

## Purpose of this Pamphlet

This pamphlet is not intended to be legal advice. It is to provide information on how a spouse or common-law partner can apply for an order for exclusive occupation of the **family home** on a reserve in Nova Scotia. An exclusive occupation order may:

- Be for a short or long period of time;
- Allows one spouse or common law partner to exclusively stay in the family home on reserve; and
- Excludes the other spouse or common law partner from coming to the family home on reserve or only allows them on the premises under certain conditions.

## Application For Exclusive Occupation

In certain communities, the Chief and Council or its delegated authority has the ability to make decisions regarding the occupancy of homes on its reserve. Notwithstanding this recognized authority, a spouse or common-law partner resident on reserve retains the right to apply for exclusive occupation of the family home under section 20 of the **Family Homes on Reserves and Matrimonial Interests or Rights Act**.

## Final Steps

1. A respondent and other Required Persons can reply to the Application by preparing an Affidavit, containing the same type of information. The respondent may also complete a Notice of Contest (Nova Scotia Supreme Court) or Response to the Application (Nova Scotia Supreme Court- Family Division).
2. The applicant may prepare a second affidavit to respond to any affidavits filed; however, may only reply to anything new raised within these affidavits.
3. Attend Court at the date and time specified in the Application.
4. If the applicant is successful in obtaining an Order for Exclusive Occupation, they **must** provide a copy of the Order to the Chief and Council of the First Nation and the Minister of Indigenous and Northern Affairs Canada.

## Legal Assistance

**This pamphlet is provided for informational purposes only and should not be considered as legal advice.**

The applicant or respondent may choose to have a lawyer at any point during the process and they would be responsible to pay their own legal costs.

Contact Nova Scotia Legal Aid at:  
[www.nslegalaid.ca](http://www.nslegalaid.ca).



## Nova Scotia

# Applying for an Exclusive Occupation Order for a Family Home on Reserve



*A guide to navigating the Supreme Court rules of Nova Scotia when applying for Exclusive Occupation of the family home under section 20 of the Family Homes on Reserves and Matrimonial Interests or Rights Act*

**The Centre of Excellence for Matrimonial Real Property**  
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## Background

The *Family Home on Reserves and Matrimonial Interests or Rights Act* (the “Act”) came into force on **December 16, 2013**. The Provisional Federal Rules (PFR’s) contained in the Act came into force **December 16, 2014** and apply (with some exceptions) to all First Nations with reserve lands. The PFR’s no longer apply to First Nations who have passed their own matrimonial real property (MRP) law, under this *Act*, or under the *First Nations Land and Management Act*. **It is important to determine which rules apply in your circumstances.** As of May 12, 2016 the following communities have their own Matrimonial Real Property Law **and this Federal Act does not apply**: Patqnek Mi’kmaq Nation, Pictou Landing First Nation, Millbrook First Nation, Sipekne’katik, Bear River First Nation and Membertou First Nation.

**NOTE: This Act only applies where the breakdown of the relationship occurred on or after December 16, 2014.**

As per Clause 2.1 of the Definitions of the *Act*, a **family home** means a structure – that need not be affixed but that must be situated on reserve land — where the spouses or common-law partners, habitually reside or, if they have ceased to cohabit or one of them has died, where they habitually resided on the day on which they ceased to cohabit or the death occurred. If the structure is normally used for a purpose in addition to a residential purpose, this definition includes only the portion of the structure that may reasonably be regarded as necessary for the residential purpose.

## Section 20(1) of the Act states:

“A court may, on application by a spouse or common-law partner whether or not that person is a First Nation member or an Indian order that the applicant be granted exclusive occupation of the family home and reasonable access to that home, subject to any conditions and for the period that the court specifies.”

Under section 20(1) of the Act, an Exclusive Occupation Order can be obtained for a family home on reserve by a spouse or common law partner regardless of whether the applicant has band membership or Indian status. Further, an Exclusive Occupation Order can be obtained for a family home regardless of whether the family home is Band owned, leased or owned privately.

An Exclusive Occupation Order does not change who owns the family home.

## Application to the Supreme Court Family Division

To apply for an Exclusive Occupation Order, the applicant must file appropriate documents with the Nova Scotia Supreme Court Family Division (if filing in Halifax, Sydney or Port Hawkesbury) or the Nova Scotia Supreme Court (if filing elsewhere in Nova Scotia).

The person making the Application is called the “applicant” and the person who the Application is against is called the “respondent”.

1. First, the applicant must select the appropriate Court, being either the Nova Scotia Supreme Court Family Division or Nova Scotia Supreme Court. The applicant must complete and file Court forms for that Court. The appropriate Court forms for this Application can be found on the Nova Scotia Family Law website: <http://www.nsfamilylaw.ca/guide-making-application-court/what-you-need-file>
2. The Notice of Application (or Notice of Application in Chambers), requires the applicant to outline the “Grounds for Order”. In addition to other important information the applicant wants the Court to know, the applicant must include the following as one of the grounds: “Exclusive Occupation of the family home, pursuant to s.20 of the *Family Home on Reserve and Matrimonial Interests or Rights Act*”

**Note: S. 41(2) states “On the council’s request, the court that is seized of the application must, before making its decision, allow the council to make representations with respect to the cultural, social and legal context that pertains to the application and to present its views about whether or not the order should be made.”**

## Application to the Supreme Court Family Division (Continued)

3. In addition to the above documents, the applicant must also file an Affidavit and a Statement of Property.

Information about how to write an Affidavit can be found on the Nova Scotia Family Law website at:

<http://www.nsfamilylaw.ca/guide-making-application-court/writing-affidavit-application>

### The applicant should include the following information in the Affidavit:

- a. Information about their relationship, including whether they have children and their ages;
- b. Information about any property the couple own (both on and off reserve), information about the family home and who all is living within the family home;
- c. How long the applicant has lived on reserve and in the family home;
- d. Whether either spouse/partner has any medical conditions;
- e. Other suitable housing available to either the applicant or respondent;
- f. If there are any existing Court Orders or agreements between the spouses/partners; and
- g. If there has been any family violence.

## Next Steps: Service of Documents

The applicant must serve a copy of all the documents filed with the Court on anyone who might be affected by the Order, including the 1) the other spouse/common law partner (respondent), 2) other adults living in the family home and 3) Chief and Council (the “Required Persons”).

To serve a copy:

1. The applicant must arrange for the Required Persons to have notice of a court proceeding. This is done by you or someone you appoint to hand-deliver the package of documents filed with the Court directly to the Required Persons.
2. The Required Persons must be served with the documents a minimum of 10 days before the hearing, or if the Court has arranged a special or appointed time to hear the Application, the Required Persons must then have 25 days’ notice in advance of the scheduled Court date.
3. Whoever personally delivers the documents to the person served, must complete an Affidavit of Service and file it with the Court.
4. The Nova Scotia Family Law website link below provides more information about Personal Service. A form for the Affidavit of Service can also be found in the link: <http://www.nsfamilylaw.ca/guide-filing-divorce-nova-scotia/personal-service>

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