



SAGAMOK ANISHNAWBEK

# GUIDE BOOK

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## FAMILY HOMES LAW

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The intention of this Law to provide a fair process and direction for dealing with the breakdown of a marriage/relationship or the death of a spouse. It includes the rights, entitlements and obligations with respect to interests in reserve land, including the family home.



**“Akin to the river we are nestled against, we seek to move forever forward, never ceasing to progress.”**



## **What is the Family Homes Law and why does it matter?**

The *Federal Family Homes on Reserves and Matrimonial Interests or Rights Act (FHRMIRA)* was created to address gaps that currently exist in the Indian Act. The *Sagamok Anishnawbek Family Homes Law* is our alternative to this legislation and only applies on reserve. The Law provides a fair process and direction for dealing with the breakdown of a marriage/relationship or the death of a spouse. It includes the rights, entitlements and obligations with respect to interests in reserve land, including the family home.

## **What about Provincial Law? Does it apply on-reserve?**

Ontario Provincial laws do not apply on reserve which is why the federal government tabled Bill S-2 (FHRMIRA) that came into force on December 16, 2014.



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**Sagamok Anishnawbek has chosen to draft a custom Matrimonial Real Property (MRP) Law rather than follow the Federal legislation.**

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The Sagamok Anishnawbek Law that deals with MRP on reserve and replaces FHRMIRA is called the ***Sagamok Anishnawbek Family Homes Law***.

Under the FHRMIRA sections 7 – 11, Power of the First Nation to enact their own laws; Community Approval, allows our community to tailor an MRP Law that respects and honours our traditions, practices and beliefs.

It is important for our community, to decide how housing and lands are addressed.

It is also important to clearly define the interests in First Nations land for non-member spouses and children. The treatment of non-member spouses and children is the most crucial aspect of the Law and each First Nation wishing to enact their own MRP Law must pay careful attention to address this.

The Sagamok Anishnawbek Family Homes Law will also complement our housing and residency laws.

# FOUNDATIONS FOR ENACTING AN MRP LAW



**In order for Sagamok Anishnawbek to enact an MRP Law, the law needs to be created with community support and management.**

Community consultation is the first step in determining and addressing the needs of our First Nation with regard to law making.

This is to ensure that the needs of Sagamok Anishnawbek are met with the historical beliefs, practices and traditions of our people and are then combined with the requirements of the FHRMIRA.

**Sagamok Anishnawbek has opted to create laws that will be enforceable within its own community.**

It is important for Sagamok Anishnawbek, with the community's particular wishes, to modernize our Law to address the specific needs of our community (e.g. housing shortages).

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ENGAGEMENT AND CONSULTATION ON THE DEVELOPMENT OF THE LAW HAS  
TAKEN PLACE WITH COMMUNITY MEMBERS AND ELDERS SINCE 2014.

**DRAFTED DOCUMENTS ARE NOW BEING PRESENTED TO THE COMMUNITY**

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# SAGAMOK ANISHNAWBEK FAMILY HOMES LAW EXPLAINED

THE FOLLOWING IS A SUMMARY OF THE SAGAMOK ANISHNAWBEK FAMILY HOMES LAW:

## PREAMBLE

This is the beginning section that discusses the rights you have to make your own Laws. It includes how and why the Laws are designed for the future of the community.

## PART I – INTERPRETATION AND APPLICATION

### Section 1 Interpretation and Application

This section is about the name of the Law. Every Law has to have a ‘statute name’ which everyone refers to.

### Section 2 Interpretation

This section provides definitions that explain descriptions of certain terms used for the purpose of the Law. This helps to ensure clarity as it relates to the Law and effects of the Law.

### Section 3 – 7 Application

These sections cover:

Section 3 – The Law applies to reserve lands only;

Section 4 – The Law permits couples and families to deal with family home and on-reserve property issues themselves. The Law applies when this cannot happen in a safe and respectful way. It does not cover off-reserve property, interests, and contents of the family home or other assets.

Section 5 – Each party and circumstance will be dealt with equality and respectfully.

Section 6 – The Law recognizes that title to reserve lands can only be held by a member according to the *Membership Law of the Sagamok Anishnawbek*.

	<p>Section 7 – Non-members cannot have title to reserve land. However, their interest in the land will be determined if there is a Will or by the administration of the estate, subject to Sagamok Laws.</p>
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**PART II - SPOUSES ADDRESS INTEREST IN FIRST NATION LAND BY DOMESTIC CONTRACT**

<p><b>Section 8-9 General</b></p>	<p>This section covers what the Law and domestic contracts will refer to when there is any existing contracts or cohabitation agreements between a Sagamok Member and their spouse and the applicability of those contracts. It covers that Chief &amp; Council will ensure there are regulations created that will also make up a component of how the Sagamok Anishnawbek will support this Law and enforcement.</p>
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<p><b>Section 10-14 Domestic Contracts making it a valid legal document</b></p>	<p>This sections speaks more to the cases where there could be a domestic contract, an existing domestic contract between parties and what is required should there be any changes made to it during the relationship.</p> <p>It talks about the when the on-reserve system breaks down and that parties can apply to an applicable (provincial court) to clarify any outstanding issues between parties.</p>
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**PART III – DISPUTE RESOLUTION PROCESSES**

<p><b>Section 15-17 General</b></p>	<p>If the spouses or common-law partners do not have or cannot complete a domestic contract upon the breakdown of their relationship, then they will have access to the dispute resolution process. Chief &amp; Council will ensure there are rules and procedures to</p>
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	conduct a dispute resolution process.
<b>Section 18-32 Mediation</b>	<p>An alternative to an ‘agreed upon contract’ this section covers ‘Mediation’. This talks about who, what, where and when this forum can occur during the relationship breakdown which would be considered.</p> <p>It allows the Chief &amp; Council and community to develop a regulation, a procedure and how this type of alternative dispute resolution would work in the community. It provides that the Parties would be responsible to pay for this type of dispute resolution process.</p>
<b>Section 33-48 Dispute Resolution Committee</b>	<p>When things don’t work out based on both parties agreeing and they’ve tried domestic contract and/or mediation, the next option is using the Dispute Resolution Committee who will work on assisting the parties to meet in the middle on outstanding issues based on Sagamok’s tradition, practices and beliefs. The Dispute Resolution Committee members would be established by Council and would provide for members, who are knowledgeable on Sagamok Custom, traditions and practices, real property on reserve and family law and dispute resolution.</p>
<b>PART IV – AMENDING/REPEALING PROCEDURES</b>	
<b>Section 49-50 Requirement to any laws</b>	<p>As with all laws, there has to be room for communities to make amendments as required due to legislation updates; what types of amendments Chief &amp; Council, community or Committee can make to not detrimentally affect the principal of the Law.</p>
<b>PART V – GENERAL PROVISIONS</b>	

<p><b>Section 51-53 Severability, Singular and Headings.</b></p>	<p>This gives the ability to repeal sections of the law as the community needs change. Severability means that if one section of the law is found to be invalid, that section will be invalid but the rest of the law will stand. Singular and headings clarify the laws applicability.</p>
<p><b>Section 54-55 Offences</b></p>	<p>This section of the Law, allows there to be a punitive or punishment to the party who fails to follow the Law. It will also have the effect that the Chief &amp; Council and Community will have the ability to collect any such fine or punishment set out in decisions.</p>
<p><b>Section 56 Effective Date Law begins and takes effect in the community</b></p>	<p>This is the date it becomes Law in the community and is in force from that date onward in time.</p>
<p><b>Section 57 Post Vote</b></p>	<p>The steps Council will take if the law passes the ratification process.</p>