

Summary of the Huron-Wendat Law on Matrimonial Real Property

Note: The French version shall always prevail in case of any discrepancy or inconsistency between the French version and its English translation.

Definitions (article 2)

The definitions are found in article 2 of the Huron-Wendat Law on Matrimonial Real Property (Law). It includes definitions for common-law partners, spouses, children, family residences, family patrimony, real property rights and interests and court (Superior Court).

Rules of interpretation (articles 3 to 8 of the Law)

These rules include descriptions for the following:

- Child:
 - A person must be under 18 years old to be considered a child;
 - However, a person over 18 years old may continue to be considered a child according to principles established by the courts. For example, in some cases, a person over the age of 18 years who is still in school may be considered a child.
- The common-law-relationship begins when two people:
 - Have been living together in a conjugal relationship for at least five (5) years without interruption;
 - Have been living together in a relationship for at least one (1) year without interruption and are the natural or adoptive parents of a child; or
 - Have entered into a cohabitation agreement to treat their relationship as marriage-like.

Application of the Law (articles 9 and 10 of the Law)

- The Law only applies to real property rights and interests in the community of Wendake, unless otherwise provided by contract.
- The Law applies:
 - To marriages, civil unions and common-law relationships that began before and after the coming into force of this Law;

- To real property rights and interests acquired before and after the coming into force of the Law;
- If at least one of the two partners or spouses is a member of the Huron-Wendat Nation.

Family residence and restriction on family residence (articles 11 to 16)

- Recognition of the right of the child to the occupation, enjoyment and use of the family residence:
 - The Law recognizes the right of a child to the occupation, enjoyment and use of the family residence, regardless of the change in the parents' relationship;
 - The Law gives precedence to children over spouses or parents regarding the right to the use, enjoyment and occupation of the family residence;
 - The right of the child to occupy the family residence persists until an order is made by a court;
 - The Law provides for restrictions on alienation from the family residence for spouses who have at least one child;
 - The Law provides remedies for non-compliance with restrictions on alienation from the family residence.
- Recognition of the right to occupy the family residence following a death:
 - Automatic right to occupation for one year following a death or according to the duration provided for in a will.

Exclusive occupation of the family residence (articles 17 to 21)

- A spouse may address the court, in the event of separation or death, to request a right of exclusive occupation of the family residence.
- This right may be granted to common-law partners and spouses.
- The Law sets out the elements that the court may consider in making an order, including the best interests of children.
- Being granted a right of exclusive occupation of the family residence does not have the effect of changing the owner of the rights or interests in the family residence; it is only a right of occupation.

Division of the family patrimony (articles 22 to 29)

- In the event of the separation, dissolution or annulment of the marriage or civil union, the Law provides for the division of the value of the real property included in the family patrimony according to the rules provided for in the Civil Code of Québec.
- The division cannot cause a person who is not a member of the Huron-Wendat Nation to become the holder of a certificate of possession.

Division of other real property interests or rights (articles 30 to 32)

- In the event of the separation, dissolution or annulment of the marriage or civil union, the real property which is not part of the family patrimony is divided as follows:
 - Real property acquired before the marriage or civil union remains the property of the spouse subject to the matrimonial regime or contract;
 - Property acquired during the marriage or civil union is divided in accordance with the provisions of any matrimonial regime or contract.

Other rights of common-law partners (articles 33 to 37)

- Common-law partners may, by cohabitation agreement in the event of separation or by will in the event of death, agree to divide certain real property just as spouses would do.
- **In the absence of a cohabitation agreement or will, there is no division of real property between common-law partners.**
- To be valid, the cohabitation agreement must be written and signed by both common-law partners before two witnesses or before a notary.

General powers of the court (articles 38 to 43)

- The court may issue the same orders as under the Civil Code of Québec.
- The court may issue orders in an urgent manner.
- The Conseil de la Nation huronne-wendat (CNHW) must be notified of any request made under the Law so that it can make representations to the court, particularly as regards the legal, cultural, social or other context.

Appeal (article 44)

- It is possible to appeal a decision rendered under the Law.

Enactment (articles 45 to 47)

- The penalty for non-compliance with an order made under the Law may be contempt of court.

Administration (articles 48 to 50)

- A copy of the Law must be made available to the public in locations determined by the Conseil de la Nation huronne-wendat, on the CNHW's website or by any other means of publication.
- The person in favour of whom an order or decision has been made under the Law must provide a copy to the person responsible for the land registry at the Conseil de la Nation huronne-wendat.

Amendment or abrogation of the Law (articles 51 to 56)

- If the amendment does not substantially affect the rights of spouses or common-law partners: the amendment may be made following one or more public assembly or assemblies with notice provided to the public.
- If the amendment substantially affects the rights of spouses or common-law partners: a referendum by simple majority must be held.

Transitional provisions (article 57)

- The federal rules will continue to apply when the separation or death occurred before the coming into force of the Law.

Entry into force (article 58)

- The Law will come into force on the date of the referendum if the 25% participation rate has been reached and the majority of voters voted in favour of the draft Law.