

# Garden River First Nation Matrimonial Real Property (MRP) Law

Community Forum  
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THIS IS INDIAN LAND

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# Agenda

- **Purpose and Goal of Workshop**
- **Matrimonial Real Property (“MRP”) Laws**
  - What is MRP Law?
  - Why make an MRP Law?
  - What MRP Laws Can & Cannot Do
- **Creating GRFN MRP Law – the Steps**
- **Overview of GRFN Draft Law**
- **Questions & Answers**

# Purpose and Goal

- To review draft *GRFN Matrimonial Real Property Law*.
- To learn from and receive feedback from the GRFN Members





# What is MRP Law?

- Matrimonial real property is real, immovable property (i.e. lands and fixtures) acquired during a marriage or in contemplation of marriage.
- MRP Laws deal with matrimonial real property issues on reserve that are not covered by other legislation:
  - Division of property on breakdown of marriage
  - Occupancy rights
    - Exclusive occupation orders
    - Emergency protection orders
    - When a spouse dies



# Why create an MRP Law?

1. Because there was a “**Legislative Gap**” created by the Canadian Government:
  - no laws addressing on-reserve MRP
  - Provincial & Territorial laws do not apply to lands on-reserve
  - *Indian Act* is silent on MRP
  
2. To **shield GRFN from a New Federal Law in force as of December 16, 2014**
  - *Family Homes on Reserves & Matrimonial Interests or Rights Act*
  - Establishes federal rules for division of on-reserve MRP



# Why create an MRP Law? (cont'd)

## 3. To seize an opportunity for GRFN to **create its own Law**

- Federal MRP Law grants legislative authority to First Nations to replace the Federal Act by enacting their own MRP laws.
- A First Nation can pass its own MRP Law at any time and then the Federal Act will no longer apply.
- Ministerial approval is not required.
- Inherent right to self-government and law-making.



## What MRP Laws Can Do

MRP Laws can address:

- Division of on-reserve matrimonial real property on breakdown of a marriage; and
- Other orders relating to real property on-reserve:
  - ✓ Emergency protection orders
  - ✓ Exclusive occupation orders
  - ✓ Preservation of property
  - ✓ Enforcement of written agreements



# What MRP Laws Cannot Do

- MRP Laws cannot provide for permanent property rights in reserve lands for non-members.
- MRP Laws also cannot address:
  - Divorce
  - Spousal or child support
  - Custody and access issues
  - Division of other types of property
  - Wills and Estates



## For greater clarity:

MRP laws do not allow non-members:

- to have permanent rights to reserve lands; or
- to sell reserve lands.



# Creating GRFN's MRP Law - the Steps

## Steps Taken

1. June 24, 2014 – Initial meeting with Technical Committee
2. August 8, 2014 – 1<sup>st</sup> Draft of TteS MRP Law provided to Technical Committee for review
3. August 13, 2014 – 2<sup>nd</sup> meeting with Technical Committee



## Steps taken (cont'd)

4. November 4, 2014 – 1<sup>st</sup> Community Meeting to review first draft of GRFN MRP Law
5. May 26, 2015 – 2<sup>nd</sup> Community meeting to review revised draft GRFN MRP Law
6. Ongoing communication with Technical Committee and further revisions to draft GRFM MRP Law.



# The Remaining Steps

1. 3<sup>rd</sup> Community forum to review final draft of GRFN MRP Law (June 16, 2015)
2. Ratification Vote
  - The GRFN MRP Law will come into force after it has been approved by the GRFN membership at the Ratification Vote.
  - A valid vote = 25% of all eligible GRFN voters participating
  - Approval = a majority of those who participate in the vote.



**Overview of Draft  
*GRFN Matrimonial Real  
Property Law, 2015***



# Preamble

- Purpose:
  - Important facts or considerations that led to the enactment of legislation
  - Legal basis for the authority to enact the legislation
- The preamble recognizes and affirms:
  - Self-sufficient government of the GRFN
  - Existing Aboriginal and Treaty rights, including the inherent right of self-government
  - Sacred duty to maintain a harmonious, self-sustaining community
  - GRFN's own laws and processes for resolving real property issues
  - Best interests of the child



# Parts 1 & 2

## Part 1: Title

- *“The Garden River First Nation Matrimonial Real Property Law”*

## Part 2: Definitions

- Defines certain words used in the law, including: child, domestic contract, family violence, spouse, matrimonial home/property
- “Family Home”
  - One or both spouses reside there
  - Mutually intended to be used for a family purpose
  - Excludes the land, certificate of possession or allotment on which the home is situated
  - Not gifted or inherited
- “Matrimonial Property”
  - Interest in GRFN Land with or without Family Home
  - Not gifted or inherited
  - Any increase in value if it occurs during r-ship



# Part 3: Application of the Law

## *This Law only applies:*

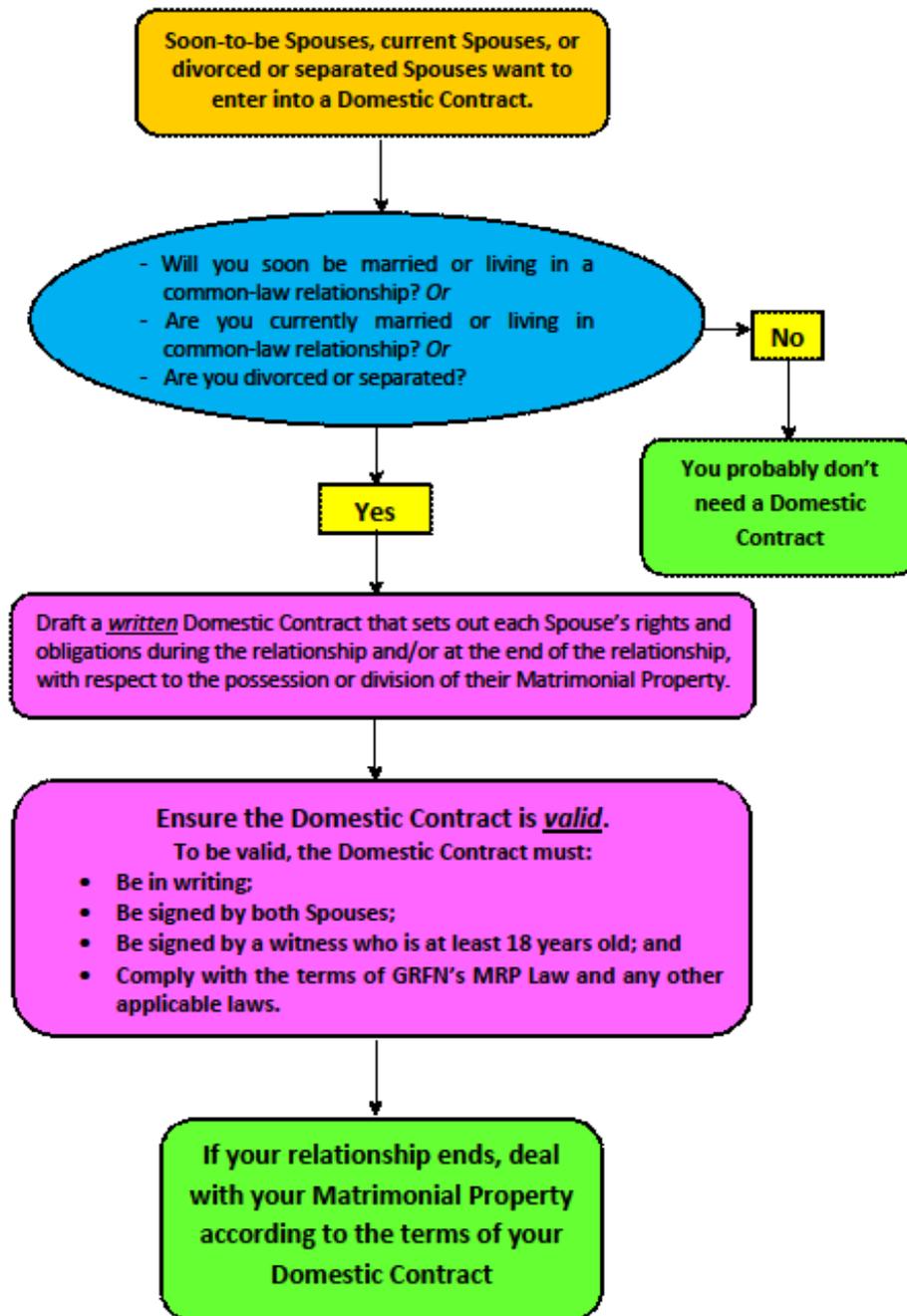
- on reserve;
  - to GRFN Members and their spouses in relation to a break-down of a marriage or common-law relationship; and
  - to family homes and matrimonial property, except where explicitly stated
- 
- **Federal and provincial laws** relating to divorce and separation **still apply**
  - Unless otherwise provided, this Law **does not apply to wills and estates**



## Part 4: Domestic Contracts

- A domestic contract is an agreement made between spouses to establish their respective rights and responsibilities regarding their family home and matrimonial property.
  - Examples are prenuptial agreements, marriage agreements, separation agreements.
- The draft GRFN MRP Law upholds domestic contracts, unless they:
  - are made illegally, or
  - grant more than a life estate in GRFN Land to a non-Member

## Creating a Domestic Contract

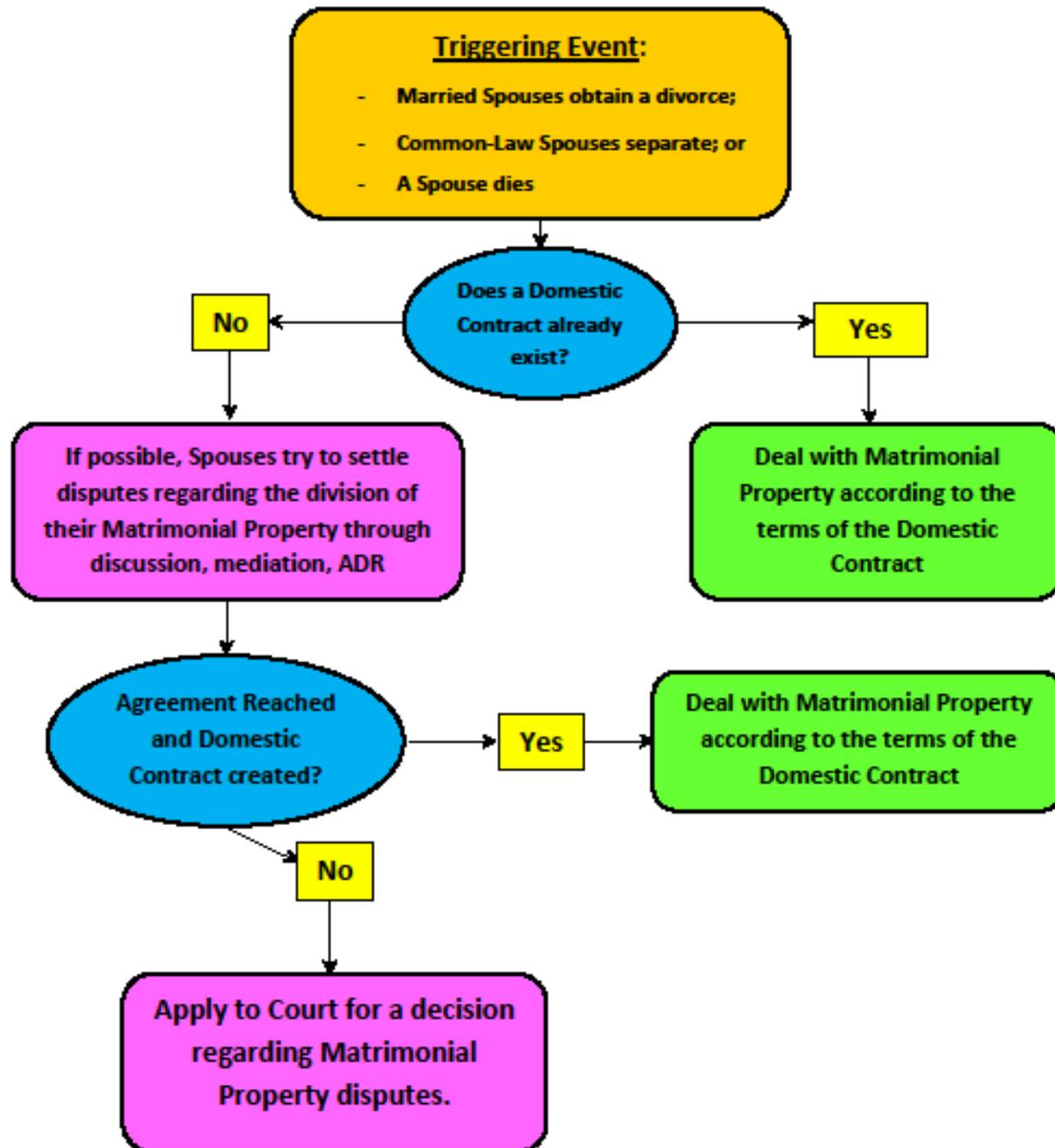




# Part 5: Access to the Courts

- The Draft GRFN MRP Law encourages Spouses to resolve their differences through cooperative discussion, mediation and ADR
- Access to the courts is allowed in order to:
  - enforce a domestic contract,
  - decide a dispute in relation to a family home or matrimonial property; or
  - deal with any matter provided for under this Law or decisions previously rendered in any Canadian court.
    - *ie: divorce, child custody, spousal support, child support, division of personal property or division of real property off-reserve.*
- Notice must be given to ALL affected parties (including the GRFN Chief and Council)
- A decision needs to be made about whether to provide for access to traditional dispute resolution tribunals.

Overview of the General Process  
Garden River First Nation Matrimonial Real Property Law





# Role of Chief and Council

Chief and Council may make representations to the court about the cultural, social and legal context relevant to an application.

**This provision does not give Council the authority or responsibility to enforce the law.**



# Part 6: Family Home

## *Presumption of Equal Rights*

- Subject to limitations inherent in the nature of GRFN land and to factors set out in this Law:
  - both spouses have an equal right to possession of a family home; and
  - each spouse is entitled to half of the value of the family home (a 50/50 presumption)



## Part 7: Division of Matrimonial Property or Compensation in Lieu

- Divorced or separated spouses can apply for division of matrimonial property or for compensation in lieu.
- Times limits for applying
- The Court can make various orders with respect to Matrimonial Property
  - **What court can do:** make a declaration as to the ownership of an interest in GRFN land, order transfers of property, order payment of specified amounts in relation to rent, grant easements.
  - **What court can't do:** provide non-members with permanent interests or make an order that would force a member to sell matrimonial property.

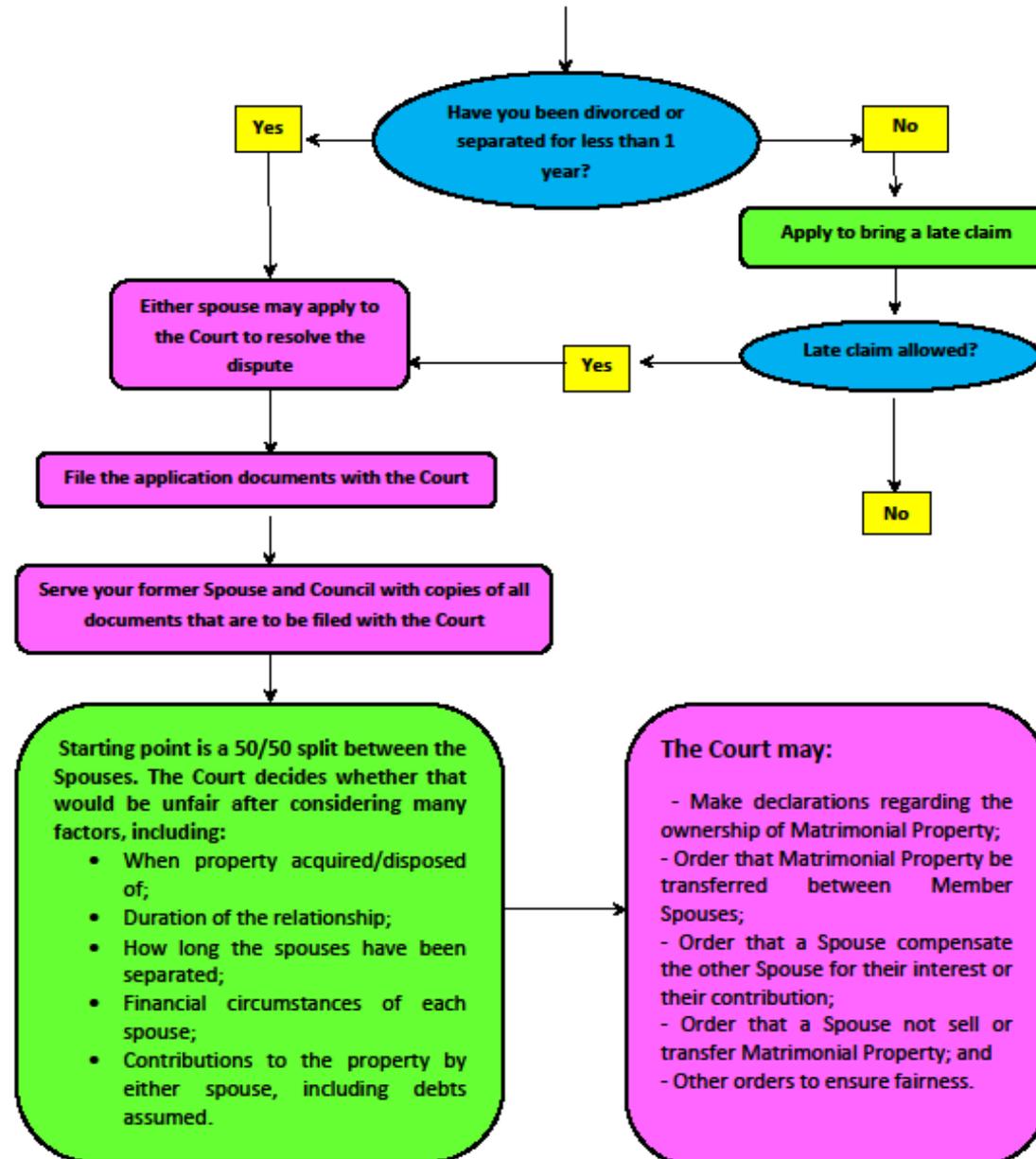


# Considerations

- The court may vary the presumption of 50/50 division of matrimonial property depending on a long list of factors.
- The key driving principles are:
  - What is in the **best interest of the children?**
  - How can we achieve the **greatest level of fairness** between the spouses without prejudicing or harming GRFN's **collective interest in its Land?**

## Applying to the Court for a Division of Matrimonial Property or Compensation

Divorced or Separated Spouses are unable to agree on how to divide their Matrimonial Property.





# Part 8: Exclusive Occupation Orders

- **Definition:** An order that grants exclusive occupation of a family home (including a rented family home) to one spouse and prevents the other spouse from entering the home for a specified period of time. The Court decides how long the order applies.
  - Generally applicable in cases of domestic violence, but other circumstances may also apply.
  - The spouse applying for the order must give notice to the affected spouse.
- In making these orders, the court must consider, among other things:
  - the best interests of any children in the home;
  - the terms of any domestic contract between spouses
  - the collective interests of GRFN Members in GRFN Land
  - the financial situation and medical condition of the spouses;
  - availability of other suitable accommodation situated on GRFN Land;
  - any existing order(s) made as a consequence of relationship breakdown;
  - any family violence, including what reasonably constitutes psychological abuse; and
  - the interests of any elderly person or person with a disability living in the home.



## Applying to the Court for Exclusive Occupation of a Family Home

Current, divorced, or separated Spouses are unable to agree on who gets to occupy the Family Home.

File application documents with the Court setting out what is being asked for and all information the Court will need to make a decision.

Serve the Spouse, Council, & any other GRFN member with an interest in the land the Family Home is on with copies of all documents that were filed with the Court.

### The Court must consider:

- Best interests of any children;
- Existence of family violence;
- Terms of any existing agreement or order;
- Collective interest of GRFN in the land;
- Financial/medical circumstances of spouses;
- Availability of other suitable accommodation;
- Needs of any dependents in the household;
- Interest of any other person in the home.

### Court may order:

- Exclusive occupation of the home by a spouse for a specified period of time;
- A spouse or other person vacate the home and be prohibited from re-entry;
- Preservation of the home and contents;
- Either spouse pay for repair/maintenance costs;
- Applicant spouse pay toward cost of respondent spouse's other accommodation; and
- Variation if change of primary caregiver of child.



# Part 9: Emergency Protection Orders

**Definition:** A temporary order granting exclusive occupancy of a family home (including a rented family home) to one spouse on an emergency basis where a judge is satisfied that family violence has occurred and the order is required to ensure immediate protection of a person.

- Applicable for a period of up to 90 days
- Applicable to all housing, including rental and social housing
- ANY PERSON can make the application (ie: on behalf of the endangered person) and NO NOTICE is required.

## Applying to the Court for an Emergency Protection Order (Exclusive Occupation Order)

Spouse, Child or person residing with a Spouse or Child on GRFN Land experiences Family Violence and requires protection.

Applies to matrimonial homes and rented matrimonial homes.

If you are a Spouse, you can apply to the Court without providing notice to the other Spouse, Council or any other person.

A peace officer or other person can apply on behalf of a Spouse with the Spouse's consent or with leave of the court.

The Court may grant you an emergency exclusive occupation order if it concludes that:

- Family Violence has occurred; and
- the order should be made to help ensure the immediate protection of a person residing in a property on GRFN Land.

The order may be varied or revoked by the Court on an application by:

- yourself (person order is in favour of);
- the person(s) the order is against;
- Council; or
- The owner of the property in question if the property in question is not owned by yourself or your Spouse.

The order must include a provision directing a peace officer to enforce the order at your or Council's request.

The order is time limited – 90 days, or term of any rental agreement, whichever is shorter.

The order may include other provisions, including provisions:

- requiring certain persons to leave and not return to the property and/or not come within a specified distance of the property;
- directing a peace officer to remove certain persons from the property; and
- directing a peace officer to accompany a person that must leave the property to the property while the person removes the personal belongings.



## Part 10: OCCUPATION OF MATRIMONIAL HOME UPON DEATH OF A SPOUSE

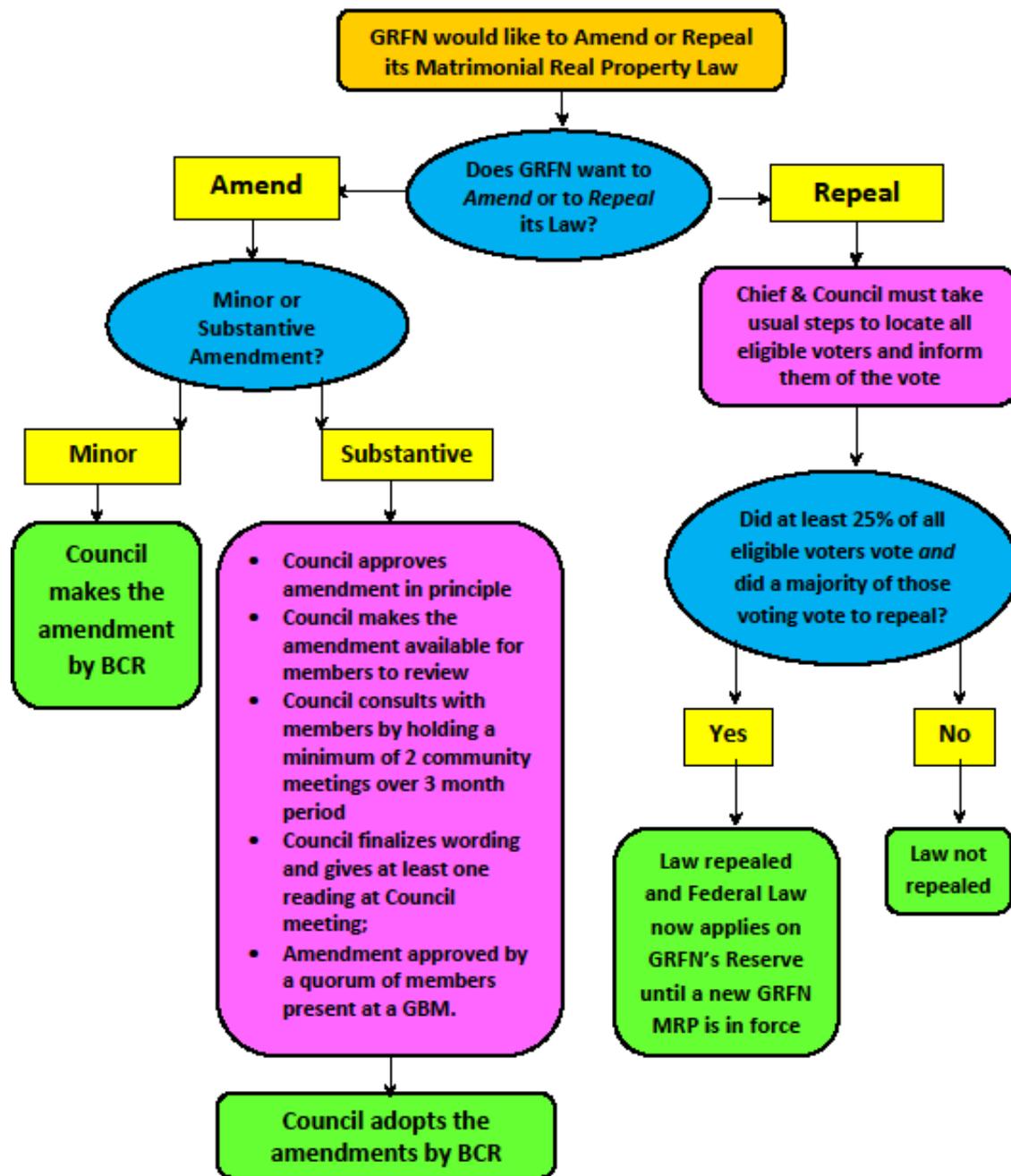
- Guarantees that a surviving spouse and the children for whom the surviving spouse is primary caregiver, will have the right to remain in the family home for a period of time after the day on which the death occurs
- Applies regardless of whether the spouse is a member or holds an interest in or right to the family home
- **Decision needs to be made about what the time limit is going to be.**



# Parts 11, 12 & 13

- Part 11: Amending/Repealing Procedures
- Part 12: Offences and Penalties
- Part 13: General Provisions
  - Certain pre-relationship gifts and inheritances exempt
  - Rights of Non-Members are non-transferable
  - Date Law Comes Into Force: when it is approved by ratification vote.

Process for Amending or Repealing GRFN's  
Matrimonial Real Property Law



# Questions?

