

TSLEIL-WAUTUTH NATION

MATRIMONIAL REAL PROPERTY LAW

WHEREAS the Tsleil-Waututh Nation (“TWN”) has taken control of its reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management*, and has enacted the Tsleil-Waututh Nation Land Code which came into force and effect on ~~June 6~~February 4, 2007;

AND WHEREAS pursuant to the *Framework Agreement*, TWN agreed to enact a Tsleil-Waututh Law setting out the rules and procedures applicable to use, occupancy and possession of Tsleil-Waututh Lands and the division of interests in these lands on the breakdown of a marriage involving at least one Member;

AND WHEREAS the Tsleil-Waututh Nation intends to honour its undertaking to provide rights and remedies, without discrimination on the basis of sex, with respect to spouses who have or claim interests in Tsleil-Waututh Lands upon the breakdown of their marriage;

AND WHEREAS the Tsleil-Waututh Nation intends to respect the following principles with respect to the use, occupancy or possession of matrimonial real property on Tsleil-Waututh Lands, and the division of interests in that land on the breakdown of a marriage,

Firstly, to uphold and recognize the rights of the parties to reach their own mutual agreement,

Secondly, to have spouses recognize the value of mediation and participate in mediation to reach a mutual agreement, and

Thirdly, to recognize that the parties have the right to access a court of competent jurisdiction to resolve their issues surrounding each of their entitlements to a Spouse’s Interest in Tsleil-Waututh Lands, and

At all times to respect the culture and traditions of the Tsleil-Waututh Nation that recognize that allotments are traditionally held within families and are passed on from one generation to the next and are to remain in those families for years to come.

NOW THEREFORE this Tsleil-Waututh Nation Matrimonial Real Property Law is hereby enacted as a Law of the Tsleil-Waututh Nation.

PART ONE
APPLICATION OF LAW

1. TITLE

1.1 This Law may be cited as the *Tsleil-Waututh Nation Matrimonial Property Law*.

PART TWO
DEFINITIONS

2. DEFINITIONS^[1]

2.1 For the purposes of this Law, the following definitions shall apply:

- a. **“Child”** means a child of the Spouses whether born in or out of wedlock or a child legally adopted by the Spouses or adopted by the Spouses in accordance with Tsleil-Waututh custom who is under the age of nineteen;
- b. **“Common-law Marriage”** means a man or a woman who are not married to each other who have lived in a conjugal relationship for a period of not less than two years;
- c. **“Domestic Contract”** means:
 - i. a **“marriage contract”** entered into between two persons or Spouses who are married to each other, or intend to marry, made in writing and signed by the parties and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation with respect to the possession or division of Interests in Tsleil-Waututh Lands, and
 - ii. a **“separation agreement”** entered into between a man and a woman who are married to each other and are living separate and apart, made in writing and signed by the parties and witnessed, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of Interests in Tsleil-Waututh Land; and
 - iii. a **“co-habitation agreement”** entered into between two persons living together in a Common-law Marriage, or in contemplation of living together in a Common-law Marriage, made in writing, signed by the parties and witnessed, in which they agree on their rights and obligations while living together or on separation, with respect to the possession or division of an Interest in Tsleil-Waututh Lands;

- d. **“Interest” or “Interest in Tsleil-Waututh Lands”** means an allotment, leasehold, easement or permit held by either Spouse or both Spouses, in Tsleil-Waututh Lands;
- e. **“Matrimonial Home”** means the home that is located on an Interest in Tsleil-Waututh Lands that is, or if the Spouses have separated, was at the time of the separation, occupied by one or both Spouses as the family home or that is mutually intended by the Spouses to be occupied by one or both of them as the family home whether or not the home was acquired before or after the date of marriage or co-habitation;
- f. **“Member”** means a person who is defined as a “member” by the terms of the Tsleil-Waututh Nation Membership List;
- g. **“Spouse”** means either a man or a woman who:
 - i. are married to each other, whether by traditional, religious or civil ceremony, and includes a Spouse by Common-Law Marriage, or
 - ii. have together entered into a marriage that is voidable or void, in good faith on the part of a person relying on a clause to assert any right under this Law; or
 - iii. are former Spouses;
 - i. for the purposes of enforcing rights or obligations under a court order or domestic contract as defined in this Law; or
 - ii. for asserting rights or obligations under this Law, so long as an application by a former Spouse is commenced within one year of the divorce of the Spouses.

PART THREE **APPLICATION**

3. APPLICATION

3.1 This law applies only to Interests in Tsleil-Waututh Lands.

3.2 For greater certainty:

- a. Rights of a Spouse in family property include a right to possession of the Matrimonial Home determined in accordance with this Law; and
- b. Family property does not include Interests in Tsleil-Waututh Lands that are used for business or commercial purposes; and
- c. Family property does not include the Interests of a member in Community Lands.

- 3.3 Subject to its terms, this Law shall not be construed as limiting or precluding any right or remedy otherwise available to persons who are or may be affected by it pursuant to any other law applicable on the breakdown of a marriage with respect to any property other than Interests in Tsleil-Waututh Lands, or other entitlements or obligations of Spouses.
- 3.4 This Law applies to Spouses only if at least one of them is a Member.
- 3.5 For greater certainty, a Spouse does not have an election on the death of the other Spouse, to claim, take or pursue an Interest in Tsleil-Waututh Lands and held by the other Spouse under this Law, and his or her interest will be determined by the will or administration of the estate of the other Spouse.
- 3.6 This Law applies in respect of and Interest in Tsleil-Waututh Lands whether or not they were acquired before or after this Law takes effect.

PART FOUR **DOMESTIC CONTRACTS**

4. DOMESTIC CONTRACTS

- 4.1 Except with respect to the determination of possession of the Matrimonial Home where there is a Child involved, it is the purpose and intention of this Law to respect the agreement of the parties to a Domestic Contract as to the use, possession, occupancy, disposition or partition of an Interest in Tsleil-Waututh Lands, including the possession of the Matrimonial Home.
- 4.2 Subject to this Part, a provision in a Domestic Contract that reflects the agreement of the parties with respect to an Interest in Tsleil-Waututh Lands, including possession of the Matrimonial Home, is valid, binding and enforceable.
- 4.3
 - a. Notwithstanding section 4.1, a provision in a Domestic Contract that would give, award, acknowledge or create an Interest in Tsleil-Waututh Lands greater than a life estate to occupy or possess an Interest in Tsleil-Waututh Lands, in favour of a Spouse or Child who is not a Member, is void.
 - b. In applying this section, a valid life estate to possess or occupy an Interest in Tsleil-Waututh Lands must be delineated by the life of the person intended to enjoy it.
- 4.4 Subject to this Law, a court of competent jurisdiction may, on application under this Section, set aside a provision of a Domestic Contract with respect to an Interest in Tsleil-Waututh Land:
 - a. if a party failed to disclose to the other all of his or her Interests in Tsleil-Waututh Lands or any other material information in respect to an Interest;

- b. if a party did not understand the nature or consequences of the provision; or
 - c. otherwise in accordance with the law of contract.
- 4.5 This Section applies whether the Domestic Contract was entered into by the parties on, before or after the date that this Law comes into force and effect.

PART FIVE **MEDIATION**

5. MEDIATION

- 5.1 Either Spouse may commence mediation with respect to their rights and interests in family property by providing to the BC Mediator Roster Society and the other Spouse a written request for mediation setting forth the general subject of dispute.
- 5.2 The Spouses shall cooperate with the BC Mediator Roster Society and with one another in selecting a mediator from the BC Mediator Society directory of family mediators and in scheduling mediation proceedings.
- 5.3 If the Spouses have not agreed upon a mediator within fourteen (14) days of the initial request to the BC Mediator Roster Society, either Spouse may, in writing, request that the BC Mediator Roster Society appoint a mediator and the BC Mediator Roster Society shall appoint a mediator within fourteen (14) days of receipt of the request.
- 5.4 As soon as possible after their appointment, the mediator shall meet or communicate directly with the Spouses, either together or individually, to explain the mediation process and to provide an initial assessment of the parties' suitability for mediation.
- 5.5 Within fourteen (14) days of the completion of the process described in section 5.3, each Spouse shall provide a brief written summary to the mediator of the relevant facts and the issues to be resolved. Upon receipt of both summaries the mediator shall deliver copies of the summaries to the other Spouse as soon as reasonably possible.
- 5.6 A mediator shall provide both initial screening and on-going screening with the Spouses for suitability for mediation, and will not mediate if, in the opinion of the mediator, it is not possible to provide a safe mediation forum for both Spouses.
- 5.7 A mediator may conduct a mediation in joint meetings or private caucus convened at locations the mediator designates after consulting each Spouse and determine his/her own rules and procedures applicable to the conduct of the mediation in accordance with the BC Mediation Roster Society standards.
- 5.8 A Spouse may attend mediation with or without legal counsel.

- 5.9 A Spouse who receives a notice of appointment with a mediator has a duty to attend the mediation.
- 5.10 The mediator shall proceed expeditiously with the mediation and use best efforts to assist the Spouses in resolving any issues with respect to the Interests in Tseil-Waututh Lands and possession of the Matrimonial Home.
- 5.11 Subject to sections 5.12 and 5.13 all offers, promises, conduct and statements, whether written or oral, made in the course of mediation by either Spouse or their lawyer or agent and by the mediator are confidential, privileged and inadmissible for any purpose, including litigation between the Spouses, provided that evidence that is otherwise admissible or discoverable is not rendered inadmissible or non-discoverable as a result of its use in the mediation.
- 5.12 For greater certainty, section 5.11 does not preclude a mediator from complying with a statutory duty to report if the mediator obtains information that a Child is in need of protection.
- 5.13 Where a mediation results in a negotiated agreement on all or some of the issues, the mediator shall advise the Spouses to seek independent legal advice. A Domestic Contract shall be drafted by a mediator or by legal counsel for either Spouse setting out the agreed terms with respect to those issues and setting out that each Spouse waives all rights to challenge the provisions as set out in the Domestic Contract. Once the agreement is signed each Spouse shall receive a signed copy of the Domestic Contract.
- 5.14 A mediator shall prepare a report if:
- (a) one of the Spouses refuses to attend the mediation;
 - (b) the mediator decided that mediation was not suitable for the Spouses; or
 - (c) if no issues were resolved by negotiated agreement;
- which report shall set out:
- (i) whether both Spouses were willing to proceed with the mediation;
 - (ii) whether the mediator decided that the mediation should not proceed; and
 - (iii) that the mediation did not result in a negotiated agreement.
- 5.15 If a mediation does not proceed because one of the Spouses refuses to attend or if no issues are resolved by negotiated agreement, the mediator shall prepare a report confirming that the mediation did not proceed or did not result in a negotiated agreement. The report shall only address whether both Spouses were willing to, and did participate in the mediation and confirm that the mediation did not result in a negotiated agreement.

- 5.16 The mediator's report described in section 5.14 shall be in writing and shall be sent to both Spouses and may be submitted to the court in proceedings under Part 6 to assist the court in making a determination whether there has been a mediation.
- 5.17 Unless otherwise agreed, each Spouse shall be responsible for an equal share of the costs of mediation.
- 5.18 For greater certainty, nothing in this Part is intended to deprive or limit the right of a Spouse to seek any or further alternate dispute resolution on the breakdown of the relationship in relation to any matter other than an Interest in Tsleil-Waututh Lands or to restrict the Spouses from otherwise reaching agreement with respect to an Interest in Tsleil-Waututh Lands, provided that such agreement results in a Domestic Contract that meets the requirements set out in this Law.

PART SIX **ACCESS TO A COURT**

6. ACCESS TO A COURT OF COMPETENT JURISDICTION

- 6.1 On application by two Spouses married to each other or by one of the Spouses the court may make a declaratory judgment that the Spouses have no reasonable prospect of reconciliation.
- 6.2 In the event of the breakdown of his or her marriage, a Spouse may apply to a court of competent jurisdiction to determine disputes in relation to Interests in Tsleil-Waututh Land provided that he or she has first complied with the mediation requirements or is specifically relieved of such compliance by a provision of this Part.
- 6.3 No court shall take or exercise jurisdiction under this Part without first enquiring whether or not the Spouses have pursued and participated in mediation and, if there has been no mediation, the court may:
- a. direct that there be mediation pursuant to the rules of court or under the mediation sections of this Law; or
 - b. where a requirement for mediation may result in an injustice, proceed to deal with an application under this Part.
- 6.4 Subject to this Law, a court may make any order in relation to an Interest in Tsleil-Waututh Lands held by a Spouse, or by both Spouses, that the court could make in respect of real property situated in the province of British Columbia, but not on Tsleil-Waututh Lands, including:
- a. a declaration as to the ownership or right of possession of an Interest;
 - b. an order that an Interest in Tsleil-Waututh Lands be transferred to a Spouse absolutely, where permitted under the Tsleil-Waututh Land Code;

- c. order a Spouse to pay compensation to the other Spouse if the Interest cannot be sold or transferred because it was inherited or gifted to one Spouse;
 - d. an order that an Interest in Tsleil-Waututh Lands be subject to a lease by one Spouse to the other Spouse for a term of years, subject to such terms and conditions as the court deems just in all the circumstances;
 - e. order a Spouse to pay compensation to the other Spouse if the Interest in Tsleil-Waututh Lands has been disposed of, or for the purpose of adjusting the division of family property;
 - f. an order that the share of either or both Spouses in the Interest be transferred to, or [be held](#) in trust for, a Child;
 - g. an order that an Interest in Tsleil-Waututh Lands held by both Spouses be partitioned or sold and if sold payment made to either or both Spouses in specified proportions or amounts; or
 - h. any appropriate and equitable order where a Spouse has intentionally, recklessly or fraudulently depleted an Interest in Tsleil-Waututh Lands.
- 6.5 No order shall be made that results in a transfer of a Certificate of Possession or creation of an allotment Interest in Tsleil-Waututh Lands in favour of a Spouse or Child who is not a Member.
- 6.6 No order for transfer or sale shall be made with respect to an Interest in Tsleil-Waututh Lands, that was inherited or gifted to one Spouse, that results in a transfer of an allotment to the other Spouse.
- 6.7 Where the Interest of a Spouse in Tsleil-Waututh Land is held through a corporation, the court may order that he or she transfer shares in the corporation to the other Spouse or have the corporation issue shares in the corporation to the other Spouse.
- 6.8 An order shall not be made under this Part so as to require the sale of an operational business on Tsleil-Waututh Lands, or so as to impair seriously its operation, unless there is no reasonable alternative method of achieving an equitable result between the Spouses.
- 6.9 Where a proceeding has been commenced under this Part and either Spouse dies before all issues relating to Interests in Tsleil-Waututh Lands have been disposed of by the court, the surviving Spouse may continue the proceeding against the estate of the deceased Spouse.
- 6.10 For greater certainty, a “spouse” for the purposes of applying for relief from a court includes a former Spouse after the marriage has been dissolved by decree absolute of divorce or by judgment of nullity.

6.11 Nothing in this Law relieves a party of the requirement to observe the rules and procedures of a court of competent jurisdiction in relation to matrimonial causes.

6.12 Nothing in this Law limits the application of valid laws of British Columbia and Canada in respect of matrimonial causes, except to the extent that such laws deal expressly or implicitly with Interests in Tseil-Waututh Lands and to that extent this Law applies.

PART SEVEN

VALUATION OF FAMILY PROPERTY

7. VALUATION OF FAMILY PROPERTY

7.1 A Spouse's Interest in Tseil-Waututh Lands shall be determined by considering the following factors:

- a. the extent to which the Interest was acquired by one Spouse through inheritance or gift;
- b. the date when the Interest was acquired or disposed of;
- c. the duration of the Spousal relationship;
- d. the duration of the period during which the Spouses have lived separate and apart;
- e. the needs of each Spouse to become or remain economically independent;
- f. direct financial contributions of each of the Spouses to the acquisition or improvement of the Interest;
- g. the contribution of a Spouse, who does not hold the registered Interest in Tseil-Waututh Lands, directly or indirectly to the acquisition, improvement or increased value of the family property by effective household management or Child rearing responsibilities;
- h. any order or award made under the *Family Relations Act* of British Columbia in favour of a Spouse concerning custody, child support, spousal support or division of family assets; and
- i. any other circumstances or factors in relation to the Interest in Tseil-Waututh Lands a court may wish to consider.

7.2 Where an Interest in Tseil-Waututh Lands for purposes of this Law includes a Matrimonial Home that is normally used for a purpose other than residential purposes, the Matrimonial Home includes only that part of the Interest in Tseil-Waututh Lands that may reasonably be regarded as necessary for use and enjoyment as the family residence.

PART EIGHT
MATRIMONIAL HOME – Exclusive Occupation Order

8. MATRIMONIAL HOME – Exclusive Occupation Order

- 8.1 A Court may, on application by a Spouse whether or not that person is a Member, order that the applicant be granted exclusive occupation of the Matrimonial Home and reasonable access to that home, subject to any conditions and for the period that the court specifies.
- 8.2 The court may make, on application by either Spouse an interim order to the same effect, pending the determination of the application under Part 6.
- 8.3 In making an order under this Part, the court shall consider, among other things:
- a. the best interests of any Child who habitually resides in the Matrimonial Home, including the interest of any Child who is a Member to maintain a connection with the Tsleil-Waututh Nation;
 - b. the terms of any agreement between the Spouses;
 - c. the representation made by the Tsleil-Waututh Council with respect to the cultural, social and legal context that pertains to the application;
 - d. the financial situation and the medical condition of the Spouses;
 - e. the availability of other suitable accommodation that is situated on Tsleil-Waututh Lands;
 - f. any existing order made on a matter related to the consequences of the breakdown of the conjugal relationship;
 - g. any family violence;
 - h. any acts or omissions by one of the Spouses that reasonably constitute psychological abuse against the other Spouse, any Child in the charge of either Spouse or any other family member who habitually resides in the Matrimonial Home;
 - i. the existence of exceptional circumstances that necessitate the removal of a person other than the applicant's Spouse from the Matrimonial Home in order to give effect to the granting to the applicant of exclusive occupation of that home, including the fact that the person has committed acts or omissions that constitute family violence, or reasonably constitute psychological abuse, against the applicant, any Child in the charge of the either Spouse, or any other family member who habitually resides in the family home;

- j. the interests of any elderly person or person with a disability who habitually resides in the Matrimonial Home and for whom either Spouse is the caregiver;
- k. the fact that a person, other than the Spouses holds an interest or right in or to the Matrimonial Home; and
- l. the views of any person who received a copy of the application, presented to the court in any form that the court allows.

8.4 An order made under this Part may contain provisions such as:

- a. a provision requiring the applicant's Spouse and any specified person – whether or not they are Members– to vacate the Matrimonial Home, immediately or within a specified period, and prohibiting them from re-entering the home;
- b. a provision requiring the applicant's Spouse to preserve the condition of the Matrimonial Home until that person vacates it;
- c. a provision directing the applicant to make payments to the other Spouse toward the cost of other accommodation; and
- d. a provision requiring either Spouse to pay for all or part of the repair and maintenance of the Matrimonial Home and of other liabilities arising in respect of the Matrimonial Home, or to make payments to the other Spouse for those purposes.

8.5 Any person in whose favour or against whom an order is made under subsection 10.1, any person specified in the order, or the holder of an interest or right in or to the Matrimonial Home may apply to the court to have the order varied or revoked if there has been a material change in circumstances. The court may, by order, confirm, vary or revoke the order.

8.6 An applicant for an order under this section shall, without delay, send a copy of the application to any person who is of the age of majority or over, whom the applicant is seeking to have the court order to vacate the family home, to any person who holds an interest or right in or to the family home and to any other person specified in the rules regulating the practice and procedure in the court.

PART NINE

REGISTRATION OF NOTICE

9. REGISTRATION OF NOTICE

9.1 A Spouse may apply to the Lands Manager to register a notice that a registered Interest in Tseil-Waututh Lands is a Matrimonial Home.

- 9.2 If the application is in the prescribed form accompanied by an affidavit in the prescribed form signed by the Spouse attesting to the fact the Interest in Tsleil-Waututh Lands is a Matrimonial Home, the notice shall be registered in the First Nations Lands Registry.
- 9.3 Where a notice has been registered in the Tsleil-Waututh Lands Register in accordance with this section no Spouse shall dispose of or encumber an Interest in Tsleil-Waututh Lands that is a Matrimonial Home unless:
- a. the other Spouse consents;
 - b. the other Spouse joins in the instrument of disposal or encumbrance;
 - c. the other Spouse has released all rights in respect of that Interest by Domestic Contract;
 - d. a court order has authorized the transaction; or
 - e. a court has released the Interest in Tsleil-Waututh Lands from the application of this Part.
- 9.4 If a Spouse disposes of or encumbers an Interest in Tsleil-Waututh Lands that is a Matrimonial Home in contravention of section 9.3, the disposal or encumbrance may, on application to a court, be set aside.
- 9.5 Section 9.3 does not apply where the person holding the disposition or encumbrance at the time of the application to the court acquired the disposition or encumbrance for value, in good faith and without notice at the time of acquiring, or making an agreement to acquire the disposition or encumbrance, that the property was a Matrimonial Home.
- 9.6 Where a person proceeds to realize upon an encumbrance or execution against an Interest in Tsleil-Waututh Lands that is a Matrimonial Home, the Spouse who has a right of possession under this Law has the same right of redemption or relief against forfeiture as the other Spouse and is entitled to the same notice respecting the claim and its enforcement or realization.
- 9.7 Any order granted under this Law or a notice made under this section may be registered in the Tsleil-Waututh Lands Register in accordance with the Tsleil-Waututh Land Code.

PART TEN
GENERAL PROVISIONS

10. GENERAL PROVISIONS

- 10.1 Where any federal Act or regulation or provincial Act or regulation or any other Tsleil-Waututh Law may apply to any matter covered by this Law, compliance

with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation or law.

- 10.2 If any section of this Law 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 Law.
- 10.3 The headings given to the sections and paragraphs in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.

PART ELEVEN **ENFORCEMENT AND OFFENCES**

11. ENFORCEMENT AND OFFENCES

- 11.1 A peace officer may arrest without warrant a person the officer believes on reasonable and probable grounds to have contravened an order for exclusive possession of the Matrimonial Home.
- 11.2 Where a person has exclusive possession of the Matrimonial Home pursuant to an order made by a court and alleges that a Spouse, or former Spouse, is interfering with that possession or behaving in a manner calculated to disrupt or interfere with the quiet possession of the Matrimonial Home by the person or any Children residing there, the court may make an order directing that Spouse, or former Spouse, not enter the Matrimonial Home or approach within a prescribed distance of the Matrimonial Home.
- 11.3 A person who contravenes an order made by a court under this Law is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 payable to the Tsleil-Waututh Nation or to imprisonment for a term of not more than three months, or to both.