

TAB 5



INDIGENOUS LAW

Issues 2016

Family Homes on Reserves and Matrimonial Interests or Rights Act

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**CENTRE OF EXCELLENCE
FOR MATRIMONIAL REAL PROPERTY**



***Family Homes on Reserves and
Matrimonial Interests or
Rights Act***

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TOPICS

1. Why was the legislation required?
2. What is the *Family Homes on Reserves and Matrimonial Rights or Interest Act (FHRMIRA)*?
3. Provisional Federal Rules (and Notice to Council)
4. Authority of First Nation to enact laws
5. Funding for MRP
6. Questions?

WHY WAS THE LEGISLATION REQUIRED?

- In 1986, the Supreme Court of Canada ruled that courts cannot apply provincial or territorial family laws respecting Matrimonial Real Property on reserves. (*Derrikson v. Derrikson* [1986] 1 S.C.R. 286)
- The *Indian Act* does not address this issue.
- As a result, many of the legal protections and rights relating to Matrimonial Real Property applicable off reserves were not available to individuals living on reserves (legislative gap).

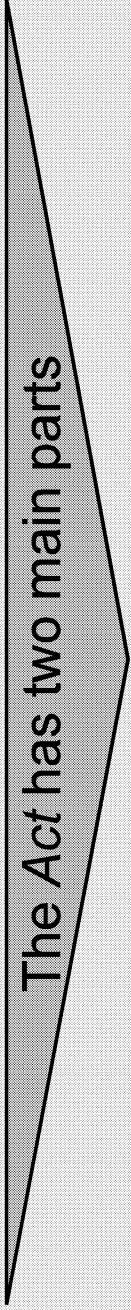
WHAT IS THE FAMILY HOMES ON RESERVES AND MATRIMONIAL INTERESTS OR RIGHTS ACT?

- The *Family Homes on Reserves and Matrimonial Interests or Rights Act* (FHRMIRA) - a federal law enacted to ensure that people living on reserves have similar protections and rights as other Canadians when it comes to the family home and the division of interests or rights.
- FHRMIRA applies to most reserves until they enact their own MRP Law.

THE ACT

Provides rights to spouses during a relationship and after it ends with respect to 2 major issues:

- Use, possession and **occupation of family homes** on reserve
- **Division of value** of any interests that they hold in structures and lands on reserve



The Act has two main parts

FN Law-Making Mechanism

(Took effect Dec 16, 2013)

- FN submits proposed law to members for approval
- Proper notice to members re: voting
- At least 25% of members must vote
- Law approved if majority achieved

Provisional Federal Rules

(Took effect Dec 16, 2014)

Provides interim rules for dealing with matrimonial real property until FN passes its own MRP law.

WHO IS AFFECTED BY THE PROVISIONAL FEDERAL RULES?

- Effective December 16th, 2014, the federal provisional rules apply to all First Nations automatically with the following exceptions:
 - First Nations that have enacted their own Matrimonial Real Property laws under this legislation;
 - First Nations with land codes or Matrimonial Real Property laws in place under the First Nation Land Management Act;
 - First Nations with reserve lands and a Self Government Agreement in effect who have jurisdiction over land management. (Self governing First Nations may ask the Minister to make a declaration that the legislation will apply to them).

RESERVE LANDS PROTECTED

- Non-members are not permitted to hold an interest or right to land on reserve. The legislation respects the principle of non-alienation of reserve lands.
- The rules will not lead to non-Indians or non-members acquiring permanent interests in reserve land either through relationship breakdown or survivorship that they were incapable of acquiring prior to this Act.

NOTICE TO COUNCIL

- **The provisional federal rules provide for First Nations to be notified in regard to any proceedings under the legislation so they may make representations to the courts about the cultural, social and legal context relevant to the proceedings.**
- **This does not apply in the case of emergency protection and confidentiality orders.**

PROVISIONAL FEDERAL RULES

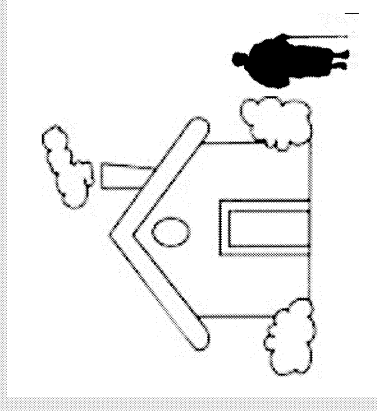
- provide a set of interim rules that allow married spouses and common-law partners to determine what they are entitled to when their relationship breaks down or upon the death of a spouse.
- applies to married couples and common law partners living on reserve where **at least one of them is a First Nation member or an Indian.**

RIGHTS AND PROTECTIONS UNDER THE PROVISIONAL FEDERAL RULES

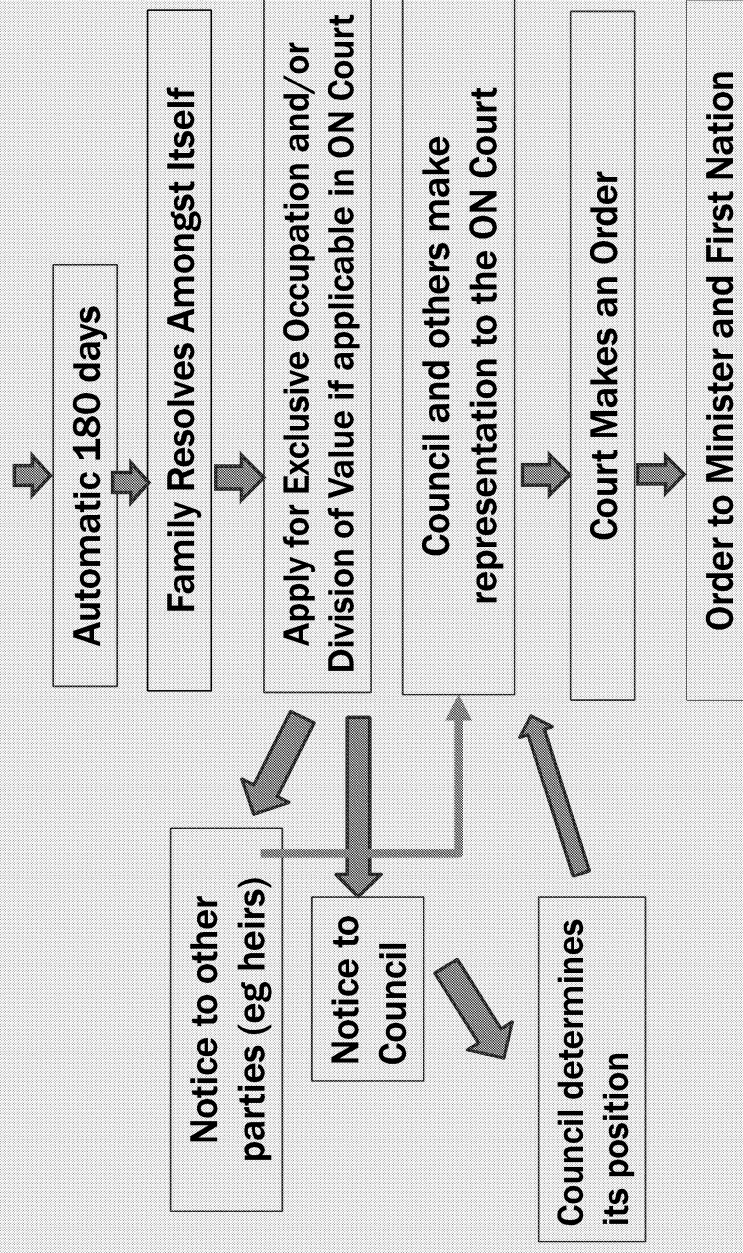
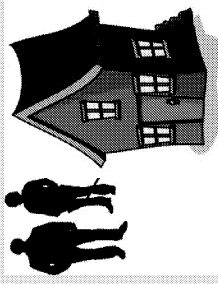
- **Section 13**
- **Confirms the right of each spouse or common-law partner to occupy the family home during the conjugal relationship**

RIGHTS AND PROTECTIONS UNDER THE PROVISIONAL FEDERAL RULES

- **Section 14**
 - Provides that when a spouse or common-law partner dies, the surviving spouse or common-law partner may remain in the home for a specified period of time (minimum 180 days).



Rights and Remedies on Death of Spouse or Common-Law Partner



Division of Value on Death of Spouse



If property is held in joint tenancy, it passes automatically to the survivor and does not form part of the estate. If land is not held jointly, estate rules must be considered

Will

- Estate managed in accordance with Indian Act
- Land would be transferred to heir
- Survivor has options (FHRMIRA)

• EOO application

• Division application

No Will

- Estate managed in accordance with section 48 of Indian Act
- Survivor has options (FHRMIRA)

• EOO application

• Division application

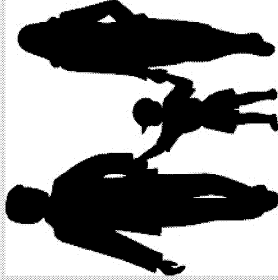
** Note: survivor could apply for both EOO and Division

RIGHTS AND PROTECTIONS UNDER THE PROVISIONAL FEDERAL RULES

■ Section 15

- Provides requirement for consent of spouse or common-law partner to dispose of or encumber the family home

REQUIREMENT FOR SPOUSAL CONSENT - DISPOSAL OR ENCUMBRANCE OF FAMILY HOME



Issue:

- John, a member spouse, holds a certificate of possession to lands on which the family home has been built.
- John has decided to relocate his family to Vancouver and wishes to sell his property to a neighbour.
- In order to register the transfer of the CP to the purchaser, MRP forms must be completed.
- These forms are required even if John is the only person on the CP and whether or not his spouse is a member or an Indian.

REQUIREMENT FOR SPOUSAL CONSENT - DISPOSAL OR ENCUMBRANCE OF FAMILY HOME

MRP Administrative processes:

- Among the other forms required to transfer the property, John must complete an MRP Assessment and Statutory Declaration to determine if the family home is being affected
- If the family home is located on the property, John's partner must complete a Statutory Declaration of Spouse or Common-Law Partner to confirm their awareness of and support for the transaction.

Form 1: Assessment of Marital Real Property and Statutory Declaration

Section A: Legal Land Description

Section B: Statutory Declaration

Section C: Declaration of Spouse or Common-Law Partner

Section D: Declaration of Support

Section E: Declaration of Awareness

Section F: Declaration of Consent

Section G: Declaration of Acknowledgment

Section H: Declaration of Release

Section I: Declaration of Waiver

Section J: Declaration of Surrender

Section K: Declaration of Assignment

Section L: Declaration of Discharge

Section M: Declaration of Satisfaction

Section N: Declaration of Completion

Section O: Declaration of Termination

Section P: Declaration of Revocation

Section Q: Declaration of Amendment

Section R: Declaration of Variation

Section S: Declaration of Extension

Section T: Declaration of Renewal

Section U: Declaration of Renewal

Section V: Declaration of Renewal

Section W: Declaration of Renewal

Section X: Declaration of Renewal

Section Y: Declaration of Renewal

Section Z: Declaration of Renewal

Form 2: Statutory Declaration of Spouse or Common-Law Partner

Section A: Legal Land Description

Section B: Statutory Declaration

Section C: Declaration of Spouse or Common-Law Partner

Section D: Declaration of Support

Section E: Declaration of Awareness

Section F: Declaration of Consent

Section G: Declaration of Acknowledgment

Section H: Declaration of Release

Section I: Declaration of Waiver

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Section Z: Declaration of Renewal

RIGHTS AND PROTECTIONS UNDER THE PROVISIONAL FEDERAL RULES

- **Sections 16-19**
 - **Provides for emergency protection orders in the case of family violence to ensure the immediate protection of a person who is at risk of harm or a property that is at risk of damage (s.s 16-19);**

EMERGENCY PROTECTION ORDERS NOT YET AVAILABLE IN ONTARIO

- **Emergency protection order (EPO):**
 - FHRMIRA provides for the lieutenant governor in council of the province to designate judges for the purposes of sections 16-19 of the Act.
 - Ontario has chosen not to designate judges for the time being.
 - Without designated judges, emergency protection orders under s.s 16-19 are not currently available in Ontario.

RIGHTS AND PROTECTIONS UNDER THE PROVISIONAL FEDERAL RULES

- Applications for temporary exclusive occupation of the family home
- s.20 applies to separation
- s.21 applies on death of spouse or common-law partner

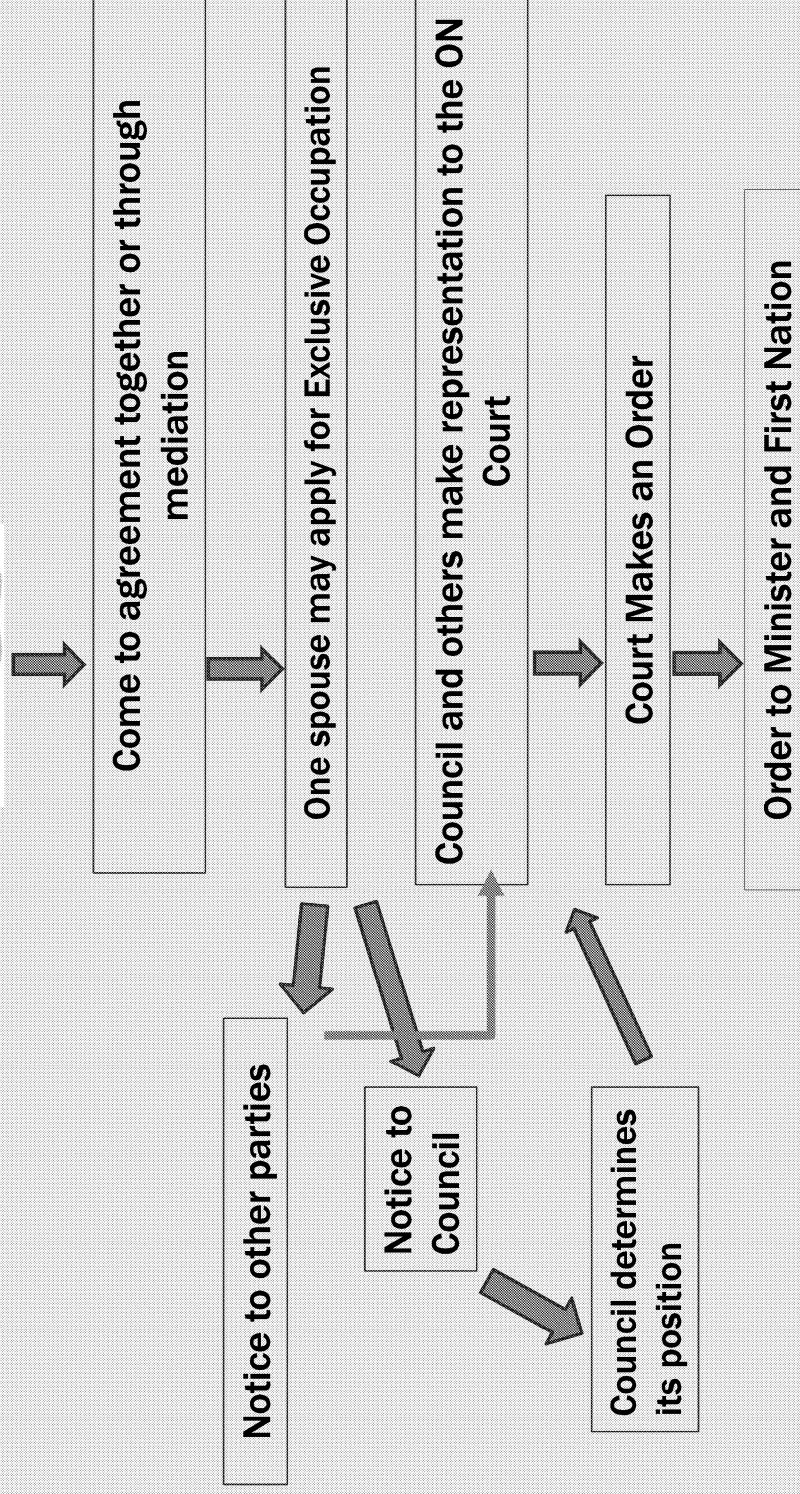
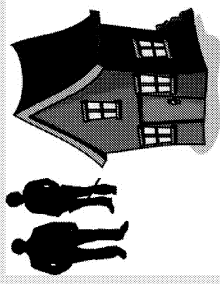
EXCLUSIVE OCCUPATION ORDERS UNDER THE PROVISIONAL FEDERAL RULES

- **Exclusive occupation order:**
 - **Enables courts to provide short to long-term occupancy of the family home to the exclusion of one of the spouses or common-law partners;**
 - **The duration of this order could range from a set number of days to a longer period, such as until dependent children reach the age of majority.**

EXCLUSIVE OCCUPATION ORDERS UNDER THE PROVISIONAL FEDERAL RULES

- **Either spouse could apply to the courts for exclusive occupation and in making the order, the courts must consider among other things;**
 - **Collective interests of the First Nation members;**
 - **Best interests of the children;**
 - **Terms of any agreements;**
 - **Period of time the applicant has habitually resided on the reserve;**
 - **Financial situation and the medical condition;**
 - **Availability of other suitable accommodations; or**
 - **Family violence, etc.**

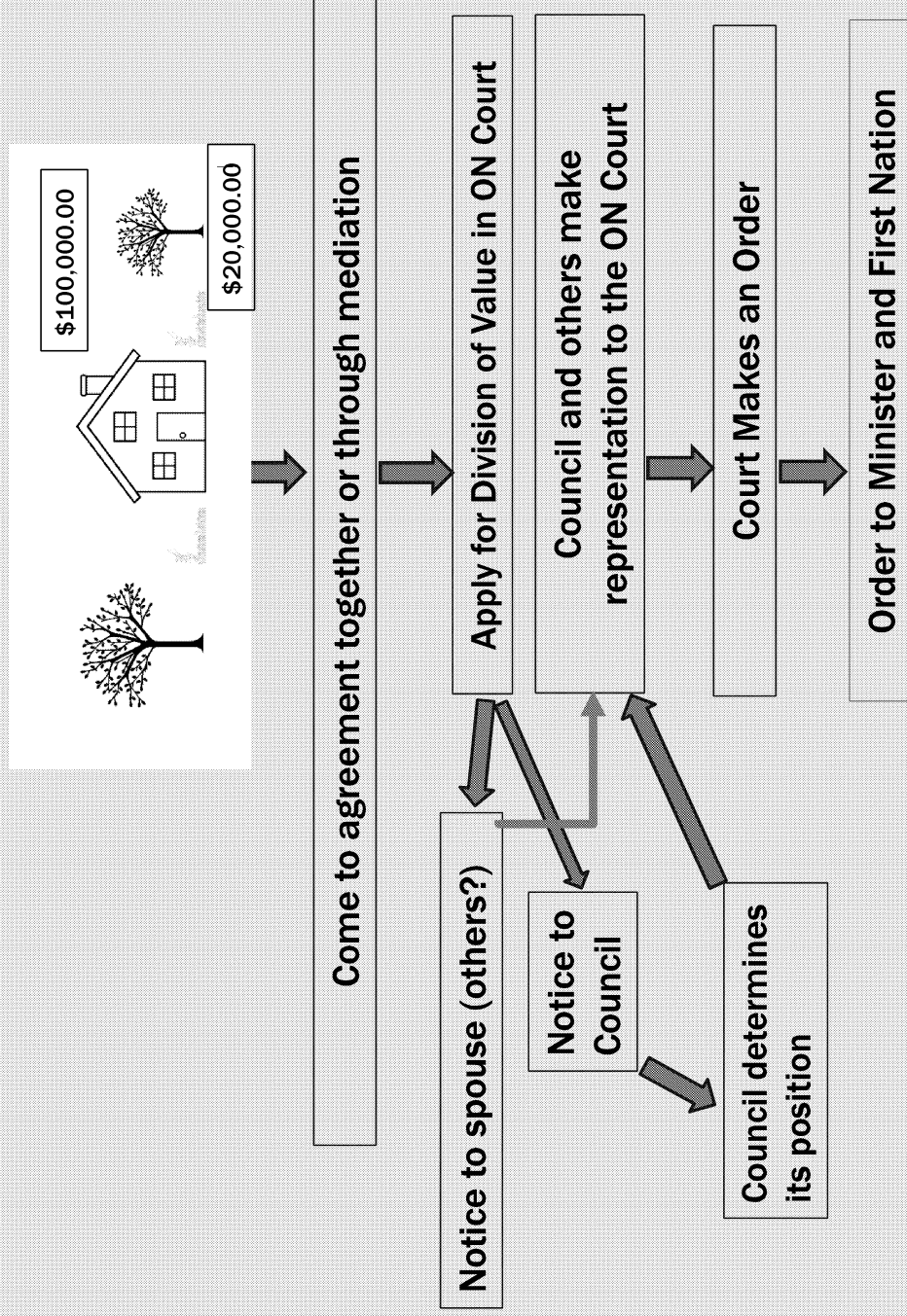
Application for Exclusive Occupation on Separation



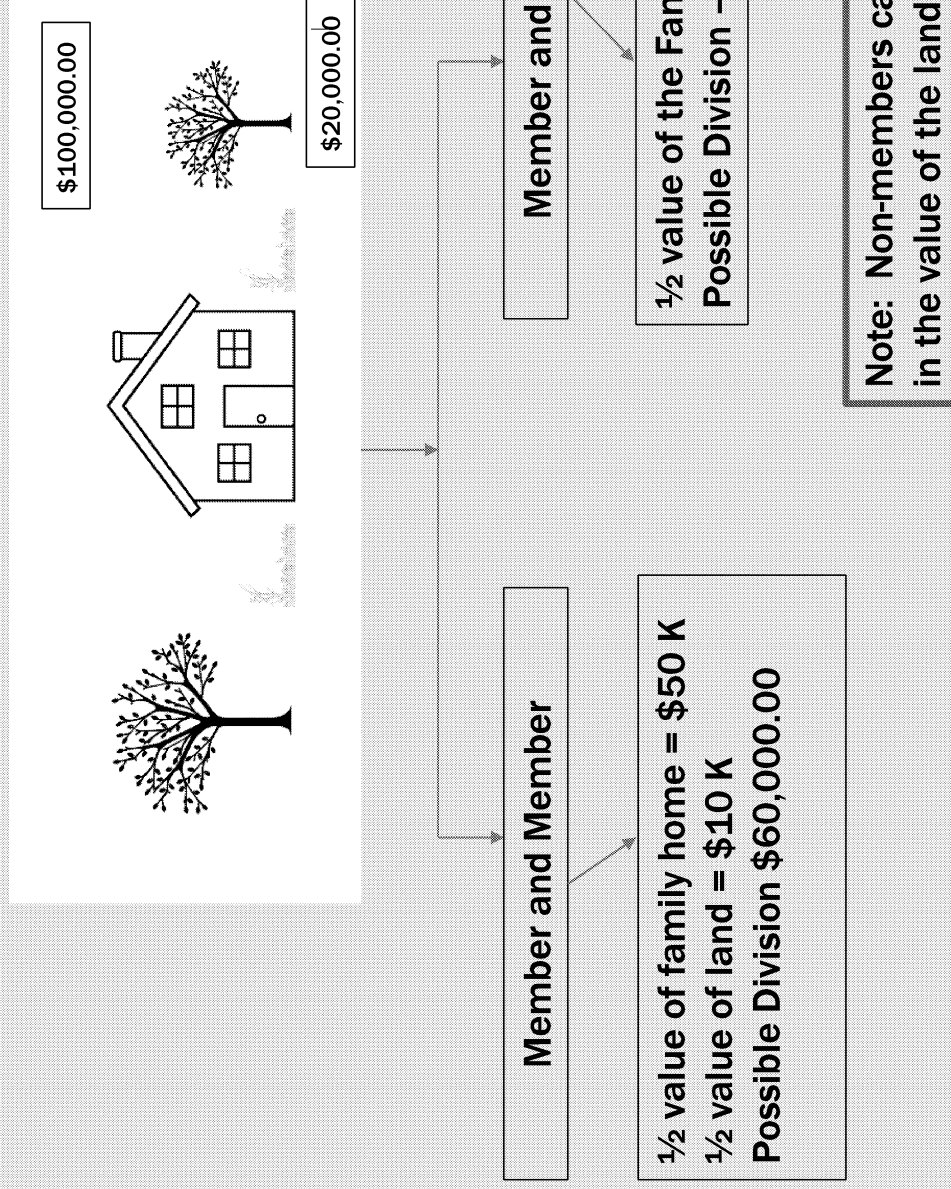
RIGHTS AND PROTECTIONS UNDER THE PROVISIONAL FEDERAL RULES

- **Sections 28 - 31 - division of the value of matrimonial interests or rights**
- **Entitlement of each spouse or common-law partner to an equal division of the value of the family home and other matrimonial interests or rights**

Division of Value



Division of Value Calculation



ENACTMENT OF FIRST NATION LAW

- Effective December 16th, 2013, a First Nation has the power to enact their own law related to:
 - Use, Occupation, and Possession of the Family Home; and
 - Division of the Value of any interests or rights held by spouses and common law partners in or to structures and lands on its reserves.
- The Act is not prescriptive so that laws can be designed to respect a First Nation's particular needs, values and customs.

ENACTMENT OF FIRST NATION LAW

- The content and acceptability of any law is determined between a First Nation government and its members.
- The First Nation Law cannot be disallowed, altered, or cancelled by the Minister or any government official.

ENACTMENT OF FIRST NATION LAW

- Enactment of a First Nation Law requires Community Approval.
- Every member of the First Nation, 18 years and over, resident or non-resident on the reserve is eligible to vote in the approval process.
- Council is obligated to take reasonable measures to locate voters and inform them of their right to vote, how they can exercise that right, and the contents of the proposed law.

ENACTMENT OF FIRST NATION LAW

- The proposed First Nation law is approved if:
 - at least 25 percent of eligible voters participated in the vote; AND
 - a majority of those members who participated in the vote, voted to approve it.
- First Nations may enact their community-specific laws at any time, however, the Provisional Federal Rules are now in effect and will apply until the First Nation enacts its own law.

FUNDING FOR MRP

- Funding available: 2016-2017 fiscal year
- 3 categories
 - Funding for Development of Laws; Legal Fees and Consultation with the Community
 - Funding for Ratification Vote
 - Increase Availability and Awareness of Community-Specific Laws
- Contact:
Centre of Excellence for MRP (1-855-657-9992)

CONTACT US

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