



Highlights of the Membertou Family Homes Law 2016

On April 30, 2016, the Membertou Family Homes Law (MFHL) became law in Membertou. In this special edition of the *Maupeltu Ta'n Telsutekek* newsletter, key aspects of the law are highlighted.

Who does it apply to?

Married and registered domestic partnership couples where one or both are Band Members for the purposes of division of property, exclusive occupation orders and emergency exclusion orders. It **does not apply** to common-law partners, or Membertou-owned rental homes except for emergency exclusion orders, and the ability to determine matters in a spousal agreement.

Why sign a Domestic Agreement?

Band Members can contract-out of the division-of-property sections of the law by entering into a domestic agreement with their spouse. Members can specifically state that they want their non-member spouse or common-law partner to have a life interest or the entire value of the property when they pass.

What are the differences between 'Common-law Partner' and 'Spouses'?

Common-law partner consent is not required to hinder or sell the family home; spousal consent is. Common-law partners have no right to a division of the family home, or to exclusive occupation orders, unless set out in a separate spousal agreement.

A **"spouse"** is a person who (a) is married to another person, whether by a traditional, religious or civil ceremony; (b) is in a domestic partnership

"Common-law partners" are (a) two (2) persons who are not married to each other, or in a domestic partnership, and who have lived together for a period of not less than five (5) years in a conjugal relationship; or (b) two (2) people who are not married to each other or in a domestic partnership, and who live together in a conjugal relationship and who have a child or children of the relationship.

No Rights Under MFHL:

If you have been living together less than five (5) years, and do not have a child together, the MFHL does not apply and a spousal agreement cannot be used under the MFHL.

No Ownership by a Non-Member Ever:

A provision in a domestic agreement that would give, award, acknowledge or create an interest in family home greater than a life estate to occupy or possess an interest in family home, in favour of a spouse who is not a Band Member, is void.

Emergency Protection Order: A spouse or common-law partner may make an "ex parte" application for an emergency protection order, and may do so even if that person has been forced to vacate the family home as a result of domestic violence.

What are the non-member Survivor Rights?

In the event of the passing of the member spouse, the non-member spouse has a right to stay in the Family Home for one year and can apply to court for an extension. They must continue to maintain the house. The heirs must wait to take occupation. A spousal agreement can be used to give the surviving spouse a life interest.

Definition of 'Family Violence' under the MFHL

"Family violence" means any of the following acts or omissions committed by a spouse or common-law partner against: 1) the other spouse or common-law partner, 2) any child in the care of either spouse or common-law partner, or 3) any other person who habitually resides in the family home, whether or not such act or omission occurs in the family home:

- (a) An intentional application of force without lawful authority or consent, excluding any act committed in self-defence;
- (b) An intentional or reckless act or omission that causes bodily harm or damage to property;
- (c) An intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or damage to property;
- (d) Sexual assault, sexual abuse or the threat of either;
- (e) Forcible confinement without lawful authority; or
- (f) Criminal harassment.

In Domestic Violence Situations:

A peace officer, or other person, may apply for an emergency protection order on behalf of a spouse or common-law partner either:

- (a) With that spouse's or common-law partner's consent; or
- (b) If that spouse or common-law partner does not consent, with leave of the court.

Valuation of Family Home:

When a relationship breaks down, each spouse is entitled to an amount equal to one-half of the value on the valuation date, of the appreciation to a CP-owned family home from the date that the spouses became spouses.



Upcoming Events

Governance Committee Meetings

- Thursday, April 26, 2017
- Thursday, May 25, 2017
- Thursday, June 29, 2017

All meetings are at **Wallace Bernard Seniors' Centre (113-B Membertou St.)** from **10:00 a.m. - 1:00 p.m.**

**Please note above dates are subject to change. Confirm details with Cheryl prior to event.*

Video recorded training sessions available at:
<http://www.membertou-governance.com>

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