

#Chat4Change:



*Engagement: Matrimonial Real Property
Law-Making and Implementation*

WHAT & WHY

Matrimonial Real Property (MRP) refers to immovable assets such as a house or a shed.

The Framework Agreement on First Nations Land Management (FNLM) and the *First Nations Lands Management Act* were amended to enable FNLM First Nations to develop MRP laws. Following this, the [Family Homes on Reserves and Matrimonial Interests or Rights Act](#) (FHRMIRA) was enacted to provide rights and protections regarding matrimonial real property on reserve.



To date, 35 operational FNLM First Nations have addressed matrimonial real property as a component of their land code implementation. A further 2 FNLM First Nations have opted to be subject to the provisional federal rules pursuant to the Act.



Indigenous and Northern Affairs Canada (INAC), in partnership with the [National Aboriginal Land Managers Association \(NALMA\)](#) and the [First Nations Land Management Resource Centre](#), will be conducting a national engagement to identify new features or measures that could improve the implementation of the Act. First Nations who have developed Matrimonial Real Property laws, successfully or unsuccessfully, will figure prominently in these discussions. Within this context, a dedicated engagement session is planned for **FNLM First Nations in Kelowna, British Columbia, January 30-31, 2017**. Additional sessions for other First Nations will be held as follows:

- Quebec Region: Wendake, October 24th – 25th, 2017 (Bilingual session)
- Calgary, November 14th – 15th, 2017
- Toronto, December 5th – 6th, 2017
- Halifax, January 23rd – 24th, 2018
- Saskatoon, February 20th – 21st, 2018
- Winnipeg, March 6th – 7th, 2018

WHAT IS INCLUDED IN THE ENGAGEMENT?



Participation in one of the engagement sessions is an opportunity for you to share your opinions and ideas about how to improve implementation. The engagement will have four themes focusing on the needs of communities in terms of:

- Capacity
- Funding
- Implementation
- Dispute resolution

A summary of each session will be posted on the engagement website following the session.

Recommendations received will be used to inform the design and development of new policy features and program supports to improve implementation.

WHO?

INAC is engaging with:

- National and Regional Indigenous organizations
- First Nations who have successfully or unsuccessfully passed community specific matrimonial real property laws
- Other interested stakeholders via responses received by email, phone, and/or mail
- Provincial/territorial governments with focus on new features and/or issues that could impact them.

TRAVEL SPONSORSHIP FUNDING

Costs of attending the engagement sessions will be reimbursed for a maximum of two participants to attend the session. The claim form for your expenses will be available at the engagement session.

HOW TO PARTICIPATE

There are three ways to participate:

1. **In Person:** Attend a regional engagement session (by invitation, click [here](#) to register on-line)
2. **Online:** Read the Discussion Guide and email your response and feedback to mrp-bim@aadnc-aandc.gc.ca
3. **By Mail:** Send your responses and feedback to the address in Contact Us

BACKGROUND OF MATRIMONIAL REAL PROPERTY ON RESERVE

This is a brief background and definition of the issue of matrimonial real property on reserve. For a more comprehensive look at the issue, please refer to the resources available on the [Matrimonial Real Property webpage](#).

In 1986, the Supreme Court of Canada confirmed in [Derrickson v. Derrickson](#) that when a conjugal relationship breaks down, courts cannot apply provincial/territorial family law if doing so would alter individual interests in matrimonial real property located on reserves, because reserve lands fall under federal jurisdiction. The *Indian Act* does not address the issue. This resulted in a legislative gap on reserves that had a significant impact on the lives of people living on-reserve. Scenarios of the impact this legislative gap had on reserves can be found [here](#).



The Framework Agreement on First Nations Land Management was amended in 2002 to address the issue of matrimonial real property and was ratified by the *First Nation Land Management Act* in 2003. However, First Nations have typically developed laws that cover a broad range of conditions, and in many cases, extend beyond marriage breakdown to transfer of matrimonial rights or interests in land during marriage. As well, the *Family Homes on Reserves and Matrimonial Interests or Rights Act* (FHRMIRA), which received Royal Assent June 19, 2013, fills the legislative gap and works to balance the collective interests of self-determination and individual need for rights and protections related to matrimonial real property.

The Government of Canada remains committed to resolving the issue of matrimonial real property on-reserves and acknowledges that First Nations are best positioned to address these issues within their own communities. First Nations operating under the FNLM regime have three options to address matrimonial real property:

- Implement as a component of their land code; or
- Enact a community-specific law pursuant to the FHRMIRA; or
- Opt to use the provisional federal rules.

The provisional federal rules apply to FNLM communities, unless or until it is addressed through one of these avenues, or the First Nation becomes self-governing.

WHAT IS THE *FAMILY HOMES ON RESERVES AND MATRIMONIAL INTERESTS OR RIGHTS ACT*?

The FHRMIRA provides men, women, children, and families living on reserves with immediate protections and rights related to the family home and matrimonial interests and rights. These rights and protections are similar to those available to other Canadians who live off-reserve under provincial and territorial jurisdiction, and consider the rights of Indigenous people to self-determination. The FHRMIRA works two-fold to provide these rights and protections.

Part 1

First Nation Law Making Mechanism

The first part of the FHRMIRA came into force on December 16, 2013. Under [sections 7-11](#) of the FHRMIRA, First Nation communities can choose to enact their own matrimonial real property laws. There are no requirements regarding the content of a community-specific matrimonial real property law. First Nation communities choosing to enact a community-specific matrimonial real property law can contact the [Centre of Excellence for Matrimonial Real Property](#) for guides and support.

The Centre of Excellence was developed to operate at arm's length from the federal government. Operated by the National Aboriginal Land Managers Association (NALMA), the Centre provides training sessions across Canada and develops and distributes materials related to the FHRMIRA. For more information on the full process of how to enact a community-specific MRP law, please visit the [First Nation Law Making](#) section of the Centre of Excellence website

Part 2

Provisional Federal Rules

The second part of the FHRMIRA contains the [provisional federal rules](#) that provide rights and protections to individuals regarding their matrimonial interests unless or until their community enacts a community-specific MRP law. First Nations active in the FNLM Regime received a three-year exemption until June 2016 to develop a matrimonial real property law as a component of their land code implementation. Following this three-year time frame, the provisional federal rules of the FHRMIRA apply to FNLM First Nations unless or until a matrimonial real property law is enacted in accordance with their land code.

The rules set out provisions for Emergency Protection Orders, Exclusive Occupation Orders, Division of the Value of Matrimonial Interest or Rights, Relationship Breakdown, Death of a Spouse or a Common-Law Partner, and the Distribution of Estate. A [clause-by-clause analysis](#) of the provisional federal rules is available for more information.

To support the implementation of the FHRMIRA, training and education was mandated to be provided for key officials applying or enforcing the FHRMIRA, including police officers on reserves and education materials for legal experts.



HOW IS MATRIMONIAL REAL PROPERTY ADDRESSED IN THE FRAMEWORK AGREEMENT?

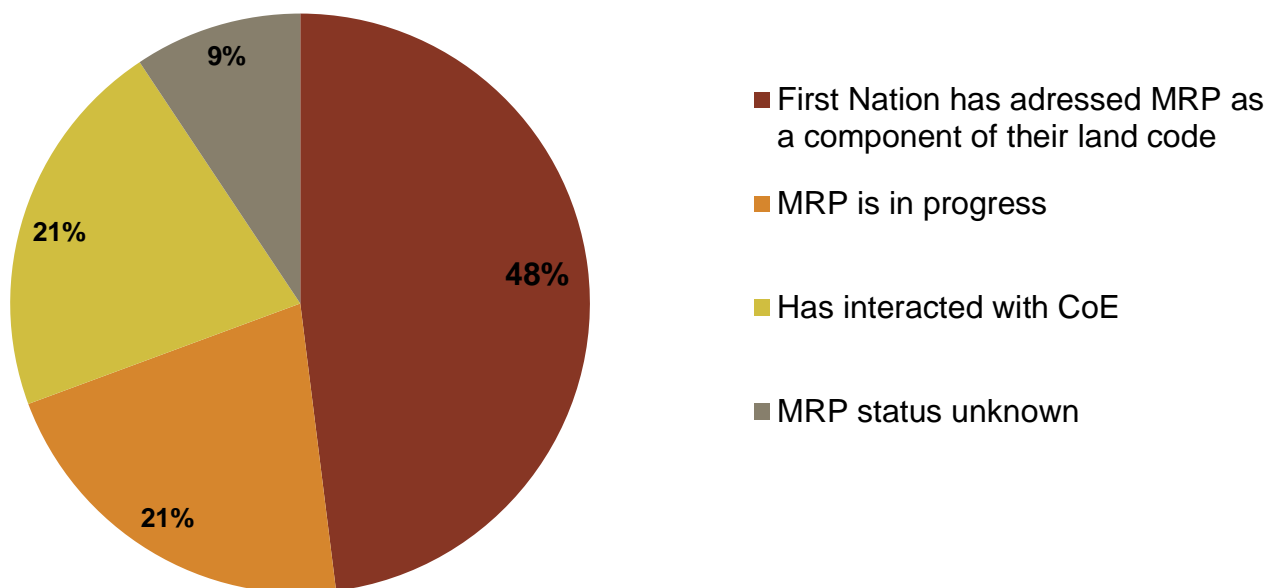
The provisional federal rules within the FHRMIRA also apply to First Nations operating under the FNLM Regime, unless or until the First Nation addresses matrimonial real property as a component of their land code. Alternatively, FNLM First Nations may enact a community-specific law pursuant to the law-making process set out in the FHRMIRA.

Framework Agreement on First Nation Land Management

5.4 In order to clarify the intentions of the First Nations and Canada in relation to the breakdown of a marriage as it affects First Nation land:

- (a) a First Nation will establish a community process in its land code to develop rules and procedures, applicable on the breakdown of a marriage, to the use, occupancy and possession of First Nation land and the division of interests or land rights in that land;
- (b) for greater certainty, the rules and procedures referred to in clause (a) shall not discriminate on the basis of sex;
- (c) the rules and procedures referred to in clause (a) shall be enacted in the First Nation's land code or First Nation laws;
- (d) in order to allow sufficient time for community consultation during the community process referred to in clause (a), the First Nation shall have a period of 12 months from the date the land code takes effect to enact the rules and procedures;
- (e) any dispute between the Minister and a First Nation in respect of this clause shall, notwithstanding clause 43.3, be subject to arbitration in accordance with Part IX;
- (f) for greater certainty, this clause also applies to any First Nation that has voted to approve a land code before this clause comes into force.

Figure: MRP law-making status for operational FNLM communities



PREVIOUSLY IDENTIFIED ISSUES

On-going implementation and external issues previously identified that affect the ability to access matrimonial real property rights and protections:



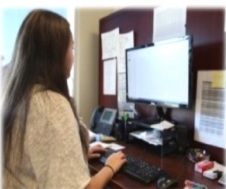
More program supports to build First Nation capacity to address matrimonial real property. For example:

- There is no dedicated support for First Nations to gain legal advice – a gap and funding pressure identified by First Nation;
- There is no dedicated funding available for communities to develop, ratify, publish and promote their matrimonial real property laws;
- Matrimonial real property considerations often require amendments to other First Nation laws or policies (e.g. housing); and
- It has been suggested that due to numerous other social, economic, and political issues that affect communities, developing a matrimonial real property law is a competing priority for communities.



Better access to Justice, including traditional justice strategies:

- The Act enables designated provincial/territorial judges to issue Emergency Protection Orders to exclude a spouse or common-law partner from the family home on an urgent basis in situations of family violence. Currently only New Brunswick, Nova Scotia, and Prince Edward Island have designated judges. Other provinces have identified mechanisms within their Family Court systems for this purpose; though some uncertainty remains on application;
- Need continues for greater training and awareness on the issue of matrimonial real property on-reserves for members of the judiciary, law enforcement, legal practitioners, court, social and family service workers;
- Additional support for the development and implementation of traditional dispute resolution strategies is needed; and
- Better access to emergency accommodations (e.g. safehouses and shelters) in cases of family violence is needed.



Greater connectivity:

- Varying levels and quality of connectivity on reserves can limit access to information about the rights and protections provided under the Act and access to enforcement mechanisms such as tele-justice.

DISCUSSION QUESTIONS

The engagement is divided into four separate themes, with a scenario accompanying each theme. You can access the scenarios online by clicking on each theme:

**Creating a
Matrimonial
Real Property
Law**



Estates



**Emergency
Protections
Orders and
Exclusive
Occupation
Orders**



**Division of
Property**



For each theme and scenario, consider the following questions:

- What would you need from a:
 - Capacity perspective
 - Funding perspective
 - Implementation perspective
 - Dispute Resolution perspective
- Are there any other supports you would need?

CONTACT US

For more information and any questions you may have, please feel free to contact the Centre of Excellence for Matrimonial Real Property or the MRP Team at INAC:

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Web Address: <https://labrc.com/home/>

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RELATED LINKS

[*Family Homes on Reserves and Matrimonial Interests or Rights Act*](#)

[Frequently Asked Questions](#)

[List of First Nations with Matrimonial Real Property Laws Under the Act](#)

[Application of the Legislation](#)

[Backgrounder](#)