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# AAMIWNAANG MATRIMONIAL REAL PROPERTY LAW

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DRAFT #1 – December 11, 2018

AAMIWNAANG  
978 Tashmoo Avenue, Sarnia, Ontario, N7T 7H5

**AAMJIWNAANG MATRIMONIAL REAL PROPERTY LAW**

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## PREAMBLE

We, the Anishinabeg of Aamjiwnaang are descendants of the Ojibwe, Pottawatomi, and Odawa (The People of the Three Fires confederacy). We have been here since the time of The Great Migration and are keepers of our traditional territory, our language, and culture and heritage.

Pursuant to our Inherent Rights to self-government given by the G'Zhemaidoo (Creator); and,

Pursuant to Aamjiwnaang Chi'Naaknigewin (community constitution); and,

Pursuant to the recognition of the rights in Sections 25 and 35 of the *Constitution Act*, 1982;

We do hereby establish the Aamjiwnaang Matrimonial Real Property Law which shall be based upon the Seven Grandfather Teachings of:

- Zaagidiwin-Love
- Debwewin-Truth
- Mnaadendmowin-Respect
- Nbwaakaawin-Wisdom
- Dbaadendiziwin-Humility
- Gwekwaadziwin-Honesty
- Aakedhewin-Bravery

The principles of the Aamjiwnaang Matrimonial Real Property Law shall preserve and enhance, for future generations:

- Anishinabe mii maanda inaaknigewin – our natural ways and is inclusive for all;
- Anishinabemowin (anishinabe language) – continues to be known;
- Anishinabe culture and traditions shall be honoured and recognized for all; and,
- Mnaadendmowin – Land, water and air resources of our traditional territory.

It is the exclusive right of all Aamjiwnaang Bendaazijig to preserve for their descendants in accordance with the Anishinabe natural and written laws to:

- Respect and uphold our laws and institutions of culture and government;
- Enjoy the benefits, rights and freedoms; and,
- Make and amend laws, codes and/or policy for Aamjiwnaang Territory.

The Canadian government has no authority to interfere with Aamjiwnaang's inherent rights and jurisdiction over our traditional territory.

**NOW THEREFORE** Aamjiwnaang hereby enacts the following:

## **PART I: APPLICATION AND INTERPRETATION**

### **CHAPTER 1: APPLICATION**

- 1.1. This law applies only to interests in Aamjiwnaang's reserve lands as defined in the *Indian Act*, and does not apply to interests in lands situated across Aamjiwnaang's broader traditional territory.
- 1.2. This law applies to Interests in First Nation Land held by either Spouse, or both Spouses, where at least one Spouse is a Member of Aamjiwnaang. For greater certainty, this law does not apply to an Interest in First Nation Land held by either Spouse, or both Spouses, where neither Spouse is a Member of Aamjiwnaang. This law also does not apply to Spouse(s) excluded by way of a Domestic Contract.
- 1.3. Subject to its terms, this law shall not be construed as limiting or precluding any right or remedy otherwise available to persons who are or may be affected by it pursuant to any other law applicable on the breakdown of a marriage or Common Law relationship with respect to any property other than Interests in First Nation Land, or other entitlements or obligations of Spouses.
- 1.4. It is the intention of this law, subject to its terms, that all rights, entitlements and obligations of Spouses, including any and all rights, entitlements and obligations in respect of Interests in First Nation Land, including the Matrimonial Home, are dealt with equitably on the basis of all their respective circumstances.

### **CHAPTER 2: INTERPRETATION**

- 2.1. This law may be cited as "Aamjiwnaang Matrimonial Real Property Law".
- 2.2. For the purposes of this law, the following definitions shall apply:

**"Aamjiwnaang"** means a place where the water swirls and flows rapid and the people gather, formerly known as Chippewas of Sarnia.

**"Bendaazijig"** means one who belongs to a group; a citizen/a community member; in this document it means citizen or Member of Aamjiwnaang.

**"Child"** means a child of either Spouse, whether born in or out of wedlock, or a legally adopted child (including a child adopted through customary adoptions) who is under eighteen (18) years of age;

**“Common Law”, “Common Law Spouse” or “Common Law Partner”** – See the definition of “Spouse” herein. “Common Law Spouse/Partner” means either of two individuals of the same sex or the opposite sex who:

- (a) are not married to each other, and have lived together in a conjugal relationship for a period of not less than two (2) years; or
- (b) are not married to each other, have lived together in a conjugal relationship for a period of less than two (2) years, are the parents of a child together and are in a relationship of some permanence.

**“Council”** means the duly elected Chief and Council of Aamjiwnaang, selected in accordance with the election process used by Aamjiwnaang, which may be amended from time to time.

**“Dispute Resolution Committee” or “the Committee”** means the body that is established in accordance with the terms described herein and which is empowered to hear and adjudicate disputes pursuant to this law.

**“Domestic Contact”** means any of:

- (a) a “Marriage Contract” entered into between two Spouses who are married to each other, or in contemplation of marriage, and which is made in writing, signed by both Spouses and witnessed, in which both Spouses agree on their respective rights and obligations as Spouses under the marriage and/or upon separation or breakdown of the marriage, with respect to the possession and/or division of Interests in First Nation Land;
- (b) a “Spousal Agreement/Cohabitation Agreement” entered into between two Spouses who are not married to each other and who are living together in a marriage-like relationship, or in contemplation of living together in a marriage-like relationship, and which is made in writing, signed by both Spouses and witnessed, in which both Spouses agree on their respective rights and obligations as Spouses in the conjugal relationship and/or upon separation or breakdown of the conjugal relationship, with respect to the possession and/or division of Interests in First Nation Land;
- (c) a “Separation Agreement” entered into between two Spouses who are married to each other and are living separate and apart, or which is entered into in contemplation of the Spouses living separate and apart, made in writing and signed by both Spouses and witnessed, in which both Spouses agree on their respective rights and obligations upon

separation or breakdown of the marriage, with respect to the possession and/or division of Interests in First Nation Land.

**“First Nation”** means Aamjiwnaang.

**“First Nation Land”** means land situated on Aamjiwnaang’s reserve(s) pursuant to the *Indian Act*, including lands which are added to Aamjiwnaang’s reserve(s) in accordance with applicable laws and regulations.

**“Immediate Family Member”** means a mother, father, sibling, child and/or legal guardian.

**“Interest(s) in First Nation Land”** means matrimonial real property, which is any legal or equitable interests held in possession by either Spouse, or both Spouses, in First Nation Land.

**“Life Estate”** is the entitlement of a non-member Spouse to certain possessory rights to real property for their lifetime.

**“Matrimonial Home”** means an Interest in First Nation Land that is, or if the Spouses have separated, was at the time of separation ordinarily occupied by the person and his or her Spouse as their family residence. Where a parcel of First Nation Land which constitutes an Interest in First Nation Land for the purposes of this law includes a Matrimonial Home but the parcel of First Nation is also normally used for a purpose other than the family residence, the Matrimonial Home is only the part of the Interest in First Nation Land that may reasonably be regarded as necessary for the use and enjoyment of the family residence.

**“Matrimonial Interests or Rights”** means interests or rights, other than interests or rights in or to the Matrimonial Home, held by at least one of the Spouses

- (a) that were acquired during the conjugal relationship;
- (b) that were acquired before the conjugal relationship but in specific contemplation of the relationship; or
- (c) that were acquired before the conjugal relationship but not in specific contemplation of the relationship and that appreciated during the relationship.

It excludes interests or rights that were received from a person as a gift or legacy or on devise or descent, and interests or rights that can be traced to those interests or rights.

**“Member”** means a person who is a Member of Aamjiwnaang pursuant to Aamjiwnaang’s membership/citizenship code, which may be amended from time to time.

**“Parties”** – where used in this law means Spouses or former Spouses, unless the context provides otherwise.

**“Personal Property”** means property other than the Matrimonial Home and may include, without limitation, household items, vehicles, boats, money in bank accounts, etc.

**“Real Property”** means the Matrimonial Home.

**“Reserve”** means Aamjiwnaang’s reserve(s) pursuant to the *Indian Act*, including lands which are added to Aamjiwnaang’s reserve(s) in accordance with applicable laws and regulations.

**“Spouse”** means either of two individuals of the same sex or the opposite sex who:

- (a) are married to each other;
- (b) are not married to each other, and have lived together in a conjugal relationship for a period of not less than two (2) years; or
- (c) are not married to each other, have lived together in a conjugal relationship for a period of less than two (2) years, are the parents of a child together and are in a relationship of some permanence;

For greater certainty, a “Spouse” includes those who are married through a religious or civil ceremony, or through a traditional First Nation ceremony, and also includes Common Law Spouses/Partners. “Spouse” also includes those individuals in conjugal relationships, as described above, which were entered into before this law takes effect.

## **PART II: THE MATRIMONIAL HOME**

### **CHAPTER 3: OCCUPATION OF THE MATRIMONIAL HOME**

#### ***During the Marriage or Common Law Relationship***

3.1. Each Spouse has an equal right to occupy the Matrimonial Home during the conjugal relationship, whether or not that person is a Member of Aamjiwnaang or an Indian.

***Upon Death of a Spouse or Common Law Partner***

- 3.2. When a Spouse dies, a surviving Spouse who does not hold an interest or right in or to the Matrimonial Home shall nevertheless have the right to continue to occupy the Matrimonial Home for a period of not less than one (1) year after the date on which the death occurs, whether or not the surviving Spouse is a Member of Aamjiwnaang or an Indian.

***Consent of Spouses to Dispose of or Encumber Interests in the Matrimonial Home***

- 3.3. A Spouse who holds an interest or right in or to the Matrimonial Home cannot dispose of or encumber that interest or right during the conjugal relationship without the free and informed written consent of the other Spouse, whether or not the other Spouse is a Member of Aamjiwnaang or an Indian.
- 3.4. If a Spouse disposes of or encumbers an interest or right in or to the Matrimonial Home during the conjugal relationship, that Spouse has the burden of proving that the other Spouse consented to the disposition or encumbrance.
- 3.5. A Spouse who has not given consent to a transaction for which their consent was required may, without prejudice to any other right, claim damages from the other Spouse.

***Jurisdiction of the Dispute Resolution Committee***

- 3.6. If a Spouse disposes of or encumbers their interest or right in or to the Matrimonial Home without the required consent of the other Spouse, the Dispute Resolution Committee may, on application by the other Spouse, by order, set aside the transaction and impose conditions on any future disposition or encumbrance of that interest or right by the Spouse to whom the interest or right reverts.
- 3.7. Subject to the *Indian Act*, the Dispute Resolution Committee may, on application by the Spouse who holds an interest or right in or to the Matrimonial Home, by order, authorize that person, subject to any conditions that the Committee considers appropriate, to dispose of or encumber that interest or right without the required consent of the other Spouse if the Committee is satisfied that the other Spouse cannot be found, is not capable of consenting or is unreasonably withholding their consent.



## CHAPTER 4: EMERGENCY PROTECTION ORDERS

### ***Applications to the Dispute Resolution Committee***

- 4.1. On *ex parte* application by a Spouse, the Dispute Resolution Committee may issue an Emergency Protection Order for a period of up to 90 days that contains one or more of the provisions referred to in section 4.7 and that is subject to any conditions that the Committee specifies, if the Committee is satisfied that:
- (a) family violence has occurred, or there is a reasonable risk that family violence may occur; and
  - (b) the order should be made without delay, because of the seriousness or urgency of the situation, to ensure the immediate protection of the person or persons who are at risk of harm or property that is at risk of damage.
- 4.2. A Spouse may make an application under this Chapter even if that person has been forced to vacate the Matrimonial Home as a result of family violence or the reasonable possibility of family violence.
- 4.3. Another person who is not a Spouse in the conjugal relationship may also make an application to the Dispute Resolution Committee under this Chapter on behalf of the Spouse with that person's consent, or if that person does not consent, with leave of the Committee.
- 4.4. Any person against whom an Emergency Protection Order under this Chapter is made, and any other person specified in the order, are bound by the order upon receiving notice of the order, whether notice is communicated to that person verbally or in writing.

### ***Definition of Family Violence***

- 4.5. For the purposes of this Chapter, family violence means any of the following acts or omissions committed by a Spouse against the other Spouse, any child in the charge of either Spouse, or any other person who habitually resides 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.

***Considerations for Granting Emergency Protection Orders***

4.6. In granting an Emergency Protection Order under this Chapter, the Dispute Resolution Committee shall consider, among other things:

- (a) the history and nature of any family violence;
- (b) the existence of immediate danger to the person who is at risk of harm or property that is at risk of damage;
- (c) the best interests of any child or children in the charge of either Spouse, whether or not those children are Members of Aamjiwnaang or Indians;
- (d) the best interests of any child or children in the charge of either Spouse who are Members of Aamjiwnaang or Indians, to maintain a connection with Aamjiwnaang;
- (e) the interests of any elderly person(s) or person(s) with a disability who habitually resides in the Matrimonial Home and for whom either Spouse is the caregiver;
- (f) the fact that another person, other than the Spouses, holds an interest or right in or to the Matrimonial Home;
- (g) the period during which the applicant has habitually resided on the reserve, whether or not the applicant is a Member of Aamjiwnaang or an Indian; and
- (h) the existence of exceptional circumstances that necessitate the removal of a

person other than the applicant's Spouse from the Matrimonial Home in order to give effect to the granting to the applicant of exclusive occupation of that home, including the fact that the person has committed acts or omissions defined in this Chapter as constituting family violence against the applicant, any child in the charge of either Spouse, or any other person who habitually resides in the Matrimonial Home.

### ***Contents of Emergency Protection Orders***

4.7. An Emergency Protection Order under section 4.1 may contain one or more of the following provisions:

- (a) a provision granting the applicant, along with any children in the charge of either Spouse, exclusive occupation of the Matrimonial Home and reasonable access to that home;
- (b) a provision requiring the applicant's Spouse and any specified person who habitually resides in the Matrimonial Home, whether or not they are a Members of Aamjiwnaang or Indians, to vacate the Matrimonial Home, immediately or within a specified period, and prohibiting them from re-entering the home for the duration of the Emergency Protection Order;
- (c) a provision directing a peace officer, immediately or within a specified period, to remove the applicant's Spouse and any specified person who habitually resides in the Matrimonial Home from the Matrimonial Home – whether or not they are a Members of Aamjiwnaang or Indians;
- (d) a provision prohibiting any person who is required to vacate the Matrimonial Home under a provision referred to in this Chapter from attending near the Matrimonial Home;
- (e) a provision directing a peace officer, within a specified period, to accompany the applicant's Spouse or any specified person to the Matrimonial Home or other location in order to supervise the removal of personal belongings; and
- (f) any other provision that the Dispute Resolution Committee considers to be necessary and appropriate for the immediate protection of the person or persons who are at risk of harm or the property that is at risk of damage.

### ***Application to Vary of Revoke Order***

4.8. Any person in whose favour or against whom an order is made under this Chapter, or any person specified in the order, may apply to the Dispute Resolution Committee to have the order varied or revoked:

(a) within twenty-one (21) days after the day on which notice of the order made under section 4.4 is received, or within any further time that the Committee allows; and

(b) at any time if there has been a material change in circumstances.

### **Confirm, vary or revoke order**

4.9. The Dispute Resolution Committee may, upon application by any person in whose favour or against whom an order is made under this Chapter, by order, confirm, vary or revoke the order, and may extend the duration of the order beyond the period of 90 days referred to in section 4.1.

## **CHAPTER 5: EXCLUSIVE OCCUPATION ORDERS**

### ***Applications to the Dispute Resolution Committee***

5.1. The Dispute Resolution Committee may, on application by a Spouse, whether or not that person is a Member of Aamjiwnaang or an Indian, order that the applicant be granted exclusive occupation of the Matrimonial Home and reasonable access to that home, subject to any conditions and for the period that the Committee specifies.

5.2. The Committee may make, on application by either Spouse, an interim order to the same effect as an order under section 5.1, pending the determination of the application under section 5.1.

### ***Emergency Protection Order Revoked***

5.3. An existing Emergency Protection Order made under Chapter 4 herein in favour of or against one of the Spouses is revoked when the Committee makes an Exclusive Occupation Order under this Chapter, except to the extent specified in that Exclusive Occupation Order.

### ***Content of Exclusive Occupation Orders***

5.4. An order made under this Chapter may contain provisions such as:

- (a) a provision requiring the applicant's Spouse and any specified person, whether or not they are a Members of Aamjiwnaang or Indians, to vacate the Matrimonial Home immediately or within a specified period, and prohibiting them from re-entering the home;
- (b) a provision requiring the applicant's Spouse to preserve the condition of the Matrimonial Home until that person vacates it;
- (c) a provision directing the applicant to make payments to the other Spouse toward the cost of other accommodation; and
- (d) a provision requiring either Spouse to pay for all or part of the repair and maintenance of the Matrimonial Home and of other liabilities arising in respect of the Matrimonial Home, or to make payments to the other Spouse for those purposes.

### ***Considerations in Granting Exclusive Occupation Orders***

5.5. In making an order under this Chapter, the Dispute Resolution Committee shall consider, among other things:

- (a) the best interests of any children who habitually reside in the Matrimonial Home, whether or not those children are Members of Aamjiwnaang or Indians;
- (b) the best interests of any children who habitually reside in the Matrimonial Home, who are Members of Aamjiwnaang or Indians, to maintain a connection with Aamjiwnaang;
- (c) the terms of any agreement between the Spouses;
- (d) the collective interests of Aamjiwnaang's Members in their reserve lands and the representations made by the Council with respect to the cultural, social and legal context that pertains to the application;
- (e) the period during which the applicant has habitually resided on the reserve,

- whether or not the application is a Member of Aamjiwnaang or an Indian;
- (f) the financial situation and the medical condition of the Spouses;
  - (g) the availability of other suitable accommodation that is situated on the reserve;
  - (h) any existing order made on a matter related to the consequences of the breakdown of the conjugal relationship;
  - (i) any family violence or risk of family violence;
  - (j) any acts or omissions by one of the Spouses that reasonably constitute psychological abuse against the other Spouse, any child in the charge of either Spouse, or any other family member who habitually resides in the Matrimonial Home;
  - (k) the existence of exceptional circumstances that necessitate the removal of a person other than the applicant's Spouse from the Matrimonial Home in order to give effect to the granting to the applicant of exclusive occupation of that home, including the fact that the person has committed acts or omissions that constitute family violence, or reasonably constitute psychological abuse, against the applicant, any child in the charge of either Spouse, or any other family member who habitually resides in the Matrimonial Home;
  - (l) the interests of any elderly person or person with a disability who habitually resides in the Matrimonial Home and for whom either Spouse is the caregiver;
  - (m) the fact that a person, other than the Spouses, holds an interest or right in or to the Matrimonial Home; and
  - (n) the views of any person who received a copy of the application, presented to the Committee in any form that the Committee allows.

***Notice to Affected Persons***

5.6. An applicant for an order under this Chapter must, without delay, send a copy of the application to any person who is of the age of majority or over, whom the applicant is seeking to have the Committee order to vacate the Matrimonial Home and to any person who holds an interest or right in or to the Matrimonial Home.

### ***Application to Vary of Revoke Order***

- 5.7. Any person in whose favour or against whom an order is made under this Chapter, any person specified in the order, or the holder of an interest or right in or to the Matrimonial Home, may apply to the Committee to have the order varied or revoked if there has been a material change in circumstances. The Committee may, by order, confirm, vary or revoke the order.

## **PART III: DIVISION OF THE VALUE OF MATRIMONIAL INTERESTS OR RIGHTS**

### **CHAPTER 6: DOMESTIC CONTRACTS**

- 6.1. It is the purpose and intention of this law to respect any agreement(s) as between Spouses as to the use, possession, occupancy, disposition or partition of an Interest(s) in First Nation Land, including an interest that is a Matrimonial Home.
- 6.2. A provision in a Domestic Contract that reflects the agreement of two Spouses with respect to an Interest in First Nation Land, including an interest that is a Matrimonial Home, is valid, binding and enforceable and takes precedence over the provisions of this law.
- 6.3. Notwithstanding sections 6.1 and 6.2, a provision in a Domestic Contract that would give, award, acknowledge or create an Interest in First Nation Land greater than a Life Estate to occupy or possess an Interest in First Nation Land, in favour of a Spouse who is not a Member of Aamjiwnaang, is void.
- 6.4. In applying this Chapter, a valid Life Estate to possess or occupy an Interest in First Nation Land must be delimited by the life of the person intended to enjoy it.
- 6.5. Subject to this law, a court of competent jurisdiction may set aside a provision of a Domestic Contract with respect to an Interest in First Nation Land if:
- (a) a Spouse failed to disclose to the other Spouse all of his or her Interests in First Nation Land, or failed to disclose any material information in respect of those interests;
  - (b) a Spouse did not understand the nature or consequences of the provision, or
  - (c) otherwise in accordance with the law of contract.

- 6.6. This law applies whether the Domestic Contract was entered into by the Parties on, before or after the date on which this law came into force and effect.

## **CHAPTER 7: BREAKDOWN OF A CONJUGAL RELATIONSHIP**

### ***Division of Value***

- 7.1. When a marriage or Common Law relationship breaks down, each Spouse is entitled, on application to the Dispute Resolution Committee, to an amount equal to one half of the value, on the valuation date, of the interest or right that is held by at least one of them in or to the Matrimonial Home.

### ***Determination of Value***

- 7.2. For the purposes of section 7.1, the value of the interests or rights is the difference between:
- (a) the amount that a buyer would reasonably be expected to pay for interests or rights that are comparable to the interests or rights in question, and
  - (b) the amount of any outstanding debts or other liabilities assumed for acquiring the interests or rights or for improving or maintaining the structures and lands that are the object of the interests or rights.

### ***Agreement by the Parties***

- 7.3. Despite section 7.2, on agreement by the Spouses, the value of the interests or rights may be determined on any other basis.

### ***Amount Payable***

- 7.4. On application by one of the Spouses made within three (3) years after the date on which they ceased to cohabit, the Committee may, by order, determine any matter in respect of each Spouse's entitlement under section 7.1, including:
- (a) determining the amount payable by one Spouse to the other; and
  - (b) providing that the amount payable be settled by



- i. payment of the amount in a lump sum;
- ii. payment of the amount by installments;
- iii. the set-off or compensation of any amounts owed by one Spouse to the other, or
- iv. any combination of the methods referred to in subparagraphs (i) to (iii).

### ***Extension of Time***

- 7.5. On application by a Spouse, the Committee may, by order, extend the period of three (3) years by any amount of time that it considers appropriate, if the Committee is satisfied that the applicant failed to make an application within that period for either of the following reasons:
- (a) circumstances existed that were beyond the control of the applicant; or
  - (b) only after the period expired did the applicant become aware of any interests or rights referred to in section 7.1.

## **CHAPTER 8: DEATH OF A SPOUSE**

### ***Entitlement of Survivor***

- 8.1. On the death of a Spouse, the survivor is entitled, on application to the Committee, to an amount equal to one half of the value, on the valuation date, of the interest or right that was held by the deceased individual in or to the Matrimonial Home.

### ***Determination of Value***

- 8.2. For the purposes of section 8.1, the value of the interests or rights is the difference between:
- (a) the amount that a buyer would reasonably be expected to pay for interests or rights that are comparable to the interests or rights in question, and
  - (b) the amount of any outstanding debts or other liabilities assumed for acquiring the interests or rights or for improving or maintaining the structures and lands

that are the object of the interests or rights.

### ***Agreement by the Parties***

8.3. Despite section 8.2, on agreement by the survivor and the executor of the will or the administrator of the estate, the value of the interests or rights may be determined on any other basis.

### ***Amount Payable***

8.4. On application by a surviving Spouse made within ten (10) months after the date on which the death of their Spouse occurs, the Dispute Resolution Committee may, by order, determine any matter in respect of the survivor's entitlement under this Chapter, including:

- (a) determining the amount payable to the survivor; and
- (b) providing that the amount payable to the survivor be settled by:
  - i. payment of the amount in a lump sum,
  - ii. payment of the amount by installments,
  - iii. any combination of the methods referred to in subparagraphs (i) to (ii).

### ***Extension of time***

8.5. On application by the surviving Spouse, the Committee may, by order, extend the period of ten (10) months by any amount of time that it considers appropriate, if the Committee is satisfied that the surviving Spouse failed to make an application within that period for any of the following reasons:

- (a) the surviving Spouse did not know of the death of their Spouse until after the period expired;
- (b) circumstances existed that were beyond the control of the surviving Spouse; or
- (c) only after the period expired did the applicant become aware of any interests or rights referred to in section 8.1.

## **PART IV: DISPUTE RESOLUTION**

### **CHAPTER 9: MEDIATION**

9.1. Spouses who, on the breakdown of their marriage or Common Law relationship, do not have and are unable to conclude a Domestic Contract with respect to Interests in First Nation Land, but where at least one of the Spouses wishes to resolve a dispute with respect to said Interests in First Nation Land, shall submit to compulsory mediation, at their cost, in respect of Interests in First Nation Land, under the direction of Aamjiwnaang's Council.

9.2. Council may, through a Band Council Resolution, provide for:

- (a) rules and procedures applicable to the conduct of compulsory mediation pursuant to section 9.1;
- (b) the qualifications of mediators and the establishment of a roster of qualified mediators for the purpose of section 9.1;
- (c) an option for the Parties to select their own mediator, and in default of such selection, the selection of a mediator by Aamjiwnaang's Council;
- (d) setting an appointment with the mediator and giving notice to the Spouses of an appointment with the mediator;
- (e) forms, certificates, and other documents or instruments deemed necessary or advisable for the purposes of section 9.1;
- (f) waiver of compliance where it appears that a Party is avoiding service, refusing to comply with the requirements of section 9.1, or taking or failing to take action in a manner calculated to frustrate the intention of section 9.1 that the Parties have a reasonable opportunity to resolve any dispute with respect to Interests in First Nation Land.

9.3. A Spouse may, within a reasonable period, upon the breakdown of a marriage or Common Law relationship, give notice of a request for compulsory mediation to Aamjiwnaang's Council, setting out in writing that:

- (a) his or her marriage or Common Law relationship has resulted in a breakdown;
- (b) that he or she and the other Spouse are living, or intending to live, separate and apart with no reasonable prospect for the resumption of cohabitation;
- (c) that either Spouse, or both Spouses, have an Interest(s) in First Nation Land;

- (d) that the Spouses do not have a Domestic Contract in place, including provisions in respect of any Interests in First Nation Land;
- (e) that there is no reasonable prospect that the Spouses will conclude a Domestic Contract including provisions in respect of an Interest in First Nation Land within a reasonable period of time; or
- (f) that the Spouses have concluded a Domestic Contract, but that at least one the Spouses intends to seek relief pursuant to section 6.5.

- 9.4. It is the responsibility of the Spouse requesting compulsory mediation to ensure that the notice referred to in section 9.3 is served on the other Spouse before it is delivered to Council. For greater certainty, service may be effected by personal service, by delivery to a solicitor representing the other Spouse in the matter of the breakdown of the marriage or Common Law relationship, as provided in a Domestic Contract, or by registered mail to the address where the other Spouse is known or believed to be residing. Service by registered mail shall be deemed to be effective four (4) days after the date on which the notice is mailed.
- 9.5. Proof of service on the other Spouse of the notice referred to in section 9.3 shall be delivered to Council at the same time the notice itself is delivered to Council.
- 9.6. Council shall arrange for a qualified mediator to be available to the Parties within thirty (30) days after the notice referred to in section 9.3 is received by Council. That period may be extended by Council either on consent of the Parties, or where Council is unable to secure the services of a qualified mediator to be available to the Parties within the initial thirty (30) day period.
- 9.7. The mediator shall proceed expeditiously with the mediation and use best efforts to assist the Parties in resolving any and all issues with respect to Interests in First Nation Land.
- 9.8. Where the mediation is successful, the agreement of the Parties with respect to Interests in First Nation Land shall be reduced to writing in the form of a Separation Agreement signed by both Parties and witnessed, and that Separation Agreement shall expressly provide that each Party waives all rights to challenge its provision pursuant to section 6.5.
- 9.9. A Separation Agreement for the purposes of section 9.8 shall include provision for all Interests in First Nation Land held by either or both Spouses and, if it deals with only those interests, shall be a sufficient Domestic Contract for the purposes of this law.
- 9.10. Where the mediation is unsuccessful, the mediator shall deliver a confidential report to the Parties and to Council regarding the mediation and the points remaining in dispute between the Parties with respect to any Interests in First Nation Land.

- 9.11. At the conclusion of compulsory mediation under section 9.1, Council shall provide a certificate to the Parties attesting to their compliance thereto.
- 9.12. No Party shall proceed with any application in respect of an Interest in First Nation Land, or seek any remedy pursuant to Chapter 10 herein, unless the certificate referred to in section 9.11 has been obtained and is filed with the Dispute Resolution Committee.
- 9.13. For greater certainty, nothing in section 9.1 is intended to deprive or limit the right of a Spouse to seek any other or further alternate dispute resolution on the breakdown of his or her marriage or Common Law relationship in relation to any matter other than Interests in First Nation Land, or to restrict the Parties from otherwise reaching agreement with respect to Interests in First Nation Land provided that such agreement results in a Separation Agreement that meets the requirements set out in this law.

## **CHAPTER 10: DISPUTE RESOLUTION COMMITTEE**

### ***Dispute Resolution Committee***

- 10.1. Council shall establish, through a Band Council Resolution, a committee of at least three (3) members to be known as the Dispute Resolution Committee.

### ***Conditions Precedent***

- 10.2. No Party shall proceed with any application before the Dispute Resolution Committee in respect of an Interest in First Nation Land, or seek any remedy pursuant to this law, unless the certificate referred to in section 9.11 has been obtained and is filed with the Dispute Resolution Committee.

### ***Jurisdiction of the Dispute Resolution Committee***

- 10.3. The Dispute Resolution Committee shall be empowered to hear and adjudicate, by majority vote, any and all matters, issues and/or disputes that may arise pursuant to this law.
- 10.4. Subject to the terms of this law and the specific remedies provided for throughout this law, the Dispute Resolution Committee shall be empowered to make any order which, in the Committee's judgment, is necessary to give effect to the purpose and intent of this law and to the rights and/or obligations of those who are subject to this law, in accordance with the traditional laws, customs and practices of Aamjiwnaang.
- 10.5. After the conclusion of compulsory mediation as described in Chapter 9 herein, the Dispute Resolution Committee shall be the primary dispute resolution mechanism, and the dispute resolution mechanism of first instance, for resolving any and all matters, issues and/or disputes that may arise pursuant to this law.

- 10.6. Any matters, issues and/or disputes that may arise pursuant to this law shall only be directed to a Canadian court of competent jurisdiction in the event of an appeal or judicial review of a decision by the Committee.

***Membership and Terms of Service***

- 10.7. Members of the Dispute Resolution Committee shall be appointed by Council through Band Council Resolutions, and shall serve a term of not more than two (2) years in length at a time.
- 10.8. Members of the Committee may be re-appointed by Council for any number of additional terms after their initial two (2) year term expires. For greater clarity, there shall not be a limit as to how many terms Committee Members may serve, whether such terms are served consecutively or not.
- 10.9. The Dispute Resolution Committee shall be composed exclusively of Members of Aamjiwnaang.

***Elder Advisory Committee***

- 10.10. Council may establish a committee of community Elders, to be known as the Elder Advisory Committee, to provide advice and guidance to the Dispute Resolution Committee on any and all matters for which such guidance may be required, including, without limitation, the traditional laws, customs and practices of Aamjiwnaang.

**CHAPTER 11: COURTS OF COMPETENT JURISDICTION**

- 11.1. In the event of the breakdown of a marriage or Common Law relationship, a Spouse may apply to a court of competent jurisdiction to determine disputes in relation to Interests in First Nation Land provided that he or she has first complied with the requirements contained in Chapters 9 and 10 of this law, or is specifically relieved of such compliance by another provision in this law.
- 11.2. Subject to this law, a court of competent Jurisdiction may deal with Interests in First Nation Land held by either Spouses, or both Spouses, in a manner consistent with the laws of general application relevant to the disposition of real property in proceedings relating to matrimonial causes.
- 11.3. Notwithstanding section 11.2, the fact that an Interest in First Nation Land does not include future or contingent Interests in First Nation Land shall not be taken to confer jurisdiction upon a court over such interests under this law.
- 11.4. An Interest in First Nation Land received by way of gift or inheritance by one Spouse only from a third person who is a family member, or by one Spouse only together with one or more members of that family, shall be deemed, subject to proof to the contrary, to have been transferred with the intention that the interest should continue to be

held within that family exempt from any claim of the other Spouse, and subject to the intention that the interest, the income from the interest and the value of the interest are to be excluded from the transferee Spouse's net family property.

- 11.5. Section 11.4 does not apply with respect to an Interest in First Nation Land that is a Matrimonial Home.
- 11.6. Notwithstanding section 11.4, the court may make any appropriate and equitable order on the ground of unconscionability where a Spouse has intentionally, recklessly or fraudulently depleted his or her net family property that is an Interest in First Nation Land and that would otherwise be subject to the presumption set out in section 11.4.
- 11.7. Subject to this law, the court may make any order in relation to Interests in First Nation Land held by a Spouse, or by both Spouses, that the court could make in respect of real property situated in the Province of Ontario, but not on First Nation land, including, in appropriate circumstances:
  - (a) an order that an Interest in First Nation Land be transferred to a Spouse absolutely, where permitted under this law,
  - (b) an order that an Interest in First Nation Land be subject to a lease by one Spouse to the other for a term of years subject to such conditions as the court deems just in all the circumstances;
  - (c) an order that an interest in First Nations land held by both Spouses be partitioned or partitioned and sold.
- 11.8. An order shall not be made under paragraph 11.7(a) in favor of a Spouse who is not a Member of Aamjiwnaang.
- 11.9. Where an order is made under paragraph 11.7(c) for the partition of an Interest in First Nation Land, the Council of Aamjiwnaang shall direct the transaction, and may by resolution make provision for a survey and for the allocation of the costs of the transaction unless the court has already made an order to that effect.
- 11.10. Where an order is made under paragraph 11.7(c) for the sale of an Interest in First Nation Land, that sale shall be by auction directed by Council, which shall by resolution make provisions for a band member bid representing a fair sale for the interest, and for the allocation of costs of the transaction unless the court has already made an order to that effect.
- 11.11. Where the interest of a Spouse in First Nation land is held through a corporation, the court may order that he or she transfer shares in the corporation to the other Spouse or have the corporation issue shares in the corporation to the other Spouse.

- 11.12. An order shall not be made under section 11.7 so as to require the sale of an operating business or farm on First Nation land, or so to impair seriously its operation, unless there is no reasonable alternative method of achieving an equitable result between the Parties.
- 11.13. Where a proceeding has been commenced in accordance with this law and either Spouse dies before all issues relating to Interests in First Nation Land have been disposed of by the court, the surviving Spouse may continue the proceeding against the estate of the deceased Spouse.
- 11.14. For greater certainty, a "Spouse" for the purpose of applying for relief from a court includes a former Spouse after the marriage or Common Law relationship has broken down or been dissolved by decree absolute of divorce or by judgement of nullity.
- 11.15. Nothing in this law relieves a Party of the requirement to observe the rules and procedures of a court of competent jurisdiction in relation to matrimonial causes.
- 11.16. Nothing in this law limits the application of valid laws of general application in respect of matrimonial causes, except to the extent that such laws deal expressly or implicitly with Interests in First Nation Land and to that extent this law applies.
- 11.17. It is the intention of this law that all rights, entitlements and obligations of Spouses be dealt with equitably on the basis of the totality of their circumstances, including rights, entitlements and obligations in respect of Interests in First Nation Land, but subject to the special provisions set out in this law.
- 11.18. Whether or not an Interest in First Nation Land is a Matrimonial Home is a question of fact and, for greater certainty, the provisions of the *Family Law Act* (Ontario) dealing with the designation of a Matrimonial Home do not apply in respect of Interests in First Nation Land.
- 11.19. Subject to the limitations inherent in the nature of First Nation Land, both Spouses have an equal right to possession of a Matrimonial Home.
- 11.20. When only one Spouse holds an Interest in First Nation Land that is a Matrimonial Home, the other Spouse's right of possession is
- (a) personal against the Spouse who holds the interest, and
  - (b) ends when they cease to be Spouses, unless a Domestic Contract or court order provides otherwise.
- 11.21. No Spouse shall dispose of or encumber an Interest in First Nation Land that is 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 in respect of that interest by Domestic Contract; or
  - (c) a court order has authorized the transaction or has released the Interest in First Nation Land from the application of this section.
- 11.22. If a Spouse disposes of or encumbers an Interest in First Nation Land that is a Matrimonial Home in contravention of section 11.21, the transaction may be set aside on an application to the court unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice, at the time of acquiring it or making an agreement to acquire it, that the property was a Matrimonial Home.
- 11.23. Regardless of which Spouse holds an Interest in First Nation Land that is Matrimonial Home, the court may on application:
- (a) order the delivering up, safekeeping and preservation of the Interest in First Nation Land that is a Matrimonial Home;
  - (b) direct that one Spouse be given exclusive possession of the Interest in First Nation Land that is a Matrimonial Home, or part of it for such period as the court may direct consistent with this law, and release any other Interests in First Nation Land that is not a Matrimonial Home;
  - (c) authorize a disposition or encumbrance consistent with the laws of Aamjiwnaang of a Spouse's Interest in First Nation Land that is a Matrimonial Home, subject to the other Spouse's right of exclusive possession as ordered;
  - (d) where it appears that a Spouse has disposed of or encumbered an Interest in First Nation Land that is a Matrimonial Home in a fraudulent manner calculated to defeat the rights of the other Spouse under this law, or has falsely and knowingly represented in connection with a disposition or encumbrance that the Interest in First Nation Land is not a Matrimonial Home, direct the other Spouse to substitute other interests he or she holds in First Nation Land for the Matrimonial Home subject to such conditions as the court considers appropriate;
  - (e) make any interim or temporary order to give effect to the purposes of this law or to protect the rights of a Spouse, or
  - (f) make any ancillary order which the court deems necessary to give effect to this law.

- 11.24. A court, in considering whether to direct that one Spouse have exclusive possession of an Interest in First Nation Land that is a Matrimonial Home, shall be guided by the principle that the custodial parent of a child should have exclusive possession of the family residence for a period sufficient to ensure that the child, or the younger child if there is more than one child, reaches the age of majority and has the opportunity to complete his or her education, provided that observance of this principle is consistent with the best interests of the child.
- 11.25. Where both parents share joint custody of a child or children, the principle set out in section 11.24 shall be adapted to favour the Spouse with whom the child or children principally reside, and if the child or children reside substantially equal periods of time with both Spouses, then the principle shall be neutral as between them.
- 11.26. In applying the principle set out in section 11.24, the court may have regard to the fact that one or more of the children are not Members of Aamjiwnaang.
- 11.27. A person who contravenes an order made by a court of competent Jurisdiction pursuant to this law in relation to an Interest in First Nation Land is guilty of an offence and liable, on summary conviction, to a fine of not more than \$1,000.00 or to imprisonment for a term of not more than three months, or to both.
- 11.28. A fine payable under this section shall be remitted to Aamjiwnaang by the court, after reasonable court costs have been deducted.

## **PART V: ADDITIONAL PROVISIONS**

### **CHAPTER 12: NON-DEROGATION**

- 12.1. Nothing in this law shall be construed so as to abrogate or derogate from any Aboriginal, treaty or other rights or freedoms that pertain to the Aamjiwnaang people. Specifically, the solutions to matrimonial property issues on reserve set-out in this law shall not abrogate or derogate from the collective rights of our peoples in our reserve lands and traditional territories.

### **CHAPTER 13: AMENDMENTS & RENEWAL**

#### ***Major Amendments***

- 13.1. Major amendments to this law shall only be enacted with the approval, by majority vote, of Members present at a meeting duly convened by Council for the purpose of amending this law.
- 13.2. Despite section 13.1, any proposed major amendments to this law shall not be approved unless at least 25 per cent of eligible voters participated in the vote.

- 13.3. Major amendments to this law for the purposes of section 13.1 include any substantive amendments that affect or may affect the main purpose and/or intent of this law, and/or any of the interests, rights, entitlements, legal protections and/or obligations of those who may be impacted by this law.
- 13.4. In advance of any meeting(s) duly convened by Council for the purpose of amending this law pursuant to section 13.1, Council shall publish a written notice containing the date, time and place of said meeting(s), as well as the text of any proposed amendment(s) to this law.

### **Minor Amendments**

- 13.5. Minor amendments to this law may be enacted by a majority decision of Council at a duly convened meeting of Council called for that purpose.
- 13.6. Minor amendments to this law for the purposes of section 13.5 include, without limitation: typographical errors, renumbering to harmonize with other laws, improvements in the language to clarify the intention of the First Nation, and/or changes required to reconcile inconsistencies with other laws and/or court decisions, as applicable.

### **Renewal**

- 13.7. The First Nation shall make best efforts to review and, if necessary, renew this law every five (5) years from the date on which this law comes into force.
- 13.8. The Dispute Resolution Committee, in consultation with the community, shall be charged with conducting periodic reviews of this law pursuant to section 13.7, and following these periodic reviews, shall provide Council with a written report summarizing the Committee's conclusions and any recommendations.
- 13.9. Renewal of this law for the purposes of section 13.7 means to enact any amendments pursuant to this Chapter as may be required, whether they be major or minor amendments. Alternatively, if no amendments to this law are enacted following a periodic review of this law under section 13.7, then this law shall be deemed to be renewed on the date of Council's acceptance of the report referred to in section 13.8.

## **CHAPTER 14: COMING INTO FORCE**

- 14.1. After being ratified by the Aamjiwnaang Bendaazijig, this law shall come into force six (6) months from the date of its subsequent adoption by Council.