

KAHNAWÀ:KE FAMILY HOMES AND MATRIMONIAL INTERESTS LAW

K.R.L.

[Enacted by MCR #]

PREAMBLE

We are the Kanien'kehá:ka of Kahnawà:ke. We are a community within the Kanien'kehá:ka Nation and are Indigenous Peoples who possess a fundamental and inherent right of self-determination given to us by the Creator.

We have inherent, Aboriginal and treaty rights, and other rights and freedoms that are recognized and affirmed in the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples* which includes the inherent right of self-government and jurisdiction over our lands, people and resources.

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Comment [FW1]: Addition stemming from comments received during 30 day consultation phase

We have consistently and historically asserted both our rights as Indigenous Peoples and the rights set out in our treaties with foreign governments. These rights cannot be extinguished, diminished or affected without our consent.

As part of our inherent and Aboriginal right of self-government, we have the right to govern ourselves in relation to matters that are integral to our unique culture, identities, traditional, languages and institutions and with respect to our connection to our people, children, land and resources.

We have consistently and historically exercised the right to determine the rules for the use and occupation of our lands and the Mohawks of Kahnawà:ke intend to preserve the cultural, political and economic integrity of Kahnawà:ke Lands and of the Kanien'kehá:ka of Kahnawà:ke.

This Law is an affirmation of our inherent, Aboriginal and Treaty rights to establish and maintain our own process to resolve disputes that arise regarding the division and distribution of the Family Home and Matrimonial Interests on Kahnawà:ke Lands.

1. TITLE

1.1 The title of this Law is the Kahnawà:ke Family Homes and Matrimonial Interests Law.

2. PURPOSE

2.1 The general purpose of this Law is more fully described in the Preamble.

2.2 This Law is intended to provide the criteria and procedures to:

- a) establish rules and a mechanism for the division of Matrimonial Interests in the event of the death of a Spouse or the Breakdown of a Marriage or Common-Law relationship;
- b) determine possession and disposition of the Family Home and ensure that the paramount consideration, when determining possession of the Family Home, is the best interests of the Child;
- c) does not deal with the declaration of a divorce judgment; the declaration of a separation of bed and board judgment; spousal or child support; child custody; membership or ownership of Personal Property.

3. JURISDICTION

- 3.1 The jurisdiction under which this Law is enacted is more fully described in the Preamble.
- 3.2 This Law is an exercise of the collective rights of the Kanien'kehá:ka of Kahnawà:ke to determine the rules of possession and ownership of Matrimonial Interests on Kahnawà:ke Lands. This Law is paramount to and supersedes the laws, regulations and policies of the governments of Canada and Quebec, or any other government, concerning this matter or matters related thereto.

4. INTERPRETATION

- 4.1 Nothing in this Law will be construed so as to abrogate or derogate from or modify the Aboriginal and Treaty rights of Aboriginal peoples recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 4.2 Nothing in this Law shall be interpreted or administered to discriminate on the basis of sex, but may distinguish between persons that have a right to hold a Certificate of Possession or Occupation in Kahnawà:ke Lands issued under the *Indian Act* and those that do not in order to determine the interest that may be held in Kahnawà:ke Lands or the rights that they have under this Law.

5. DEFINITIONS

- 5.1 For the purposes of this Law and the Regulations,
 - “**Breakdown of Marriage**” means when there is no hope for reconciliation between the Spouses in the foreseeable future, and includes:
 - (a) When either Spouse has commenced proceedings to end the Marriage, including for divorce or for separation from bed and board;
 - (b) When the Spouses have lived separate and apart for a period of six (6) months and have declared that the relationship has ended.

“Breakdown of Common-Law relationship” means when there is no hope for reconciliation between the Spouses in the foreseeable future, and includes when the Spouses have lived separate and apart for a period of six (6) months and have declared that the relationship has ended.

"Child or Children" means a Child that is either a person’s natural child, adopted child or a child for whom the person exercises guardianship, who is under the age of 18 years and includes such a person who is:

- (a) over 18 years of age but under the age of 25 years and is enrolled in, and attending, a post-secondary educational institute on a full time basis; or
- (b) over the age of 18 years of age, but as a result of mental or physical disability, is unable to care for him/herself and is dependent on someone else for support.

“Commercial Interest” means any legal estate, right or title of any nature that is held by a Spouse to Kahnawà:ke Lands, including structures on Kahnawà:ke Lands and Certificates of Possession or Occupation issued under the *Indian Act* that is used for making profit or with the intention to make profit.

"Common-Law relationship" means a conjugal relationship, not solemnized by a Marriage ceremony, Law or custom, between two persons that have lived together and that have been publicly represented as Spouses for 5 years.

"Court" means the Court of Kahnawà:ke established by Kahnawà:ke Law or in the absence of such Law, the Court of Kahnawà:ke identified by Mohawk Council of Kahnawà:ke Resolution to exercise the jurisdiction conferred by this Law.

“Custom” means the cultural or traditional practices that the Mohawks maintain and continue to practice today.

Comment [FW2]: Addition stemming from comments received during 30 day consultation phase

“Domestic Agreement” means:

- (a) A Spousal Agreement entered into between Spouses, or between two people in contemplation of their Marriage to each other, in which they agree on their respective rights and obligations while residing together as Spouses or upon Breakdown of the Marriage or Common Law Relationship or death, with respect to the possession or division of Matrimonial Interests;
- (b) A Separation Agreement entered into between Spouses who are living separate and apart or in contemplation of their separation, in which they agree on their respective rights and obligations upon the Breakdown of their Marriage or Common Law Relationship, with respect to the possession or division of Matrimonial Interests.

"Family Home" means a structure situated on Kahnawà:ke Lands where the Spouses habitually resided. This definition includes only the portion of the structure that is used for residential purposes.

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“Family Patrimony” means the term used in the *Civil Code of Quebec* that designates the mass of property (‘patrimony’) that the couple has accumulated for the use of the family, regardless of who owns it.

“Guardianship” means the rights and duties akin to those naturally arising from parenthood which are assumed by any person who has, in Law or in fact, the custody or control of a Child or Children.

“Interest” means any legal estate, right or title of any nature other than a Commercial Interest, including equitable and undivided interests, held by a Spouse or to Kahnawà:ke Lands, including structures on Kahnawà:ke Lands and Certificates of Possession or Occupation issued under the *Indian Act*, but does not include title to the land.

“Kahnawà:ke Court of Appeal” means the Court of Appeal established by Kahnawà:ke Law or in the absence of such Law, the Court of Appeal identified by Mohawk Council of Kahnawà:ke Resolution to exercise the jurisdiction conferred by this Law.

“Kahnawà:ke Lands” or “Lands” means:

- a) the lands under the control and jurisdiction of the Kanien'kehá:ka of Kahnawà:ke, including Kahnawà:ke Indian Reserve No. 14 and the Kahnawà:ke interest in Tioweró:ton (Doncaster);
- b) any and all lands that may be added to the lands now under the control and jurisdiction of the Kanien'kehá:ka of Kahnawà:ke through the negotiation and resolution of land grievances;
- c) any and all lands that may be added to the lands now under the control and jurisdiction of the Kanien'kehá:ka of Kahnawà:ke as a result of any other means;
- d) lands, which are returned to Kahnawà:ke as lands within the meaning of subsection 91(24) of the *Constitution Act*, 1867.

“Lands Registry” means the Lands Registry administered by the Mohawk Council of Kahnawà:ke Lands Unit.

“Lease” means a contract by which one party conveys the right to use Land and/or property to another for residential purposes for a term.

“Life Interest” means an interest conveyed to Land and/or property for residential purposes for the duration of another’s life or one’s own life.

“Marriage” means a binding union between two consenting persons with legal capacity that is solemnized by ceremony, Law or custom and that gives rise to duties and responsibilities that are enforceable in Law, and includes civil unions.

"**Matrimonial Interests**" means any Interests in Kahnawà:ke Lands, including the Family Home, acquired by one or both of the Spouses:

- (a) that were acquired during the Marriage or Common-Law Relationship
- (b) that were acquired before the Marriage or Common-Law Relationship but in specific contemplation of the relationship; or
- (c) that were acquired before the conjugal relationship but not in specific contemplation thereof, and that appreciated in value during the relationship, to the extent of such appreciation.

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

"**Matrimonial Regime**" means the term used in the *Civil Code of Quebec* to designate the legal or conventional regime that establishes the rights and powers of married Spouses with respect to certain property.

"**Mediation**" means a process whereby a neutral third party facilitates communication among parties to a dispute, to assist them in reaching a mutually acceptable resolution.

"**Order**" means an Order rendered by the Court of Kahnawà:ke pursuant to this Law.

"**Personal Property**" means anything other than a Matrimonial Interest that is capable of ownership and includes, but is not limited to, such items as furniture, vehicles, boats, livestock, household goods, clothing, jewelry, money, bank accounts, shares, wages or debts owed to one of the Spouses that were created during the Marriage.

"**Regulations**" means the Regulations enacted pursuant to this Law.

"**Spouse**" means a person who is Married or in a Common-Law Relationship.

"**Surviving Spouse**" means a Spouse that survives following the death of their Spouse.

6. APPLICATION OF LAW

6.1 This Law applies to any person that holds a Matrimonial Interest in Kahnawà:ke Lands and their children.

6.2 For greater certainty, this Law:

(a) applies only to Matrimonial Interests in Kahnawà:ke Lands;

(b) replaces the application of the "Provisional Federal Rules" of *An Act respecting Matrimonial Homes situated on First Nation reserves and matrimonial interests or rights in or to structures and lands situated on those reserves*;

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~~(b)~~(c) applies in respect of rights and interests acquired both before and after this law comes into force.

Comment [FW3]: Addition by MCK Legal Services based on Model First Nation Real Property Law provided at National Forum

7. DOMESTIC AGREEMENTS

- 7.1 Persons may, in contemplation of their Marriage, enter into a Spousal Agreement in which they agree on their respective rights and obligations while residing together as Spouses or upon Breakdown of the Marriage or Common Law Relationship, or upon death of a Spouse, with respect to the possession or division of Matrimonial Interests.
- 7.2 Spouses may, upon Breakdown of a Marriage or Common-Law relationship, enter into a Separation Agreement in which they agree on their respective rights and obligations with respect to the possession or division of Matrimonial Interests.
- 7.3 A Domestic Agreement is valid, binding and enforceable under this Law if it is in writing, signed by both Spouses and is witnessed by a notary or Commissioner of Oaths and by two other adults.
- 7.4 Any provision of a Domestic Agreement that would give, award, acknowledge, transfer or create a right to own or hold Kahnawà:ke Lands in favour of a Spouse or Child who is not legally entitled to hold a Certificate of Possession or Occupation in Kahnawà:ke Lands issued under the *Indian Act* is void.
- 7.5 The Court may vary or set aside all or part of a Domestic Agreement with respect to Matrimonial Interests:
- (a) where a Spouse has failed to disclose to the other Spouse all of his or her Matrimonial Interests, and any material information with respect to those Interests;
 - (b) where an Agreement or part of an Agreement is deemed to be unconscionable;
 - (c) where an Agreement or part of an Agreement was concluded in violation of any of the fundamental conditions of formation of contracts.

8. MEDIATION

Mandatory mediation information session

- 8.1 With the exception of an Application to homologate the terms of a Separation Agreement, no Application may be heard by the Court unless the Spouses have attended a Mediation information session on the Mediation process offered through the Court Administration Services and a copy of the mediator's report or, if applicable, a Certificate of Participation has been filed with the Court.
- 8.2 Should the Spouses not agree to pursue Mediation following the completion of the Mediation information session, a Certificate of Participation is issued to the Spouses.

Comment [FW4]: New heading added for additional clarity based on Record of Discussion 2014-05-27

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8.3 A Spouse that has a valid reason not to attend the information session on the Mediation process may state that fact to any mediator of the Court Administration Services. The reason may relate, in particular, to the existence of a Domestic Agreement that settles any issues related to the Breakdown of the Marriage or Common Law Relationship, to any inequality between the Spouses, to the disability or the physical or psychological condition of the Spouse or to the great distance between the Spouses' respective residences. In such a case, the mediator draws up a report containing a statement that the Spouse cannot attend the information session for a valid reason, which shall not be disclosed.

Mediation process

8.4 Should the Spouses agree to enter into Mediation, the Mediation shall take place through the Court Administration Services, which takes into account the culture, traditions and customs of the Mohawks of Kahnawà:ke. The mediator shall endeavor to assist the Parties to reach an Agreement that is fair and equitable.

8.5 Either Spouse may, at any time during Mediation, terminate it without having to give reasons. The mediator must terminate Mediation if he considers that to pursue it would be ill advised.

8.6 Should the parties to a Mediation process reach an Agreement signed by both Spouses, the provisions of that Agreement regarding the possession, division and distribution of Matrimonial Interests shall be recognized by the Court, subject to the provisions of Sections 7.4 and 7.5 that also apply to Agreements reached pursuant to Mediation.

8.7 When the Mediation process is deemed to be completed by the Court Administration Services a Report shall be provided to the Parties confirming that the Mediation process has been completed. The Mediation process is deemed complete in accordance with Sections 8.5 or 8.6 or after a maximum of six (6) sessions with the mediator.

8.8 Notwithstanding any provision of this Section, the Court may, on an Application, make, subject to the conditions it determines, any appropriate order to safeguard the rights of a Spouse or any Children during the period of Mediation or during any other period it considers appropriate.

9. RIGHT OF OCCUPATION

9.1 When only one Spouse holds an Interest in the Family Home, the other Spouse's right of occupation of the Family Home ends upon Breakdown of the Marriage or Common Law Relationship, unless a Domestic Agreement or Order provides otherwise.

10. APPLICATIONS AND ORDERS

10.1 In the event of the Breakdown of a Marriage or Common-Law relationship, or upon death of a Spouse, a former Spouse or a Surviving Spouse may apply to the Court for an Order or Declaration in relation to Matrimonial Interests.

Comment [FW5]: New heading added for additional clarity based on Record of Discussion 2014-05-27

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- 10.2 A Spouse may apply to the Court for an Order for the homologation of the terms of a Domestic Agreement. Notwithstanding any other provision of this Law, and subject to Section 7, the Court shall apply the terms of a Domestic Agreement to any matter over which the Court has jurisdiction under this Law.
- 10.3 In the case of married Spouses, an Application for an Order or Declaration under this Law may be made at any time prior to a final divorce or separation judgment being rendered by a Court of competent jurisdiction or within one (1) year of the final divorce or separation judgment.
- 10.4 In the case of Common-Law Spouses, an Application for an Order or Declaration under this Law must be made within two (2) years of the date of the Breakdown of the Common Law Relationship.
- 10.5 Subject to section 10.6, in the case of death of a Spouse, an Application for an Order or Declaration under this Law by a Surviving Spouse or the Estate of the deceased Spouse may be made at any time within one (1) year of the death of a Spouse.
- 10.6 In the case of death of a Surviving Spouse, the Estate of the Surviving Spouse can bring an Application for an Order or Declaration under this Law at any time within one (1) year of the death of the Surviving Spouse.
- 10.7 On Application the Court may, by Order, extend the period of one (1) year outlined in Sections 10.5 and 10.6 by any amount of time that it considers appropriate, if the Court is satisfied that the Surviving Spouse failed to make an Application within that period for any of the following reasons:
- (a) the Surviving Spouse did not know of the death of their Spouse until after the period expired;
 - (b) circumstances existed that were beyond the control of the Surviving Spouse;
 - (c) delays attributable to the estate not being legally represented; or
 - (d) only after the time period expired did the Applicant become aware of any Matrimonial Interests.
- 10.8 An Application for an Order granting interim occupation of the Family Home may be brought by a Spouse or former Spouse, Surviving Spouse or a guardian of a Child.
- 10.9 An Application for an Order or Declaration concerning the division of the Matrimonial Interests held by one or both Spouses can be made for:
- (a) a Declaration as to the ownership or the right of occupation of Matrimonial Interests;

- (b) a Declaration as to the value of Matrimonial Interests;
- (c) an Order that a Matrimonial Interest be transferred to a Spouse absolutely, notwithstanding Section 24 of the *Indian Act*, including a Certificate of Possession or Certificate of Occupation within the meaning of the *Indian Act*;
- (d) an Order that a Matrimonial Interest be subject to a Right of Occupation or Lease, with or without payment of consideration, by one Spouse to the other Spouse or be subject to a Life Interest with or without payment of consideration, in favour of one Spouse on such terms and conditions as the Court deems just in all circumstances;
- (e) an Order for one Spouse to pay compensation to the other Spouse;
- (f) an Order that the share of either or both of the Spouses in the Matrimonial Interests be transferred to or placed in trust for any children;
- (g) an Order that a Matrimonial Interest held by either Spouse be partitioned or sold and if sold, determine the share of the proceeds to be attributed to each Spouse;
- (h) any appropriate and equitable Order where a Spouse, executor of a will or administrator of an estate, has intentionally or recklessly or fraudulently depleted Matrimonial Interests;
- (i) any Order for the payment by a Spouse of any outstanding loan or lien, including any Mohawk Council of Kahnawà:ke Housing loans incurred;
- (j) any Order in relation to Matrimonial Interests that it deems appropriate in the individual circumstances.

10.10 An individual who is not eligible to hold a Certificate of Possession or Certificate of Occupation in Kahnawà:ke Lands that is issued under the *Indian Act* may not:

- (a) apply for or benefit from an Order for the issuance or transfer of a Certificate of Possession or Certificate of Occupation to Kahnawà:ke Lands, within the meaning of the *Indian Act*;
- (b) apply for or benefit from an Order or Declaration for the acquisition, transfer or ownership of Matrimonial Interests;
- (c) apply to possess, use or occupy an interest in the Family Home or other Matrimonial Interests, except pursuant to an Order made under Sections 10.8 and 11.1.

10.11 A right to occupy the Family Home pursuant to an Order in favour of a Spouse cannot be transferred, sold, leased or otherwise alienated to a third party

11. ORDER FOR INTERIM OCCUPATION OF THE FAMILY HOME

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- 11.1 A Spouse may make an Application for an Order granting the interim occupation of the Family Home under section 10.8. This Order may provide for the exclusive or shared occupation of the Family Home.
- 11.2 An Order granting the interim occupation of the Family Home is for a specified period of time, until such time as:
- (a) the Order expires;
 - (b) is modified by a subsequent Order; or,
 - (c) is replaced by a final Order regarding the ownership, possession or disposition of the Family Home.
- 11.3 The Court, in hearing an Application under section 10.8, shall consider:
- (a) any existing Orders under this Law or any other relevant Orders or judgments, including child custody and any support orders;
 - (b) the best interests of any Children;
 - (c) the terms of any Domestic Agreement between the Spouses;
 - (d) the contributions, including financial contributions made by the Spouses for the acquisition, payment and maintenance of the Matrimonial Interests;
 - (e) the financial position of both Spouses;
 - (f) the Spouse in whose name the Certificate of Possession or Certificate of Occupation is issued for the land on which the Family Home is built;
 - (g) the duration of the Marriage or Common-Law relationship and of cohabitation in the Family Home;
 - (h) the availability of other suitable and affordable accommodation;
 - (i) whether the Spouses and any Children have a right to hold a Certificate of Possession or Occupation in Kahnawà:ke Lands issued under the *Indian Act*;
 - (j) any violence committed by a Spouse against another Spouse or a Child of the Marriage, regardless of whether the violence alleged resulted in a conviction by a Court of competent jurisdiction;
 - (k) any other relevant factors.
- 11.4 Notwithstanding section 10.10 (c), a person who would not have a right to hold a Certificate of Possession or Occupation in Kahnawà:ke Lands issued under the *Indian Act*

may apply for an interim Order for the Occupation of the Family Home pursuant to sections 10.8 and 11.1.

- 11.5 An interim Order rendered pursuant to sections 10.8 and 11.1 may include an Order outlining the Parties' respective obligations regarding any mortgage or lease payments due for the duration of the Order.

12. ORDERS CONCERNING DIVISION OF MATRIMONIAL INTERESTS

- 12.1 Subject to Section 10, a Spouse may, upon death of a Spouse or upon the Breakdown of the Marriage or Common Law Relationship, make an Application for an Order concerning the division of Matrimonial Interests under this Law pursuant to Section 10.9.

Division of Matrimonial Interests for married Spouses

- 12.2 For married Spouses, the value of the Matrimonial Interests of the Spouses, after deducting the debts contracted for the acquisition, improvement, maintenance or preservation of the Matrimonial Interests composing it, is equally divided between the Spouses.

Calculation of division of Matrimonial Interests for married Spouses

- 12.3 Where partition is effected upon separation from bed and board, no new partition is effected upon the subsequent dissolution of the Marriage unless the Spouses had voluntarily resumed living together for ninety (90) days or more; where a new partition is effected, the date when the Spouses resumed living together is substituted for the date of the Marriage for the purposes of this section.

Calculation of net value of Matrimonial Interests to be divided

- 12.4 The net value of the Matrimonial Interests is determined according to the market value of the Interests comprising the Matrimonial Interests minus the debts contracted for the acquisition, improvement, maintenance or preservation of the Interests composing it on the date of the institution of the Application for the division of Matrimonial Interests under this Law. The Court may, however, upon the application of one or the other of the Spouses or of their successors, decide that the net value of the Matrimonial Interests will be established according to the value of such Interests minus such debts on the date when the Spouses ceased living together.

Deduction for Matrimonial Interests owned at the time of Marriage

- 12.5 Once the net value of the Matrimonial Interests has been established per section 12.4, a deduction is made from it of the net value, at the time of the Marriage, of the Interest then owned by one of the Spouses that is included in the Matrimonial Interests. A further deduction from the net value is made of the increase in value acquired by the Interests during the Marriage, proportionately to the ratio existing at the time of the Marriage between the net value and the gross value of the Interests.

Deduction for Contribution to Property Devolved by Succession or Gift

- 12.6 Once the net value of the Matrimonial Interests has been established per section 12.4, a deduction is made from it of the net value of a contribution made by one of the Spouses during the Marriage of the acquisition or improvement of the Interests included in the Matrimonial Interests, where the contribution was made out of the Interests devolved by succession or gift. A further deduction from the net value is made of the increase in value acquired since the contribution, proportionately to the ratio existing at the time of the contribution between the value of the contribution and the gross value of the Interests.

Deduction for Reinvestment Contribution

- 12.7 Once the net value of the Matrimonial Interests has been established per section 12.4, a deduction is made from it of the net value of a contribution made by one of the Spouses during the Marriage for the acquisition or improvement of the Interests included in the Matrimonial Interests, where the contribution was made out of that Interest's reinvestment. For greater certainty, only Interests included in the Matrimonial Interests that is sold during the Marriage and that is reinvested for the improvement or acquisition of the Interests included in the Matrimonial Interest that is still owned at the time of the Breakdown of the Marriage can be considered for a deduction. A further deduction from the net value is made of the increase in value acquired since the reinvestment contribution, proportionately to the ratio existing at the time of the reinvestment contribution between the value of the reinvestment contribution and the gross value of the Interests.

Other factors in calculation of division of Matrimonial Interests

- 12.8 In making an Order with respect to compensation, the Court may alter its calculation as to any payment or compensation due between the Spouses in consideration of the division that has or that will occur of the property included in the Family Patrimony that is not a Matrimonial Interest, including the terms of any binding agreement or judgment pertaining to the division of said property.
- 12.9 Notwithstanding Section 12.2, and pursuant to Sections 7.1 to 7.3 and 10.2, the Court may also alter its calculation as to any payment or compensation due between the Spouses in consideration of the terms of a Domestic Agreement.
- 12.10 Notwithstanding Section 12.2, and pursuant to Sections 7.1 to 7.3 and 10.2, the Court may also alter its calculation as to any payment or compensation due between the Spouses in consideration of the terms of a notarized Marriage contract entered into before or after the coming into force of this Law, including a contract that establishes an applicable Matrimonial Regime.
- 12.11 When the division of Matrimonial Interests involves a Spouse that cannot legally hold a Certificate of Possession or Occupation in Kahnawà:ke Lands issued under the *Indian Act*, the value of any Certificates of Possession or Certificates of Occupation shall be excluded from the calculation of the value and division of Matrimonial Interests.

12.12 For the division of Matrimonial Interests of married Spouses that lived as Common-Law Spouses prior to Marriage, the Court shall divide the value of the Matrimonial Interests in the same manner as under Section 12.2 to 12.11 calculated from the date that the Spouses became Common-Law Spouses.

Accompanying orders

12.13 Partition of the Matrimonial Interests is affected by giving monetary payment or payment by the transfer of ownership of a Matrimonial Interest or of other property not included in the Matrimonial Interests.

12.14 The Court may, at the time of partition, order payment or award certain Interests to one of the Spouses and also, where it is necessary to avoid damage, order the debtor Spouse to perform his or her obligation by way of installments over a period of not more than ten (10) years. It may also order any other measure it considers appropriate to ensure that the judgment is properly executed, and, in particular, order that security be granted to one of the parties to guarantee performance of the obligations of the debtor Spouse.

12.15 A final Order regarding the division of the value of Matrimonial Interests can be accompanied by an Order of a leasehold or Life-Interest pursuant to Section 10.9 d) that provides for the right of occupation of the Family Home for a specified or determinable period of time. The Court shall calculate the value of the leasehold or Life Interests in determining the division of the value of the Matrimonial Interests.

12.16 Orders for leasehold or Life-Interests are not available for individuals that do not have a right to hold a Certificate of Possession or Occupation in Kahnawà:ke Lands issued under the *Indian Act*.

12.17 In making an Order under this Section pertaining to the awarding or transfer of an Interest to a Spouse, the Court must consider the following factors:

- (a) any existing Orders under this Law or any other relevant Orders or judgments, including child custody and any support orders;
- (b) the best interests of any Children;
- (c) the terms of any Domestic Agreement between the Spouses;
- (d) the contributions, including financial contributions made by the Spouses for the acquisition, payment and maintenance of the Matrimonial Interests;
- (e) the financial position of both Spouses;
- (f) the Spouse in whose name the Certificate of Possession or Certificate of Occupation is issued for the land on which the Family Home is built;

- (g) the duration of the Marriage or Common-Law relationship and of cohabitation in the Family Home;
- (h) the availability of other suitable and affordable accommodation;
- (i) whether the Spouses and any Children have a right to hold a Certificate of Possession or Occupation in Kahnawà:ke Lands issued under the *Indian Act*;
- (j) any violence committed by a Spouse against another Spouse or a Child of the Marriage, regardless of whether the violence alleged resulted in a conviction by a Court of competent jurisdiction;
- (k) any other relevant factors.

12.18 Where an Interest included in the Matrimonial Interests was alienated or misappropriated in the year preceding the death of one of the Spouses or the institution of proceedings under this Law or for separation from bed and board, divorce or annulment of Marriage and was not replaced, the Court may order that a compensatory payment be made to the Spouse who would have benefited from the inclusion of that property in the Matrimonial Interests.

Division of Matrimonial Interests for Common Law Spouses

12.19 For the division of Matrimonial Interests of Common-Law Spouses, the Court shall divide the value of the Matrimonial Interests in the same manner as under Sections 12.2 to 12.18 calculated from the date of that the Spouses became Common-Law Spouses.

Division of Matrimonial Interests following the death of a Spouse

12.20 In case of an Application for the division of Matrimonial Interests following the death of a Spouse, the division of the Matrimonial Interests shall take place according to Sections 12.2 to 12.18 notwithstanding any provision in the will of the deceased.

12.21 The net value of the Matrimonial Interests will be calculated using the date preceding the death of the Spouse.

12.22 Notwithstanding Section 12.20, on Application by an executor of a will or an administrator of an estate, the Court may, by order, vary the amount owed to the Surviving Spouse under this Law, if the Spouses had previously resolved the consequences of the Breakdown of the Marriage or Common Law Relationship by Domestic Agreement or Agreement reached pursuant to Mediation or if that amount would be unconscionable, having regard to, among other things, the fact that any children of the deceased would not be adequately provided for.

12.23 If the Court decides, after the death of a Spouse, that an amount is payable to the Surviving Spouse under this Law, the Surviving Spouse may not, in respect of an Interest

or right in or to the Family Home and the Matrimonial Interests or rights, benefit from Sections 48 to 50.1 of the *Indian Act*.

- 12.24 Subject to section 12.20, an executor of a will or an administrator of an estate must not proceed with the distribution of the estate until one of the following occurs:
- (a) the Surviving Spouse consents in writing to the proposed distribution;
 - (b) the period of one (1) year referred to in sections 10.5 or 10.6 and any extended period the Court may have granted under subsection 10.7 have expired and no Application has been made under Section 12.1 within those periods; or
 - (c) an Application made under section 12.1 is disposed of.
- 12.25 If a Surviving Spouse and the executor of the will or the administrator of the estate enter into a written agreement that sets out the amount which the Surviving Spouse is entitled and how to settle the amount payable, a Court may, on Application by one of them, make an Order to enforce that Agreement unless the Court varies or sets aside all or part of that Agreement according to the provisions of Section 7.5.

13. REGISTRATION, DISPOSITION OR ENCUMBRANCE OF MATRIMONIAL INTERESTS

- 13.1 Any Order rendered under this Law or a notice made under this Section may be registered in the Lands Registry.
- 13.2 A Spouse that is a party to a Domestic Agreement may sign and register in the Lands Registry a notice in the form prescribed by Council setting out:
- (a) the full name and last known address of each Spouse who is a party to the Domestic Agreement;
 - (b) a description of the Family Home or Matrimonial Interest to which the Domestic Agreement relates; and
 - (c) the provisions of the Domestic Agreement that relate to the Family Home or Matrimonial Interest described in the notice.
- 13.3 A Spouse may register the notice described in section 13.2 in the Lands Registry concerning an Interest in Kahnawà:ke Lands that is a Family Home or Matrimonial Interest.
- 13.4 A notice sent under Section 13.3 shall be registered in the Lands Registry if the application is:
- (a) in the form prescribed by the Council;

(b) accompanied by an affidavit, signed by the Spouse attesting to the fact that the Interest in Kahnawà:ke land is a Family Home or Matrimonial Interest.

13.5 Where a notice has been registered in the Lands Registry under sections 13.1, 13.2 or 13.3, no Spouse shall dispose of or otherwise encumber an Interest in the Kahnawà:ke Lands that is a Family Home or Matrimonial Interest unless one of the following occurs:

- (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 Agreement or an Agreement reached pursuant to Mediation;
- (d) the Court has authorized the transaction;
- (e) the Court has released the Interest in the Kahnawà:ke Lands from the application of this section.

13.6 If a Spouse disposes of or encumbers an Interest in Kahnawà:ke Lands that is a Family Home or Matrimonial Interest in contravention of section 13.5, the disposal or encumbrance may, on application to the Court, be set aside.

14. REGULATIONS

14.1 The Mohawk Council of Kahnawà:ke may adopt regulations with respect to any matter outlined in this Law, including:

- (a) regulating the practice and procedures applicable to any Applications or appeals made under this Law;
- (b) regulating the form or content of Domestic Agreements;
- (c) regulating the practice and procedures applicable to Mediation and Agreements reached through Mediation;
- (d) respecting the practice and procedure for implementing Interim Occupation Orders;
- (e) respecting the valuation of Matrimonial Interests;
- (f) respecting the form of any Notices or the registration of any Notices or Orders under this Law;
- (g) respecting the enforcement of any Declarations or Orders; and
- (h) prescribing and regulating any other matter considered just and expedient to attain the ends of justice and carry into effect the purposes and provisions of this Law.

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15. ENFORCEMENT OF ORDERS

- 15.1 Where a person fails to make payments or fails to transfer an Interest or any other Property within the delays specified by Order of the Court, a person in whose favour the Order has been rendered may apply to the Court for:
- (a) An Order for the transfer of a Certificate of Possession or Certificate of Occupation; and/or,
 - (b) A writ of seizure.
- 15.2 In ordering writ of seizure pursuant to Section 15.1, the Court may also Order that the person against whom the Order was made to pay for any and all costs associated with the transfer or seizure.
- 15.3 The Court may, on Application by a person in whose favour an Order has been rendered, vary an Order to require the person against whom the Order was made to pay into the Court the amount payable that was specified in the Order, if the Court is satisfied that it is necessary for the enforcement of the Order.
- 15.4 The Kahnawà:ke Peacekeepers or any other Peace Officers appointed and authorized to act by regulation have the authority to enforce Orders rendered under this Law.

16. PENAL PROVISIONS

- 16.1 No person shall obstruct, interfere or hinder a Kahnawà:ke Peacekeeper or any other Peace Officers appointed and authorized to act by regulation in the carrying out of their duties or mislead them, make false declarations or refuse to disclose information to them.
- 16.2 Any person who fails to abide by an Order or acts in violation of this Law can, upon conviction, be found in contempt of Court and is subject to a fine of not less than \$1000.00 but no greater than \$10,000.00.

17. NO ACTION

- 17.1 No action or proceeding for damages shall be instituted against a Court justice, Kahnawà:ke Court administrator, Peacekeeper, any other Peace Officers appointed and authorized to act by regulation or any person working as an employee or contractor with the Kahnawà:ke Court for any act done in good faith in the administration of that person's duties under this Law.

18. APPEALS

- 18.1 An appeal to an Order or Declaration made by the Court lies with the Kahnawà:ke Court of Appeal in accordance with the Kahnawà:ke Justice Act.
- 18.2 An appeal to an Order or Declaration made by the Court must be filed within thirty (30) days of receipt of the Order or Declaration.
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~~18.3 An appeal from an Order or Declaration of the Court does not operate as a stay or suspend the operation of the Order or Declaration unless the judge hearing the matter decides otherwise.~~

Comment [FW6]: Addition by MCK Legal Services based on Model First Nation Real Property Law provided at National Forum

19. GENERAL PROVISION

19.1 If any part of this Law is for any reason held invalid by a decision of a Court of competent jurisdiction, the invalidated section or subsection shall be severed from and not affect the remaining provisions of this Law.

20. AMENDMENT

20.1 This Law may only be amended using the Kahnawà:ke Community Decision Making Process established by Mohawk Council of Kahnawà:ke Executive Directive, as may be amended from time to time. Any amendments to this act shall not affect the Applications that have been filed at the time that the amendment comes into force.

21. TRANSITION

21.1 Spouses can only make Applications pursuant to this Law for the Breakdown of a Marriage or Common Law Relationship that occurs after the coming into force of this Law.

22. COMING INTO FORCE

22.1 Further to the will of the Kanien'kehá:ka of Kahnawà:ke, as expressed through the Kahnawà:ke Community Decision Making Process, this Law is enacted on _____ by MCR No:___/2013-2014. The provisions of this Law come into force on the dates set out in MCR No:___/2013-2014 or on such later dates as are set out in subsequent resolutions of the Mohawk Council of Kahnawà:ke.