

T'SOU-KE NATION MATRIMONIAL REAL PROPERTY LAW (April 20, 2009)

PREAMBLE

WHEREAS T'Sou-ke Nation has an inherent right to self-government which emanates from its people, culture, language, and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;

WHEREAS our Nation, as an aspect of our inherent right of self-government, has the jurisdiction to address real property issues such as matrimonial property upon the breakdown of marriage and common law relationships, and this inherent right has not been extinguished;

WHEREAS our Nation also chose to assume control of its Indian reserve lands pursuant to the *First Nation Lands Management Act*, S.C. 1999, c. 24 by entering into the *Individual Agreement on First Nation Land Management between T'Sou-ke First Nation and Her Majesty the Queen in Right of Canada* and by adopting the *T'Sou-ke First Nation Land Code*, and section 38 of the *Land Code* requires our Nation to adopt a law concerning matrimonial real property;

WHEREAS our Nation encourages its members to resolve any matrimonial property issues internally, with the assistance of family, other community members or other individuals before turning to the courts;

WHEREAS our Nation wishes to see matrimonial real property disputes resolved in a way that is as fair as possible to both spouses, and wherever possible, in a way that is in keeping with the best interests of their children;

WHEREAS our Nation has chosen for this Law to apply to both common law and married spouses;

WHEREAS spouses who are not members of the T'Sou-ke Nation cannot hold any permanent legal interest in T'Sou-ke reserve land;

WHEREAS it is essential to the health and survival of our Nation that we maintain our community and existing lands, and that T'Sou-ke members be able to live in the T'Sou-ke community if they wish to do so;

WHEREAS this Law will apply in conjunction with federal and provincial laws concerning the division of personal property, real property off-reserve, spousal support, child support, and divorce.

NOW THEREFORE the T'Sou-ke Nation hereby enacts the following Law:

PART I - INTERPRETATION AND APPLICATION

A. Short Title

1. This Law may be cited as the "T'Sou-ke Matrimonial Property Law".

B. Interpretation

2. For the purposes of this Law, the following definitions shall apply:

"Child" means a person under the age of nineteen (19) who is

- a) the offspring of at least one Spouse, or
- b) adopted, under Canadian law or Aboriginal custom, by at least one Spouse

and it includes "children";

"Council" means the Chief and Council of T'Sou-ke Nation or, if T'Sou-ke adopts a governing body under a modern treaty, that new governing body.

"Court" means the Supreme Court of British Columbia;

"*Divorce Act*" means the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp) as amended over time or any future law enacted in replacement of it;

"Domestic Contract" means:

- a) an agreement between Spouses who are married to each other, entered into when they were married or when they intended to marry, made in writing and signed by the parties and witnessed by an individual who is at least 19 years of age, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of Matrimonial Property;
- b) an agreement between Spouses who are living together in a marriage-like relationship, entered into during the Relationship or in contemplation of the Relationship, made in writing and signed by the parties and witnessed by an individual who is at least 19 years of age, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of Matrimonial Property; or
- c) a separation agreement between Spouses who are living separate and

apart, made in writing and signed by the parties and witnessed by an individual who is at least 19 years of age, in which they agree on their respective rights and obligations on separation with respect to the possession or division of Matrimonial Property.

"*Family Relations Act*" means the *Family Relations Act*, R.S.B.C. 1996 c. 128 as amended over time or any future law enacted in replacement of it;

"Interest in T'Sou-ke Land" means any certificate of possession, allotment, lease, permit or any other equivalent instrument that is recognized as a valid type of interest under *T'Sou-ke First Nation Land Code*, but does not include rental agreements for T'Sou-ke Nation property. For greater certainty, where there is a Matrimonial Home affixed to the T'Sou-ke Land that is the subject of the Interest, the Interest includes both the land and the Matrimonial Home;

"Matrimonial Home" means an affixed dwelling that is ordinarily used for a family purpose and is:

- a) owned by one or both Spouses, and
- b) located on T'Sou-ke Land;

"Matrimonial Property" means

- a) an Interest in T'Sou-ke Land that is held by one or both Spouses and that was acquired during the Relationship;
- b) any increased value during the course of the Relationship of an Interest in T'Sou-ke Land that is held by one or both Spouses and that was acquired prior to the Relationship; and
- c) Matrimonial Homes.

but it does not include an Interest in T'Sou-ke Land that was received by way of gift or inheritance by only one Spouse from a third person or by only one Spouse together with one or more family members, unless the Interest in T'Sou-ke Land includes a Matrimonial Home;

"Member" means a person whose name appears or is entitled to appear on the T'Sou-ke Indian Band membership list or, if the T'Sou-ke Nation develops membership rules, any person who holds T'Sou-ke membership under those rules or is eligible for membership and has not formally opted against being a member of the T'Sou-ke Nation;

"Relationship" means

- a) in the case of married Spouses, the period during which the Spouses are married;
- b) in the case of common law Spouses, the period during which the Spouses live together, starting two years after they began living together;

"Spouse" means a person who:

- a) is married to another person, including through an Aboriginal customary marriage;
- b) who has been living with another person in a marriage-like relationship for at least two years (i.e. common law spouses); or
- c) is a former Spouse, subject to the restrictions set out in this Law.

"T'Sou-ke Land" means T'Sou-ke Indian Reserve #1, Indian Reserve #2, any future additions to the T'Sou-ke Nation's reserves, and any lands held by the T'Sou-ke Nation under a modern treaty or reconciliation agreement with British Columbia and/or Canada.

C. Application

3. This Law applies only to T'Sou-ke Land and not the remainder of T'Sou-ke's territory.
4. This Law does not apply to an Interest in T'Sou-ke Land held by one or both Spouses where neither Spouse is a Member.
5. For greater certainty,
 - a) a Spouse cannot commence legal proceedings after the death of the other Spouse under this Law, and his or her rights in relation to an Interest in T'Sou-ke Land or a Matrimonial Home will instead be determined by the applicable law governing the estate of the deceased Spouse;
 - b) where a Spouse dies, the other Spouse may continue any legal proceedings under this Law which were started before the death of that Spouse.
6. The rights recognized in this Law are subject to T'Sou-ke By-Law No. 3 (A By-Law for the Removal and Punishment of Persons Trespassing on Reserve and the Prevention of Disorderly Conduct and Nuisances).

PART II - DOMESTIC CONTRACTS

7. Subject to sections 8-10, a provision in a Domestic Contract that reflects the agreement of the Spouses with respect to an Interest in T'Sou-ke Land or a Matrimonial Home is valid, binding, and enforceable by the Court, whether the Spouses entered into the Domestic Contract before or after this Law came into force.
8. If the Domestic Contract transfers an Interest in T'Sou-ke Land or a partial Interest in T'Sou-ke Land, it must be registered in the T'Sou-ke First Nation Land

Register in order to be enforceable.

9. A Domestic Contract may provide an Interest in T'Sou-ke Land or grant rights to a Matrimonial Home to a Spouse or Child who is not a Member, but such Interest and such rights shall not in any case be greater than a life estate measured by the life of the individual intended to enjoy it. For greater certainty, a provision creating, or intended to create, any greater interest than a life estate in respect of a non-Member is void.
10. Subject to this Law, the Court may, on application by a Spouse, set aside a Domestic Contract or any provision therein concerning an Interest in T'Sou-ke Land or a Matrimonial Home upon making a determination that:
 - a) a Spouse failed to disclose to the other Spouse any material information in respect of his or her Interests in T'Sou-ke Land or a Matrimonial Home;
 - b) a Spouse did not understand the nature or consequences of the Domestic Contract or provision; or
 - c) the Domestic Contract or provision is unconscionable, was entered into under duress, or on the basis of undue influence or fraud.
 - d) any other common law requirement for a legal and binding contract has been breached or has not been met.
11. Section 10 only applies to formerly married Spouses who have been divorced for less than two years and to common law Spouses who have been living separate and apart for less than one year.

PART III - ACCESS TO A COURT OF COMPETENT JURISDICTION

A. General Rules

12. Where Spouses are unable to resolve their differences regarding any matter addressed in this Law, they may apply to the Court for a resolution of their dispute.
- 13.(1) Any Spouse who seeks a court order based on any provision in this Law, other than s. 28 (emergency protection orders) must promptly serve the Council with a copy of the documents filed with the court
 - (2) At the request of Council, the court shall, 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 sought should be made.
14. When a court makes any order under this Law, the Spouse in whose favour the order is made shall provide, without delay, a copy of the order to the Council.

B. Ownership and Division of Matrimonial Property

15. Sections 16 to 18 only apply to formerly married Spouses who have been divorced for less than two years and to former common law Spouses who have been living separate and apart for less than one year.
16. (1) Subject to this Law, the Court may make any determination concerning interests in and the division of Matrimonial Property and may make orders that are necessary, reasonable or ancillary to give effect to the determination, including, in appropriate circumstances:
 - (a) a declaration as to whether the property at issue is in fact Matrimonial Property;
 - (b) a declaration as to the ownership of any Interest in T'Sou-ke Land or an interest in a Matrimonial Home;
 - (c) if a Spouse is a Member, an order that Matrimonial Property be transferred to that Spouse exclusively;
 - (d) an order that one Spouse lease an Interest in T'Sou-ke Land or a Matrimonial Home to the other Spouse for a fixed period of time, subject to such conditions as the Court deems just in all the circumstances;
 - (e) an order that a Member Spouse make a compensatory payment to the non-Member Spouse to recognize the contribution which the non-Member Spouse has made to the acquisition, upkeep and/or improvement of the Matrimonial Property;
 - (f) an order that restrains either Spouse from disposing of or transferring their Interest in the Matrimonial Property, either legally or beneficially, pending the trial of the action; or
 - (g) an order that one Spouse pay compensation to the other Spouse if an Interest in T'Sou-ke Land or a Matrimonial Home has been disposed of, for the purpose of dividing the Matrimonial Property;
 - (h) any appropriate equitable order where one Spouse has intentionally, recklessly, or fraudulently depleted Matrimonial Property.
- (2) For greater certainty, the Court may not make any declaration or order that provides a non-Member with any permanent Interest in T'Sou-ke land or any permanent interest in a Matrimonial Home.
- (3) In making any order under subsection (1)(a)-(h), the Court shall begin with the presumption that each Spouse is entitled to an equal share of the Matrimonial Property, or in the case of a non-Member Spouse, an equal share of the value of the Matrimonial Property, and then consider whether this presumption should be varied in light of any of the following factors:
 - (a) the date when the Matrimonial Property was acquired or disposed of;
 - (b) the duration of the Relationship;

- (c) the duration of the period during which the Spouses have lived separate and apart;
 - (d) the needs of each Spouse to become or remain economically independent;
 - (e) direct financial contributions of each Spouse toward the acquisition, upkeep, or improvement of the Matrimonial Property;
 - (f) the direct or indirect contribution of each Spouse to the acquisition, upkeep, improvement or increased value of the Matrimonial Property, including through child rearing responsibilities.
 - (g) any relevant order or award that the Court is making or has previously made for the Spouses pursuant to the *Family Relations Act* or the *Divorce Act*.
 - (h) any other factor which the Court considers relevant to an equitable division of the Matrimonial Property.
- (3) In making any compensation order under subsection (1)(e), the Court shall:
- (a) not make any order until it has been provided with at least one valuation of the Matrimonial Property that has been prepared by a qualified appraiser, and which accounts for the limitations on the ownership rights associated with the Matrimonial Property and, in particular, the feasibility of selling or leasing the Matrimonial Property or replacing it with a new Interest in T'Sou-ke Land; and
 - (b) not make an order if a Member Spouse demonstrates that the order is likely to force the Member Spouse to move out of the Matrimonial Home, unless the Court concludes that the order is unlikely to cause the Member Spouse undue hardship.
17. Where the interest of a Spouse in Matrimonial Property is held through a corporation, the Court may order that he or she transfer shares in the corporation to the other Spouse.
18. An order shall not be made under this Part so as to require the sale of an operating business or farm on T'Sou-ke Land, or so as to seriously impair its operation, unless there is no reasonable alternative method of achieving an equitable result between the Spouses.
19. Nothing in this Law relieves a party of the requirement to observe the rules and procedures of the Court.
20. Where any order is made under section 16(1) which transfers the ownership of an Interest in T'Sou-ke Land, the Spouse who benefits from that order shall promptly register the order with the T'Sou-ke First Nation Land Register.
- C. Matrimonial Home**
21. Subject to the provisions below, both Spouses have an equal right to occupy the

Matrimonial Home.

22. No Spouse shall dispose of or encumber a Matrimonial Home unless:
 - (a) the other Spouse joins in the instrument or consents to the transaction;
 - (b) the other Spouse has released all rights to the Matrimonial Home by Domestic Contract; or
 - (c) a Court order has authorized the transaction or has released the Matrimonial Home from the application of this section.
23. Sections 21 and 22 only apply to formerly married Spouses if they have been divorced for less than two years and to former common law Spouses if they have been living separate and apart for less than one year.
24. If a Spouse disposes of or encumbers a Matrimonial Home in contravention of section 22, the transaction may be set aside on an application to the Court.
25. When a person proceeds to realize upon an encumbrance or execution against a Matrimonial Home, the Spouse who has a right of occupation under section 21 has the same right of redemption or relief against forfeiture as the other Spouse and is entitled to the same notice respecting the claim and its enforcement or realization.
26. The Court may, on the application of a Spouse or a person claiming an interest in a Matrimonial Home:
 - (a) make a declaration as to whether or not the dwelling at issue is a Matrimonial Home;
 - (b) authorize a disposition or encumbrance of the Matrimonial Home, provided that such disposition or encumbrance is otherwise authorized under this Law, if the Court finds that the Spouse whose consent is required cannot be found or is not available, is not capable of giving or withholding consent, or is unreasonably withholding consent, and the Court may prescribe conditions including the provision of other comparable accommodation, or payment in place of it, that the Court considers appropriate
- 27.(1) The Court may on application make an exclusive occupation order for the Matrimonial Home and its contents in favour of one Spouse for a specified period of time:
 - (a) if that Spouse is a Member, whether or not that Spouse owns the Matrimonial Home;
 - (b) if that Spouse is not a Member, but is the primary caregiver of a Child, if such an order is in the best interests of the Child.

- (2) Any person whose favour or against whom an order is made under subsection (1) may apply to the Court to have the order varied or revoked within the time determined by the Court or, of no time limit is stipulated, at any point while the order remains in force.
- 28.(1) The Court may, on *ex parte* application by a Spouse, make an emergency exclusive occupation order for the Matrimonial Home in favour of that Spouse for a period of up to 90 days, whether or not the Spouse is a Member and whether or not a Child is involved, if the Court concludes that:
- (a) family violence has occurred and
 - (b) the order should be made to help ensure the immediate protection of the Spouse or a Child who resides in the Matrimonial Home.
- (2) The order described in subsection (1) must include a provision directing a peace officer to enforce any provision of the order if requested to do so by the applicant Spouse or the Council.
- (3) The order described in subsection (1) may include any of the following additional provisions:
- (a) a provision requiring the Spouse of the applicant Spouse and any other person to vacate the Matrimonial Home and prohibiting them from returning to the Matrimonial Home;
 - (b) a provision directing a peace officer to remove the applicant's Spouse and any other person from the Matrimonial Home;
 - (c) a provision prohibiting any person who is required to vacate the Matrimonial Home from attending near the Matrimonial Home;
 - (d) a provision directing a peace officer to accompany the person who is required to vacate the Matrimonial Home to the Matrimonial Home in order to supervise the removal of personal belongings;
 - (e) any other provision that the Court considers necessary for the immediate protection of the person who is at risk.
- (4) Any person in whose favour or against whom an order is made under subsection (1) may apply to the Court to have the order varied or revoked within the time determined by the Court or, if no time limit is stipulated, at any point while the order remains in force.

PART IV – AMENDING PROCEDURES

- 29.(1) Any proposed substantive amendment to this Law shall be initiated by a petition

signed by at least thirty (30) percent of T'Sou-ke's eligible voters or by two thirds (2/3) majority of Council.

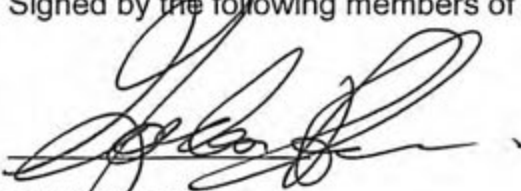
- (2) This Law may only undergo substantive amendments by the consent of the majority of T'Sou-ke's eligible voters at a meeting convened by Council for the purpose of amending this Law provided that thirty (30) percent of T'Sou-ke's eligible voters are present.
 - (3) The Council shall provide to Members, in writing, the wording of the proposed amendment and the date for the Members' meeting at least 14 days before the meeting.
- 30.(1) The Council may adopt minor amendments to the Law by unanimous decision at a duly convened meeting.
- (2) For the purpose of subsection (1), minor amendments include:
 - (a) amendments to correct typographical errors,
 - (b) amendments required to reference any relevant new or amended T'Sou-ke Nation laws,
 - (c) amendments ordered by any court of competent jurisdiction, and
 - (d) amendments which serve to clarify the Law, where there is no reasonable dispute about the intention underlying the original provision.

PART V – GENERAL PROVISIONS

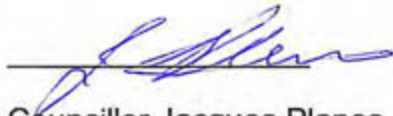
31. If any provision or set of provisions in this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid provision(s) will, wherever possible, be severed from and not affect the remaining provisions of this Law.
- 32.(1) A person commits an offence by refusing or neglecting, without reasonable excuse, to comply with any court order made against that person under the provisions of this Law.
- (2) A court order, certified by a proper officer of the court that made the order, is proof of the order in a prosecution under this section.
 - (3) A person is liable, on summary conviction under subsection 32(1) of this Law, to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both.
 - (4) A fine payable under this section shall be remitted to T'Sou-ke by the Court, after reasonable Court costs have been deducted.

BE IT KNOWN that this Law entitled "T'SOU-KE NATION MATRIMONIAL REAL PROPERTY LAW" is hereby enacted by the Council of T'Sou-ke First Nation by quorum at a duly convened Council Meeting held on the 5 day of Oct 2009.

Signed by the following members of Council:

A handwritten signature in black ink, appearing to read "Gord Planes", written over a horizontal line.

Chief Gord Planes

A handwritten signature in blue ink, appearing to read "Jacques Planes", written over a horizontal line.

Councillor Jacques Planes

A handwritten signature in blue ink, appearing to read "Colleen George", written over a horizontal line.

Councillor Colleen George