



**Mi'kmaw Matrimonial Real  
Property:**

A Guide for Bear River, Millbrook, Paqtnkek,  
Pictou Landing, and Sipekne'katik  
March 2017



# **Bear River, Pictou Landing, Paqtnkek, Sipeknekatik and Millbrook**

## **Matrimonial Real Property Law Information Session**

Angelina Amaral, Mi'kmaw Lawyer  
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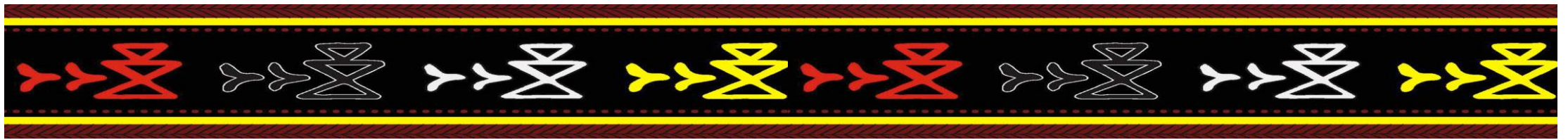
March 2017



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# Legal Disclaimer

- This presentation does not provide legal advice.
- It is for educational purposes only.
- If you need legal advice, please speak with a lawyer.
- Lawyer Referral Service: 800-665-9779 (toll free).



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## Angelina Amaral, BA, MEd and JD.

- Member of the Miawpukek (Conner River) First Nation.
- Called to the Bar in June of 2015.

### Before law school...

- Mi'kmaw Legal Support Network
- Healing Our Nations

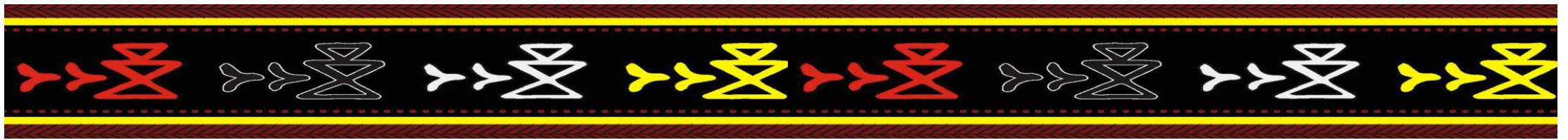


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# Outline

1. Background on the band MRP law.
2. When do band MRP laws apply?
3. What are Exclusive Occupation Orders?
4. What are Emergency Protection Orders?
5. What is the role of Chief and Council?
6. Other provisions (enforcement and mediation).



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# Introduction

Five CMM bands have their own Matrimonial Real Property (MRP) laws:

1. Bear River, December 16, 2014.
2. Millbrook, December 1, 2014.
3. Paqtnkek, December 18, 2014
4. Pictou Landing, December 16, 2014.
5. Sipekne'katik, September 25, 2015.

For a complete copy of these laws:



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# Background

## Why did the five CMM bands enact their own MRP law?

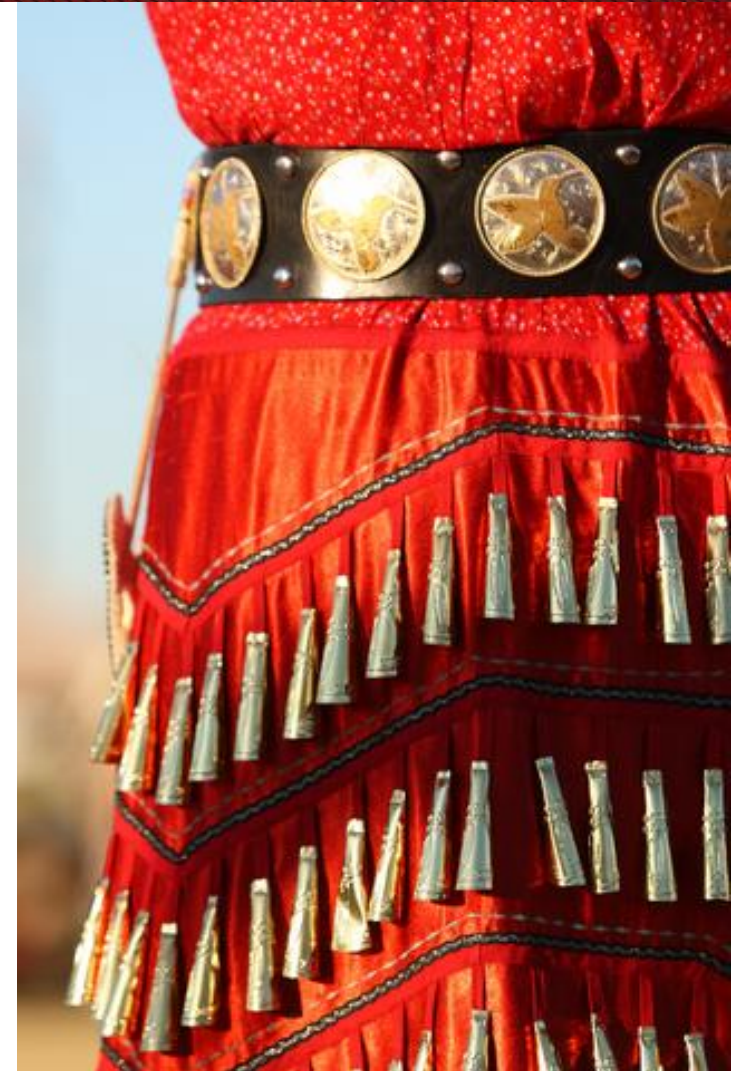
- Provincial laws relating to MRP do not apply on reserve.
- *Family Home on Reserves and Matrimonial Interests or Rights Act (FHRMIRA)* was introduced by the federal government to fill this gap.
- If a band did not want *FHRMIRA* to apply to their community, the band had to pass their own MRP law before December 16, 2014.
- A band can enact a MRP law at any time and no longer have *FHRMIRA* apply.



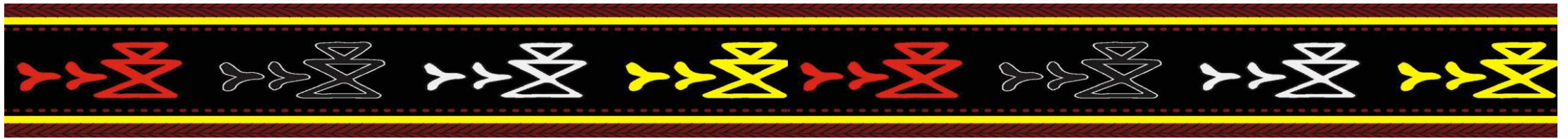
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# The Making of the Band MRP Law

- The Chiefs set up a drafting committee.
- A MRP law template was drafted.
- Community information sessions were held in each CMM band.
- A vote was held in the community.
- The law was ratified by five CMM bands.

## Committee Members:

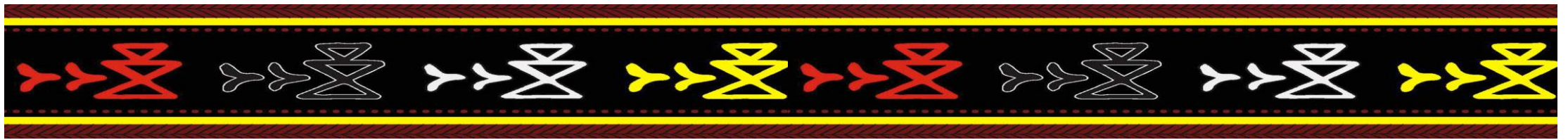
- CMM, Mary Jane Abram
- CMM, Susan Cook
- Legal Drafter, Bryna Fraser Hatt
- Annapolis Valley, Gerald Toney Sr.
- Bear River, Sherry Pictou
- Glooscap, Amanda Peters
- Paqtnkek, Darlene (Dolly) Prosper
- Sipekne'katik, Jim Michael
- Pictou Landing, Sally Duff
- Millbrook, Shelly Martin



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# Community Ratification

1. The MRP law was mailed to all band members (on and off reserve).
  2. Had to pass a threshold and a majority vote:
    - **Threshold:** 25% of eligible voters had to vote.
    - **Majority:** 51% of those who voted had to vote YES.
- ✧ Annapolis Valley and Glooscap did not enact a MRP law.



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# When Do Band MRP Laws Apply?

**When at least one partner is a band member and...**

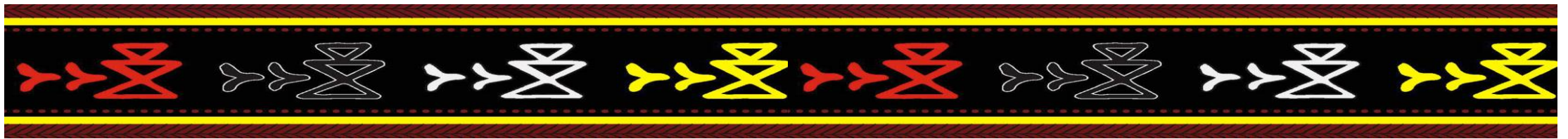
- The couple is married or in a common law relationship and live on reserve.
- Only applies to real property, not personal property.



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## The court will use the band's MRP law to make decisions about:

1. The use, occupation and possession of MRP;
2. The division of value of the family home; and
3. The division of value for any other family real property on reserve.

Unless there is a valid domestic agreement

### **A domestic agreement is valid if:**

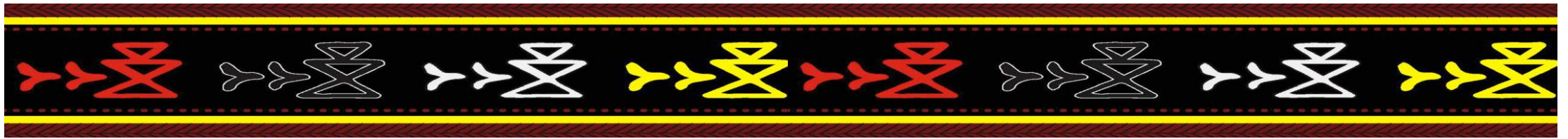
- In writing;
- Signed and dated;
- The parties had legal capacity; and
- The document is witnessed.



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# Family Homes on Reserve

## Non-band owned family homes

A spouse cannot give, sell, exchange or dispose of the home in any way, *unless*:

- The other spouse agrees in writing;
- There is a domestic agreement; or
- If the family home is subject to a Ministerial Loan Guarantee, the Council consents to or authorizes the transaction.

## Band owned family homes

The people living in the house do not own the family home:

- The home is the legal property of the band.
- Band members only have a right to occupy (use) the home.
- People living in the home are like tenants.
- The band's housing policy decides what happens to band owned homes after an order expires.

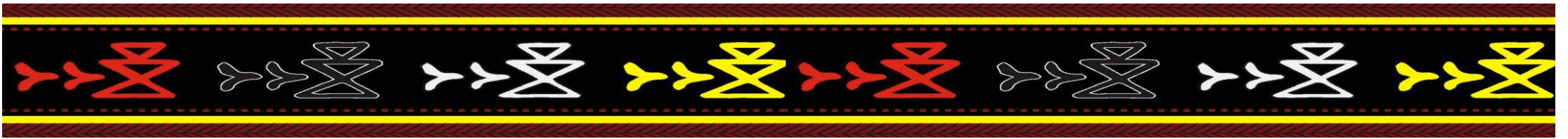


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## **Scenario 1**

A same sex couple has lived in a marriage-like relationship for the past five years. One Spouse is a Band Member and the other is not. During the relationship the Spouses lived in a Family Home on CP lands owned by the Band Member Spouse. As a result of financial difficulties, the Band Member Spouse owes a substantial debt to another Band Member. In order to repay the debt the Band Member Spouse has agreed to transfer the CP to the other Band Member.

## **Under the Band MRP Law**

The Band Member Spouse cannot sell or transfer the CP to another Band Member unless the non-Band Member Spouse agrees to the sale or transfer. The sex or gender of a Spouse is not relevant to the application of the Band MRP Law.



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# Exclusive Occupation Orders (EEO)

An EEO is a court order that gives one spouse the right to occupy the family home.

- Can be given for band owned homes, as well as, non-band owned homes.
- Given for a short period (max of 1 year).
- Automatic right upon the death of a spouse.
- Have to apply to a court for an EEO after the breakdown of a relationship.

The spouse who is not granted an EEO:

- Can be stopped from entering the home; or
- Can only enter under certain conditions.

**Note:** After an EEO expires; the band's housing policy will determine what will happen to a Band Owned Home.



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# EOO upon the Death of a Spouse

The surviving spouse, band member or not, can:

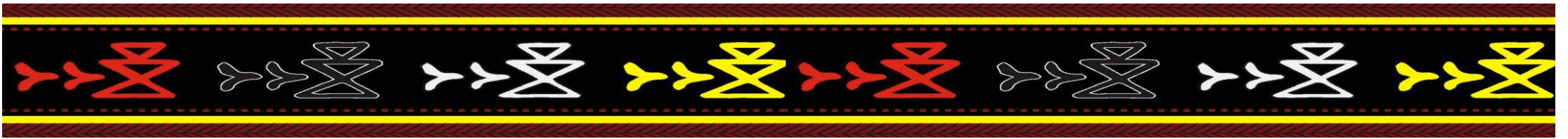
- Occupy the home for 180 days; and
- Can apply for extension of up to 1 year (which will include the 180 days).

Can ONLY apply for an extension if the spouse is:

- The primary care giver of a band member child; or
- Is a band member with Indian status, when there are no children involved.







## **Scenario 2**

A non-Band Member father has lived on the reserve for 15 years. His Band Member wife has passed away leaving the father to care for their young children, who are Band Members with Indian status. The wife held a CP to the Family Home and lands. Now, the father finds himself looking for a new place to live for him and his children since the right to own the family home cannot be passed to a non-Band Member.

## **Under the Band MRP Law**

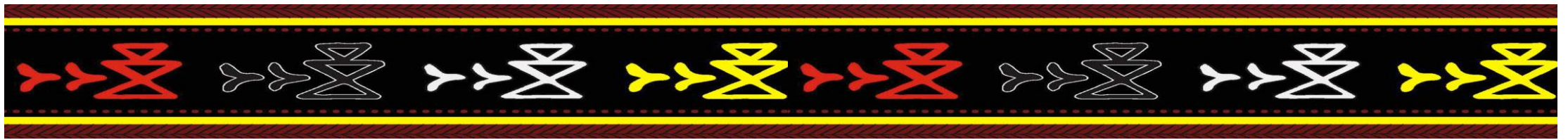
The non-Band Member father would have a minimum of 180 days to stay in the home. This would give him time to search for a new home and develop a plan.



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# EOO upon Relationship Breakdown

A spouse can ONLY apply for an EOO if they:

- Are the primary care giver of a band member child; or
- They are a band member with Indian status, when there are no children involved.

The spouse granted the EOO can:

- Occupy the home for up to 90 days; and
- Can apply for extension. The total amount of time a person can stay in the home on an EOO cannot be more than 1 year.





## When deciding to extend an EOO, the court will:

1. Priority given to the spouse with primary care or the custodial parent of band member children with Indian status (whether or not the parent is a band member or status Indian).
2. If the spouses have shared custody of a band member child, the spouse with Indian status and band membership will stay in the family home.
3. If there are no band member children, the spouse who is a band member and has Indian status will stay in the family home.

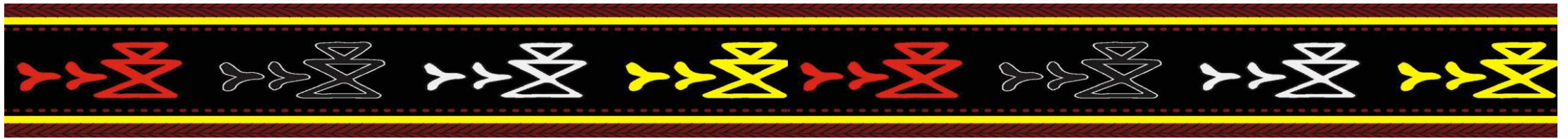


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## If both spouses are band members with Indian status, the court will also consider:

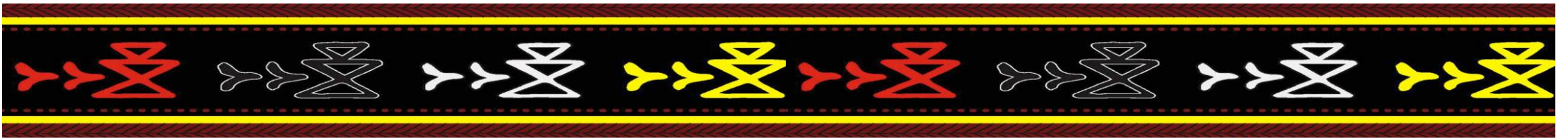
- Best interests of the child.
- Financial positions of the spouses.
- Medical conditions of the spouses.
- Domestic violence.
- Elderly people living in the home and who are caring for them.
- The length of time each spouse has lived in the home.



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## To apply for an EOO you must:

- Choose the proper court – NSSC or NSSC (Family Division).
- File a Notice of Application (form used will depend on the court chosen).
- Set out the grounds for the order.
- File an Affidavit and a Statement of Property.
- Pay the filing fee or submit a fee waiver, if you qualify.
- Serve a copy of all documents given to the court to all required persons.
- Respond to any new information brought forward.
- Attend Court on the date and time given in the application.



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### **Scenario 3**

Two Band Members with Indian status have been married for seven years. Two years into their marriage, the husband's grandmother and his niece, whom the grandmother was raising, came to live with the couple as the grandmother was having difficulties. The husband is her primary caregiver, while the wife must frequently travel for work. The Spouses decided to separate and both want to remain in the Family Home.

### **Under the Band MRP Law**

One or both of the Spouses can apply for Exclusive Occupation of the Family Home. When deciding who will stay in the home a judge will consider, among other factors, the best interest of any Child living in the Family Home and the interests of any elderly person who also lives in the Family Home.

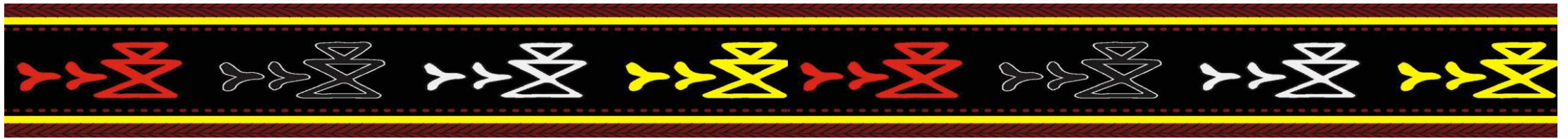


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# Family Real Property on Reserve

## Family Real Property includes:

- Any rights or interests a spouse may have in First Nation lands:
  - A hunting camp.
  - Rental units.
  - CP lands used by the family.
  - An allotment set aside for cultivation or livestock.
  - Mobile homes.

## Family Real Property does not include:

- The family home.
- Property acquired by a spouse by way of inheritance or gift,
  - *Unless* the inheritance or gift was given to both spouses to use together.

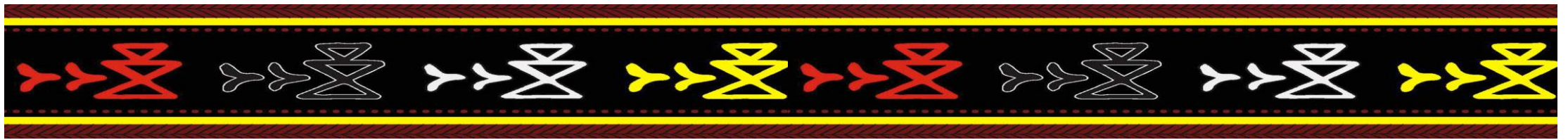


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# Entitlements of each Spouse

## Upon the death of a spouse:

- A Band member with Indian status can receive ownership of the MRP.

## Upon the breakdown of a relationship:

- An equal division of the value of the non-band owned family home and family real property.



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# Valuation and Division of MRP

## What will be valued and divided?

1. A non-band owned family home.
2. All family real property.

## The value of the MRP will be based on:

- What a buyer would reasonably be expected to pay for a home or real property, less any outstanding debts; or
- The amount agreed upon by the parties.

**NOTE:** Reserve lands are owned collectively by band members, because of this the value of real property is not equivalent to the value of the same property off reserve.

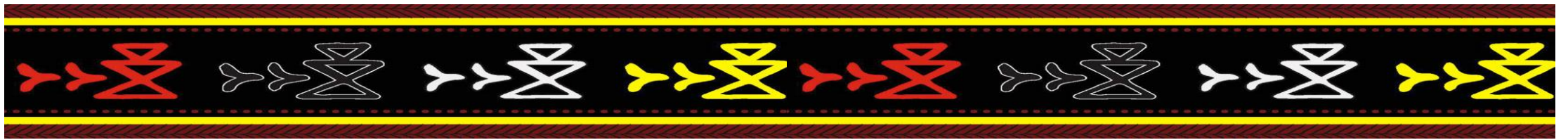


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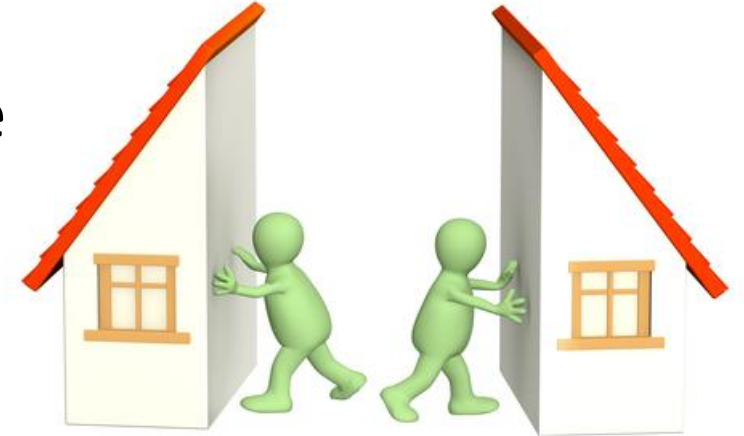
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# Unequal Division

- A court can order an unequal division of the MRP.
- To do this a court must find that an equal division of the non-band owned family home and the family real property would be:
  - Unfair; or
  - Inequitable.



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# Date of Valuation

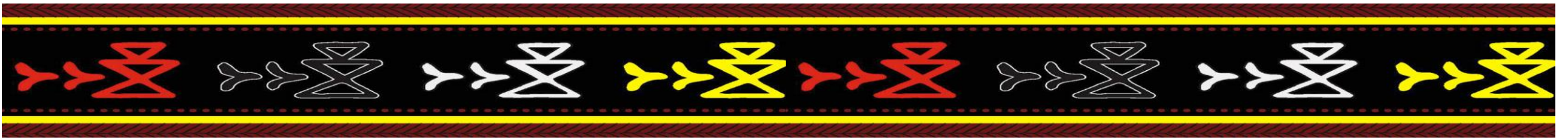
- The date the MRP is valued at will be the earliest of the following dates:
  - The date of divorce;
  - The date the spouses began to live separate and apart;
  - The date the spouses showed intention to end their relationship;
  - The date a spouse dies; or
  - The date an application is made under the MRP law.



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## **Scenario 4**

After 20 years of marriage a couple decide to separate. During their relationship the Spouses lived in a Band Owned Home. At the time of separation the Family Real Property consists of CP lands held by the wife. A trailer was parked on the CP lot and used as rental income to support the family and a hunting camp the wife's father gifted to both the Spouses. At the hunting camp the husband built a boat dock and small windmill.

## **Under the band MRP laws**

Each Spouse is entitled to half the value of all Family Real Property owned by one of the Spouses. Under the band MRP law a Court may determine the value of the CP lands, the trailer, the hunting camp, the boat dock and the windmill.

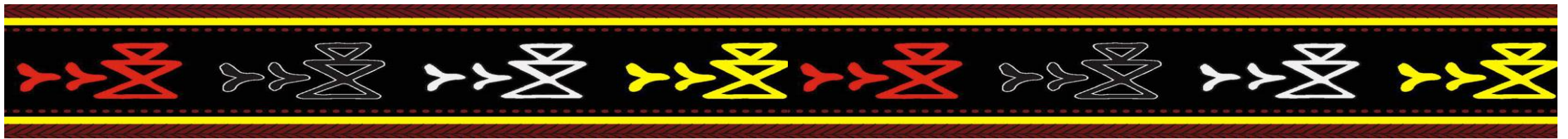


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# Emergency Protection Orders (EPO)

**An EPO is a court order that removes one spouse from the family home:**

- For up to 30 days.
- On an urgent basis (such as in situations of family violence).
- Peace officers and health care professionals can apply for an EPO on behalf of a spouse (with consent or leave of the designated judge).
- A designate judge can grant an EPO at any time.

**An EPO can help victims of family violence by:**

- Keeping a spouse away from the family home and workplace.
- Prohibiting a spouse from communicating with specific family members.

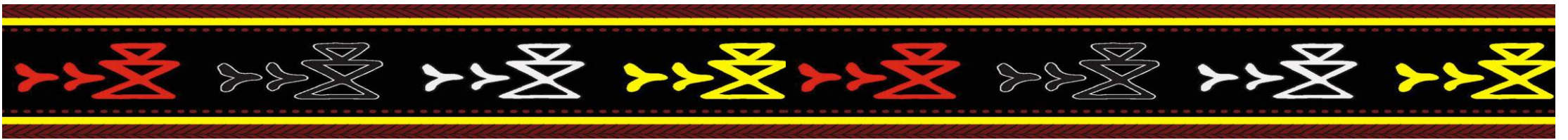


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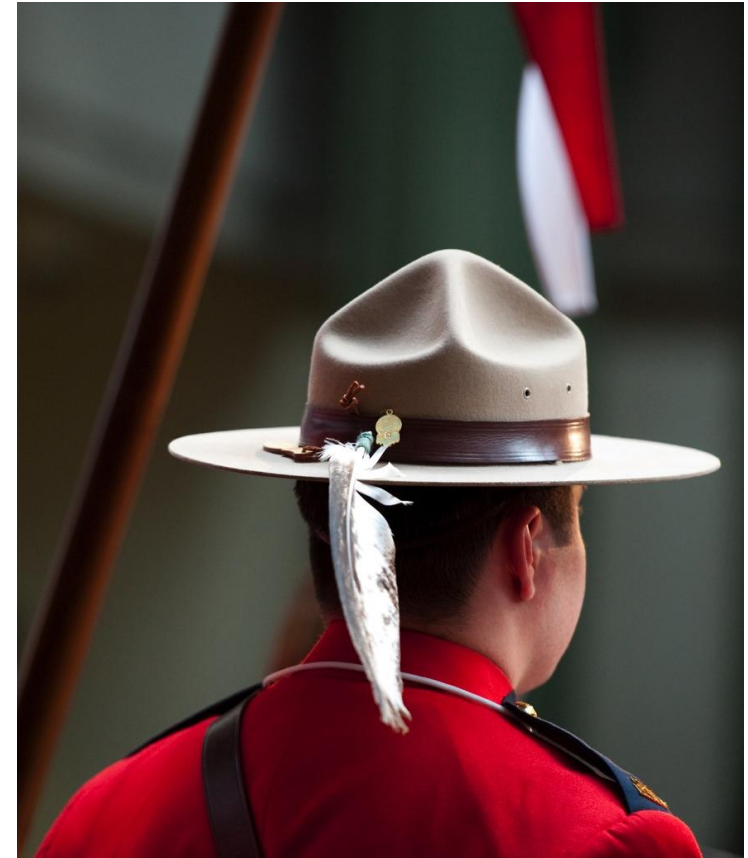
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## Other provisions an EPO can have:

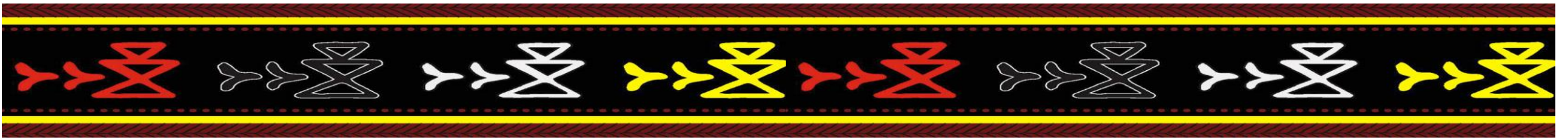
- Require a band member to leave the home and allow a non-band member to occupy the home.
- Require the immediate removal of a spouse or that the spouse leave by a certain time.
- Prohibit any person required to leave the home from being near the family home.
- That a peace officer supervise the removal of personal belongings of the spouse of other specified person.
- Any other provisions a judge considers necessary for the immediate protection of the person or property.



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## **Scenario 5**

A Band Member, who has five children, was forced to leave her Family Home and community due to family violence and a chronic housing shortage. However, she could not find affordable housing off the reserve. Due to her financial situation, she was forced to live at a rundown boarding house with her five children. She went to the authorities for help to find housing for her and her children. The authorities responded by apprehending her five children.

## **Under the band MRP law**

The woman is able to apply for an EPO. Even though she left the community she could still apply for an EPO and the authorities (a peace officer or health care professions) are able to make the application on her behalf. In addition to an EPO, the woman may apply for an EOO for the Family Home for up to one year.

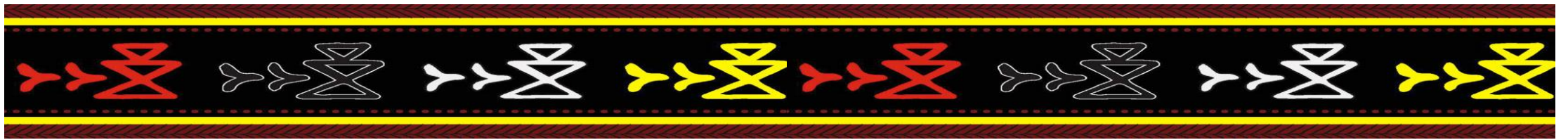


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# Role of Chief and Council

The Council may make representations to the court when:

- The community's collective rights or interest are engaged.
- The band has a financial interest in the MRP of the spouses.
- Making an EOO for a band owned home.
- Extending an EOO for a surviving spouse beyond 180 days.

The Council is entitled to receive a copy of every application to the court.

- Except EPO applications, but will receive a copy of the court order.



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# Mediation

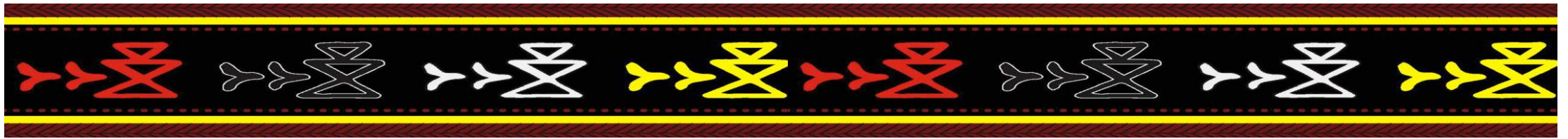
- Spouses are encouraged to resolve their differences through mediation.
- Mediation can be done in accordance with the traditions, customs and practices of the band.
- If mediation is not working the spouses can go to court.



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# Enforcement

- It is an offence to breach a court order or decision made under the band MRP law.
- If found guilty a person is liable for a summary offence.
  - **First offence** - fine not exceeding \$2,000 or imprisonment for up to 3 months or both; or
  - **Subsequent offences** - fine not exceeding \$5,000 or imprisonment for up to 1 year or both.

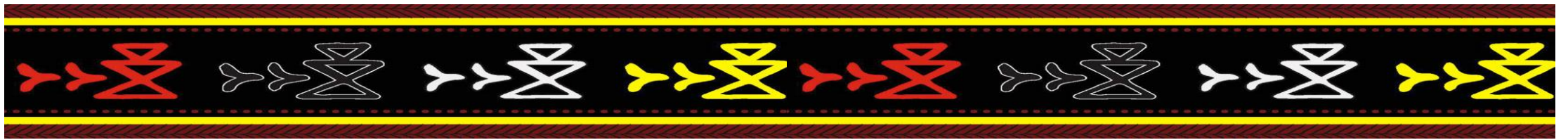


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# Special Thanks

- A special thank you to the National Aboriginal Lands Managers Association for funding this MRP education project;
- Bryna Fraser for the development of the Emergency Protection Order pamphlet;
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- Giancarla Francis for assisting with the social media campaign.



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