



CHIEF AND COUNCIL PLAY A CRUCIAL ROLE IN ADDRESSING MATRIMONIAL REAL PROPERTY (MRP) ON RESERVE. THEY HAVE THE AUTHORITY TO ENACT THEIR OWN MRP LAW, ENSURING IT REFLECTS THE VALUES, TRADITIONS, AND GOVERNANCE STRUCTURES OF THEIR FIRST NATION.

SUMMARY OF THE FAMILY HOMES ON RESERVES AND MATRIMONIAL INTERESTS OR RIGHTS ACT (FHRMIRA):

On June 19, 2013, the Family Homes on Reserves and Matrimonial Interests or Rights Act (FHRMIRA) was 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. The new law affects “Matrimonial Real Property” also known as “Family Property” on reserves.

It seeks to provide basic protection and rights to individuals living on reserves regarding the family home and other matrimonial interests and rights:

- During a conjugal relationship between spouses and common-law partners.
- In the event of a breakdown of that relationship.
- Death of their spouse or common-law partner.

The Indian Act does not address this issue.

Key Responsibilities of Chief and Council:

Understanding the Legislation:

Chief and Council should review the Family Homes on Reserves and Matrimonial Interests or Rights Act (FHRMIRA) to determine how it applies to their community.

Seeking Legal Guidance:

Engaging with a legal advisor can provide clarity on their roles, responsibilities, and the legal implications of developing or implementing an MRP law.

Accessing Support and Training:

First Nations can reach out to the First Nations Housing Professionals Association (FNHPA) for an overview of the legislation and to arrange governance and community information sessions.

WHAT THE ACT DOES

The Act gives First Nations the opportunity to either enact their own MRP law or follow the Provisional Federal Rules (PFR's) until such time as a First Nation chooses to enact their own Law.

On December 16, 2013, Sections 7-11 came into effect. These sections set out the authority and process for enacting a First Nation MRP Law. Sections 12-52 contain the Provisional Federal Rules (PFR's). These sections came into force 12 months later, on December 16, 2014, and address two major issues:

- 1. Use, possession and occupation of the family homes on reserves, and;**
- 2. Division of value of any interests they may hold in structures and lands on reserves.**

WHAT THE ACT DOES NOT DO – IMPORTANT NOTES

1. Council Approval of First Nation MRP Law:

The approval of a First Nation's Matrimonial Real Property (MRP) Law is exclusively between the Council and its members. Neither the Minister of Indigenous Services Canada (ISC) nor their staff have the authority to approve or intervene in the contents of a community's MRP law.

This ensures that each First Nation maintains full control over the development and implementation of their own MRP laws.

2. No Permanent Land Ownership for Non-Members:

The FHRMIRA does not result in non-members or non-Indians gaining a permanent interest in reserve land as reserve lands remain under the collective ownership of the First Nation. However, in cases of separation or divorce, spouses or common-law partners may be granted exclusive occupation of the family home or compensation, but this right does not equate to land ownership.

3. Temporary Occupation of the Family Home:

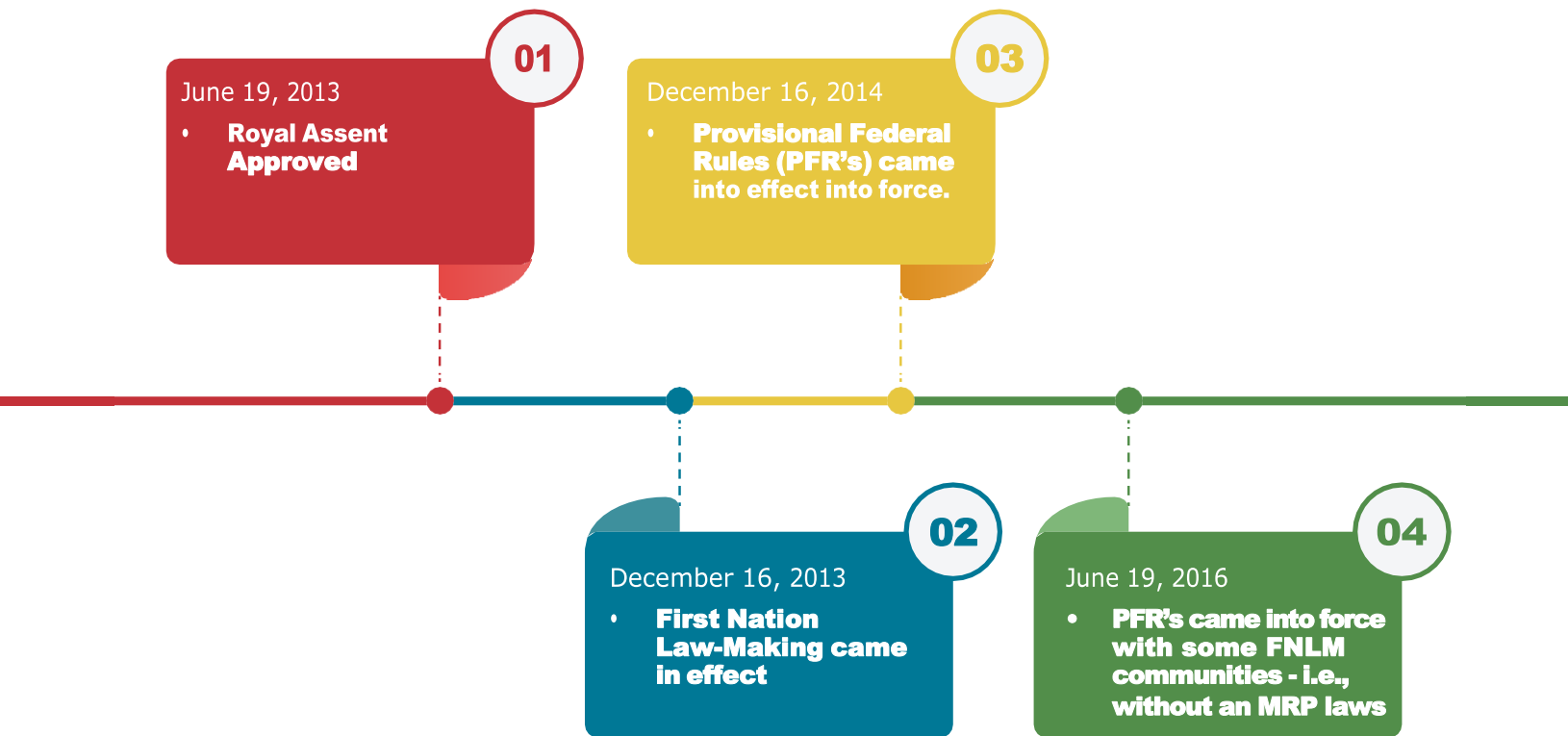
While non-member spouses or common-law partners may not acquire permanent rights to the reserve land, they may receive temporary rights. For example, they could be granted exclusive occupation of the family home for a specified period of time or may be eligible for compensation, depending on the circumstances surrounding the separation. These provisions are designed to ensure fair treatment for all parties involved, while respecting First Nations control over their lands.

THE IMPORTANCE OF FIRST NATION VIEWS

The Act recognizes the diverse values, cultures and practices among First Nations concerning individual interests in reserve lands; for this reason, Section 41 of the Act, provides for First Nations to be notified regarding any proceedings under this Act, except in the case of Emergency Protections Orders (s.16) and Confidentiality Orders (s. 19).

PROTECTIONS AND RIGHTS OF THE FIRST NATION

As of December 16, 2014, the Provisional Federal Rules (PFR's) are in effect (with some exceptions). The chart below explains those exceptions.



For First Nations who have not yet enacted their own MRP Law. The following list includes examples of the protections and rights that could apply, or court applications you might receive notice of:

- Emergency Protection Orders
- Use, occupation, and possession of the family home.
- Division of the value of the family home
- Division of the value of interests or rights
- Division of the value of matrimonial interests or rights

The Council may make representations to the courts when an application is received. Responding to MRP matters, either under FHRMIRA or your own MRP Law, may also impact other areas of First Nation governance. Your implementation discussions should include a review of other policies and procedures related to general governance.

BEST PRACTICE GUIDE FOR MANAGING AN APPLICATION FOR EXCLUSIVE OCCUPATION ORDER

What to do when an application for Exclusive Occupation Order arrives at the First Nation Administration Office:

STEP 1

Establish a knowledgeable team or dedicated staff member.

- Create a dedicated team or appoint an individual responsible for managing the application process. This ensures accountability and knowledge sharing within the team.
- Appoint a staff member who will be responsible for initially receiving and acknowledging the application.
- Appoint a writer to draft a written response with respect to cultural, social and legal context that pertains to the application and ensuring they are familiar with applicable provincial family court rules.
- Ensure the team or appointed individual stays updated on the relevant MRP laws, policies, and procedures.

STEP 2

Develop a Confidential File Management System:

- Set up an internal, secure file management system where applications will be stored and tracked to maintain confidentiality and comply with privacy laws.
- Centralize an application process: all applications should be submitted through a central point to ensure proper handling and consistency.
- Standardize a process for gathering and presenting the information to Council to ensure all material information is provided.

STEP 3

Collaboration with Other Internal Departments and Identify Court Representation:

- Identify which departments (e.g., Lands Officer, Social Services, Housing) should be consulted for pertinent information related to the application.
- Identify who will represent the Council's position in court if attendance is required, and ensure they are adequately prepared to present the Council's views clearly and effectively.
- Ensure decisions or orders made by the court are documented, communicated to relevant parties, and adhered to by the First Nation Administration.

STEP 4

Identify Who Interacts with the Applicant:

- The identified staff member will be the point of contact for the applicant and should maintain professionalism, provide updates, and ensure the applicant's rights are respected throughout the process.

Understanding legislation can be a challenge, however FNHPA is committed to helping First Nations understand and implement the FHRMIRA through educating their communities. Support is available for you and your community.



Matrimonial Real Property | FNHPA

For More Information:



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Legal Disclaimer:

The First Nations Housing Professionals Association does not provide legal advice on any matrimonial real property laws under the Family Homes on Reserves and Matrimonial Interests or Rights Act (FHRMIRA). The material provided is for information purposes only and you should not rely upon the material or information as a basis for making any legal or any other decisions. The FNHPA strongly suggests you consult a lawyer or legal clinics for guidance on next steps.
