



Agreements between spouses or partners for First Nation Members in Québec

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for the National Aboriginal Land Managers Association



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Table of Contents

Introduction	5
Who does this booklet apply to?	5
How can I use this booklet?	5
What is not covered in this booklet?	5
Who does this booklet not apply to?	5
Legal terminology and other definitions	6
Section 1: Overview of the different laws applicable in family law	11
Section 2: Agreements between spouses or partners	12
1. THE DIFFERENT TYPES OF AGREEMENTS BETWEEN SPOUSES OR PARTNERS	12
2. <i>DE FACTO</i> SPOUSES	13
3. REQUIREMENTS FOR CONTRACTS BETWEEN <i>DE FACTO</i> SPOUSES	13
4. WHAT TO INCLUDE IN AN AGREEMENT BETWEEN SPOUSES OR PARTNERS, INCLUDING A <i>DE FACTO</i> UNION AGREEMENT	14
4.1. Items to include that do <i>not</i> affect land or real property rights on reserve	14
4.2. Elements related to the family home and real estate interests on reserve	15
4.3. Things NOT to include in an agreement between spouses or partners	16
5. SHOULD A NOTARY PREPARE YOUR AGREEMENT WITH YOUR SPOUSE OR PARTNER?	17
5.1. The advantages of using the services of a notary	17
5.2. What if you are unable to use a notary?	18
6. WHEN TO MAKE CHANGES TO YOUR AGREEMENT?	18
Section 3: Overview of FHRMIRA	19
1. BENEFITS OF INCLUDING THE FHRMIRA IN THE AGREEMENT BETWEEN SPOUSES OR PARTNERS	19
2. FHRMIRA APPLICATION	19
3. TYPES OF MATRIMONIAL REAL PROPERTY	20
4. SUMMARY OF FHRMIRA PROVISIONAL FEDERAL RULES	21
Section 4: Considerations when FHRMIRA does not apply	22
1. THE CREES OF EYYOU ISTCHEE	22
2. THE NASKAPIS	23
3. THERE IS A LAND CODE OR <i>MATRIMONIAL REAL PROPERTY LAW</i> IN EFFECT IN MY FIRST NATION	23
Section 5: Additional Considerations	24
1. YOUR WILL	24
2. THE PARTICULARITIES OF YOUR COMMUNITY	25
2.1. The nature of the interest in the land on the reserve	25

2.2. Custom Allotments	25
2.3. First Nation Residential and Housing By-Laws and Policies	25
APPENDIX A: FINDING A NOTARY OR LAWYER	26
HOW TO FIND A NOTARY	26
HOW TO FIND A LAWYER	26
Legal aid	26
APPENDIX B: OTHER SOURCES OF INFORMATION	27
APPENDIX C: PREPARING FOR AN APPOINTMENT WITH THE NOTARY	28
APPENDIX D: SAMPLE AGREEMENT BETWEEN <i>DE FACTO</i> SPOUSES	29
APPENDIX E: DETAILED EXPLANATIONS ON FHRMIRA	37
<i>Note: use of the term spouse in this section refers to married, civil union or de facto spouses.</i>	37
The rights of the spouse with respect to the family home during the relationship	37
Consent required to dispose of or encumber the family home	37
In the event of domestic violence	37
Breakup or breakdown of the relationship	37
Order of exclusive occupation of the family home and reasonable access	37
<u>Following the death of a spouse or a partner</u>	38
Exclusive Occupation of the family home	38
<u>Division of the value of matrimonial rights or interests</u>	39
Division of the value of matrimonial rights or interests in the event of the breakdown of the relationship	39
Other articles for determining the value following the breakdown of the relationship	39
Division of the value of matrimonial rights or interests following the death of a spouse	40
<u>Sharing the Value of Matrimonial Rights or Interests in Estate Matters</u>	40
END NOTES	42

INTRODUCTION

Who does this booklet apply to?

This booklet on agreements between spouses or partners has been prepared for First Nation members who have Indian status and live on reserve in Québec, as well as for Naskapis and Crees living on Category IA-N and IA lands.

This booklet discusses the various types of agreements between spouses or partners, with a particular focus on contracts between *de facto* spouses. This is because *de facto* unions are so common in Québec, and because the law already provides protections for married and civil union spouses.

The booklet also discusses certain protections for spouses and partners for whom the other matrimonial laws apply in the event of a marital breakdown or the death of a spouse or partner.

This booklet highlights the complex particularities faced by First Nation members when it comes to family and relationship planning. Given the interaction of First Nations laws, the *Indian Act*, the *Family Homes on Reserves and Matrimonial Interests or Rights Act* (“FHRMIRA”) and the *Civil Code of Québec* (“CCQ”), as well as a person’s own unique circumstances, it is strongly recommended that you consult a notary to obtain legal advice adapted to your own situation. **The information in this booklet is general in nature and does not constitute legal advice.**

How can I use this booklet?

This booklet provides an overview of the benefits of having an agreement or contract in place with your spouse or partner, particularly if you are in a *de facto* union and the specifics to keep in mind when preparing this type of agreement or contract, particularly for First Nation members living on reserve. It is meant to be an introduction to relationship planning and agreements between spouses or partners.

What is not covered in this booklet?

This booklet is not intended to be a detailed analysis of the family law and marital planning for First Nation members living on a reserve in Québec. This booklet will also not go into detail regarding the *Divorce Act*, the specific rules of *the Civil Code of Québec* regarding the division of property, the various matrimonial regimes, and child or spousal support.

Who does this booklet not apply to?

This booklet **does not apply** to:

- First Nation members living in Québec but who do not ordinarily live on a reserve (or on Category IA-N or IA lands for Naskapi and Cree communities),
- First Nation members living outside Québec, and
- Métis or Inuit individuals.

LEGAL TERMINOLOGY AND OTHER DEFINITIONS

Québec is subject to a legal system that is different than elsewhere in Canada. While the rest of Canada is subject to the *common* law, Québec has a *civil* legal system. Most civil law applicable in Québec, including family law and the law applicable to spousal relations, is codified in *the Civil Code of Québec*. This explains why the legal terminology in Québec differs from that used elsewhere in Canada, as well as in the *Indian Act*, which can lead to confusion. Some of these differences in terminology and definitions are explained below to help assist you when reading this booklet.

Agreement between spouses or partners: Agreements between spouses or partners in Québec include the marriage contract, the civil union contract, the contract between *de facto* spouses and the separation contract. FHRMIRA speaks of an "agreement between spouses", whether married or not.

Appreciation: The increase in value of an asset, such as a family home, over time.

CCQ: *Civil Code of Québec*.

Civil union contract: Defines the rights and obligations of civil union spouses. If the partners do not choose a matrimonial regime, the regime automatically applicable is that of the partnership of acquests. The civil union contract must be made before a notary by notarial act *en minute* to be valid.

Civil union spouses: Partners become civil union spouses through a ceremony before a recognized celebrant and two (2) witnesses. They have civil union status, which

can be proven by an act of civil union. Civil union is only valid in Québec, unlike marriage. It should be noted that a civil union is much rarer than a *de facto* union or marriage, so this booklet will discuss it less. Spouses in a civil union have the same obligations towards each other as spouses and they benefit from the same protections granted to spouses.¹

Common residence or family residence: The place where the spouses live together, also known as the "family home" in FHRMIRA.

Common-law partner (within the meaning of the *Indian Act* and FHRMIRA): Under the *Indian Act* and FHRMIRA, a "common-law partner" is the person another person has lived with for at least one (1) year, but without being married. This is called a "*de facto* spouse" in Quebec civil law. Under FHRMIRA, a common-law partner has special rights if the other partner dies or if they separate. The *Civil Code of Québec*, however, does **not** give special

rights or interests to unmarried spouses. For the purposes of this booklet, we will refer to unmarried partners as “partners”.

Conjugal relationship: A relationship carrying a certain level of permanence and financial, social, emotional and physical interdependence between spouses. These individuals have made a commitment to each other and share a life together and possibly have children. Spouses in a conjugal relationship normally live in the same residence and share the responsibilities associated with it, but living together under the same roof is not necessary.

Contract between *de facto* spouses: An agreement that *de facto* spouses can conclude to define the rights and obligations of each during their relationship. Since *de facto* spouses under the *Civil Code of Québec* do not have the same rights as married or civil union couples, this contract allows them to define for themselves the rights they want to give themselves. This contract is also called a “cohabitation contract”, “cohabitation agreement”, “agreement between *de facto* spouses”, or “*de facto* union contract”.

Co-ownership: Refers to owning property together. If two people buy a building together by both signing the deed of purchase, they normally become co-owners in equal shares (50/50). This means that the person will need the other person's permission to sell the house. If they want their shares to be different, they will have to provide for it in a co-ownership agreement. In Quebec, if only one *de facto* partner signs the deed of sale for a house, this person becomes the sole owner, although *FHRMIRA* provides certain rights in the family home to *de facto* partners living on reserve. Married or civil union

spouses automatically become co-owners of the family home.

***De facto*:** Latin term frequently used in Québec civil law, meaning “in reality or as a matter of fact”.

***De facto* separation:** *De facto* separation means that the spouses live separately without initiating legal separation or divorce proceedings. *De facto* separation has, in principle, no legal effect. All the duties and obligations between the spouses remain.

***De facto* spouse (within the meaning of the *Civil Code of Québec*):** A *de facto* union exists between spouses who have been living together for some time, whether or not they have a child, but without being married or in a civil union. Under the *Civil Code of Québec*, the *de facto* spouse has no special rights upon separation or the death of the other *de facto* spouse, unless provided by another law, such as the *Indian Act*, *FHRMIRA* or certain Québec tax laws.² In terms of property, no family patrimony is created and therefore, unless they have signed a contract to the contrary, each *de facto* spouse leaves the relationship with the property in their name at the time of the breakup or death. For the purposes of this booklet, “partner” refers to a “common-law partner” or “*de facto* spouse”.

Dispose: Sell or donate property, such as the family home.

Dissolution of the civil union: The end of the civil union. If a couple is childless, the dissolution can be done by joint declaration and notarized contract. If the couple agrees on the division of the family patrimony and their property, they can dissolve their union without further formality or court intervention.

Divided co-ownership: A building is held in divided co-ownership when it is divided into two (2) or more parts. Each part of the building can belong to one or more people. The best example of divided co-ownership is condo buildings.

Divorce: Divorce ends the marriage and must be decided by a court. Consenting to it or living apart does not result in a divorce. The *Divorce Act*, a federal law, governs several aspects of divorce, while the *Civil Code of Québec* manages some of its effects. The only possible cause for divorce is the breakdown of the marriage, which can be invoked on one of three grounds: living apart for at least one (1) year; adultery; or physical or mental cruelty.³ See also the **definition "Separation contract or amicable agreement"** for an amicable divorce, which is simpler and less expensive (if the ex-spouses agree).

Encumbrance: Granting rights or interests in favour of a third party, placing a mortgage, or otherwise encumbering immovable property, such as the family home.

Family home: The place where spouses live together. The family home is matrimonial real property within the meaning of FHRMIRA. See full definition on **p.20** of this booklet.

Family patrimony: The *Civil Code of Québec* stipulates that when spouses marry or enter into a civil union, a family patrimony is automatically created. The family patrimony is made of their assets intended for family use, including movable property (eg cars, furniture, bank accounts, etc..) and their immovable property (eg house, chalets, etc.).

FHRMIRA: *Family Homes on Reserves and Matrimonial Interests or Rights Act*, a federal law.

Household expenses: An expression frequently used in law to refer to the expenses of spouses or partners in relation to their union or their home or family home.

Improvident depletion: The act of intentionally disposing of matrimonial assets, including the family home, or diminishing their value.

Indian: A person with Indian status within the meaning of the *Indian Act*, and for the purposes of this booklet, we refer to those living on reserve.

Joint Tenancy: Not applicable in Québec.⁴ Only “tenancy in common” or “co-ownership” applies. Joint tenancy is a form of lawful tenure of land in which two (2) or more members jointly own equal undivided shares in an entire parcel of land. Upon the death of one of the joint tenants, the deceased person's interest in the land passes to the surviving joint tenant(s) by right of survivorship.

Legal separation or “separation from bed and board”: Legal separation for married couples is the result of a court judgment. Consenting to it or living separately does not result in legal separation. The court judgment regulates the ancillary measures of separation, such as child custody and child support, as well as the division of certain property.⁵

Liquidator/Executor: The person chosen by the deceased and named in their will to administer and liquidate the estate. “Executor” or “executor” are the terms used in the *Indian Act*, FHRMIRA, and elsewhere in Canada, while “liquidator” is the term used in *the Civil Code of Québec*. In order to avoid any confusion, the booklet will refer to the “liquidator” as being

"liquidator/executor", except in **APPENDIX D: SAMPLE AGREEMENT BETWEEN** . If an Indian dies without a will, an "administrator" approved by Indigenous Services Canada will administer the estate.

Marriage contract: Defines the rights and obligations of spouses and defines the matrimonial regime chosen, especially if they choose a regime other than a partnership of acquests. If they do not choose a matrimonial regime before their marriage, the regime automatically applicable is a partnership of acquests.⁶ The marriage contract must be made before a notary by notarial act *en minute* to be valid.⁷

Married Spouse: Spouses who get married before a recognized officiant. They have the status of married spouses, which can be proven by a marriage certificate. Married spouses benefit from the protections of *the Civil Code of Québec*, such as the creation and division of the family patrimony, meaning the equal division of certain property regardless of who owns it. The family patrimony includes assets such as the family residence and vehicles intended for the use of the family, regardless of which spouse purchased them.⁸ Spouses also owe each other respect, fidelity, and assistance, must contribute to the expenses of the marriage and may have to pay each other support in the event of a breakup, etc.

Matrimonial regime: Marriage and civil union automatically subject the spouses to rules to define their economic relations for the duration of their marriage or civil union.⁹ The matrimonial regime does not apply to *de facto* spouses unless they choose one by contract between *de facto* spouses. The matrimonial regime can be chosen and the options are: partnership of acquests (the most common and defined below);

separation of property; and community of property. Each matrimonial regime contains rules for the administration of the property and debts that the spouses accumulate during their union and their mode of division in the event of divorce or death of one of them. If no option is chosen, the matrimonial regime of partnership of acquests applies automatically and by default.

Notary: In Québec, a notary is a legal professional registered as a member of the *Chambre de notaires du Québec*. Like a lawyer, a notary must go to law school. To be valid, the notary must prepare the marriage contract and the civil union contract. He can also help draft the contract between *de facto* spouses. Elsewhere in Canada, it is mainly family law lawyers who will prepare these contracts.

Ordinarily living on a reserve: An Indian is considered "ordinarily living on a reserve" even if they temporarily leave the reserve or live off the reserve to pursue studies or receive health care. However, if an Indian leaves the reserve to work or live off reserve for long periods of time and their permanent residence is located off reserve, they will no longer be considered "ordinarily living on a reserve".

Partnership of acquests: The property that each of the spouses or partners owns at the time of the union or that they acquire subsequently constitutes acquests or private property according to the rules of *the Civil Code of Québec* and will be divided in a specific manner and according to complex rules.¹⁰ An "acquest" constitutes, for example, the work product of a spouse during the marriage and "private property" constitutes, for example, property received during the marriage by inheritance or gift. The regime of the partnership of

acquiesces automatically applies to married or civil union spouses unless they select another regime with respect to the division of their property. The partnership of acquiesces regime does **not** automatically apply to *de facto* spouses, but they can choose to have it apply to them by entering an agreement or contract between *de facto* spouses.

Property: Something that belongs to a person, that we 'own'. There are different types of property: movable property and immovable property. **Immovable property** is a type of property that is fixed to the ground or cannot be moved. Real property is sometimes referred to as "real estate". Examples of immovable property are: land, structures, constructions, buildings, houses, etc. **Movable property** is a type of property that moves. Examples of personal property are: a car, a boat, jewelry, etc.

Separation contract or amicable agreement of separation or divorce ("entente de rupture à l'amiable", in French): An amicable agreement (also called a "mediation agreement") involves a specific process in Québec and provides for all the consequences that will result from the termination. **De facto spouses** can use a notary-mediator for the drafting of a separation agreement. The agreement can include provisions regarding their children and the division of jointly acquired property (see also the definition "contract between *de facto* spouses"). **Married spouses** can divorce through an amicable agreement. Coming to an amical agreement has several advantages compared to a court decision obtained in a climate of confrontation or dispute. It will also reduce costs and delays. Having the documents prepared by a notary will make it easier for the court to approve the amicable agreement. As

long as the amicable agreement deals with: child custody; obligations resulting from marriage; family patrimony; the matrimonial regime; the marriage contract; and any other matter arising from the marriage, the notary can draft it for you and is authorized to file it in court on your behalf, at the same time as the application for divorce or legal separation. You can also file the joint application for divorce yourself with your spouse, as long as you have been living apart for one (1) year and you agree on all the consequences of the breakup.¹¹

Succession or estate: All the money and property that a person owns, especially at the time of their death, after subtracting their claims and debts.

Tenancy in Common: A form of lawful tenure of reserve land in which two (2) or more members jointly own undivided shares, equal or not, in an entire parcel of reserve land. Unlike joint tenancy, tenancy in common has no rights of survivorship. When one of the tenants in common dies, their interest in the land passes to their estate or heirs. The majority of reserve land in Québec is held in tenancy in common.

Undivided co-ownership: For the purposes of this booklet, undivided co-ownership is more relevant than divided co-ownership. Undivided co-ownership means that two or more owners hold rights to the same building in its entirety. This is the case, for example, of *de facto* spouses who together buy a house or their family home, and become co-owners.

Will: Legal document outlining a person's last wishes regarding the distribution of their property once they die.

SECTION 1: OVERVIEW OF THE DIFFERENT LAWS APPLICABLE IN FAMILY LAW

If an Indian is registered under the *Indian Act* and is considered to ordinarily live on a reserve in Québec, various laws apply that affect their family status and property, including the *Civil Code of Québec*, the *Indian Act*, FHRMIRA and perhaps a First Nation's own matrimonial property law. This **Section 1** will provide an overview of the application of various laws to different aspects of family law that may be addressed by an agreement between spouses or partners. The interaction and complexity of all these laws and rules explains the importance of getting legal advice from a notary or a lawyer about your situation. The main laws are listed below.

- ***Indian Act*** (federal law): It defines who is an "Indian" within the meaning of the *Indian Act* and what is "reserve" land. The *Indian Act* applies to all property located on the reserve. For example, it determines who can buy or own land on a reserve (only Indians, or members of a given First Nation). The *Indian Act*, however, does not establish any special rights with respect to matrimonial property. For matrimonial real property, see FHRMIRA which was created especially for this reason.
- ***Family Homes on Reserves and Matrimonial Interests or Rights Act*** (federal law): FHRMIRA applies to married, civil union or *de facto* spouses living on reserve when one of them is an Indian or a member of a First Nation. FHRMIRA applies more particularly to their matrimonial immovable property located on reserve.
- ***Civil Code of Québec*** (provincial law): Applies to various aspects of family law, marital relations, and to the effects of separation or divorce (as long as consistent with the *Divorce Act*).¹² The CCQ sets out the rules for the dissolution of the matrimonial regime, family patrimony, parental authority, and certain questions related to child or spousal support.¹³ The CCQ also applies to property or immovables located *off* reserve and held by an Indian. The CCQ does not apply to immovable property located on reserve.¹⁴
- ***Divorce Act*** (federal law): The federal government has jurisdiction over divorce, but the province of Québec retains certain powers in this area by virtue of its jurisdiction over property, civil rights and matters of a local or private nature. The *Divorce Act* establishes the rules and procedures for spouses who wish to end their marriage. The only ways to end a marriage are death or divorce. To obtain a judgment of divorce, it is necessary to make an application to the Court and to prove the breakdown of the marriage. As explained above, several effects of divorce are governed by the *Civil Code of Québec*, as long as there is no incompatibility.

- **Québec Model for the Determination of Child Support Payments** (per the *Code of Civil Procedure*,¹⁵ a provincial law): Specifies the rules surrounding the calculation of child support upon separation or divorce of the parents. You can consult a [Step-by-Step Guide](#)¹⁶ and the [Basic Parental Contribution Determination Table](#)¹⁷ on the [Justice Québec](#) website.¹⁸ Couples cannot decide on the amount of child support themselves: they must comply with the levels established by law.¹⁹
- **Federal Child Support Guidelines** (created under *the Divorce Act*, a federal law): Similar to the rules in the *Québec model for the determination of child support payments*, these rules apply to the calculation of child support for children when parents separate or divorce, in cases where one of them now resides elsewhere in Canada, outside Québec.²⁰ This booklet will not go further in terms of the calculations and factors for determining child support.

SECTION 2: AGREEMENTS BETWEEN SPOUSES OR PARTNERS

1. THE DIFFERENT TYPES OF AGREEMENTS BETWEEN SPOUSES OR PARTNERS

Agreements between spouses or partners are a form of contract. This means that the spouses are bound by their agreement and, in the event of conflict or non-compliance, they can go to court. Spouses or partners with or without children can benefit from free mediation sessions.²¹ Agreements between spouses or partners include the following:

1. marriage contracts,
2. civil union contracts,
3. contracts between *de facto* spouses (also called "*de facto* union contracts or agreements"), and
4. separation contract (if the contract between *de facto* spouses does not address the effects of separation) or an amicable agreement of separation or divorce for married spouses, for example.²²

2. DE FACTO SPOUSES

The Civil Code of Québec does not recognize the rights of *de facto* spouses, in the same way as the *Indian Act* or the rest of Canada. The *Civil Code of Québec* uses the term “*de facto* spouse” while the *Indian Act* and the other Canadian provinces (where the common law applies) refer to “common-law partners”. Regardless of the number of years they have been living together or forming a couple, the *Civil Code of Québec* does not offer *de facto* spouses any automatic protection in the event of a breakup or death (such as spousal support or the right to automatically inherit), unless they have stated so in a contract or agreement between them. However, FHRMIRA offers all Indian partners living on reserve, whether they are married or not, special protection over their family home and other buildings on reserve. (see **Section 3: Overview of FHRMIRA**).

It should be noted that all children have the same rights (child support, all decisions must be in their best interest, etc.), regardless of whether they are born within a marriage, a civil union, *de facto* union, or no official union.²³

It is recommended for all partners to conclude an agreement, but this is especially important for *de facto* spouses. These agreements are tailor-made for the needs of each couple. The contract can even specify their rights and obligations in a way that resembles married spouses. **Sub-section 4: WHAT TO INCLUDE IN AN AGREEMENT BETWEEN SPOUSES OR PARTNERS, INCLUDING A DE FACTO UNION AGREEMENT** provides examples of things you can and can't include to an agreement between spouses or partners.

3. REQUIREMENTS FOR CONTRACTS BETWEEN DE FACTO SPOUSES

As seen above, there are various types of agreements between spouses or partners recognized in Québec. Each has its own validity criteria. As with any other contract within the meaning of *the Civil Code of Québec*, to enter into a valid *de facto* union contract, the *de facto* spouses must²⁴:

- be 18 years of age or older,
- not have been declared incompetent (have mental capacity),
- consent freely with full knowledge of the facts (not be under duress or undue influence),
- conclude a contract which is not contrary to public order (doesn't contain illegal clauses),
- drawn up together and signed, ideally in the presence of two (2) witnesses, and
- ideally, have it drafted by a notary or a lawyer.²⁵

The contract between *de facto* spouses can be:

- verbal or written, although the written form is recommended,²⁶ and
- concluded at any time (at the beginning or during the relationship).

The contract between *de facto* spouses comes into force when both spouses have both signed it.

4. WHAT TO INCLUDE IN AN AGREEMENT BETWEEN SPOUSES OR PARTNERS, INCLUDING A *DE FACTO* UNION AGREEMENT

One of the reasons it is helpful to work with a notary to prepare your agreement with your spouse or partner, is that they will ask you all the right questions and will advise you on aspects that you had not thought of to ensure that everything is included. Dealing with a notary will ensure that nothing is forgotten, that the law is respected, and that your agreement reflects your wishes for your relationship.

4.1. Items to include that do *not* affect land or real property rights on reserve

Below are some items you may consider including in your agreement with your spouse or partner that do not affect the family home, land or real property rights on reserve (these are covered in the next section):

- A list of the assets and debts of each spouse or partner at the time they started living together,
- The ability to represent each other in certain situations (power of attorney),
- The sharing of responsibilities and contributions of each spouse or partner during their relationship,
- How your movable and immovable property located off reserve will be shared in the event of a breakup,
- Determining the family home,
- Sharing of amounts registered with the Québec Pension Plan accumulated during the relationship,
- Sharing of supplemental pension plans,
- Debt repayment terms in the event of a breakup,
- How to share or divide any business you may own with your spouse or partner,
- A compensatory allowance or spousal support in case of a breakdown of the relationship,
- Gifts of furniture or other belongings²⁷,
- An annuity in favor of the other spouse or partner (the offering of a good or a sum of money)²⁸,

- The designation of your spouse as the beneficiary of your life insurance²⁹,
- Certain decisions in the best interest of the child, for example^{30 31}:
 - Custody of the children,
 - The rights of the parent who does not have custody and their access rights (both ex-spouses retain parental authority to make important decisions for the children), and
- Recourse to a family mediator to help you with aspects of your breakup (or any other settlement arrangements in the event of a dispute).

4.2. Elements related to the family home and real estate interests on reserve

In addition to the elements provided for in **subsection 4.1**, you can include additional clauses in your agreement concerning your family home and your matrimonial real property interests on reserve.

As explained in this booklet, land tenure is very different on reserve than on provincial lands, which must be recognized and respected in any agreement between spouses or partners. In addition, as explained in more detail below in **Section 3: Overview of FHRMIRA**, FHRMIRA provides certain protections for spouses or partners living on reserve and the Act recognizes agreements between spouses or partners (and will be considered in any legal action). It is, therefore, recommended that you take FHRMIRA into account and consider incorporating the elements below into your agreement. Even if your First Nation is not subject to FHRMIRA, these elements are nevertheless to be considered as they could be very useful in the event of a separation or death and may be upheld by the First Nation or a tribunal.

- How to resolve all matrimonial real property issues on reserve, including your family home.³²
- The right to exclusive occupation of the family home and reasonable access by you or your spouse following your separation for a period of time determined in advance (for a short period or for a longer period, for example until your children become adults).³³
- The obligation for the spouse who obtains exclusive occupation of the family home to pay the housing costs of the other spouse.³⁴
- The obligation of one of the spouses to make payments to the other for the purpose of repairs and maintenance of the family home.³⁵
- The right for your surviving spouse to continue to live in the family home for a specified period following your death.³⁶

- The value of each spouse's interests in the family home, other buildings and, if both spouses are members of the First Nation, lands located in the reserve. You can agree on a 50/50 split or another amount different from this one in the event of a breakup. The amount you agree upon will be considered by a court and, if it is not unfair and you have consented in a free and informed manner, it will be able to confirm this value.³⁷ If one of the partners passes away, this valuation could also be considered by a judge in determining the amount due to the survivor.³⁸
- The transfer of the interests in the family home or any other building or land on reserve (here, the court will particularly ensure that the consent of the spouse has been obtained in a free and informed manner, in writing, and that the agreement is not unfair).³⁹

4.3. Things NOT to include in an agreement between spouses or partners

There are certain things that should **not be included** in an agreement between spouses or partners, including a contract between *de facto* partners, for example:

- *mortis causa* gifts (in case of terminal illness or death) as these must be done by will,⁴⁰
- decisions contrary to the best interests of the child,
- clauses transferring land or property on reserve in a manner that goes against the *Indian Act* (e.g. transfer to a non-member) or against the specific regime applicable in a given First Nation,
- clauses contrary to public order, e.g., contrary to the protections of the *Québec Charter of Human Rights and Freedoms*, and
- clauses that would limit the individual rights of another person.

***Important:** your agreement with your spouse or partner does not replace your will or your protection mandate. It is strongly recommended that you consult a notary to ensure that your agreement does not contradict these documents.

5. SHOULD A NOTARY PREPARE YOUR AGREEMENT WITH YOUR SPOUSE OR PARTNER?

5.1. The advantages of using the services of a notary

Notaries are legal professionals supervised by the Chambre des notaires, a regulatory body responsible for evaluating the quality of the notary services to ensure the protection of the public. Notaries with a practice focused on family law can offer legal advice on the following subjects:

- legal effects of a *de facto* union,
- agreements between spouses or partners,
- rights and obligations arising from marriage or civil union,
- support and custody for the children,
- family mediation,
- separation contracts and amicable agreements of separation or divorce, and
- divorce.

Notaries are able to draft the various types of agreements between spouses or partners, including marriage contracts, the civil union contracts and contracts between *de facto* spouses. Some notaries also have more in-depth knowledge of Indigenous law. This means that a notary is able to prepare an agreement that respects the requirements of the various legal regimes applicable to your circumstances as well as to the particularities of your First Nation.

It should be mentioned that in order to be valid, certain agreements, such as marriage and civil union contracts, **must** be made by a notary.

When looking for a notary and meeting with one, be sure to:

- mention that you are a member of a First Nation and what specific reserve you live on so that the appropriate rules are applied,
- mention if your spouse or partner is a member of your First Nation,
- see **APPENDIX A: FINDING A NOTARY OR LAWYER** of this booklet, explaining how to find a Québec notary near you with experience in Aboriginal law, and
- see **APPENDIX C: PREPARING FOR AN APPOINTMENT WITH THE NOTARY** to prepare for the appointment.

5.2. What if you are unable to use a notary?

It is clearly advantageous to do business with a notary to help you with the drafting of your agreement with your partner, but it is **not mandatory** (with the exception of marriage and civil union contracts). Although not to be construed as legal advice, using the sample clauses for *de facto* union contracts in **APPENDIX D: SAMPLE AGREEMENT BETWEEN** of this booklet can serve as a starting point for drafting your agreement with your spouse or partner. It is also recommended that you have your draft agreement reviewed by your First Nation's Land Management Department if applicable and again, if possible, by a notary.

6. WHEN TO MAKE CHANGES TO YOUR AGREEMENT?

Significant life events warrant review, and possibly changes to your agreement with your spouse or partner. For example, the following situations will require changes to your agreement:

- You get married,
- You separate from your partner,
- You are separated from the partner with whom you had a contract and are now in a relationship with someone else,
- You move,
- You become a parent,
- You acquire valuable property, or
- You acquire new immovable property (land, secondary residences).

To modify your contract with your *de facto* spouse, more specifically, you and your spouse must:

- Draft a new contract between *de facto* spouses and both sign it, in the presence or not of two (2) witnesses, or
- Contact a notary (ideally) or a lawyer.

To modify other types of agreements between spouses or partners, it is possible that other formalities are required for the modification, such as, for example, making the changes before a notary.

SECTION 3: OVERVIEW OF FHRMIRA

1. BENEFITS OF INCLUDING THE FHRMIRA IN THE AGREEMENT BETWEEN SPOUSES OR PARTNERS

FHRMIRA recognizes that couples can enter into an agreement with respect to their family property and affairs.⁴¹ This type of agreement is often formalized through a contract, which includes a contract between *de facto* spouses.

If there is an agreement of this nature between you and your spouse or partner and you must go to court, FHRMIRA allows a judge to consider the terms and content of this agreement when making orders under the Provisional Federal Rules. An agreement can save you time, money, stress. If the court must ultimately decide the case, having an agreement in place between the spouses or partners, including a *de facto* union contract, can save time and money since the court will examine the content of the agreement and order that it be respected (as long as it is fair and reasonable).

When preparing an agreement between spouses or partners, the parties to the contract and the person in charge of drafting it, must consider the key aspects of FHRMIRA which should guide the terms of the agreement between spouses or partners for aspects relating to the family home and other buildings or land on reserve.

2. FHRMIRA APPLICATION

For almost 10 years, FHRMIRA has applied to most First Nation members living on reserve. There are exceptions, however. Below is a list of First Nations not subject to FHRMIRA:

- First Nations who have enacted their own matrimonial real property law under FHRMIRA. In this case, that law applies, not FHRMIRA.⁴² In Québec, this would be the case for the Abénakis of Odanak, for example (see **p.23** for more information).
- First Nations that have signed a self-government agreement, such as the Crees.
- First Nations that are not subject to the *Indian Act*, such as the Naskapi and the Cree.
- First Nations that do not have reserve lands, such as the Micmac Nation of Gespeg and the Long Point First Nation.

- Signatory First Nations to the *Framework Agreement on First Nations Land Management* that have adopted a matrimonial real property law in accordance with their First Nation Land Code.
- Signatory First Nations to the *Framework Agreement on First Nations Land Management* who had a Land Code in place prior to December 16, 2014.

If you are unsure whether FHRMIRA rules apply to your community or if your community has its own matrimonial real property law in place, you can contact your First Nation's Land Management Department for clarification in this regard.

3. TYPES OF MATRIMONIAL REAL PROPERTY

FHRMIRA recognizes two (2) types of matrimonial real property:

1. **The family home:** The residence on reserve where the spouses or partners normally live or, if they have no longer live together or one of them has died, where they lived together on the day they stopped living together or when the spouse passed away. If the home is normally used for another purpose, aside from “residential”, the “family home” will only include the portion of the structure that they use as their residence.⁴³
2. **Matrimonial real property rights or interests:** The rights or interests other than those in the family home, which at least one of the spouses or partners holds and which, as the case may be:
 - are acquired during the conjugal relationship,
 - are acquired before the conjugal relationship but in consideration of it (e.g., the acquisition by one of the spouses of a hunting camp, which they plan to use together to go hunting), or
 - are acquired before the spousal relationship but not in consideration of it (e.g., the acquisition of a building on the reserve for business purposes) and which have since increased in value.⁴⁴

Excluded from the definition of "matrimonial real property" are rights or interests received as a gift, bequeathed in a will, or on devise or descent.⁴⁵ The family home is not included in this exception. In other words, the family home will be included in the family patrimony even if it has been bequeathed to one of the spouses through a will, for example.

4. SUMMARY OF FHRMIRA PROVISIONAL FEDERAL RULES

FHRMIRA provides certain rights to both spouses and partners to their family home and other structures located on reserve, whether they are members of the First Nation or not. It also provides rights to both spouses or partners to any land held on reserve, if both are members of the First Nation. The most important of these rights are summarized below and detailed in **APPENDIX E: DETAILED EXPLANATIONS ON FHRMIRA**.

FHRMIRA's Provisional Federal Rules allow spouses and partners to resolve matters relating to matrimonial real property, including the family home, located on a First Nation's reserve, pending the adoption of the First Nation's own matrimonial real property law. These rules ensure that:

- spouses and partners both have the right to occupy the family home during their relationship, whether they are both Indians or members of a First Nation or not,⁴⁶
- the home family cannot be sold, transferred, mortgaged, etc. during the relationship without the written, free, and informed consent of the other spouse or partner, whether or not that spouse is an Indian or member of the First Nation,⁴⁷
- a spouse or partner may be granted exclusive occupation of the family home on an urgent basis in the event of family violence,⁴⁸
- in the event of separation, the courts may order the exclusive occupation of the family home by one of the spouses or partners (for a fixed term or a period longer, for example, until the dependent children come of age),⁴⁹
- the spouses can apply to the court for a division of value: in the event of separation or death, each spouse (or the survivor) is entitled to 50% of the value of the couple's interests in the family home and other buildings and, when both spouses are members of the First Nation, they are also entitled to 50% of the value of the lands located on the reserve,⁵⁰
- in some cases, upon separation or death, a court may transfer an interest or right in reserve land between spouses who are both members of the First Nation, in lieu of financial compensation or in addition thereof,⁵¹

- when one of the spouses or partners dies, the survivor can continue to remain in the family home automatically for a period of 6 months (or longer if there is an agreement or a court order under FHRMIRA),⁵² and
- the spouses or partners may enter into an agreement (that is fair and to which they consent in a free and informed manner) regarding matrimonial real property matters, which a court could then consider.⁵³

For more in-depth information about the contents of FHRMIRA, including calculation methods for determining the value and division of your matrimonial real property, the rights of exclusive occupation and reasonable access to the family home, as well as the various types of orders that can be issued by the courts, please refer to **APPENDIX E: DETAILED EXPLANATIONS ON FHRMIRA** .

SECTION 4: CONSIDERATIONS WHEN FHRMIRA DOES NOT APPLY

1. THE CREES OF EYYOU ISTCHEE

Most of the information contained in **Section 1 & 2** of this booklet also applies to the Crees of Eeyou Istchee who are beneficiaries of the *James Bay and Northern Québec Agreement* (“JBNQA”), particularly with respect to how to draft a contract between *de facto* spouses and what it should include.

The *Indian Act* does not apply to the Crees of Eeyou Istchee or to Category IA lands (except to establish which Cree beneficiaries are “Indians”).⁵⁴ FHRMIRA also doesn’t apply to Crees.

The *Agreement on Cree Nation Governance Between the Crees of Eeyou Istchee and the Government of Canada* provides for the possibility for the Cree Nation to create its own matrimonial real property laws. However, as of the date of publication of this booklet, this has not yet been done. This *Agreement on Cree Nation Governance* provides that the laws of Québec apply as long as they are not in conflict with the provisions of the Agreement or of a Cree law.⁵⁵ This means that provincial laws, in particular the articles of *the Civil Code of Québec*, apply to certain aspects of family law, including: movable property that is part of the family patrimony situated on category IA land; all property (movable or immovable) located outside Category IA lands; determining child support; and determining spousal support.

Although the *Civil Code of Québec* applies to certain matters, it does not apply to immovable property (matrimonial or not) located on Category IA lands, including the lands themselves. The applicable legal regime in these matters is that set out in the JBNQA, the *Agreement on Cree Nation Governance*, the Cree Constitution and by any other Cree law relating to lands located on Category IA lands.

In summary, if you are Cree and in a *de facto* union with your spouse, it is particularly important to have a contract between *de facto* spouses in place in order to provide protections for you and your *de facto* spouse. As you do not fall under the application of FHRMIRA, which provides certain protections for the unmarried spouse, you will not benefit from any automatic division of the family home and other real estate following a separation.

2. THE NASKAPIS

Most of the information in **Section 1 & 2** of this booklet also applies to the Naskapis, particularly with respect to how to draft an agreement between spouses or partners and what it should include.

However, the *Naskapi and Cree-Naskapi Commission Act* (the "*Naskapi Act*") excludes the application of the *Indian Act* but does not include specific provisions on family law or relationships between spouses or partners. Art. 4 of the *Naskapi Act* provides, however, that the laws of Québec apply so long as they are not in conflict with and do not overlap with the provisions of the *Naskapi Act*.⁵⁶ It is also very important to note that FHRMIRA does not apply to the Naskapis.

In summary, if you are Naskapi (especially if you are in a *de facto* union), it is particularly important to have a contract in place in order to provide protections for you and your spouse. As you do not fall under the application of FHRMIRA, which provides certain protections for the unmarried spouse, you will not benefit from any automatic division of the family home and other real estate following a separation.

3. THERE IS A LAND CODE OR MATRIMONIAL REAL PROPERTY LAW IN EFFECT IN MY FIRST NATION

At the time of writing of this booklet, a few First Nations in Québec have matrimonial real property laws or are in the process of developing their own law or their own Land Codes under *the First Nations Land Management Act*. There are two communities that have already adopted their respective Land Codes.⁵⁷

Depending on the status of your Land Code, its effective date, and whether or not there is a law on matrimonial real property in place, FHRMIRA may apply to you (see explanations at p. 19). This may change in future years, so it's important to contact your First Nation's Land Management Department to verify the applicable regime as you prepare to draft your agreement between spouses or partners.

SECTION 5: ADDITIONAL CONSIDERATIONS

In addition to the provisions of *the Civil Code of Québec* and those of FHRMIRA, other considerations listed below must also be taken into account when drafting your agreement between spouses or partners.

Indeed, you must consider:

1. the content of your will, if you have one;
2. the nature of your real property interests;
3. whether or not there is a traditional or customary land allotment system in your First Nation; and
4. the impact of your First Nation's housing and residency policies.

1. YOUR WILL

An agreement between spouses or partners cannot replace or contradict a will. It is recommended that everyone, especially Indians within the meaning of the *Indian Act*, have a will in place so that they can control the distribution of their estate following their death.

Without a will, the estate provisions of the *Indian Act*⁵⁸ determine the distribution of the estate. To ensure that a marriage contract, a civil union contract, a contract between *de facto* spouses, or a separation contract does not conflict with the contents of a will or the provisions in the *Indian Act*, FHRMIRA, the *Civil Code of Québec* or with your First Nation's regulations, traditional or customary laws, it is recommended to consult a notary with experience in family law, succession planning, and Indigenous law.

2. THE PARTICULARITIES OF YOUR COMMUNITY

2.1. The nature of the interest in the land on the reserve

There are special rules regarding the right to occupy and own land on a reserve. In general, First Nation members have the right to use or own land or buildings on reserves, either because they have a Certificate of Possession or because of the laws and customs of a First Nation.

For First Nations that issue Certificates of Possession for reserve land, only members of that First Nation can hold a Certificate of Possession. Under FHRMIRA, upon separation or the death of a spouse or partner, only a spouse or partner who is a First Nation member can apply for half of the value of *land* held by their spouse or partner, but non-members cannot make such a request. This is because the transfer of land located on reserve can only be made from one member to another. However, *all* spouses and partners (members or non-members of the First Nation) can apply for half the value of the family home or other structures located on reserve land.

2.2. Custom Allotments

Some First Nations do not issue Certificates of Possession to allocate reserve lands to their members. Rather, the lands are occupied by way of the First Nation's custom allotments or customary laws. This is also something to consider when drafting agreements between spouses or partners. Note that FHRMIRA's Provisional Federal Rules do *not* apply to the value of *lands* that have been attributed by custom allotments. However, spouses and partners may apply for the sharing of the value of the family home and other structures located on lands occupied by custom allotments that are recognized by First Nations. In these cases, it is suggested to contact the Land Management Department of the community in question.

2.3. First Nation Residential and Housing By-Laws and Policies

Another consideration is the impact of a First Nation's residential and housing policies and/or by-laws. The rights and remedies contained in FHRMIRA may sometimes conflict with the housing and residential policies and/or by-laws of a First Nation. As a general rule, the *Indian Act* and FHRMIRA prevail over First Nation policies and by-laws. However, the question of whether it is FHRMIRA or the First Nation's policies and/or by-laws that apply, can be a complex one. As such, when preparing an agreement between spouses or partners, the person drafting it, ideally the notary, must be on the lookout for First Nations policies or by-laws which may conflict with FHRMIRA and the terms of the agreement between the spouses or partners.

APPENDIX A: FINDING A NOTARY OR LAWYER

HOW TO FIND A NOTARY

The steps below will help you to find a notary with experience working with the various federal, provincial and First Nations laws applicable to agreements between spouses or partners for First Nation members living on reserve.

- To find a notary with experience working with First Nation members living on reserve, go to: <https://trouverunnotaire.cng.org/en/find-a-notary.html>,
- Search by “Field of practice” and select “droit autochtone” and/or “famille et couple”^{lix},
- If you wish to limit your search results even further, select “City” and enter the name of your community or the city closest to you.

If you have difficulty finding a notary, you can call the Chambre des notaires at 1-800-263-1793.

Suggestion: When contacting notary offices or specific notaries, you can ask them if they have experience in family planning for First Nation members living on reserve. If they are unfamiliar with First Nations issues, you can still ask them if they can recommend a notary. You can also ask them what their fees are and if they offer meetings by videoconference.

Internet Searches

You can search for “notaries in city X” or “notaries near me” or “best notaries in Québec for First Nation members living on reserve”.

Ask others:

Word of mouth: someone you know may have done business with a notary they really liked and with experience with agreements between spouses or

partners for First Nation members. You can also ask your First Nation's Land Management Department.

HOW TO FIND A LAWYER

Montreal area:

- \$60 for a 60-minute consultation
- Call 1 (514) 866-2490
- Email: reference@barreaudemontreal.qc.ca

Longueuil area:

- \$50 for the first 30 minutes of the consultation
- Call 1 (450) 468-2609

Québec, Beauce and Montmagny regions:

- \$60 for the first 60 minutes
- Call 1 (418) 529-0301, ext. 21

Suggestion: Be sure to clarify with the lawyer what you are looking for and what their fees are for a 30 or 60-minute consultation. To receive a consultation adapted to your needs, be sure to specify that you are a member of a First Nation and that you live on a reserve.

To find a Barreau du Québec lawyer near you with experience in family law and Indigenous law, go to: <https://www.barreau.qc.ca/fr/trouver-avocat/>.

Legal aid

Legal Aid offices in Québec offer legal services in the area of family law, for free or at reduced rates for people with lesser financial means. There is certain eligibility criteria, particularly on the financial level, to be able to receive these services. Go to: <http://www.csj.qc.ca/commission-des-services-juridiques/nous-joindre/bureaux-d-aide-juridique/en> to find the office closest to you and find out whether a legal aid lawyer can help you.

APPENDIX B: OTHER SOURCES OF INFORMATION

The **Centres de justice de proximité du Québec (Québec Community Justice Centers)** provide general information free of charge to the Québec population. There are several Community Justice Centers in the province, try to find one near you.

- <https://www.justicedeproximite.qc.ca/en/centres/Québec/> or call 1 (844) 522-6900

For **family mediation** for free or at a reduced rate to help you with the separation from your spouse or partner, please visit the following websites:

- Pre-mediation:
<https://avantlamediation.ca/en/>
- Family mediation for couples without common or dependent children:
<https://www.justice.gouv.qc.ca/en/couples-and-families/separation-and-divorce/family-mediation-negotiating-a-fair-agreement/family-mediation-for-couples-without-children-or-common-dependent-children/>
- Family mediation for couples with children:
<https://www.justice.gouv.qc.ca/en/couples-and-families/separation-and-divorce/family-mediation-negotiating-a-fair-agreement>

Éducaloi is a gold mine of easy-to-understand information on all areas of law concerning residents of Québec. The **Éducaloi** website includes specific sections on family law and agreements between spouses, including contracts between de facto spouses, and even a specific section for certain legal issues affecting First Nation members.
<https://educaloi.qc.ca/en/>

NALMA has many interesting resources concerning family homes and the rights of surviving spouses

- Tel.: 1(855)657-9992 or 1(887) 234-9813
- Website: <https://www.coemrp.ca/> or <https://nalma.ca/>

Finally, it is always helpful to contact your First Nation's **Land Management Department**. This is especially true if:

- you are a member of a First Nation where a Land Code is in effect,
- your First Nation has its own matrimonial property law, or
- you are Cree or Naskapi and living in your community.

APPENDIX C: PREPARING FOR AN APPOINTMENT WITH THE NOTARY

An appointment with a notary can be a stressful and emotional experience as you have to think about the consequences of separating from your spouse or partner. Try talking to your notary to find out what you need to bring to your meeting and what the costs will be for the appointment and for the preparation of an agreement or contract between *de facto*, married or civil union spouses.

You may find it comforting to ask someone you trust (a relative or loved one) to accompany you to your appointment with the notary. You should ask in advance whether this is possible or not. Your companion may not be able to go inside the notary's office with you because the information you share is confidential, but they could still accompany you for the drive to the notary's office and possibly wait for you in the waiting room. If English or French is not your primary languages, you may be able to avail of the services of an interpreter or a translator to help you during the appointment. To find a certified interpreter or translator in Québec, visit the following page: <https://ottiaq.org/en/>.

Since the start of the Covid-19 pandemic, Québec notaries have been conducting virtual consultations and performing certain notarial acts electronically. This means that you could possibly attend your appointment with the notary by videoconference while remaining in the comfort of your home. Make sure to ask whether this is a possibility.

Calling a notary's office does not mean you have to retain the services of the notary in question. You can call a few notaries to find out about their fees and their experience working in family, as well as the planning and preparation of agreements or contracts for spouses or partners who are First Nation members.

APPENDIX D: SAMPLE AGREEMENT BETWEEN *DE FACTO* SPOUSES

This sample contract between *de facto* spouses (between unmarried spouses) should in no way be interpreted as legal advice. The clauses in this contract are examples of what a contract between *de facto*-spouses could look like.

Note that you cannot write your own marriage or civil union contract (this must be done by the notary, by notarial act). However, the following example contains elements that you can consider including in your marriage or civil union contract before your meeting with the notary.

This example could also provide potential clauses to settle certain aspects of your separation contract or your amicable agreement, regardless of your type of union. If you are married or in a civil union, additional formalities may be required to validate it⁶⁰ and it is advisable to receive legal advice from a notary or a lawyer.

Remember that each First Nation is unique for different reasons (e.g., a Land Code is in effect, a matrimonial real property law applies, or a self-government agreement is in place). Likewise, each individual has their own specific circumstances.

NOTE: Text in red in the examples below should be replaced with your own specific information. The text in italic blue represents explanations and is not part of the content of the main clauses for this example (which are in black). Alternative clauses will also be in italic blue and they are often accompanied by an explanation (also in blue). This means that if you draft your *de facto* union contract yourself, you will not need all the sample clauses below. Please read them carefully.

Agreement Governing Relations Between *De Facto* Spouses

BETWEEN:

Jane Doe, social worker, residing at *123 Mountain Road* in the town of *ABC* in the province of Québec, Canada,

and

John Doe, veterinary technician, residing at *123 Mountain Road* in the city of *XYZ*, in the province of Québec, Canada,

Hereinafter referred to as “the partners”;

Who are both members of ABC First Nation and have been living in a *de facto* union relationship since July 9, 2018 [OR “will be living in a *de facto* relationship as of *date/month/year*”] and intend to settle between them certain aspects of their life together according to the following Agreement, namely:

(The following clauses are examples of a general nature and not legal advice. Please read them carefully and do not copy them automatically, because you do not need everything listed below or you will need to make changes.)

1. DESIGNATION OF THE FAMILY HOME

- 1.1. The family home, as defined in the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, chosen by the spouses is located at 123 Mountain Road. The residence is located on Lot 123, range 1, of reserve ABC #3, as shown by Plan12345 SATC.

(If you are a member of a First Nation that is not subject to FHRMIRA, you can still identify your common residence according to the designation and land registration system in effect in your First Nation.)

2. CONTRIBUTION TO HOUSEHOLD EXPENSES

- 2.1. Spouses will contribute to household expenses in proportion to their respective abilities.

(OR you may want to provide more specific contributions than those listed above. For example, you may want to contribute to household expenses as follows:

“1. The spouses intend to contribute to household expenses in the following manner, namely:

- a) *contributions by Jane Doe will consist exclusively of the payment of groceries and the purchase of her personal effects;*
- b) *contributions by John Doe will consist of the payment of housing costs (electricity and heating costs, repairs, etc.). Also, John Doe will pay all household expenses alone, except for those expressly mentioned above as having to be paid by Jane Doe.*

2. In the event that the partners agree that one of them stops working outside of the family home, this partner may then pay their contribution through their activities within the home (cleaning, cooking meals, caring for children if there are any, etc.).

3. Neither of the partners may claim from the other the amounts that they have used for the purpose of contributing to household expenses.”)

3. ADMINISTRATION AND DISPOSAL OF PROPERTY

- 3.1. Each of the partners will retain the administration, enjoyment, and free disposal of all their movable and immovable property. They will not be responsible for the debts of one another, whether these debts were contracted before or after the start of their life together. [OR if you choose to assume your respective debts, you could write: “They will be responsible for each

other's debts, whether these debts were incurred before or after the start of their life together”].

4. MOVABLE PROPERTY AND PERSONAL EFFECTS

- 4.1. The movable property and personal effects owned by the partners at the signing of this Agreement are listed in a list attached hereto, after having been accepted and signed by the partners. *[OR if you choose to do business with a notary as recommended, you could write: “after having been acknowledged as true and signed by the partners in the presence of the undersigned notary”].*
- 4.2. This list will be updated regularly, by mutual agreement by the partners. Each update will be dated and signed by each of the partners in duplicate.

(OR you may choose not to keep a list of your belongings, however, it is strongly recommended that you do so, especially if you have valuable possessions. If you choose to keep such a list, you may wish to update the list at a predetermined time instead of as per the clause above. For example, you could include a clause stating:

“This list will be updated by the partners every three (3) years, on the date of this Agreement’s anniversary. Each update will be dated and signed by each of the partners in duplicate.”)

5. THE FAMILY HOME

- 5.1 **John Doe** is the **sole holder** of the Certificate of Possession associated with the land on which the family home is located, meaning the land corresponding to **Lot 132, range 1, of reserve ABC #3**, as demonstrated by **Plan 12345 SATC**.
- 5.2 The family home is currently encumbered **with no servitudes, or mortgages or other encumbrances**.
- 5.3 The partners intend to establish between them an undivided interest with respect to the family home. Therefore, **John Doe** cedes half (½) of his interest in the family home to **Jane Doe** for the **following consideration: [insert an amount of money here if you want the partner to pay you for their share]**.
- 5.4 The partners also intend to establish the rules that will govern their relationship as holders of undivided interests in the family home.

(It is important here to consult a notary or a lawyer. If the names of both First Nation member partners appear on the Certificate of Possession, they could use a clause similar to the following:

“The partners both hold the certificate of possession for the land on which the family home is located and the partners wish to establish the rules which will govern their relations as such.”)

CONSEQUENTLY of the foregoing, the partners agree as follows:

5.5 **Purpose of the family home** – The family home will be used for residential purposes. Each of the partners will have the right to occupy and use, jointly with the other, the family home while not preventing the full and complete exercise of the same interest by the other undivided interest holder (the other partner).

5.6 **Share** – The partners establish that their respective share in the family home is **50/50**.

5.7 **Administration** – The family home will be jointly administered by the partners.

5.8 **Expenses** – For all expenses relating to the family home not already provided for in article 2 hereof, the partners will contribute **in proportion to their respective share**.

5.9 **Repairs** – No repairs, modifications or transformations can be made without the prior agreement of both partners. The partners, however, give each other a mutual mandate for the execution of urgent and necessary repairs.

5.10 **Deposits** – Each of the partners will deposit monthly, in a joint account approved by both partners, a lump sum **which will be established at the beginning of each year** to cover the expenses relating to the family home. All disbursements will be made by **Interact e-Transfers** from this account. *[OR replace this clause with any other payment agreement]*

5.11 **Inter vivos sale or transfer of a share** – Any *inter vivos* sale or transfer (during the lifetime of the partners) of a share is subject to the following rules of sale.

1. None of the partners may sell or otherwise alienate their interests in the family home without having first offered them to the other partner by written notice. **Within sixty (60) days of receipt of the written notice**, the other partner will have the option of acquiring the other partner's share for a price determined according to the market value of the family home, as established by agreement between the partners or, failing such agreement, by a certified appraiser appointed jointly by the partners. In this case, the selling partner will fully assume the costs of the evaluation.
2. If the partner does not wish to avail themselves of the said offer within the **sixty (60) days**, the partner may either acquire their partner's share, who will be required to transfer it to them, or dispose of their own in favour of whoever they wish **within six months (6) which will follow, for a price at least equal to that contained in the offer above**. **If the offering partner has not disposed of their rights within the period of six (6) months, they must**, if they wish to dispose of them again, follow the prescriptions of the preceding paragraph and of this paragraph.

(Another clause option would be to provide for a right of pre-emption, however it is advisable to consult a notary to verify the possible options for you and your partner, depending on the First Nation of which you are a member. A clause providing for a right of pre-emption could be read as follows:

"The partner who wishes to alienate their share or part of their share in exchange for money and in favour of a third person must first offer it to the other partner by giving them written notice. And the notice shall contain, as applicable, the price and conditions of alienation

contemplated by the partner, the price and conditions offered by a promising buyer in good faith.

The partner must decide in thirty (30) days of receipt of this notice. Failure to respond within this period or conclude the sale contract within fifteen (15) days following a positive response is equivalent to a refusal to acquire. The partner will then be able to forfeit their share or part of their share, but the price and conditions may not be less than what was offered to the other partner. »

5.12 Death of a partner – In the event of the death of one of the partners, the other partner may purchase the other’s interest in the family home. **The price will be determined according to the market value of the family home** as established by agreement between the surviving partner and the liquidator of the succession of the deceased or, failing such an agreement, by a certified appraiser appointed jointly by the surviving partner and the liquidator of the succession of the deceased. **The price will be payable to the heirs of the deceased within six (6) months of death, without interest.** It is understood that from the moment of the death of a partner until the signing of the deed of sale mentioned above, **the surviving partner will have exclusive occupation of the family home to the exclusion of the deceased partner's heirs.**

5.13 Sale to a third party – In the event that the entire immovable is sold to a third party (OR resold to your First Nation) with the consent of the partners, the proceeds of this sale will be divided between the partners in proportion to their respective share.

(Instead of the above clause, you could instead avail yourself of the following clause if applicable:

"Sale to a third party – In the event that the entire immovable is sold to a third party with the consent of the partners, the proceeds of this sale will be used for the following purposes:

a) first, the reimbursement of all charges and mortgages on the immovable, in proportion to the respective share of the partners;

b) then, the recovery by the partners of their respective down payment, i.e. for and for, as well as the sums disbursed by each of the partners on each anniversary day of the mortgage loan in order to reduce the borrowed capital , if applicable.

If a balance remains, it will be divided between the partners, in proportion to their respective shares. »

5.14 Fair market value – The fair market value referred to above will be established mutually by the partners. In the event that they do not reach an agreement, the partners will jointly appoint a certified appraiser who will appraise the immovable. In the absence of agreement on the choice of this appraiser, each will appoint one and the value of the immovable will be equal to the average of the appraisals thus obtained, it being understood that the highest value of the two appraisals thus obtained must not exceed by more than ten percent the value of the lower of the two valuations.

6. SUBSEQUENT ACQUISITIONS

- 6.1. Any other immovable acquired together by the partners will be subject to article 5 of this Agreement with the necessary adaptations. The partner who acquires an immovable individually **will be the exclusive interest-holder.**

7. MODIFICATIONS TO THE AGREEMENT

- 7.1. The partners reserve the right to modify this agreement by mutual agreement. Any modification must be made in writing, by mutual agreement of the partners and with the signature of each one of them.

(It may be that instead of the clause above, you wish to modify your contract before a notary, by notarial act en minute or that you wish to modify your agreement before one (1) or two (2) witnesses).

8. RELATIONSHIP BREAKDOWN

- 8.1. In the event of a relationship breakdown, the partners agree to the following:

- a) Each partner will retain the **movable and immovable property in which they have an exclusive interest (with the exclusion of the family home).** For any property in which neither of the partners can justify their exclusive interest, this property will be presumed to belong to both partners, as holders of equal undivided interests.
- b) Custody of children: The partners do not have children. If they have any, they agree to **both have 50/50 custody of them, each in turn, one (1) week out of two (2).** *[OR sole custody for one of the partners OR for another period of time].*

(Note here, that in case of conflict, a court is not bound by the terms of custody that the partners indicate. The Court will make the necessary decisions, based on the best interests of the child.)

- c) Support: **\$ / month** . *[Insert a monthly amount, or another amount that the partners agree that one of them pays to the other. If the partners agree that there will be no support payments for their own needs, indicate this here].*
- d) Québec Pension Plan: **\$** *[Indicate an amount if the partners wish to share pensionable earnings accumulated while living together or agree here that the partners will not share them. See the Act respecting the Québec Pension Plan, RSQ]*
- e) RRSP: **\$** *[Indicate here if the partners do not wish to be able to claim back their respective amounts invested in an RRSP. See the specifics of your RRSP].*

9. MEDIATION

- 9.1. The partners understand the advantages of family mediation as a method of managing disputes and hereby undertake to attempt mediation before any recourse to the courts for any disagreement or dispute that may arise, in particular and not exclusively, from the interpretation or application of this Agreement, its execution, its nullity or its resolution, as

well as any dispute that may arise between the partners at the end of their living together. An accredited Family Mediator, appointed by mutual agreement by the partners, must conduct the mediation in accordance with the rules of law and the provisions of the *Code of Civil Procedure* of Québec in force at the time of the dispute, in particular, those relating to family mediation. The costs relating to the mediation will be covered jointly by the partners, in proportion of their respective income.

(A clause of this nature is not necessary despite the fact that mediation may be advantageous. As mentioned above, Québec has free or reduced-fee family mediation programs available to help couples with their separation.)

10. PERIODIC REVIEW OF THIS AGREEMENT

(A clause of this nature is optional and serves to provide in advance that the partners wish to revisit the content of this Agreement at certain times, for example: every year or every two (2) years, or at the time of their marriage if they decide to marry).

11. SCOPE

11.1. This Agreement is binding on the partners and all their mandataries, heirs, and successors.

(OR the following clause can be inserted instead of the one above:

"However, in the event of the death of one of the partners, only the surviving partner will have the option of whether or not to apply this Agreement. If the surviving partner chooses not to have it applied, this Agreement will have no effect and the heirs will not be able to make any claim under this Agreement. This option of the surviving partner must be expressed, by notarial act en minute, before the first of the following events: three (3) months from the publication of the notice of inventory of the succession or six (6) months from the death. If there is no option, the surviving partner will be deemed to have chosen not to enforce this agreement.")

12. INTERPRETATION

12.1. Each of the agreements and provisions contained in this Agreement are independent.

12.2. For the purposes of interpreting this Agreement, the titles of the articles and their numbering are present only as an indication, to facilitate the reading of the Agreement, and can in no case be used to interpret the meaning of the said articles. Also, whenever the context so requires, any word written in the singular also includes the plural, and vice versa, and any word written in the masculine gender also includes the feminine. Any word meaning persons includes natural persons and legal persons.

IN WITNESS WHEREOF, the spouses have signed at _____ (name of city and province) _____, this _____ (full date, day/month/year) _____.

Signature of Jane Doe

Jane Doe

Signature of John Doe

John Doe

If signed by spouses before one (1) or two (2) witnesses although not required, add a clause similar to the following:

SIGNED by **the spouses** and declared by **them**, in **my/our** presence, **I/we** sign here as witness(es) and also affix our initials on each page.

Signature of witness

Signature of witness

Name of witness

Name of witness

APPENDIX E: DETAILED EXPLANATIONS ON FHRMIRA

Note: use of the term spouse in this section refers to married, civil union or de facto spouses.

The rights of the spouse with respect to the family home during the relationship

Consent required to dispose of or encumber the family home

Subject to the *Indian Act*, the spouse may not, during the relationship, dispose of or encumber the family home without the written, free, and informed consent of the other spouse, whether or not they are an Indian or a member of the First Nation. If a spouse sells or encumbers the family home against the will or without the knowledge of the other, the court may set aside the transaction and impose conditions and award damages in favour of that other spouse.⁶¹ However, the disposition of the right or interest or the encumbrance on the family home cannot be cancelled if the other contracting party acquired it for valuable consideration and in good faith.⁶² A court may, however, subject to the *Indian Act*, authorize a spouse to dispose of the interest of the other spouse in the family home without their consent if it is satisfied that they cannot be found, are unable to consent or unreasonably refuse to consent.⁶³

In the event of domestic violence

A designated judge may issue an **emergency protection order** for a maximum of ninety (90) days, under the conditions they specify and including several provisions provided for in s. 16(5), including the granting of the exclusive right to occupy the family home and reasonable access to it, if satisfied:

- that there has been domestic violence, and/or
- that because of the seriousness or of the urgency of the situation, the order must be issued without delay to ensure the immediate protection of a person who risks

suffering harm or property which risks being damaged.⁶⁴

Breakup or breakdown of the relationship

Order of exclusive occupation of the family home and reasonable access

A court may, on the application of a spouse, whether or not they are a member of a First Nation or an Indian, issue an **order of exclusive occupation of the family home and reasonable access**, for the duration and under the conditions it specifies. In making such an order, the court must consider the following elements⁶⁵ :

- the best interests of any child involved,
- the terms of any agreement, such as an agreement between spouses or partners,
- the collective rights of the First Nation with respect to their reserve lands and the observations of the Council of the First Nation regarding the cultural, social, and legal contexts relating to the request for exclusive occupation of the family home in question,
- the length of time during which the applicant spouse has habitually resided on the reserve,
- the financial situation and health status of the spouses or partners,
- the availability of other suitable accommodation located on the reserve,
- any orders still in force regarding the breakdown of the relationship,
- history of domestic violence or emotional abuse,
- interests of any elderly or disabled person usually residing in the family home and cared for by one of the spouses or partners,
- any exceptional circumstances,

- the rights or interests held by persons other than the spouses with regard to the family home, and/or
- the observations presented to the court by persons who have received a copy of the application for exclusive occupation and reasonable access to the family home.

This order may contain provisions requiring⁶⁶:

- that a spouse, whether or not they are a member of the First Nation or an Indian, leave the family home, immediately or within a specified period, with the prohibition to return there,
- that the spouse leaving the family home, preserves its good condition until their departure,
- that the spouse requesting exclusive occupation of the family home pays the accommodation costs of the other spouse, and/or
- that one of the spouses or partners carries out payments to another for repairs and upkeep of the family home.

Following the death of a spouse or a partner

Exclusive Occupation of the family home

Upon the death of a spouse, the survivor who does not have a right or interest in the family home may still occupy it **for one hundred and eighty (180) days (six (6) months)** following the death of the person even if:

- they are not a member of the First Nation,
- they are not an Indian within the meaning of the *Indian Act*,⁶⁷
- they did not inherit the family home through their deceased spouse, and/or
- the deceased spouse did not have a Certificate of Possession but held a customary right to the home (if applicable, contact your First Nation's Land Management Department).

Indeed, at the request of this surviving spouse, whether or not they are a member of the First Nation or Indian, a court can issue an **order of exclusive occupation of the family**

home and reasonable access in their favour, following the death of the other, taking into account the following factors:

⁶⁸

- the best interests of any child involved,
- the content of the will,
- the terms of any agreement, such as an agreement between spouses,
- the collective rights of the First Nation with respect to their reserve lands and the observations of the Council of the First Nation with respect to the cultural, social, and legal contexts relating to the request for exclusive occupation of the family home in question,
- the survivor's health condition,
- the period during which the survivor usually resided on reserve,
- the fact that the home family is the only asset of substantial value in the estate,
- the interests of any elderly or disabled person ordinarily residing in the family home for whom the surviving spouse provides care,
- any exceptional circumstances,
- any rights or interests now held or to be held by any person with regard to the family home, and/or
- observations by people who received a copy of the application for exclusive occupation and reasonable access to the family home.

The exclusive occupation and reasonable access order to the family home may also contain provisions requiring that:

- the surviving spouse maintain the state of the family home,
- a certain person immediately leave the family home and not return to it, whether or not this person has rights or interests in the family home,
- a peace officer gives notice to certain persons, and/or
- the liquidator/executor or administrator of the estate or the holder of a right or interest in the family home, pay all or part of the repairs or maintenance expenses.⁶⁹

Division of the value of matrimonial rights or interests

Division of the value of matrimonial rights or interests in the event of the breakdown of the relationship

In the event of their relationship, **each spouse has a right to an amount equal to half of the value of the right or interest held in the family home.** S. 28 of FHRMIRA specifies the amounts to which spouses who are members of the First Nation are entitled to and those to which spouses who are not members of the First Nation are entitled to. This section also explains the determination of the value of other structures and lands located on reserve, in which a spouse may have an interest or right, while taking into consideration the appreciation of value during the relationship, as well as the differences between the financial contributions of each spouse to maintain and/or improve them and the value of their appreciation and debts associated with them.⁷⁰

The determination of this value is based on the amount that a buyer would reasonably be expected to pay for comparable rights or interest and the amount of debts or obligations associated with them, at their valuation date. If the spouses agree, the value can be determined on any other basis.⁷¹

A court may issue an **order varying the amount** owed to the other spouse for a matrimonial interest or property if the amount is considered unfair based on the following factors:

- the amount associated with the care and upbringing of dependent children,
- the debts or obligations of each of the spouses or partners,
- a significant variation in the value of the matrimonial rights or interests since their valuation date,
- the duration of the relationship,
- the fact that one of the spouses can obtain the exclusive right of occupation of the family home,
- the availability of accommodations comparable to the family home elsewhere on the same reserve,

- the content of any agreement between spouses or partners,
- the reduction in the value of rights and interests due to the omissions or acts of one of the spouses or partners, following for example, the disposal or the improvident depletion thereof, without the consent of the other, and/or
- other factors relevant.

In the event of significant changes in circumstances, on the condition of notifying the other spouse, an application can be made to the court to revoke or modify the order.

Other articles for determining the value following the breakdown of the relationship

Other articles of FHRMIRA provide details regarding the determination of the value of matrimonial rights or interests following the breakdown or failure of the relationship. **Within three (3) years** following the end of the cohabitation of the spouses, the court may, on the application of one of them, determine the amount payable by one of the spouses to another and set the terms of payment. In certain circumstances, a spouse may make this request after the expiry of the three (3) years.⁷²

At the request of a spouse who is a member of a First Nation, the court may order that the interest or right in respect of the family home and/or of any structure or lands specified in section 28 be transferred to them if the court is satisfied that one of the following scenarios is present:

- the spouses have consented to the transfer, in writing, in a free and informed manner, and this consent or agreement is not unfair,
- the applicant spouse already held that right or interest prior to the termination of the cohabitation, and/or
- the transfer is appropriate in the circumstances because the spouses hold more than one right or interest in respect of the structures and lands located on the reserve of the First Nation in question.⁷³

This order for transfer of the interest or right can also be made by the court if it does not relate to one of the following First Nations:

- First Nation within the meaning of art. 2(1) of the *First Nations Land Management Act*, subject to any Land Code or law to which it is subject,
- First Nation having entered into a self-government agreement to which Canada is a party,
- Mohawks of Kanesatake, subject to any Mohawks of Kanestake Land Code or law enacted under the *Kanesatake Interim Land Base Governance Act*,⁷⁴

The court may make any other order necessary to protect the value of matrimonial or family home rights or interests.⁷⁵

Division of the value of matrimonial rights or interests following the death of a spouse

Within ten (10) months following the death of one of the spouses, the survivor, whether member of a First Nation or not, may apply to the court to receive an amount representing half of the value of the right or interest that the deceased held with regard to the family home.⁷⁶

The court may more specifically, issue an order to decide any question relating to the rights of the survivor, in particular:

- the amount payable to the survivor,
- the terms of payment of this amount,
- the extension of the period of ten (10) months to make this request, due to special circumstances,
- permission for the liquidator/executor to modify the terms of a trust created by will to allow the payment of amounts due to the survivor, and/or
- the notice to be given, if necessary.

If the survivor is a member of a First Nation, they are also entitled to:

- an amount equal to half the value of the matrimonial rights or interests that the deceased spouse held with respect to **lands and other structures** located on the reserve of that First Nation,
- the greater of the following amounts:

- half of the appraised value on such matrimonial rights and interests during the spousal relationship, **or**
- the difference between the financial contributions of the surviving spouse to improve the constructions and lands located on the reserve on which the deceased held matrimonial rights or interests, and the amount still due for the debts and obligations incurred for these improvements,
- the difference between the financial contributions to improve the lands and constructions located in the reserve on which the deceased held rights or interests which would have been of a "matrimonial" nature (if they were appreciated during the marital relationship), and the amount still due to dispose of the debts and obligations incurred for these improvements.⁷⁷

FHRMIRA provides similar rights for non-First Nation surviving spouses or partners but **only for the value of structures** located on the land on the reserve, not for the value of the land itself.⁷⁸

A court can make an order to vary the amount owed to the surviving spouse if:

- the amount would be unfair, for example because it would be insufficient to cover the care and needs of the children of the deceased spouse,
- the partners had, before the death of one of them, settled the consequences of their breakup or relationship within an agreement or by court order.⁷⁹

Sharing the Value of Matrimonial Rights or Interests in Estate Matters

The Provisional Federal Rules under FHRMIRA set out certain obligations in estate matters. Indeed, it is provided that the liquidator/executor or the administrator of a succession must not proceed to the liquidation of a succession before one of the events listed below takes place.⁸⁰

- The surviving spouse consents in writing to the proposed liquidation.

- The ten (10) month period (or the extended period) has expired.
- A surviving spouse who has no interest or right in the family home is automatically entitled to occupy the family home for at least **one hundred and eighty (180) days** after the death of their spouse, including *de facto* spouse.
- The surviving spouse has the right to request exclusive occupation of the family home for a period longer than **one hundred and eighty (180) days**. Various factors will be considered by the court to determine whether to extend the term and for how long.
- The surviving spouse may apply to receive an amount representing half of the value of the deceased's interest or right in the family home and other matrimonial interests or rights. If the court determines that the survivor is entitled to this amount, the survivor cannot, in addition, benefit from the will of the deceased or from the provisions of the *Indian Act* with respect to these same rights or interests. In other words, the

survivor will have to choose between receiving the amounts or rights determined under FHRMIRA or those provided for in the will or the *Indian Act*. Administrators and liquidators/executors will have access to information regarding survivor options that may impact the administration of the estate. A surviving spouse wishing to determine their options in this regard should consult a notary or lawyer for sound legal advice, based on their own circumstances.

A court may make any order necessary to prevent the improvident depletion of the matrimonial right or interest or those relating to the family home.⁸¹ If a liquidator/executor and the surviving spouse enter into a written agreement setting out the amount in respect of the death of the other spouse and the terms of payment, the court may make orders to enforce that agreement, if the court is satisfied that it is not unreasonable and was entered into with the free and informed consent of the survivor.⁸²

END NOTES

¹ CcQ s. 521.1 and following.

² <https://educaloi.qc.ca/en/capsules/common-law-couples-making-a-life-together-without-being-married/>.

³ *Divorce Act*, s. 8(2). See also: https://www.cnq.org/en/the-chambre-and-your-protection/faq/?faq_categories=marriage-and-couples.

⁴ Except for the cases of joint tenancy already in existence and except for Akwesasne, all reserve lands in Québec sont are held in tenancy in common: <https://www.aadnc-aandc.gc.ca/fra/1100100034806/1100100034808#a09>.

⁵ BÉLANGER, Maryse, *La séparation de corps et le divorce : aspects généraux du traitement du litige conjugal*, Collection de droit 2021-2022, École du Barreau du Québec, Vol 4. JuriBistro edoctrine, pp.68 and following.

⁶ CCQ s. 432.

⁷ CCQ s. 440.

⁸ CCQ, s. 414 and following.

⁹ CCQ, s. 431 and following.

¹⁰ CCQ, ss.448, 449, 450 and following.

¹¹ See information on Chambre des notaires du Québec website, here: <https://www.cnq.org/en/your-notarial-services/families-and-couples/separation/#faq-8833>, <https://www.cnq.org/en/your-notarial-services/families-and-couples/separation/#faq-8857>, and <https://www.cnq.org/en/the-chambre-and-your-protection/faq/que-what-does-an-amicable-agreement-of-separation-or-divorce-contain-un-projet-daccord-de-rupture-a-lamiable/>.

¹² *Divorce Act*, s. 25 and 35, and CCQ, s. 517.

¹³ For child and spousal support, see the CCQ at s. 585 et 586.

¹⁴ *Derrickson v Derrickson*, [1986] 1 SCR 285.

¹⁵ CCP, s. 411and 443.

¹⁶ <https://www.justice.gouv.qc.ca/en/couples-and-families/separation-and-divorce/children-a-joint-responsibility/child-support/the-quebec-model-for-the-determination-of-child-support-payments>.

¹⁷ https://www.justice.gouv.qc.ca/fileadmin/user_upload/contenu/documents/En_Anglais/centredec/publications/couple-famille/TA_tablefix_parent_2022_EN_MJQ.pdf.

¹⁸ <https://www.justice.gouv.qc.ca/en/couples-and-families/separation-and-divorce/children-a-joint-responsibility/child-support>.

¹⁹ This is where it is especially important to consult with a notary, who will write out the parents' agreement regarding access and custody rights and child support. In case of disagreement, one of the Québec government's mediation programs or a notary mediator could help you resolve your conflict. See: <https://www.cnq.org/en/your-notarial-services/families-and-couples/separation/#faq-8829>.

²⁰ Explanations on guidelines and calculations for different provinces, here: <https://laws.justice.gc.ca/eng/regulations/SOR-97-175/page-4.html>.

²¹ To find out more about family mediation, go to: <https://www.justice.gouv.qc.ca/couple-et-famille/separation-et-divorce/la-mediation-familiale-pour-negocier-une-entente-equitable/>. Also contact the Centre de Justice de proximité near you at 1 844-522-6900. See **APPENDIX B: OTHER SOURCES OF INFORMATION** of this booklet regarding Centres de Justice de proximité.

²² See definition of "separation contract or amicable agreement of separation or divorce" in the **Legal terminology and other definitions** section. See also: <https://www.cnq.org/en/your-notarial-services/families-and-couples/separation/#faq-8829>.

²³ CCQ, s. 32, 33, 522, 585 et s., 597 and s.

²⁴ See CCQ, at ss. 153, 1385, 1399, 1409 and 1411, amongst others.

²⁵ Don't forget that if you decide to conclude a marriage or civil union contract (which isn't mandatory to benefit from the protections of the CCQ), they must be concluded before notary, by notarial act, in order to be valid.

²⁶ <https://educaloi.qc.ca/en/capsules/written-agreements-between-common-law-couples/>.

²⁷ CCQ, s. 1806 and following. See also Chambre des notaires du Québec website : <https://www.cnq.org/en/the-chambre-and-your-protection/faq/why-draw-up-a-de-facto-union-agreement/>.

²⁸ CCQ, s. 2367 and following.

²⁹ Requirements at CCQ, ss. 2418, 2419 and 2449, must be followed here.

³⁰ Decisions relating to children are often not provided for in the contract between *de facto* spouses, separation or amicable agreement (for married or civil union spouses going through a *de facto* separation only). The separation between *de facto* spouses does not need to be formalized by judgment as for married spouses (if they wish to divorce or legally separate). Decisions relating to separation can be made by the spouses themselves or with the help of a notary, a lawyer, or a family mediator (call the local Centre de justice de proximité closest to you to find out if you qualify for free mediation sessions). Former *de facto* spouses can decide to have their separation agreement homologated by the court. If you cannot agree, you can go to Court so that it can make the decisions for you. If necessary, if you have children, an information session on parenting and mediation will be mandatory before going before the judge. See <https://educaloi.qc.ca/en/capsules/separation-of-common-law-couples-agreeing-on-important-issues/> . See also: <https://www.cnq.org/en/your-notarial-services/families-and-couples/separation/#faq-8829> .

³¹ Couples cannot decide themselves on the amount for child support. They must respect the amounts outlined in the law. For more information, see : <https://www.justice.gouv.qc.ca/en/couples-and-families/separation-and-divorce/children-a-joint-responsibility/child-support/the-quebec-model-for-the-determination-of-child-support-payments> . This is where it is particularly important to consult a notary, who will capture in writing, the parents' agreement regarding child access and custody, as well as child support. In case of disagreement, a notary-mediator could help you resolve conflict. See: <https://www.cnq.org/en/your-notarial-services/families-and-couples/separation/#faq-8829> .

³² FHRMIRA, s. 33.

³³ FHRMIRA, s. 20(1) et (3).

³⁴ FHRMIRA, s. 20.

³⁵ FHRMIRA, s. 20.

³⁶ FHRMIRA, s. 14 and 21. Make sure your will, documents, and other agreements in place with your spouse or partner do not contradict a clause to this effect.

³⁷ FHRMIRA, s. 28.

³⁸ FHRMIRA, s. 35 and see **APPENDIX E: DETAILED EXPLANATIONS ON FHRMIRA** .

³⁹ FHRMIRA, s. 30-31.

⁴⁰ *Mortis causa* gifts (upon death or mortal illness) must be made within a will. See CCQ s. 1819 and BÉLANGER, Maryse, *La séparation de corps et le divorce : aspects généraux du traitement du litige conjugal*, Collection de droit 2021-2022, École du Barreau du Québec, Vol 4. JuriBistro edoctrine, p.71 and following.

⁴¹ FHRMIRA, s. 2(1) et (3).

⁴² FHRMIRA, s. 12(1) et 12(2).

⁴³ FHRMIRA, s. 2(1) at “family home” definition.

⁴⁴ FHRMIRA, s. 2(1) at “interest or right” definition.

⁴⁵ FHRMIRA, s. 2(1).

⁴⁶ FHRMIRA, s. 13.

⁴⁷ FHRMIRA, s. 15.

⁴⁸ FHRMIRA, s. 16.

⁴⁹ FHRMIRA, s. 20(1) et (3).

⁵⁰ FHRMIRA, s. 28.

⁵¹ FHRMIRA, s. 30-31. Regarding interests and rights of the surviving spouse or partner upon the death of the other, see : FHRMIRA, s. 34(1) and 36 and **APPENDIX E: DETAILED EXPLANATIONS ON FHRMIRA** .

⁵² FHRMIRA, s. 14 and 21.

⁵³ FHRMIRA, s. 33.

⁵⁴ *Cree Nation of Eeyou Istchee Governance Agreement Act*, s. 11 : <https://laws-lois.justice.gc.ca/eng/acts/c-45.75/page-1.html> .

⁵⁵ *Agreement on the Cree Nation Governance*, s. 4.3 : <https://www.rcaanc-cirnac.gc.ca/eng/1504798011685/1542989671051#chp7> .

⁵⁶ *Naskapi and the Cree-Naskapi Commission Act*, SC 1984, c 18, s. 4, here: <https://laws-lois.justice.gc.ca/eng/acts/C-45.7/page-1.html#h-112719> .

⁵⁷ <https://labrc.com/map/> and <https://labrc.com/resource/land-codes/> .

⁵⁸ R.S.C., 1985, c. I-5, ss. 42-50.1.

^{lix} These terms are not translated on the Chambre des notaires website.

⁶⁰⁶⁰ See also definitions for “married spouse”, “marriage contract”, “civil union spouse”, “civil union contract”, “partnership of acquests”, “matrimonial regime”, and “family patrimony”.

⁶¹ FHRMIRA, s. 15(1) and (2).

⁶² FHRMIRA, s. 15(3).

⁶³ FHRMIRA, s. 15(6).

⁶⁴ FHRMIRA, s. 16.

⁶⁵ FHRMIRA, s. 20(1) and (3).

⁶⁶ FHRMIRA, s. 20(4).

⁶⁷ FHRMIRA, s. 14.

⁶⁸ FHRMIRA, s. 21.

⁶⁹ FHRMIRA, s. 21(4) and 21(5).

⁷⁰ FHRMIRA, s. 28(1) to (3).

⁷¹ FHRMIRA, s. 28(4) and (5).

⁷² FHRMIRA, s. 30.

⁷³ FHRMIRA, s. 31(1).

⁷⁴ FHRMIRA, s. 31(2).

⁷⁵ FHRMIRA, s. 32.

⁷⁶ FHRMIRA, s. 34(1) and 36.

⁷⁷ FHRMIRA, s. 34(2).

⁷⁸ FHRMIRA, s. 34(3). See also the article by Me Annie Desrosiers, dated March 8, 2021:

<https://aidejuridiquesaglac.com/capsules-juridiques/2021/biens-immobiliers-matrimoniaux-fin-vie-commune-r%C3%A9serve-autochtone> .

⁷⁹ FHRMIRA, s. 35.

⁸⁰ FHRMIRA, s. 38.

⁸¹ FHRMIRA, s. 39.

⁸² FHRMIRA, s. 40.