

Nipissing Matrimonial Law

Matrimonial Real Property
(MRP)

January 30, 31, 2018

Delta Grand Okanagan Resort

Photo use permission by
Mrs. Suzanne Campeau Whiteduck

Nipissing enacted its Land Code on July 1, 2003.

MRP Law came into force
June 19, 2007.

WAS Due for a review of possible
amendments June of 2017

The ***primary direction from Elder's*** was to set in place a law that ensured the protection of Children and the person(s) having custody. **Lack of and a MUST review on 'legal obligations' custodial care of trust revenue interests'**

1

*Nipissing First Nation
Matrimonial Real Property Law*

Index

Law when under review will be more definitive
by adding indexes to Table of Contents

Table of Contents

Title Page	1
Table of Contents	2
Preamble	3
Part One - Application of Law	4-5
Part Two – Domestic Contracts	5-6
Part Three – Compulsory First Nation Mediation	6-8
Part Four – Access to A Court of Competent Jurisdiction	8-13
Part Five – General Provisions	13

Preamble

- A. Empowered under NLC.
- B. Enactment in accord with Framework Agreement
- C. Provision of rights & remedies without discrimination based on gender 'who have or claim' interests in land
- D. Provides;
 - avenue for couples to make their own agreement, or
 - Strongly recommends mediation for those couples incapable of reaching agreement, or
 - Right to access courts of competent jurisdiction.
- E. CAUTION on rights of Nipissing People on land remaining for Nipissing People use and benefit

Preamble

- A. Whereas the Nipissing First Nation has taken control of its reserve lands and resources pursuant to the *Framework Agreement on Nipissing First Nation land Management*, and has enacted the *Nipissing First Nation land Management Code* which came into force and effect on July 1, 2003;
- B. And whereas, pursuant to the *Framework Agreement*, the First Nation agreed to enact rules and procedures, applicable on the breakdown of a marriage, to the use, occupancy and possession of Nipissing First Nation land, and the division of interests in the said land;
- C. And whereas the Nipissing First Nation intends to provide rights and remedies, without discrimination on the basis of sex, with respect to spouses who have or claim interests in Nipissing First Nation land upon the breakdown of their marriage;
- D. And whereas the Nipissing First Nation intends to respect the following principles with respect to the use, occupancy of matrimonial real property on Nipissing First Nation land, and the division of interests in that land on the breakdown of a marriage:
 - i) Firstly, the right of the parties to a marriage to make their own agreement as to the disposition of interests in Nipissing First Nation land in the event that their marriage breaks, or has broken down;
 - ii) Secondly, the value of mediation where the parties have not or are unable to reach their own agreement as described above; and
 - iii) Thirdly, the right of the parties to have access to a court of competent jurisdiction to deal with all their property rights, entitlements and obligations on the breakdown of their marriage, subject to First Nation law where their property includes an interest in Nipissing First Nation land.
- E. And whereas it is also the desire of the Nipissing First Nation to insure the Nipissing First Nation land remains for the use and benefit of its members for all time.

IT IS THEREFORE ENACTED AS LAW OF THE NIPISSING FIRST NATION:

Application of Law

- Applies only to interest in land under the NLC
- “*not to be construed*” as limiting rights or remedies available under other laws “or other entitlement or obligations of spouses”
- Provides definitions

PART ONE APPLICATION OF LAW

1. This law may be cited as the *Nipissing First Nation Matrimonial Real Property Law*.
2. This law applies only to interest in, or claimed pursuant to this law in, Nipissing First Nation land as that term is defined in the *Nipissing First Nation Land Management Code*.
3. Subject to its terms, this law shall not be construed as limiting or precluding any right or remedy otherwise available to persons who are or may be affected by it pursuant to any other law applicable on the breakdown of a marriage with respect to any property other than interests in Nipissing First Nation land, or other entitlement or obligations of spouses.
4. For the purposes of this law, the following definitions shall apply:
 - (1) “**child**” includes a child born out of wedlock, a legally adopted child and a child adopted in accordance with the *Nipissing First Nation Band Custom Adoption*.
 - (2) “**Council**” means the Chief and Council of the Nipissing First Nation
 - (3) “**domestic contract**” includes:
 - (a) A “**marriage contract**” entered into between two people who are married to each other, or intend to marry, made in writing and signed by the parties and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of interests in Nipissing First Nation land; and
 - (b) A “**separation agreement**” entered into between two people who are married to each other and are living separate and apart, made in writing and signed by the parties and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of interests in Nipissing First Nation land.
 - (4) “**interest in Nipissing First Nation land**” includes any legal or equitable interest held in possession by either spouse, or both spouses, in Nipissing First Nation land.
 - (5) “**Chief and Council**” means the Chief and Council of Nipissing First Nation;

- At time of separation, only the part of an interest in land “to the use and enjoyment of the family residence”
- Clause 4.8(a) provides for a definition of a spouse to mean married by traditional customary, religious or civil, common law partnership
- Does not provide for a spouse to pursue an interest in land under this law if the interest “will be determined by will or administration of an estate :
- Provides for a description and parameters for Domestic Contracts on a matrimonial home, i.e.: use, occupancy, disposition, partition, validity
- Clause 8(1) any provision in a DC that would create more than a ‘life estate’ to non-Nipissing is void

- (6) “**matrimonial home**” means an interest in Nipissing First Nation land that is or, if the spouses have separated, was at the time of separation, ordinarily occupied by the person and his or her spouse as their family residence; and, where a parcel of Nipissing First Nation land that is an interest in Nipissing First Nation land for purposes of this law includes a matrimonial home and is normally used for a purpose other than residential, the matrimonial home is only the part of the interest in Nipissing First Nation land that may reasonably be regarded as necessary to the use and enjoyment of the family residence.
- (7) “**member**” means a person who is defined as a “member” by the terms of the *Nipissing First Nation Membership Code*
- (8) “**spouse**” means a person who:
 - (a) is married to another, whether by a traditional customary, religious or civil ceremony, and includes a Spouse by Common-Law Partnership; 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. 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 Nipissing First Nation 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 DOMESTIC CONTRACTS

- 6. 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 Nipissing First Nation land, including an interest that is a matrimonial home.
- 7. Subject to this Part, a provision in a domestic contract that reflects the agreement of the parties with respect to an interest in Nipissing First Nation land, including an interest that is a matrimonial home, is valid, binding and enforceable.
- 8. (1) Notwithstanding section 7, a provision in a domestic contract that would give, award, acknowledge or create an interest in Nipissing First Nation land greater than a life estate to occupy or possess the matrimonial home in Nipissing First Nation land, in favour of a spouse who is not a member, is void.

- Life estate to possess or occupy may be measured only by the life of the person intended to enjoy the interest
- Court of competent jurisdiction may set aside a domestic contract if a party failed to disclose interests, or
- A party did not understand nature or consequences of the provision

Should COMPULSORY MEDIATION be required upon inability of parties to conclude a Domestic Contract, parties must;

- Submit to mediation under direction of C & C; C & C authorized to create and maintain a roster of qualified mediators; **2nd draft of an updated 'Dispute Resolution Law' proposing to include healing circles, elder's and peer reviews.**
- Spouses may elect to initiate own mediation BUT MRP law recommends use of C & C qualified mediators
- Request for mediation upon filing notice on designated form and with proof of service

- (2) In applying this section, a valid life estate to possess or occupy an interest in Nipissing First Nation land may be measured only by the life of the person intended to enjoy it.
9. Subject to this law, a court of competent jurisdiction may, on application under Part Four, set aside a provision of a domestic contract with respect to an interest in Nipissing First Nation land:
 - (a) if a party failed to disclose to the other all of his or her interests in Nipissing First Nation land, or any material information in respect of those interests,
 - (b) if a party did not understand the nature or consequences of the provision, or
 - (c) Otherwise in accordance with the law of contract.
 10. This Part applies whether the domestic contract was entered into by the parties on, before or after the date that this law comes into force and effect.

PART THREE **COMPULSORY FIRST NATION MEDIATION**

11. It is the intention of this Part that spouses who, on the breakdown of their marriage, do not have and are unable to conclude a domestic contract with respect to interests in Nipissing First Nation land, submit to mediation in respect of interests in Nipissing First Nation land under the direction of the Council of the Nipissing First Nation.
12. The Chief and Council is authorized by this law to create and maintain a roster of qualified mediators available to spouses to assist them in resolving disputes about interests in Nipissing First Nation land, and a current copy of that roster shall be posted in the office of the Lands Manager of Nipissing First Nation.
13. Spouses who do not have or are unable to conclude a domestic agreement may initiate their own mediation with respect to interests in Nipissing First Nation land and it is recommended that they use the services of a mediator whose name appears on the roster of qualified mediators.
14. A spouse who does not have and is unable to conclude a domestic agreement with the other spouse may request mediation by filing a notice of request for mediation, in the designated form and with proof of service on the other spouse, with the Lands Manager.

Provides for:

Clear processes and timelines for compulsory mediation; (Part 3)

- procedures
- forms
- obligations of Nipissing personnel, spouses, C & C mediator(s)
- timeframes
- notices
- Costs
- **LACKING a registry repository for types of orders, notices etc...**

15. It is the responsibility of the spouse requesting mediation to ensure that the notice referred to in section 14 is served on the other spouse before it is delivered to the Lands Manager. For greater certainty, service may be effected by personal service, by delivery to a solicitor representing the other spouse in the matter of the breakdown of the marriage, as provided in a domestic contract, or by registered mail to the address where the other spouse is known or believed to be residing. Service by registered mail shall be deemed to be effected four days after the day the notice is mailed. By advertisement in local newspaper of last location of residence.
16. Upon receipt of a notice of request for mediation, the Lands Manager shall forthwith deliver it to the Chief and Council, which is authorized to arrange for a qualified mediator to be available to the parties within 30 days after the notice referred to in section 14 is filed. That period may be extended by the Chief and Council:
 - (a) at the joint request of the parties; or
 - (b) where the Chief and Council is unable to secure the services of a qualified mediator to be available to the parties within the 30 days period.
17. Notice of an appointment for mediation shall be delivered to both spouses by the Chief and Council no later than 10 days before the date of the appointment, and a copy of the notice shall also be delivered to the Lands Manager.
18. A spouse who receives a notice of appointment with a mediator has a duty to attend the mediation.
19. Each spouse is obliged to pay his or her equal share of the costs of mediation.
20. The mediator shall proceed expeditiously with the mediation and use best efforts to assist the parties in resolving any and all issues with respect to interests in Nipissing First Nation land.
21. Where the mediation is successful, the agreement of the parties with respect to interest in Nipissing First Nation land shall be reduced to writing in a separation agreement, and that agreement shall expressly provide that each party waives all rights to challenge its provisions pursuant to section 9.
22. A separation agreement for the purposes of section 21 shall include provision for all interests in Nipissing First Nation land held by either spouse, or both spouses, and shall be a sufficient domestic contract for purposes of this law if it deals only with those interests.

Draft # 2 – Proposed Dispute Resolution Law Land Staff question to include:

Do you have a traditional method of restoring jurisdiction with regard to disputes? Healing circles, elder's reviews, peer reviews? Nipissing is looking into adding to this law a section that deals with our own Nation's restorative justice circles. How we traditionally selected restorative jurisdiction, i.e.:

- Each traditional family would choose, or
- Select an individual to represent their family on a peer review, or
- Each Headman of a family would select from his/her family an individual to represent.

Provides a court of competent jurisdiction a law that assists in setting out parameters of acceptable decisions with regards to disposition of matrimonial property; (Part 4)

Court of competent jurisdiction

is the

Ontario Superior Court of Justice

or the

Unified Family Court in Ontario

23. Where mediation is successful, the mediator shall report this fact to the Chief and Council, which in turn shall notify the Lands Manager of the successful mediation.
24. Where the mediation is unsuccessful, the mediator shall deliver a confidential report to the parties and to the Chief and Council upon the mediation and the points remaining in dispute between the parties with respect to interests in Nipissing First Nation land.
25. At the conclusion of an unsuccessful mediation under this Part, the Chief and Council shall provide a certificate to the parties and to the Lands manager, which may be:
 - (a) a certificate of compliance with this Part; or
 - (b) a certificate of waiver in favour of the spouse requesting the mediation in circumstances where the Chief and Council reasonably concludes that the other spouse cannot be located, is avoiding or ignoring service of documents or otherwise refused to participate in the mediation.
26. For the purposes of this Part, the Chief and Council is authorized to prescribe rules, procedures and forms as necessary.

PART FOUR

ACCESS TO A COURT OF COMPETENT JURISDICTION

A. GENERAL RULES

27. For the purposes of this Part, "court of competent jurisdiction" and "court" refer to the Ontario Superior Court of Justice or the Unified Family Court in Ontario
28. For greater certainty, no court other than a court of competent jurisdiction shall exercise jurisdiction under this law in respect of interests in Nipissing First Nation land
29. (1) 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 Nipissing First Nation land provided that he or she has first complied with Part Three.
(2) The Court shall enquire into the particulars of any mediation, or attempted mediation and may, in appropriate circumstances, direct that the parties participate in a mediation with respect to any interests in Nipissing First Nation land on such terms and conditions as the court deems fit.

Interests dealt with in a manner consistent with the *Family Law Act (Ontario)*

- ❑ Notwithstanding clauses ensure Court deals with interests with a mind to protections for 'Nipissing' land
- ❑ Ensures that "interest in Nipissing First Nation land" is protected; (Clause 35)
- ❑ Court may make an order on the interest in land
 1. transfer to a spouse absolutely, if the spouse is a Nipissing Nation Member;
 2. land be subject to a lease by one spouse to other;
 3. be partitioned or partitioned and sold.
- ❑ Section 36 provides Land Manager with a provision for a survey and allocate costs of survey and transaction costs under 34 (a).
Amendment on process required for inclusion of 34 (b) & (c)

30. Subject to this law, a court of competent jurisdiction may deal with interests in Nipissing First Nation land held by either spouse, or both spouses, in a manner consistent with the provisions of the *Family Law Act*, (Ontario) 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.
31. Notwithstanding section 30, the fact that an interest in Nipissing First Nation land does not include future or contingent interests in Nipissing First Nation land shall not be taken to confer jurisdiction upon a court over such interests under this law.
32. Notwithstanding section 31, the rules applicable under this law to interests in Nipissing First Nation land received by way of gift or inheritance apply, except with respect to an interest in Nipissing First Nation land that is a matrimonial home.
33. Notwithstanding section 32 the court may make any appropriate and equitable order on the ground of unconscionability where a spouse has intentionally, recklessly or fraudulently depleted his or her net family property that is an interest in Nipissing First Nation land.
34. Subject to this law, the court may make any order in relation to interests in Nipissing First Nation land held by a spouse, or by both spouses, including in appropriate circumstances:
 - (a) an order that an interest in Nipissing First Nation land be transferred to a spouse absolutely, where permitted under this law,
 - (b) an order that an interest in Nipissing First Nation 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; or
 - (c) an order that an interest in Nipissing First Nation land held by both spouses be partitioned or partitioned and sold.
35. An order shall not be made under paragraph 34 (a) in favour of a spouse who is not a member.
36. Where an order is made under paragraph 34(a), the Lands Manager of the Nipissing First Nation may make provision for a survey and for the allocation of the costs of the transaction unless the court has already made an order to that effect.

Law provides for court orders on;

- ✓ Right of possession of interest
- ✓ Corporations and Shares
- ✓ Sales of business, farm, reasonable alternative method for achieving equity
- ✓ Surviving spouse may continue the 'proceeding' against the estate of a deceased spouse (Section 40)
- ✓ Includes former spouse where marriage has been dissolved by decree absolute of divorce or by judgment of nullity (Clause 41)
- ✓ Other valid Ontario Canada laws may be applied except where laws deal expressly or implicitly with *'interest and the extent of this MRP Law applies'*

37. Subject to this law, a spouse may apply to the court for determination of a question between him and her and his or her spouse in relation to the right to possession of an interest in Nipissing First Nation land, and the court may make:
 - (a) an order declaring the right of possession to the interest in Nipissing First Nation land, and
 - (b) any order that could be made under section 34 in respect of that interest in Nipissing First Nation land.
38. Where the interest of a spouse in Nipissing First Nation land is held through a corporation, the court may order that he or she transfer shares in the corporation to the other spouse or have the corporation issue shares in the corporation to the other spouse.
39. An order shall not be made under this Part so as to require the sale of an operation business or farm on Nipissing First Nation land, or so as to impair seriously its operation, unless there is no reasonable alternative method of achieving an equitable result between the parties.
40. Where a proceeding has been commenced under this Part, and either spouse dies before all issues relating to interests in Nipissing First Nation land have been disposed of by the court, the surviving spouse may continue the proceeding against the estate of the deceased spouse.
41. 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.
42. Nothing in this law relieves a party of the requirement to observe the rules and procedures of a court of competent jurisdiction in relation to matrimonial causes.
43. Nothing in this law limits the application of valid laws of Ontario and Canada in respect of matrimonial causes, except to the extent that such laws deal expressly or implicitly with interests in Nipissing First Nation land and to that extent this law applies.
44. It is the intention of this law that all rights, entitlements and obligations of spouses be dealt with equitably on the basis of totality of their circumstances, including rights, entitlements and obligations in respect of interest in Nipissing First Nation land, but subject to the special provisions set out in this law.

Provides for a clear definition for “matrimonial home”; (Part 2, Clause 4.6 & Part 4, B)

- ***Family Reform Act of Ontario*** definition of matrimonial home do not apply to interests on Nipissing land
- Equal interest in possession of matrimonial home unless court order or domestic agreement provides otherwise
- No spouse shall encumber matrimonial home unless with consent of other spouse or transaction may be set aside (Section 48)
- Court may declare a matrimonial home (Section 51)

B. MATRIMONIAL HOME

45. Whether or not an interest in Nipissing First Nation land is a matrimonial home is a question of fact, and, for greater certainty, the provisions of the *Family Law Act* (Ontario) dealing with the designation of a matrimonial home do not apply in respect of interests in Nipissing First Nation land.
46. Both spouses have an equal right to possession of a matrimonial home.
47. When only one spouse holds an interest in Nipissing First Nation land that is a matrimonial home, the other spouse's right of possession is:
 - (a) personal against the spouse who holds the interest; and
 - (b) ends when they cease to be spouses, unless a domestic contract or court order provides otherwise.
48. No spouse shall dispose of or encumber an interest in Nipissing First Nation land that is a matrimonial home unless:
 - (a) the other spouse joins in the instrument or consents to the transaction;
 - (b) the other spouse has released all rights in respect of that interest by domestic contract; or
49. If a spouse disposes of or encumbers an interest in Nipissing First Nation land that is a matrimonial home in contravention of section 48, the transaction may be set aside on an application to the court, unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice, at the time of acquiring it or making an agreement to acquire it, that the property was a matrimonial home.
50. When a person proceeds to realize upon an encumbrance or execution against an interest in Nipissing First Nation land that is a matrimonial home, the spouse who has a right of possession under section 47 has the same right of redemption or relief against forfeiture as the other spouse and is entitled to the same notice respecting the claim and its enforcement or realization.
51. The court may, on the application of a spouse or a person claiming an interest in Nipissing First Nation land that is a matrimonial home:
 - (a) make a declaration whether or not the interests in Nipissing First Nation land is a matrimonial home;

- Authorize the disposition or encumbrance of interest for spouse incapable of giving or unreasonably withholding consent
- Fraudulent exercise may lead Court to direct of offending spouse to provide other remedies such a substitution in other 'interest(s) in Nipissing.... Land *'that is not matrimonial home'*
- Court may make interim or temporary orders to protect rights

- (b) authorize a disposition or encumbrance of the interest in Nipissing 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; or
 - (c) dispense with a notice required to be given under section 50;
 - (d) make an order under section 49, subject to such terms and conditions as the court determines to be equitable and just in all the circumstances.
52. Regardless of which spouse holds an interest in Nipissing First Nation land that is a matrimonial home, the court may on application:
- (a) order the delivering up, safekeeping and preservation of the interest in Nipissing First Nation land that is a matrimonial home;
 - (b) direct that one spouse be given exclusive possession of the interest in Nipissing First Nation land that is a matrimonial home, or part of it for such period as the court may direct consistent with this law, and release any other interest in Nipissing First Nation land that is a matrimonial home from the application of this part;
 - (c) authorize a disposition or encumbrance consistent with First Nation law of a spouses interest in Nipissing First Nation land that is a matrimonial home, subject to the other spouse's right of exclusive possession as ordered;
 - (d) where it appears that a spouse has disposed of or encumbered an interest in Nipissing First Nation land that is a matrimonial home in a fraudulent manner calculated to defeat the rights of the other spouse under this law, or has falsely and knowingly represented in connection with a disposition or encumbrance that the interest in Nipissing First Nation land is not a matrimonial home direct the other spouse to substitute other interests he or she holds in Nipissing First Nation land for the matrimonial home subject to such conditions as the court considers appropriate;
 - (e) make any interim or temporary order to give effect to the purposes of this law or to protect the rights of a spouse; or
 - (f) make any ancillary order which the court deems necessary to give effect to this law.

Section 53 provides Court to be 'guided the principal that the custody parent of the child SHOULD have exclusive possession' until youngest child reaches age of majority

- Protection of "FAMILY OF OLD HOLDINGS" value of the interest are to be excluded from the transferee spouse's net family property
- Possession in a matrimonial home by Non-Nipissing is not assignable and terminates when person ceases to use or occupy
- Not more than \$5,000.00 fine or imprisonment term not more than 3 months for person who contravenes an Order under MRP Law.

53. A court, in considering whether to direct that one spouse have exclusive possession of an interest in Nipissing First Nation land that is a matrimonial home shall be guided by the principal that the custody parent of a child should have exclusive possession of the family residence for a period of sufficient time to ensure that the child, or the youngest child if there is more than one child, reaches the age of majority, provided that observance of this principle is consistent with the best interests of the child.
54. Where both parents share joint custody of a child or children, the principle set out in section 53 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
55. In applying the principles set out in section 53 and 54, the court may have regard to the fact that one or more of the minor children are not members.

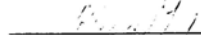
PART FIVE
GENERAL PROVISIONS

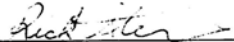
56. An interest in Nipissing First Nation land received by way of a gift or inheritance by one spouse only from a third person who is a family member, or by one spouse only together with one or more members of that family, shall be deemed, subject to proof to the contrary, to have been transferred with 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.
57. The possession of an interest in a matrimonial home on Nipissing First Nation under this law by a person who is not a member is not assignable and shall be deemed to terminate when that person ceases to use or occupy that interest personally.
58. (1) A person who contravenes an order made by a court of competent jurisdiction pursuant to this law in relation to an interest in Nipissing First Nation land is guilty of an offence and liable, on summary conviction, to a fine of not more than \$5,000.00 or to imprisonment for a term of not more than three months, or to both.
(2) A fine payable under this section shall be remitted to the Nipissing First Nation by the court, after reasonable court costs have been deducted.

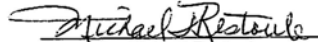
Enactment by C & C

This law shall come into force and effect on the June day of 19th 2007.



Chief Marianna Couchie

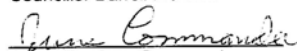

Deputy Chief Meriza George



Councillor Rick Stevens


Councillor Michael Restoule


Councillor Darrell McLeod


Councillor Doug Chevrier



Councillor June Commanda


Councillor Perry McLeod-Shabogesic

Nipissing appended Resolution reaffirms

Appended Council Resolution reiterates principles of MRP:

- parties to make their own agreements;
- the value and necessity for mediation;
- the right to access court of competent jurisdiction 'subject' to Nipissing law "where their property includes interest in Nation land"
- The intent of the MRP is to enact and amend rules and procedures.



BAND COUNCIL RESOLUTION

Council of the Nipissing First Nation Chronological Number
LNS 2130

Date of duly convened meeting June 9 2007

DO HEREBY RESOLVE

FIRST NATION

MATRIMONIAL REAL PROPERTY LAW

WHEREAS Nipissing First Nation has taken control of its reserve lands and resources pursuant to the Framework Agreement on First Nation Land Management, enacted the Nipissing First Nation Land Code which came into force and effect on July 1 2003.

AND WHEREAS pursuant to the Framework Agreement the First Nation agreed to enact 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 in that land by amendment to its Land Code or by First Nation law;

AND WHEREAS Nipissing First Nation intends to honour its undertaking to provide rights and remedies to the use occupancy or possession of matrimonial real property on Nation land and the division of interests in that land on the breakdown of a marriage;

AND WHEREAS Nipissing First Nation intends to respect the following principles with respect to the use occupancy or possession of matrimonial real property on Nation land and the division of interests in that land on the breakdown of a marriage:

Firstly the right of the parties to a marriage to make their own agreements as to the disposition of interests in First Nation land in the event that their marriage does or has broken down.

Secondly the value and necessity for mediation where the parties have not or are unable to reach their own agreement as described above and

Thirdly the right of the parties to have access to a court of competent jurisdiction to deal with all of their property rights entitlements and obligations on the breakdown of their marriage subject to First Nation law where their property includes interest in Nation land

IT IS THEREFORE ENACTED AS A LAW OF NIPISSING FIRST NATION

Marionna Carache
Chief Marionna Couche

Deputy Chief
Deputy Chief Melina George

Richard Stevens
Councillor Rick Stevens

Darlene McLeod
Councillor Darlene McLeod

June Commanda
Councillor June Commanda

Michael Retsault
Councillor Michael Retsault

Doug Clever
Councillor Doug Clever

Perry McLeod-Shabogase
Councillor Perry McLeod-Shabogase

EXAMPLE of a LIFE ESTATE

LIFE ESTATE AGREEMENT made this ____ day of _____, 201__

We, _____ and _____,
Name of Spouse Name of Spouse

Reside as spouses of each other at our home at:
911/House No.
Street, Road, Lot No.
Village
Postal Code

The above address of our matrimonial home is located on Nipissing Nation. We acknowledge that only registered members of Nipissing First Nation can hold or devise title to land on Nipissing I. R. #10 or the lands owned by Nipissing First Nation or Nipissing Nation's corporate holding company.

NON-NIPISSING DECLARATION: (suggested)

I, _____
Non-Nipissing Spouse acknowledge and agree that in the event
that my spouse, _____,
Name of Nipissing Nation Member Spouse who is a registered Member of

Nipissing First Nation and is the sole owner to the interest in the land that the matrimonial home is situated upon.

That should I exercise my right to the matrimonial home under this agreement, I shall abide by all Nipissing Nation laws, regulations, costs associated with service levy(s) to service the matrimonial home. I shall ensure that the matrimonial home and the property situated on the land is maintained for future use by my spouse's heir(s), kin or in the absence of, the People of Nipissing Nation. I, further acknowledge that my use and residence of the matrimonial home and any occupation thereof does not by acknowledgement of by my spouse, heir(s), kin or Nipissing Nation imply a greater right than that of peaceful occupation of the matrimonial home.

NIPISSING NATION MEMBER DECLARATION: (suggested)

I, _____,
Name of Nipissing Nation Member Spouse wish to acknowledge that should I
predecease my spouse _____, that my spouse shall be
granted by my heir(s), kin, Nation Members the following life estate options for residing in our

- 2 -

matrimonial home stated above. That by my request have not implied to my spouse any greater right than to occupy our matrimonial home.

LAST WILL AND TESTAMENT MAY BE ACKNOWLEDGED AS FOLLOWS

As set out in my Last Will and Testament stored at the repository stated above, that my spouse, acknowledged herein, be permitted by my Executor, heirs, kin, Nation Members to occupy and reside in our matrimonial home until _____
his or her demise, or for such time as _____
he or she may wish to occupy the said matrimonial home.

OR

In addition to clause 1 above, it is my intent that my spouse, _____ has the option and right to sell my house through my Executor, to a Nipissing Nation member and is to benefit solely from proceeds of the sale, in accordance with the First Nation Land Management Act and/or the estate provisions under the Indian Act.

This document is to accompany my Last Will and Testament dated _____. My Last Will and Testament has been stored in the repository of _____.
This document does not accompany my Last Will and Testament _____.

Witness

- Nipissing No. 2200

Witness

- Non-Nipissing Spouse

Witness declaration should be appended

Nipissing Matrimonial Law Fact Sheet RECAP

- A process for the right of parties to make their own agreements on the division of property; (Preamble D i)
- Value of mediation where parties have not or are unable to reach their own agreement ; (Preamble D ii)
- Right of access to court of competent jurisdiction; (Preamble D iii)
- Clear processes and timelines for compulsory mediation; (Part 3)
- Clear definition for “matrimonial home”; (Clause 4.6 & Part 4(B))
- Definition of a spouse by traditional customary ceremony; (Clause 4.8 a)
- “life estate” to occupy a matrimonial home for a spouse who is not a Nipissing Nation Member; (Clause 8)
- Provides a court of competent jurisdiction a law that assists in setting out parameters of acceptable decisions with regards to disposition of matrimonial property; (Part 4)
- Ensures that “interest in Nipissing First Nation land” is protected; (Clause 35)
- Provides safety mechanisms to ensure that fair play is observed; (Clause 52)
- Protects the rights(s) of children to the continued occupation of their homes; (Clause 53, 54 and 55)
- Provides life estate not to be assignable and terminates when use or occupation ceases; (Clause 57)
- Safeguards interest(s) by inheritance of Nipissing land other than matrimonial home; (Clause 56)

MARIAN WHITEDUCK & CHILDREN
BABY AGNES, LAWRENCE

Miigwech,

Thank you,

Merci

Contact Information:

joanm@nfn.ca or 705-753-2922

