



## **Brief Summary:** **Membertou Family Homes Law**

### **What is the Membertou Family Homes Law (MFHL)?**

The Membertou Family Homes Law is a law drafted by Membertou based on consultation with community that would determine how the interests in an individually-owned family home in Membertou would be divided in the event of a separation, divorce, or death - if the spouses cannot come to an agreement.

### **Preamble**

The preamble is the introduction to the law and sets out that Membertou has an inherent right of self-governance and has jurisdiction upon the breakdown of a relationship to create rules regarding the use and occupation of family homes located on Membertou lands and these rules can be enforced in court. Membertou confirms that the best interests of any children are to be treated as the most important consideration when applying the law. Membertou also confirms that spouses have the right to reach their own domestic (written) agreements on matters related to the use and occupation of the family home and can therefore “opt out” of the law.

### **Part 1 – Citation**

This section sets out the legal name of the law: the *Membertou Family Homes Law, 2016*

### **Part 2 – Definitions**

This section defines many of the terms used in the MFHL. Of note, partners who live together but who are not married must have lived together for five years or have a child together before they will be found to be common-law. The law does not apply to couples living together if they do not meet the definition of spouse (married or domestic partner) or common-law.

Also significant to the interpretation of this law are the definitions of “family homes” and “Membertou-owned homes”. Family homes are held by certificate of possession, while Membertou-owned homes include rent-to-own and rental homes where legal title to the lands is held by Membertou.

### **Part 3 – Domestic Agreements and Mediation**

Spouses entering into a marriage, or ending a marriage, and common-law partners may make a domestic agreement that sets out the division of the value of their interests and rights in or to the

family home in a manner that is different than the manner provided for under the law. Agreements must be in writing and must be witnessed. These agreements are enforceable in court if validly made.

Spouses and common-law partners are encouraged to mediate disputes when possible.

## **Part 4 – Family Homes**

Spouses and common-law partners both have a right to live in the family home on Membertou lands as long as they remain together.

If a spouse or partner passes away, the surviving spouse or partner can automatically stay in the family home for a full year and could apply to court to stay longer. By domestic agreement, members are able to allow their spouse or common-law partner to stay in the home longer than this, potentially up to the end of their lives. The spouse or common-law partner must continue to maintain the house, but if they are not a member they will not be able to own it and they cannot sell it. It will eventually pass to the heir (usually another family member).

A member does not need the consent of a common-law partner to sell the family home, but they do need the consent of their spouse.

This section does not apply to Membertou-owned rent-to-own or rental homes which are governed by Membertou policy.

## **Part 5 – Emergency Protection Orders**

This section allows a court to order that a spouse or common-law partner be excluded from the family home on an urgent basis (in situations of family violence) for up to ninety days. The judge will consider the best interests and safety of dependent children as the most important factor in making such an order.

This section applies to certificate of possession homes, Membertou-owned rent-to-own and rental homes.

## **Part 6 – Exclusive Occupation Order (At Breakdown of Relationship)**

When a relationship breaks down and spouses cannot agree who can stay in the home either spouse may apply to court for an order permitting them to stay in the family home, whether or not they are a member, and requiring the other spouse to leave until the separation or divorce is finalized or an agreement is otherwise reached.

Common-law partners can only apply for this order if they have dependent children. When making such an order a court will consider the best interests of any dependent children first and then the needs, means and circumstances of the parties.

This section does not apply to Membertou-owned rent-to-own or rental homes which are governed by Membertou policy.

### **Part 7 – Exclusive Occupation Order (After Death of a Spouse or Common-law Partner)**

A surviving spouse or common-law partner has an automatic right to remain in the family home for one year following the death of their partner but the survivor may apply to the court for an order granting the survivor exclusive occupation of a family home whether or not that person is a member.

When making such an order a court will consider the best interests of any dependent children first and will also consider other facts, such as the interests of the individual who will inherit the home, in making an order for a period of time up until the end of the life of the survivor.

This section does not apply to Membertou-owned rent-to-own or rental homes which are governed by Membertou policy.

### **Part 8 – Division of the Value of a Family Home (Upon Breakdown of Marriage or Domestic Partnership)**

Each spouse is entitled to an amount equal to one half of the appreciation of the family home from the date that the spouses became spouses up until the date the relationship ends. Value is determined by considering what a buyer would pay for the home taking into account the fact that the home can only be transferred to another member and deducting any family debts from the amount.

A common-law partner is only entitled to a division in the value of a family home granted through a domestic agreement on the terms set out in the domestic agreement.

This section does not apply to Membertou-owned rent-to-own or rental homes.

### **Part 9 – General**

This section permits Council to make representations to a court on any application for an order made under this law. For example, if Council considers that a non-member surviving spouse has made a significant contribution to Membertou as a community member Council could present this for consideration in an application to permit the spouse to stay in the family home for a longer period of time. This section also makes it an offence not to comply with court orders made under the law.

## **Parts 10 and 11 – Jurisdiction of Courts & Rules of Practice and Procedure**

This section clarifies the power of the courts to hear and decide applications made under this law and the legal rules the court will use in making their decisions.

## **Part 12 - Proof of Law and Access to Copies of Law**

The MFHL must be published on the Membertou website if it is enacted.

## **Part 13 - Amendment or Repeal**

A major amendment to the MFHL must be approved by eligible voters at a members-at-large meeting that is convened by Council for the purpose of amending the law. Minor amendments to correct errors, for example, may be made by Membertou council resolution.

## **Part 14 – Coming into Force**

The law comes into force if it is approved by Council and by majority vote (50% plus 1) of 25% of eligible voters of Membertou members.

### **Where can I see the full version of the *Membertou Family Homes Law*?**

It is available on the Membertou Governance website at [www.maupeltutantelsutekek.webs.com](http://www.maupeltutantelsutekek.webs.com). Paper copies are also available at the Membertou Entrepreneur Centre's Governance office.

### **Who do I contact if I have questions on the *Membertou Family Homes Law*?**

Please contact Cheryl Knockwood, Membertou Governance Coordinator, at 1-800-617-6466 (ext. 2520) or by email at [cherylknockwood@membertou.ca](mailto:cherylknockwood@membertou.ca). Membertou members may also drop in Tuesdays and Thursdays from 1:00 to 4:30 p.m. starting March 22, 2016 and ask her questions in person at the Membertou Entrepreneur Centre.

**Note:** This outline does **not** cover each section of the proposed law. We advise all Membertou members to read the full law. This document is not intended to be used as legal advice.