



STÁUTW FIRST NATION ŚMELI (MATRIMONIAL) REAL PROPERTY LAW

No. 01-2012

TABLE OF CONTENTS

PART 1 - TITLE	3
PART 2 - DEFINITIONS	3
PART 3 - APPLICATION	6
Only to First Nation Land	6
Only to Members and their Spouses	6
Applies to Pre-Existing Interests in First Nation Land	6
Federal and Provincial Laws	6
Does Not Apply to Wills and Estates	7
Continuation where Spouse Dies During Proceedings	7
Subject to other STÁUTW Laws	7
PART 4 - DOMESTIC CONTRACTS	7
Domestic Contracts Enforceable	7
Registration Requirement	7
Court May Set Aside or Vary Domestic Contracts	7
Time Limit	8
Interests, Rights and Life Estates to non-Members	8
Past and Future Agreements Valid	8
PART 5 - ACCESS TO THE COURT: GENERAL	8
Co-operative Dispute Resolution Encouraged	8
General Access to Court	8
Court to have regard to SNEPENEK TFE SELWÁN	9
First Nation Standing	9
Time limit for specific applications	9
PART 6 - ACCESS TO THE COURT: OWNERSHIP AND DIVISION OF ŚMELI (MATRIMONIAL) PROPERTY	10
Access to Court – order for transfer or division of property	10
Equal division of ŚMELI (Matrimonial) Property	10
Unequal division of ŚMELI (Matrimonial) Property	10
Compensation in respect of, but no transfer of, Excluded Property	10
Determination of ownership or division	11
Valuation of ŚMELI (Matrimonial) Property	12
No compensation where Member would be forced to move off-Reserve	12
Orders to sell farms or businesses restricted	12
Registration of order	12
PART 7 - ACCESS TO THE COURT: OCCUPATION, DISPOSITION AND ENCUMBRANCE OF ŚMELI (MATRIMONIAL) HOMES	12
Spouses have equal rights of occupation	12
No disposal or encumbrance without consent or an order	12
Court may set aside disposal or encumbrance	12
Rights to relief against forfeiture	13
Exclusive Occupation Orders	13

Primary Caregiver to have exclusive occupation.....	13
Emergency Protection Orders.....	13
PART 8 - AMENDING PROCEDURES.....	14
Substantive Amendments.....	14
Minor Amendments.....	14
PART 9 - GENERAL PROVISIONS.....	14
Headings Inserted for Convenience Only.....	15
Severability.....	15
Rights of Non-Members Non-Transferable.....	15
Offences.....	15
Penalties.....	15
Coming Into Force.....	15

WHEREAS:

- A. The members of the STÁUTW First Nation have in common inherent rights, customs, and traditions and the inherent right to self-government which are recognized in the Douglas Treaty and affirmed by Section 35 of the *Constitution Act, 1982*;
- B. STÁUTW First Nation, as an incident of our inherent right to self government, has jurisdiction to address real property issues such as matrimonial property upon the breakdown of marriage and common law relationships, and this inherent right has not been extinguished;
- C. The STÁUTW First Nation intends to honour and give expression in this Law to our ÓELÁNEN insofar as it applies to spousal property matters;
- D. The STÁUTW First Nation wishes to affirm through this Law a central aspect of its ÓELÁNEN, which is to look after families, and especially children and grandchildren;
- E. The STÁUTW First Nation encourages its members to resolve any matrimonial property issues in accordance with ÓELÁNEN before turning to the courts;
- F. The STÁUTW First Nation also chose to assume control of its Indian reserve lands pursuant to the *First Nation Land Management Act*, S.C. 1999, c. 24 by entering into the *Individual Agreement on First Nation Land Management between Tsawout First Nation and Her Majesty the Queen in Right of Canada*, and by adopting the *Tsawout First Nation Land Code*, which came into force and effect on May 29, 2007;
- G. Section 35.1 of the Land Code requires the STÁUTW First Nation enact a spousal property Law prescribing rules and procedures applicable on the breakdown of a marriage to the use, occupancy, possession and the division of interests in STÁUTW First Nation land;

-
- H. The STÁUTW First Nation intends to provide rights and remedies without discrimination on the basis of sex to members who have an interest or who have claimed an interest in STÁUTW First Nation Land;
- I. The Land Code requires, in section 35.3, that the rules and procedures developed concerning spousal property take into account the following principles:
- (a) the children of the Spouses, if any, should have a right to reside in the matrimonial home;
 - (b) the Spouses should resolve spousal property matters by contract or agreement;
 - (c) each Spouse should have an equal right to possession of the matrimonial home;
 - (d) each Spouse should be entitled to an undivided half interest in the matrimonial home as a tenant in common;
 - (e) the rules and procedures will not discriminate on the basis of sex; and
 - (f) only Members are entitled to hold a spousal interest in First Nation Land or a charge against a spousal interest in First Nation Land; and
- J. This Law will apply in conjunction with applicable federal and provincial laws concerning the division of personal property, real property off-reserve, spousal support, child support, and divorce.

NOW THEREFORE the Council of the STÁUTW First Nation hereby enacts the following Law:

PART 1 - TITLE

Short Title

1.1 This Law may be cited as the "STÁUTW First Nation *SMELI (Matrimonial) Real Property Law No. 01-2012.*"

PART 2 - DEFINITIONS

2.1 For the purposes of this Law, the following definitions apply:

"Band Land" means any First Nation Land that is not subject to a Permanent Interest.

"Child" means a person under the age of nineteen (19):

- (a) who is the offspring of at least one Member Spouse, whether born in or out of wedlock,
- (b) who is adopted, under Canadian or BC law or STÁUTW First Nation custom, by at least one Member Spouse, or
- (c) who is the grandchild of a Member Spouse where that Member Spouse has Primary Care

and it includes "Children."

"ĆELÁNEN" means the body of WSÁNEĆ laws, customs and traditions, and includes the traditions and laws of individual families.

"Council" means the Chief and Council of the First Nation.

"Court" means the Supreme Court of British Columbia.

"Common Law Spouse" means a person who has been living with another person in a marriage-like relationship for a continuous period of at least two years, including a Spouse by Common Law Marriage as that term is defined in the Land Code, and for the purposes of this Law, the marriage-like relationship may be between persons of the same gender.

"Domestic Contract" means an agreement, made in writing and signed by the parties and witnessed by an individual who is at least 19 years of age:

- (a) between Spouses who are married to each other, entered into when they were married or when they intended to marry, in which they agree on their respective rights and obligations under the marriage or on separation, with respect to the possession or division of ŚMELI (Matrimonial) Property;
- (b) between Spouses who are living together in a marriage-like relationship, entered into during the spousal relationship or in contemplation of the spousal relationship, in which they agree on their respective rights and obligations under the spousal relationship or on separation, with respect to the possession or division of ŚMELI (Matrimonial) Property; or
- (c) between Spouses who are living separate and apart, in which they agree on their respective rights and obligations on separation with respect to the possession or division of ŚMELI (Matrimonial) Property (a "Separation Agreement").

"Douglas Treaty" means the Douglas Treaty for South Saanich of February 1852.

"Excluded Property": means, except for the amount by which the value of a Spouse's interest in the property in question increases during the spousal relationship:

- (a) interests in First Nation Land acquired by a Spouse before the spousal relationship started; or
- (b) gifts or inheritances of First Nation Land to a Spouse.

"Family Violence" includes the following actions by a person towards a Spouse, a Child, or anyone residing with a Spouse or a Child in the ŚMELI (Matrimonial) Home (in this definition, a "family member"):

- (a) causing or attempting to cause, physical or sexual abuse including forced confinement or deprivation of the necessities of life, and

(b) psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour, which may include, but is not limited to, the following behaviours by the person towards the family member:

- i. intimidation, harassment or threats, including threats to harm the family member, other persons, pets or property to obtain the compliance of the family member,
- ii. unreasonable demands to know where or with whom the family member is or restrictions on the family member's activities or contact with friends or family members,
- iii. financial abuse, including unreasonable prevention of the family member from access to or knowledge about family income,
- iv. stalking or following the family member, or
- v. intentional damage to property,

but does not include acts of self-protection, or protection of another person, if the force does not exceed what is reasonable in the circumstances.

"First Nation Land" means a First Nation reserve or any portion thereof that is subject to the Land Code.

"Interest in First Nation Land" means, for the purposes of this Law, any Permanent Interest, allotment, lease, easement, permit, licence or other equitable interest in First Nation Land held by one or both Spouses, but does not include rental agreements for homes on Band Land.

"Land Code" means the *STÁUTW First Nation Land Code*, which came into force and effect on May 29, 2007.

"Law" means this *STÁUTW First Nation ŚMELI (Matrimonial) Real Property Law No. 01-2012*.

"Member" means an individual whose name appears or is entitled to appear on the *STÁUTW First Nation membership list*.

"Permanent Interest" means a Certificate of Possession issued under s. 20(2) of the *Indian Act* or equivalent tenure issued under the Land Code.

"Primary Care" means physical custody or day-to-day care of a Child, and "Primary Caregiver" has a corresponding meaning.

"S,HI,WEK" means the head of the family, according to *ĆELÁNEN*.

"ŚMELI," for the purposes of this Law, includes all spousal relationships.

"ŚMELI (Matrimonial) Home" means a structure that need not be affixed but that must be situated on First Nation Land, that is:

- (a) habitually occupied by one or both Spouses as the family home; and
- (b) owned by one or both Spouses.

"ŚMELI (Matrimonial) Property" means:

- (a) any Interest in First Nation Land in which, on the date the Spouses begin living separate and apart, at least one Spouse has an interest;
- (b) any Interest in First Nation Land in which at least one Spouse acquires an interest after the Spouses separate through income received from or in place of property referred to in paragraph (a)

but does not include Excluded Property, except the amount by which the value of the Excluded Property increases during the spousal relationship.

SNEPENEK TFE SELWÁN means the guidance and teachings of elders, in accordance with ÓELÁNEN.

"Spouse" means a person who:

- (a) is married to another person, including through an Aboriginal customary marriage;
- (b) is a Common Law Spouse; or
- (c) is a former Spouse for the purposes of applying for an order under this Law.

"STÁUTW" or "First Nation" means the Tsawout First Nation, a "band" within the meaning of the *Indian Act*, and as named in the *First Nations Land Management Act*.

"Tsawout Lands Register" means the register maintained by the First Nation under section 25.1 of the Land Code.

WSÁNEĆ means the Saanich people, also known as the Saanich Tribe, or the Saanich Indians, of which STÁUTW is a part.

PART 3 - APPLICATION

Only to First Nation Land

3.1 This Law applies only to First Nation Land and not to the remainder of the First Nation's territory.

Only to Members and their Spouses

3.2 This Law does not apply to an Interest in First Nation Land held by one or both Spouses where neither Spouse is a Member.

Applies to Pre-Existing Interests in First Nation Land

3.3 This Law applies in respect of Interests in First Nation Land whether or not they were acquired before or after this Law takes effect.

Federal and Provincial Laws

3.4 (1) Valid federal and provincial laws apply to the extent that such laws are not inconsistent with this Law and the Land Code.

(2) Nothing in this Law limits the application of any applicable federal or provincial laws in respect of matrimonial causes or any rights or remedies available in those laws, except to the extent that such laws deal expressly or implicitly with Interests in First Nation Land, and to that extent, this Law shall apply.

Does Not Apply to Wills and Estates

3.5 A Spouse cannot commence legal proceedings after the death of the Spouse under this Law, and his or her rights in relation to ŚMELI (Matrimonial) Property or a ŚMELI (Matrimonial) Home will instead be determined by the applicable law governing the estate of the deceased Spouse.

Continuation where Spouse Dies During Proceedings

3.6 Despite section 3.5, where a proceeding has been commenced under this Law, and either Spouse dies before all issues relating to the ŚMELI (Matrimonial) Home or ŚMELI (Matrimonial) Property have been determined by a Court, the surviving Spouse may continue the proceedings against the estate of the deceased Spouse.

Subject to other STAUTW Laws

3.7 The rights and remedies recognized in this Law are subject to any bylaws passed by the First Nation under section 81 of the *Indian Act* and any laws passed under Part 2 of the Land Code in relation to:

- (a) The removal and punishment of persons trespassing on First Nation Land or frequenting First Nation Land for prohibited purposes;
- (b) Public nuisance and/or private nuisance;
- (c) The observance of law and order; or
- (d) Protection of the community.

PART 4 - DOMESTIC CONTRACTS

Domestic Contracts Enforceable

4.1 Subject to this Law and all applicable laws, a provision in a Domestic Contract that reflects the agreement of the Spouses with respect to an Interest in First Nation Land is valid, binding and enforceable.

Registration Requirement

4.2 If a Domestic Contract transfers an Interest in First Nation Land or a part of an Interest in First Nation Land, the Domestic Contract must be registered in the Tsawout Lands Register in order to be enforceable.

Court May Set Aside or Vary Domestic Contracts

4.3 Subject to this Law, a Court may, on application by a Spouse, set aside or vary a Domestic Contract or any provision therein concerning ŚMELI (Matrimonial) Property, a ŚMELI (Matrimonial) Home or Excluded Property if the Court determines that:

- (a) a Spouse failed to disclose to the other Spouse all of that Spouse's Interests in First Nation Land, or any other material information in respect of those interests;
- (b) a Spouse did not understand the nature or consequences of the Domestic Contract or provision;

-
- (c) the Domestic Contract or provision is unconscionable, was entered into under duress, or on the basis of undue influence or fraud; or
 - (d) any other common law requirement for a legal and binding contract has been breached or has not been met.

Time Limit

- 4.4 (1) A married Spouse seeking to apply for an order under section 4.3 must apply before his or her divorce or within one year after his or her divorce, and a Common Law Spouse seeking to apply for an order under section 4.3 may only apply if he or she had been living separate and apart from the other Spouse for less than one year.
- (2) The time limit provided for in subsection (1) may, on application to the Court, be extended for a further period of one year if:
- (a) the Spouse seeking to apply for an order provides cogent evidence that he or she sought SNEPENEK TFE SELWÁN, in the case of a formerly married Spouse, within one year after his or her divorce, and in the case of a Common Law Spouse, during the period that he or she had been living separate and apart from the other Spouse for less than one year; or
 - (b) in extraordinary circumstances, the Court deems it just to extend the time limit.

Interests, Rights and Life Estates to non-Members

- 4.5 A Domestic Contract may provide an interest in, or grant rights to, a Matrimonial Home to a Spouse or Child who is not a Member, but such interest and such rights shall not in any case be greater than a life estate measured by the life of the individual intended to enjoy it. For greater certainty, a provision creating, or intending to create, any greater interest than a life estate in respect of a non-Member is void.

Past and Future Agreements Valid

- 4.6 This Part applies whether the Spouses entered into the Domestic Contract on, before or after this Law comes into force and effect.

PART 5 - ACCESS TO THE COURT: GENERAL

Co-operative Dispute Resolution Encouraged

- 5.1 Spouses are encouraged to resolve their differences regarding any matter addressed in this Law through seeking SNEPENEK TFE SELWÁN, through cooperative discussion, or through mediation or other alternative dispute resolution.
- 5.2 In accordance with CELÁNEN, and with reference to the protocols within the families involved, Spouses seeking SNEPENEK TFE SELWÁN shall consult with the S,HI,WEK for support and guidance.

General Access to Court

- 5.3 (1) Where Spouses are unable to resolve their differences regarding any matter addressed in this Law, and provided that they have first made reasonable efforts

to seek SNEPENEK TFE SELWÁN, they may apply to the Court for a resolution of their dispute.

(2) The onus of demonstrating that reasonable efforts have not been made to seek SNEPENEK TFE SELWÁN in accordance with the requirement in subsection (1) rests with the person opposing the application.

(3) The requirement in subsection (1) to make reasonable efforts to seek SNEPENEK TFE SELWÁN does not apply in the case of an application for an order under section 7.9 (emergency protection orders).

Court to have regard to SNEPENEK TFE SELWÁN

5.4 A S,HI,WEK who is consulted by Spouses pursuant to section 5.2 may make a written recommendation in the form of an affidavit regarding matters addressed in this Law, and where such S,HI,WEK makes such a written recommendation, the Court shall have regard to such recommendation in making an order, provided that such recommendation does not conflict with the provisions of this Law.

First Nation Standing

5.5 (1) Any Spouse who seeks a court order based on any provision in this Law, other than section 7.9 (emergency protection orders) must promptly serve the Council with a copy of the documents filed with the Court.

(2) At the request of Council, the Court shall, before making its decision, allow the Council to make representations with respect to the cultural, social and legal context that pertains to the application and to present its views about whether or not the order sought should be made.

5.6 When the Court makes any order under this Law, the Spouse in whose favour the order is made shall provide, without delay, a copy of the order to the Council.

5.7 Nothing in this Law relieves a party of the requirement to observe the rules and procedures of a Court in relation to matrimonial causes.

Time limit for specific applications

5.8 (1) A married Spouse seeking to apply for an order under Part 6 or Part 7 must apply before his or her divorce or within one year after his or her divorce, and a Common Law Spouse seeking to apply for an order under Part 6 or Part 7 may only apply if he or she had been living separate and apart from the other Spouse for less than one year, unless another time limit is specified in this Law.

(2) The time limit provided for in subsection (1) may, on application to the Court, be extended for a further period of up to one year if:

(a) the Spouse seeking to apply for an order provides cogent evidence that he or she sought SNEPENEK TFE SELWÁN, in the case of a formerly married Spouse, within one year after his or her divorce, and in the case of a Common Law Spouse, during the period that he or she had been living separate and apart from the other Spouse for less than one year; or

-
- (b) in extraordinary circumstances, the Court deems it just to extend the time limit.

PART 6 - ACCESS TO THE COURT: OWNERSHIP AND DIVISION OF \$MELI (MATRIMONIAL) PROPERTY

Access to Court – order for transfer or division of property

- 6.1 Subject to this Law, the Court may, on application, order that the \$MELI (Matrimonial) Property be:
- (a) divided into shares fixed by the Court, or
 - (b) transferred to one Spouse.

Equal division of \$MELI (Matrimonial) Property

- 6.2 Each Spouse is entitled to an undivided half interest in \$MELI (Matrimonial) Property except as otherwise provided in a Domestic Contract or an order of the Court.

Unequal division of \$MELI (Matrimonial) Property

- 6.3 (1) A Court may only order an unequal division of \$MELI (Matrimonial) Property if, having regard to the factors listed in subsection (2), an equal division would be clearly unfair.
- (2) For the purposes of section 6.1, the following factors must be considered:
 - (a) the duration of the spousal relationship;
 - (b) the extent to which the financial means and earning capacity of each Spouse have been affected by the responsibilities and other circumstances of the spousal relationship;
 - (c) a Spouse's direct or indirect contribution, financially or otherwise, to the acquisition, upkeep, improvement or increased value of the \$MELI (Matrimonial) Property including contributions through management of the household and through child rearing responsibilities;
 - (d) whether actions or omissions of a Spouse during the spousal relationship or after the date of separation caused a significant change in the value of the \$MELI (Matrimonial) Property beyond market trends;
 - (e) the terms of any Domestic Contract between the Spouses;
 - (f) whether a Spouse has made, without the other Spouse's consent,
 - i. a substantial gift of \$MELI (Matrimonial) Property to a third party; or
 - ii. a transfer of \$MELI (Matrimonial) Property to a third party other than a purchaser in good faith for value;
 - (g) whether a Spouse has dissipated property, or otherwise substantially reduced the value of property;
 - (h) a Spouse's direct or indirect contribution to the career or career potential of the other Spouse;
 - (i) any relevant order or award that a court of competent jurisdiction is making or has previously made for the Spouses pursuant to the *Family Relations Act* or the *Divorce Act*; and
 - (j) any other relevant factor or circumstance.

Compensation in respect of, but no transfer of, Excluded Property

- 6.4 (1) The Court may on application order a Spouse holding an interest in Excluded

Property to compensate the other Spouse where it would be clearly unfair not to do so having regard to:

- (a) the duration of the spousal relationship; or
- (b) a Spouse's direct or indirect contribution to the preservation, maintenance, improvement, operation, or management of the Excluded Property, including contributions through management of the household and through child rearing responsibilities.

(2) For greater certainty, no order shall be made under this Part to permanently transfer Excluded Property.

Determination of ownership or division

- 6.5 (1) Subject to this Law, the Court may, in proceedings under this Part or on application, determine any matter respecting interests in, and the division of, **ŚMELI (Matrimonial) Property** or a **ŚMELI (Matrimonial) Home** and may make orders that are necessary, reasonable or ancillary to give effect to the determination.
- (2) Without limiting subsection (1), the Court may do one or more of the following in an order under this Part:
- (a) declare whether the property at issue is in fact **ŚMELI (Matrimonial) Property**;
 - (b) declare the ownership of, or right of possession to, any Interest in First Nation Land;
 - (c) order that, on a division of property, title to a specified **ŚMELI (Matrimonial) Property** be transferred to, held in trust for, or be vested in the Spouse either:
 - i. Absolutely (in the case of a Member Spouse);
 - ii. For life; or
 - iii. For a term of years;
 - (d) order that one Spouse lease **ŚMELI (Matrimonial) Property** or Excluded Property to the other Spouse for a fixed period of time, subject to such terms and conditions as the Court deems just in all the circumstances;
 - (e) order a Spouse to pay compensation to the other Spouse if **ŚMELI (Matrimonial) Property** or Excluded Property has been encumbered or disposed of, or for the purpose of dividing **ŚMELI (Matrimonial) Property** or Excluded Property under this Part;
 - (f) order that a Spouse is restrained from disposing of or transferring an interest in **ŚMELI (Matrimonial) Property**, either legally or beneficially, pending the trial of an action;
 - (g) order that all or part of the share of either Spouse or both Spouses in **ŚMELI (Matrimonial) Property** be transferred to, held in trust for, or vested in a Member Child;
 - (h) order partition or sale of **ŚMELI (Matrimonial) Property** and payment to be made out of the proceeds of sale to one or both Spouses in specified proportions or amounts; or
 - (i) make any appropriate equitable order where one Spouse has intentionally, recklessly, or fraudulently transferred or depleted, or intends to so transfer or deplete **ŚMELI (Matrimonial) Property** for the purpose of defeating a Spouse's claim to an interest in the **ŚMELI (Matrimonial) Property** but for greater certainty, may not make any declaration or order that provides a non-Member with a Permanent Interest in First Nation Land.

Valuation of SMELI (Matrimonial) Property

6.6 (1) The division of SMELI (Matrimonial) Property must be based on the value of the SMELI (Matrimonial) Property as of the date a Separation Agreement or Court order respecting the division or compensation is made, unless the Separation Agreement or Court order provides otherwise.

(2) the value of the Interest in First Nation Land or SMELI (Matrimonial) Property is, unless another value is agreed to or ordered, the appraised fair market value which accounts for the limitations on the ownership rights and feasibility of selling or leasing the Interest in First Nation Land.

No compensation where Member would be forced to move off-Reserve

6.7 The Court shall not make any compensation order under this Part if a Member Spouse demonstrates that the order is likely to force the Member Spouse to move out of the SMELI (Matrimonial) Home, unless the Court concludes that the order is unlikely to cause the Member Spouse undue hardship.

Orders to sell farms or businesses restricted

6.8 An order shall not be made under this Part so as to require the sale of an operating business or farm on First Nation Land, or so as to seriously impair its operation, unless there is no reasonable alternative method of achieving an equitable result between the Spouses.

Registration of order

6.9 Where any order is made under this Part which transfers the ownership of an Interest in First Nation Land, the Spouse who benefits from that order shall promptly register the order in the Tsawout Lands Register.

PART 7 - ACCESS TO THE COURT: OCCUPATION, DISPOSITION AND ENCUMBRANCE OF SMELI (MATRIMONIAL) HOMES

Spouses have equal rights of occupation

7.1 Subject to the provisions of this Part, both Spouses have an equal right to occupy the SMELI (Matrimonial) Home.

No disposal or encumbrance without consent or an order

7.2 No Spouse shall dispose of or encumber a SMELI (Matrimonial) Home unless:

- (a) the other Spouse joins in the instrument or consents in writing to the transaction;
- (b) the other Spouse has released all rights to the SMELI (Matrimonial) Home by Domestic Contract; or
- (c) a Court order has authorized the transaction or has released the SMELI (Matrimonial) Home from the application of this section.

Court may set aside disposal or encumbrance

7.3 (1) If a Spouse disposes of or encumbers a SMELI (Matrimonial) Home in contravention of section 7.2, a Court may, on application,

- (a) set aside the disposal or encumbrance;
- (b) order the Spouse to pay compensation to the other Spouse; or
- (c) make any other order it deems appropriate.

Rights to relief against forfeiture

- 7.4 When a person proceeds to realize on an encumbrance or execution against a ŠMELI (Matrimonial) Home, the Spouse who has a right of occupation under section 7.1 has the same right of redemption or relief against forfeiture as the other Spouse and is entitled to the same notice of the claim and its enforcement or realization.
- 7.5 The Court may, on the application of a Spouse or a person claiming an interest in, or a right in respect of, a ŠMELI (Matrimonial) Home:
- (a) make a declaration as to whether or not the dwelling at issue is a ŠMELI (Matrimonial) Home;
 - (b) authorize a disposition or encumbrance of the ŠMELI (Matrimonial) Home, provided that such disposition or encumbrance is otherwise authorized under this Law, if the Court finds that the Spouse whose consent is required cannot be found or is not available, is not capable of giving or withholding consent, or is unreasonably withholding consent, and the Court may prescribe conditions including the provision of other comparable accommodation, or payment in place of it, that the Court considers appropriate.

Exclusive Occupation Orders

- 7.6 (1) The Court may on application make an exclusive occupation order for the ŠMELI (Matrimonial) Home in favour of one Spouse for a specified period of time:
- (a) if that Spouse is a Member, whether or not that Spouse owns the ŠMELI (Matrimonial) Home;
 - (b) if that Spouse is not a Member, but is the Primary Caregiver of a Child, if such an order is in the best interests of the Child.
- (2) Any person whose favour or against whom an order is made under subsection (1) may apply to the Court to have the order varied or revoked within the time determined by the Court or, if no time limit is stipulated, at any point while the order remains in force.

Primary Caregiver to have exclusive occupation

- 7.7 A Court, in considering whether to direct that one Spouse have exclusive occupation of a ŠMELI (Matrimonial) Home, shall be guided by the principle that the parent with Primary Care of a Child should have exclusive occupation of the family residence for a period sufficient to ensure that the Child, or the youngest Child if there is more than one Child, reaches the age of majority, provided that this is consistent with the best interests of the Child or Children.
- 7.8 Where both Spouses share joint custody of a Child or Children, the principle set out in section 7.7 shall be adapted to favour the Spouse who has Primary Care.

Emergency Protection Orders

- 7.9 (1) The Court may, on *ex parte* application by a Spouse, make an emergency exclusive occupation order for the ŠMELI (Matrimonial) Home in favour of that Spouse for a period of up to 90 days, whether or not the Spouse is a Member and whether or not a Child is involved, if the Court concludes that:
- (a) Family Violence has occurred; and

(b) the order should be made to ensure the immediate protection of the Spouse or a Child who resides in the ŠMELI (Matrimonial) Home.

(2) The order described in subsection (1) must include a provision directing a peace officer to enforce any provision of the order if requested to do so by the applicant Spouse or the Council.

(3) The order described in subsection (1) may include any of the following additional provisions:

- (a) a provision requiring the Spouse of the applicant Spouse and any other person to vacate the ŠMELI (Matrimonial) Home and prohibiting them from returning to the ŠMELI (Matrimonial) Home;
- (b) a provision directing a peace officer to remove the applicant's Spouse and any other person from the ŠMELI (Matrimonial) Home;
- (c) a provision prohibiting any person who is required to vacate the ŠMELI (Matrimonial) Home from attending near the ŠMELI (Matrimonial) Home;
- (d) a provision directing a peace officer to accompany the person who is required to vacate the ŠMELI (Matrimonial) Home to the ŠMELI (Matrimonial) Home in order to supervise the removal of personal belongings;
- (e) any other provision that the Court considers necessary for the immediate protection of the person who is at risk.

(4) Any person in whose favour or against whom an order is made under subsection (1) may apply to the Court to have the order varied or revoked within the time determined by the Court or, if no time limit is stipulated, at any point while the order remains in force.

PART 8 - AMENDING PROCEDURES

Substantive Amendments

8.1 Substantive amendments to this Law may only be made in accordance with Section 7 under Part 2 and Subsections 10.1 and 11.1 under Part 3 of the Land Code.

Minor Amendments

8.2 Despite section 8.1 of this Law, the Council may adopt minor amendments to this Law by unanimous decision at a duly convened meeting, and expressed by band council resolution.

8.3 For the purposes of section 8.2, minor amendments include:

- (a) amendments to correct typographical errors,
- (b) amendments required to reference any relevant new or amended First Nation laws;
- (c) amendments ordered by any court of competent jurisdiction; and
- (d) amendments which serve to clarify the Law, where there is no reasonable dispute about the intention underlying the original provision.

PART 9 - GENERAL PROVISIONS

9.1 This Law provides for a dispute resolution procedure under the authority of section 35.1 of the Land Code that is an exception, within the meaning of section

36.3 of the Land Code, to the application of the dispute resolution procedures in Part 8 of the Land Code.

Headings Inserted for Convenience Only

9.2 Headings in this Law are for reference purposes only, and do not form part of this Law.

9.3 In this Law, references to a Part (e.g., Part 1), section (e.g., section 1.1), subsection (e.g., subsection 7.9(3)), paragraph 3.4(a) is a reference to the specified Part, section, subsection, or paragraph of the Law, except where otherwise stated.

Severability

9.4 All provisions of this Law are severable. If a court of competent jurisdiction determines that any provision of this Law is invalid or inapplicable, the provision(s) shall be severed from the Law and the remainder of the Law shall remain in force with any necessary revisions.

Rights of Non-Members Non-Transferable

9.5 A non-Member who is granted interim occupation or possession rights on First Nation Land under this Law cannot dispose of, transfer or assign these rights or pass them to their heirs in a will. As soon as the non-Member ceases use or occupation personally or the term of the order expires, all such rights are deemed to be terminated.

Offences

9.6 A person commits an offence by refusing or neglecting, without reasonable excuse, to comply with any court order made against that person under the provisions of this Law.

9.7 A court order, certified by a proper officer of the court that made the order, is proof of the order in a prosecution under this Part.

Penalties

9.8 A person is liable, on summary conviction under section 9.6 of this Law, to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both.

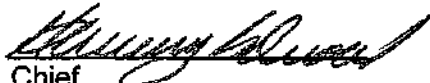
9.9 A fine payable under section 9.8 shall be remitted to the First Nation by the Court, after reasonable Court costs have been deducted.


Coming Into Force

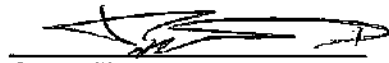
9.10 This Law shall come into force and effect on the date it is enacted by Council after complying with the requirements Section 7 under Part 2 and Subsections 10.1 and 11.1 under Part 3 of the Land Code.


BE IT KNOWN that this Law, cited as the *STÁUTW First Nation SMELI (Matrimonial) Real Property Law No. 01-2012*, is hereby ENACTED by Council at a duly convened meeting held this 28th day of March, 2012.


A quorum of Council consists of (5) members of Council.

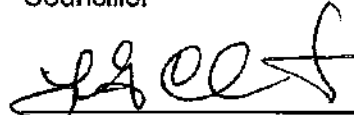

Chief

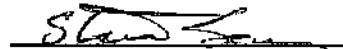

Councillor



Councillor


Councillor


Councillor


Councillor


Councillor


Councillor



BAND COUNCIL RESOLUTION	Chronological No.
	File Reference No.

NOTE:

The words "from our Band Funds" "capital" or "revenue", whichever is the case, must appear in all resolutions requesting expenditures from Band Funds.

The council of the Tsawout First Nation			Cash free balance	
			Capital account	\$ _____
Date of duly convened meeting	DD / MM / YYYY 25 / 01 / 2012	Province BC	Revenue account	\$ _____

DO HEREBY RESOLVE:

- A. Pursuant to Section 35 of the Land Code Council must enact a spousal property law prescribing rules and procedures applicable on the breakdown of a marriage to:
 - i. the use, occupancy, and possession of First Nation Land; and
 - ii. the division of interests in that land;
- B. The Land Management Committee was involved in the development of the attached *SMELI (Matrimonial) Real Property Law 01-2012*, including through a subcommittee which met over the winter of 2010/11, meetings of elders, and through discussions at meetings of the full Land Management Committee including on March 21, 2011 and on January 16, 2012;
- C. The Lands Manager has tabled the attached *SMELI (Matrimonial) Real Property Law 01-2012* with Council this 25th day of January 2012 as required by Section 7.2(c) of the Land Code; and
- D. Section 11.1 of the Land Code specifies that prior to enactment by Council, approval at a Meeting of Members must be obtained for a spousal property law under section 35 of the Land Code;

THEREFORE THE COUNCIL HEREBY RESOLVE:

- 1. To provisionally approve the *SMELI (Matrimonial) Real Property Law 01-2012* for approval by Members;
- 2. To direct the Lands Manager to call a Meeting of Members for approval of the *SMELI (Matrimonial) Real Property Law 01-2012* in accordance with the procedures set out in section 12 of the Land Code for calling a Meeting of Members.

This Band Council Resolution was passed at a duly convened meeting of the Tsawout First Nation at East Saanich I.R. No. 2, British Columbia on the 25th day of January, 2012.

Quorum: 5

(Chief)

(Councillor)

(Councillor)

(Councillor)

(Councillor)

(Councillor)

(Councillor)

(Councillor)

STATEMENT OF RESULTS BY POLLING OFFICER

(Vote concerning the *STAUTW First Nation SMELI (Matrimonial) Real Property Law, No. 01-2012.*)

I, Denise Kelly, certify that:

1. I was appointed by the Tsawout First Nation Land Management Committee to administer the vote at a Meeting of Members held on February 29, 2012 between 3:00 p.m. and 6:00 p.m. concerning approval of the ***STAUTW First Nation SMELI (Matrimonial) Real Property Law, No. 01-2012***, and personally oversaw the votes being cast.
2. In accordance with the Tsawout First Nation Land Code section 12.4, a Notice of Meeting of Members was posted in the First Nation's Administration Office, published in the First Nation's community newsletter, and posted on the First Nation's website, all at least 21 days prior to the Meeting of Members at which the vote took place.
3. A true copy of the Notice of Meeting of Members is attached as Exhibit "A" to this Statement.
4. There are 511 Eligible Voters whose names appear on the List of Voters.
5. The number of Eligible Voters who constituted a quorum for a Meeting of Members pursuant to section 12.2 of the Land Code (10% of Eligible Voters) was 51.
6. The number of Eligible Voters that voted was 90.
7. The results of the vote are as follows:
 - (a) 90 regular ballots were cast
 - (b) 0 ballots were spoiled
 - (c) 70 ballots were marked "YES" for the question; and
 - (d) 20 ballots were marked "NO" for the question.
8. A sample ballot is attached as Exhibit "B" to this Statement.

I, Denise Kelly, certify that the information in this Statement is correct.


Denise Kelly, Polling Officer

Date February 29, 2012

Witness to Polling Officer's signature:



Name: Elizabeth Herman
Occupation: Tsawout Lands Clerk



TSAWOUT FIRST NATION

7728 Tetayut Rd, Saanichton, BC, V8M 2C3
Phone: 250-652-9101 Fax: 250-652-9114

NOTICE OF MEMBERS MEETING:

*Subdivision, Development and Servicing Law – For Input; and
STAUTW First Nation SMELI (Matrimonial) Real Property Law – For
Approval*

Attn: All Voting Tsawout First Nation Members

Re: Notice of Members Meeting – February 29, 2012, 3:00pm – 6:00pm

Please take notice that Tsawout First Nation will be holding a meeting for Tsawout First Nation members on 29th February, 2012 at 3:00pm- 6:00pm.

MEETING INFORMATION

Place: Tsawout First Nation (Old Admin Building at Tsawout)

Date: February 29, 2012

Time: 3:00pm - 6:00pm

MEETING AGENDA

At the meeting Tsawout First Nation will:

1. seek approval of the *STAUTW First Nation SMELI (Matrimonial) Real Property Law*; and
2. seek input on the proposed *Subdivision, Development and Servicing Law*.

A COPY OF THE PROPOSED LAWS may be obtained from the Tsawout First Nation Lands Department, or on line at www.tsawout.com

The purpose of the *STAUTW First Nation SMELI (Matrimonial) Real Property Law* is to address real property issues that arise upon the breakdown of marriages and common law relationships. Specifically, the *SMELI (Matrimonial)*

Real Property Law will prescribe rules and procedures applicable on the breakdown of marriage to the use, occupancy, possession and the division of interests in STAUTW First Nation land. The **SMELI (Matrimonial) Real Property Law** is a required law under the Tsawout First Nation Land Code and the *First Nations Land Management Act*. Development of this law commenced in 2008 and the law has gone through numerous drafts with the committee and members of Tsawout.

The purpose of the **Subdivision, Development and Servicing Law** is to promote environmentally sustainable, healthy, safe, and well-planned use of Tsawout First Nation Land. The **Subdivision, Development and Servicing Law** is made pursuant to sections 6.1 and 6.2 of the Tsawout First Nation Land Code which authorizes Council to make laws respecting the development, conservation, protection, management, use and possession of First Nation Land, including without limitation, laws relating to development, provision of local services, imposition of user charges, and authorization of subdivisions.

CONTACT INFORMATION: For further information or questions regarding the Proposed Laws, this Notice, or the meeting, please contact:

Gwen Underwood, Lands Manager
7728 Tetayut Rd, Saanichton BC, V8M 2C3
phone: 250-652-9101 ext) 302
email: shaysema@tsawout.ca.

Refreshments and door prizes will be provided

BALLOT

**Are you in favour of approval of the *STÁUTW*
First Nation SMELI (Matrimonial) Real
*Property Law, No. 01-2012?***

YES

NO

Mark this Ballot by placing a Cross (X) in one of the above boxes.



BAND COUNCIL RESOLUTION

Chronological No.

File Reference No.

NOTE:

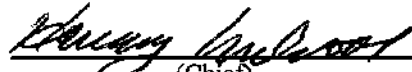
The words "from our Band Funds" "capital" or "revenue", whichever is the case, must appear in all resolutions requesting expenditures from Band Funds.

The council of the Tsawout First Nation					Cash free balance	
					Capital account	\$ _____
Date of duly convened meeting	D 28	M 03	Y 12	Province BC	Revenue account	\$ _____

DO HEREBY RESOLVE:


1. At a duly convened meeting held on March 28, 2012, the Tsawout First Nation Council approves and enacts the **STÁUTW FIRST NATION ŚMELI (MATRIMONIAL) REAL PROPERTY LAW, No. 01-2012.**

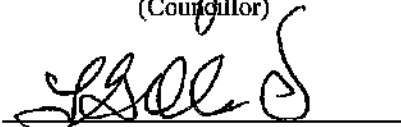
Quorum: 5


(Chief)


(Councillor)


(Councillor)


(Councillor)


(Councillor)


(Councillor)


(Councillor)


(Councillor)

FOR DEPARTMENTAL USE ONLY					
Expenditure	Authority (Indian Act Section)	Source of funds <input type="radio"/> Capital <input type="radio"/> Revenue	Expenditure	Authority (Indian Act Section)	Source of funds <input type="radio"/> Capital <input type="radio"/> Revenue
Recommending officer			Recommending officer		
_____ Signature		_____ Date	_____ Signature		_____ Date
Approving officer - Approuvé par			Approving officer		
_____ Signature		_____ Date	_____ Signature		_____ Date