency Protection Order may apply to have it renewed for a period of up to 90 days.

(2) A renewal application under subsection (1) must be made with notice to the respondent Spouse, Council, and the owner of Interest in Katzie Land that is subject to the order, in accordance with the applicable rules of Court.

## **PART 9 - OCCUPATION OF SPOUSAL HOME UPON DEATH OF A SPOUSE**

### **Death of a Spouse**

43. If a Spouse dies, the surviving Spouse and any Child for whom the surviving Spouse is the primary caregiver has the right to occupy the Spousal Home for a period of 180 days after the day on which the death occurs, whether or not the survivor is a Member.

## **PART 10 – AMENDING AND REPEALING PROCEDURES**

### **Minor Amendments**

44. Council may, by Resolution, make amendments to this Law that do not change its substance, which may include, but are not limited to the following:

- (a) corrections to clerical, grammatical or typographical errors;
- (b) minor improvements to the language of the Law that bring out more clearly the intent of Katzie First Nation without changing the substance of any provision;
- (c) changes as may be required to reconcile seemingly inconsistent provisions;

- (d) amendments to reference any relevant new or amended Katzie First Nation laws; and
- (e) amendments ordered by any Court of competent jurisdiction.

### **Substantive Amendments**

45. Without limiting Council's authority to require additional steps, Council may make substantive amendments to this Law if the following steps have been followed:
- (a) Council approves the proposed amendments in principle at a duly convened meeting of Council;
  - (b) Council makes the wording of the proposed amendments available for Members to review;
  - (c) Council consults with Members about the proposed amendments by holding a minimum of two community meetings over a period of at least three months;
  - (d) Council finalizes the wording of the proposed amendments in response to the consultation with Members and the proposed amendments receives at least one reading in a duly convened meeting of Council;
  - (e) Council provides written notice to Members of a Meeting of Members to vote on the proposed amendments that complies with sections 12.4 and 12.5 of the Land Code;
  - (f) the proposed amendments receive at least one reading at a duly convened Meeting of Members and is approved by a majority of the Eligible Voters in attendance at the meeting; and
  - (g) Council adopts the amendments by Resolution.

### **Coming into force - Amendments**

46. An amendment to this Law comes into force upon passage of the Resolution adopting the amendments in accordance with section 44 for a minor amendment, and section 45 for a substantive amendment.

### **Repeal**

47. This Law may be repealed in its entirety if a majority of at least 25 percent of Members eligible to vote consent to the repeal of this Law.

## **PART 11 - OFFENCES AND PENALTIES**

### **Offence**

48. A person who, without reasonable excuse, contravenes an order made by a Court pursuant to this Law is guilty of an offence and liable on summary conviction.

## **Penalty**

49. (1) A person who has been found guilty under section 48 is liable to pay 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 subsection (2) must be remitted to Katzie First Nation by the Court, after reasonable Court costs have been deducted.

## **PART 12 - GENERAL PROVISIONS**

### **Rights of Non-Members Non-Transferable**

50. (1) A non-Member who is granted interim occupation or possession rights on Katzie Land under this Law cannot dispose of, transfer, or assign those rights or pass them to heirs in a will.

(2) As soon as the non-Member ceases to personally use or occupy the subject lands, or the term of the order expires, the non-Member's rights of use and occupancy in the subject lands are deemed to be terminated.

### **Headings**

51. Headings in this Law are for reference only and do not form part of this Law.

### **Provisions are severable**

52. All provisions of this Law are severable. If a Court of competent jurisdiction determines that any provision of this Law is invalid or inapplicable, the provision shall be severed from the law and the remainder of the law shall remain in force with any necessary revisions.

*[the remainder of this page is intentionally left blank]*

### **Coming Into Force**

53. This Law comes into force on the date it is passed by Resolution after complying with section 7 of the Land Code.

THIS LAW IS HEREBY DULY ENACTED by Council on the 9<sup>th</sup> day of September, 2019, at Pitt Meadows, in the Province of British Columbia.

Quorum for Council is 3

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Chief Grace Cunningham

\_\_\_\_\_

Councillor Rick Bailey

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Councillor Peter James

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Councillor David Kenworthy