

SKAWAHLOOK FIRST NATION

SUMMARY OF SPOUSAL PROPERTY LAW

Introduction:

Skawahlook's Land Advisory Committee has prepared a draft Spousal Property Law. This Law is to ensure that property on reserve that is held by spouses in a marriage or in a common-law relationship can be fairly dealt with if the relationship ends. Currently there is no law in Canada that deals with reserve property on the break-up of a marriage or marriage-like relationship. This Law enables the BC Supreme Court to treat spouses fairly regarding the division of property on reserve when relationships end. It also gives spouses a set of ground-rules they can use to negotiate fair settlements between them without going to court. Importantly, the Law protects the interests of the Band by ensuring that no non-members can get permanent interests in Skawahlook reserve lands. A person who holds a permanent interest in land can pass that interest on to their heirs (e.g. sons, daughters) in their will because a permanent interest in land is an interest which survives a person's death. However, non-members can get short- or long-term non-permanent interests in Skawahlook reserve lands under the Law, in certain circumstances. Some examples of this are set out below.

Key Points:

- The Law applies equally to married or common-law spouses and to same sex marriages (see "Spouse" in definitions section).
- The Law applies only to spousal property that is on Skawahlook reserve land (section 3 and definitions section).
- Under the Law, no non-member spouse can receive a permanent interest in Skawahlook reserve land (sections 8, 22(2)). However, a non-member spouse can obtain the right to live in a matrimonial home on a Skawahlook reserve under certain circumstances; for example when that spouse has primary responsibility for a child of the marriage (section 33(1)(b)) or through a Domestic Contract (section 8) or where a judge orders it (section 22(1)(d)). For example, where non-member spouses are elderly or disabled, or where they have been long-term residents of the reserve, it could be argued that they should be able to live on reserve for the balance of their life after marriage breakdown. Non-members cannot, however, receive any permanent interest in Skawahlook reserve lands that they can pass on in a will to their heirs.
- Under the Law, spouses are encouraged to agree on how they will possess or divide their spousal property on reserve if their relationship ends (Part 2)
- Part 3 of the Law encourages spouses to utilize the traditional Sto:lo dispute resolution process, Qwi:qwelstom, to resolve disputes between them on relationship breakdown, including disputes about the possession and/or division of property on Skawahlook reserve lands.

- The Law sets out when and how spouses can use the BC courts to assist them to resolve disputes over spousal property on reserve (Part 4).
- Council has the opportunity to appear before the courts to describe the unique circumstances involved with reserve lands, and Band members' interests in these lands, if an issue is brought before the courts under the Law (section 19(2)).
- The court can make a number of different orders concerning the possession and/or division of property on reserve, depending on the circumstances. For example, the court can order that one spouse lease a matrimonial home to the other spouse for a specified period of time (section 22(1)(d)). Another example is that the court can order that a spouse who is a member make a payment to a spouse who is not a member where the non-member spouse can prove that he or she made a contribution to the acquisition, upkeep or improvement of the home that he or she should be compensated for (section 22(1)(e)).
- The courts can also make an order for emergency exclusive occupation of a matrimonial home for up to 90 days to a spouse, even if that spouse is a non-member, if family violence has occurred or if a spouse or child requires immediate protection (section 34).
- The Law can be amended, but only with the consent of a majority of eligible voters at a meeting where at least 10% of Skawahlook's eligible voters are present (section 35).