



Domestic Contracts in the Context of the *Family Homes on Reserves and Matrimonial Interest or Rights Act*

March 31, 2021

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Family Homes on Reserve and Matrimonial Rights or Interests Act (FHRMIRA)

Domestic Contracts

Disclaimer

THIS GUIDE IS FOR INFORMATIONAL PURPOSES AND DOES NOT CONSTITUTE OR REPRESENT LEGAL ADVICE. BEFORE USING OR PREPARING A DOMESTIC AGREEMENT, IT IS HIGHLY RECOMMENDED THAT YOU OBTAIN LEGAL ADVICE FROM A LAWYER FAMILIAR WITH DOMESTIC CONTRACTS AND FHRMIRA.

THIS GUIDE PROVIDES GENERAL INFORMATION ON DOMESTIC AGREEMENTS IN THE CONTEXT OF THE FAMILY HOMES ON RESERVE AND MATRIMONIAL RIGHTS OR INTERESTS ACT. IT IS PRIMARILY FOR COUPLES LIVING ON RESERVE WITH REAL PROPERTY ON RESERVE.

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1 - Introduction

This booklet looks at the Family Homes on Reserve and Matrimonial Rights or Interests Act (FHRMIRA) in the context of the utility and applicability of Domestic Contracts in addressing couples on reserve matrimonial real property issues. It explores the matrimonial real property rights and responsibilities couples have under FHRMIRA and considers the role Domestic Contracts can play in assisting couples in the settlement or resolution of their real property issues as it relates to on reserve matrimonial interests or rights.

2 - Terminology

Affixed – attach or fasten something to something else. A family home may or not be affixed to land.

Conjugal Relationship - A conjugal relationship is one of some permanence, when individuals are interdependent – financially, socially, emotionally and physically – when they share household and related responsibilities, and when they have made a serious commitment to one another. Conjugal does not mean “sexual relations” alone. It indicates that there is a significant degree of attachment between two partners.

Cohabitate - the state of living together and having a sexual relationship without being married.,

Contemplate - To consider, to plan, to think carefully about doing something.

Devise or descent - Devise means through a will instrument. That means it was sent to you through someone who passed away. Or descent, which means if someone passed away without a will, and it happened to pass through to you through a process called intestacy.

Improvident depletion – Upon separation or death of a spouse, one spouse intentionally or recklessly depletes the net family property. In short, without regard to the future, reduces the value of a family property such as the family home.

In specific contemplation of a relationship – Means that an asset or matrimonial real property was acquired for the use and benefit of the relationship.

Dispose of/encumber – Dispose means the sale or gifting of an asset such as a family home. Encumber means to place a lien, mortgage, or other encumbrance on real property such as the family home.

Appreciation in value – increase in the value of an asset over time, such as a family home or land.

3 - Background to FHRMIRA

The Family Homes on Reserve and Matrimonial Interests or Rights Act (here in after FHRMIRA) came into force on December 16, 2013. One year later on December 16, 2014, a set of Provisional Rules contained in the Act came into force and automatically apply to all First Nations with Reserve Land, with the following exceptions:

- First Nations that have enacted matrimonial real property laws under this Act,
- First Nations with a self-government agreement unless they have reserve land and opt into the Provisional Federal Rules,
- First Nations who are signatories to the Framework agreement on First Nation Land Management that have enacted matrimonial real property laws in accordance with their First Nation Land Code.

First Nations who were on the schedule to the Framework Agreement on First Nation Land Management on June 19th, 2013 (date of the Royal Ascent) were exempted from the application of the provisional federal rules for a period of three years, until June 19, 2016.

First Nations who are signatories to the Framework Agreement on First Nation Land Management who had their Land Code in force before December 16, 2014 are exempt from the application of the provisional federal rules.

The Provisional Federal Rules, contained in FHRMIRA, allow spouses and common-law partners to deal with on-reserve matrimonial real property issues pending the enactment of a First Nation law. They ensure that:

- spouses and common-law partners have equal right to occupy the family home during the relationship,
- the family home cannot be sold, transferred, mortgaged, etc. during the marriage or common-law relationship without the free and informed written consent of the other spouse or common-law partner, regardless of whether that spouse or common-law partner is a First Nation member,
- a spouse or common-law partner can be awarded exclusive occupation of the family home on an urgent basis in cases of family violence,
- courts may provide short-term to long-term occupancy of the family home to the exclusion of one of the spouses or common-law partners. The length of this order is chosen by the court, and may range from a set number of days to a longer period (for example, occupancy may last until dependent children reach the age of majority),

- the value of a couple's matrimonial interests or rights in, or to, the family home, other structures, and in some cases lands, when both parties are band members, on the reserve may be divided equitably between each member spouse or common-law partner,
- in some cases, a court may transfer an interest or right in reserve land between First Nations member spouses or common-law partners together with, or instead of, financial compensation,
- when a spouse or common-law partner dies, the **surviving spouse or common-law partner may remain in the home for a specified period of time, and can choose to apply under the federal rules for a division of the value of the matrimonial real property interests or rights instead of inheriting from the estate of the deceased,**
- **parties may come to an agreement about matrimonial real property matters (for example, through negotiation, remediation, or traditional dispute resolution) which can be enforced by the court if necessary, as long as the agreement is fair and reasonable.**

As such, FHRMIRA recognizes that couples can reach their own agreement with respect to their matrimonial matters. The *Family Homes on Reserves and Matrimonial Interests or Rights Act* (the *Act*) recognizes the ability of a judge to consider “the terms of any agreement between the spouse or common-law partners” when making orders under the Provisional Federal Rules.

This may save time and resources and preclude the need to have a court decide a matter or save the court and the parties significant time in having a court to uphold and enforce an agreement entered by the parties. With respect to the last bulleted item above, parties that reach an agreement regarding their real property matters often formalize the agreement through a “Domestic Contract”.

4 - Domestic Contracts

a) What is a Domestic contract?

A domestic Contract is an agreement reached between two people living in a family relationship, which outlines rights and responsibilities if they separate or one of the couple dies. A couple must both agree on the contents of a Domestic Contract. A couple can be two persons that are married, common-law or considering marriage or living together as a couple. These agreements are legally binding upon the parties entering such agreements. The following are all domestic contracts:

- marriage contracts,
- cohabitation agreements,
- separation agreements.

b) What is a “marriage contract”?

A marriage contract is an agreement that a couple may enter into before their marriage or during their marriage while living together. In the contract, they define their rights and obligations during marriage, and upon death, divorce or separation.

What can we include in a “marriage contract”?

A marriage contract may include requirements about the ownership or division of property, support obligations and other important issues, such as the education and religion of your children. However, a marriage contract cannot deal with custody and access of the children. For the purpose of the booklet, we are focusing on ownership or division of matrimonial interests or rights on reserve.

c) What is a “cohabitation agreement”?

A cohabitation agreement is a contract that outlines each person’s rights and obligations during the period of cohabitation or upon death or separation. This type of agreement is appropriate for couples who are living together but who are not married to one another.

What can be included in a “cohabitation agreement”?

A cohabitation agreement may include requirements for the division or ownership of pensions and property, support obligations, and other matters on settling your affairs if you separate. As in a marriage contract, you cannot include clauses dealing with custody and access of your children. For this booklet, we are focusing on ownership or division of matrimonial interests or rights on reserve.

What if a couple marries after signing a cohabitation agreement?

If a couple has entered a cohabitation agreement and later marry, this agreement is considered to be a marriage contract. Typically, cohabitation agreements have a specific clause indicating the agreement shall be legally considered a marriage contract in the event the couple becomes married.

d) What is a “separation agreement”?

A separation agreement is a contract wherein spouses or common-law couples set out your rights and obligations at the time of your separation. You may enter into a separation agreement if

you and your spouse (or common-law partner) were living together but have separated and are now living apart. Spouses or couples can prepare a separation agreement when they are still living together but have agreed to live separate.

What can we include in a “separation agreement”?

A separation agreement should indicate individual support obligations to each other and/or children. As well, it should include decisions about ownership in and division of property and any other matter related to the settlement of your affairs. If you have children, your separation agreement should set out your parenting arrangement which would include custody and access rights.

e) [Legal Nature of Domestic Contracts - What is Required to Make Legally Binding?](#)

Domestic Contracts, as stated above, are legally binding contracts between spouses or couples. Both individuals entering a Domestic Contract must have capacity to enter the contract (be over the age of 18 and of sound mind at the time of execution), each must sign the Domestic Contract and each signature must be witnessed.

Note: Before signing a Domestic Contract, it is recommended that each individual obtain their own independent Legal advice (ILA) to ensure their rights and interests are protected and that the Domestic Contract is legally valid and enforceable.

5 - FHRMIRA considerations

This booklet is intended to provide guidance on the utility of Domestic Contracts as it relates to the Family Homes on Reserve and Matrimonial Interest or Rights Act. As such, the focus is on how Domestic Contracts can play a role in addressing matrimonial interests or rights as determined by the Act.

When preparing a Domestic Contract, the parties to the contract and the drafter should consider key aspects of FHRMIRA which will inform the Domestic Contract terms. The following provides specific information on FHRMIRA that should be considered when preparing and entering a Domestic Contract:

What is Matrimonial Real Property?

FHMIRA recognizes two (2) types of matrimonial real property which includes:

1. Family Home - means a structure that need not be affixed to but must be situated on reserve land where the spouses or common law couple habitually reside or, if they ceased to cohabit or one of them had died, where they habitually resided on the day in which they ceased to cohabit or death occurred.
2. Matrimonial interests or rights means interests or rights, other than interests or rights in or to the family home, held by at least one of the spouses or common-law partners.
 - (a) that were acquired during the conjugal relationship;
 - (b) that were acquired before the conjugal relationship but in specific contemplation of the relationship; or
 - (c) that were acquired before the conjugal relationship but not in specific contemplation of the relationship and that appreciated during the relationship.

It excludes interests or rights that were received from a person as a gift or legacy or on devise or descent, and interests or rights that can be traced to those interests or rights.

Determining if a Right Exists

In preparing a Domestic Contract it is important to determine if a right or interest exists as it relates to a family home, reserve land or other structures on reserve. In considering the aforementioned, a review of key sections of the Provisional Federal Rules in FHRMIRA is very important.

The Act addresses 2 major issues:

- 1 - Occupation of family Homes and
- 2 - Division of Value.

1 - Occupation of Family Home - Sections 13-15 of the Act.

- During the Relationship

During Conjugal Relationship Each spouse or common-law partner may occupy the family home during the conjugal relationship, whether or not that person is a First Nation member or an Indian.

- After Death

A survivor who does NOT hold an interest or right in the family home may occupy that home for 180 days.

- Consent

One party cannot dispose of or encumber the family home without the free and informed consent in writing of the other party.

If a spouse does sell or encumber the property against the will of, or without knowledge of the other spouse, the court can set aside (nullify) the transaction and impose conditions and damages.

However, the disposition or encumbrance cannot be set aside if the other contracting party acquired it for value and acted in good faith.

A court may authorize a spouse to dispose of a party's interest in the family home without the other spouse's consent if the court is satisfied that the other spouse cannot be found, is not capable of consenting, or is unreasonably withholding consent.

BUT WHAT HAPPENS WHEN THE RELATIONSHIP BREAKS DOWN?

- Section 20 of the Act

A court may grant an applicant exclusive occupation of the family home and reasonable access to that home, subject to any conditions imposed by the court and for the period that the court specifies. In making such an order, the court must consider:

- the best interests of any children involved,
- the terms of any agreement between the spouses,
- the collective interests of the First Nation,
- the financial situation and/or medical issues of the spouses,
- any existing orders made on the matter,
- history of any family violence or psychological abuse,
- interests of any elderly or disabled occupants,
- any exceptional circumstances.

The Order may contain provisions:

- for a spouse or partner to vacate the family home immediately or within a specified period of time and prohibiting them from re-entering the home,
- for preserving the condition of the home,
- for making payments to the other spouse toward the cost of other accommodation,
- for payment of all or part of the repair and maintenance of the home.

Exclusive Occupation Order after Death

Section 21 of the Act

On application by a survivor, a court may order that the survivor be granted exclusive occupation of the family home along with reasonable access.

In making such an order, the court must consider:

- the best interests of any children involved,
- the terms of the will,
- the terms of any agreement between the spouses,
- the collective interests of the First Nation,
- the medical condition of the survivor,
- the period which the survivor has habitually lived on the reserve,
- the significant value of the home,
- the interests of any other person who holds rights in the home,
- any exceptional circumstances.

The order may contain certain provisions:

- for preserving the condition of the home,
- to have someone vacate the home and not re-enter it,
- to have a peace officer deliver notice to certain persons.
- to have the executor of the will or the administrator of the estate pay for repairs and maintenance.

2 - Division of Value - Matrimonial Interests or Rights

Section 28 of the Act

When a conjugal relationship breaks down each spouse or common-law partner is entitled to an amount equal to one half of the value of the family home. Section 28 outlines the details of how value of other reserve-based structures and lands in which a spouse may have an interest or right is to be determined, and takes into consideration the appreciation in value that may have occurred during the time of the conjugal relationship, and the differences in payments that each spouse made to maintaining and/or improving the properties.

Determination of value is based on the amount that a buyer would reasonably be expected to pay for comparable interests and the amount of any debts or liabilities assumed. On agreement by the spouses, value may be determined on any other basis.

The Court May Make Changes

A court may, by order, vary the amount if it is considered unconscionable (grossly unfair), given:

- the needs of caring for children,
- the debts or liabilities of each spouse,
- a significant change in value of the interests,
- other pertinent factors.

Application may be made to the court to have the order revoked or varied if there have been material changes in circumstances. In that case, notice to the other party must be given.

2 a) - Division of Value - Other Provisions

Sections 30 to 33 - Other Provisions Related to Division of Value

Section 30 of the Act

On application by one of the spouses, made within three years after cohabitation ended, the court may determine the amount payable by one spouse to the other, and set the conditions for how the amount is to be settled. In certain circumstances, the three-year period may be extended.

Section 31 of the Act

On application by a spouse who is a First Nation member, the court may order that the interest or right to the family home and/or any structure or land specified in Section 28, be transferred to the applicant if the court is satisfied that: a) the spouses agree in writing, consent was informed, and

agreement is not unconscionable, b) the applicant had previously held the interest before cessation of cohabitation, and c) the transfer is appropriate in the circumstances because the spouses hold interest in more than one such land interest.

Section 32 of the Act

The court may make orders as it considers necessary to protect value of property.

Section 33 of the Act

The court may make orders to enforce the terms of the agreement, including payments.

2 b) Division of Value - Death of Spouse or Common-Law Partner

Section 34 of the Act

On the death of a spouse, the survivor is entitled to one half the value of the interest that was held by the deceased in the family home. If the survivor is a First Nation member then he or she is also entitled to:

- i) an amount equal to one-half of the value of interests in other structures and lands on the reserve held by the deceased spouse,
- ii) and the greater of: either one-half the appreciation in value that occurred during the conjugal relationship, or, the difference between the payments the survivor made towards improvements, and debts/liabilities.

Section 34(3) of the Act

This spells out the similar survivor rights for non-members, however, only using the value of the structures on the land, not the value of the land itself.

Section 35 of the Act

A court may, by order, vary the amount owed to the survivor if it is considered unconscionable (grossly unfair)

- i) given the needs of caring for children,
- ii) if the spouses had previously resolved the consequences of the breakdown by agreement or judicial decision.

Section 36 of the Act

On application by the survivor made within ten months after death of the spouse, a court may, by order, determine any matter in respect of the survivor's entitlement, including:

- the amount payable to the survivor,
- the method of payment (lump sum, installments),
- if the survivor is a First Nation member, the transfer of any interests or rights in any structure or land situated on the reserve,
- extension of the ten-month period due to special circumstances,
- permitting the executor of a will to vary the terms under the will to allow for the amounts due to be paid to the survivor,
- ensuring that proper notice is given.

2 c) Estates

The Provisional Federal Rules in the Act provide that:

Section 38 of the Act

The executor of a will or the administrator of an estate must NOT proceed with the distribution of an estate until one of the following occurs:

1. the survivor consents in writing to the proposed distribution.
2. the period of 10 months or any extended period granted has expired. Reasonable advances to survivors or other dependents may be made for their support. If there are two survivors - a common-law partner, and a spouse with whom the deceased was no longer cohabiting - the estate must pay the common-law survivor before paying the survivor who was the spouse.
3. A surviving spouse or common-law partner who does not hold an interest or right in or to the family home will have an automatic right to occupy the family home for a minimum of 180 days after the death of their spouse or common-law partner.
4. The survivor will be entitled to apply for exclusive occupation of the matrimonial home for longer than the 180-day period. Various factors will be studied by the court to determine whether to grant exclusive occupation and the period of such occupation.
5. The surviving spouse or common-law partner will be able to make application to receive half the value of the deceased spouse's or common-law partner's interest or right in the family home and of other matrimonial interests or rights. If the court determines that the surviving spouse is entitled to an amount in respect of that interest or right, the surviving spouse or common-law partner will not be able to benefit from the deceased's will or from the provisions of the Indian Act in respect of the same interest or right. In other words, the surviving spouse or common-law partner will have to choose between receiving an amount under this Act or an amount or right under the will or the Indian Act. Administrators and

executors of estates will have access to information regarding the options for survivors that may affect the estate administration.

Section 39 of the Act

A court may make any order that it considers necessary to restrain the improvident depletion of the interest or right in the family home.

Section 40 of the Act

If an executor and a survivor enter into a written agreement that sets out the amount and terms of payment that is not unconscionable, the court may make orders to enforce that agreement.

Wills and Domestic Contracts

A Domestic Contract should not take the place of a Will and the terms of the Domestic Contract should not conflict with an individual's Will. It is recommended that all persons have a Will to decide how their estate will be distributed upon death. If a person does not have a Will, then the estates provisions of the Indian Act (Sections 40-50.1) will determine how the estate is distributed.

Other Considerations

When entering Domestic Contracts to address on reserve matrimonial rights or interests on reserve, the following should be considered in addition to the specific provisions in FNRMIRA:

1. The nature of interest in land on the reserve in question - some First Nations issue Certificates of Position (C.P.) to reserve land to its members. Only Band Members can hold a Certificate of Position to reserve land. Under FHRMIRA a band member spouse or common law partner can make application for one half the value of land held by their spouse or partner but non-band members cannot apply for one half the value of land held by their spouse or common law partner.
2. Custom or Traditional Allotments - some reserves do not issue C.P.'s and the land is occupied by members through custom allotments. The Provisional Federal Rules in the Act do not apply to the value of the lands that have been allotted according to custom, as these allotments are not recognized as legal holdings by the federal government. However, band member and non-band member spouses and common law partners can apply to share in the value of structures on custom allotments that are recognized by First Nations or by the courts.

3. Impact of First Nation residency and housing policies and or by-laws - the rights and remedies in FHRMIRA “may” conflict with a First Nation’s housing policy or housing policies. Generally, FHRMIRA will prevail over First Nations polices and by-laws, however, the question of whether FHRMIRA or the First Nation’s polices and by-laws prevails can be a complicated issue. As such, when preparing a Domestic Contract, the legal drafter should be aware of the First Nations policies and laws that may conflict with FHRMIRA and in turn the terms of the Domestic Contract.

Three (3) Domestic Contract Samples are presented below. These samples are based on fictional scenarios which may reflect real life scenarios that may emerge in the context of FHRMIRA and the provisional rules. There are numerous real-life scenarios and subject matters that may result due to the operation of FHRMIRA . As such, the three (3) samples provided do not cover every possible scenario.

The Domestic Contract samples and this booklet does not constitute or represent legal advice. Before using or completing this template, it is strongly recommended that legal advice be obtained.

6 Sample Domestic Contract #1

THIS TEMPLATE IS FOR INFORMATION PURPOSES ONLY, AND TO HIGHLIGHT SOME POTENTIAL WORDING OF A DOMESTIC CONTRACT THAT CONSIDERS THE PROVISIONAL FEDERAL RULES IN FHRMIRA. IT DOES NOT CONSTITUTE OR REPRESENT LEGAL ADVICE. BEFORE USING OR COMPLETING THIS TEMPLATE, IT IS STRONGLY RECOMMENDED THAT LEGAL ADVICE BE OBTAINED.

Scenario # 1: Two band members are planning to cohabitate. One of the band members owned their home prior to the cohabitation. The home shall be the couples place of residence. The other band member pursuant to this Domestic Contracts waives his right to exclusive occupation of the family home and division of value of the family home upon separation or death of his common law partner.

THIS IS A DOMESTIC CONTRACT made at the times and places hereinafter stated.

BETWEEN:

Insert the full legal name of each party.

Charlene Smith

(hereinafter referred to as "Charlene")

OF THE ONE PART

AND: David Winston

(hereinafter referred to as "David")

OF THE OTHER PART

WHEREAS Charlene and David will start cohabitating on or about [insert month, day and year];

AND WHEREAS at the date of this Contract there are no children of their relationship, however, each of them has children from prior relationships;

AND WHEREAS the Parties believe that this Contract will bring certainty and confidence to their relationship and strengthen their relationship as a couple and a family in society;

AND WHEREAS Charlene and David intend, by this Domestic Contract, except as otherwise stated herein, to make arrangements different than what is prescribed in the provisional federal rules as contained in the *Family Homes on Reserve and matrimonial Interests or Rights Act*, the *Divorce Act*, any other applicable legislation or laws of the Province of [Insert Province or Territory] and any other jurisdiction;

AND WHEREAS this Contract is made as a Domestic Contract;

ACCORDINGLY, in consideration of their mutual love and affection, and the promises and covenants herein contained, the Parties expressly agree as follows:

1. **INTERPRETATION**

(1) In this Contract:

(a) "Charlene" means Charlene Smith, who is a Party to this Contract and/or her heirs, executors, administrators or assigns. Charlene is in the process of getting her surname changed to her maiden name "Pope". Once the name change is legally carried out "Charlene" will then refer to Charlene Phyllis Anne Pope;

(b) "David " means David Winston who is a Party to this Contract and/or his heirs, executors, administrators or assigns;

(c) "Family" means Charlene and David together as a couple;

(d) "First Nation" means _____ First Nation located at _____.

- (e) "Breakdown of the relationship" means the first of the following events to occur:
 - (i) the separation of the Parties with no reasonable prospect that they will reconcile;
 - (ii) the death of either of the Parties or both;
 - (f) "Effective date" shall mean the date upon which the Parties began cohabitation;
 - (g) "Family home" shall have the same meaning as "family home" in Part 2 of the *Family Homes on Reserve and Matrimonial Interests or Rights Act*;
 - (h) "Matrimonial Interests or Rights" shall mean interests or rights as defined in Part 2 of the *Family Homes on Reserve and Matrimonial Interests or Rights Act*;
 - (i) "Divorce Act" means the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), as amended;
 - (j) "Ownership" means that the property or asset is held in the name of a natural person, or, an artificial person, the shares of which are held by a natural person;
 - (k) "Business" means any partnership, corporation or enterprise, the object of which is to earn profit or save income taxes;
 - (l) "Withdraw from the relationship" shall occur when one Party hereto, leaves the relationship or informs the other in writing of his or her intention to discontinue the relationship;
 - (m) "Relationship" shall mean that the parties hereto are living together without the benefit of marriage (cohabitation) or are married to each other through a civil ceremony, church wedding or traditional marriage ceremony.

2. BACKGROUND

The following items set out the background information of this Contract:

- (1) Charlene is divorced and has two adult children from a previous marriage;
 - a. (ii) David was previously married and now divorced and has no children;
- (2) Both Charlene and David are members of the ____ First Nation and they intend to cohabitate in a home owned by Charlene on the _____ First Nation Reserve;

- (3) Charlene owns a home on the _____ First Nation and has a Certificate of Position for the land on which the home is situated. David rents an apartment from the First Nation and intends to cancel his rental agreement when he and Charlene starts their cohabitation.
- (4) Charlene owned the home before her and David started their relationship and David has not contributed any funds or equity in the home
- (5) Both David and Charlene intend that this Contract from the outset of their cohabitation, determine how issues of support, maintenance of each other, and the division of on reserve real property owned before, during and after their cohabitation, will be addressed in the events mentioned herein.

3. PURPOSE OF CONTRACT:

Each Party intends, by this Contract:

- (1) Except as specifically provided herein, to avoid any rights and obligations relating to property and support which arise or which may in the future arise, at law or in equity, from their cohabitation and marriage.
- (2) More particularly, except as specifically provided herein, to elect and affirm that none of the property of either Party will be divided between them except according to ownership.
- (3) If there is a breakdown of the relationship, to make specific provision for the division, after the breakdown, of any property which may become their joint property by virtue of it having been acquired during the relationship and/or by virtue of the provisions contained in the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

4. AGREEMENT

Each Party agrees with the other to be bound by the provisions of this Contract.

5. EFFECTIVE DATE OF THE CONTRACT

This Contract takes effect on the date the Parties sign which will be the date of commencement of cohabitation which is [Insert Date]

6. DOMESTIC CONTACT

This is a Domestic Contract entered into by each Party and is intended by the Parties to prevail over the same matters dealt with in *the Family Homes on Reserve and Matrimonial Interests or Rights Act*, the *Divorce Act*, and any other applicable statute or law of the Province of [Insert province or territory].

7. Real Property

Family Home

- (1) David and Charlene acknowledge that the property located at _____ (Real Property) is presently held and solely owned by Charlene and moreover, David has not contributed any funds or equity towards the property.
- (2) Upon separation Charlene will continue to live in the property and David will have - _____ days to find alternative living arrangements.
- (3) Upon separation or death of Charlene, David agrees to waive any and all right to exclusive occupation or division of value of the property pursuant to the *Family Homes on Reserve and Matrimonial Interests or Rights Act*. David will vacate the property within _____ days upon Charlene's death (Note can indicate 180 days as in FHRMIRA or a lesser amount of time).
- (4) Neither of them will be entitled to a division of real property owned by one of them before the relationship or acquired by one of them during the relationship.
- (5) Unless stated otherwise herein, neither of them will be entitled to a share of any real property or the value of any property owned by the other notwithstanding:
 - (a) they are cohabiting;
 - (b) one Party is improvidently depleting or may improvidently deplete his or her property;
 - (c) they are separated;
 - (d) one Party has died leaving the other surviving.

8. PERSONAL PROPERTY DIVISION ON BREAKDOWN OF THE RELATIONSHIP

(1) The Parties agree that in the event of the breakdown of their Relationship, at any time in the future:

(a) All property owned by Charlene prior to the relationship, acquired by her in her own name during the relationship or acquired in her own name during the breakdown of the relationship, including any family residence in her name, shall become Charlene's sole and absolute property;

(b) All property owned by David prior to the relationship, acquired by him in his own name during the relationship or acquired in his own name during the breakdown of the relationship, including any family residence in his name, shall become David's sole and absolute property;

(c) All property acquired by either or both Parties during the relationship, the ownership of which cannot be determined by reference to one or the other's name, shall be divided between the Parties as they agree or, failing such agreement, shall be divided by reference to mediation and/or arbitration.

9. SUPPORT

(1) CHILD SUPPORT

The Parties acknowledge that there will be no children born to their relationship and no minor children of previous relationships residing with the Parties. In view of the same, the Parties hereby agree that at no time in the future will either of them claim or seek to establish that their child/ren from previous relationships must receive support or maintenance from the other.

(2) SPOUSAL SUPPORT

Upon a breakdown of the relationship, neither Party will have any rights to receive financial support from the other or his or her estate, nor will either Party be under any obligation to provide financial support to the other as is given or imposed upon a Party by the *Family Law Act*, the *Divorce Act*, or any other statute or law.

10. DEEMED OWNERSHIP

Subject to an appropriate instrument in writing, the rule of law applying a presumption of resulting trust shall not apply in questions of ownership of property between the Parties:

- (1) Property transferred from one Party to the other Party shall be deemed to be owned by the Party to whom the property is transferred;
- (2) Unless stated otherwise herein, property held in the name of one Party shall be deemed to be owned by that Party;
- (3) Property held in the name of both Parties as joint tenants shall be deemed to be owned equally by both Parties as joint tenants.

11. **NO OWNERSHIP UNLESS LEGAL OWNERSHIP**

Except as provided herein, each Party:

- (1) waives all rights and entitlement; and,
- (2) releases and discharges the other and his or her estate from all claims that he or she has on the date this Contract takes effect or may later acquire:
 - (a) in equity by way of constructive, implied or resulting trust, or by way of any other doctrine in equity; and
 - (b) at law under the *Family Law Act*, *Family Homes on Reserve and Matrimonial Interests or Rights Act*, *the Indian Act*, and the laws of any jurisdiction, to:
 - i) compensation; and
 - ii) any interest in property or the value of property owned by the other by reason of:
 - a. the transfer of property to the other without any adequate payment or other consideration;
 - b. work, money or money's worth contributed to the acquisition, management, maintenance, operation or improvement of property; or
 - c. any other fact or circumstance creating a beneficial interest in property.

12. **RIGHT TO DEAL WITH PROPERTY**

Each Party may dispose of or encumber or otherwise deal with his or her property as he or she deems fit, free from any claim by the other as if he or she were not in the relationship.

13. **RELEASE AGAINST BUSINESS INTERESTS**

Without restricting the generality of the other waivers and releases given under this Contract, except for any interest that is expressly granted by an instrument in writing:

- (1) David releases and discharges Charlene and her businesses (if applicable) from any and all claims that he may have on the effective date of this Contract or may later acquire, to any interest in any business of Charlene's or any business she may acquire after the relationship.
- (2) Charlene releases and discharges David and his businesses (if applicable) from any and all claims that she may have on the effective date of this Contract or may later acquire, to any interest in any business of David's or any business he may acquire after the relationship.

14. **RELEASE AGAINST THE ESTATE OF THE OTHER**

Without restricting the generality of the other waivers and releases in this Contract; and subject to transfers or bequests or transfers that may otherwise be made, each Party hereto waives all rights and hereby releases and forever discharges the other and the other's estate from all claims which he or she may have or in the future may acquire to the estate or property of the other **AND IN PARTICULAR** hereby waives and forever releases or discharges the estates of the other from any distribution of property under intestacy or any obligation to provide support for the other.

15. **TRANSFER OR BEQUEST OF PROPERTY TO THE OTHER PARTY**

Either Party may, by appropriate written instrument:

- (1) Convey or transfer during his or her lifetime; and
- (2) Devise or bequeath for distribution after his or her death, any property to the other, or appoint the other as executor of his or her estate.
- (3) Nothing in this Contract will limit or restrict in any way the right to receive any such conveyance, transfer, devise or bequest from the other, or, if so appointed, the right to act as executor or administrator of the estate of the other.

16. AMENDMENT OF CONTRACT

Any amendment of this Contract will be unenforceable unless made in writing and signed by each Party before a witness.

17. GOVERNING LAW

This Contract will be governed by the law of the Province of [Insert jurisdiction]

18. SEVERABILITY

Any invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision, and any invalid provision shall be severable from this Contract.

19. CONTRACT TO SURVIVE MARRIAGE

This Contract shall survive the marriage of the Parties to each other and, coincident with the marriage, this Contract shall become a Marriage Contract as contemplated by the *Family Law Act*.

20. CONTRACT TO SURVIVE BREAKDOWN

If a breakdown of the relationship arises, the terms of this Contract shall survive the event and continue in force.

21. CONTRACT TO SURVIVE DEATH

This Contract is intended to survive the death of a Party or the Parties and will be binding on the heirs, administrators, executors, successors and assigns of the deceased Party or Parties.

22. INDEPENDENT LEGAL ADVICE

Each Party acknowledges that he or she:

- (1) has had independent legal advice or is waiving independent legal advice,
- (2) understands the nature and the consequences of this Contract; and

(3) is signing this Contract voluntarily.

TO EVIDENCE THEIR AGREEMENT, each of the Parties has signed this Contract under seal before a witness.

SIGNED, SEALED AND DELIVERED

By _____, at the Town of
_____, in the Province
of _____, this
day of _____, A.D., 2021,
in the presence of:

SIGNED, SEALED AND DELIVERED

By _____, at the Town of
_____, in the Province
of _____, this
day of _____, A.D., 2021,
in the presence of:

7 Sample Domestic Contract #2

THIS TEMPLATE IS FOR INFORMATION PURPOSES ONLY, AND TO HIGHLIGHT SOME POTENTIAL WORDING OF A DOMESTIC CONTRACT THAT CONSIDERS THE PROVISIONAL FEDERAL RULES IN FHRMIRA. IT DOES NOT CONSTITUTE OR REPRESENT LEGAL ADVICE. BEFORE USING OR COMPLETING THIS TEMPLATE, IT IS STRONGLY RECOMMENDED THAT LEGAL ADVICE BE OBTAINED.

Scenario # 2: A married couple comprised of a member and non- member wish to agree as to what happens to the family home upon separation or death of a spouse. The family home is situated on reserve. The couple own the home and it is on land allotted to the band member by way of a Certificate of Possession (C.P). The married couple wish to make arrangements that will see the wife continue to have exclusive occupation of the family home for the benefit of her and the children of the marriage upon separation or upon death of the husband.

THIS IS A DOMESTIC CONTRACT made at the times and places hereinafter stated.

BETWEEN:

Insert the full legal name of each party.

Charlene Winston

(hereinafter referred to as "Charlene")

OF THE ONE PART

AND: David Winston

(hereinafter referred to as "David")

OF THE OTHER PART

WHEREAS Charlene and David were married or commences cohabitation on _____ and live in a family home situated on 3 Medicine Wheel Drive.

AND WHEREAS at the date of this Contract there are 2 children of their marriage, Anna Winston age 5 and Paul Winston age 8;

AND WHEREAS the Parties believe that this Contract will bring certainty and confidence to their marriage and strengthen their relationship as a couple and a family in society;

AND WHEREAS Charlene and David intend, by this Domestic Contract, except as otherwise stated herein, to make arrangements different than what is prescribed in the provisional federal rules as contained in the *Family Homes on Reserve and matrimonial Interests or Rights Act*, the *Divorce Act*, any other applicable legislation or laws of the Province of [Insert Province or Territory] and any other jurisdiction;

AND WHEREAS this Contract is made as a Domestic Contract;

ACCORDINGLY, in consideration of their mutual love and affection, and the promises and covenants herein contained, the Parties expressly agree as follows:

1. **INTERPRETATION**

(1) In this Contract:

- (a) "Charlene" means Charlene Winston, who is a Party to this Contract and/or her heirs, executors, administrators or assigns;
- (b) "David " means David Winston who is a Party to this Contract and/or his heirs, executors, administrators or assigns;
- (c) "Family" means Charlene and David together as a couple;
- (d) "First Nation" means _____ First Nation located at _____.
- (e) "Breakdown of the relationship" means the first of the following events to occur:
 - (i) the separation of the Parties with no reasonable prospect that they will reconcile;
 - (ii) the death of either of the Parties or both;

- (f) "Effective date" shall mean the date upon which the Parties began cohabitation;
- (g) "Family home" shall have the same meaning as "family home" in Part 2 of the *Family Homes on Reserve and Matrimonial Interests or Rights Act*;
- (h) "Matrimonial Interests or Rights" shall mean interests or rights as defined in Part 2 of the *Family Homes on Reserve and Matrimonial Interests or Rights Act*;
- (i) "Divorce Act" means the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), as amended;
- (j) "Ownership" means that the property or asset is held in the name of a natural person, or, an artificial person, the shares of which are held by a natural person;
- (k) "Business" means any partnership, corporation or enterprise, the object of which is to earn profit or save income taxes;
- (l) "Withdraw from the relationship" shall occur when one Party hereto, leaves the relationship or informs the other in writing of his or her intention to discontinue the relationship;
- (m) "Relationship" shall mean that the parties hereto are living together without the benefit of marriage (cohabitation) or are married to each other through a civil ceremony, church wedding or traditional marriage ceremony.

2. BACKGROUND

The following items set out the background information of this Contract:

- (1) Charlene and David were married on _____ and have two minor children of their marriage Anna Winston age 5 and Paul Winston age 8;
- (2) David is a member of the _____ First Nation and the family home is located on reserve at 3 Medicine Wheel Drive. Charlene is a non-member. David and Charlene built the home themselves and David has a Certificate of Possession for the land on which the home is situated.
- (3) Both David and Charlene intend that this Contract from the outset of their cohabitation, determine how issues of support, maintenance of each other, and the division of on reserve real property owned before, upon separation or death of either one of them, will be addressed in the events mentioned herein.

3. PURPOSE OF CONTRACT:

Each Party intends, by this Contract:

- (1) Except as specifically provided herein, to avoid any rights and obligations relating to property and support which arise or which may in the future arise, at law or in equity, from their cohabitation and marriage.
- (2) More particularly, except as specifically provided herein, to elect and affirm that none of the property of either Party will be divided between them except according to ownership.
- (3) If there is a breakdown of the relationship, to make specific provision for the division, after the breakdown, of any property which may become their joint property by virtue of it having been acquired during the relationship and/or by virtue of the provisions contained in the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

4. AGREEMENT

Each Party agrees with the other to be bound by the provisions of this Contract.

5. EFFECTIVE DATE OF THE CONTRACT

This Contract takes effect on the date the Parties sign which will be the date of commencement of cohabitation which is [Insert Date]

6. DOMESTIC CONTACT

This is a Domestic Contract entered into by each Party and is intended by the Parties to prevail over the same matters dealt with in *the Family Homes on Reserve and Matrimonial Interests or Rights Act*, the *Divorce Act*, and any other applicable statute or law of the Province of [Insert province or territory].

7. Real Property

Family Home

- (1) David and Charlene acknowledge that the property located at 3 Medicine Wheel Drive (Real Property) is presently to which each have rights and interests pursuant to the *Family Homes on Reserve and Matrimonial Interests or Rights Act*.
- (2) Upon separation Charlene and the children of the marriage will continue to live in the property and David will have _____ days to find alternate living arrangements. To this end, David is agreeing that Charlene will have exclusive occupation of the family home until the youngest child Anna attains the age of majority.
- (3) Charlene shall be responsible for the upkeep and maintenance of the family home during her period of exclusive occupation.
- (4) Upon Anna obtaining the age of majority, Charlene will have 90 days to vacate the family home.
- (5) On or before Charlene vacates the family home David shall pay Charlene one half the value of the family home based on an appraisal by a mutually agreed appraiser. The appraiser shall value the family home based on the difference between:
 - (a) The amount that a buyer would reasonably be expected to pay for interests or rights that are comparable to the interests or rights in question, and
 - (b) the amount of any outstanding debts or other liabilities assumed for acquiring the interests or rights or for improving or maintaining the structures and lands that are the object of the interests or rights.
- (6) Upon the death of David and if Charlene survives him, David agrees that Charlene and the children of the marriage will continue to live in the property and, David agrees that Charlene will have exclusive occupation of the family home until the youngest child Anna attains the age of majority Charlene shall have exclusive occupation of property pursuant to the *Family Homes on Reserve and Matrimonial Interests or Rights Act*.
- (7) On or before Charlene vacates the family home David's estate shall pay Charlene one half the value of the family home based on an appraisal by a mutually agreed appraiser. The appraiser shall value the family home based on the difference between:

- (a) The amount that a buyer would reasonably be expected to pay for interests or rights that are comparable to the interests or rights in question, and
 - (b) the amount of any outstanding debts or other liabilities assumed for acquiring the interests or rights or for improving or maintaining the structures and lands that are the object of the interests or rights.
- (8) Upon the death of Charlene and if David survives her, Charlene agrees that David and the children of the marriage will continue to live in the property and, Charlene agrees that David shall own all interests and rights to the family home and Charlene's estate will not have any right to division of value as it relates to the family home.

8. PERSONAL PROPERTY AND ASSET DIVISION ON SEPERATION

- (1) The Parties agree that in the event of the breakdown of their Relationship, at any time in the future, each person shall keep as their own the following All property:
- a) David: List items (this can include items like cars, ATV's, personal items, furniture, jewellery, bank accounts, pensions, investments, etc,)
 - b) Charlene: List Items (this can include items like cars, ATV's, personal items, furniture, jewellery, bank accounts, pensions, investments, etc,)

9. SUPPORT

(1) CHILD SUPPORT AND CUSTODY

CUSTODY

- a) The parties hereto agree that the wife and husband shall have joint custody of the children of the marriage and the children's principal residence shall be with the wife.
- b) The parties agree that the husband shall have generous and liberal access to the child upon reasonable notice to the husband.

CHILD SUPPORT

- a) The parties agree that the husband's annual income is approximately \$_____ a year;
- b) Based on the Federal Child Support Guidelines, the husband shall pay the sum of \$_____per month for support of the children of the marriage to the wife;
- c) The husband shall continue to pay child support to the wife for Anna and Paul until they turn the age of majority (18), however, such payments shall continue if either one or both children attend post-secondary school and such payments shall continue as long as they are enrolled in a post-secondary institution.

(2) SPOUSAL SUPPORT

Upon a breakdown of the relationship, neither Party will have any rights to receive financial support from the other or his or her estate, nor will either Party be under any obligation to provide financial support to the other as is given or imposed upon a Party by the *Family Law Act*, the *Divorce Act*, or any other statute or law.

10. RELEASE AGAINST BUSINESS INTERESTS

Without restricting the generality of the other waivers and releases given under this Contract, except for any interest that is expressly granted by an instrument in writing:

- (1) David releases and discharges Charlene and her businesses (if applicable) from any and all claims that he may have on the effective date of this Contract or may later acquire, to any interest in any business of Charlene's or any business she may acquire after the relationship.
- (2) Charlene releases and discharges David and his businesses (if applicable) from any and all claims that she may have on the effective date of this Contract or may later acquire, to any interest in any business of David's or any business he may acquire after the relationship.

11. TRANSFER OR BEQUEST OF OTHER PROPERTY TO THE OTHER PARTY

Either Party may, by appropriate written instrument:

- (1) Convey or transfer during his or her lifetime; and

- (2) Devise or bequeath for distribution after his or her death, any property, not including the family home, to the other, or appoint the other as executor of his or her estate,
- (3) Nothing in this Contract will limit or restrict in any way the right to receive any such conveyance, transfer, devise or bequest from the other, or, if so appointed, the right to act as executor or administrator of the estate of the other.

12. AMENDMENT OF CONTRACT

Any amendment of this Contract will be unenforceable unless made in writing and signed by each Party before a witness.

13. GOVERNING LAW

This Contract will be governed by the law of the Province of [Insert jurisdiction]

14. SEVERABILITY

Any invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision, and any invalid provision shall be severable from this Contract.

15. CONTRACT TO SURVIVE MARRIAGE

This Contract shall survive the marriage of the Parties to each other and, coincident with the marriage, this Contract shall become a Marriage Contract as contemplated by the *Family Law Act*.

16. CONTRACT TO SURVIVE BREAKDOWN

If a breakdown of the relationship arises, the terms of this Contract shall survive the event and continue in force.

17. CONTRACT TO SURVIVE DEATH

This Contract is intended to survive the death of a Party or the Parties and will be binding on the heirs, administrators, executors, successors and assigns of the deceased Party or Parties.

18. INDEPENDENT LEGAL ADVICE

Each Party acknowledges that he or she:

- (1) has had independent legal advice or is waiving independent legal advice,
- (2) understands the nature and the consequences of this Contract; and
- (3) is signing this Contract voluntarily.

TO EVIDENCE THEIR AGREEMENT, each of the Parties has signed this Contract under seal before a witness.

SIGNED, SEALED AND DELIVERED

By _____, at the Town of _____, in the Province
of _____, this day of _____, A.D., 2021,
in the presence of:

SIGNED, SEALED AND DELIVERED

By _____, at the Town of _____, in the Province
of _____, this day of _____, A.D., 2021,
in the presence of:

8 Sample Domestic Contract #3

THIS TEMPLATE IS FOR INFORMATION PURPOSES ONLY, AND TO HIGHLIGHT SOME POTENTIAL WORDING OF A DOMESTIC CONTRACT THAT CONSIDERS THE PROVISIONAL FEDERAL RULES IN FHRMIRA. IT DOES NOT CONSTITUTE OR REPRESENT LEGAL ADVICE. BEFORE USING OR COMPLETING THIS TEMPLATE, IT IS STRONGLY RECOMMENDED THAT LEGAL ADVICE BE OBTAINED.

Scenario # 3: An elderly couple lives on reserve and they have been married for over 50 years. The wife is a band member, and the husband is a non-member. The wife wishes to make arrangements in a Domestic Contract for her husband to have exclusive occupation of the family home should she predecease her husband.

THIS IS A DOMESTIC CONTRACT made at the times and places hereinafter stated.

BETWEEN:

Insert the full legal name of each party.

Charlene Winston

(hereinafter referred to as "Charlene")

OF THE ONE PART

AND: David Winston

(hereinafter referred to as "David")

OF THE OTHER PART

WHEREAS Charlene and David were married on _____[insert month, day and year]; or alternatively

WHEREAS Charlene and David are common law partners and commenced cohabitation in the family home on _____, 20-----. (Note must be over a year of cohabitation)

AND WHEREAS at the date of this Contract there are no minor children of their relationship, however, they have three adult children who do not live in the family home.

AND WHEREAS the Parties believe that this Contract will bring certainty and confidence to their marriage and strengthen their relationship as a married couple and a family in society:

AND WHEREAS Charlene and David intend, by this Domestic Contract, except as otherwise stated herein, to make arrangements that is permissible given the interests and rights prescribed in the provisional federal rules as contained in the *Family Homes on Reserve and matrimonial Interests or Rights Act*, or any other applicable legislation, or laws of the Province of [Insert Province or Territory] and any other jurisdiction;

AND WHEREAS this Contract is made as a Domestic Contract;

ACCORDINGLY, in consideration of their mutual love and affection, and the promises and covenants herein contained, the Parties expressly agree as follows:

1. **INTERPRETATION**

(1) In this Contract:

(a) "Charlene" means Charlene Winston, who is a Party to this Contract and/or her heirs, executors, administrators or assigns.

(b) "David " means David Winston who is a Party to this Contract and/or his heirs, executors, administrators or assigns;

(c) "Family" means Charlene and David together as a couple;

(d) "First Nation" means _____First Nation located at _____.

- (e) "Death" means the death of either of the Parties or both;
- (f) "Effective date" shall mean the date upon which the Parties executed this contract;
- (g) "Family home" shall have the same meaning as "family home" in Part 2 of the *Family Homes on Reserve and Matrimonial Interests or Rights Act*;
- (h) "Exclusive Occupation of the family home means the husband will have the right of exclusive occupation of the family home for the remainder of his life;
- (h) "Matrimonial Interests or Rights" shall mean interests or rights as defined in Part 2 of the *Family Homes on Reserve and Matrimonial Interests or Rights Act*;
- (i) "Ownership" means that the property or asset is held in the name of a natural person, or, an artificial person, the shares of which are held by a natural person;
- (j) "Relationship" shall mean that the parties hereto are living together without the benefit of marriage (cohabitation) or are married to each other through a civil ceremony, church wedding or traditional marriage ceremony.

2. BACKGROUND

The following items set out the background information of this Contract:

- (i) Charlene and David are elders that live in their family home at 3 Dream Catcher Road on the _____ First Nation. They own the family home which is located on a traditional allotment on reserve;
- (ii) They were married in 1971 and at the time of this Contract being executed Charlene is 83 years of age and David is 81;
- (ii) Charlene is a member of the First Nation and David is a non-member. David is an active resident of the community and has volunteered in many capacities including a long-term volunteer with the First Nation Fire Department up to the time of his retirement at age 70.
- (iii) Charlene has multiple medical issues and as part of her estate planning wishes to make provisions in this Domestic Contract that will provide for David having exclusive occupation of the family home for the remainder of his life should Charlene predecease him.

3. PURPOSE OF CONTRACT:

Each Party intends, by this Contract:

- (1) To make provisions for David, as a non-member, to remain in the family home for the remainder of his life should Charlene predecease him. For greater certainty, the intent is for the parties to make arrangements for David to have “exclusive occupation” in the family home for the remainder of David’s life.

- (2) To make arrangements for the transfer of the family home to Charlene and David’s youngest child Anna Winston upon the death of both parties;

4. AGREEMENT

Each Party agrees with the other to be bound by the provisions of this Contract.

5. EFFECTIVE DATE OF THE CONTRACT

This Contract takes effect on the date the Parties execute this contract

6. DOMESTIC CONTACT

This is a Domestic Contract entered into by each Party and is intended by the Parties to prevail over the same matters dealt with in *the Family Homes on Reserve and Matrimonial Interests or Rights Act*, any other applicable statute or law of the Province of [Insert province or territory].

7. Real Property

Family Home

- (2) If Charlene should predecease David, in addition to the automatic right to occupy the family home for 180 days, it is her agreement and desire that David have exclusive occupation of the family home for the remainder of his life or such time as he no longer desires to live in the family home. This means that David will be allowed to stay in the family home for the remainder of his life. For the purposes of the *Family Homes on Reserve and Matrimonial Interests or*

Rights Act Charlene agrees and expresses her desire for Davide to have “exclusive occupation” of the family home for the remainder of his life.

- (2) Charlene agrees that if David at any point in the future requires a home care support worker or a family member to live with him for the purpose of homecare that this requirement will not be construed as being contrary to exclusive occupation.
- (3) If David should predecease Charlene, David waives any and all interests or rights his estate may have in the family home pursuant to *Family Homes on Reserve and Matrimonial Interests or Rights Act*. As such, all interest and rights in the family home and any other matrimonial interest or rights shall vest fully with Charlene upon David’s death.
- (4) Upon the death of both Charlene and David, the family home is Willed to their youngest child, Anna Winston, to be hers absolutely and forever. Charlene and David have reciprocating Wills which complement this Domestic Contract.

8. **AMENDMENT OF CONTRACT**

Any amendment of this Contract will be unenforceable unless made in writing and signed by each Party before a witness.

9. **GOVERNING LAW**

This Contract will be governed by the law of the Province of [Insert jurisdiction]

10. **SEVERABILITY**

Any invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision, and any invalid provision shall be severable from this Contract.

11. **CONTRACT TO SURVIVE MARRIAGE**

This Contract shall survive the marriage of the Parties to each other and, coincident with the marriage, this Contract shall become a Marriage Contract. **Note: This Section will apply only if the parties are common law.**

12. CONTRACT TO SURVIVE BREAKDOWN

If a breakdown of the relationship arises, the terms of this Contract shall survive the event and continue in force.

13. CONTRACT TO SURVIVE DEATH

This Contract is intended to survive the death of a Party or the Parties and will be binding on the heirs, administrators, executors, successors and assigns of the deceased Party or Parties.

14. INDEPENDENT LEGAL ADVICE

Each Party acknowledges that he or she:

- (1) has had independent legal advice or is waiving independent legal advice,
- (2) understands the nature and the consequences of this Contract; and
- (3) is signing this Contract voluntarily.

TO EVIDENCE THEIR AGREEMENT, each of the Parties has signed this Contract under seal before a witness.

SIGNED, SEALED AND DELIVERED

By _____, at the Town of _____, in the Province
of _____, this _____ day of _____, A.D., 2021,

in the presence of:

SIGNED, SEALED AND DELIVERED

By _____, at the Town of _____, in the Province
of _____, this _____ day of _____, A.D., 2021,
in the presence of:

These samples are based on fictional scenarios which may reflect real life scenarios that may emerge in the context of FHRMIRA and the provisional rules. There are numerous real-life scenarios and subject matters that may result due to the operation of FHRMIRA . As such, the three (3) samples provided do not cover every possible scenario.

The Domestic Contract samples and this booklet does not constitute or represent legal advice. Before using or completing this template, it is strongly recommended that legal advice be obtained.