

LEQ'A:MEL FIRST
NATION MATRIMONIAL
REAL PROPERTY LAW
2011



MATRIMONIAL REAL PROPERTY LAW 2011

With the wisdom of the past, the community of Leq'a:mel will be a healthy, safe, self-sustaining home where we live in harmony, creating a better future for all generations. ~ March 10, 2009

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WHEREAS Leq'a:mel has enacted the *Leq'a:mel Land Code* and has thereby taken control of its reserve lands and resources in accordance with the Framework Agreement on First Nation Land Management;

AND WHEREAS pursuant to the Framework Agreement on First Nation Land Management and the *Leq'a:mel Land Code*, Leq'a:mel agreed to enact rules and procedures applicable on the breakdown of a marriage, to the use, occupancy and possession of Leq'a:mel Land and to the division of Interests in that land;

AND WHEREAS Leq'a:mel intends to provide rights and remedies, without discrimination on the basis of sex, to Spouses who have or claim Interests in Leq'a:mel Land upon the breakdown of their marriage;

AND WHEREAS Leq'a:mel intends to respect the following general principles with respect to the use, occupancy and possession of matrimonial real property on Leq'a:mel Land, and the division of Interests in that land, on the breakdown of a marriage:

- (a) the children of the Spouses, if any, should have a right to reside in the Matrimonial Home until the age of majority or until other arrangements have been made in the best interests of those children;
- (b) each Spouse should have an equal right to possession of the Matrimonial Home;
- (c) each Spouse should be entitled to an undivided half interest in the Matrimonial Home as a tenant in common; and,
- (d) only members of Leq'a:mel are entitled to hold a permanent interest in Leq'a:mel Land or a charge against a permanent interest in Leq'a:mel Land.

AND WHEREAS Leq'a:mel further intends to respect the following procedural principles with respect to the use, occupancy and possession of matrimonial real property on Leq'a:mel Land, and the division of Interests in that land, on the breakdown of a marriage:

- (a) the right of Spouses to make their own agreement as to the disposition of Interests in Leq'a:mel Land in the event that their marriage does, or has, broken down;
- (b) the value of mediation where the Spouses have not reached, or are unable to reach, their own agreement as to the disposition of Interests in Leq'a:mel Land in the event that their marriage does break down, or has broken down; and
- (c) the right of the Spouses to have access to a court of competent jurisdiction to deal with all of their property rights, entitlements and obligations on the breakdown of their marriage, subject to Leq'a:mel law where their property includes an Interest in Leq'a:mel Land.

NOW THEREFORE this *Leq'a:mel Matrimonial Real Property Law* is hereby enacted as a Law of the Leq'a:mel.

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PART 1 - APPLICATION

1. This Law may be cited as the *Leq'a:mel Matrimonial Real Property Law, 2011*.
2. This Law applies only to Interests in, or claimed pursuant to this Law in, Leq'a:mel Land as defined in the *Leq'a:mel Land Code*.
3. Subject to its terms, this Law will 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 Leq'a:mel Land, or other entitlements or obligations of Spouses.
4. For the purposes of this Law, Unless stated otherwise, definitions in the *Leq'a:mel Land Code* will apply. For the purposes of this Law, the following definitions will apply:
 - a. "Child" means a child born in or out of wedlock, a legally adopted child or a child adopted in accordance with Leq'a:mel custom;
 - b. "Common-law Marriage" means two persons not married to each other, who have lived together as Spouses for a period of not less than one year;
 - c. "Council" means the Chief and Councillors of the Leq'a:mel or any successor elected government of the Leq'a:mel;
 - d. "Inter-spousal Contract" means:
 - i. a marriage contract entered into between Spouses who are married to each other, or intend to marry, made in writing, 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 an Interest in Leq'a:mel Land; or
 - ii. a separation agreement entered into between Spouses who are married to each other and are living separate and apart, made in writing, 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 an Interest in Leq'a:mel Land;
 - e. "Interest" includes any legal or equitable interest held in possession by either Spouse, or both Spouses, in Leq'a:mel Land;
 - f. "Lands Office" means the Leq'a:mel Lands Office established under Part 3 of the *Leq'a:mel Land Code*;
 - g. "Matrimonial Home" means an Interest in Leq'a:mel Land that is, or, if the Spouses have separated, was at the time of 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;
 - h. "Member" means a person whose name appears on the Leq'a:mel Band Membership List; and,

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- i. "Spouse" means a person who:
 - i. is married to another person, whether by a traditional, religious or civil ceremony, and includes a Spouse by Common-law Marriage; or,
 - ii. has entered into a marriage that is voidable or void, in good faith on the part of a person relying on this clause to assert any right under this Law.
5. This Law does not apply to an Interest in Leq'a:mel Land held by either Spouse, or both Spouses, where neither Spouse is a Member.
6. For greater certainty, the definitions of Spouse and references to marriage in this law include:
 - a. Spouses of the same gender;
 - b. relationships entered into before this Law takes effect; and,
 - c. 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 divorce of the Spouses.
7. 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 Leq'a:mel Land 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.

PART 2 - INTERSPOUSAL CONTRACTS

8. It is the intention of this Law to respect the agreement of the parties to a marriage as to the use, possession, occupancy, or disposition of an Interest in Leq'a:mel Land, including an Interest that is a Matrimonial Home.
9. Subject to this Part, a provision in an Inter-spousal Contract that reflects the agreement of the parties with respect to an Interest in Leq'a:mel Land, including an Interest that is a Matrimonial Home, is valid, binding and enforceable.
10. Notwithstanding section 9, a provision in an Inter-spousal Contract that would give, award, acknowledge or create an Interest in Leq'a:mel Land greater than a life estate to occupy or possess an interest in Leq'a:mel Land, in favour of a Spouse who is not a Member, is void.
11. In applying section 9, a valid life estate to possess or occupy an Interest will be measured by the life of the person intended to enjoy it.

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12. Subject to this law, a court of competent jurisdiction may, on application under Part 4, set aside a provision of an Inter-spousal Contract with respect to an Interest in Leq'a:mel Land:
- a. if a party to that contract failed to disclose to the other all of that party's Interests in Leq'a:mel Land, or any material information in respect of those Interests;
 - b. if a party did not understand the nature or consequences of the provision; or,
 - c. otherwise in accordance with the law of contract.
13. This Part applies whether the parties entered into the Inter-spousal Contract on, before or after the date that this law comes into force and effect.

PART 3 - MEDIATION

14. Either Spouse may commence mediation with respect to an Interest by providing the BC Mediator Roster Society and the other Spouse with a written request for mediation setting out the general subject area of the dispute.
15. The Spouses shall cooperate with the BC Mediator Roster Society and with one another, in selecting a mediator from the BC Mediator Society panel of neutrals, and in scheduling mediation proceedings.
16. BC Mediator Roster Society, either Spouse may, in writing, request that the BC Mediator Roster Society appoint a mediator within fourteen (14) days of receipt of the request.
17. 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.
18. Within fourteen (14) days of the completion of the process described in section 17, each Spouse shall provide to the mediator a brief written summary of the relevant facts and the issues to be resolved, and upon receipt of both summaries the mediator shall deliver copies of the summaries to the other Spouse as soon as reasonably possible.
19. A The 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.
20. The mediator may
- a. conduct a mediation in joint meetings or private caucus convened at locations the mediator designates after consulting with each Spouse; and
 - b. determine their own rules and procedures for the conduct of the mediation in accordance with the BC Mediation Roster Society standards.
21. A Spouse may attend mediation with or without legal counsel.

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22. A Spouse who receives a notice of appointment with a mediator shall attend the mediation.
23. The mediator shall proceed expeditiously with the mediation and use best efforts to assist the Spouses in resolving any issues with respect to interest in Leq'a:mel Lands and possession of the Matrimonial Home.
24. Subject to sections 25 and 26, 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 mediation.
25. For greater certainty, section 24 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.
26. 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 separation agreement shall be drafted by the 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 separation agreement. Once the agreement is signed each Spouse shall receive a copy of the separation agreement.
27. A mediator shall prepare a report if:
- one of the Spouses refuses to attend the mediation;
 - the mediator decided that the mediation was not suitable for the Spouses; or,
 - if no issues were resolved by negotiated agreement;
- The report shall set out:
- whether both Spouses were willing to proceed with the mediation;
 - whether the mediator decided that the mediation should not proceed; and
 - that the mediation did not result in a negotiated agreement.
28. If 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.
29. The mediator's report described in section 28 shall be in writing and shall be sent to both Spouses and may be submitted to the court to assist the court in making a determination whether there has been a mediation.
30. Unless otherwise agreed, each Spouse shall be responsible for an equal share of the costs of mediation.

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31. 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, including any mediation services offered by Sto:lo Nation, on the breakdown of a marriage in relation to any matter other than an Interest in Leq'a:mel Land, or to restrict the Spouses from otherwise reaching agreement with respect to an Interest in Leq'a:mel Land, provided that such agreement results in a separation agreement that meets the requirements set out in this Law.

PART 4 - ACCESS TO A COURT OF COMPETENT JURISDICTION

GENERAL

32. For the purposes of this Part, "court of competent jurisdiction" and "court" is intended to mean the Family Law Division of the British Columbia Supreme Court.
33. For greater certainty, no court other than a court of competent jurisdiction will exercise jurisdiction under this Law in respect of an Interest in Leq'a:mel Land.
34. In the event of the breakdown of a marriage, a Spouse may apply to a court to determine a dispute in relation to an Interest in Leq'a:mel Land provided that the Spouse has first complied with Part 3 or has been relieved of such compliance by a provision of this Part.
35. No court will take or exercise jurisdiction under this Part without first enquiring whether or not the Spouses have pursued and participated in mediation pursuant to Part 3 and, if there has been no mediation, the court may:
- a. direct that there be mediation pursuant to the rules of the court or under Part 3; or
 - b. where a requirement for mediation may result in an injustice, proceed to deal with an application under this Part.
36. Subject to this law, a court may deal with Interests in Leq'a:mel Land held by either Spouse, or both Spouses, in a manner consistent with the provisions of the British Columbia *Family Relations Act* relevant to the ownership, possession or occupancy of real property, the division of interests in real property, and net family property representing the value of interests in real property.
37. Notwithstanding section 36, the fact that an Interest in Leq'a:mel Land does not include future or contingent Interests in Leq'a:mel Land will not be taken to confer jurisdiction upon a court over those Interests under this Law.
38. Notwithstanding sections 63 and 65, a court may make an appropriate and equitable order on the ground of unconscionability where a Spouse has intentionally, recklessly or fraudulently depleted net family property that is an Interest in Leq'a:mel Land and that would otherwise be subject to the presumption set out in that section.
39. Subject to this law, a court may make any order in relation to an Interest in Leq'a:mel Land 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 Leq'a:mel Land, including:

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- a. an order that an Interest in Leq'a:mel Land be transferred to a Spouse absolutely, where permitted under this Law;
 - b. an order that an Interest in Leq'a:mel Land be subject to a lease by one Spouse to the other Spouse for a term of forty-nine (49) years consistent with Leq'a:mel law, subject to such terms and conditions as the court deems just in all the circumstances; or,
 - c. an order that an Interest in Leq'a:mel Land be subject to a lease by one Spouse to a third party for a term of forty-nine (49) years consistent with Leq'a:mel law for the purposes of dividing the proceeds, subject to such terms and conditions as the court deems just in all the circumstances.
40. No order will be made under paragraph 39(a) in favour of a Spouse who is not a Leq'a:mel Member.
41. Subject to this Law, a Spouse may apply to a court for determination of a question in relation to the right to possession of an Interest in Leq'a:mel Land, and the court may make an order declaring the right of possession to the Interest.
42. Where the Interest of a Spouse in Leq'a:mel Land is held through a corporation, the court may order:
- a. that Spouse to transfer shares in the corporation to the other Spouse; or,
 - b. the corporation to issue shares in the corporation to the other Spouse.
43. An order will not be made under this Part which significantly impairs the operation of a business or farm on Leq'a:mel Land unless there is no reasonable alternative method of achieving an equitable result between the Spouses.
44. Where a proceeding has been commenced under this Part, and either Spouse dies before all issues relating to Interests in Leq'a:mel Land have been disposed of by a court, the surviving Spouse may continue the proceeding against the estate of the deceased Spouse.
45. Nothing in this Law relieves any party of the requirement to observe the rules and procedures of a court in relation to matrimonial causes.
46. 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 Leq'a:mel Land, and to that extent, this Law will apply.
47. It is the intention of this Law that all rights, entitlements and obligations of Spouses be dealt with equitably on the basis of all their respective circumstances, including rights, entitlements and obligations in respect of Interests in Leq'a:mel Land.

PART 5 - MATRIMONIAL HOME

48. Whether or not an Interest is a Matrimonial Home is a question of fact.

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49. Where an Interest in Leq'a:mel Land includes a Matrimonial Home that is normally used for a purpose additional to residential purposes, the Matrimonial Home includes only that part of the Interest that may reasonably be regarded as necessary for use and enjoyment as a residence.
50. Subject to the limitations inherent in the nature of Leq'a:mel Land, both Spouses have an equal right to possession of a Matrimonial Home.
51. Where only one Spouse holds an Interest in Leq'a:mel Land that is a Matrimonial Home, the other Spouse's right of possession is:
- a. personal against the Spouse who holds the Interest; and
 - b. unless an Inter-spousal Contract or court order provides otherwise, ends when the Parties cease to be Spouses.
52. No Spouse will dispose of or encumber 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 Inter-spousal Contract;
 - d. a court order has authorized the transaction; or
 - e. a court has released the Interest in Leq'a:mel Land from the application of this section.
53. If a Spouse disposes of or encumbers a Matrimonial Home in contravention of section 52, the disposal or encumbrance may, on application to a court, be set aside.
54. Section 53 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.
55. Where a person proceeds to realize upon an encumbrance or execution against a Matrimonial Home, the Spouse who has a right of possession under section 50 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.
56. A court may, on the application of a Spouse or a person claiming an Interest in Leq'a:mel Land that is a Matrimonial Home:
- a. make a declaration whether or not the Interest is a Matrimonial Home;

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- b. where a court finds that the Spouse whose consent is required under section 52 cannot be found, is not available, is declared incompetent due to mental incapacity, is otherwise incapable of giving or withholding consent, or is unreasonably withholding consent, authorize a disposition or encumbrance of the Interest in Leq'a:mel Land, provided that such disposition or encumbrance is otherwise authorized under Leq'a:mel law, and the court may prescribe such conditions including the provision of or payment for other comparable accommodation, that the court considers appropriate; or
- c. make an order under section 52(d) or (e), subject to such terms and conditions as the court determines to be equitable and just in all the circumstances.

57. Regardless of which Spouse holds an Interest in Leq'a:mel Land that is a Matrimonial Home, a court may on application:

- a. order the delivering up, safekeeping and preservation of the Interest in Leq'a:mel Land that is a Matrimonial Home;
- b. direct that one Spouse be given exclusive possession, consistent with this law, of the Interest or part of the Interest that is a Matrimonial Home for such period as the court may direct, and release any other Interest in the Matrimonial Home from the application of this Part;
- c. authorize a lease for a term of forty-nine (49) years of a Spouse's Interest in Leq'a:mel Land that is a Matrimonial Home, subject to the other Spouse's right of exclusive possession as ordered;
- d. where it is shown that a Spouse has disposed of or encumbered an Interest in Leq'a:mel Land that is a Matrimonial Home in a fraudulent manner calculated to defeat the rights of the other Spouse under this Law, or has falsely and knowingly represented in connection with a disposition or encumbrance that the Interest in Leq'a:mel Land is not a Matrimonial Home, direct the other Spouse to substitute any other Interest the other Spouse may hold in Leq'a:mel Land for the Matrimonial Home subject to such conditions as the court considers appropriate;
- e. make any interim or temporary order to give effect to the purposes of this Law or to protect the rights of a Spouse; and,
- f. make any ancillary order, including an order as to costs, that the court deems necessary to give effect to this Law.

58. A court, in considering whether to direct that one Spouse have exclusive possession of an Interest in Leq'a:mel Land that is a Matrimonial Home, will be guided by the principle that the custodial parent of a child should have exclusive possession of the family residence for a period sufficient to ensure that the child, or the youngest child if there is more than one child, reaches the age of majority and has the opportunity to complete their education, provided that observance of this principle is consistent with the best interests of the child.

59. Where both Spouses share joint custody of a child or children, the principle set out in section 58 will be adapted to favour the Spouse with whom the child or children principally reside, but if the child or children reside substantially equal periods of time with both Spouses, then the principle will be neutral as between the Spouses.

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60. In applying the principle set out in sections 58, a court may have regard to the fact that one or more of the children are not Members.

PART 6 – LEQ’A:MEL LAND REGISTER

61. Any order granted under this law or a notice made under this section may be registered in the Leq’a:mel Lands Register.

62. A Spouse who is a party to an Inter-spousal Contract may sign and register in the Leq’a:mel Lands Register a notice in the prescribed form setting out:

- a. the full name and last known address of each Spouse who is a party to the Inter-spousal Contract;
- b. a description of the Matrimonial Home or Interest in Leq’a:mel Lands to which the Inter-spousal Contract relates; and,
- c. The provisions of the Inter-spousal Contract that relates to the Matrimonial Home or Interest in the Leq’a:mel Lands described in the Notice.

PART 7 - GENERAL PROVISIONS

63. An Interest in Leq’a:mel Land received by way of gift or inheritance by only one Spouse from a third person who is a family member, or by only one Spouse together with one or more members of that family, will be deemed, subject to proof to the contrary, to have been transferred with the intention that the Interest should continue to be held within that family exempt from any claim of the other Spouse, but the Interest, the income from the Interest and the value of the Interest are to be excluded from the transferee Spouse’s net family property.

64. Section 63 does not apply with respect to an Interest in Leq’a:mel Land that is a Matrimonial Home.

65. The possession of an Interest in a Leq’a:mel Land under this Law which is held by Certificate of Possession by a person who is not a Member is not assignable and will be deemed to terminate when that person ceases to use or occupy that interest personally.

PART 8 - ENFORCEMENT AND OFFENCES

66. A person who contravenes an order made by a court of competent jurisdiction pursuant to this Law in relation to an Interest in Leq’a:mel Land is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both.

67. A fine payable under section 66 will be remitted to the Leq’a:mel by the court, after reasonable court costs have been deducted.

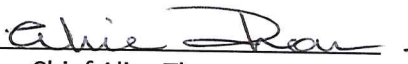
68. This Law will come into force on a date set by Resolution.

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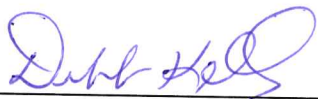
PART 9 – COMING INTO FORCE

9. This Law shall come into force and effect on the date it is passed by Council Resolution after complying with the requirements of Part 30.0 of the Land Code.

BE IT KNOWN that this Law entitled Leq'a:mel Matrimonial Real Property Law is hereby enacted by a quorum of Council at duly convened Council meeting of the Leq'a:mel First Nation held on 19 of SEPTEMBER, 2011.


Chief Alice Thompson


Councilor Lawrence de Vos


Councilor Deborah Kelly


Councilor Michael Kelly

Councilor Barb Leggat


Councilor Peter McDonald


Councilor Darrel McKamey