

Can You Stay in the Family Home on Reserve?

Who this is for

This fact sheet is for you if —

- you share (or shared) a home on reserve with your partner
- you are thinking of leaving, or you have already left the relationship, and
- you have questions about your right to stay in the family home

Who can stay in the family home?

There is no easy answer to this question. Whether or not you can stay in the family home after separating from your partner depends on —

- whether you have the right to live on the reserve
- who has rights to the land your home is on
- what kind of housing you live in
- the band's policies on the reserve where you live

Who has the right to live on reserve?

You need to have the right to live on reserve in order to stay in the family home. You have the right to live on reserve if —

- you are a member of the band, or
- you qualify under the band's residency bylaw for non-band members.

If you do not have the right to live on reserve, it's unlikely that you will be able to stay in the family home. But if you live in **capital** or **social** housing, you may be able to go to court to get money from your partner for your share of the house. This is called **compensation** (see back page).

Whose land is your home on?

Your right to stay in the family home depends on who has rights to the land your home is on. There are different kinds of land rights on reserve:

■ Indian Act land

This is land allocated by the band to individual band members, according to the Indian Act. With an Indian Act land allotment, there is usually a Certificate of Possession, or Certificate of Occupation. The person whose name is on the certificate has the right to live on the land. You can find out who it is by asking your band housing officer or chief and council, or by checking with the Indian Land Registry at Indian and Northern Affairs Canada.

■ Traditional land

This is land that belongs to a particular family through tradition or custom recognized by the band. Whoever the band has recognized has the right to live on that land. Check with the band chief or council to find out if there is a written record of traditional land possession.

■ General band land

If you don't have a specific land allotment, you probably live on general band land. This is land held by the band for all band members. In this case, your right to stay in the home depends on band policies and the type of housing you live in: **capital**, **social**, or **rental** housing. If you're not sure what your housing is, ask your band for more information.

What types of housing are there?

■ Capital housing

This is housing that you and/or your partner pay for by getting a loan (although part of the

house may be paid for by a subsidy from the band). Although you and/or your partner own the house, you may still have a **tenancy agreement** with the band to occupy general band land.

- It is likely you can stay in the home if you are an **individual tenant** (you alone have the tenancy agreement with the band)
- You *may* be able to stay in the home if you are a **joint tenant** with your partner (you both have the tenancy agreement with the band)
- You probably can't stay in the family home if you are not an individual or joint tenant, but you may have the right to get **compensation** for a share of the home. You will need to talk to a lawyer who knows about family and property law on reserve.

■ Social housing

Social housing is paid for by the band through a Canada Mortgage and Housing (CMHC) program. While you live in it, you and/or your partner repay the band, and when the house is fully paid off, the band transfers ownership to you and/or your partner.

- If the band has transferred ownership to you and/or your partner, you are in the same position as someone with capital housing (see above).
- If you are still paying off the house, or you do not have a rent-to-own agreement with the band, you are in the position of someone in band-owned rental housing (see below).

■ Band-owned rental housing

This is housing that you and your partner rent from the band.

- If you signed a **tenancy agreement**, check to see if it says anything about what happens when the tenants separate.
- Check also to see if there is a **band policy** about what happens if the tenants in rental or social housing separate. For example, the band's policy may say that if the children live with you, you can stay in the home and have it put in your name.

Can the courts help?

- Under provincial law, the courts cannot make decisions about who should stay in the family home because this comes under a federal law (the Indian Act) and band policies.
- However, if you do not have rights to stay in capital or social housing, you *can* go to court and ask a judge to order that you get compensation for a share of the home's value (either sale or rental value). The judge may order this to ensure there is a fair division of family property. You will need to talk to a lawyer who knows about family and property law on reserve.

Where to get more help

- If you are leaving an abusive partner, it is very important to have a **personal safety plan**. A transition house worker or Native Courtworker can help you with this. For information about how to contact them, call **VictimLINK** at **1-800-563-0808**.
- Talk to your band housing officer, or chief and council. They may help you keep or regain your home if the children are living with you.
- If you do not have possession of a capital or social home, talk to a lawyer about getting compensation for a share of the home's value. You'll need a lawyer who knows about family and property law on reserve.
- If you cannot afford a lawyer, contact your local legal aid office. They can help you apply for a legal aid lawyer and also give you legal information. Make sure to tell them if your situation is urgent. Call **VictimLINK** at **1-800-563-0808** for the number of the legal aid office nearest to you.

This fact sheet explains the law in general. It is not intended to give you legal advice on your particular problem.

This fact sheet is one of a series produced by the Legal Services Society, BC.

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