



SOOWAHLIE FIRST NATION LANDS DEPARTMENT



DRAFT SPOUSAL REAL PROPERTY LAW (SUMMARY MARCH, 2017)

LAND CODE LAWS

This is a draft law developed by the Soowahlie Land Governance Advisory Committee under the *Soowahlie Land Code*. The draft law will be brought to the community for review and discussion before it is passed.

WHAT IS SPOUSAL REAL PROPERTY?

- “Real property” is real estate. It includes land and homes and buildings attached to the land. This is different from “personal property” which means things that are owned but not attached to land such as trucks, boats and jewelry.
- “Spousal real property” means land or homes that are owned or used by spouses. It is mostly about family homes.

WHY DO WE NEED THIS LAW?

The Soowahlie *Land Code* requires Council to pass a spousal real property law within 12 months of the Land Code coming into effect. This is to fill a gap in the law. Provincial laws relating to child support and other parts of divorces apply on Reserve lands but provincial land laws do not apply on Reserve land. So, we need a Soowahlie Land Code law to say what happens to family homes on Reserve if there is a divorce.

SUMMARY OF KEY POINTS IN DRAFT LAW

- The law only applies to married or common-law spouses where at least one of them is a Soowahlie Member.
- The law only applies on Soowahlie Reserve land.
- The law only deals with family homes held by spouses or former spouses.
- Federal and provincial laws still apply in relation to divorces, child support, spousal support etc. This law is just about the spousal real property on Soowahlie Reserve lands.
- The law does not deal with ownership of CP lands. The Committee and Council felt very strongly that CP lands should stay in the name of the families that hold them no matter what happens with divorces.
- The law allows and encourages spouses to develop and register pre-nuptial, marriage or separation agreements to set out their agreement on what happens if they end up in a divorce.
- The law sets out a basic principle that each spouse should get half of the value of the family home appraised at the date of their marriage or common-law relationship or at the date they bought or

acquired the home. However, this can be varied depending on what each spouse put into mortgage payments, renovations and repairs, child care, etc.

- The law aims to prevent one spouse from getting a mortgage or second mortgage on the family home without the other spouse's agreement.
- The law authorizes provincial, federal or First Nation courts to issue various orders including:
 - Emergency orders to protect one spouse or one or more children if there is violence or abuse.
 - Orders for one spouse to leave the home for a while.
 - Orders for one spouse to lease or temporarily give the family home (but not the CP land) to the other spouse for up to 25 years.
 - Orders about the amount of compensation or value that one spouse must pay to the other.
- It is important to note that the draft law does not provide the power to a court to order the sale of a family home. This protects the family home and keeps it in the name of the original family but it will also make it more difficult for the spouse who is leaving to collect what is owed to them.

DISCLAIMER

***Disclaimer: This summary is an effort to explain the draft law in plain English.
However, this summary has no legal status: the law itself is the authoritative version.***

QUESTIONS

We do welcome any questions about the draft law and any input on how to improve it. There are 30 days for you to provide comments to your Chief and Council. After that date, the law will be in force once passed by Chief and Council.