



MRP Dispute Resolution Model *(Customary or Traditional Land Holdings)*



Version 1.0
2019

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Table of Contents

| | |
|--|-----------|
| Purpose of this workbook..... | iv |
| Workbook Overview | 1 |
| MRP Dispute Resolution Workbook (<i>Customary or Traditional Land Holdings</i>) | 1 |
| This Workbook:..... | 1 |
| How to Use this Workbook..... | 2 |
| Preamble | 2 |
| Part One – Definitions and Interpretation | 2 |
| Part Two – Purpose and Mandate | 2 |
| Part Three – Dispute Resolution Process | 2 |
| Part Four – Requesting Services and Format..... | 2 |
| Part Five – Representatives, Witnesses and Others | 2 |
| Part Six – Tribunal Membership and Administration..... | 2 |
| Part Seven – Approval, Amendments, Coming Into Force | 2 |
| Additional Provisions..... | 2 |

PURPOSE OF THIS WORKBOOK

BACKGROUND:

On December 16, 2014, the federal *Family Homes on Reserve and Matrimonial Interests or Rights Act* (FHRMIRA) and its Provincial Federal Rules (PFR) came into effect. The FHRMIRA and the PFR protects rights connected to family homes on reserve, including matrimonial interests or rights. These protections apply to individuals living on reserve during a relationship in the event of a relationship breakdown and on the death of a spouse or common-law partner.

The FHRMIRA applies to all First Nations with reserve land, with the following exceptions:

- First Nations that have enacted their own matrimonial real property laws under FHRMIRA.
- Operational First Nations with land codes and a matrimonial real property law in place under the *Framework Agreement on First Nations Lands Management* (FAFNLM).
- First Nations with reserve lands and a self-government agreement in effect that have jurisdiction over land management.

A First Nation may develop a matrimonial real property law in accordance with the FHRMIRA, FAFNLM, or a self-government agreement.

COEMRP MANDATE:

Hosted by the NALMA, the COEMRP operates at arm's length from the Government of Canada and provides the following services:

- Guide First Nations who are opting to develop their own matrimonial real property laws.
- Provide information on the protections and rights available to individuals and families living on reserve.
- Assist with implementing the PFR.
- Provide research on dispute resolution mechanisms.

WORKBOOK OVERVIEW

MRP Dispute Resolution Workbook (*Customary or Traditional Land Holdings*)

This Workbook:

The COEMRP has developed this MRP Dispute Resolution Model Workbook (Customary or Traditional Land Holdings) as an aide to assist First Nations in developing dispute resolution mechanisms to resolve matrimonial real property disputes on separation or survivorship in accordance with either their matrimonial real property law or under the *Family Homes on Reserve and Matrimonial Interests or Rights Act* (FHRIMRA) and the Provisional Federal Rules. This Workbook is for First Nations that hold real property in accordance with **customary or traditional land holdings**.

This Workbook is to be used together with the COEMRP's:

- **On-Reserve Matrimonial Real Property Dispute Resolution Model (For Use Where Real Property is Held in Accordance with Customary or Traditional Land Holdings).**
- **A Toolkit for On-Reserve Matrimonial Real Property Dispute Resolution.**

The COEMRP has developed a separate Workbook and MRP Dispute Resolution Model to aide First Nations that hold real property in accordance with the ***Indian Act or a Land Code***.

OTHER NALMA/COEMRP RESOURCES:

Please see NALMA's website for other resources on Land Management: www.NALMA.ca

HOW TO USE THIS WORKBOOK

This Workbook is intended to be a hands-on manual to assist First Nations in developing a dispute resolution mechanism to resolve matrimonial real property disputes on separation or survivorship that may arise either under their matrimonial real property law or under the *Family Homes on Reserve and Matrimonial Interests or Rights Act* (FHRIMRA) and the Provisional Federal Rules.

This Workbook uses the **On-Reserve Matrimonial Real Property Dispute Resolution Model (For Use Where Real Property is Held in Accordance with Customary or Traditional Land Holdings)** to aid First Nations in developing their dispute resolution mechanism. The Dispute Resolution Model is not prescriptive; it can be modified and adapted to reflect the needs, values and customs of First Nations.

This Workbook:

- Presents the **On-Reserve Matrimonial Real Property Dispute Resolution Model (For Use Where Real Property is Held in Accordance with Customary or Traditional Land Holdings)** section by section.
- Raises various policy issues or questions in a section (*shown in italics*) for First Nations to consider.
- Provides a checkbox for First Nations to check if wording in a section is to be kept with no changes.
- Provides space for First Nations to write alternative wording for a section.
- Provides space for First Nations to explain why alternative wording for a section is being proposed.
- Provides space for First Nations to set out any additional sections that they want included.

This Workbook can be completed by a single individual or by a group. A person using this Workbook is not expected to be a lawyer or expected to draft the legal wording of the proposed dispute resolution mechanism for their First Nation. The First Nation, in consultation with legal counsel, would develop the dispute resolution mechanism later. This Workbook is intended to assist First Nations by recording ideas and capturing policy discussions about the proposed dispute resolution mechanism that First Nations wish to develop.

**This Workbook is not intended as legal advice and should not be relied on as legal advice.
Users should contact their own lawyer regarding any questions they may have with respect to the information provided.**

PREAMBLE

The MRP Dispute Resolution Model contains a Preamble that makes general statements of principle. Preambles are not binding statements of law.

| MRP Dispute Resolution Model Wording: | Keep As Is ✓: | Change The Wording To: | Reason For The Change: |
|--|------------------|------------------------|------------------------|
| WHEREAS we, the [insert name of First Nation], are part of the [insert Nation] which have existed on this land called Mother Earth since time immemorial; | | | |
| WHEREAS we, the [insert name of First Nation], are signatories of the [insert name of Treaty]; <i>[Delete this paragraph if no Treaty]</i> | | | |
| WHEREAS we, the [insert name of First Nation], are strong and proud people who have the sacred duty to protect and respect the land and the gifts of the Creator for the well-being of our people to the Seventh Generation; | | | |
| WHEREAS we, the [insert name of First Nation], have an unextinguished right to self-determination as affirmed by the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> and which is protected in our self-government agreement; <i>[Delete the last part if the First Nation does not have a self-government agreement]</i> | | | |
| WHEREAS we, the [insert name of First Nation], have our Aboriginal and treaty rights enshrined in section 35 of the <i>Constitution Act, 1982</i> ; | | | |

| MRP Dispute Resolution Model Wording: | Keep As Is ✓: | Change The Wording To: | Reason For The Change: |
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| <p>WHEREAS we, the [insert name of First Nation], have the right to govern ourselves in relation to matters that are integral to our culture, traditions, language, and territories; <i>[if the First Nation operates under a self-government agreement, or under Land Code, can add wording here to state that];</i></p> | | | |
| <p>WHEREAS we, the [insert name of First Nation], enacted our [insert name of matrimonial real property law] on [insert date] which is a law centered in our culture, traditions and practices that govern how on-reserve matrimonial real property issues on separation or survivorship will be resolved; <i>[Delete this clause if the First Nation is under the Family Homes on Reserve and Matrimonial Interests or Rights Act and chooses to remain under the Provisional Federal Rules, use the following alternate wording instead]</i></p> <p>ALTERNATE WORDING: WHEREAS, the <i>Family Homes on Reserve and Matrimonial Interests or Rights Act</i> and the Provisional Federal Rules determine how matrimonial real property in [insert name of First Nation] will be resolved;</p> <p><i>[Delete this clause if the First Nation has its own matrimonial real property law]</i></p> <p>ALTERNATE WORDING if the First Nation’s matrimonial real property law is enacted under the <i>Family Homes on Reserve and Matrimonial Real Interests or Rights Act</i>:</p> <p>WHEREAS the <i>Family Homes on Reserve and Matrimonial Real Interests or Rights Act</i> provides that a First Nation has the power to enact First Nation laws that apply during the conjugal relationship, when the relationship breaks down or on the death of a spouse or common law partner, respecting use, occupation, and possession of family home on its reserve and the</p> | | | |

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| <p>division of value of any interests or rights held by spouse or common law partners in or to structures and lands on its reserve;</p> <p><i>[Delete this clause if the First Nation has passed its matrimonial real property law based on inherent right]</i></p> | | | |
| <p>WHEREAS, we, the [insert name of First Nation], require issues that arise on-reserve concerning matrimonial real property are resolved in accordance with our [insert name of matrimonial real property law] through a dispute resolution process that is fair, transparent, accessible, and respectful of our culture, traditions and practices; and</p> <p><i>[Delete this clause if the First Nation is under the Family Homes on Reserve and Matrimonial Interests or Rights Act, and use the following alternate wording instead]</i></p> <p>ALTERNATE WORDING: WHEREAS, the <i>Family Homes on Reserve and Matrimonial Interests or Rights Act</i> and the Provisional Federal Rules contained therein apply to [insert name of First Nation], and [insert name of First Nation] require issues that arise on-reserve concerning matrimonial real property are resolved under the <i>Family Homes on Reserve and Matrimonial Interests or Rights Act</i> and the Provisional Federal Rules through a dispute resolution process that is fair, transparent, accessible, and respectful of our culture, traditions and practices; and</p> <p><i>[Delete this clause if the First Nation has its own matrimonial real property law]</i></p> | | | |
| <p>NOW THEREFORE, we, the [insert name of First Nation], enact this Dispute Resolution Policy to resolve on-reserve matrimonial real property issues within [insert name of First Nation]. Notwithstanding the enactment of this Dispute Resolution Policy, the parties to a dispute</p> | | | |

| MRP Dispute Resolution Model Wording: | Keep As Is ✓: | Change The Wording To: | Reason For The Change: |
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| <p>maintain the right to refer on-reserve matrimonial real property issues to a court.</p> <p><i>[Delete this clause if the First Nation is under the Family Homes on Reserve and Matrimonial Interests or Rights Act, and use the following alternate wording instead]</i></p> <p>ALTERNATE WORDING: NOW THEREFORE, we, the [insert name of First Nation], enact this Dispute Resolution Policy to resolve on-reserve matrimonial real property issues within [insert name of First Nation]. Notwithstanding the enactment of this Dispute Resolution Policy, the parties to a dispute maintain the right to refer on-reserve matrimonial real property issues to a court in accordance with the Provisional Federal Rules.</p> <p><i>[Delete this clause if the First Nation has its own matrimonial real property law]</i></p> | | | |

PART ONE – DEFINITIONS AND INTERPRETATION

The MRP Dispute Resolution Model contains Part One – Definitions and Interpretation that defines terms used within the model and how the model will be interpreted.

| MRP Dispute Resolution Model Wording: | Keep As Is √: | Change The Wording To: | Reason For The Change: |
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| DEFINITIONS | | | |
| 1. In this Policy: | | | |
| a. “accommodation” means the act of accommodating a person with special needs, including but not limited to such needs as wheelchair access and access for hearing impaired; | | | |
| b. “applicant” means a person who makes an application to use the dispute resolution process under this Policy; | | | |
| c. “application” means an application for dispute resolution services; | | | |
| d. “Band Manager” means the senior employee of [insert name of First Nation] that has delegated authority from Council for the financial, administrative, employment and business affairs of the [insert name of First Nation]; | | | |
| e. “Band Office” means the [insert name of First Nation] Band Office and “Administration Office” shall have the same meaning; | | | |

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| f. “child” means the person’s natural, adopted, stepchild; or a child whom the person has demonstrated a settled intention to treat as a child of their family except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody; and “children” shall have the same meaning; | | | |
| g. “circle process” is a stage in the dispute resolution process that is a voluntary informal process where the parties work together with the assistance of the Dispute Resolution Tribunal to resolve the dispute; | | | |
| h. “community person” means a person who is not a member but regularly resides in [insert name of First Nation] due to being: <ul style="list-style-type: none"> i. a child of a member; ii. married to or in a common law relationship with a member; iii. an immediate family or extended family of a member; iv. employed by [insert name of First Nation]; or v. a person that leases land in [insert name of First Nation]. and “non-member” has the same meaning; | | | |
| i. “confidentiality” means information a person has obtained by using the dispute resolution process in this Policy; | | | |
| j. “conflict of interest” means where in a matter, a person or their immediate family has: | | | |

| MRP Dispute Resolution Model Wording: | Keep As Is ✓: | Change The Wording To: | Reason For The Change: |
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| <ul style="list-style-type: none"> i. an actual or perceived personal or monetary interest; ii. a family interest; iii. a financial interest; iv. a professional or business interest; or a prejudicial, discriminatory or biased opinion. | | | |
| <ul style="list-style-type: none"> k. “Council” means collectively, the Chief and Councillors who are the elected leadership of the [insert name of First Nation] in accordance with [state whether under the <i>Indian Act</i>, Custom Code, traditional, or other form of governance selection]; | | | |
| <ul style="list-style-type: none"> l. “customary or traditional land holdings” means a land interest granted to a member in accordance with a customary or traditional practice of the [insert name of First Nation]; | | | |
| <ul style="list-style-type: none"> m. “decision” means a conclusion or determination of the Dispute Resolution Tribunal which legally resolves the matters outlined in the application, including orders, if necessary to implement the decision; | | | |
| <ul style="list-style-type: none"> n. “Dispute Resolution Tribunal” means the body responsible for providing the dispute resolution process established under this Policy; | | | |
| <ul style="list-style-type: none"> o. “discrimination” means treating a person differently due their race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, and conviction for | | | |

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| an offence for which a pardon has been granted or in respect of which a record suspension has been ordered; | | | |
| p. “evidence” means any type of proof presented by the parties at the proceedings before the Dispute Resolution Tribunal in support of their position, including written documents, oral statements, photographs, video recordings, and audio recordings; | | | |
| q. “extended family” means a person’s first-degree aunt or uncle, first degree niece or nephew; | | | |
| r. “Family Homes on Reserve and Matrimonial Interests or Rights Act” means the federal legislation enacted to address matrimonial real property issues on reserve, and “Act” or “FHRMIRA” have the same meaning; <i>[Delete this definition if the First Nation has its own matrimonial real property law]</i> | | | |
| s. “harassment” means any interactions between people that can be characterized as unwelcome, intimidation, bullying, violence, or misconduct; | | | |
| t. “hearing process” is a stage in the dispute resolution process that is a mandatory formal process where the Dispute Resolution Tribunal makes a final binding decision to resolve the dispute; | | | |
| u. “holiday” includes statutory holidays, Saturdays and Sundays; | | | |
| v. “immediate family” means the person’s spouse, child, parent, sister, brother, | | | |

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| grandchild, mother or father-in-law, sister or brother-in-law, grandparent, legal guardian or agent; | | | |
| w. “Land Code” means the [insert name of Land Code] ratified by the members on [insert name of ratification date]; <i>[Delete this definition if not applicable]</i> | | | |
| x. “legal representative” means legal counsel or an agent who is authorized to represent a person in the dispute resolution proceeding; | | | |
| y. “matrimonial real property law” means the [insert name of the First Nation’s matrimonial real property law] enacted by the members on [insert date matrimonial real property law enacted], and “Law” shall have the same meaning; <i>[Delete this definition if the First Nation is under the Family Homes on Reserve and Matrimonial Interests or Rights Act, and use the following alternate wording instead]</i> ALTERNATE WORDING: “matrimonial real property law” means the <i>Family Homes on Reserve and Matrimonial Interests or Rights Act</i> and the Provisional Federal Rules that have been enacted to address matrimonial real property issues on reserve; <i>[Delete this definition if the First Nation has its own matrimonial real property law]</i> | | | |
| z. “mediation process” is a stage in the dispute resolution process that is a voluntary facilitated process where the Dispute Resolution Tribunal assists the parties to resolve the dispute; | | | |

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| <p>aa. “member” or “Band member” means a person whose name appears on or is entitled to appear on the Band List or membership list where [insert name of First Nation] determines its own membership in accordance with a membership code or self-government agreement;</p> <p><i>[Delete wording that is not applicable to the First Nation]</i></p> | | | |
| <p>bb. “off-reserve” means a member who does not reside in [insert name of First Nation] for more than [insert number of months] consecutive months;</p> | | | |
| <p>cc. “on-reserve” means a member who resides in [insert name of First Nation] for more than [insert number of months] consecutive months;</p> | | | |
| <p>dd. “order” means an order issued by the Dispute Resolution Tribunal establishing specific rights and obligations of the parties;</p> | | | |
| <p>ee. “reasons” means the grounds and conclusions on which the Dispute Resolution Tribunal has based its decision, including findings of fact and law;</p> | | | |
| <p>ff. “respondent” means a person that is required to respond to the application to use the dispute resolution process under this Policy;</p> | | | |
| <p>gg. “party” means any person or organization that is entitled to participate in the dispute resolution process under this Policy;</p> | | | |

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| hh. “Policy” means this Dispute Resolution Policy; | | | |
| ii. “proceeding” means all possible steps before the Dispute Resolution Tribunal from the start of the application to the end when the application is determined; | | | |
| jj. “Provisional Federal Rules” means the rules presented in sections 12-52 of the FHRMIRA that apply during the conjugal relationship, when the relationship breaks down or on the death of a spouse or common law partner, respecting use, occupation, and possession of family home on its reserve and the division of value of any interests or rights held by spouse or common law partners in or to structures and lands on reserve, and “PFR” has the same meaning; <i>[Delete this definition if the First Nation has its own matrimonial real property law]</i> | | | |
| kk. “Self-government agreement” means the [insert name of Self-government agreement] ratified by the members on [insert name of ratification date] <i>[Delete this definition if not applicable];</i> | | | |
| ll. “spouse” means a person who is married to another, whether by a traditional customary, religious or civil ceremony, and includes a common-law partnership where two people have been living together in a marital relationship for at least [insert number of years] years; and | | | |

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| mm. “ submissions ” may be oral or written and include legal memorandum, position papers, case law, depositions, transcripts, witness statements, expert reports, photographs, bills, receipts, invoices, or other documentary evidence submitted by a party in support of their position. | | | |
| <p>MATRIMONIAL REAL PROPERTY LAW DEFINITIONS</p> <p>2. Unless otherwise provided in this Policy, the terms used in this Policy have the same meaning as defined in the matrimonial real property law.</p> | | | |
| <p>LAND CODE DEFINITIONS</p> <p>3. Unless otherwise provided in this Policy, the terms used in this Policy have the same meaning as defined in the <i>Land Code</i>.</p> <p><i>[Delete this clause if not applicable]</i></p> | | | |
| <p>SELF-GOVERNMENT AGREEMENT DEFINITIONS</p> <p>4. Unless otherwise provided in this Policy, the terms used in this Policy have the same meaning as defined in the self-government agreement.</p> <p><i>[Delete this clause if not applicable]</i></p> | | | |
| <p>ABORIGINAL AND TREATY RIGHTS</p> <p>5. Nothing in this Policy will be construed so as to abrogate or derogate from the Aboriginal and treaty rights of Indigenous Peoples recognized and affirmed by section 35(1) of the <i>Constitution Act, 1982</i>.</p> | | | |
| <p>APPLICATION OF OTHER LAWS</p> <p>6. Where any federal law, provincial law, or any other [insert name of First Nation] law may apply to any matter covered in this Policy, compliance with this Policy will not relieve the person from</p> | | | |

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| also complying with the provisions of the other applicable law. | | | |
| <p>POLICY AND MATRIMONIAL REAL PROPERTY LAW CONFLICT</p> <p>7. In the event of an inconsistency or conflict between this Policy and the matrimonial real property law, the matrimonial real property law will prevail to the extent of the inconsistency or conflict.</p> | | | |
| <p>INTERPRETATION</p> <p>8. This Policy shall be interpreted:</p> <ul style="list-style-type: none"> a. In a fair, large, and liberal manner; b. To not discriminate on the basis of sex or gender; c. That there is no presumption that doubtful expressions, terms or provisions are to be resolved in favour of any particular person or party; d. References to days are consecutive calendar days; e. When counting the number of days where an action is to be done in a specified period of time, the first day is not counted and the last day is counted; f. Where an action is to be done that falls on a holiday, the action may be done on the next day that is not a holiday; g. Headings and subheadings are for convenience and reference only and do not form part of this Policy and will not be used in the interpretation of this Policy; h. Use of the singular includes the plural and vice versa; and | | | |

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| i. Use of one gender includes all genders. | | | |
| <p>SEVERABILITY</p> <p>9. If any section of this Policy is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the remaining provisions of this Policy.</p> | | | |

PART TWO – PURPOSE AND MANDATE

The MRP Dispute Resolution Model contains Part Two – Purpose and Mandate that establishes a dispute resolution process and explains its powers.

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| <p>PURPOSE</p> <p>10. This Dispute Resolution Policy establishes the dispute resolution process that will be used to assist in resolving on-reserve matrimonial real property issues on separation or survivorship within [insert name of First Nation] in accordance with the [insert name of the First Nation’s matrimonial real property law]. Notwithstanding the enactment of this Dispute Resolution Policy, the parties to a dispute maintain the right to refer on-reserve matrimonial real property issues to a court.</p> <p><i>[Delete this section if the First Nation is under the Family Homes on Reserve and Matrimonial Interests or Rights Act, and use the following alternate wording instead]</i></p> <p>ALTERNATE WORDING: This Dispute Resolution Policy establishes the dispute resolution process that will be used to assist in resolving on-reserve matrimonial real property issues on separation or survivorship within [insert name of First Nation] or as an alternative dispute resolution mechanism for First Nations remaining under the jurisdiction of FHRMIRA</p> | | | |

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| <p>and the Provisional Federal Rules contained therein. Notwithstanding the enactment of this Dispute Resolution Policy, the parties to a dispute maintain the right to refer on-reserve matrimonial real property issues to a court in accordance with the Provisional Federal Rules.</p> <p><i>[Delete this clause if the First Nation has its own matrimonial real property law]</i></p> | | | |
| <p>ESTABLISHMENT</p> <p>11. This Policy establishes the Dispute Resolution Tribunal, consisting of the Tribunal members.</p> | | | |
| <p>MANDATE</p> <p>12. The Dispute Resolution Tribunal is mandated to provide the dispute resolution process in a manner that:</p> <ul style="list-style-type: none"> a. Is respectful of our culture, traditions and practices; b. Is fair, just, timely, transparent, and accessible; c. Is economical, informal and flexible; d. Allows the parties to participate effectively, whether or not they are self-represented or represented; e. Applies principles of law and fairness; and f. Recognizes that relationships between the parties and/or the [insert name of First Nation] may continue after the dispute resolution process is concluded. | | | |
| <p>JURISDICTION</p> <p>13. The Dispute Resolution Tribunal has the jurisdiction to resolve disputes concerning on-</p> | | | |

| MRP Dispute Resolution Model Wording: | Keep As Is ✓: | Change The Wording To: | Reason For The Change: |
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| <p>reserve matrimonial real property issues on separation or survivorship within the [insert name of First Nation]. The Dispute Resolution Tribunal is to encourage the parties to agree to resolve the dispute; and if the parties cannot agree to resolve the dispute, to resolve the dispute by deciding the application brought to the Dispute Resolution Tribunal. The Dispute Resolution Tribunal does not have jurisdiction to determine matrimonial real property matters off-reserve or solely between non-members who may reside in the [insert name of the First Nation].</p> <p><i>[Delete this section if the First Nation is under the Family Homes on Reserve and Matrimonial Interests or Rights Act, and use the following alternate wording instead]</i></p> <p>13. ALTERNATE WORDING: The Dispute Resolution Tribunal has the jurisdiction to resolve disputes concerning on-reserve matrimonial real property issues on separation or survivorship within the [insert name of First Nation]. This jurisdiction derives from the parties consenting to use the Dispute Resolution Tribunal process. The Dispute Resolution Tribunal is to encourage the parties to agree to resolve the dispute; and if the parties cannot agree to resolve the dispute, to resolve the dispute by deciding the application brought to the Dispute Resolution Tribunal. The Dispute Resolution Tribunal does not have jurisdiction to determine matrimonial real property matters off-reserve or solely between non-members who may reside in the [insert name of the First Nation].</p> | | | |

| MRP Dispute Resolution Model Wording: | Keep As Is ✓: | Change The Wording To: | Reason For The Change: |
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| <i>[Delete this clause if the First Nation has its own matrimonial real property law]</i> | | | |
| <p>PROCEDURAL POWERS</p> <p>14. The Dispute Resolution Tribunal may exercise the following procedural powers to provide for a fair, just, and timely dispute resolution process:</p> <ol style="list-style-type: none"> a. Lengthen or shorten any time limit in this Policy; b. Add or remove a party; c. Allow for the parties to amend their documents; d. Direct that a party receive a notice of a proceeding, including the Council; e. Define and narrow the issues in order to decide the application; f. Decide the order that issues in the proceeding will be considered and determined; g. Decide the order that evidence in the proceeding will be presented; h. Allow a party to provide a statement before the start of any questions; i. Ask questions of a party or witness; j. Limit the evidence or submissions on an issue; k. Advise when additional evidence or witnesses may assist the Dispute Resolution Tribunal; l. Make or order the examination of records or other inquiries that it considers necessary; | | | |

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| <ul style="list-style-type: none"> m. Require a party or other person to produce a document, information, or thing that it considers necessary; n. Where reasonable, on the request of a party, direct the other party to provide a report, statement, or evidence, or produce a witness; o. Direct that a party or witness be asked questions about a report, statement or evidence they provide; p. Make other orders as necessary to give effect to an order or direction under this Policy; q. Make terms or conditions to any order or direction; r. Consider the public interest; and s. Take any other action that the Dispute Resolution Tribunal determines is appropriate. | | | |
| <p>DISPOSE OF PROCEEDING ON CONSENT</p> <p>15. Where the parties consent, the Dispute Resolution Tribunal may dispose of an application without a hearing on the merits.</p> | | | |
| <p>ABUSE OF PROCESS</p> <p>16. The Dispute Resolution Tribunal may make an order or give direction to prevent abuse of its dispute resolution process.</p> | | | |
| <p>VEXATIOUS PROCEEDING</p> <p>17. Where the Dispute Resolution Tribunal finds that a person has conducted a proceeding in a</p> | | | |

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| vexatious manner, the Dispute Resolution Tribunal may dismiss the proceeding for abuse of process. | | | |
| <p>USE OF OTHER PROCESS</p> <p>18. Where permitted under the matrimonial real property law or a contractual agreement between the parties regarding matrimonial real property, the parties may resolve their dispute through another process without use of the Dispute Resolution Tribunal.</p> | | | |
| <p>STATUTORY INSTRUMENTS ACT</p> <p>19. The <i>Statutory Instruments Act</i>, R.S.C., 1985, c. S-22 does not apply to the Dispute Resolution Tribunal.</p> | | | |

PART THREE – DISPUTE RESOLUTION PROCESS

The MRP Dispute Resolution Model contains Part Three – Dispute Resolution Process that explains the dispute resolution process and its powers.

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| <p>THREE MAIN STAGES</p> <p>20. The Dispute Resolution Tribunal provides three main stages of dispute resolution:</p> <p>a. Stage One: Circle Process – a voluntary informal process where the parties come together with the assistance of one or more members of the Dispute Resolution Tribunal to work towards resolving the dispute concerning the on-reserve matrimonial real property matter on separation or survivorship. Any agreement reached through the circle process to resolve the dispute is made by the parties.</p> <p>b. Stage Two: Mediation Process – a voluntary facilitated process where the parties make their best efforts to resolve the dispute concerning the on-reserve matrimonial real property matter on separation or survivorship with the assistance of one member of the Dispute Resolution Tribunal. Any agreement reached through the</p> | | | |

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| <p>mediation process to resolve the dispute is made by the parties.</p> <p>c. Stage Three: Hearing Process – a mandatory formal process where the parties present their evidence and submissions to a panel of three members of the Dispute Resolution Tribunal to resolve the dispute concerning the on-reserve matrimonial real property matter on separation or survivorship. The Dispute Resolution Tribunal may make either a non-binding or a binding decision that will resolve the dispute.</p> | | | |
| <p>STAGES IN ORDER</p> <p>21. The dispute resolution stages are linear, meaning that the parties will proceed through each stage in order unless:</p> <p>a. The parties do not agree to use Stage One, then the dispute will proceed automatically to Stage Two;</p> <p>b. The parties do not agree to use Stage Two, then the dispute will proceed automatically to Stage Three;</p> <p>c. The parties agree in writing that they will not proceed to the next stage if they are not successful in resolving the dispute at the stage that they are currently in;</p> <p><i>[Delete this if the First Nation does not want the option of the parties opting out of automatically proceeding to the next stage]</i></p> <p>d. A contractual agreement between the parties requires that disputes concerning the on-reserve matrimonial real property matter</p> | | | |

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| <p>on separation or survivorship be resolved through a specific stage;</p> <p>e. The matrimonial real property law requires that disputes concerning the on-reserve matrimonial real property matter on separation or survivorship be resolved through a specific stage; or</p> <p>f. The parties resolve the dispute in the stage that they are currently in.</p> | | | |
| <p>TERMINATION AT STAGE ONE OR STAGE TWO</p> <p>22. Dispute resolution through Stage One or Stage Two may be terminated where:</p> <p>a. The parties reach an agreement;</p> <p>b. One or both of the parties refuse to continue with Stage One;</p> <p>c. One or both of the parties refuse to continue with Stage Two; or</p> <p>d. Upon the written request of both parties.</p> | | | |
| <p>PROCEEDING TO NEXT STAGE</p> <p>23. Where the dispute resolution is terminated at either Stage One or Stage Two, the dispute will automatically proceed to the next stage if both parties agree in writing to proceed to the next stage.</p> <p><i>[Delete the last part of this section if the First Nation does not want the option of the parties opting out of automatically proceeding to the next stage]</i></p> | | | |
| <p><u>STAGE ONE: CIRCLE PROCESS</u></p> <p>24. The first stage in the dispute resolution process is the circle process. The circle process is a voluntary informal process where the parties</p> | | | |

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| <p>meet in person with the assistance of one or more members of the Dispute Resolution Tribunal to work towards resolving the dispute concerning the on-reserve matrimonial real property matter on separation or survivorship. This stage allows the parties to work together to come to a mutually agreed resolution of the dispute. Council is entitled to participate in the circle process.</p> | | | |
| <p>SELECTION OF TRIBUNAL MEMBER</p> <p>25. The parties to the dispute will jointly select one member of the Dispute Resolution Tribunal to assist in the circle process; if the parties cannot agree on the Tribunal member, they will draw the name out of a hat. The member of the Dispute Resolution Tribunal cannot be an immediate family member of a party and cannot have a conflict of interest. Where required, the parties may decide to request that more than one member of the Dispute Resolution Tribunal assist in the circle process.</p> | | | |
| <p>ROLE OF THE TRIBUNAL MEMBER</p> <p>26. The member of the Dispute Resolution Tribunal will be responsible for conducting the circle process, provide guidance, encouraging discussion and negotiation between the parties, and providing traditional customary practices and teachings where requested by the parties. The member of the Dispute Resolution Tribunal does not have the authority to decide or require the parties to resolve the dispute.</p> | | | |

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| <p>TIMEFRAME FOR CIRCLE PROCESS</p> <p>27. As the circle process requires the parties to work together to resolve their dispute regarding the on-reserve matrimonial real property matter on separation or survivorship, it may be necessary for the parties and the member of the Dispute Resolution Tribunal to meet together more than once to resolve the dispute. The parties and the member of the Dispute Resolution Tribunal shall agree to how many circle meetings may be required.</p> | | | |
| <p>RESOLVING THE DISPUTE</p> <p>28. Where the circle process resolves the dispute regarding the on-reserve matrimonial real property matter on separation or survivorship, the terms of the agreement will be set out in a written circle agreement signed by the parties. The parties and the Council are entitled to receive a copy of the circle agreement.</p> | | | |
| <p>WHERE DISPUTE NOT RESOLVED</p> <p>29. Where the parties are unable to reach an agreement or decision through the circle process that resolves the dispute regarding the on-reserve matrimonial real property matter on separation or survivorship, the circle process will be terminated and the dispute will proceed to the next stage if both parties agree in writing to proceed to the next stage.</p> <p><i>[Delete the last part of this section if the First Nation does not want the option of the parties opting out of automatically proceeding to the next stage]</i></p> | | | |

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| <p><u>STAGE TWO: MEDIATION PROCESS</u></p> <p>30. The second stage in the dispute resolution process is the mediation process. The mediation process is a voluntary facilitated process where the parties meet in person to make their best efforts to resolve the dispute concerning the on-reserve matrimonial real property matter on separation or survivorship with the assistance of one member of the Dispute Resolution Tribunal. This stage allows the parties to work together through a facilitated process to come to a mutually agreed resolution of the dispute. Council is entitled to participate in the mediation process.</p> | | | |
| <p><u>SELECTION OF TRIBUNAL MEMBER</u></p> <p>31. The parties to the dispute will jointly select one member of the Dispute Resolution Tribunal to assist in the mediation process; if the parties cannot agree on the Tribunal member, they will draw the name out of a hat. The member of the Dispute Resolution Tribunal cannot be an immediate family member of a party, cannot have a conflict of interest, and cannot have been the member of the Dispute Resolution Tribunal who conducted the circle process.</p> | | | |
| <p><u>ROLE OF THE TRIBUNAL MEMBER</u></p> <p>32. The member of the Dispute Resolution Tribunal will be responsible for conducting the mediation process and facilitating discussion and negotiation between the parties. The member of the Dispute Resolution Tribunal does not have</p> | | | |

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| the authority to decide or require the parties to resolve the dispute. | | | |
| <p>TIMEFRAME FOR MEDIATION PROCESS</p> <p>33. As the mediation process requires the parties to work together through a facilitated process to resolve their dispute regarding the on-reserve matrimonial real property matter on separation or survivorship, it may be necessary for the parties and the member of the Dispute Resolution Tribunal to meet together more than once to resolve the dispute. The parties and the member of the Dispute Resolution Tribunal shall agree to how many mediation meetings may be required.</p> | | | |
| <p>RESOLVING THE DISPUTE</p> <p>34. Where the mediation process resolves the dispute regarding the on-reserve matrimonial real property matter on separation or survivorship, the terms of the agreement will be set out in a written mediation agreement signed by the parties. The parties and the Council are entitled to receive a copy of the mediation agreement.</p> | | | |
| <p>WHERE DISPUTE NOT RESOLVED</p> <p>35. Where the parties are unable to reach an agreement through the mediation process that resolves the dispute regarding the on-reserve matrimonial real property matter on separation or survivorship, the mediation process will be terminated and the dispute will proceed to the next stage if both parties agree in writing to proceed to the next stage.</p> | | | |

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| <i>[Delete the last part of this section if the First Nation does not want the option of the parties opting out of automatically proceeding to the next stage]</i> | | | |
| <p><u>STAGE THREE: HEARING PROCESS</u></p> <p>36. The third and final stage of the dispute resolution process is the hearing process. The hearing process is a mandatory formal process where the parties present their evidence and submissions to a panel of three members of the Dispute Resolution Tribunal (called the Hearing Panel) to resolve the dispute concerning the on-reserve matrimonial real property matter on separation or survivorship. The Hearing Panel may make either a non-binding or a binding decision that will resolve the dispute. Council is entitled to participate in the hearing process.</p> | | | |
| <p><u>SELECTION OF HEARING PANEL</u></p> <p>37. The Hearing Panel will be selected as follows:</p> <ul style="list-style-type: none"> a. One party selecting one member of the Dispute Resolution Tribunal; b. The other party selecting one member of the Dispute Resolution Tribunal; and c. The two selected members of the Dispute Resolution Tribunal selecting one member of the Dispute Resolution Tribunal, and that selected member will be the chairperson of the hearing process. <p>The members of the Hearing Panel cannot be an immediate family member of a party, cannot have a conflict of interest, and cannot have been the member of the Dispute Resolution Tribunal who conducted the circle process or mediation process.</p> | | | |

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| <p>ROLE OF THE HEARING PANEL</p> <p>38. The Hearing Panel will be responsible for conducting the hearing process, hearing the presentation of evidence and submissions of the parties, and rendering a final binding decision on the dispute regarding the on-reserve matrimonial real property matter on separation or survivorship.</p> | | | |
| <p>FORMAT OF THE HEARING PROCESS</p> <p>39. As determined by the Hearing Panel and the parties, the hearing process may be conducted in person, by telephone conference call, by video conferencing or other electronic means, in writing, or a combination of ways.</p> | | | |
| <p>POWER OF THE HEARING PANEL</p> <p>40. The Hearing Panel has the power to conduct the hearing process in accordance with the matrimonial real property law and this Policy.</p> | | | |
| <p>DECISION MAKING AUTHORITY</p> <p>41. The Hearing Panel has the authority to make the following types of decisions:</p> <ul style="list-style-type: none"> a. Determine whether or not a structure is the matrimonial home and if so, its extent; b. Authorize the disposition or encumbrance of the matrimonial home without the consent of a spouse if the spouse cannot be found or does not contest the application, is not capable of giving or withholding consent, or is unreasonably withholding consent; | | | |

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| <ul style="list-style-type: none"> c. Declare as of no effect and set aside any sale or encumbrance of a matrimonial home made in contravention of the matrimonial real property law; d. Make any order that it considers necessary to stop or restrict the irresponsible depletion of matrimonial real property; e. Determine what the matrimonial real property is and its value; f. Determine the date for fixing the value of the matrimonial real property; g. Determine the amount payable by one spouse to the other; h. Provide for the method by which the amount payable be settled, including: <ul style="list-style-type: none"> i. Payment of the amount in a lump sum; ii. Payment of the amount by installments; iii. The transfer of a right or interest such as a customary or traditional land holding in accordance with the matrimonial real property law; iv. The set-off or compensation of any amounts owed by one spouse to the other; or v. Any combination of these methods. i. Divide the matrimonial real property in unequal shares or adjust the payments if it considers that it would be unfair and inequitable after considering: <ul style="list-style-type: none"> i. The best interests and welfare of a child, including the need to provide | | | |

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| <p>accommodation or to properly support a child;</p> <p>ii. Any payments payable for the support of a child and any financial responsibility related to the care and upbringing of a child;</p> <p>iii. Any domestic agreement between the parties;</p> <p>iv. Any agreement between one or both spouses and a third party;</p> <p>v. The length of time that the spouses have lived together;</p> <p>vi. The length of time, if any, that the spouses have lived separate and apart;</p> <p>vii. The date when the matrimonial real property was acquired;</p> <p>viii. Any significant change in the value of the interests or rights in question between the day for fixing the value date and the day in which the order is made;</p> <p>ix. Whether one spouse has exclusive occupation of the matrimonial home by agreement or order;</p> <p>x. The process used by the [insert name of First Nation] to determine and allot customary or traditional land holdings;</p> <p>xi. The interests of any other party or third party where the matrimonial real property is held in accordance with a customary or traditional land holding;</p> | | | |

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| <p>xii. Any contribution, whether financial or in some other form, made directly or indirectly by a third party on behalf of a spouse to the acquisition, disposition, operation, management or use of the matrimonial real property;</p> <p>xiii. Any direct or indirect contribution made by one spouse to the career or career potential of the other spouse;</p> <p>xiv. The extent to which the financial means and earning capacity of each spouse has been affected by the responsibilities and other circumstances of the marriage or common-law relationship;</p> <p>xv. Any substantial gift of property by a spouse to a third party or any transfer of property by a spouse to a third party other than a bona fide purchaser for value;</p> <p>xvi. Any previous distribution of property between the spouses by gift or agreement or pursuant to any order of a court;</p> <p>xvii. Any tax liability that may be incurred by a spouse as a result of any transfer or sale of property or any order made by a court;</p> <p>xviii. Any dissipation or reduction in value of the property caused by a spouse;</p> <p>xix. Any benefit received or receivable by the surviving spouse as a result of the death of their spouse;</p> | | | |

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| <ul style="list-style-type: none"> xx. Any financial interest or other interests of the [insert name of First Nation] or third party in the matrimonial real property; xxi. Any debts or liabilities of a spouse, including debts paid during the course of the marriage or common-law relationship; xxii. The value of other property that is subject to division or has been divided under the applicable family law of a province; or xxiii. Any other relevant fact or circumstance. j. May attach any conditions it considers appropriate to its decision or order under the matrimonial real property law and give such directions as are necessary for those purposes; k. Make a decision or order on an emergency or temporary basis; l. Make a decision or order without prior notice to another party if the Hearing Panel believes it is justified in the circumstances; m. Determine the best interests and welfare of a child in considering the possible disruptive effects on a child to move to another accommodation, and the child’s preferences, if they can be reasonably determined; n. Determine the best interests and welfare of a child where a non-member spouse has custody of a child who is a member; | | | |

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| <p>o. Determine the best interests and welfare of a child where a non-member surviving spouse has a minor child who is a member;</p> <p>p. Make a decision or order concerning occupancy where the surviving spouse is a non-member taking into consideration the length of time that the spouse has resided in [insert name of First Nation], the age of the surviving spouse, the contributions the surviving spouse has made to the matrimonial home and the First Nation, any children of the marriage, and other relevant factors;</p> <p>q. Grant leave to consider late applications submitted beyond any time limit as set out in the matrimonial real property law where there are exceptional circumstances that justify the late application;</p> <p>r. Confirm, vary or revoke any order or decision made under the matrimonial real property law; and</p> <p>s. Costs.</p> <p><i>[The list of types of decisions that may be made should be modified accordingly to reflect what is in the First Nations’ matrimonial real property law]</i></p> | | | |
| <p>REJECT DISPUTE WITHOUT HEARING</p> <p>42. The Hearing Panel may reject a dispute without a hearing if it determines that:</p> <p>a. The dispute is not within the mandate of the matrimonial real property law or this Policy;</p> <p>b. The dispute is frivolous, vexatious or an abuse of process; or</p> | | | |

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| <p>c. A party to the dispute acted or attempted to act in a way to improperly influence the decision of the members of the Dispute Resolution Tribunal.</p> | | | |
| <p>FAILURE TO ATTEND</p> <p>43. Where a party has been notified of the hearing process and fails to or refuses to attend, the Hearing Panel may:</p> <ul style="list-style-type: none"> a. Conduct the hearing process in the absence of that party; b. Determine that the party is not entitled to further notice of the hearing process; c. Determine that the party is not entitled to present evidence or make submissions to the Hearing Panel; d. Decide the dispute based solely on the materials before it; and e. Take any other action it considers appropriate. | | | |
| <p>DECISION OF THE HEARING PANEL</p> <p>44. Within thirty days of the hearing, the Hearing Panel shall render a written decision with reasons to resolve the dispute concerning the on-reserve matrimonial real property matter on separation or survivorship. The parties and the Council are entitled to receive a copy of the decision with reasons. The decision is binding on the parties.</p> | | | |
| <p>APPEAL OF DECISION</p> <p>45. Decisions of the Hearing Panel are final and may not be appealed.</p> | | | |

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| <p><i>[Delete this clause and use the following alternate wording instead if the First Nation wants decisions to be appealed to a court]</i></p> <p>45. Decisions of the Hearing Panel may be appealed to a court of competent jurisdiction.</p> <p><i>[Delete this clause if the First Nation does not want decisions to be appealed to a court]</i></p> | | | |
| <p>JUDICIAL REVIEW</p> <p>46. Decisions of the Hearing Panel are not subject to judicial review.</p> <p><i>[Delete this clause and use the following alternate wording instead if the First Nation wants decisions to be subject to judicial review]</i></p> <p>46. Decisions of the Hearing Panel are subject to judicial review if the Hearing Panel exceeds its jurisdiction, followed improper or unfair procedures, made a decision on law that is incorrect, or made a decision on facts that was unreasonable.</p> <p><i>[Delete this clause if the First Nation does not want decisions to be subject to judicial review]</i></p> | | | |

PART FOUR – REQUESTING SERVICES AND FORMAT

The MRP Dispute Resolution Model contains Part Four – Requesting Services and Format that explains how dispute resolution services are requested and conducted.

| MRP Dispute Resolution Model Wording: | Keep As Is ✓: | Change The Wording To: | Reason For The Change: |
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| <p>REQUESTING DISPUTE RESOLUTION</p> <p>47. A party that wishes to request to use the dispute resolution process must submit a written application to the Dispute Resolution Tribunal. The application must include information regarding who the parties are, what the dispute is about, the dispute resolution that is being requested, and any other information that is relevant concerning the on-reserve matrimonial real property dispute on separation or survivorship.</p> | | | |
| <p>REVIEWING THE REQUEST</p> <p>48. The Dispute Resolution Tribunal will review the written application to determine whether the dispute comes within the mandate of the Dispute Resolution Tribunal. Where it is determined that the dispute is within its mandate, the Dispute Resolution Tribunal will notify the party that submitted the application, the other party to the dispute, and the Council that it will provide the dispute resolution process to the parties.</p> | | | |

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| <p>SCHEDULING OF DISPUTE RESOLUTION</p> <p>49. The Dispute Resolution Tribunal will work with the parties to schedule the dispute resolution process. A notice of proceeding will be sent to the parties and the Council advising of the date, time and location for the dispute resolution process.</p> | | | |
| <p>CONTACT INFORMATION OF PARTIES</p> <p>50. A party will be required to provide their contact information to the Dispute Resolution Tribunal and all parties, and shall immediate notify all of any changes to their contact information.</p> | | | |
| <p>WRITTEN AND E-MAIL COMMUNICATION</p> <p>51. All written and e-mail correspondence with the Dispute Resolution Tribunal must be addressed to the Dispute Resolution Tribunal, and a copy delivered to all parties and the Council.</p> | | | |
| <p>COMMUNICATION TO LEGAL REPRESENTATIVE</p> <p>52. Where a party has a legal representative, all communications between the Dispute Resolution Tribunal and the party will be through the legal representative.</p> | | | |
| <p>EXCHANGE OF INFORMATION</p> <p>53. Any evidence or submissions that a party intends to use in the dispute resolution process must be provided to the Dispute Resolution Tribunal, the other party, and the Council at least ten days before the dispute resolution process is conducted. <i>[The timeframe can be modified]</i></p> | | | |

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| <p>PRIOR ADMISSIONS OR STATEMENTS</p> <p>54. Where the parties have first used another stage of the dispute resolution services, such as a circle process or mediation process, any admissions or statements made at that first stage cannot be introduced by a party, the Dispute Resolution Tribunal, or the Council, if they are not the one that made the admission or statement. This means that the party who made the prior admissions or statements, if they so chose, may make the same admission or statement at the current stage of the dispute resolution services but it cannot be introduced by someone else.</p> | | | |
| <p>DUTY OF FAIRNESS</p> <p>55. A person using the dispute resolution process under this Policy is entitled to:</p> <ol style="list-style-type: none"> a. Be treated fairly by the Dispute Resolution Tribunal; b. Be advised of their right to use the dispute resolution process in a timely manner and provided with sufficient information to reasonably determine whether to use the dispute resolution process; c. Be provided an opportunity to present their evidence and submissions in a timely manner; d. Be provided with a fair and impartial dispute resolution process in a timely manner; and e. Where applicable, provided with a written decision of the Dispute Resolution Tribunal in a timely manner. | | | |

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| <p>GUIDING PRINCIPLES</p> <p>56. The Dispute Resolution Tribunal shall be guided by the principles of wisdom, love, respect, bravery, honesty, humility, and truth.</p> <p><i>[This can be changed to reflect the guiding principles and teachings of the First Nation]</i></p> | | | |
| <p>GROUND RULES AND PROCEDURES</p> <p>57. At the start of and during the dispute resolution process, the Dispute Resolution Tribunal will advise the parties of the following ground rules and procedures that must be adhered to by all that participating in the process:</p> <ul style="list-style-type: none"> a. All parties have the opportunity to present their evidence and submissions; b. All parties have the opportunity to be heard; and c. All parties are to be courteous and respectful of each other. <p><i>[Can add additional ground rules and procedures]</i></p> | | | |
| <p>ACCOMMODATION</p> <p>58. A party shall notify the Dispute Resolution Tribunal as soon as possible of any accommodation requirements of the parties, witness, support person, or legal representative.</p> | | | |
| <p>LANGUAGE</p> <p>59. The Dispute Resolution Tribunal receives materials, produces materials, and conducts its proceedings in English.</p> | | | |

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| <i>[Modify this as appropriate where the First Nation conducts its proceedings in their language and/or in French]</i> | | | |
| <p>INTERPRETER</p> <p>60. A person appearing before the Dispute Resolution Tribunal may use an interpreter. Interpretation services may be provided upon request where required for accommodation purposes or where a party does not speak English.</p> <p><i>[Modify this as appropriate where the First Nation conducts its proceedings in their language and/or in French]</i></p> | | | |
| <p>LOCATION</p> <p>61. The Dispute Resolution Tribunal may conduct its proceedings in person, by telephone or by electronic means that allow all participants to hear one another and to participate in the proceedings, or by written submissions. Where the proceedings are to be conducted in person, the Dispute Resolution Tribunal shall decide on the location, taking into consideration a location that is in close proximity to the parties and any other necessary requirements.</p> <p><i>[The First Nation can specify where if it has a set location such as at the community complex]</i></p> | | | |
| <p>FORMAT AND STRUCTURE</p> <p>62. The Dispute Resolution Tribunal and the parties will agree on the format and structure that will be used in the dispute resolution proceeding, which may include such aspects as having an opening and closing prayer, having a smudge,</p> | | | |

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| <p>arranging seating in a circle, providing refreshments and food, having the opportunity to take breaks, and incorporating traditional protocols and practices.</p> | | | |
| <p>NOT RECORDED 63. Proceedings of the Dispute Resolution Tribunal are not recorded by video, audio, or other electronic means. <i>[The First Nation can change this if they intend to record the proceedings]</i></p> | | | |
| <p>WRITTEN NOTES 64. The Dispute Resolution Tribunal may take written notes during the proceeding to assist in conducting the proceeding and in writing the decision. The written notes will be destroyed after the completion of the dispute resolution process and are not discoverable.</p> | | | |
| <p>CLOSED PROCEEDINGS 65. Proceedings of the Dispute Resolution Tribunal are closed and not open to the public. Generally, only the parties and their legal representatives, the Council, and the Dispute Resolution Tribunal are entitled to attend.</p> | | | |
| <p>CONFIDENTIALITY 66. Proceedings of the Dispute Resolution Tribunal are confidential unless the parties consent in writing to waive confidentiality. The Dispute Resolution Tribunal may not disclose information from the dispute resolution process unless specifically authorized to do so or unless the information is already in the public domain.</p> | | | |

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| <p>FEES FOR SERVICE</p> <p>67. The [insert name of First Nation] may set reasonable fees to use the dispute resolution process under this Policy. Such fees will be published and made available to members and community persons on request.</p> | | | |
| <p>DEFECT OR IRREGULARITY</p> <p>68. A proceeding of the Dispute Resolution Tribunal will not be invalid where it is only a defect or other irregularity in form.</p> | | | |
| <p>WAIVER OF LIABILITY</p> <p>69. The parties will be required to sign a liability waiver which states that the parties release the Dispute Resolution Tribunal from liability for harm or damage for any act or omission in providing dispute resolution to the parties, unless the act or omission is fraudulent or involves willful misconduct.</p> | | | |
| <p>NON COMPELLABLE</p> <p>70. The Dispute Resolution Tribunal and the parties cannot be compelled to give testimony or produce documents in a civil proceeding concerning matters relating to, prepared for, or exchanged in the dispute resolution process.</p> | | | |
| <p>NOT PRODUCED AS EVIDENCE</p> <p>71. Representations, statements or admissions made, documents prepared for exchanged during the dispute resolution process cannot be used as evidence or produced in a civil proceeding, except where:</p> | | | |

| MRP Dispute Resolution Model Wording: | Keep As Is ✓: | Change The Wording To: | Reason For The Change: |
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| <ul style="list-style-type: none"> a. There are reasonable grounds to believe that the disclosure is necessary to address a real or perceived threat to a person’s life or physical safety; b. A party consents to disclose their personal information; or c. The terms of an agreement from the dispute resolution process may be disclosed to a court and to all parties. | | | |

PART FIVE – REPRESENTATIVES, WITNESSES AND OTHERS

The MRP Dispute Resolution Model contains Part Five – Representatives, Witnesses and Others that explains the process for legal counsel, support persons, witnesses, Council, and interested persons may attend and participate.

| MRP Dispute Resolution Model Wording: | Keep As Is ✓: | Change The Wording To: | Reason For The Change: |
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| <p>SELF-REPRESENTED</p> <p>72. A person may personally represent themselves in proceedings before the Dispute Resolution Tribunal. Where people represent themselves, they are expected to be familiar with the Dispute Resolution Tribunal's procedures and to provide timely responses to the other party and the Dispute Resolution Tribunal, and are responsible for their own costs.</p> | | | |
| <p>LEGAL REPRESENTATIVE</p> <p>73. A person may choose to be represented by a person licensed with the law society of the province or territory where the First Nation [modify this to specifically state the name of the province or territory] is located in proceedings before the Dispute Resolution Tribunal, and is responsible for their costs. A legal representative is expected to be familiar with the Dispute Resolution Tribunal's procedures, are responsible for conveying the Dispute Resolution Tribunal's communications and directions to their client, and are to provide timely responses</p> | | | |

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| <p>to the other party and the Dispute Resolution Tribunal. A legal representative is to immediately advise the Dispute Resolution Tribunal and the other party in writing where they begin or cease to act for their client. Where the legal representative’s continued appearance before the Dispute Resolution Tribunal would lead to an abuse of process, the Dispute Resolution Tribunal may disqualify the legal representative from appearing before it.</p> | | | |
| <p>SUPPORT PERSON</p> <p>74. A party shall notify the Dispute Resolution Tribunal and the other party if they will have a support person attend the proceedings before the Dispute Resolution Tribunal and in what capacity the support person will attend. A support person may be required in circumstances such as where the age, medical or mental health condition of the party requires that another person assist them in the proceedings by providing support or advocacy for the person. For greater certainty, a support person who provides such assistance is not a legal representative. The party who requests the support person will be responsible for their costs.</p> | | | |
| <p>WITNESSES</p> <p>75. A party may require a witness to provide direct information or evidence on an issue in the proceedings, and is responsible for their costs to do so. Fifteen days [can change timeframe] before the proceeding, a party calling a witness must provide the Dispute Resolution Tribunal</p> | | | |

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| <p>and the other party written information including the name of the witness and a summary of the information that the witness will present on. The Dispute Resolution Tribunal maintains the right to refuse a witness where it determines it necessary for a fair, just, and timely dispute resolution process.</p> | | | |
| <p>COUNCIL</p> <p>76. Council is entitled to:</p> <ul style="list-style-type: none"> a. Receive a copy of every application submitted to the Dispute Resolution Tribunal; b. Make representations to the Dispute Resolution Tribunal on an application at its own costs; and c. To receive a copy of any order made under the matrimonial real property law and in accordance with this Policy. | | | |
| <p>DIRECTLY AFFECTED PERSON</p> <p>77. Where a person may be directly affected by the dispute regarding the on-reserve matrimonial real property matter on separation or survivorship due to the matrimonial real property being held by a customary or traditional land holding, the person will automatically be entitled to receive notice of the dispute resolution proceedings. That person may apply to the Dispute Resolution Tribunal to participate in the dispute resolution proceedings. The Dispute Resolution Tribunal will consider the request taking into account whether and how the person may be directly affected by the dispute in</p> | | | |

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| <p>regards to the customary or traditional land holdings. The Dispute Resolution Tribunal will render a written decision as to whether the person may participate in the dispute resolution process and on what issues. A person will be responsible for their own costs to participate.</p> | | | |
| <p>INTERESTED PERSON OR INTERVENOR</p> <p>78. A person or organization that is not a party to the proceeding may submit a written request to participate or intervene in the proceedings as soon as they become aware of the proceedings. The written request must be submitted to the Dispute Resolution Tribunal and the parties that set out the person or organization’s interest in the dispute, the issue that they want to address, and the information they will present if permitted to participate or intervene. A party to the proceeding may object to the request to participate or intervene by submitting a written objection to the Dispute Resolution Tribunal. The Dispute Resolution Tribunal will consider the request and any objection received to issue a written decision either denying or allowing the request for the person or organization to participate or intervene. Where the person or organization is permitted to participate or intervene, the Dispute Resolution Tribunal shall decide whether they may participate or intervene in the entire dispute resolution process or only part of it, and whether it will be in person or only by written submissions. A person or organization is responsible for their own costs to</p> | | | |

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| participate or intervene in the dispute resolution process. | | | |

PART SIX – TRIBUNAL MEMBERSHIP AND ADMINISTRATION

The MRP Dispute Resolution Model contains Part Six – Tribunal Membership and Administration that explains the qualifications and selection process for the members of the Dispute Resolution Tribunal.

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| <p>COMPOSITION</p> <p>79. The Dispute Resolution Tribunal will have a roster of at least seven Tribunal members. [The First Nation can change this number for what is appropriate for the size of their community] Tribunal members will be members of the [insert name of First Nation], and will strive to have a balance between genders and will strive to have on-reserve and off-reserve members.</p> <p><i>[The First Nation can modify this to what they deem appropriate. It could also be changed to having Tribunal members from other First Nations, where appropriate]</i></p> | | | |
| <p>QUALIFICATIONS</p> <p>80. To be eligible to be a member of the Dispute Resolution Tribunal, a person must:</p> <ol style="list-style-type: none"> a. Be a member of the [insert name of First Nation]; b. Be a minimum of eighteen years of age; c. Be knowledgeable of the customs, traditions, and practices of the [insert name of First Nation]; | | | |

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| <p>d. Demonstrate knowledge and understanding of dispute resolution;</p> <p>e. Not hold elected office in the capacity of Chief or Councillor; and</p> <p>f. Not be the Band Manger of the [insert name of First Nation].</p> <p><i>[Insert any addition qualifications that the First Nation deems important]</i></p> | | | |
| <p>SELECTION PROCESS</p> <p>81. The Council will oversee the process for selecting members of the Dispute Resolution Tribunal. A person wanting to be considered to be a member of the Dispute Resolution Tribunal will be required to complete a form describing who they are; their knowledge of the customs, traditions and practices of the [insert name of First Nation]; knowledge and understanding of dispute resolution; training; personal and educational background; familiarity with the matrimonial real property law; and references. The Council may decide to interview a person applying to be a member of the Dispute Resolution Tribunal. The Council will notify a person in writing if they are selected to be a member of the Dispute Resolution Committee.</p> <p><i>[This can be modified appropriately to the process that the First Nation wants to use in selecting the members of the Dispute Resolution Tribunal]</i></p> | | | |
| <p>TERM</p> <p>82. A member of the Dispute Resolution Tribunal will serve for a three <i>[can replace with different number]</i> year renewable term unless the person:</p> | | | |

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| <ul style="list-style-type: none"> a. Is not a member of the [insert name of First Nation]; b. Holds elected office in the capacity of Chief or Councillor; c. Is the Band Manager of the [insert name of First Nation]; d. Is unable to fulfill their duties to the Dispute Resolution Tribunal and is removed by the Council; e. Resigns as a member of the Dispute Resolution Tribunal; or f. Dies. | | | |
| <p>RESIGNATION</p> <p>83. Before the expiration of their term, a member of the Dispute Resolution Tribunal may submit a written resignation to the Council.</p> | | | |
| <p>COMMITMENTS</p> <p>84. Members of the Dispute Resolution Tribunal will be required to make a number of commitments as a condition of being on the Dispute Resolution Tribunal, including:</p> <ul style="list-style-type: none"> a. Providing dispute resolution in accordance with this Policy; b. Attending an orientation session and any other training that may be required for the Dispute Resolution Tribunal; c. Abiding by this Policy; and d. Participating in evaluations as required. <p><i>[The First Nation can add more commitments here if necessary]</i></p> | | | |

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| <p>TRAINING</p> <p>85. The Dispute Resolution Tribunal will be required to participate in training that assists them in fulfilling their duties under this Policy.</p> | | | |
| <p>EVALUATION</p> <p>86. Members of the Dispute Resolution Tribunal will participate in an annual evaluation process.</p> | | | |
| <p>REMUNERATION AND EXPENSES</p> <p>87. Members of the Dispute Resolution Tribunal will be remunerated for their services and will be reimbursed for reasonable travel and out-of-pockets expenses necessarily incurred in carrying out their duties. The Council will establish the rates for remuneration and expenses for the Dispute Resolution Tribunal.</p> | | | |

PART SEVEN – APPROVAL, AMENDMENTS, COMING INTO FORCE

The MRP Dispute Resolution Model contains Part Seven – Approval, Amendments, Coming Into Force that sets out that additional policies may be made, explains the process to approve and amend the policy, and states when the policy comes into effect.

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| <p>POWER TO MAKE POLICIES</p> <p>88. The Council has the power to enact further policies, directives, or guidelines to support this Policy regarding such matters as:</p> <ul style="list-style-type: none"> a. Rules of practices and procedure for the Dispute Resolution Tribunal; b. Types of disputes that are included and excluded from the jurisdiction of the Dispute Resolution Tribunal; c. Types of decisions and orders that the Dispute Resolution Tribunal can and cannot make; d. Maximum amounts of monetary awards that the Dispute Resolution Tribunal can award; e. Time limits to apply for judicial review of a final decision of the Dispute Resolution Tribunal, if applicable; f. Establishing fees that are to be paid for services provided or anything done by the Dispute Resolution Tribunal; and g. Remuneration and expenses for members of the Dispute Resolution Tribunal. | | | |

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| <p>APPROVAL OF POLICY</p> <p>89. This Policy shall be approved through the following process:</p> <ul style="list-style-type: none"> a. The Policy is introduced by a member or Council; b. Council considers the Policy and may make any amendments as required or advisable; c. Council posts the Policy in public for ninety days inviting members and community persons to provide written comments and feedback; d. Council presents the Policy at three Band meetings to receive comments and feedback; e. Council may make any amendments as required or advisable to the Policy based on the comments and feedback received from members and community persons; f. The Policy will be presented to members at a Band meeting to vote by a show of hands on whether to approve the Policy. Fifty percent plus one (50% + 1) of eligible voters present at the Band meeting will be quorum to approve the matter; and g. The results of the vote will be recorded in the Band meeting minutes. <p><i>[This section should be amended to reflect the process that the matrimonial real property law requires to approved policies under that law, or which the First Nation normally uses to approve policies]</i></p> | | | |

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| <p>MINOR AMENDMENTS TO POLICY</p> <p>90. Council may make minor amendments to this Policy from time to time due to:</p> <ul style="list-style-type: none"> a. Section renumbering in documents referenced; b. Documents referenced in this Policy having expired, been replaced, or been suspended; c. Minor improvements in the language without changing the substance; d. Correcting any inconsistencies with other documents referenced in this Policy; and e. Correcting of editing, grammatical or typographical errors. | | | |
| <p>MAJOR AMENDMENTS TO POLICY</p> <p>91. Major amendments to this Policy shall be made through the approval process set out in section 89 of this Policy.</p> | | | |
| <p>COMING INTO FORCE</p> <p>92. This Policy shall come into force on the date that it is approved by the members at the Band meeting in accordance with section 89 of this Policy.</p> <p><i>[This can be amended to state a specific date]</i></p> | | | |

ADDITIONAL PROVISIONS

The First Nation may wish to include additional provisions to reflect their customs, traditions and practices that may not have been captured in the MRP Dispute Resolution Model. This part of the Workbook can be used to state what those provisions are and the reasons for the addition.

| Wording For Additional Provisions | Reason for Additional Provisions |
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