

DRAFT

Matrimonial Real Property (MRP) Questions & Answers

1. What is MRP?

MRP refers to Matrimonial Real Property. MRP Matrimonial real property is often viewed as the "family home." This is the home that the spouses lived in at the time they separated or that was intended to be occupied by them as the family home. This type of "real property" is permanent and can also be described as real property or "immovable". Matrimonial real property includes land held by one or both spouses and used by the family, as well as houses, sheds and any other property that is securely attached to the land. Matrimonial real property does not include other kinds of movable family property like vehicles, furniture, or cash.

Matrimonial property can include homes and the land they sit on and other property used for a family purpose, such as cars, cash, and household furniture. In common law jurisdictions, the concept of property (things that individuals can own) includes two main categories of property - "real property" and "personal property". Real property includes land and things permanently attached to the land such as a house. Personal property is things that can be moved such as furniture or money.

Off reserves, in all provinces and territories, matrimonial property laws provide rules that can guide spouses, when making their own agreements about property during marriage or upon marriage breakdown. When spouses cannot agree, these laws provide guidance and authority for judicial decision-makers to decide matters in dispute between spouses. These laws provide a comprehensive regime for determining property disputes between spouses. They define what constitutes matrimonial property (both real and personal)

For example, there are specific protections for spouses in regard to the family home during marriage such as prohibiting the sale of a family home without the consent of one's spouse. In cases of relationship breakdown, in every province and territory, a spouse can apply to court for interim exclusive possession of the family home upon marital breakdown. Domestic contracts can be enforced as orders of the court. Provincial and territorial matrimonial property law also determines the ultimate disposition of property between spouses by providing formulas for dividing matrimonial property in ways that take into account the value of the family home and other forms of matrimonial real property.

2. What is marriage?

Marriage can be any form of civil union and can include marriages performed by clergy, common law marriage - where a couple lives together for a set period, or traditional aboriginal marriages performed by the customs of a particular First Nation. This is normally defined in the law itself.

3. Does MRP include land, house and chattels?

MRP includes land and building fixed to the land but not movable items. Chattels are usually referred to as personal property and are not included as matrimonial real property.

4. What about non-native spouses who acquired status prior to 1985 (C-31)?

Persons who have acquired legal rights before the enactment of a law are considered to continue to have those rights. Therefore pre-1985 spouses would be considered the same as other First Nations spouses on the reserve.

5. What about children?

Marriage breakdown is particularly difficult for Children. Their interests should always be at the forefront in developing any MRP law. In other jurisdictions rules will often try to keep children with the matrimonial home. Child custody is a related issue that becomes important when a marriage breaks down.

6. How will it affect how land is handed down - e.g. estates?

MRP law can affect estates if matrimonial real property is part of the estate. It will be important to develop laws that take this into account.

7. What will be the impact if a federal MRP law is passed?

The current recommendation by the person hired by the government to study the issue is for the federal government to pass MRP legislation applying to all First Nations only until First Nations enact or pass their own MRP law. The government and community at Six Nations will have to decide how or if it will allow the federal law to apply within the community. There are questions of jurisdiction - Six Nations takes the position that they have the jurisdiction to pass their own laws in this area of family law. This is supported by recommendations of the Royal Commission on Aboriginal Peoples. It has never been decided by Canadian courts. One other First Nations in Ontario has passed its own law under its own inherent authority.

8. How will we enforce this law?

This is an important question that will have to be dealt with. A Six Nations MRP law could authorize provincial courts to enforce the law or could establish a Six Nations or Iroquois court to enforce the law. This is one option that was recommended by the federal ministerial representative. The community will have to agree to be bound by any authority established to enforce.

9. How will it affect people who don't carry status cards?

This is a separate issue. The law can apply to the people who reside within the Six Nations territory regardless of their status. That can be spelled out in the law.

10. What about the Six Nations residency by-law?

The residency by-law is in place and will continue to operate. The MRP law should take into account the provisions of the residency by-law and can be used to supplement or support the residency by-law.

11. What about traditional marriage?

The Six Nations MRP law can include all types of marriage including traditional marriage.

12. What does the confederacy think about this?

Confederacy representatives will be asked to participate to provide their input into the development of the law.