

# Oneida Tribe of Indians of Wisconsin

## **Legislative Reference Office**

P.O. Box 365  
Oneida, WI 54155  
(920) 869-4376  
(800) 236-2214  
<http://oneida-nsn.gov/LOC>



## **Committee Members**

Brandon Stevens, Chairperson  
Tehassi Hill, Vice Chairperson  
Fawn Billie, Councilmember  
Jennifer Webster, Councilmember

## **LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
March 4, 2015 9:00 a.m.

### **I. Call To Order and Approval of the Agenda**

### **II. Minutes to be approved**

1. February 18, 2015 LOC Meeting Minutes

### **III. Current Business**

1. Leasing Law
2. Marriage Law Amendments
3. Rules of Appellate Procedure Amendments
4. Furlough Policy

### **IV. New Submissions**

1. Real Property Law Amendments

### **V. Additions**

### **VI. Administrative Updates**

1. LOC Priority List
2. LOC Update for March 28 GTC

### **VII. Executive Session**

### **VIII. Recess/Adjourn**

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## LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center

February 18, 2015 9:00 a.m.

**PRESENT:** Fawn Billie, Tehassi Hill, Brandon Stevens

**EXCUSED:** Jennifer Webster

**OTHERS PRESENT:** Candice Skenandore, Danelle Wilson, Taniquelle Thurner, Fawn Cottrell, Rae Skenandore, Lynn Franzmeier, Phil Wisneski, Michelle Mays

### I. Call To Order and Approval of the Agenda

Brandon Stevens called the February 18, 2015 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Tehassi Hill to approve the agenda; seconded by Fawn Billie. Motion carried unanimously.

### II. Minutes to be approved

#### 1. February 4, 2015 LOC Meeting Minutes

Motion by Tehassi Hill to approve the February 4, 2015 LOC Meeting Minutes; seconded by Fawn Billie. Motion carried unanimously.

### III. Current Business

#### 1. Investigative Leave Policy Amendments (00:56 –04:28)

Motion by Tehassi Hill to defer the Investigative Leave Policy Amendments for a legislative analysis and a fiscal impact statement; seconded by Fawn Billie. Motion carried unanimously.

#### 2. Removal Law Amendments (04:39 –10:56)

Motion by Fawn Billie defer the Removal Law Amendments for a legislative analysis and a fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.

#### 3. Environmental, Health and Safety Law (11:00 –13:56)

Motion by Tehassi Hill to defer the Environmental, Health and Safety Law to the sponsor's office for further review and re-drafting; seconded by Fawn Billie. Motion carried unanimously.

**IV. New Submissions**

**1. Administrative Procedures Act Emergency Amendments (14:00 –19:46)**

Motion by Tehassi Hill to approve the resolution and forward to the Oneida Business Committee for consideration of adoption; seconded by Fawn Billie. Motion carried unanimously.

**2. Appeals Commission References Removal (19:53 – 22:34)**

Motion by Tehassi Hill to approve the resolution and forward to the Oneida Business Committee for consideration of adoption; seconded by Fawn Billie. Motion carried unanimously.

**V. Additions**

**VI. Administrative Updates**

**1. LOC Sponsor List (22:40 –29:00)**

Motion by Tehassi Hill to accept the LOC Sponsor List as FYI; seconded by Fawn Billie. Motion carried unanimously.

**VII. Executive Session**

**VIII. Recess/Adjourn**

Motion by Fawn Billie to adjourn the February 18, 2015 Legislative Operating Committee Meeting at 9:29 a.m.; seconded by Tehassi Hill. Motion carried unanimously.



# Legislative Operating Committee

## March 4, 2015

### Leasing Law

**Submission Date:** September 17, 2014

<input type="checkbox"/> Public Meeting: <input type="checkbox"/> Emergency Enacted:
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**LOC Sponsor:** Tehassi Hill

**Summary:** *This item was carried over into the current term by the LOC. Development of a new law would allow the Tribe to approve surface leases at their discretion, instead of the Secretary of Interior, so long as the Secretary of Interior has approved Tribal surface lease regulations.*

**09/17/14 LOC:** Motion by Tehassi Hill to add the Leasing Law to the Active Files List with Tehassi Hill as sponsor; seconded by Fawn Billie. Motion carried unanimously.

**12/17/14 LOC:** Motion by Jennifer Webster to direct that a legislative analysis and a fiscal impact statement be completed on the Leasing Law; seconded by Tehassi Hill. Motion carried unanimously.

**02/04/15 LOC:** Motion by Tehassi Hill to send the Leasing Law back to the Legislative Reference Office to make the noted changes, update the analysis and bring back to the March 4, 2015 Legislative Operating Committee meeting; seconded by Fawn Billie. Motion carried unanimously.

**Next Steps:**

- LOC to review the analysis and most recent draft of the Law and consider forwarding to an April 2, 2015 public meeting.

## Chapter 65 LEASING

65.1. Purpose and Policy  
65.2. Adoption, Amendment, Repeal  
65.3. Definitions  
65.4. General Provisions  
65.5. Lease and Lease Document Requirements  
65.6. Residential Leases

65.7. Agricultural Leases  
65.8. Business Leases  
65.9. Environmental and Cultural Reviews  
65.10. Lease Management  
65.11. Enforcement  
65.12. Appeals

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### 65.1. Purpose and Policy

65.1-1. *Purpose.* The purpose of this Law is to set out the Tribe's authority to issue, review, approve and enforce leases. In addition, the purpose of this Law is to meet the requirements of the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) by establishing a process under which the Tribe will be able to approve leases on Tribal trust land without additional approval of the Secretary of the Interior.

65.1-2. *Policy.* It is the policy of the Tribe to set out the expectations and responsibilities of the lessors and lessees of Tribal land and to ensure the leasing of Tribal land results in minimal risk to the Tribe.

### 65.2. Adoption, Amendment, Repeal

65.2-1. This Law was adopted by the Oneida Business Committee by resolution \_\_\_\_\_ and shall take effect thirty (30) days after approval by the Secretary of the Interior.

65.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act. Major, substantive changes to this Law shall not take effect until they have been approved by the Secretary of the Interior. Minor, technical amendments may take effect upon approval by the Oneida Business Committee.

65.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

65.2-4. In the event of a conflict between a provision of this Law and a provision of another Tribal law, the provisions of this Law shall control.

(a) To the extent that this Law conflicts with any applicable federal statutes or regulations, the federal statute or regulation shall control.

(b) To the extent that any lease to which this Law applies conflicts with this Law, this Law shall control.

65.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### 65.3. Definitions

65.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Assignment" shall mean an agreement between a lessee and an assignee whereby the assignee acquires all or some of the lessee's rights and assumes all or some of the lessee's obligations under a lease.

(b) "Cultural Heritage Department" shall mean the Tribal entity responsible for conducting cultural reviews as required under this Law.

(c) "Cultural review" shall mean a review of the anticipated effects of a proposed lease or lease document on archaeological, cultural and/or historic resources, ~~as defined in the Protection and Management of Archeological & Historical Resources law.~~

- (d) “Day” or “days” shall mean calendar days, unless otherwise specified.
- (e) “Encumbrance” shall mean a claim or liability that is attached to property.
- (f) “Environmental, Health and Safety Division” shall mean the Tribal entity responsible for conducting environmental reviews as required under this Law.
- (g) “Environmental review” shall mean a review of the anticipated environmental effects of a proposed lease or lease document.
- (h) “Improvements” shall mean buildings, other structures, and associated infrastructure attached to the leased premises.
- (i) “Land Management” shall means the Division of Land Management or other Tribal entity responsible for entering into leases of Tribal land.
- (j) “Lease” shall mean a written contract between the Tribe and a lessee, whereby the lessee is granted a right to use or occupy Tribal land, for a specified purpose and duration.
- (k) “Lease document” shall mean a lease amendment, lease assignment, sublease or encumbrance.
- (l) “Leasehold mortgage” shall mean a mortgage, deed of trust, or other instrument that pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.
- (m) “Lessee” shall mean a person or entity who has acquired a legal right to use or occupy Tribal land by a lease under this Law, or one who has the right to use or occupy a property under a lease.
- (n) “Lessor” shall mean the Tribe as the legal, beneficial and/or equitable owner of Tribal land subject to a Lease, and any administrator or assign of the Tribe.
- (o) “Performance bond” shall mean a bond given to ensure the timely performance of a lease.
- (p) “Secretary” shall mean the Secretary of the Interior, U.S. Department of the Interior, or its authorized representative.
- (q) “Sublease” shall mean a written agreement by which the lessee grants to a person or entity a right to use or occupy no greater than that held by the lessee under the lease.
- (r) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.
- (s) “Tribal land” shall mean Tribal trust land and any land owned by the Tribe held in fee status.
- (t) “Tribal trust land” shall mean the surface estate of land or any interest therein held by the United States in trust for the Tribe; land held by the Tribe subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; and/or land held by the United States in trust for a Tribal corporation chartered under Section 17 of the Indian Reorganization Act, 25 U.S.C §§ 461-479, et. seq.

#### **65.4. General Provisions**

65.4-1. *Applicable Land.* This Law applies to all Tribal land.

65.4-2. *Applicable Leases.*

- (a) Except as excluded in (b) below, or as contrary to applicable federal statutes and regulations, this Law shall apply to all residential, agricultural and business leases executed by the Tribe and to all actions and decisions taken in connection with those leases. Provided that, nothing herein shall be construed to affect the terms and conditions of leases existing when this Law goes into effect or amendments, assignments, subleases or encumbrances made to those leases.
- (b) This Law shall not apply to mineral leases or to any lease of individually owned

Indian allotted land in accordance with 25 U.S.C. 415(h)(2).

65.4-3. *Applicable Law.* In addition to this Law, leases approved under this Law are subject to:

- (a) all Tribal law, except to the extent those Tribal laws are inconsistent with applicable federal law;
- (b) applicable federal laws; and
- (c) any specific federal statutory requirements that are not incorporated in this Law.

65.4-4 Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the Tribe under federal law, the Secretary may, upon reasonable notice from the Tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any residential, agricultural or business lease on Tribal trust land executed by the Tribe. The United States shall not be liable for losses sustained by any party to a residential, agricultural or business lease executed pursuant to this Law.

65.4-5. All disputes over residential, agricultural and business leases shall be resolved under the laws of the Tribe and in accordance with federal law. Nothing in this Law shall be construed to waive the Tribe's sovereign immunity.

65.4-6. After the Secretary approves this Law, all leases of Tribal trust land approved and executed under this Law shall be effective without federal approval under 25 U.S.C. 415(h), unless the Secretary rescinds approval of this Law and reassumes responsibility for such approval.

## **65.5. Lease and Lease Document Requirements**

65.5-1. *Information and Application.* Land Management shall approve and execute all leases.

Information on obtaining residential, agricultural or business leases or lease documents shall be available at Land Management. Parties interested in obtaining a residential, agricultural or business lease or lease document shall submit an application to Land Management.

- (a) Land Management shall develop, and the Oneida Land Commission shall approve, the format and requirements set out in the lease and lease document applications for different types of leases, as well as additional procedures and processes to be followed when offering and awarding leases and lease documents.

65.5-2. *Terms and Conditions.* Leases shall be in writing and contain, at a minimum, the following:

- (a) A description of the land or building being leased; business leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems;
- (b) The effective date and term of the lease;
- (c) The purpose of the lease and authorized uses of the leased premises;
- (d) The parties to the lease;
- (e) How much rent is due, when it is due, who receives it, what form(s) of payment is acceptable, and whether any late payment charges or special fees apply and the rate of interest to be charged if the lessee fails to make payments in a timely manner;
- (f) Whether there will be rental reviews or adjustments, how and when they will be done, when any adjustments will be effective and how disputes regarding adjustments will be resolved;
- (g) Who will be responsible for any taxes applied to the property and/or improvements;
- (h) Due diligence requirements that apply, if any;
- (i) Performance bond and insurance requirements that apply, if any;
- (j) Land Management or the Secretary has the right, at any reasonable time during the

term of the lease and upon reasonable notice, in accordance with federal regulations, to enter the leased premises for inspection and to ensure compliance with the lease;

(k) The lessee holds the United States and the Tribe harmless from any loss, liability or damages resulting from the lessee's use or occupation of the leased premises;

(l) The lessee indemnifies the United States and the Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's negligence or willful misconduct; and

(m) Land Management or the Secretary may, at its discretion, treat as a lease violation any failure by the lessee to cooperate with a request to make appropriate records, reports or information available for inspection and duplication.

65.5-3. *Improvements.* A lease shall set out requirements related to improvements, including:

(a) whether improvements may be constructed;

(b) ownership of improvements;

(c) responsibility for constructing, operating, maintaining and managing improvements;

(d) removal of improvements;

(e) whether a lessee may develop equity in improvements and sell its interest in the lease based on the equity; and

(f) the lessor's right of first refusal to purchase the lessee's interest, if any.

65.5-4. *Obtaining a Lease Document.* Lease documents shall be by written consent of the lessor and the lessee, unless otherwise provided herein and shall contain the effective date of the lease document.

(a) The lease may authorize subleases only upon approval and execution from Land Management. This in no way relieves the parties from carrying out their duties under the lease.

(b) The lease may authorize encumbrances, including leasehold mortgages, on the leasehold interest for the purpose of financing to develop and improve the premises. Approval of the encumbrance by Land Management is required.

(c) The lease shall not authorize mortgages that encumber title to Tribal land.

65.5-5. *Payments.* For any lease requiring payments to be made to the lessor, the lessor shall provide the Secretary with such documentation of the lease payments as the Secretary may request to enable the Secretary to discharge the trust responsibility of the United States such that:

(a) The United States shall not be liable for losses sustained by any party to a lease executed; or

(b) Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the lessor under federal law and any applicable regulations, the Secretary may, upon reasonable notice from the lessor and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the lessor.

65.5-6. *Environmental and Cultural Reviews.* Land Management shall not approve a lease or lease document until an environmental review and a cultural review, as required under section 65.9, have been completed. Leases approved and executed in violation of this section shall be null and void.

65.5-~~6~~7. *Documentation.* The following are required for a party to enter into a lease:

(a) a signed lease; and

(b) any reports, surveys and site assessments needed to comply with Tribal environmental, cultural resource and land use requirements.



**65.6. Residential Leases**

65.6-1. In addition to the requirements that apply to all leases under section 65.5, the requirements of this section shall also apply to residential leases.

~~65.6-2. A residential lease shall be entered into for the lease of land suited or used for the construction, improvement, and/or maintenance of a dwelling and related structures on the premises, and otherwise to use or occupy said premises for residential purposes.~~  
~~Duration. Residential leases shall not exceed seventy-five (75) years.~~

~~65.6-3. Rental Reviews. It is in the best interest of the Tribe to ordinarily not have rental reviews and/or adjustments on residential properties; however, the lease shall set out circumstances that would result in Land Management reviewing the rental rate and adjusting it to reflect the fair market value or an adjusted fair market value.~~

~~65.6-3. Rental Reviews. It is in the best interest of the Tribe to ordinarily not have rental reviews and/or adjustments on residential properties; however, the lease shall set out circumstances that would result in Land Management reviewing the rental rate and adjusting it to reflect the fair market value or an adjusted fair market value.~~

**65.7. Agricultural Leases**

65.7-1. In addition to the requirements that apply to all leases under section 65.5, the requirements of this section shall also apply to agricultural leases.

~~65.7-2. An agricultural lease shall be entered into for the lease of land suited or used for the production of crops, livestock or other agricultural products, or land suited or used for a business that supports the surrounding agricultural community.~~

~~65.7-23. Duration and Renewal. Agricultural leases shall not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.~~

~~65.7-34. Land Management. Agricultural leases shall require the lessee to manage land in accordance with any agricultural resource management plan developed by the Tribe.~~

**65.8. Business Leases**

65.8-1. In addition to the requirements that apply to all leases under section 65.5, the requirements of this section shall also apply to business leases.

~~65.8-2. A business lease shall be entered into for the lease of land suited or used for business purposes including retail, office, manufacturing, storage, or other business purposes; and public purposes, including religious, educational, recreational, cultural, or other public purposes.~~

~~65.8-3. Duration and Renewal. Business leases shall not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.~~

~~65.8-34. Supporting Documents. All applicants for business site leases shall submit the following documents to Land Management:~~

~~(a) financial statement;~~

~~(b) site survey and legal description, if applicable;~~

~~(c) other documents as may be required by the any business site leasing management plan developed by the Tribe.~~

~~65.8-45. Appraisal, Local Studies.~~

~~(a) The fair annual lease value shall be determined by an appraisal or equivalent procedure performed by Land Management utilizing the following data: improvement cost, replacement cost, earning capacity, and sales and lease data of comparable sites. An appraisal log reporting the methods of appraisal and value of the Tribal land shall be attached to every business site lease.~~

~~(b) Alternatively, the fair annual lease value shall be determined by an appraisal~~

performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or another commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of the Tribal land shall be attached to every business site lease.

65.8-~~56~~. *Fair Annual Lease Value.*

(a) No lease shall be approved for less than the present fair annual lease value as set forth in the appraisal, except as follows:

- (1) The lessee is in the development period;
- (2) Land Management is providing an incentive for businesses to locate on Tribal land, and must provide lease concessions, lease improvement credits, and lease abatements to attract such business; or
- (3) Land Management determines such action is in the best interest of the Tribe.

(b) A lease may:

- (1) Be structured at a flat lease rate; and/or
- (2) Be structured at a flat lease rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center, or the lessee generates over one million dollars (\$1,000,000.00) annually in gross receipts; and/or
- (3) Be structured based on a percentage of gross receipts, or based on a market indicator; and/or
- (4) Be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved; and/or
- (5) Be amended to allow for lease rate adjustments; and/or
- (6) Provide for periodic review. Such review shall give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.

(c) Land Management shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments. These records shall be presented to the lessee ~~for its review and acceptance or non-acceptance~~ and included in any lease file.

65.8-~~67~~. *Performance Bond.* If a performance bond is required under a business lease, a performance bond shall be obtained by the lessee in an amount that reasonably assures performance on the lease. Such bond shall be for the purpose of guaranteeing the following:

- (a) The annual lease payment;
- (b) The estimated development cost of improvements; and
- (c) Any additional amount necessary to ensure compliance with the lease.

## 65.9. Environmental and Cultural Reviews

65.9-1. *Applicability.* Land Management shall not consider approving a lease or lease document until an environmental review and a cultural review have been completed.

65.9-2. *Environmental Reviews.* An environmental review shall be conducted by or at the request of the Environmental, Health and Safety Division on all proposed leases and lease documents. The environmental review shall be conducted in accordance with the process established under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to evaluate environmental effects of federal undertakings.

65.9-3. *Cultural Reviews.* A cultural review shall be conducted by or at the request of the Cultural Heritage Department on all proposed leases and lease documents. The cultural review shall be conducted in accordance with the permit review requirements for undertakings

established in the Protection and Management of Archeological & Historical Resources law.  
65.9-4. *Environmental and Cultural Review Completion.* The Environmental, Health and Safety Division shall forward a completed environmental review, ~~which includes~~ and the cultural review, to Land Management for consideration in the approval or denial of a lease or lease document.

(a) Before approving a lease or lease document, Land Management may require any reasonable actions, as recommended within the environmental review or cultural review, be completed.

(b) The Environmental, Health and Safety Division shall prepare an updated environmental review and the Cultural Heritage Department shall prepare an updated cultural review upon completion of any reasonable actions.

## **65.10. Lease Management**

65.10-1. *Management Plan.* Land Management shall:

(a) manage existing leases as well as those executed pursuant to this Law; and

(b) institute a leasing management plan that employs sound real estate management practices, and addresses accounting, collections, monitoring, enforcement, relief, and remedies.

65.10-2. *Accounting.* Land Management shall implement an accounting system that generates invoices, accounts for payments, and dates of when rate adjustments should be made. Nothing in this section shall be construed to absolve the lessee of its duties under a lease.

65.10-3. *Recording Leases and Lease Documents.* Land Management shall provide all leases and lease documents of Tribal trust land, except residential subleases and encumbrances, to the Bureau of Indian Affairs for recording in the Land Titles and Records Office. All leases and lease documents of Tribal land shall also be recorded in the Tribe's Register of Deeds. Land Management shall also distribute a copy of the recorded lease documents to the lessee.

65.10-4. *Ownership of Records.* Records of activities taken pursuant to this Law with respect to Tribal trust land are the property of the United States and the Tribe. Records compiled, developed or received by the lessor in the course of business with the Secretary are the property of the Tribe.

65.10-5. *Administrative Fees.* Land Management may charge administrative fees for costs associated with issuing a lease or lease document, or conducting any other administrative transaction.

## **65.11. Enforcement**

65.11-1. Land Management shall have all powers necessary and proper to enforce this Law and the lease terms. This includes the power to enter the premises ~~at a reasonable time, with or without notice~~, assess penalties, assess late payments and cancel leases. Land Management may request the Oneida Law Office assist in enforcement of this Law and leases.

65.11-2. *Harmful or Threatening Activities.* If a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, Land Management or another interested party may take appropriate emergency action, which includes cancelling the lease and/or securing judicial relief.

65.11-3. *Holdovers and Trespass.* If a lessee remains in possession of a property after the expiration or cancellation of a lease, or a person occupies a property without Land Management's approval, Land Management shall take action to recover possession of the property; and/or pursue additional remedies, such as damages, if applicable.

65.11-4. *Defaults.* If Land Management determines a lessee is in default, Land Management

shall take action to have the lessee cure the default or, if the default is not cured, cancel the lease.  
65.11-5. *Penalties.* Unless the lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the lessee from Land Management, and the failure to pay such amounts shall be treated as a breach of the lease.

**65.12. Appeals**

65.12-1. The lessee or an interested party may appeal a determination of Land Management ~~to the Tribe's Judiciary~~ in accordance with the ~~Oneida~~ Judiciary ~~Rules~~ law and any applicable rules of Civil Procedure~~procedure~~.

*End.*

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# Notice of Public Meeting

*to be held*

**April 2, 2015 at 12:15 p.m.  
OBC Conference Room - 2nd Floor,  
Norbert Hill Center**



## ***Topic: Leasing Law Adoption & Real Property Law Amendments***

**The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would adopt a Leasing Law and remove the leasing provisions from the current Real Property Law. This proposal would:**

- ◆ Establish a process for approving leases on Tribal trust and fee land that complies with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) which would result in the Tribe no longer needing approval from the Secretary of Interior for leases of Tribal trust land. This process includes:
  - ◇ The terms and conditions that must be contained within a lease, including separate requirements for residential, agricultural and business leases.
  - ◇ How lease amendments and assignments, subleases, and encumbrances are approved.
  - ◇ A requirement that environmental and cultural reviews be completed before a lease or lease document is approved and what those reviews entail.
- ◆ Land Management is responsible for developing, with Land Commission approval, procedures and processes for offering and awarding leases and lease documents; managing leases; recording leases and lease documents with the appropriate entities; and enforcing leases.
- ◆ The main amendment to the Real Property Law removes a provision that governs leasing of Tribal land and replaces it with a provision that defers to the Leasing Law for the leasing of Tribal land.

**All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.**

### **Public Comment Period—Open until April 9, 2015**

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings) or contact the Legislative Reference Office (LRO), which is located on the second floor of the Norbert Hill Center, Oneida WI.

Mail: **Legislative Reference Office  
PO Box 365  
Oneida, WI 54155**

Phone: **(920) 869-4376 or (800) 236-2214**  
E-Mail: **LOC@oneidanation.org**  
Fax: **(920) 869-4040**

## Chapter 65 LEASING

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<i>Analysis by the Legislative Reference Office</i>					
Title	Leasing law (the Law)				
Requester	Nathan King, Legislative Affairs	Drafter	Lynn Franzmeier	Analyst	Tani Thurner
Reason for Request	This is a proposal for a new Law that meets the requirements of the Federal HEARTH Act <sup>1</sup> , establishing a Tribal leasing law that, if approved by the Secretary of the Interior, would enable the Tribe to authorize leases for Tribal trust land without needing to have the Secretary of the Interior approve of each individual lease.				
Purpose	To set out the Tribe's authority to issue, review, approve and enforce leases of Tribal fee land and trust land.				
Authorized/ Affected Entities	Department of Land Management (DLM), Land Commission, Oneida Law Office, Cultural Heritage Department, Environmental Health & Safety Division, the Judiciary.				
Due Process	DLM decisions are appealable to the Judiciary.				
Related Legislation	Public Use of Tribal Land Law; correlating amendments are being made to the Real Property Law				
Policy Mechanism	Issuing leases to occupy/use Tribal trust and fee land.				
Enforcement	Denial of lease requests and cancellation of leases; interested parties can also request that the Secretary of the Interior review the Tribe's leasing law to ensure it is being followed.				

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### Overview

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This request for a leasing law was originally submitted to the Legislative Operating Committee (LOC) on January 23, 2013, but was not completed by the LOC during the prior term; and was carried over into the current term by the current LOC.

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This is a proposal for a new Law to meet the requirements of the Federal HEARTH Act. This Law will be submitted to the Secretary of the US Department of Interior (*hereinafter: Secretary*) for approval, and, if approved, the Tribe will be able to execute leases for Tribal trust land without needing to obtain Secretarial Approval for each individual lease.

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*Note: This proposal is unrelated to the proposed Constitutional amendments – the requirement of Secretarial approval for tribal trust land leases is a federal requirement; not an Oneida Constitutional requirement, and is unaffected by the upcoming Secretarial Election.*

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### **HEARTH Act – Background**

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Until recently, federal law<sup>2</sup> required Indian tribes to obtain approval from the Secretary before a tribe could enter into any agreement to lease out their trust land (i.e. land held in trust

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<sup>1</sup> Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, this Act amended the Indian Long-Term Leasing Act of 1955, 25 U.S.C. Sec. 415.

<sup>2</sup> 25 USC 415



for the Tribe by the US government). This changed in 2012, with the enactment of the HEARTH Act, which allows tribes to create their own tribal leasing regulations (such as this leasing law) which could be submitted to the Secretary for approval<sup>3</sup>; and once approved, that tribe may negotiate and execute leases for their trust land without having to seek Secretarial approval first – instead, the tribe only has to submit the leases to the Bureau of Indian Affairs (BIA) for recording in the Land Titles and Records Office.

Since the HEARTH Act was enacted, at least 15 other tribes have had such regulations approved.

The HEARTH Act requires the Secretary to approve a tribe's leasing regulations if they are consistent with the requirements used by the Secretary to determine whether to approve a tribal land lease. Those requirements are set out in the Code of Federal Regulations<sup>4</sup>.

### **The Proposed Oneida Leasing Law**

This proposed Law would govern all Tribal land. Federal law and the HEARTH Act only apply to leases for Tribal trust land, but this Law would also apply to any leases for Tribal fee land. [65.4-1]

This Law would take effect 30 days after being approved by the Secretary. [65.2-1] Once effective, the Tribe may approve and execute leases without Secretarial approval, unless the Secretary rescinds approval and reassumes responsibility for approving Oneida trust land leases. [65.4-6]

This Law may be amended or repealed by the OBC in accordance with the Legislative Procedures Act, but any major, substantive changes would not be effective until approved by the Secretary. Minor, technical amendments may take effect once approved by the OBC. [65.2-2]

The HEARTH Act authorizes tribes to create regulations to execute three main types of leases on their trust land: agricultural leases, business leases, and leases for residential, recreational, religious or educational purposes. This Law governs residential, agricultural and business leases executed by the Tribe, as well as actions and decisions taken in connection with those leases. For the purposes of this Law; business leases include leases for business purposes; as well as leases for public purposes; including religious, educational, recreational, cultural or other public purposes. [65.4-1, 65.4-2 and 65.8-2]

This Law does not apply to mineral leases or to leases of individually-owned Indian allotted land, and does not affect the terms and conditions of existing leases. This Law also does not affect the terms and conditions of amendments, assignments, subleases or encumbrances made to leases that are already in effect when the law goes into effect. [65.4-2]

Nothing in this Law shall be construed to waive the Tribe's sovereign immunity. [65.4-5]

### **Authorities and Responsibilities**

This Law establishes responsibilities and authorities for various Tribal entities, including:

- **Division of Land Management (DLM):** DLM will manage all already-existing leases as well as any leases executed under this law [65.10-1(a)]; including lease amendments, assignments, subleases and encumbrances (collectively: "lease documents"). DLM is given all powers necessary and proper to enforce this Law and lease terms [65.11-1]. Various related responsibilities/authorities for DLM are set out in the Law, including:
  - Making information available about leases; and accepting lease and lease document applications. [65.5-1]

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<sup>3</sup> The Secretary must either approve or disapprove of those regulations within 120 days, unless this time period is extended after consultation with the Tribe. See 25 USC 415 (h)(4)(A)

<sup>4</sup> 25 C.F.R. 16

- Instituting a leasing management plan, implementing an accounting system, and developing requirements for lease applications and additional procedures/processes for offering/awarding leases and lease documents. [65.10-1(b), 65.5-1(a) and 65.10-2]
- Approving and executing all leases [65.5-1] and subleases; and approving mortgages and other encumbrances. [65.5-1 and 65.5-4]
- Submitting leases and lease documents for trust land to the BIA for recording when required; [65.10-3]; recording all leases and lease documents in the Tribe's Register of Deeds and distributing copies to the lessee. [65.10-3]
- Charging administrative fees (DLM is authorized, not required, to do so). [65.10-5]
- Entering a leased premises, assessing penalties and late payments, cancelling leases; taking action to recover possession of a property and/or to pursue additional remedies in holdover and trespass situations; taking emergency action to prevent or respond to criminal activity and/or immediate and significant harm to a leased premises; and taking action to have lessees cure a default. [65.11]
- **Oneida Land Commission.** This entity has approval authority over the requirements DLM creates for lease/lease document applications, and over any additional procedures and processes DLM creates that are related to offering and awarding leases and lease documents. [65.5-1(a)]
- **Environmental Health and Safety Division.** This entity is responsible for preparing environmental reviews (including any recommendations) for each lease and for forwarding the completed environmental review and the cultural review to the DLM. [65.9-2 and 65.9-4]
- **Cultural Heritage Department.** This entity is responsible for conducting or requesting cultural reviews for all proposed leases and documents. [65.9-3]
- **Oneida Law Office.** DLM may request that the Oneida Law Office assist with enforcing this Law and leases. [65.11-1]
- **Judiciary.** The lessee or an interested party may appeal a determination of DLM to the Judiciary in accordance with the Judiciary law and any applicable rules of procedure. [65.12-1]

### **Environmental and Cultural Reviews**

In order for a tribe's leasing regulations to be approved by the Secretary, they must include an environmental review process. The process must identify and evaluate any significant effects of the proposed lease on the environment, include a process for notifying the public and soliciting public comment on any environmental impacts, and include a process for responding to public comment before approving the lease. [25 USC 415(h)(3)(B)]

This Law satisfies that requirement, requiring not only an environmental review, but also a cultural review, before any lease can be approved. After receiving both reviews, DLM may require that any reasonable actions, as recommended within the reviews, be completed, and then updated reviews must be prepared.[65.9-4] Leases approved/executed in violation of this requirement, are null and void. [65.5-6 and 65.9-1]

#### *Environmental Review*

To comply with the federal requirements, the Law requires environmental reviews to be conducted in accordance with the process established under the National Environmental Policy Act (NEPA) to evaluate environmental effects of federal undertakings. [65.9-2]

#### *Cultural Review*

Although not a federal requirement, this Law requires cultural reviews for all leases, which must be done in accordance with the permit review requirements for undertakings established in the Tribe's Protection and Management of Archeological & Historical Resources law (PMAHR).



[65.9-3] Essentially, this means that a Preservation Officer must review the application and determine if the proposal constitutes an “undertaking” and if so, must conduct a literature and oral history search, and a field survey when necessary; to determine whether the undertaking will affect any archaeological, historic or cultural resources; and whether the effect will be harmful. Within six weeks, the Officer must submit the cultural review and any recommendations.

Unlike an environmental review, this Law does not provide for any sort of public comment for a cultural review.

### **Lease Requirements**

In order to enter into a lease, this Law requires that there be a signed lease and any reports, surveys and site assessments needed to comply with Tribal environmental, cultural resource, and land use requirements. [65.5-7] Lease documents must be by written consent of the lessor (i.e. the Tribe) and lessee (the party leasing the land from the Tribe). Both leases and lease documents must identify an effective date. [65.5-4] Leases must contain various provisions which track federal requirements – identifying the parties; the property; the lease term; the purpose of the lease and authorized uses; and various provisions governing rent - including whether, when and how to do rental reviews or adjustments, and how disputes will be resolved - and various requirements related to due diligence, performance bonds and insurance, minimum insurance, and improvements. [65.5-2 to 65.5-3] Lessees must indemnify the US and Tribe against all liabilities or costs related to the use or release of hazardous materials, except for that arising from the Tribe’s negligence or willful misconduct. [65.5-2(l)]

The Law also identifies some specific rules for all leases, including:

- Both DLM and the Secretary are authorized to enter a leased premises for inspection and to ensure compliance with a lease – at any reasonable time and upon reasonable notice, in accordance with federal regulations. [65.5-2(j)]
- If a lessee fails to cooperate with a request to make appropriate records, reports or information available for inspection and duplication, DLM or the Secretary has discretion to treat this as a lease violation. [65.5-2(m)]
- Mortgages that encumber title to Tribal land are prohibited, but leasehold interests (i.e. the lessee’s interest in the land) can be encumbered. [65.5-4(b) and (c)]
- Even without any specific notice from DLM, interest charges and late payment penalties apply, and failure to pay these must be treated as a breach of the lease. [65.11-5]

This Law also includes provisions that track federal law - 65.4-4 and 25 USC 415(h)(7) both state:

- Pursuant to the Secretary’s authority to fulfill the US trust obligation to the Tribe, the Secretary has discretion to enforce the provisions of, or cancel, any lease on Tribal trust land executed by the Tribe; upon reasonable notice from the Tribe.
- The US is not liable for losses sustained by any party to a lease executed under this Law.

### *Specific Requirements for Types of Leases*

This Law permits leases of up to a maximum of 75 years. Business and Agricultural leases may be for terms of up to 25 years, with options to renew for up to two additional terms of up to 25 years each. Residential leases may be for up to 75 years. [65.6-3, 65.7-3 and 65.8-3]

### *Residential Leases*

The Law defines a residential lease as the lease of land suited or used for the construction, improvement and/or maintenance of a dwelling and related structures on the premises; and otherwise to use or occupy said premises for residential purposes. [65.6-2]

### *Agricultural Leases*

The Law defines an agricultural lease as the lease of land suited or used for the production of crops, livestock or other agricultural products, or land suited or used for a business that supports the surrounding agricultural community. [65.7-2] Agricultural leases must require the lessee to manage land in accordance with any agricultural resource management plan developed by the Tribe. [65.7-4]

### *Business Leases*

This Law contains several additional provisions exclusively for business leases (which includes business leases and leases for public purposes, such as religious, educational, recreational, cultural or other public purposes [65.8-2]:

- Applicants for leases must submit a financial statement, a site survey and legal description if applicable, and any other documents as may be required by any business site leasing management plan developed by the Tribe. [65.8-4]
- Any required performance bonds must be obtained by the lessee in an amount that reasonably assures performance. The bond is for guaranteeing the annual lease payment, the estimated development cost of improvements, and any additional amount necessary to ensure compliance. [65.8-7]
- The Law identifies appropriate methods for establishing and recording Fair Annual Lease Value. [65.8-5]. DLM is required to present written records of the basis used for determining fair annual lease value to the lessee and include them in any lease file. [65.8-6(c) and 65.8-5]
- The Law identifies four ways a business lease may be structured and one reason a business lease may be amended; and states that a business lease may provide for periodic review. [65.8-6(b)]
- Business leases cannot be approved for less than the appraised fair annual lease value, except in three situations: 1) the lessee is in the development period; 2) DLM needs to provide an incentive to attract business to locate on Tribal land; or 3) DLM determines that approving a lease for less than fair annual lease value is in the best interest of the Tribe. [65.8-6(a)] It is not clear whether residential or agricultural leases can be approved for less than a fair annual lease value.

### **Federal Enforcement**

Although not addressed in this Law, federal law also provides for additional enforcement: after exhausting any applicable tribal remedies, an interested party may submit a petition to the Secretary to review a tribe's compliance with their own leasing regulations. If the Secretary determines that a tribe violated their own law, the Secretary may take any necessary action to remedy the violation – this includes rescinding approval of the Tribal regulations and reassuming responsibility for approving leases of tribal trust lands. However, before implementing any remedy, the Secretary must first provide the Tribe with written notice of the allegation, a hearing on the record and a reasonable opportunity to cure the alleged violation. [25 USC 415(h)(8)]

### **Miscellaneous**

A recordkeeping provision is included in the Law: Records of activities taken pursuant to this Law with respect to Tribal trust land are the property of the US and the Tribe. Records compiled, developed or received by the lessor in the course of business with the Secretary are the property of the Tribe. [65.10-4]

A public meeting has not been held.

### Considerations

- The BIA Policy Memorandum requires Tribal regulations to establish the process for obtaining a lease or lease document. Some of those requirements are included in 65.5-6 but no actual process is established, this section just includes scattered requirements.
- The definition for DLM is “the Division of Land Management or other Tribal entity responsible for entering into leases of Tribal land.” [65.3-1(i)] It may be confusing to reference (or grant authority to an “other entity”) because this law delegates various authorities and responsibilities that appear to be intended only for DLM. Instead of including other tribal entities in the definition for DLM, it may be more clear to authorize DLM to delegate authority to another entity, or to otherwise rephrase so that any other tribal entity that is authorized to enter into leases will not accidentally be authorized to do things that it is intended that only DLM have authority to do.
- 65.12-1 states that “The lessee or an interested party may appeal a determination of Land Management in accordance with the Judiciary law and any applicable rules of procedure.” However, “interested party” is not defined, and the term is very broad. This provision may be interpreted to give legal standing to a broad group that may not otherwise have jurisdiction. It may be more appropriate to establish within the Law specifically who has legal standing to bring an action in these situations; rather than having the Court determine who has standing.
- 65.11-2. Land Management or other party may take appropriate emergency action, which includes cancelling the lease and/or securing judicial relief.
  - This does not say “including but not limited to”, and using general rules of statutory interpretation, this means that these are the only two appropriate emergency actions DLM is authorized to take under this Law.
  - It is not clear what “other party” is intended to be able to take appropriate emergency action – as written, this may be too broadly phrased.
- The proposed Leasing Law delegates various responsibilities to DLM to implement, create or establish different types of regulations; including setting administrative fees and penalties; and the Law also delegates authority to make broad decisions - with very little oversight, very few approval requirements, and limited guidelines for those regulations and limited guidance as to how they make decisions. These are all policy calls, but it should be noted that numerous other laws/policies require approval of rules from OBC or another entity. Also; by giving DLM such broad authority to create rules and decide how to administer leases, it will be somewhat difficult to appeal or challenge any DLM actions or decisions, because there wouldn’t be any actual law for the Judiciary to interpret or apply – challenges would most likely be based on DLM’s rules or requirements, and this law appears to give DLM the authority to not only create those rules without much oversight, but to enforce them and to change them at will.

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## Chapter 65 LEASING

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### 65.1. Purpose and Policy

65.1-1. *Purpose.* The purpose of this Law is to set out the Tribe's authority to issue, review, approve and enforce leases. In addition, the purpose of this Law is to meet the requirements of the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) by establishing a process under which the Tribe will be able to approve leases on Tribal trust land without additional approval of the Secretary of the Interior.

65.1-2. *Policy.* It is the policy of the Tribe to set out the expectations and responsibilities of the lessors and lessees of Tribal land and to ensure the leasing of Tribal land results in minimal risk to the Tribe.

### 65.2. Adoption, Amendment, Repeal

65.2-1. This Law was adopted by the Oneida Business Committee by resolution \_\_\_\_\_ and shall take effect thirty (30) days after approval by the Secretary of the Interior.

65.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act. Major, substantive changes to this Law shall not take effect until they have been approved by the Secretary of the Interior. Minor, technical amendments may take effect upon approval by the Oneida Business Committee.

65.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

65.2-4. In the event of a conflict between a provision of this Law and a provision of another Tribal law, the provisions of this Law shall control.

(a) To the extent that this Law conflicts with any applicable federal statutes or regulations, the federal statute or regulation shall control.

(b) To the extent that any lease to which this Law applies conflicts with this Law, this Law shall control.

65.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### 65.3. Definitions

65.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Assignment" shall mean an agreement between a lessee and an assignee whereby the assignee acquires all or some of the lessee's rights and assumes all or some of the lessee's obligations under a lease.

(b) "Cultural Heritage Department" shall mean the Tribal entity responsible for conducting cultural reviews as required under this Law.

(c) "Cultural review" shall mean a review of the anticipated effects of a proposed lease or lease document on archaeological, cultural and/or historic resources.

(d) "Day" or "days" shall mean calendar days, unless otherwise specified.

(e) "Encumbrance" shall mean a claim or liability that is attached to property.

(f) "Environmental, Health and Safety Division" shall mean the Tribal entity responsible for conducting environmental reviews as required under this Law.

(g) “Environmental review” shall mean a review of the anticipated environmental effects of a proposed lease or lease document.

(h) “Improvements” shall mean buildings, other structures, and associated infrastructure attached to the leased premises.

(i) “Land Management” shall mean the Division of Land Management or other Tribal entity responsible for entering into leases of Tribal land.

(j) “Lease” shall mean a written contract between the Tribe and a lessee, whereby the lessee is granted a right to use or occupy Tribal land, for a specified purpose and duration.

(k) “Lease document” shall mean a lease amendment, lease assignment, sublease or encumbrance.

(l) “Leasehold mortgage” shall mean a mortgage, deed of trust, or other instrument that pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

(m) “Lessee” shall mean a person or entity who has acquired a legal right to use or occupy Tribal land by a lease under this Law, or one who has the right to use or occupy a property under a lease.

(n) “Lessor” shall mean the Tribe as the legal, beneficial and/or equitable owner of Tribal land subject to a lease, and any administrator or assign of the Tribe.

(o) “Performance bond” shall mean a bond given to ensure the timely performance of a lease.

(p) “Secretary” shall mean the Secretary of the Interior, U.S. Department of the Interior, or its authorized representative.

(q) “Sublease” shall mean a written agreement by which the lessee grants to a person or entity a right to use or occupy no greater than that held by the lessee under the lease.

(r) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.

(s) “Tribal land” shall mean Tribal trust land and any land owned by the Tribe held in fee status.

(t) “Tribal trust land” shall mean the surface estate of land or any interest therein held by the United States in trust for the Tribe; land held by the Tribe subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; and/or land held by the United States in trust for a Tribal corporation chartered under Section 17 of the Indian Reorganization Act, 25 U.S.C §§ 461-479, et. seq.

#### **65.4. General Provisions**

65.4-1. *Applicable Land.* This Law applies to all Tribal land.

65.4-2. *Applicable Leases.*

(a) Except as excluded in (b) below, or as contrary to applicable federal statutes and regulations, this Law shall apply to all residential, agricultural and business leases executed by the Tribe and to all actions and decisions taken in connection with those leases. Provided that, nothing herein shall be construed to affect the terms and conditions of leases existing when this Law goes into effect or amendments, assignments, subleases or encumbrances made to those leases.

(b) This Law shall not apply to mineral leases or to any lease of individually owned Indian allotted land in accordance with 25 U.S.C. 415(h)(2).

65.4-3. *Applicable Law.* In addition to this Law, leases approved under this Law are subject to:

(a) all Tribal law, except to the extent those Tribal laws are inconsistent with applicable federal law;

(b) applicable federal laws; and

(c) any specific federal statutory requirements that are not incorporated in this Law.

65.4-4 Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the Tribe under federal law, the Secretary may, upon reasonable notice from the Tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any residential, agricultural or business lease on Tribal trust land executed by the Tribe. The United States shall not be liable for losses sustained by any party to a residential, agricultural or business lease executed pursuant to this Law.

65.4-5. All disputes over residential, agricultural and business leases shall be resolved under the laws of the Tribe and in accordance with federal law. Nothing in this Law shall be construed to waive the Tribe's sovereign immunity.

65.4-6. After the Secretary approves this Law, all leases of Tribal trust land approved and executed under this Law shall be effective without federal approval under 25 U.S.C. 415(h), unless the Secretary rescinds approval of this Law and reassumes responsibility for such approval.

### **65.5. Lease and Lease Document Requirements**

65.5-1. *Information and Application.* Land Management shall approve and execute all leases. Information on obtaining residential, agricultural or business leases or lease documents shall be available at Land Management. Parties interested in obtaining a residential, agricultural or business lease or lease document shall submit an application to Land Management.

(a) Land Management shall develop, and the Oneida Land Commission shall approve, the format and requirements set out in the lease and lease document applications for different types of leases, as well as additional procedures and processes to be followed when offering and awarding leases and lease documents.

65.5-2. *Terms and Conditions.* Leases shall be in writing and contain, at a minimum, the following:

(a) A description of the land or building being leased; business leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems;

(b) The effective date and term of the lease;

(c) The purpose of the lease and authorized uses of the leased premises;

(d) The parties to the lease;

(e) How much rent is due, when it is due, who receives it, what form(s) of payment is acceptable, and whether any late payment charges or special fees apply and the rate of interest to be charged if the lessee fails to make payments in a timely manner;

(f) Whether there will be rental reviews or adjustments, how and when they will be done, when any adjustments will be effective and how disputes regarding adjustments will be resolved;

(g) Who will be responsible for any taxes applied to the property and/or improvements;

(h) Due diligence requirements that apply, if any;

(i) Performance bond and insurance requirements that apply, if any;

(j) Land Management or the Secretary has the right, at any reasonable time during the term of the lease and upon reasonable notice, in accordance with federal regulations, to enter the leased premises for inspection and to ensure compliance with the lease;

(k) The lessee holds the United States and the Tribe harmless from any loss, liability or damages resulting from the lessee's use or occupation of the leased premises;

(l) The lessee indemnifies the United States and the Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's negligence or willful misconduct; and

(m) Land Management or the Secretary may, at its discretion, treat as a lease violation any failure by the lessee to cooperate with a request to make appropriate records, reports or information available for inspection and duplication.

65.5-3. *Improvements.* A lease shall set out requirements related to improvements, including:

(a) whether improvements may be constructed;

(b) ownership of improvements;

(c) responsibility for constructing, operating, maintaining and managing improvements;

(d) removal of improvements;

(e) whether a lessee may develop equity in improvements and sell its interest in the lease based on the equity; and

(f) the lessor's right of first refusal to purchase the lessee's interest, if any.

65.5-4. *Obtaining a Lease Document.* Lease documents shall be by written consent of the lessor and the lessee, unless otherwise provided herein and shall contain the effective date of the lease document.

(a) The lease may authorize subleases only upon approval and execution from Land Management. This in no way relieves the parties from carrying out their duties under the lease.

(b) The lease may authorize encumbrances, including leasehold mortgages, on the leasehold interest for the purpose of financing to develop and improve the premises. Approval of the encumbrance by Land Management is required.

(c) The lease shall not authorize mortgages that encumber title to Tribal land.

65.5-5. *Payments.* For any lease requiring payments to be made to the lessor, the lessor shall provide the Secretary with such documentation of the lease payments as the Secretary may request to enable the Secretary to discharge the trust responsibility of the United States.

65.5-6. *Environmental and Cultural Reviews.* Land Management shall not approve a lease or lease document until an environmental review and a cultural review, as required under section 65.9, have been completed. Leases approved and executed in violation of this section shall be null and void.

65.5-7. *Documentation.* The following are required for a party to enter into a lease:

(a) a signed lease; and

(b) any reports, surveys and site assessments needed to comply with Tribal environmental, cultural resource and land use requirements.

## **65.6. Residential Leases**

65.6-1. In addition to the requirements that apply to all leases under section 65.5, the requirements of this section shall also apply to residential leases.

65.6-2. A residential lease shall be entered into for the lease of land suited or used for the construction, improvement, and/or maintenance of a dwelling and related structures on the premises, and otherwise to use or occupy said premises for residential purposes.

65.6-3. *Duration.* Residential leases shall not exceed seventy-five (75) years.

**65.7. Agricultural Leases**

65.7-1. In addition to the requirements that apply to all leases under section 65.5, the requirements of this section shall also apply to agricultural leases.

65.7-2. An agricultural lease shall be entered into for the lease of land suited or used for the production of crops, livestock or other agricultural products, or land suited or used for a business that supports the surrounding agricultural community.

65.7-3. *Duration and Renewal.* Agricultural leases shall not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.

65.7-4. *Land Management.* Agricultural leases shall require the lessee to manage land in accordance with any agricultural resource management plan developed by the Tribe.

**65.8. Business Leases**

65.8-1. In addition to the requirements that apply to all leases under section 65.5, the requirements of this section shall also apply to business leases.

65.8-2. A business lease shall be entered into for the lease of land suited or used for business purposes including retail, office, manufacturing, storage, or other business purposes; and public purposes, including religious, educational, recreational, cultural, or other public purposes.

65.8-3. *Duration and Renewal.* Business leases shall not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.

65.8-4. *Supporting Documents.* All applicants for business site leases shall submit the following documents to Land Management:

- (a) financial statement;
- (b) site survey and legal description, if applicable;
- (c) other documents as may be required by any business site leasing management plan developed by the Tribe.

65.8-5. *Appraisal, Local Studies.*

(a) The fair annual lease value shall be determined by an appraisal or equivalent procedure performed by Land Management utilizing the following data: improvement cost, replacement cost, earning capacity, and sales and lease data of comparable sites. An appraisal log reporting the methods of appraisal and value of the Tribal land shall be attached to every business site lease.

(b) Alternatively, the fair annual lease value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or another commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of the Tribal land shall be attached to every business site lease.

65.8-6. *Fair Annual Lease Value.*

(a) No lease shall be approved for less than the present fair annual lease value as set forth in the appraisal, except as follows:

- (1) The lessee is in the development period;
- (2) Land Management is providing an incentive for businesses to locate on Tribal land, and must provide lease concessions, lease improvement credits, and lease abatements to attract such business; or
- (3) Land Management determines such action is in the best interest of the Tribe.

(b) A lease may:

- (1) Be structured at a flat lease rate; and/or



(2) Be structured at a flat lease rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center, or the lessee generates over one million dollars (\$1,000,000.00) annually in gross receipts; and/or

(3) Be structured based on a percentage of gross receipts, or based on a market indicator; and/or

(4) Be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved; and/or

(5) Be amended to allow for lease rate adjustments; and/or

(6) Provide for periodic review. Such review shall give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.

(c) Land Management shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments. These records shall be presented to the lessee and included in any lease file.

65.8-7. *Performance Bond.* If a performance bond is required under a business lease, a performance bond shall be obtained by the lessee in an amount that reasonably assures performance on the lease. Such bond shall be for the purpose of guaranteeing the following:

(a) The annual lease payment;

(b) The estimated development cost of improvements; and

(c) Any additional amount necessary to ensure compliance with the lease.

## **65.9. Environmental and Cultural Reviews**

65.9-1. *Applicability.* Land Management shall not consider approving a lease or lease document until an environmental review and a cultural review have been completed.

65.9-2. *Environmental Reviews.* An environmental review shall be conducted by or at the request of the Environmental, Health and Safety Division on all proposed leases and lease documents. The environmental review shall be conducted in accordance with the process established under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to evaluate environmental effects of federal undertakings.

65.9-3. *Cultural Reviews.* A cultural review shall be conducted by or at the request of the Cultural Heritage Department on all proposed leases and lease documents. The cultural review shall be conducted in accordance with the permit review requirements for undertakings established in the Protection and Management of Archeological & Historical Resources law.

65.9-4. *Environmental and Cultural Review Completion.* The Environmental, Health and Safety Division shall forward a completed environmental review and the cultural review to Land Management for consideration in the approval or denial of a lease or lease document.

(a) Before approving a lease or lease document, Land Management may require any reasonable actions, as recommended within the environmental review or cultural review, be completed.

(b) The Environmental, Health and Safety Division shall prepare an updated environmental review and the Cultural Heritage Department shall prepare an updated cultural review upon completion of any reasonable actions.

## **65.10. Lease Management**

65.10-1. *Management Plan.* Land Management shall:

(a) manage existing leases as well as those executed pursuant to this Law; and

(b) institute a leasing management plan that employs sound real estate management

practices, and addresses accounting, collections, monitoring, enforcement, relief, and remedies.

65.10-2. *Accounting.* Land Management shall implement an accounting system that generates invoices, accounts for payments, and dates of when rate adjustments should be made. Nothing in this section shall be construed to absolve the lessee of its duties under a lease.

65.10-3. *Recording Leases and Lease Documents.* Land Management shall provide all leases and lease documents of Tribal trust land, except residential subleases and encumbrances, to the Bureau of Indian Affairs for recording in the Land Titles and Records Office. All leases and lease documents of Tribal land shall also be recorded in the Tribe's Register of Deeds. Land Management shall also distribute a copy of the recorded lease documents to the lessee.

65.10-4. *Ownership of Records.* Records of activities taken pursuant to this Law with respect to Tribal trust land are the property of the United States and the Tribe. Records compiled, developed or received by the lessor in the course of business with the Secretary are the property of the Tribe.

65.10-5. *Administrative Fees.* Land Management may charge administrative fees for costs associated with issuing a lease or lease document, or conducting any other administrative transaction.

## **65.11. Enforcement**

65.11-1. Land Management shall have all powers necessary and proper to enforce this Law and the lease terms. This includes the power to enter the premises, assess penalties, assess late payments and cancel leases. Land Management may request the Oneida Law Office assist in enforcement of this Law and leases.

65.11-2. *Harmful or Threatening Activities.* If a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, Land Management or another interested party may take appropriate emergency action, which includes cancelling the lease and/or securing judicial relief.

65.11-3. *Holdovers and Trespass.* If a lessee remains in possession of a property after the expiration or cancellation of a lease, or a person occupies a property without Land Management's approval, Land Management shall take action to recover possession of the property; and/or pursue additional remedies, such as damages, if applicable.

65.11-4. *Defaults.* If Land Management determines a lessee is in default, Land Management shall take action to have the lessee cure the default or, if the default is not cured, cancel the lease.

65.11-5. *Penalties.* Unless the lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the lessee from Land Management, and the failure to pay such amounts shall be treated as a breach of the lease.

## **65.12. Appeals**

65.12-1. The lessee or an interested party may appeal a determination of Land Management in accordance with the Judiciary law and any applicable rules of procedure.

*End.*

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# Legislative Operating Committee

## March 4, 2015

# Marriage Law Amendments

**Submission Date:** November 11, 2014

☐ Public Meeting:  
☐ Emergency Enacted:

**LOC Sponsor:** Fawn Billie

**Summary:** *Amendments to the Marriage Law were proposed after the U.S. Supreme Court denied certiorari to consider overruling the lower court's finding that Wisconsin's same-sex marriage ban is unconstitutional. Questions were raised since the Tribe's Marriage Law does not allow for same-sex marriage and would not recognize a marriage conducted legally in Wisconsin.*

**11/05/14 LOC:** Motion by Fawn Billie to add the Marriage Law Amendments to the Active Files List; seconded by Jennifer Webster. Motion carried unanimously.

*Note: Fawn Billie will be the sponsor.*

**1/21/15 LOC:** Motion by Jennifer Webster to defer the Marriage Law Amendments for a legislative analysis and fiscal impact statement; seconded by Fawn Billie. Motion carried unanimously.

### Next Steps:

- LOC to review the proposed draft and analysis and consider forwarding to an April 2, 2015 public meeting.



# Notice of Public Meeting

*to be held*

**April 2, 2015 at 12:15 p.m.**

**OBC Conference Room - 2nd Floor, Norbert Hill Center**



## ***Topic: Marriage Law Amendments***

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would adopt amendments to the Marriage Law that would remove the requirement that individuals be of the opposite sex to marry. In addition, this proposal would:

- ◆ Remove the provision that states marriage results in the creation of a legal status of husband and wife and replaces it with language establishing a legal status of spouses; in addition the parties can be the officiating persons at their wedding if they mutually declare to take each other as spouses, as opposed to husband and wife.
- ◆ Require Licensing to notify the applicants that the marriage ceremony must be held either on the Reservation or in the State of Wisconsin, depending on the residency of the applicants.
- ◆ Removes the requirement that the Court establish guidelines for registering traditional tribal practitioners or spiritual or religious leaders who qualify as "officiating persons." The Family Court Judge requested this change to avoid confusion that the Court has the authority to determine who qualifies as a traditional tribal practitioner or spiritual or religious leader. The Court plans on drafting and maintaining registrations forms for traditional tribal practitioners or spiritual or religious leaders to use when registering as officiating persons, but will not determine who is qualified as an officiating person.

**All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.**

## **Public Comment Period—Open until April 9, 2015**

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings) or contact the Legislative Reference Office (LRO), which is located on the second floor of the Norbert Hill Center, Oneida WI.

Mail: **Legislative Reference Office**  
**PO Box 365**  
**Oneida, WI 54155**

Phone: **(920) 869-4376 or (800) 236-2214**  
E-Mail: **LOC@oneidanation.org**  
Fax: **(920) 869-4040**

# ONEIDA TRIBE OF INDIANS OF WISCONSIN

## ONEIDA FINANCE OFFICE

Office: (920) 869-4325 • Toll Free: 1-800-236-2214  
FAX # (920) 869-4024

## MEMORANDUM

DATE: February 24, 2015  
FROM: Rae Skenandore, Project Manger  
TO: Larry Barton, Chief Financial Officer  
Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer  
RE: **Financial Impact of the Marriage Law Amendments**

### I. Background

BC Resolution 5-12-93-A resolved that an ordinance be drafted setting forth the requirements for the recognition of civil marriages. The Marriage Law was adopted by the Oneida Business Committee by resolution BC-04-28-10-F. Resolution BC-06-12-13-E amended the marriage law to resolve a disagreement with the State on the filing of the original marriage document.

On October 7, 2014 the United States Supreme Court denied certiorari on the constitutionality of Wisconsin's ban on same sex marriage even through the Seventh Circuit Court of Appeals held the ban was unconstitutional. Upon the denial of certiorari, the State of Wisconsin started issuing marriage licenses to same sex partners. The Oneida Marriage Law does not allow a marriage of same sex couples and Wisconsin does. Therefore the Oneida Marriage Law needed to be amended to be consistent with Wisconsin law.

### II. Executive Summary of Findings

Marriage licenses will be issued by Oneida Licensing. Currently the department administers vendor, motor vehicle, alcohol and food/restaurant licensing. The department has been working with the State of Wisconsin to finalize procedures since 2013.

In FY'13, startup funds of \$2,000 were expensed to purchase a copy of Brown County's marriage license data base. The database expense would be considered a sunk cost. Existing personnel will take on the added duties of issuing the licenses. Staff has already relocated to accommodate privacy requirements. Added space, equipment, and supplies are estimated at approximately \$400 annually with documentation costs estimated at \$1,500 annually. The operating budget for Oneida Licensing in FY '15 is \$176,876 with estimated external sales of \$183,255.

The Statistician reviewed Oneida's demographic information and compared it to both State and national marriage rates & other domestic partnerships. It's estimated that approximately 102 couples could potentially purchase a marriage license from Oneida. Oneida Licensing intends to keep fees comparable to other local governments. Currently Brown County charges \$115 for a license and an additional \$25 (\$140 total) to waive the 6 day waiting period. If Licensing charges the same or a similar rate, Oneida would recognize approximately \$11,730 in revenue. Oneida Licensing anticipates that 60 days will be needed to implement the law once approved.

### **III. Financial Impact**

Added revenue is anticipated to offset the minimal staff time and supply costs for an estimated positive impact of approximately \$10,000.

### **III. Recommendation**

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that General Tribal Council has full information with which to render a decision.

**CHAPTER 71**  
**MARRIAGE**  
**Yeny@kta>**

71.1. Purpose and Policy  
71.2. Adoption, Amendment, Conflicts  
71.3. Definitions  
71.4. Marriages, Generally

71.5. Marriage Document and Marriage Ceremony  
71.6. Marriages Conducted to Avoid the Law and Immaterial Irregularities  
71.7. Penalties

<i>Analysis by the Legislative Reference Office</i>					
Title	Marriage (Law)				
Requester	Brandon Stevens	Drafter	Lynn Franzmeier	Analyst	Candice Skenandore
Reason for Request	Same-sex marriage is now legal in Wisconsin; however, the current Law does not recognize same-sex marriage.				
Purpose	The purpose of these amendments is to have the Law recognize legal marriages.				
Authorized/ Affected Entities	The Licensing Department (Department), Family Court, and anyone that wishes to marry in accordance with this Law.				
Due Process	Any person issued a fine under this Law can appeal to the Court [See 71.7-2].				
Policy Mechanism	Department can issue marriage documents including a marriage license [See 71.5-1 & 71.5-3 (g)].				
Enforcement	A person who knowingly violates this Law can be fined; the Department is responsible for enforcing such fines [See 71.7-1 & 71.7-2].				

**Overview**

On October 6, 2014 the United States Supreme Court denied a review of a lower court's decision which ruled Wisconsin's same-sex marriage ban unconstitutional. Therefore same-sex marriage is now legal in the State of Wisconsin. It is because of this decision that the Law is being amended.

**Proposed Amendments**

The following are proposed amendments to the Law.

- The General Tribal Council is no longer authorized to amend or repeal this Law [See 71.2-1].
- The definition of "marriage" is updated to reflect that a marriage results in the creation of a legal status of spouses, as opposed to a legal status of husband and wife [See 71.3-1 (d)].
- Two adults of the same sex can now marry. The current Law only allows two adults of the opposite sex to marry [See redline 71.4-1 (b)].
- This Law contains a requirement that if neither applicant resides on the Reservation, the marriage ceremony must be held on the Reservation. If one or both applicants reside on the Reservation, the marriage ceremony must be held within the State of Wisconsin [See 71.5-3]. This requirement is found within the current Law; however, language has been added which requires the applicants to be noticed of this requirement prior to applying for a marriage license.
- The parties themselves can be officiating persons under this Law so long as they both mutually declare to take each other as spouses. The current Law requires the parties to take each other as husband and wife [See 71.5-4 (a) (6)].
- The Court will no longer establish guidelines for registering traditional tribal practitioners

or spiritual or religious leaders who qualify as “officiating persons” [See Redline 71.5-4 (b)]. The Family Court Judge requested this change in order to avoid confusion that the Court has the authority to determine who qualifies as traditional tribal practitioner or spiritual or religious leader. The Court is comfortable drafting and maintaining registrations forms for traditional tribal practitioners or spiritual or religious leaders to use when registering as officiating persons.

### Considerations

The LOC may want to consider the following:

- The Oneida Judiciary Rules of Evidence (Rules of Evidence) has a section entitled *Husband-wife and domestic partner privilege*. Although this title seems to conflict with this Law, the actual rule grants this privilege to spouses, not just between a husband and wife [See Rules of Evidence 155.8-4]. TO avoid confusion the LOC may want to consider amending the title of this section in the Rules of Evidence.

### Miscellaneous

A public meeting has not been held. Revisions have been made to this Law which complies with drafting styles.

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#### 71.1. Purpose and Policy

71.1-1. *Purpose*. It is the purpose of this Law to exercise the sovereign right of the Oneida Tribe to regulate the rights and responsibilities relating to marriage.

71.1-2. *Policy*. Marriage is a foundation of Tribal society that stabilizes families which the Tribe acknowledges by recognizing the legal relationship of a union between two adults.

#### 71.2. Adoption, Amendment, Conflicts

71.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-04-28-10-F and amended by resolutions BC-06-12-13-E, and

71.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Oneida Administrative Legislative Procedures Act ~~by the Oneida Business Committee or the Oneida General Tribal Council~~.

71.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

71.2-4. In the event of a conflict between a provision of this Law and a provision of another law, ~~including the Administrative Procedures Act~~, the provisions of this Law shall control. Provided that, nothing in this Law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

71.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

71.2-6. *Rules*. If rules addressing a certain area of this Law have not been enacted in accordance with Tribal law and the Court is faced with a question, the Court may, in its discretion, refer to other Indian tribal law or state law for guidance, to the extent that such law is not inconsistent with this or any other Tribal law.



**71.3. Definitions**

71.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Court" means the ~~current~~ judicial system of the Tribe which is assigned to handle all family law matters.

(b) "Court of competent jurisdiction" means a court that has the power and authority to dissolve a marriage.

(c) "Department" means the licensing department of the Tribe that is responsible for administering and issuing licenses in accordance with Oneida laws.

(d) "Marriage" means the civil contract to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of ~~husband and wife~~ spouses.

(e) "Marriage document" means that document issued by the Department which includes the marriage license as well as information concerning the marriage ceremony, the signatures of the witnesses and officiating person(s), and proof of filing.

(f) "Marriage license" means that portion of the marriage document designated as such, which is the authorization for the marriage to take place.

(g) "Officiating person" means the person or persons who perform the marriage ceremony.

(h) "Reservation" means all the land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(i) "Tribe" or "Tribal" means the Oneida Tribe of Indians of Wisconsin.

**71.4. Marriages, Generally**

71.4-1. *Who May Marry*. A marriage may be contracted under this Law between two (2) adults who:

(a) have a marriage document issued by the Department;

~~(b) are of the opposite sex;~~

~~(c)~~ (b) have attained the age of eighteen (18), except as provided in 71.4-3; and

~~(d)~~ meet all other provisions under this Law.

71.4-2. *Who May Not Marry*. Persons may not enter into marriage if they:

(a) are currently legally married to another person; or,

(b) have been legally divorced for less than six (6) months with a judgment of divorce from a court of competent jurisdiction; or,

(c) are not legally competent; or,

(d) are closer in relationship than second cousins, except first cousins may marry if both parties are fifty-five (55) years old or older.

71.4-3. *Minors*. Individuals under the age of sixteen (16) shall not marry. Individuals who meet the above requirements, except for 71.4-1~~(e)~~ (b) and are over the age of sixteen (16) but under the age of eighteen (18) may marry if they present:

(a) written consent by his or her parent or guardian, signed and notarized before the person issuing the marriage license; or

(b) proof that they have been legally emancipated.

**71.5. Marriage Document and Marriage Ceremony**

71.5-1. *Marriage Document*. The Department shall issue a marriage document to the applicants within five (5) business days after the application is filed if, in addition to the other requirements in this Law, the following conditions are met at the time a marriage license is applied for:

(a) Either (1) or (2) applies to the applicants:

(1) each applicant:

(A) is a Tribal member; or

(B) resides on the Reservation and is a member of an Indian tribe, band or community which is recognized by a state or the federal government.

(2) one of the applicants meets the requirements of (1)(A) or (B) and the other applicant consents to the Tribe's jurisdiction to issue the license. The completion of an application for a marriage license represents a person's consent to the Tribe's jurisdiction to grant the license.

(b) Both applicants appear in person at the Department to complete the marriage license application.

(c) The applicants provide any information necessary to complete the application, which may include: social security numbers, birth certificates, proof of residence, proof of tribal membership, documentation of a judgment of divorce, annulment, or death certificates from most recent marriages, parents' full names, mothers' maiden names, date and place of marriage ceremony, and the name, address, and phone number of the officiating person(s).

(d) The applicants swear under oath that the information provided is true and accurate and sign the application in the presence of a notary public.

(e) The applicants pay the required fee.

71.5-2. *Objections.* Any relative of the applicants, Department official, or applicant that objects to an upcoming marriage may file a petition and sworn affidavit with the Court objecting to the marriage.

(a) The petition shall state grounds for the belief that a marriage license should not be issued to the applicants or a marriage license that has already been issued should be revoked.

(b) The Court shall approve the petition only if the marriage, if conducted, would violate this Law.

(c) If the petition is approved by the Court, the applicants shall show cause why the license should be issued or why the license should not be revoked.

71.5-3. *Marriage Ceremony.*

(a) The applicants shall marry not less than six (6) days after the license is issued and not more than thirty (30) days after the license is issued. The marriage license shall contain notification of these time limits.

(b) If neither applicant resides on the Reservation, the marriage ceremony shall be held on the Reservation. If one (1) or both of the applicants reside on the Reservation, the marriage ceremony shall be held within the State of Wisconsin. The applicants shall be notified of this requirement when applying for a marriage license.

(c) The ceremony shall be solemnized by an officiating person(s) with two (2) competent adult witnesses present.

(ed) The parties shall vow by mutual declarations, before the officiating person(s) and witnesses, that they take each other in lawful matrimony.

(de) The parties, the officiating person(s), and the witnesses shall, at the conclusion of the ceremony, sign and date the marriage document.

(ef) The officiating person(s) shall deliver the original completed marriage document to the Department within three (3) business days after the ceremony. The Department shall deliver the original marriage document to the Wisconsin Vital Statistics Department within ten (10) business days after it is filed. The Department shall retain a file stamped

copy and provide a file stamped copy to the married couple.

(fg) The Department shall keep a marriage license docket and shall enter therein a complete record of the marriage applications and issuance of marriage licenses which shall be available for public inspection during regular business hours.

71.5-4. *Officiating Persons.* The following persons are authorized as officiating persons under this Law:

~~(a) The following persons are authorized as officiating persons under this law:~~

~~(1a)~~ a traditional tribal practitioner or spiritual or religious leader who is commonly recognized as such by the Oneida community or other Indian community and has registered with the Court ~~as such~~; or

~~(2b)~~ a Judge from the Court or a tribal, federal, or state judge or commissioner authorized to solemnize marriages under tribal, federal or state law; or

~~(3c)~~ the Tribal Chairperson or a person designated by the Tribal Chairperson at the request of the persons being married; or

~~(4d)~~ any ordained clergyperson of any religious denomination, society, or sect; or

~~(5e)~~ any person licensed by a religious body or appointed by a high-ranking clergy member, if the religious denomination, society, or sect allows the person to solemnize marriages; or

~~(6f)~~ the parties themselves, by mutual declarations that they take each other as husband and wife~~spouses~~, in accordance with the customs, rules, and regulations of any religious denomination, society, or sect to which either of the parties belongs.

~~(b) Registration. The Court shall establish guidelines for registering traditional tribal practitioners or spiritual or religious leaders who qualify as "officiating persons" under this law.~~

**71.6. Marriages Conducted to Avoid the Law and Immaterial Irregularities**

71.6-1. If a person is prohibited from marrying another under this Law and goes to another jurisdiction and there contracts a marriage that is prohibited under this Law, such marriage shall not be recognized by the Tribe.

71.6-2. No marriage shall be contracted under this Law by a party residing and intending to continue to reside in another jurisdiction, if such marriage would be void if contracted in such other jurisdiction. Every marriage celebrated in violation of this provision shall be void.

71.6-3. *Immaterial Irregularities.* A marriage shall be recognized as valid if the marriage is consummated with the full belief on the part of the persons so married that they have been lawfully joined in marriage, and:

(a) the officiating person(s) did not have the authority to solemnize the marriage; or

(b) the marriage license was issued by a department or person who did not have jurisdiction to issue the license; or

(c) the marriage license or application for the marriage license had an informality or irregularity; or

(d) either or both of the witnesses to the marriage were incompetent; or

(e) the marriage ceremony was solemnized outside of the Reservation boundaries, or Brown or Outagamie County, when applicable, or outside of the required time lines listed on the marriage license.

**71.7. Penalties**

71.7-1. A person who knowingly violates this Law may be penalized as follows:

(a) Any person who swears to a false statement to obtain a marriage license or to help

another obtain a marriage license shall be fined no less than five hundred dollars (\$500.00).

(b) Any person who is not an officiating person who solemnizes a marriage ceremony shall be fined no less than one hundred dollars (\$100.00).

(c) The parties to a marriage and/or the officiating person(s) of a marriage conducted without a valid marriage license or without the presence of two (2) competent adult witnesses shall be fined no less than one hundred dollars (\$100.00).

(d) Any person who goes to another jurisdiction to avoid this Law and contracts a marriage prohibited under this Law shall be fined no less than five hundred dollars (\$500.00).

(e) Any person who violates any other provision of this Law shall be fined no less than one hundred dollars (\$100.00).

71.7-2. The Department shall be the responsible entity for the enforcement of this section. All fines issued shall be paid within thirty (30) days of the issuance of the fine. Any person issued a fine under this Law may contest the fine by filing an appeal with the Court prior to the deadline to pay the fine. The filing of an appeal shall stay the requirement to pay the fine. The notice of penalty issued shall inform the person penalized of the process to file his or her appeal.

*End.*

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Adopted-BC-04-28-10-F

Amended-BC-06-12-13-E

**CHAPTER 71**  
**MARRIAGE**  
**Yeny@kta>**

71.1. Purpose and Policy  
71.2. Adoption, Amendment, Conflicts  
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71.5. Marriage Document and Marriage Ceremony  
71.6. Marriages Conducted to Avoid the Law and Immaterial  
Irregularities  
71.7. Penalties

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**71.1. Purpose and Policy**

71.1-1. *Purpose.* It is the purpose of this Law to exercise the sovereign right of the Oneida Tribe to regulate the rights and responsibilities relating to marriage.

71.1-2. *Policy.* Marriage is a foundation of Tribal society that stabilizes families which the Tribe acknowledges by recognizing the legal relationship of a union between two adults.

**71.2. Adoption, Amendment, Conflicts**

71.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-04-28-10-F and amended by resolutions BC-06-12-13-E and \_\_\_\_\_.

71.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

71.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

71.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control. Provided that, nothing in this Law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

71.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

71.2-6. *Rules.* If rules addressing a certain area of this Law have not been enacted in accordance with Tribal law and the Court is faced with a question, the Court may, in its discretion, refer to other Indian tribal law or state law for guidance, to the extent that such law is not inconsistent with this or any other Tribal law.

**71.3. Definitions**

71.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Court" means the judicial system of the Tribe which is assigned to handle all family law matters.

(b) "Court of competent jurisdiction" means a court that has the power and authority to dissolve a marriage.

(c) "Department" means the licensing department of the Tribe that is responsible for administering and issuing licenses in accordance with Oneida laws.

(d) "Marriage" means the civil contract to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of spouses.

(e) "Marriage document" means that document issued by the Department which includes the marriage license as well as information concerning the marriage ceremony, the signatures of the witnesses and officiating person(s), and proof of filing.

(f) "Marriage license" means that portion of the marriage document designated as such, which is the authorization for the marriage to take place.

(g) "Officiating person" means the person or persons who perform the marriage

ceremony.

(h) "Reservation" means all the land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(i) "Tribe" or "Tribal" means the Oneida Tribe of Indians of Wisconsin.

#### **71.4. Marriages, Generally**

71.4-1. *Who May Marry.* A marriage may be contracted under this Law between two (2) adults who:

- (a) have a marriage document issued by the Department;
- (b) have attained the age of eighteen (18), except as provided in 71.4-3; and
- (c) meet all other provisions under this Law.

71.4-2. *Who May Not Marry.* Persons may not enter into marriage if they:

- (a) are currently legally married to another person; or,
- (b) have been legally divorced for less than six (6) months with a judgment of divorce from a court of competent jurisdiction; or,
- (c) are not legally competent; or,
- (d) are closer in relationship than second cousins, except first cousins may marry if both parties are fifty-five (55) years old or older.

71.4-3. *Minors.* Individuals under the age of sixteen (16) shall not marry. Individuals who meet the above requirements, except for 71.4-1(b) and are over the age of sixteen (16) but under the age of eighteen (18) may marry if they present:

- (a) written consent by his or her parent or guardian, signed and notarized before the person issuing the marriage license; or
- (b) proof that they have been legally emancipated.

#### **71.5. Marriage Document and Marriage Ceremony**

71.5-1. *Marriage Document.* The Department shall issue a marriage document to the applicants within five (5) business days after the application is filed if, in addition to the other requirements in this Law, the following conditions are met at the time a marriage license is applied for:

(a) Either (1) or (2) applies to the applicants:

(1) each applicant:

- (A) is a Tribal member; or
- (B) resides on the Reservation and is a member of an Indian tribe, band or community which is recognized by a state or the federal government.

(2) one of the applicants meets the requirements of (1)(A) or (B) and the other applicant consents to the Tribe's jurisdiction to issue the license. The completion of an application for a marriage license represents a person's consent to the Tribe's jurisdiction to grant the license.

(b) Both applicants appear in person at the Department to complete the marriage license application.

(c) The applicants provide any information necessary to complete the application, which may include: social security numbers, birth certificates, proof of residence, proof of tribal membership, documentation of a judgment of divorce, annulment, or death certificates from most recent marriages, parents' full names, mothers' maiden names, date and place of marriage ceremony, and the name, address, and phone number of the officiating person(s).

(d) The applicants swear under oath that the information provided is true and accurate

and sign the application in the presence of a notary public.

(e) The applicants pay the required fee.

71.5-2. *Objections.* Any relative of the applicants, Department official, or applicant that objects to an upcoming marriage may file a petition and sworn affidavit with the Court objecting to the marriage.

(a) The petition shall state grounds for the belief that a marriage license should not be issued to the applicants or a marriage license that has already been issued should be revoked.

(b) The Court shall approve the petition only if the marriage, if conducted, would violate this Law.

(c) If the petition is approved by the Court, the applicants shall show cause why the license should be issued or why the license should not be revoked.

71.5-3. *Marriage Ceremony.*

(a) The applicants shall marry not less than six (6) days after the license is issued and not more than thirty (30) days after the license is issued. The marriage license shall contain notification of these time limits.

(b) If neither applicant resides on the Reservation, the marriage ceremony shall be held on the Reservation. If one (1) or both of the applicants reside on the Reservation, the marriage ceremony shall be held within the State of Wisconsin. The applicants shall be notified of this requirement when applying for a marriage license.

(c) The ceremony shall be solemnized by an officiating person(s) with two (2) competent adult witnesses present.

(d) The parties shall vow by mutual declarations, before the officiating person(s) and witnesses, that they take each other in lawful matrimony.

(e) The parties, the officiating person(s), and the witnesses shall, at the conclusion of the ceremony, sign and date the marriage document.

(f) The officiating person(s) shall deliver the original completed marriage document to the Department within three (3) business days after the ceremony. The Department shall deliver the original marriage document to the Wisconsin Vital Statistics Department within ten (10) business days after it is filed. The Department shall retain a file stamped copy and provide a file stamped copy to the married couple.

(g) The Department shall keep a marriage license docket and shall enter therein a complete record of the marriage applications and issuance of marriage licenses which shall be available for public inspection during regular business hours.

71.5-4. *Officiating Persons.* The following persons are authorized as officiating persons under this Law:

(a) a traditional tribal practitioner or spiritual or religious leader who is commonly recognized as such by the Oneida community or other Indian community and has registered with the Court; or

(b) a Judge from the Court or a tribal, federal, or state judge or commissioner authorized to solemnize marriages under tribal, federal or state law; or

(c) the Tribal Chairperson or a person designated by the Tribal Chairperson at the request of the persons being married; or

(d) any ordained clergyperson of any religious denomination, society, or sect; or

(e) any person licensed by a religious body or appointed by a high-ranking clergy member, if the religious denomination, society, or sect allows the person to solemnize marriages; or

(f) the parties themselves, by mutual declarations that they take each other as spouses, in

accordance with the customs, rules, and regulations of any religious denomination, society, or sect to which either of the parties belongs.

#### **71.6. Marriages Conducted to Avoid the Law and Immaterial Irregularities**

71.6-1. If a person is prohibited from marrying another under this Law and goes to another jurisdiction and there contracts a marriage that is prohibited under this Law, such marriage shall not be recognized by the Tribe.

71.6-2. No marriage shall be contracted under this Law by a party residing and intending to continue to reside in another jurisdiction, if such marriage would be void if contracted in such other jurisdiction. Every marriage celebrated in violation of this provision shall be void.

71.6-3. *Immaterial Irregularities.* A marriage shall be recognized as valid if the marriage is consummated with the full belief on the part of the persons so married that they have been lawfully joined in marriage, and:

- (a) the officiating person(s) did not have the authority to solemnize the marriage; or
- (b) the marriage license was issued by a department or person who did not have jurisdiction to issue the license; or
- (c) the marriage license or application for the marriage license had an informality or irregularity; or
- (d) either or both of the witnesses to the marriage were incompetent; or
- (e) the marriage ceremony was solemnized outside of the Reservation boundaries, or Brown or Outagamie County, when applicable, or outside of the required time lines listed on the marriage license.

#### **71.7. Penalties**

71.7-1. A person who knowingly violates this Law may be penalized as follows:

- (a) Any person who swears to a false statement to obtain a marriage license or to help another obtain a marriage license shall be fined no less than five hundred dollars (\$500.00).
- (b) Any person who is not an officiating person who solemnizes a marriage ceremony shall be fined no less than one hundred dollars (\$100.00).
- (c) The parties to a marriage and/or the officiating person(s) of a marriage conducted without a valid marriage license or without the presence of two (2) competent adult witnesses shall be fined no less than one hundred dollars (\$100.00).
- (d) Any person who goes to another jurisdiction to avoid this Law and contracts a marriage prohibited under this Law shall be fined no less than five hundred dollars (\$500.00).
- (e) Any person who violates any other provision of this Law shall be fined no less than one hundred dollars (\$100.00).

71.7-2. The Department shall be the responsible entity for the enforcement of this section. All fines issued shall be paid within thirty (30) days of the issuance of the fine. Any person issued a fine under this Law may contest the fine by filing an appeal with the Court prior to the deadline to pay the fine. The filing of an appeal shall stay the requirement to pay the fine. The notice of penalty issued shall inform the person penalized of the process to file his or her appeal.

*End.*

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Adopted-BC-04-28-10-F  
Amended-BC-06-12-13-E





# Legislative Operating Committee

## March 4, 2015

# Rules of Appellate Procedure Amendments

**Submission Date:** September 17, 2014

*Public Meeting:* 02/05/15  
*Emergency Enacted:* 12/19/14  
*Expires:* 06/19/15

**LOC Sponsor:** Jennifer Webster

**Summary:** *A review of the Rules led to a request that the LOC make amendments to the Rules to improve the process. On July 30, 2014, the LOC accepted these items as FYI and requested the LRO to bring this proposal to the next LOC. This item was carried over into the current term by the LOC.*

**9/17/14 LOC:** Motion by Jennifer Webster to add the Rules of Appellate Procedure to the Active Files List with Jennifer Webster as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

**10/15/14 LOC:** Motion by Fawn Billie to defer this item to the Legislative Reference Office for additional changes based on comments received from the Court yesterday; seconded by Tehassi Hill. Motion carried unanimously.

**12/17/14 LOC:** Motion by Jennifer Webster to ratify the Rules of Appellate Procedure Amendments E-poll results from December 12, 2014, and direct the Legislative Reference Office to prepare the Rules of Appellate Procedure Amendments for public meeting; seconded by Tehassi Hill. Motion carried unanimously.

**12/19/14 OBC:** Motion by Brandon Stevens to adopt resolution 12-19-14-A Rules of Appellate Procedure Emergency Amendments, seconded by Jenny Webster. Motion carried unanimously.

**01/15/15 LOC:** Motion by Tehassi Hill to approve the public meeting date of January 29, 2015 regarding the Rules of Appellate Procedure Amendments; seconded by Fawn Billie. Motion carried unanimously.

**01/21/15 LOC:** Motion by Jennifer Webster to ratify the Furlough Policy and Rules of Appellate Procedures Amendments Public Meeting Date E-poll; seconded by Tehassi Hill. Motion carried unanimously.

**02/05/15:** Public meeting held.

### Next Steps:

- Consider forwarding the Rules of Appellate Procedure Amendments to the OBC for consideration.

**Oneida Tribe of Indians of Wisconsin  
Legislative Reference Office**

Lynn A. Franzmeier, Staff Attorney  
Taniquelle J. Thurner, Legislative Analyst  
Candice E. Skenandore, Legislative Analyst



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**Memorandum**

**TO:** Legislative Operating Committee  
**FROM:** Lynn A. Franzmeier, Staff Attorney *LA*  
**DATE:** February 17, 2015  
**RE:** Rules of Appellate Procedure Amendments: Public Meeting Comment Review

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On February 5, 2015, a public meeting was held regarding amendments to the Rules of Appellate Procedure (Rules). The main amendments to the Rules would allow parties to file by private mail in certain instances; require the Clerk to notify the Trial Court Clerk when an appeal is filed; increase the amount of time the Court has to hear a case; require an initial review to be performed by 3 Appellate Judges; require the Court to state reasons for denying an appeal or request for stay within 30 days of receiving the Notice of Appeal; allow the Court to permit parties to cite or discuss cases at oral argument that were not cited in a brief; allow audio recordings to be considered a record of the case; and give an Appellant 20 days from the Certification of the Record, instead of from when the Notice of Appeal is filed, to serve a brief on the Respondent and file the brief with the Court.

No public meeting comments were received on the Rules and no further amendments to the Rules are recommended at this time.

**Conclusion**

No public meeting comments were received on this item and it is recommended the draft be forwarded to the Oneida Business Committee for consideration of adoption.

# Oneida Tribe of Indians of Wisconsin

## Legislative Reference Office

P.O. Box 365  
Oneida, WI 54155  
(920) 869-4376  
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## Committee Members

Brandon Stevens, Chairperson  
Tehassi Hill, Vice Chairperson  
Fawn Billie, Councilmember  
Jennifer Webster, Councilmember

## Memorandum

**To:** Oneida Business Committee  
**From:** Brandon Stevens, LOC Chairperson *BS*  
**Date:** March 4, 2015  
**Re:** Rules of Appellate Procedure Amendments

---

Please find attached the following for your consideration:

1. Fiscal Impact: Rules of Appellate Procedure Amendments
2. Resolution: Rules of Appellate Procedure Amendments
3. Statement of Effect: Rules of Appellate Procedure Amendments
4. Rules of Appellate Procedure (redline)
5. Rules of Appellate Procedure (clean)

### Overview

On December 19, 2014, the Oneida Business Committee adopted emergency amendments to the Rules of Appellate Procedure (Rules). The attached resolution would adopt those amendments, with some minor formatting updates, on a permanent basis. The amendments would create new definitions in the Rules and correct inadvertent omissions. This includes updating the definition of "attorney" to remove references to advocates; and defining "advocate" "original hearing body" and "record." The terms "advocate" and "original hearing body" are also incorporated throughout the Rules, where appropriate. "Initial Review" would also be defined under the amendments and a section is added to the Rules to require an Initial Review be conducted by three members of the Court when a Notice of Appeal or Perfected Notice of Appeal is filed.

Additional amendments would allow tracked U.S. or private mail to be used for service and clarify Clerk responsibilities regarding the certification of records. The amendments also increase the time for the Court to complete a case from one hundred and twenty days to one hundred and eighty days. Finally, the amendments give the Court the flexibility to allow parties to cite cases during oral argument, even if those cases have not been cited in a brief.

Additional, minor revisions were made that do not affect the content of the Rules. A public meeting was held on February 5, 2015 in accordance with the Legislative Procedures Act and no comments were received on the proposed changes.

### Requested Action

Approve the Resolution: Rules of Appellate Procedure Amendments.

# ONEIDA TRIBE OF INDIANS OF WISCONSIN

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Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

ONEIDA FINANCE OFFICE  
Office: (920) 869-4325 • Toll Free: 1-800-236-2214  
FAX # (920) 869-4024



UGWA DEMOLUM YATEHE  
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

## MEMORANDUM

DATE: February 19, 2015  
FROM: Rae Skenandore, Project Manger  
TO: Larry Barton, Chief Financial Officer  
Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer  
RE: Fiscal Impact of the Amendments to the Rules of Appellate Procedure

### I. Background

The Oneida Tribal Judicial System was created by GTC Resolution # 01-07-13-B. BC Resolution 04-25-14-B adopted the Oneida Judiciary Rules of Appellate Procedure to be effective when the Judiciary goes into effect November 1, 2014. The Family Court Judge has requested that amendments be made to the Law so that the Court of Appeals can run in a more effective and efficient manner. The amendments include the following:

- Definitions were expanded.
- Processes and procedures were added or clarified.

### II. Executive Summary of Findings

The operational costs of the Judiciary were budgeted beginning with the fiscal year 2014 budget. There are no additional costs to the proposed amendments.

### III. Financial Impact

No fiscal impact

### IV. Recommendation

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that General Tribal Council has full information with which to render a decision.

**BC Resolution \_\_\_\_\_**  
*Rules of Appellate Procedure Amendments*

**WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

**WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and

**WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

**WHEREAS,** on January 7, 2013 the General Tribal Council adopted the Judiciary Law; and

**WHEREAS,** with the adoption of the Judiciary Law, General Tribal Council directed that Rules of Appellate Procedure (Rules) be adopted by the Oneida Business Committee or by General Tribal Council; and

**WHEREAS,** the Oneida Business Committee adopted Rules on April 25, 2014; and

**WHEREAS,** the Chief Appellate Judge of the Court of Appeals (Chief Judge) requested amendments be made to the Rules to clarify definitions and to include provisions that were inadvertently omitted; and

**WHEREAS,** the Oneida Business Committee adopted those amendments on an emergency basis on December 19, 2014 to ensure they would be implemented before the new Judiciary begins accepting cases on January 5, 2015; and

**WHEREAS,** Legislative Operating Committee processed the amendments for permanent adoption, including presenting them at a public meeting on February 5, 2015, in accordance with the Legislative Procedures Act.; and

**NOW THEREFORE BE IT RESOLVED,** that the attached amendments to the Rules of Appellate Procedure are hereby adopted and shall be effective in ten (10) business days.

**CERTIFICATION**

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; \_\_\_\_ members were present at a meeting duly called, noticed and held on the \_\_\_\_ day of \_\_\_\_\_, 2014; that the foregoing resolution was duly adopted at such meeting by a vote of \_\_\_\_ members for; \_\_\_\_ members against; and \_\_\_\_ members not voting; and that said resolution has not been rescinded or amended in any way.

\_\_\_\_\_  
 Lisa Summers, Tribal Secretary  
 Oneida Business Committee

\*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."

## **Oneida Tribe of Indians of Wisconsin Legislative Reference Office**

Lynn A. Franzmeier, Staff Attorney  
Taniquele J. Thurner, Legislative Analyst  
Candice E. Skenandore, Legislative Analyst



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### **Statement of Effect**

#### *Rules of Appellate Procedure Amendments*

#### **Summary**

This Resolution adopts amendments to the Rules of Appellate Procedure to clarify definitions and to include provisions that were inadvertently omitted when the Rules were originally adopted.

*Submitted by Lynn A. Franzmeier, Staff Attorney*

#### **Analysis by the Legislative Reference Office**

On January 7, 2013 the General Tribal Council (GTC) adopted the Judiciary Law and directed that Rules of Appellate Procedure be adopted by the Oneida Business Committee (OBC) or GTC. The OBC adopted Rules of Appellate Procedure on April 25, 2014. The Judiciary began accepting cases on January 5, 2015 and requested emergency amendments to the Rules be made before that date in order to enable the Judiciary to operate under consistent rules. The OBC adopted emergency amendments to the Rules on December 19, 2014 in order to clarify definitions and include provisions that were inadvertently omitted from the Rules.

After the emergency amendments were adopted, the Legislative Operating Committee processed the amendments for permanent adoption in accordance with the Legislative Procedures Act, including presenting them at a public meeting on February 5, 2015.

#### **Conclusion**

The adoption of this Resolution does not conflict with any current Tribal Law or Policy.



## Chapter 154 Rules of Appellate Procedure

154.1. Purpose and Policy  
154.2. Adoption, Amendment, Repeal  
154.3. Definitions  
154.4. General Provisions  
154.5. Initiating the Appeal  
154.6. Appeal by Permission  
154.7. Joint, Consolidated and Cross Appeals  
154.8. Service, Filing and Certification  
154.9. Time Computation

154.10. Motions  
154.11. Briefs  
154.12. Oral Argument  
154.13. Entry and Form of Judgment  
154.14. Interest of Judgments  
154.15. Penalties  
154.16. Substitution of Parties  
154.17. Costs

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Rules of Appellate Procedures (Law)				
<b>Requester</b>	Chief Appellate Judge	<b>Drafter</b>	Lynn Franzmeier	<b>Analyst</b>	Candice Skenandore
<b>Reason for Request</b>	The Chief Appellate Judge has requested the Law be amended for clarification				
<b>Purpose</b>	The purpose of this Law is to govern the procedures in all actions and proceedings in the Tribe's Court of Appeals				
<b>Authorized/ Affected Entities</b>	Court of Appeals, Court Staff, persons utilizing the Court of Appeals				
<b>Due Process</b>	Court of Appeals				
<b>Related Legislation</b>	Rules of Civil Procedure and the Federal Rules of Appellate Procedure can be used as a guide when this Law does not address an issue; however, those rules must be consistent with existing Oneida Rules of Procedure, Tribal laws or customs of the Tribe				
<b>Policy Mechanism</b>	The Court of Appeals can issue penalties for frivolous appeals, delays and non-compliance with the rules				
<b>Enforcement</b>	The Court of Appeals can issue penalties which may include, among other things, court costs, attorney fees, double costs, interest on the award amount, damages, dismissal of the appeal, summary reversal of the original hearing body decision and/or other actions as the Court of Appeals considers appropriate				

### Overview

This Law governs the procedures in all actions and proceedings of the Court of Appeals (Court) and can be used in conjunction with the Rules of Civil Procedure [See 154.1-1 and 154.4-1]. The Oneida Business Committee approved emergency amendments to this Law on December 19, 2014, and will now be considering these amendments on a permanent basis. If these amendments are not permanently adopted or are not extended, these emergency amendments will expire on June 19, 2015.

### Proposed Amendments

The proposed amendments include the following:

- The definition section has been expanded to include definitions for “initial review”, “original hearing body” and “record” as well as separates the definitions of “advocate” and “attorney” [See 154.3-1 (a), (o), (s) and (v)].
- The current Law does not address what happens when the Court denies a request for stay; therefore, language was added that requires the Court to state the reasons for denying an appeal or request for stay within 30 days of the receipt of Notice of Appeal. [See 154.4-1 (b)].

- The Law will now require three Appellate Judges be assigned to perform an initial review of the Notice of Appeal within ten days of filing the Notice of Appeal or the Perfected Notice of Appeal [See 154.5-2 (b)]. The current Law does not require an initial review.
- A party can now file required papers to the Court by using private mail so long as it has a delivery tracking feature. In accordance with the current Law, a party filing by mail must do so by using certified mail with a return receipt [See 154.8-1 (c)].
- If a party or Clerk demands, the party filing documents must provide, among other things, proof of delivery of the filing in question. Proof of delivery is not specifically required in the current Law [See 154.8-2 (a)].
- When accepting an appeal, the Clerk must now notify the Trial Court clerk or original hearing body that an appeal has been filed and request that the Trial Court clerk or original hearing body prepare and file with the Court all papers comprising the record of the appealed case within 30 days. When the Clerk certifies the record, it must be served to all parties. The Chief Judge can extend this 30 day timeline for filing and certifying the record for good cause upon a written request from the Trial Court clerk. Currently the Law requires the Appellate Court Clerk, not the Trial Court Clerk, to prepare, to certify and file all the papers comprising the record of appealed cases with the Court. In addition, the current Law does not address extending the filing and certifying the record 30 day timeline [See 154.8-4].
- Audio recordings will be considered a record of the case [See 154.8-4 (a)].
- The Court will have 180 days to complete a case, instead of 120 days which is currently required, not including extensions [See 154.9-3].
- The Appellant has 20 days from when the Certification of the Record is accepted to serve a brief to the Respondent and file the brief with the Clerk. Currently the Appellant has 20 days from when the Notice of Appeal is filed to serve and file the brief [See 154.11-1 (d)].
- The Court can now permit parties to cite or discuss a case at an oral argument that was not cited in one of the briefs [See 154.12-3]. The current Law only allows parties to cite or discuss a case if the case has been cited in one of the briefs.

### Considerations

This Law will require three Appellate Judges be assigned to perform an initial review of the Notice of Appeal within ten days of the Notice of Appeal or the Perfected Notice of Appeal are filed [See 154.5-2 (b)]. There may be times when three Appellate Judges are not available to perform an initial review. In order to avoid burdening the Court, the Legislative Operating Committee may want to consider eliminating the number of Appellate Judges required to perform the initial review which would allow the Law to have more flexibility.

### Miscellaneous

A public meeting was held on February 5, 2015. Additional, minor revisions were made that do not affect the content of this Law.

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#### 154.1. Purpose and Policy

154.1-1. *Purpose.* The purpose of this Law is to govern the procedure in all actions and proceedings in the divisions that make up the Court of Appeals within the Judiciary that fall under the jurisdiction of the Tribe.



154.1-2. *Policy.* It is the policy of the Tribe that these rules are to be liberally construed to ensure a speedy, fair, and inexpensive determination of every appeal.

## **154.2. Adoption, Amendment, Repeal**

154.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-04-25-14-B.

154.2-2. This Law may be amended or repealed pursuant to the procedures set out in the Oneida Legislative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

154.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

154.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

154.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

## **154.3. Definitions**

154.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense:

(a) "Advocate" shall mean an Oneida non-attorney advocate as provided by law or other advocate who is presented to the court as the representative or advisor to a party.

~~(a)~~(b) "Agent" shall mean a person authorized to act on behalf of another.

~~(b)~~(c) "Amicus Curiae" shall mean (literally, friend of the court) a person who is not a party to a case, nor solicited by any of the parties, who files a brief to assist the Court by furnishing information or advice regarding questions of law or fact.

~~(c)~~(d) "Answer" shall mean a written response in opposition to a brief or petition.

~~(d)~~(e) "Appeal" shall mean a review in the Court of Appeals by appeal or writ of error authorized by law of a judgment or order of the Trial Court or original hearing body.

~~(e)~~(f) "Appellant" shall mean a person who files a notice of appeal.

~~(f)~~(g) "Attorney" shall mean ~~an Oneida non-attorney advocate as provided by law and other advocate~~ a person who is admitted to practice law ~~and is presented to the court as the representative or advisor to a party.~~

~~(g)~~(h) "Brief" shall mean a written legal document which aids in the Court's decision by reciting the facts of the case, the arguments being raised on appeal, and the applicable law.

~~(h)~~(i) "Clerk" shall mean the Clerk of the Court of Appeals.

~~(i)~~(j) "Court" shall mean the Court of Appeals of the Tribe.

~~(j)~~(k) "Cross-Appeal" shall mean an appeal brought by the Respondent against the Appellant after the Appellant has already filed an appeal.

~~(k)~~(l) "Days" shall mean calendar days, unless otherwise specifically stated.

~~(l)~~(m) "Docketed" shall mean an appeal that has been filed and assigned a docket number.

~~(m)~~(n) "Electronic" shall mean an electronic communication system, including, but is not limited to E-mail, used for filing papers with the Court or serving papers on any other party.

(o) “Initial Review” shall mean review of the Notice of Appeal to determine if the case is acceptable for appellate review.

~~(n)~~(p) “Interlocutory” shall mean an order or appeal that occurs before the Trial Court or original hearing body issues a final ruling on a case.

~~(n)~~(q) “Joinder” shall mean the joining together of several claims or several parties all in one (1) hearing, provided that the legal issues and the factual situation are the same for all Appellants and Respondents.

~~(n)~~(r) “Judiciary” shall mean the Oneida Tribal Judicial System.

(s) “Original hearing body” shall mean the administrative agency decision-making panel which heard a contested case under the Administrative Procedures Act (or similar law) and from which appeal is permitted by law.

~~(q)~~(t) “Petitioner” shall mean a person filing a petition.

~~(n)~~(u) “Pro se” shall mean advocating on one’s own behalf before the Court, rather than being represented by an attorney or advocate.

(v) “Record” shall mean all materials identified in 154.8-4(a) of these Rules.

~~(s)~~(w) “Reply Brief” shall mean a brief of a party to a legal action in answer to points of law raised in an opponent’s brief but not in his or her own.

~~(n)~~(x) “Respondent” shall mean a person adverse to the Appellant.

~~(n)~~(y) “Rules” shall mean the Court of Appeals these Rules of Appellate Procedure.

~~(n)~~(z) “Stay” shall mean a suspension of a case or a suspension of a particular proceeding, including orders, within a case that prevents enforcement pending appeal or other circumstances.

~~(w)~~(aa) “Trial Court” shall mean the Trial Court of the Tribe.

~~(x)~~(bb) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.

~~(y)~~(cc) “Tribal law” shall mean a code, act, statute, rule, regulation, policy or ordinance enacted by the Oneida General Tribal Council or the Oneida Business Committee.

#### 154.4. General Provisions

154.4-1. These Rules may be used in conjunction with the Rules of Civil Procedure. Matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the Court. Where these Rules fail to address an issue, the Federal Rules of Appellate Procedure may be used as a guide, so long as those rules are not inconsistent with existing Oneida Rules of Procedure, Tribal laws, or the customs of the Tribe.

154.4-2. On its own or by a party’s motion; the Court may, to expedite its decision or for other good cause, suspend any provision of these Rules in a particular case and order proceedings as it directs.

154.4-3. The Chief ~~Justice~~Judge of the Court shall, when hearing a case, have the authority to compel the production of documents where such is deemed necessary to rendition of the Court’s opinion. There shall not be a new trial in the Court. The Court may review both the factual findings and conclusions of law of the Trial Court or original hearing body.

#### 154.5. Initiating the Appeal

154.5-1. *Right of Appeal.* Any party to a civil action, who is aggrieved by a final judgment or order of the Trial Court or original hearing body, may appeal to the Court of Appeals.

(a) In any case brought on appeal, the Appellant may petition the Court for an order staying the judgment or order. A stay shall be granted in all cases in which it is requested unless plain and obvious injustice would result from granting the stay. The Court may

render a stay conditioned upon execution of a bond to guarantee performance of the judgment or order when deemed necessary.

(b) In the event the appeal or request for stay is denied, the Court shall state the reasons for the refusal within thirty (30) days of the receipt of the Notice of Appeal.

154.5-2. *Notice of Appeal.* Any party who is appealing shall appeal in the manner prescribed by this Rule.

(a) Such party shall file with the Clerk a Notice of Appeal from such judgment or order, together with a filing fee, as set by the Court, within thirty (30) days after the day such judgment or order was rendered. A Notice of Appeal shall not be filed by electronic means.

(b) Within ten (10) days of the filing of the Notice of Appeal or the Perfected Notice of Appeal as provided under 154.5-3, three (3) Appellate Judges shall be assigned to perform an Initial Review of the Notice of Appeal.

(1) Waiver of Fee. The Chief Judge of the Court may waive the filing fee upon motion for a fee waiver by the Appellant where the Chief Judge of the Court is satisfied the Appellant lacks the means to pay the filing fee. The motion shall include an affidavit demonstrating inability to pay and shall accompany the Notice of Appeal.

~~(b)~~(c) In addition to the Notice of Appeal and filing fee, the following information shall be provided upon the filing of the notice:

(1) A copy of the written decision of the Trial Court or original hearing body;

(2) A short statement explaining what relief is sought by the Appellant;

(3) A short statement explaining the legal grounds for seeking the appeal and justification for the relief requested;

(4) Name, address and phone numbers of all parties, including respondent; and

(5) Name, address and phone numbers of all party attorneys or advocates, if known.

~~(c)~~(d) A cash deposit or bond in an amount equal to the amount of any judgment, plus costs assessed by the Trial Court or original hearing body, or a motion for waiver of this requirement, shall accompany the Notice of Appeal. The deposit/bond requirement may be waived only when, in the judgment of the Court, such deposit/bond is not in the interest of justice and such waiver does not unnecessarily harm the judgment holder. The motion for waiver of the deposit/bond requirement shall be requested with notice to all parties. If the motion for waiver is denied, the deposit/bond shall be submitted within ten (10) days of the denial. The appeal shall be dismissed if the deposit/bond is not paid or waived.

(1) *Exception.* The Tribe, or an officer or agency of the Tribe shall be exempt from the requirement of providing any cash deposit or bond. The exemption under this section shall be automatic and shall not require a motion or waiver.

~~(d)~~(e) An appeal shall not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

154.5-3. *Perfection of Notice.* If the appellant fails to provide a completed Notice of Appeal Form, the filing fee or waiver form, or any required documents or materials, the Appellant shall be notified of any filing deficiencies by the Clerk within five (5) business days and shall have five (5) business days from receipt of this notice to perfect the filing. Failure to perfect the filing within five (5) business days may result in the non-acceptance of the appeal.

**154.6. Appeal by Permission**

154.6-1. *Appeal by Permission.* An appeal from an interlocutory order may be sought by filing a Petition for Permission to Appeal with the Clerk within ten (10) business days after the entry of such order with proof of service on all other parties to the action. Within ten (10) business days after service of the petition, an adverse party may file an Answer in opposition. A decision shall be issued in a reasonable time, but no longer than thirty (30) days from the first deliberation unless good cause to extend the deadline is found by the Court. This extension shall be in writing. The petition shall contain:

- (a) a statement of the facts necessary to develop an understanding of the question of law determined by the order of the Trial Court or original hearing body; and
- (b) a statement of the question itself; and
- (c) a statement of the reasons why substantial basis exists for a difference of opinion on the question; and
- (d) the relief sought; and
- (e) why an immediate appeal may:
  - (1) materially advance the termination of the litigation;
  - (2) protect the petitioner from substantial or irreparable injury; or
  - (3) clarify an issue of general importance in the administration of justice; and
- (f) The petition shall include or have a copy of the order of the Trial Court or original hearing body attached thereto.

**154.7. Joint, Consolidated, and Cross Appeals**

154.7-1. *Joint or Consolidated Appeals.* When two (2) or more parties are entitled to appeal from a Trial Court or original hearing body judgment or order, and their interests make joinder practicable, the parties may file a joint notice of appeal. The parties may then proceed on appeal as a single Appellant.

- (a) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the Court.
- (b) If the persons do not file a joint appeal or elect to proceed as a single Appellant, or if their interests are such as to make joinder impractical, the person shall proceed as Appellant and co-Appellant, with each co-Appellant to have the same procedural rights and obligations as the Appellant. The Appellant shall be the person who filed first.

154.7-2. *Cross Appeal.* A Respondent who seeks modification of the judgment or order appealed from or of another judgment or order entered in the same action or proceeding shall file a notice of cross-appeal within the time established for the filing of a notice of appeal or ten (10) business days after the receipt of the notice of appeal, whichever is later. The Respondent shall be listed as the cross-Appellant. A cross-Appellant has the same rights and obligations as an Appellant under these Rules.

**154.8. Service, Filing and Certification**

154.8-1. A paper required or permitted to be filed in the Court shall be filed with the Clerk. The filing party shall supply the Clerk with the original papers and three (3) copies. The filing party shall also provide one (1) copy of the papers for each opposing party or party's attorney or advocate. Filing shall be complete by the close of business on the day which the filing is due. The following methods of filing shall be used, in order of preference:

(a) *In Person*: A party to a pending case, or the party's attorney, advocate or authorized Agent may file papers in person before the Clerk.

(b) *Electronic*: A party to a pending case may file papers electronically to the electronic address, designated for such filings, of the Clerk. A paper filed by electronic means shall constitute a written paper for the purpose of applying these Rules. Upon receipt by the Clerk, any paper filed electronically shall be deemed filed, signed and verified by the filing party.

(c) *By Mail*: A party to a pending case may file papers by certified U.S. or private mail with ~~return receipt~~ the ability to track the delivery, with cover documents to be addressed to the Clerk. Filing shall not be completed upon mailing, but only upon receipt.

(1) ~~Certified mail shall include the filing~~ Filing of papers is also permitted through the Tribal certified interoffice mail system.

154.8-2. *Proof of Service.* Upon demand by a party or the Appellate Clerk, a party filing documents shall provide one (1) of the following:

~~(a) A paper presented for filing shall contain either of the following:~~

(a) Proof of delivery of the filing in question;

~~(a)(b)~~ (b) an acknowledgment of service by the person served; or

~~(b)(c)~~ (c) proof of service consisting of a statement by the person who made service certifying:

(1) the date and manner of service;

(2) the names of the persons served;

(3) the mail or electronic addresses, facsimile numbers of the persons served, or the addresses of the places of delivery, as appropriate for the manner of service; and

(4) if served electronically, a writing by the person being served consenting to service by electronic means.

154.8-3. *Service of All Papers Required.* A party shall, at or before the time of filing a paper, serve a copy on all other parties to the appeal. Any party may be served by electronic means, if such party consents in writing to service by electronic means. Service on a party represented by an attorney or advocate shall be made on the party's attorney or advocate.

154.8-4. *Certification of the Record.* Upon ~~receipt~~ acceptance of the ~~Notice of Appeal and Proof of Service~~, the Clerk shall, notify the Trial Court clerk or original hearing body that an appeal has been filed and request, the Trial Court clerk or original hearing body to prepare, ~~certify~~ and file with the Appellate Court all papers comprising the record of the case appealed. ~~The~~ within thirty (30) days. Upon Certification of the Record by the Clerk it shall be served on all parties as provided for in 154.8-3. The time for filing and certifying the record may be extended for good cause by the Chief Judge of the Court upon a written request from the Trial Court clerk or original hearing body.

(a) The record of the case shall consist of all papers filed with the Trial Court or original hearing body, exhibits, ~~the~~ a transcript / or audio recording of the proceedings, and the final decision of the Trial Court or original hearing body.

## 154.9. Time Computation

154.9-1. *Deadline Computation.* Time lines are determined by designating the day after notice is received as day one. Computation involving calendar days shall include intermediate Tribally observed holidays and weekend days, provided that if the last day of the period falls on a Saturday, Sunday or Tribally observed holiday, then the next business day shall be the due date.



Computation involving business days shall not include intermediate weekend days or Tribally observed holidays. All papers due to be filed with the Clerk are due prior to the close of business on the last day of the time period.

(a) If notice is mailed, then three (3) days shall be added to the time line in order to determine the due date.

154.9-2. *Extension of Time.* For good cause, the Court may extend the time prescribed by these Rules or by its order to perform any act, or may permit an act to be done after that time expires. But the Court shall not extend the time to file:

(a) a notice of appeal; or

(b) a petition for permission to appeal.

154.9-3. *Time to Complete.* Unless time is extended by the Court with the knowledge of the parties, the time from the filing of the Notice of Appeal to the completion and entry of the final written decision shall not exceed one hundred and ~~twenty (120)~~eighty (180) days.

#### **154.10. Motions**

154.10-1. *Application for Relief.* An application for an order or other relief in a docketed case shall be made by motion unless these Rules prescribe another form. A motion shall be in writing unless the Court permits otherwise. The moving party shall file all motions with the Clerk and serve opposing parties as provided in 154.8.

154.10-2. *Contents of a Motion.* A motion shall state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(a) Any affidavit or other paper necessary to support a motion shall be served and filed with the motion. An affidavit shall contain only factual information, not legal argument.

A motion seeking substantive relief shall include a copy of the Trial Court's or original hearing body's opinion as a separate exhibit.

154.10-3. *Response to a Motion.* Any party may file a response to a motion, in accordance with 154.11-2. The response shall be filed within ten (10) days after service of the motion unless the Court shortens or extends the time.

154.10-4. *Motion for a Procedural Order.* The Court may act on a motion for a procedural order at any time without awaiting a response. A party adversely affected by the Court's action may file a motion to reconsider, vacate, or modify that action within five (5) days of receipt of notice of the decision.

154.10-5. *Motion for Voluntary Dismissal.* An appellant may dismiss an appeal by filing a motion to dismiss. If not yet docketed in the Court, then the motion shall be filed in the Trial Court or original hearing body. The dismissal of an appeal shall not affect the status of a cross-appeal or the right of a respondent to file a cross appeal.

154.10-6. *Form.* Motions shall be typed, legible and include the case caption. Every motion shall:

(a) Contain a caption heading, the name Judiciary- Court of Appeals, the title of the action, the docket number (if known) and a designation as to the purpose or type of motion.

(b) Contain the names of all parties to the action.

(c) Be organized in sections containing a clear designation, which shall include, but is not limited to:

(1) The facts, events or occurrences which make a specific motion for relief necessary;

(2) The specific relief requested by the moving party;

- (3) The applicable law or laws to the motion at hand, including citations; and  
(4) The legal reasons the relief should be granted.  
(d) Be on 8 ½ by 11 inch paper. The text shall be double-spaced, but quotations more than two (2) lines may be indented and single-spaced. Headings and footings may be single-spaced. Margins must be at least one (1) inch on all four (4) sides. Page numbers may be placed in the margins, but no other text shall appear there.  
(e) Be typed in a plain, roman style, although italics or boldface may be used for emphasis. Case names shall be italicized or underlined.  
(f) Not exceed twenty (20) pages, unless the Court permits or directs otherwise.

#### 154.11. Briefs

154.11-1. *Briefs Generally.* Briefs shall be used by the Court to aid the Court in its consideration of the issues presented.

(a) *Form.* The brief shall be 1.5 line spaced, typed, 1 inch margins, and on 8.5 x 11 inch paper, and shall be signed by the party or the party's attorney or advocate, if represented. The front cover of a brief shall contain:

- (1) the number of the case centered at the top;
- (2) the name of the court;
- (3) the title of the case;
- (4) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court below;
- (5) the title of the brief, identifying the party or parties for whom the brief is filed; and
- (6) the name, office address, and telephone number of the attorney or advocate representing the party for whom the brief is filed, if represented.

(b) *Length.* The brief shall be no more than twenty (20) pages, one (1) sided, in length, not including any addendums, appendices, attachments, or the tables of contents and authorities.

(c) *Filing.* When a party is represented by an attorney or advocate, only the attorney or advocate shall file briefs and pleadings. The individual shall not file on his or her own unless he or she is pro se. Three (3) copies of each brief shall be filed with the Clerk and one (1) copy to all parties to the appeal.

(d) *Time to Serve and File a Brief.* The Appellant shall serve on the Respondent and file with the Clerk a brief within twenty (20) days after ~~the Notice of Appeal is filed.~~acceptance of the Certification of the Record. The Respondent's brief shall be filed with the Clerk within twenty (20) days of receipt of the Appellant's brief. A reply brief, if necessary, shall be filed within fourteen (14) days of receipt of Respondent's brief. The Court may, on its own, order different time lines for any party's time to file a brief.

(e) *Consequence of Failure to File.* If an Appellant fails to file a brief within the time provided by this Rule, or within an extended time, a Respondent may move to dismiss the appeal. A Respondent who fails to file a brief shall not be heard at oral argument unless the Court grants permission.

154.11-2. *Appellant's Brief.* The Appellant's brief shall contain, under appropriate headings and in the order indicated:

(a) *Content:*

- (1) a table of contents, with page references;

(2) a table of authorities-cases (alphabetically arranged), statutes, and other authorities-with references to the pages of the brief where they are cited;

(3) a jurisdictional statement, including:

(A) the basis for the Trial Court's or original hearing body's subject-matter jurisdiction;

(B) the basis for the Court of Appeals' jurisdiction;

(C) the filing dates establishing the timeliness of the appeal; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the Court of Appeals' jurisdiction on some other basis;

(4) a statement of the issues presented for review;

(5) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;

(6) a statement of facts relevant to the issues submitted for review with appropriate references to the record;

(7) a summary of the argument, which shall contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which shall not merely repeat the argument headings;

(8) the argument, which shall contain:

(A) Appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the Appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(9) a short conclusion stating the precise relief sought;

(10) a short appendix to include:

(A) relevant docket entries in the Trial Court or original hearing body;

(B) limited portions of the record essential to an understanding of the issues raised;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the Court's attention; and

(11) where the record is required by law to be confidential, reference to individuals shall be by initials rather than by names.

154.11-3. *Respondent's Brief.* The Respondent's brief shall conform to the same requirements as 154.11-2 (Appellant's Brief).

(a) The Respondent's brief shall address each issue and argument presented by the Appellant's brief.

(b) The Respondent's brief may present additional issues, with the Respondent's positions and arguments on such issues.

154.11-4. *Reply Brief.* The Appellant may file a brief in reply to the Respondent's brief. Unless the Court permits, no further briefs may be filed. A reply brief shall conform to the requirements of 154.11-3 (Respondent's Brief), except that a reply brief shall be no more than fifteen (15) pages, one (1) sided, in length.

154.11-5. *Amicus Curiae Brief.* A person who is not a party to a case but has some interest in the outcome of the case may, upon timely motion and with permission of the Court, submit an



amicus curiae brief in support of a party to the action. The Court may, on its own motion, request amicus participation from appropriate individuals or organizations.

(a) Amicus curiae briefs shall conform to the requirements of 154.11-2 (Appellant's Brief), except as provided in the following:

(1) Amicus curiae shall file his or her brief no later than seven (7) days after the brief of the party being supported is filed. Amicus curiae that do not support either party shall file his or her brief no later than seven (7) days after the Appellant's or Respondent's brief is filed. The Court may grant leave for later filing, specifying the time within which an opposing party shall answer.

154.11-6. *Briefs in a Case Involving Multiple Appellants or Respondent.* In a case involving more than one (1) Appellant or Respondent, including consolidated cases, any number of Appellants or Respondents may join in a brief, and any party may adopt, by reference, a part of another's brief. Parties may also join in reply briefs.

## 154.12. Oral Argument

154.12-1. *Oral Arguments.* The Court may order oral argument when issues of fact or law remain unclear and/or the positions of the parties on an issue are unclear or otherwise not fully developed. The Court shall direct that an appeal be submitted on briefs only, if:

- (a) The appeal is frivolous;
- (b) The dispositive issue or issues have been authoritatively decided; or
- (c) The facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

154.12-2. *Notice.* The Clerk shall provide notice, of at least ten (10) business days, to all parties when oral arguments are scheduled. The notice shall list the location of the oral argument and the time allowed for each side. The Court shall determine the amount of time for oral arguments. A motion to postpone the argument or to extend the argument timeframe shall be filed at least five (5) business days before the hearing date.

154.12-3. *Citation of Authorities at Oral Argument.* ~~Parties~~Unless permitted by the Court, ~~parties~~ may not cite or discuss a case at an oral argument unless the case has been cited in one (1) of the briefs.

## 154.13. Entry and Form of Judgment

154.13-1. *Entry.* A judgment is entered when it is noted on the docket. The Clerk shall prepare, sign, and enter the judgment after receiving the Court's opinion.

(a) The decision and opinion of the Court shall be by a majority vote.

(b) The Court may:

- (1) Reverse, affirm, or modify the judgment or order as to any or all parties;
- (2) Remand the matter to the Trial Court or original hearing body and order a new trial on any or all issues presented; the order remanding a case shall contain specific instructions for the Trial Court or original hearing body;
- (3) If the appeal is from a part of a judgment or order, the Court may reverse, affirm or modify as to the part which is appealed;
- (4) Direct the entry of an appropriate judgment or order; or
- (5) Require such other action or further proceeding as may be appropriate to each individual action.

(c) On the date when judgment is entered, the Clerk shall serve all parties with a copy of the decision and opinion as entered.

154.13-2. *Form*. All decisions of the Court shall be in writing and accompanied by an opinion stating the legal issues and the basis for the decision. Decisions of the Court shall be issued no later than sixty (60) days after the conclusion of oral argument or after the expiration of time to file a *Reply Brief* or *Response Brief* if no oral argument is held.

(a) The time for issuing a decision and opinion may be extended provided all parties are notified of the extension in writing. The notice of extension shall include the cause for and length of such extension.

#### 154.14. Interest of Judgments

154.14-1. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the Trial Court's or original hearing body's judgment was entered. If the Court modifies or reverses a judgment with a direction that a money judgment be entered in the Trial Court or by the original hearing body, the mandate shall contain instructions about the allowance of interest.

#### 154.15. Penalties

154.15-1. *Frivolous Appeals*. If an appeal or cross-appeal is found by the Court to be frivolous, the Court may award to the successful party costs and attorney's or advocate's fees.

(a) Costs may be assessed against the Appellant or cross-Appellant, the (cross)-Appellant's attorney or advocate, or both the (cross)-Appellant and his/her attorney or advocate jointly.

(1) Court costs shall be based on actual cost or defined by the Court.

(b) A finding of a frivolous appeal or cross-appeal shall be made if one (1) or more of the following elements are found by the Court:

(1) The appeal or cross appeal was filed, used, or continued in bad faith, solely for purposes of delay, harassment or injuring the opposing party; or

(2) The party or party's attorney or advocate knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

154.15-2. *Delay*. If the Court finds that an appeal or cross-appeal was taken for the purpose of delay, it may award one (1) or more of the following to the opposing party:

(a) Double costs;

(b) A penalty of additional interest not exceeding ten percent (10%) on the award amount affirmed;

(c) Damages caused by the delay; and/or

(d) Attorney's or advocate's fees.

154.15-3. *Non-Compliance with Rules*. Failure of a party to comply with a requirement of these Rules or an order of the Court, does not affect the jurisdiction of the Court over the appeal but may be grounds for one (1) or more of the following:

(a) Dismissal of the appeal;

(b) Summary reversal of the Trial Court or original hearing body;

(c) Striking of a paper, document or memorandum submitted by a party;

(d) Imposition of a penalty or costs on a party or party's attorney or advocate; and/or

(e) Other action as the Court considers appropriate.

**154.16. Substitution of Parties**

154.16-1. *Death of a Party.* Death of a party does not automatically end a party's right to appeal.

(a) *After Notice of Appeal Is Filed.* If a party dies after a notice of appeal has been filed or while a proceeding is pending in the Court, the decedent's personal representative may be substituted as a party on motion filed with the Clerk by the representative or by any party. A party's motion shall be served on the representative. If the Decedent has no representative, any party may suggest the death on the record, and the Court may then direct appropriate proceedings.

(b) *Before Notice of Appeal Is Filed-Potential Appellant.* If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative, or if there is no personal representative, the decedent's attorney or advocate of record, may file a notice of appeal within the time prescribed by these Rules. After the notice of appeal is filed, substitution shall be in accordance with 154.16-1(a).

(c) *Before Notice of Appeal Is Filed-Potential Respondent.* If a party against whom an appeal may be taken dies after entry of a judgment or order in the Trial Court or original hearing body, but before a notice of appeal is filed, an Appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution shall be in accordance with 154.16-1(a).

154.16-2. *Substitution for a Reason Other Than Death.* If a party needs to be substituted for any reason other than death, the procedure set in 154.16-1(a) applies.

**154.17. Costs**

154.17-1. *Costs.* Costs in an appeal shall be as follows unless otherwise ordered by the Court:

- (a) Against the appellant when the appeal is dismissed or the judgment or order affirmed;
- (b) Against the respondent when the judgment or order is reversed.

154.17-2. *Allowable Costs.* Allowable costs shall include:

- (a) Cost of printing and assembling the number of copies and briefs and appendices required by the Rules;
- (b) Fees charged by the Court and/or Clerk;
- (c) Cost of the preparation of the transcript of testimony of the record of appeal; and
- (d) Other costs as ordered by the Court.

154.17-3. *Recovery of Costs.* A party seeking to recover costs in the Court shall file a statement ~~of the~~ costs within fourteen (14) days of the filing of the decision of the Court. An opposing party may file, within eleven (11) days after service of the statement, a motion objection to the statement of costs.

*End.*

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Adopted BC-04-25-14-B

Emergency Amended BC-12-19-14-A

## Chapter 154 Rules of Appellate Procedure

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### 154.1. Purpose and Policy

154.1-1. *Purpose.* The purpose of this Law is to govern the procedure in all actions and proceedings in the divisions that make up the Court of Appeals within the Judiciary that fall under the jurisdiction of the Tribe.

154.1-2. *Policy.* It is the policy of the Tribe that these rules are to be liberally construed to ensure a speedy, fair, and inexpensive determination of every appeal.

### 154.2. Adoption, Amendment, Repeal

154.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-04-25-14-B and amended by resolution \_\_\_\_\_.

154.2-2. This Law may be amended or repealed pursuant to the procedures set out in the Oneida Legislative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

154.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

154.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

154.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### 154.3. Definitions

154.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense:

(a) "Advocate" shall mean an Oneida non-attorney advocate as provided by law or other advocate who is presented to the court as the representative or advisor to a party.

(b) "Agent" shall mean a person authorized to act on behalf of another.

(c) "Amicus Curiae" shall mean (literally, friend of the court) a person who is not a party to a case, nor solicited by any of the parties, who files a brief to assist the Court by furnishing information or advice regarding questions of law or fact.

(d) "Answer" shall mean a written response in opposition to a brief or petition.

(e) "Appeal" shall mean a review in the Court of Appeals by appeal or writ of error authorized by law of a judgment or order of the Trial Court or original hearing body.

(f) "Appellant" shall mean a person who files a notice of appeal.

(g) "Attorney" shall mean a person who is admitted to practice law.

(h) "Brief" shall mean a written legal document which aids in the Court's decision by reciting the facts of the case, the arguments being raised on appeal, and the applicable law.

- (i) "Clerk" shall mean the Clerk of the Court of Appeals.
- (j) "Court" shall mean the Court of Appeals of the Tribe.
- (k) "Cross-Appeal" shall mean an appeal brought by the Respondent against the Appellant after the Appellant has already filed an appeal.
- (l) "Days" shall mean calendar days, unless otherwise specifically stated.
- (m) "Docketed" shall mean an appeal that has been filed and assigned a docket number.
- (n) "Electronic" shall mean an electronic communication system, including, but is not limited to E-mail, used for filing papers with the Court or serving papers on any other party.
- (o) "Initial Review" shall mean review of the Notice of Appeal to determine if the case is acceptable for appellate review.
- (p) "Interlocutory" shall mean an order or appeal that occurs before the Trial Court or original hearing body issues a final ruling on a case.
- (q) "Joinder" shall mean the joining together of several claims or several parties all in one (1) hearing, provided that the legal issues and the factual situation are the same for all Appellants and Respondents.
- (r) "Judiciary" shall mean the Oneida Tribal Judicial System.
- (s) "Original hearing body" shall mean the administrative agency decision-making panel which heard a contested case under the Administrative Procedures Act (or similar law) and from which appeal is permitted by law.
- (t) "Petitioner" shall mean a person filing a petition.
- (u) "Pro se" shall mean advocating on one's own behalf before the Court, rather than being represented by an attorney or advocate.
- (v) "Record" shall mean all materials identified in 154.8-4(a) of these Rules.
- (w) "Reply Brief" shall mean a brief of a party to a legal action in answer to points of law raised in an opponent's brief but not in his or her own.
- (x) "Respondent" shall mean a person adverse to the Appellant.
- (y) "Rules" shall mean these Rules of Appellate Procedure.
- (z) "Stay" shall mean a suspension of a case or a suspension of a particular proceeding, including orders, within a case that prevents enforcement pending appeal or other circumstances.
- (aa) "Trial Court" shall mean the Trial Court of the Tribe.
- (bb) "Tribal" or "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.
- (cc) "Tribal law" shall mean a code, act, statute, rule, regulation, policy or ordinance enacted by the Oneida General Tribal Council or the Oneida Business Committee.

#### **154.4. General Provisions**

154.4-1. These Rules may be used in conjunction with the Rules of Civil Procedure. Matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the Court. Where these Rules fail to address an issue, the Federal Rules of Appellate Procedure may be used as a guide, so long as those rules are not inconsistent with existing Oneida Rules of Procedure, Tribal laws, or the customs of the Tribe.

154.4-2. On its own or by a party's motion; the Court may, to expedite its decision or for other good cause, suspend any provision of these Rules in a particular case and order proceedings as it directs.

154.4-3. The Chief Judge of the Court shall, when hearing a case, have the authority to compel the production of documents where such is deemed necessary to rendition of the Court's opinion.

There shall not be a new trial in the Court. The Court may review both the factual findings and conclusions of law of the Trial Court or original hearing body.

#### **154.5. Initiating the Appeal**

154.5-1. *Right of Appeal.* Any party to a civil action, who is aggrieved by a final judgment or order of the Trial Court or original hearing body, may appeal to the Court of Appeals.

(a) In any case brought on appeal, the Appellant may petition the Court for an order staying the judgment or order. A stay shall be granted in all cases in which it is requested unless plain and obvious injustice would result from granting the stay. The Court may render a stay conditioned upon execution of a bond to guarantee performance of the judgment or order when deemed necessary.

(b) In the event the appeal or request for stay is denied, the Court shall state the reasons for the refusal within thirty (30) days of the receipt of the Notice of Appeal.

154.5-2. *Notice of Appeal.* Any party who is appealing shall appeal in the manner prescribed by this Rule.

(a) Such party shall file with the Clerk a Notice of Appeal from such judgment or order, together with a filing fee, as set by the Court, within thirty (30) days after the day such judgment or order was rendered. A Notice of Appeal shall not be filed by electronic means.

(b) Within ten (10) days of the filing of the Notice of Appeal or the Perfected Notice of Appeal as provided under 154.5-3, three (3) Appellate Judges shall be assigned to perform an Initial Review of the Notice of Appeal.

(1) *Waiver of Fee.* The Chief Judge of the Court may waive the filing fee upon motion for a fee waiver by the Appellant where the Chief Judge of the Court is satisfied the Appellant lacks the means to pay the filing fee. The motion shall include an affidavit demonstrating inability to pay and shall accompany the Notice of Appeal.

(c) In addition to the Notice of Appeal and filing fee, the following information shall be provided upon the filing of the notice:

- (1) A copy of the written decision of the Trial Court or original hearing body;
- (2) A short statement explaining what relief is sought by the Appellant;
- (3) A short statement explaining the legal grounds for seeking the appeal and justification for the relief requested;
- (4) Name, address and phone numbers of all parties, including respondent; and
- (5) Name, address and phone numbers of all party attorneys or advocates, if known.

(d) A cash deposit or bond in an amount equal to the amount of any judgment, plus costs assessed by the Trial Court or original hearing body, or a motion for waiver of this requirement, shall accompany the Notice of Appeal. The deposit/bond requirement may be waived only when, in the judgment of the Court, such deposit/bond is not in the interest of justice and such waiver does not unnecessarily harm the judgment holder. The motion for waiver of the deposit/bond requirement shall be requested with notice to all parties. If the motion for waiver is denied, the deposit/bond shall be submitted within ten (10) days of the denial. The appeal shall be dismissed if the deposit/bond is not paid or waived.

(1) *Exception.* The Tribe, or an officer or agency of the Tribe shall be exempt from the requirement of providing any cash deposit or bond. The exemption under this section shall be automatic and shall not require a motion or waiver.

(e) An appeal shall not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

154.5-3. *Perfection of Notice.* If the appellant fails to provide a completed Notice of Appeal Form, the filing fee or waiver form, or any required documents or materials, the Appellant shall be notified of any filing deficiencies by the Clerk within five (5) business days and shall have five (5) business days from receipt of this notice to perfect the filing. Failure to perfect the filing within five (5) business days may result in the non-acceptance of the appeal.

#### **154.6. Appeal by Permission**

154.6-1. *Appeal by Permission.* An appeal from an interlocutory order may be sought by filing a Petition for Permission to Appeal with the Clerk within ten (10) business days after the entry of such order with proof of service on all other parties to the action. Within ten (10) business days after service of the petition, an adverse party may file an Answer in opposition. A decision shall be issued in a reasonable time, but no longer than thirty (30) days from the first deliberation unless good cause to extend the deadline is found by the Court. This extension shall be in writing. The petition shall contain:

- (a) a statement of the facts necessary to develop an understanding of the question of law determined by the order of the Trial Court or original hearing body; and
- (b) a statement of the question itself; and
- (c) a statement of the reasons why substantial basis exists for a difference of opinion on the question; and
- (d) the relief sought; and
- (e) why an immediate appeal may:
  - (1) materially advance the termination of the litigation;
  - (2) protect the petitioner from substantial or irreparable injury; or
  - (3) clarify an issue of general importance in the administration of justice; and
- (f) The petition shall include or have a copy of the order of the Trial Court or original hearing body attached thereto.

#### **154.7. Joint, Consolidated and Cross Appeals**

154.7-1. *Joint or Consolidated Appeals.* When two (2) or more parties are entitled to appeal from a Trial Court or original hearing body judgment or order, and their interests make joinder practicable, the parties may file a joint notice of appeal. The parties may then proceed on appeal as a single Appellant.

- (a) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the Court.
- (b) If the persons do not file a joint appeal or elect to proceed as a single Appellant, or if their interests are such as to make joinder impractical, the person shall proceed as Appellant and co-Appellant, with each co-Appellant to have the same procedural rights and obligations as the Appellant. The Appellant shall be the person who filed first.

154.7-2. *Cross Appeal.* A Respondent who seeks modification of the judgment or order appealed from or of another judgment or order entered in the same action or proceeding shall file a notice of cross-appeal within the time established for the filing of a notice of appeal or ten (10) business days after the receipt of the notice of appeal, whichever is later. The Respondent shall be listed as the cross-Appellant. A cross-Appellant has the same rights and obligations as an Appellant under these Rules.

**154.8. Service, Filing and Certification**

154.8-1. A paper required or permitted to be filed in the Court shall be filed with the Clerk. The filing party shall supply the Clerk with the original papers and three (3) copies. The filing party shall also provide one (1) copy of the papers for each opposing party or party's attorney or advocate. Filing shall be complete by the close of business on the day which the filing is due. The following methods of filing shall be used, in order of preference:

(a) *In Person*: A party to a pending case, or the party's attorney, advocate or authorized Agent may file papers in person before the Clerk.

(b) *Electronic*: A party to a pending case may file papers electronically to the electronic address, designated for such filings, of the Clerk. A paper filed by electronic means shall constitute a written paper for the purpose of applying these Rules. Upon receipt by the Clerk, any paper filed electronically shall be deemed filed, signed and verified by the filing party.

(c) *By Mail*: A party to a pending case may file papers by U.S. or private mail with the ability to track the delivery, with cover documents to be addressed to the Clerk. Filing shall not be completed upon mailing, but only upon receipt.

(1) Filing of papers is also permitted through the Tribal certified interoffice mail system.

154.8-2. *Proof of Service*. Upon demand by a party or the Appellate Clerk, a party filing documents shall provide one (1) of the following:

(a) Proof of delivery of the filing in question;

(b) an acknowledgment of service by the person served; or

(c) proof of service consisting of a statement by the person who made service certifying:

(1) the date and manner of service;

(2) the names of the persons served;

(3) the mail or electronic addresses, facsimile numbers of the persons served, or the addresses of the places of delivery, as appropriate for the manner of service; and

(4) if served electronically, a writing by the person being served consenting to service by electronic means.

154.8-3. *Service of All Papers Required*. A party shall, at or before the time of filing a paper, serve a copy on all other parties to the appeal. Any party may be served by electronic means, if such party consents in writing to service by electronic means. Service on a party represented by an attorney or advocate shall be made on the party's attorney or advocate.

154.8-4. *Certification of the Record*. Upon acceptance of the Appeal, the Clerk shall, notify the Trial Court clerk or original hearing body that an appeal has been filed and request, the Trial Court clerk or original hearing body to prepare, and file with the Appellate Court all papers comprising the record of the case appealed within thirty (30) days. Upon Certification of the Record by the Clerk it shall be served on all parties as provided for in 154.8-3. The time for filing and certifying the record may be extended for good cause by the Chief Judge of the Court upon a written request from the Trial Court clerk or original hearing body.

(a) The record of the case shall consist of all papers filed with the Trial Court or original hearing body, exhibits, a transcript or audio recording of the proceedings, and the final decision of the Trial Court or original hearing body.

**154.9. Time Computation**

154.9-1. *Deadline Computation*. Time lines are determined by designating the day after notice is received as day one. Computation involving calendar days shall include intermediate Tribally



observed holidays and weekend days, provided that if the last day of the period falls on a Saturday, Sunday or Tribally observed holiday, then the next business day shall be the due date. Computation involving business days shall not include intermediate weekend days or Tribally observed holidays. All papers due to be filed with the Clerk are due prior to the close of business on the last day of the time period.

(a) If notice is mailed, then three (3) days shall be added to the time line in order to determine the due date.

154.9-2. *Extension of Time.* For good cause, the Court may extend the time prescribed by these Rules or by its order to perform any act, or may permit an act to be done after that time expires. But the Court shall not extend the time to file:

(a) a notice of appeal; or

(b) a petition for permission to appeal.

154.9-3. *Time to Complete.* Unless time is extended by the Court with the knowledge of the parties, the time from the filing of the Notice of Appeal to the completion and entry of the final written decision shall not exceed one hundred and eighty (180) days.

#### **154.10. Motions**

154.10-1. *Application for Relief.* An application for an order or other relief in a docketed case shall be made by motion unless these Rules prescribe another form. A motion shall be in writing unless the Court permits otherwise. The moving party shall file all motions with the Clerk and serve opposing parties as provided in 154.8.

154.10-2. *Contents of a Motion.* A motion shall state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(a) Any affidavit or other paper necessary to support a motion shall be served and filed with the motion. An affidavit shall contain only factual information, not legal argument. A motion seeking substantive relief shall include a copy of the Trial Court's or original hearing body's opinion as a separate exhibit.

154.10-3. *Response to a Motion.* Any party may file a response to a motion, in accordance with 154.11-2. The response shall be filed within ten (10) days after service of the motion unless the Court shortens or extends the time.

154.10-4. *Motion for a Procedural Order.* The Court may act on a motion for a procedural order at any time without awaiting a response. A party adversely affected by the Court's action may file a motion to reconsider, vacate, or modify that action within five (5) days of receipt of notice of the decision.

154.10-5. *Motion for Voluntary Dismissal.* An appellant may dismiss an appeal by filing a motion to dismiss. If not yet docketed in the Court, then the motion shall be filed in the Trial Court or original hearing body. The dismissal of an appeal shall not affect the status of a cross-appeal or the right of a respondent to file a cross appeal.

154.10-6. *Form.* Motions shall be typed, legible and include the case caption. Every motion shall:

(a) Contain a caption heading, the name Judiciary- Court of Appeals, the title of the action, the docket number (if known) and a designation as to the purpose or type of motion.

(b) Contain the names of all parties to the action.

(c) Be organized in sections containing a clear designation, which shall include, but is not limited to:

(1) The facts, events or occurrences which make a specific motion for relief necessary;

- (2) The specific relief requested by the moving party;  
(3) The applicable law or laws to the motion at hand, including citations; and  
(4) The legal reasons the relief should be granted.
- (d) Be on 8 ½ by 11 inch paper. The text shall be double-spaced, but quotations more than two (2) lines may be indented and single-spaced. Headings and footings may be single-spaced. Margins must be at least one (1) inch on all four (4) sides. Page numbers may be placed in the margins, but no other text shall appear there.
- (e) Be typed in a plain, roman style, although italics or boldface may be used for emphasis. Case names shall be italicized or underlined.
- (f) Not exceed twenty (20) pages, unless the Court permits or directs otherwise.

#### **154.11. Briefs**

154.11-1. *Briefs Generally.* Briefs shall be used by the Court to aid the Court in its consideration of the issues presented.

(a) *Form.* The brief shall be 1.5 line spaced, typed, 1 inch margins, and on 8.5 x 11 inch paper, and shall be signed by the party or the party's attorney or advocate, if represented. The front cover of a brief shall contain:

- (1) the number of the case centered at the top;
- (2) the name of the court;
- (3) the title of the case;
- (4) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court below;
- (5) the title of the brief, identifying the party or parties for whom the brief is filed; and
- (6) the name, office address, and telephone number of the attorney or advocate representing the party for whom the brief is filed, if represented.

(b) *Length.* The brief shall be no more than twenty (20) pages, one (1) sided, in length, not including any addendums, appendices, attachments, or the tables of contents and authorities.

(c) *Filing.* When a party is represented by an attorney or advocate, only the attorney or advocate shall file briefs and pleadings. The individual shall not file on his or her own unless he or she is pro se. Three (3) copies of each brief shall be filed with the Clerk and one (1) copy to all parties to the appeal.

(d) *Time to Serve and File a Brief.* The Appellant shall serve on the Respondent and file with the Clerk a brief within twenty (20) days after acceptance of the Certification of the Record. The Respondent's brief shall be filed with the Clerk within twenty (20) days of receipt of the Appellant's brief. A reply brief, if necessary, shall be filed within fourteen (14) days of receipt of Respondent's brief. The Court may, on its own, order different time lines for any party's time to file a brief.

(e) *Consequence of Failure to File.* If an Appellant fails to file a brief within the time provided by this Rule, or within an extended time, a Respondent may move to dismiss the appeal. A Respondent who fails to file a brief shall not be heard at oral argument unless the Court grants permission.

154.11-2. *Appellant's Brief.* The Appellant's brief shall contain, under appropriate headings and in the order indicated:

- (a) *Content:*
- (1) a table of contents, with page references;

- (2) a table of authorities-cases (alphabetically arranged), statutes, and other authorities-with references to the pages of the brief where they are cited;
- (3) a jurisdictional statement, including:
- (A) the basis for the Trial Court's or original hearing body's subject-matter jurisdiction;
  - (B) the basis for the Court of Appeals' jurisdiction;
  - (C) the filing dates establishing the timeliness of the appeal; and
  - (D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the Court of Appeals' jurisdiction on some other basis.
- (4) a statement of the issues presented for review;
- (5) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;
- (6) a statement of facts relevant to the issues submitted for review with appropriate references to the record;
- (7) a summary of the argument, which shall contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which shall not merely repeat the argument headings;
- (8) the argument, which shall contain:
- (A) Appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the Appellant relies; and
  - (B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);
- (9) a short conclusion stating the precise relief sought;
- (10) a short appendix to include:
- (A) relevant docket entries in the Trial Court or original hearing body;
  - (B) limited portions of the record essential to an understanding of the issues raised;
  - (C) the judgment, order, or decision in question; and
  - (D) other parts of the record to which the parties wish to direct the Court's attention; and
- (11) where the record is required by law to be confidential, reference to individuals shall be by initials rather than by names.
- 154.11-3. *Respondent's Brief.* The Respondent's brief shall conform to the same requirements as 154.11-2 (Appellant's Brief).
- (a) The Respondent's brief shall address each issue and argument presented by the Appellant's brief.
  - (b) The Respondent's brief may present additional issues, with the Respondent's positions and arguments on such issues.
- 154.11-4. *Reply Brief.* The Appellant may file a brief in reply to the Respondent's brief. Unless the Court permits, no further briefs may be filed. A reply brief shall conform to the requirements of 154.11-3 (Respondent's Brief), except that a reply brief shall be no more than fifteen (15) pages, one (1) sided, in length.
- 154.11-5. *Amicus Curiae Brief.* A person who is not a party to a case but has some interest in the outcome of the case may, upon timely motion and with permission of the Court, submit an amicus curiae brief in support of a party to the action. The Court may, on its own motion, request amicus participation from appropriate individuals or organizations.

(a) Amicus curiae briefs shall conform to the requirements of 154.11-2 (Appellant's Brief), except as provided in the following:

(1) Amicus curiae shall file his or her brief no later than seven (7) days after the brief of the party being supported is filed. Amicus curiae that do not support either party shall file his or her brief no later than seven (7) days after the Appellant's or Respondent's brief is filed. The Court may grant leave for later filing, specifying the time within which an opposing party shall answer.

154.11-6. *Briefs in a Case Involving Multiple Appellants or Respondent.* In a case involving more than one (1) Appellant or Respondent, including consolidated cases, any number of Appellants or Respondents may join in a brief, and any party may adopt, by reference, a part of another's brief. Parties may also join in reply briefs.

#### **154.12. Oral Argument**

154.12-1. *Oral Arguments.* The Court may order oral argument when issues of fact or law remain unclear and/or the positions of the parties on an issue are unclear or otherwise not fully developed. The Court shall direct that an appeal be submitted on briefs only, if:

- (a) The appeal is frivolous;
- (b) The dispositive issue or issues have been authoritatively decided; or
- (c) The facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

154.12-2. *Notice.* The Clerk shall provide notice, of at least ten (10) business days, to all parties when oral arguments are scheduled. The notice shall list the location of the oral argument and the time allowed for each side. The Court shall determine the amount of time for oral arguments. A motion to postpone the argument or to extend the argument timeframe shall be filed at least five (5) business days before the hearing date.

154.12-3. *Citation of Authorities at Oral Argument.* Unless permitted by the Court, parties may not cite or discuss a case at an oral argument unless the case has been cited in one (1) of the briefs.

#### **154.13. Entry and Form of Judgment**

154.13-1. *Entry.* A judgment is entered when it is noted on the docket. The Clerk shall prepare, sign, and enter the judgment after receiving the Court's opinion.

(a) The decision and opinion of the Court shall be by a majority vote.

(b) The Court may:

- (1) Reverse, affirm, or modify the judgment or order as to any or all parties;
- (2) Remand the matter to the Trial Court or original hearing body and order a new trial on any or all issues presented; the order remanding a case shall contain specific instructions for the Trial Court or original hearing body;
- (3) If the appeal is from a part of a judgment or order, the Court may reverse, affirm or modify as to the part which is appealed;
- (4) Direct the entry of an appropriate judgment or order; or
- (5) Require such other action or further proceeding as may be appropriate to each individual action.

(c) On the date when judgment is entered, the Clerk shall serve all parties with a copy of the decision and opinion as entered.

154.13-2. *Form.* All decisions of the Court shall be in writing and accompanied by an opinion stating the legal issues and the basis for the decision. Decisions of the Court shall be issued no

later than sixty (60) days after the conclusion of oral argument or after the expiration of time to file a *Reply Brief* or *Response Brief* if no oral argument is held.

- (a) The time for issuing a decision and opinion may be extended provided all parties are notified of the extension in writing. The notice of extension shall include the cause for and length of such extension.

#### **154.14. Interest of Judgments**

154.14-1. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the Trial Court's or original hearing body's judgment was entered. If the Court modifies or reverses a judgment with a direction that a money judgment be entered in the Trial Court or by the original hearing body, the mandate shall contain instructions about the allowance of interest.

#### **154.15. Penalties**

154.15-1. *Frivolous Appeals*. If an appeal or cross-appeal is found by the Court to be frivolous, the Court may award to the successful party costs and attorney's or advocate's fees.

- (a) Costs may be assessed against the Appellant or cross-Appellant, the (cross)-Appellant's attorney or advocate, or both the (cross)-Appellant and his/her attorney or advocate jointly.

- (1) Court costs shall be based on actual cost or defined by the Court.

- (b) A finding of a frivolous appeal or cross-appeal shall be made if one (1) or more of the following elements are found by the Court:

- (1) The appeal or cross appeal was filed, used, or continued in bad faith, solely for purposes of delay, harassment or injuring the opposing party; or

- (2) The party or party's attorney or advocate knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

154.15-2. *Delay*. If the Court finds that an appeal or cross-appeal was taken for the purpose of delay, it may award one (1) or more of the following to the opposing party:

- (a) Double costs;
- (b) A penalty of additional interest not exceeding ten percent (10%) on the award amount affirmed;
- (c) Damages caused by the delay; and/or
- (d) Attorney's or advocate's fees.

154.15-3. *Non-Compliance with Rules*. Failure of a party to comply with a requirement of these Rules or an order of the Court, does not affect the jurisdiction of the Court over the appeal but may be grounds for one (1) or more of the following:

- (a) Dismissal of the appeal;
- (b) Summary reversal of the Trial Court or original hearing body;
- (c) Striking of a paper, document or memorandum submitted by a party;
- (d) Imposition of a penalty or costs on a party or party's attorney or advocate; and/or
- (e) Other action as the Court considers appropriate.

#### **154.16. Substitution of Parties**

154.16-1. *Death of a Party*. Death of a party does not automatically end a party's right to appeal.

(a) *After Notice of Appeal Is Filed.* If a party dies after a notice of appeal has been filed or while a proceeding is pending in the Court, the decedent's personal representative may be substituted as a party on motion filed with the Clerk by the representative or by any party. A party's motion shall be served on the representative. If the Decedent has no representative, any party may suggest the death on the record, and the Court may then direct appropriate proceedings.

(b) *Before Notice of Appeal Is Filed-Potential Appellant.* If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative, or if there is no personal representative, the decedent's attorney or advocate of record, may file a notice of appeal within the time prescribed by these Rules. After the notice of appeal is filed, substitution shall be in accordance with 154.16-1(a).

(c) *Before Notice of Appeal Is Filed-Potential Respondent.* If a party against whom an appeal may be taken dies after entry of a judgment or order in the Trial Court or original hearing body, but before a notice of appeal is filed, an Appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution shall be in accordance with 154.16-1(a).

154.16-2. *Substitution for a Reason Other Than Death.* If a party needs to be substituted for any reason other than death, the procedure set in 154.16-1(a) applies.

#### **154.17. Costs**

154.17-1. *Costs.* Costs in an appeal shall be as follows unless otherwise ordered by the Court:

- (a) Against the appellant when the appeal is dismissed or the judgment or order affirmed;
- (b) Against the respondent when the judgment or order is reversed.

154.17-2. *Allowable Costs.* Allowable costs shall include:

- (a) Cost of printing and assembling the number of copies and briefs and appendices required by the Rules;
- (b) Fees charged by the Court and/or Clerk;
- (c) Cost of the preparation of the transcript of testimony of the record of appeal; and
- (d) Other costs as ordered by the Court.

154.17-3. *Recovery of Costs.* A party seeking to recover costs in the Court shall file a statement of the costs within fourteen (14) days of the filing of the decision of the Court. An opposing party may file, within eleven (11) days after service of the statement, a motion objecting to the statement of costs.

*End.*

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Adopted BC-04-25-14-B

Emergency Amendments BC-12-19-14-A



# Legislative Operating Committee

## March 4, 2015

### Furlough Policy

**Submission Date:** October 15, 2014

☒ Public Meeting: 02/05/15  
☐ Emergency Enacted:

**LOC Sponsor:** Fawn Billie

**Summary:** *During the prior term, the OBC adopted a policy on an emergency basis that set out a process allowing tribal employees to be furloughed as a cost-containment measure. The emergency adoption/extension expired on October 15, 2014, however on October 8, 2014, the OBC directed the LOC to continue developing a permanent policy that allowed for furloughs.*

**09/17/14 LOC:** Motion by Jennifer Webster to not add the Furlough Policy Emergency Adoption to the Active Files List and to provide the Oneida Business Committee a memo stating that it is the intent of the Legislative Operating Committee to let the emergency adoption expire; seconded by Tehassi Hill. Motion carried unanimously.

**10/8/14 OBC:** Motion by Lisa Summers to accept the Legislative Operating Committee update with the following answers:  
 3) With regard to the Furlough Policy, the Business Committee agrees that the LOC should move forward with the development of a permanent policy.  
 seconded by Trish King. Motion carried unanimously.

**10/15/14 LOC:** Motion by Jennifer Webster to add the Furlough Policy to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

*Note: Fawn Billie will be the sponsor for this item.*

**12/03/14 LOC:** Motion by Jennifer Webster to direct that a fiscal impact statement and a legislative analysis be conducted on the Furlough Policy; seconded by Fawn Billie. Motion carried unanimously.

**1/15/15 LOC:** Motion by Jennifer Webster to approve the public meeting date of January 29, 2015 regarding the Furlough Policy; seconded by Tehassi Hill. Motion carried unanimously.

**1/21/15 LOC:** Motion by Jennifer Webster to ratify the Furlough Policy and Rules of Appellate Procedures Amendments Public Meeting Date E-poll; seconded by Tehassi Hill. Motion carried unanimously.

**2/5/15:** Public meeting held.

#### Next Steps:

- Review the public meeting comments and direct changes or defer to the sponsor to make changes and bring back when ready.

**Oneida Tribe of Indians of Wisconsin  
Legislative Reference Office**

Lynn A. Franzmeier, Staff Attorney  
Taniquelle J. Thurner, Legislative Analyst  
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**Memorandum**

**TO:** Legislative Operating Committee  
**FROM:** Lynn A. Franzmeier, Staff Attorney  
**DATE:** February 24, 2015  
**RE:** Furlough Policy: Public Meeting Comment Review

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On February 5, 2015, a public meeting was held regarding adoption of the Furlough Policy (Policy). The Policy would enable the Tribe to implement furloughs to correct an operating budget deficit by granting the Oneida Business Committee the ability to authorize a furlough period through resolution; requiring General Manager-level positions to develop furlough plans for their areas; and prohibiting furloughs from being used for disciplinary reasons.

This memorandum is submitted as a review of the oral and written comments received during the public meeting process. The public meeting draft with comments, as well as the comments received, have been attached for your review.

Please note, microphones were not used during the public meeting, so most of the oral comments do not have a name attached and were created based on a compilation of the notes taken at the meeting

**Comment 1. Comment on defining political appointees and political officials.**

**Larae Gower:** Line 7: Define political appointees – give examples. Line 9: Define political officials – give examples.

*Response*

The comment is referring to the following, which was contained in the analysis:

This policy applies to all employees of the Tribe, defined to specifically include employees of Tribal programs and enterprises, political appointees and individuals under an employment contract as a limited term employee. Specifically excluded from the definition (so not subject to furlough) are elected and appointed officials, consultants, and employees of Tribally- chartered corporations. [1-2 and 3-1(a)]

This is a policy call as to whether these terms need to be defined.

**Comment 2. Comment on time lines for notice requirements to management.**

**Larae Gower:** Line 27: How much notice does the Oneida Business Committee have to give to management that a furlough is coming? This only determines the amount of time the supervisor has to give notice to the employees.



*Response*

The comment is referring to the following, which was contained in the analysis:

Supervisors must give employees at least five business days' notice before implementing a furlough for that employee's position. [4-3] This appears to mean the employee must be notified at least five 5 business days before the first day of his/her furloughed time off.

Section 4-1 authorizes the Oneida Business Committee (OBC), through resolution, to direct the General Manager-level positions to implement a furlough. The Policy also requires the resolution to direct the beginning and ending dates of the furlough. The Policy does not put a time frame on how much notice the General Manager-level positions must have before implementing the furlough. This is a policy call whether a time line should be added.

**Comment 3. Comment on limiting the length and number of furloughs.**

**Larae Gower:** Line 30: Furlough should not extend more than 3 months and cannot occur more than twice per calendar year.

*Response*

The comment is referring to the following, which was contained in the analysis: "The OBC resolution must include furlough start and end dates. [4-1]"

The Policy leaves it up to the OBC to determine how long a furlough will last and does not limit the number of furloughs that can occur. This is a policy call.

**Comment 4. Comment on travel during furlough.**

**Larae Gower:** Line 33: All travel should be cease if a furlough is necessary, for all employees, political appointees, political officials and Oneida Business Committee members unless preapproved and deemed as absolutely necessary. Substitute technology such as

*Response*

The comment is referring to the following, which was contained in the analysis: "Employees cannot travel on behalf of the Tribe while on furlough. [4-4]"

The LOC may want to consider whether suspending all travel is necessary or even a prudent thing to do. A furlough period could last over several months, so the LOC may want to consider issues that arose during the continuing resolution period when travel was suspended. This includes how this could affect travel that is grant funded, what travel would be "absolutely necessary" and who determines when travel is necessary.

**Comment 5. Comment on unemployment compensation.**

**Larae Gower:** Line 49-50: The Oneida Tribe of Indians of Wisconsin will not contest employees filing for Unemployment Compensation with the State of Wisconsin.

*Response*

The comment is referring to the following, which was contained in the analysis: "The Expired Policy specifically stated that the Tribe shall not deny a request for unemployment compensation due to furloughs, [5-6] but the proposed Policy does not."

The Policy is silent as to how unemployment compensation is paid when a claim is filed. The intent is that the Tribe will continue to treat all unemployment compensation claims, whether brought on by furlough or other circumstances, the same.

**Comment 6 & 19. Comments on payroll deductions.**

**Larae Gower:** Line 52: Employees should work with Central Accounting Payroll and Human Resources regarding their payroll deductions.

**Unknown (oral comment):** Comment regarding: Line 52 (4-6) says the supervisor will help with payroll deductions but as a supervisor I don't know much about payroll deductions. Wouldn't it be better if they worked with someone who does?

**Brandon Stevens:** Yeah, cause there's a lot of different deductions that employees have, in and outside of the organization.

*(inaudible – microphones were not used.)*

**Brandon Stevens:** Okay, any necessary entities to determine which payroll deductions will continue during the furlough.

*(inaudible – microphones were not used.)*

**Brandon Stevens:** Okay, we can look at that. It looks like it's addressed in the next line, but we'll look at that to see if that really needs to be in there. Just 'employee work with whomever.'

*Response*

The first comment is referring to the following, which was contained in the analysis:

Instead of requiring all miscellaneous payroll deductions to stop during a furlough, the new Policy requires employees to work with their supervisor and any necessary entities to determine which payroll deductions will continue during the furlough - any discontinued payroll deductions are the employee's responsibility. [4-6]

The oral comment is referring to section 4-6. *Payroll Deductions*, which states: "An employee on furlough shall work with his or her supervisor, the Accounting Department and any other necessary departments and agencies to determine which previously authorized optional payroll deductions will continue to be deducted during the furlough period."

The Policy uses the term "necessary entities" in order to notice the employee that a furlough may affect his or her decision to have certain payroll deductions. This may require the employee to work with his or her supervisor, or other Tribal entities including Central Accounting Payroll and Human Resources, that are involved with payroll deductions. This is a policy call if the LOC wants to add specific Tribal entities to, remove the supervisor from this section and/or clarify the intent of the section.

**Comment 7. Comment on overtime during a furlough.**

**Larae Gower:** Line 61: Overtime is always a necessary consideration when dealing with external customers. The no overtime requirement conflicts with lines 35-36 that states "Furloughs must be scheduled in a way that allows the departments to continue to provide a basic level of service." It would be more reasonable to require monitoring and justification of overtime.

*Response*

The comment is referring to the following, which was contained in the analysis: “Employees are ineligible for overtime during any pay period where another employee from the same department/agency is furloughed [4-8(a)]”

The LOC may want to consider including a more flexible statement under this section, similar to how overtime was treated during the continuing resolution, including a monitoring and justification process as suggested by the comment.

**Comment 8. Comment on medical insurance being affected by furlough.**

**Larae Gower:** Line 71-82: The Furlough Policy should not be approved until the issues of employee medical insurance are satisfactorily resolved. In addition, there is no reference made to ensure compliance with the Affordable Care Act. That Act may need to be reviewed and considered.

*Response*

The comment is referring to the following, which was contained in the analysis:

While furloughed, employees continue to receive benefits as if they were on an unpaid leave of absence. [4-7] The Leave of Absence Tribal Work Standard identifies different types of unpaid leaves of absence - generally speaking, medical insurance coverage for maternity, paternity and military leave continues for a limited amount of the leave, but a furlough would not count as any of those. For a “personal” or “educational” unpaid leave of absence, insurance is cancelled on the employee’s last working day, and reinstated on the day the employee returns to work. So if this provision is enforced, it could mean that an employee would not have medical insurance coverage on full days of furlough. At a minimum, the Work Standard may need revision to address furloughs, and it may be beneficial to require training for all persons involved in creating furlough plans, so that they can understand how employees stand to be affected by the way they structure furloughs.

During the creation of the Policy, Employee Insurance was consulted regarding how a furlough would affect employee benefits. According to Employee Insurance, a short furlough will be treated the same as if an employee took a day off without pay. The employee’s insurance should not be affected and the employer and employee would pay the premiums the same as they would during any regular week. The intent of the Policy is that under the individual furlough plans which are implemented by General Manager Level positions, each area has the flexibility to determine how they will implement furloughs, taking into consideration that a longer furlough may have an impact on employee benefits. Section 4-7 states: “Employees shall not use or accrue personal or vacation time when on furlough. Employees shall continue to receive other benefits during a furlough in the same manner as an employee on an unpaid leave of absence receives benefits.” A furlough is not intended to affect benefits and if a long furlough is anticipated, the Layoff Policy should be utilized to implement a layoff, as opposed to a furlough.

**Comment 9. Comment on developing procedures for a furlough.**

**Larae Gower:** Line 79-82: Furlough Procedures should be developed prior to the implementation of the furlough Policy to assist in avoiding passing a policy whose demands cannot be met. Mandatory training should be provided to all employees involved in developing and implementing Furlough Procedures.

*Response*

The comment is referring to the following, which was contained in the analysis:

At a minimum, the Work Standard may need revision to address furloughs, and it may be beneficial to require training for all persons involved in creating furlough plans, so that they can understand how employees stand to be affected by the way they structure furloughs.

HRD Training staff prepared procedures when the emergency Furlough Policy was in effect. See comment 25 below. These procedures could be used to assist General Manager-level positions in creating and implementing furlough plans.

**Comment 12. Employees subject to the Policy.**

**Wendy Alvarez:** Can regular contracted employees be placed on a Furlough (i.e GGM, Doctors, teachers)?

*Response*

1-2. *Policy.* This Policy shall apply to all employees of the Tribe.

The Policy defines “Employee” as “any individual who is employed by the Tribe and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. “Employee” includes, but is not limited to, an individual employed by any program or enterprise of the Tribe and political appointees, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this Law, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.”

Regular contracted employees like doctors, teachers and managers can be placed on a furlough.

**Comments 13 & 14. Comments on what triggers a furlough.**

**Rae Skenandore (oral comment):** comments were with regards to: What’s the criteria to be used to implement the policy? Who decides that? Nothing in here gives us reasons why they would implement this. When does a situation call for a furlough. What financial reduction in Revenue will justify furloughs? 10%, 20% etc?]

**Brandon Stevens:** Okay, yeah, the Finance would recommend and then the BC would approve, and so that sounds like something that maybe the Finance, or -probably the Treasurer’s Office would recommend maybe providing, those steps you’re wanting to take, you know, if it’s all travel, is done first; all discretionary funds, or expenditures go away first. Those types of things are what you’re looking for, correct? A list of.. ‘this is what we do first, this is what we do last’ type thing – at least a general feel of how that goes, a schedule of how we...

**Rae Skenandore (oral comment):** My comment is more about what financial conditions trigger a furlough.

**Brandon Stevens:** Okay, gotcha.

*(inaudible – microphones were not used.)*

**Brandon Stevens:** Okay, yeah, that's an excellent suggestion, that's more of a communication with the Treasurer's office and how we carry that out. So that's basically the process and we're going to take this one a little slow. There's other laws and policies we just give your comments, push it through if there's no comments, but clearly there's an interest in the furlough policy, and that's understandable. So we'll take it slow and try to communicate as much as we can to the organization, managers and employees about this policy, welcome any comments within that time.

### *Response*

Section 4-1 of the Policy states: *Furlough Resolution*. If the OBC has identified the necessity for a furlough, a directive by resolution shall be given to the appropriate General Manager Level positions. The Policy states that furloughs can be implemented "to remedy an operating budget deficit" and "[t]o utilize a furlough, a decrease or lapse of revenue or funding and/or any other budget situation warranting an unpaid leave shall be identified." [See 1-1 & 1-2] The Policy is silent as to what specific conditions would need to occur in order for the OBC to direct a furlough. The LOC may want to consider adding reasons, or leave it open so the OBC has the flexibility to use the conditions they are given to justify the resolution directing a furlough.

### **Comments 15 - 18. Comment on length of notice given before a furlough is implemented.**

**Wendy Alvarez:** Supervisors must give employees at least five business days' notice...(too short, 30 is more reasonable especially if benefits will be affected). Maybe a staggered notice (one day furlough = one week notice, two day furlough – two week notice)

**Unknown (oral comment):** The comment was with regards to section 4-3 which says the supervisor must notify the employee at least 5 business days prior to being placed on furlough. The commenter doesn't feel this isn't enough time. The employee has to figure out the payroll deduction, apply for assistance, etc. Plus what happens if the furlough occurs during December and Christmas time. The employee needs more than 5 business days to figure stuff out. Most companies have a 30 day outlook prior to placing an employee on furlough. Suggest a 30 day notice, not a 5 business day notice.

**Brandon Stevens:** Trying to think how mine would go. If I were to get furloughed. I know the bank would do it immediately; it's just depending ... the separate agencies you are talking about, correct? Okay. Well, I don't know... it'd seem like, I guess the answer only is, is we can look at that and see if we can look at, maybe we can look at some of those possible situations that would arise and maybe we could look at extending that period a little longer or see how we could fix that, if indeed it is an issue. Five days does seem like a quick turnaround for an employee. I would say, for an employee. Yeah. We'll come back to that answer, we'll try to answer that for you, for everyone.

**Unknown (oral comment):** The comment was that a 30 day notice would be better. This is not a friendly policy.

**Brandon Stevens:** Yeah I know I would love a thirty day notice, I guess the way we budget... we're a week-to-week. We're living by week-to-week. A drop comes in I think on Sunday, and we're almost paying right out from that. And like you said, December and January are our worst times of the year, as far as revenue. So we're getting there where we actually have those funds there. We do have the line of credit, those are the things we look at, instead of having the cash outlay from the drop in gaming; we always look at utilizing the line of credit in case of those. Like I said this is a last ditch thing we would ever do, we have a lot of options before this.

**Unknown (oral comment):** "one thing to take into consideration that we could incorporate in the policy is a timetable whether it be a one day furlough, three day furlough, week furlough, two week furlough ... because depending on how long we need to take off..." [From LRO notes: Include a timetable that specifies if a furlough lasts a couple of hours, 1 day, 1 week, 2 weeks etc and maybe have different notice requirements for the different lengths of furloughs. An employee may need a longer notice for furloughs that last a couple weeks but if a furlough lasts a few hours then the 5 business day notice is sufficient. If we include a time table, that would be helpful.

**Brandon Stevens:** Okay, that makes sense, because Finance will tell us... they'll give us a number on what we're short and how long we expect to be in that mode. So that definitely makes sense on how we could look towards to give more of an expectation of a timeline for our employees to plan. So we'll definitely take a look at that, level of... you know, if it's \$2 million we're down, \$3 million, four, five, ten, or so on and so forth, we can look at how long we plan to utilize a furlough policy or other options instead

#### *Response*

The comments are referring to section 4-3, which states: "*Notice.* A supervisor shall give an employee notice at least five (5) business days prior to a furlough being implemented for his or her position." The individual Furlough Plans can set out the actual amount of notice given to employees based on the length of the furlough; however, a furlough as short as one day will require a five day notice. However, the LOC could also include a more concrete time frame in the Policy based on the length of the furlough implemented.

#### **Comment 20. Designation of Critical Positions**

**Wendy Alvarez:** 5-1 Request that the General Manager level designate critical positions for their areas within their plan to be exempt to ensure business needs are met for customers and services, especially for revenue generating entities, health and safety.

#### *Response*

Section 5-1. states: *Furlough Plans.* The General Manager Level positions shall develop furlough plans for their respective departments and agencies.

Under the Layoff Policy, critical positions are defined and a manager can identify critical positions that are not subject to the Indian Preference in the development of a layoff SOP. Under the Layoff Policy, Oneida member employees are retained over all other employees, when all other things are equal, except in the case of a critical employee, who has a degree, license or certification and skills that cannot be reassigned to another employee.

The LOC should consider the purpose of the Furlough Policy and whether it is necessary to identify critical positions when the intent of a furlough is a temporary, short-term leave of absence that will be used to alleviate budget concerns. However, this is a policy call for the LOC.

**Comment 21. Comment regarding the creation of the Furlough Plan.**

**Pat Pelky (oral comment):** Pat was questioning whether it is possible for the employee be a part of the GM level furlough plan. He expressed the desire to work with the employees and see if a plan can be developed with employee input. These plans could allow an employee to volunteer or be put on a rotating furlough. Are we looking for consistency in these plans? Afraid that there will be different types of furlough plans across the organization.

**Brandon Stevens:** OK. Yeah, we'll look at that five days; to be honest; the general intent of this furlough policy is one of those times we're not making payroll. And so those immediate expenses, I guess that's why the shortened timeline is there. They came close maybe twice over the last six years, that we came close to not making payroll. And those are the types of situations that we're really talking about, where there's a finite time period of a furlough, to alleviate the budget deficit. It's like the worst case scenario. And the worst case scenario is also making our employees pay for it. We'll definitely look at that five day notice, and probably talk with the Treasurer's office, Finance, to see if there's consideration of extending that time out.

*Response*

Section 5-1 states: The General Manager-level positions shall develop furlough plans for their respective departments and agencies. There are no limitations on how these plans are developed, including allowing employee input and/or having a rotating furlough schedule and/or allowing volunteers to be furloughed over others. The Policy purposely gives each area the ability to develop their own furlough plan so they can create something that works for their area. The plans do not have to be consistent across the organization.

**Comment 22.**

**Wendy Alvarez:** Emergency Temporary and Limited Term employees may be hired to replace furlough employees? The policy should state if they can or cannot hire in place of furloughed employees. This will need to be clear.

*Response*

The LOC may want to consider clarifying the length of furloughs and how they will be used in the Policy. It seems that there may be a misunderstanding as to how long a furlough would last and the difference between a furlough and a layoff. Discussions held during the drafting of the Policy indicate that there shouldn't be a need or the time to hire other employees in place of a furloughed employee as a furlough is a temporary status to respond to a budget situation where there wouldn't be additional funds available to hire emergency temporary or limited term employees.

**Comment 23.**

**Wendy Alvarez:** Should there be a list of areas that would be furloughed first or last based on the Nations priorities? Example 1<sup>st</sup> Non-profit making entities 2<sup>nd</sup> services that may be absorbed by other areas (or reorganized).

*Response*

This is a policy call for the LOC. Discussions during the drafting stages of the Policy indicated that the furlough would apply Tribal-wide so that all areas/employees would be affected similarly and no one area/employee would bear the entire impact of the furlough. For example, all areas could be required to furlough every employee for one day, staggered over a three month period.

**Comment 24.**

**Wendy Alvarez:** Furlough can mean one day off per week and still = a full time employee without loss of most benefits. This is not clear in the policy . As long as an employee works 30 hours per week they are full time.

*Response*

When implementing a furlough, the furlough plan could be created to have a minimal impact on an employee's status and benefits. The Policy was written to allow for flexibility in the furlough plans that are created. The LOC may want to consider additional provisions in the Policy to clarify the intent of a furlough.

**Comment 25.**

**Barb Kolitsch:** Below are some ideas that the HRD Training staff developed during the emergency Furlough policy. As you can see, the first thing we suggested was non-furlough options, second was voluntary furloughs and then finally we had involuntary furloughs (which was not included in this document because the current draft criteria was changed.)

**Non-Furlough Options – Policy suggestion: add non-furlough options to the policy, similar to layoffs, eliminate emergency temp employees first, ask for volunteers, etc. So my suggestion would be that when the areas develop their plan, they identify first non-furlough options, then volunteer, and finally involuntary furloughs.**

- 1.1 General Manager Level positions will identify essential positions within their area, not subject to non-furlough options. NOTE: If you require this in the policy, then employees may be less apt to accuse a manager of hand-selecting employees based on performance or using furlough as a discipline.
  - 1.1.1 All non-essential positions may be subject non-furlough options.
- 1.2 General Manager positions or delegates may choose from any of the following (or combination of) to meet the payroll goal:
 

Voluntary choices:

  - 1.2.1 Time off without pay/reduced work schedule (available to regular status and temporary employees) Some people would like to work less hours: parents of young children, employees who would like to reduce hours due to health or other life priorities, etc.
  - 1.2.2 Layoff(s)
  - 1.2.3 Leave of absence(s) Maybe an employee has been contemplating time off



- to start a business, or optional surgery, etc.
- 1.2.4 Attrition (not filling open positions)
- 1. Involuntary choices:
  - 1.2.5 Ending temporary employee contracts (emergency temp, limited term, etc.)
  - 1.2.6 Time off without pay/reduced work schedule (available to regular status and temporary employees)
  - 1.2.7 Elimination of paid parental time (can still use vacation/personal, time off without pay, or adjust the work schedule/flex time) for educationally sanctioned school functions. The Gaming Division already requires employees to use flex, personal, vacation or time without pay for Parental Time. Other Divisions could do the same when the financial situation requires adjustment.

### Furlough Options

- 1.3 Furlough options shall be considered if the payroll goal has not been met by implementing non-furlough options.
- 1.4 General Manager Level positions will identify essential positions within their area, not subject to furlough.
  - 1.4.1 All non-essential positions may be subject furlough options.
- 1.5 General Manager positions or delegates may choose from any of the following (or combination of) to meet the payroll goal:
  - 1.5.1 Voluntary furlough(s)
    - 1.5.1.1 Full-schedule furlough (full work week)
    - 1.5.1.2 Less than full-schedule furlough (less than full work week)
  - 1.5.2 Involuntary furlough(s)
    - 1.5.2.1 Full-schedule furlough (full work week)
    - 1.5.2.2 Less than full-schedule furlough (less than full work week)

## **2.0 PROCEDURES**

### **First - Selection criteria for voluntary furlough and non-furlough options**

- 2.1 Determine what voluntary option(s) you will offer to non-essential positions based on business needs.
  - 2.2 Offer voluntary option(s) to employees in non-essential positions.
    - 2.2.1 Give employees Options Matrix so they can understand the implications of their decision.
  - 2.3 Determine which employee(s) in the identified non-essential positions will be allowed to take a voluntary option(s).
  - 2.4 Submit payroll reduction plan to the Finance Office for approval prior to implementing the option(s) if payroll goal is met. If not, go to second options below.
  - 2.5 Notify employee(s) of the approval of their voluntary option(s) choice(s).
- If not enough employees volunteer to meet the payroll goal, use involuntary non-furlough options.

### *Response*

The LOC may want to consider incorporating some of the above suggestions into the Policy in order to clarify the intent of the Policy, as these suggestions seem to capture the discussions that were held during the creation of the Policy.

**Comment 26. Comment on whether a furloughed employee can work for another employer.**

**Unknown (oral comment):** When an employee is on furlough, are they allowed to work at other jobs outside of the Tribe.

**Brandon Stevens:** I don't think; yeah, I don't think we have any control over that, so I would say... yeah? There's nothing in here that would prohibit, so I would... I'm just thinking of situations that may arise out of it...

*Response*

The Tribe has no control over how an employee spends his or her time while on furlough, an employee that is furloughed can work at another job(s) outside of the Tribe.

**Comment 27. Overview of oral public meeting comments received.**

**Brandon Stevens:** Okay, so the few things that I got is the five day... looking at the five day window of notice to the employees, whether or not that's fair or feasible for an employee to do the deductions and so on and so forth; and the management plan – it's is a little tight, as well as the 5 day plan, to carry out, to do bigger plans, to extend the furlough out maybe longer, have people volunteer... we'll look at that, but generally what we're trying to say we want the management to take the initiative to develop those plans on how they're going to alleviate their budget, so along the lines of what you're saying, that's what we really want. And moving to as long a notice as we possibly could, you know, a 30 day notice was kind of the guideline there. And maybe a policy statement basically saying that this is utilized as one of the last options, for comfort, and then a timetable, for scheduling at certain levels so that employees would know how long they may be expected to be on furlough so they can better plan, and then the levels of budget reduction methods we've been using, kind of a general rule.

*Response*

This comment provided an overview of the comments received at the public meeting, there are no recommended changes based on this comment.

**Conclusion**

There were multiple comments provided on the Policy, both at the public meeting and in writing which the LOC should consider and incorporate as they see fit. From the comments received, it seems there is confusion surrounding how a furlough should be used and the impacts that a furlough would have on the organization. Also, the Policy should be clarified as to the differences between a furlough and a layoff.

## Furlough Policy

Article I. Purpose and Policy  
Article II. Adoption, Amendment, Repeal  
Article III. Definitions  
Article IV. Furlough

Article V. Furlough Plans  
Article VI. Supervisor Responsibilities  
Article VII. Appeal

<i>Analysis by the Legislative Reference Office</i>					
Title	The Furlough Policy ("The Policy")				
Requester	Oneida Business Committee (OBC)	Drafter	Lynn Franzmeier	Analyst	Tani Thurner
Reason for Request	On October 15, 2013, the OBC adopted a Furlough Policy on an emergency basis, which was extended for six months on April 9, 2014; expiring on October 9, 2014. The item had remained on last term's Active Files List as the LOC processed the policy for permanent adoption but did not complete it by the end of the term. This term, the LOC initially determined not to proceed with this item, and notified the OBC of this decision; however the OBC then directed that the LOC continue processing the Policy for permanent adoption.				
Purpose	This Policy sets out a process for the Tribe to furlough employees (temporarily reducing or stopping their work hours) as a cost-saving measure.				
Authorized/ Affected Entities	General Manager Level Positions, Supervisors, HRD and the OBC all have roles in the process; all employees could be affected.				
Due Process	The Policy expressly states that employees have no right to appeal a furlough decision under any Tribal law, policy or the personnel grievance process.				
Related Legislation	There is already a Tribal Layoff Policy which is very similar, enabling the Tribe to lay off employees as part of a cost-saving effort. The Personnel Policies and Procedures (Blue Book) address leaves of absence - this Policy addresses benefits by treating a furlough as a leave of absence.				
Policy Mechanism	Resolution adopted by OBC; Furlough Plans adopted by each division and kept on file with HRD.				
Enforcement	None, but the Blue Book would govern any violations by Tribal employees.				

### Overview

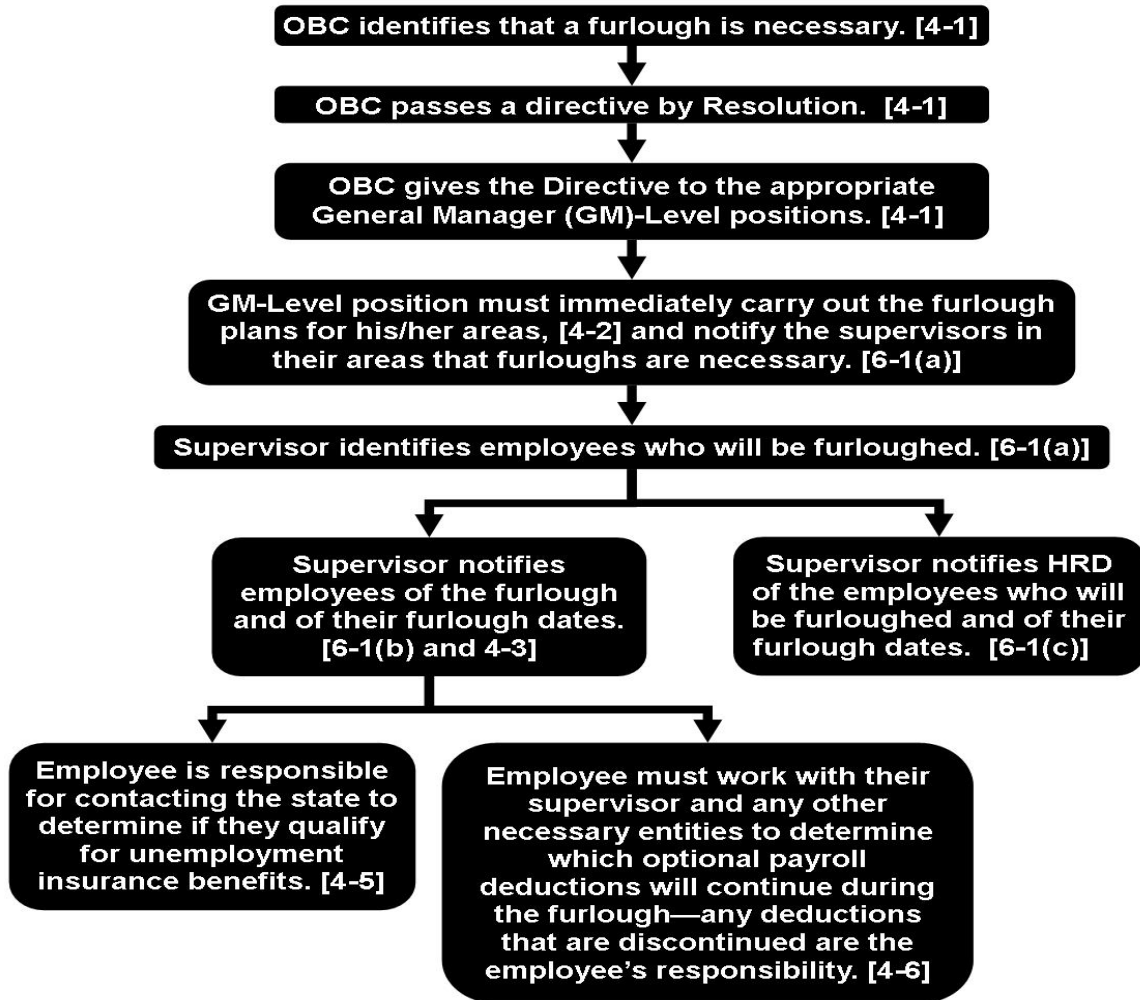
This is a new Policy that enables the Tribe to implement furloughs as a tool to fix an operating budget deficit. A furlough is a temporary unpaid leave from work for a specified period of time. In order to furlough employees, a decrease/lapse of revenue/funding or other budget situation warranting an unpaid leave must be identified. [1-1, 1-2 and 3-1(b)]

This policy applies to all employees of the Tribe, defined to specifically include employees of Tribal programs and enterprises, political appointees and individuals under an employment contract as a limited term employee. Specifically excluded from the definition (so not subject to furlough) are elected and appointed officials, consultants, and employees of Tribally- chartered corporations. [1-2 and 3-1(a)]<sup>1</sup>

Employees must be furloughed on days that the employee is normally scheduled to work, or on "holidays recognized by the Tribe", regardless of whether the employee is normally scheduled to work or not. [4-2(b)] While on furlough, employees cannot perform any work, including responding to work-related e-mail or voicemail. [4-2(a)] Employees may not use personal or vacation time while on furlough [4-7] and are not eligible for back pay when they return to work [4-10].

<sup>1</sup> Larae Gower: Define political appointees – give examples. Define political officials – give examples.

17 Employees have no right to appeal a furlough under Tribal law, policy, or the personnel



18 grievance process. [7-1]

## 19 The Furlough Process

### 20 Changes from the previous version of the Furlough Policy

21 This proposed Furlough Policy is substantially similar to the policy that was emergency-  
22 adopted last term (hereinafter called the “Expired Policy”); but there are a few changes:

#### 23 *New Provisions*

24 The following provisions are added to this Policy but were not in the Expired Policy:

- 25 • Furloughs shall not be used for disciplinary reasons. [4-9]
- 26 • Supervisors must give employees at least five business days’ notice before implementing  
27 a furlough for that employee’s position. [4-3] This appears to mean the employee must be  
28 notified at least five 5 business days before the first day of his/her furloughed time off.<sup>2</sup>
- 29 • The OBC resolution must include furlough start and end dates. [4-1]<sup>3</sup>

30 <sup>2</sup> **Larae Gower:** How much notice does the Oneida Business Committee have to give to management that a furlough is coming? This only determines the amount of time the supervisor has to give notice to the employees.

<sup>3</sup> **Larae Gower:** Furlough should not extend more than 3 months and cannot occur more than twice per calendar year.

- Once the OBC adopts a resolution directing a furlough, all GM-Level positions must immediately carry out the furlough plans for their departments/agencies. [4-2]
- **Employees cannot travel on behalf of the Tribe while on furlough. [4-4]<sup>4</sup>**
- GM-Level Positions must develop furlough plans, setting forth how their respective departments and agencies intend to implement a furlough. Furloughs must be scheduled in a way that allows the departments to continue to provide a basic level of service. These plans must be kept on file with HRD. A furlough plan must include:
  - An explanation of how employees will be selected.
  - A tentative schedule for a furlough.
  - The estimated number of employees affected.
  - A summary of how the furlough will relieve budget shortfalls. [4-2(a), 5-1 to 5-3]
- While furloughed, employees do not accrue vacation or personal time, but otherwise continue to receive benefits as if they were on an unpaid leave of absence. [4-7] The following chart demonstrates how a furlough could affect personal/vacation (P/V) time accrual:

Years of Service	P/V days normally accrued each year	P/V that would not accrue for each furlough day	P/V lost if furloughed 1 day/week for 6 months
0-3	18	.554 hours	14.399 hours
4-7	23	.708 hours	18.408 hours
8-14	30	.923 hours	23.998 hours
15+	37	1.138 hours	29.588 hours

#### *Expanded or Changed Provisions*

The following changes were made to provisions found in the Expired Policy:

- **The Expired Policy specifically stated that the Tribe shall not deny a request for unemployment compensation due to furloughs, [5-6] but the proposed Policy does not.<sup>5</sup>**
- **Instead of requiring all miscellaneous payroll deductions to stop during a furlough, the new Policy requires employees to work with their supervisor and any necessary entities to determine which payroll deductions will continue during the furlough - any discontinued payroll deductions are the employee's responsibility. [4-6]<sup>6</sup>**
- Unlike the Expired Policy, this proposal does not require that Indian Preference be used, if available, to determine which employees would be furloughed. [4-2]
- Instead of stating that furloughed employees "shall not be separated from the Tribe", the proposal states that a furlough shall not constitute a break in continuous service. [4-4]
- The Expired Policy stated that no overtime and/or additional duty pay can be approved as a result of a furlough. The proposed Policy instead provides that:
  - **Employees are ineligible for overtime during any pay period where another employee from the same department/agency is furloughed [4-8(a)]<sup>7</sup>**

<sup>4</sup> **Larae Gower:** All travel should be cease if a furlough is necessary, for all employees, political appointees, political officials and Oneida Business Committee members unless preapproved and deemed as absolutely necessary. Substitute technology such as

<sup>5</sup> **Larae Gower:** The Oneida Tribe of Indians of Wisconsin will not contest employees filing for Unemployment Compensation with the State of Wisconsin.

<sup>6</sup> **Larae Gower:** Employees should work with Central Accounting Payroll and Human Resources regarding their payroll deductions.

<sup>7</sup> **Larae Gower:** Overtime is always a necessary consideration when dealing with external customers. The no overtime requirement conflicts with lines 35-36 that states "Furloughs must be scheduled in a way that allows the

- Employees cannot receive additional duty pay for performing duties for furloughed employees from the same department/agency. [4-8(b)]

### Miscellaneous

A Public Meeting has not been held.

### Considerations

**The following are issues the LOC may want to consider:**

- While furloughed, employees continue to receive benefits as if they were on an unpaid leave of absence. [4-7] The Leave of Absence Tribal Work Standard identifies different types of unpaid leaves of absence - generally speaking, medical insurance coverage for maternity, paternity and military leave continues for a limited amount of the leave, but a furlough would not count as any of those. For a “personal” or “educational” unpaid leave of absence, insurance is cancelled on the employee’s last working day, and reinstated on the day the employee returns to work. So if this provision is enforced, it could mean that an employee would not have medical insurance coverage on full days of furlough. At a minimum, the Work Standard may need revision to address furloughs, and it may be beneficial to require training for all persons involved in creating furlough plans, so that they can understand how employees stand to be affected by the way they structure furloughs.<sup>89</sup>
- The Layoff Policy is very similar to this Policy, but there are a few provisions in the Layoff Policy that are not included in this Policy, and which should be noted:
  - The Layoff Policy permits managers to identify critical positions that are exempt from Indian Preference (which is used as a criteria to determine who is laid off) – critical positions are “those requiring a Professional or Technical License, Certification, and/or Degree and which require skills which cannot be reassigned to another employee” – this Policy does not allow for any exceptions for any sort of critical position that would be exempt from furloughs. This is a policy call.
  - The Layoff Policy requires strategic layoff plans (similar to the plans created under this Policy) to be developed with the HRD Manager, and approved by the OBC before they are implemented. This Policy only requires the GM level positions to develop furlough plans, which must be kept on file with HRD, with no requirement for OBC approval or HRD involvement. This is a policy call.
  - The Layoff Policy requires individual business units to develop Layoff SOPs “to meet their unique needs” provided that such SOPs must be at least as restrictive as Blue Book requirements. This Policy does not mention SOPs for individual business units. This is a policy call.
  - This Policy prohibits overtime and additional duty pay for employees from the same department/agency while another employee of that department/agency is

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departments to continue to provide a basic level of service.” It would be more reasonable to require monitoring and justification of overtime.

<sup>8</sup> **Larae Gower:** The Furlough Policy should not be approved until the issues of employee medical insurance are satisfactorily resolved. In addition, there is no reference made to ensure compliance with the Affordable Care Act. That Act may need to be reviewed and considered.

<sup>9</sup> **Larae Gower:** Furlough Procedures should be developed prior to the implementation of the furlough Policy to assist in avoiding passing a policy whose demands cannot be met. Mandatory training should be provided to all employees involved in developing and implementing Furlough Procedures.

furloughed. By comparison, the Layoff Policy prohibits departments with laid-off employees from hiring ET or LTE employees to replace them. This Policy is silent about hiring/using ET or LTE employees during a furlough – it states that temporary employees must be furloughed first, but does not address what happens after employees are furloughed.

- Like this Policy, the Layoff Policy applies to all employees. However, the Layoff Policy also states that employees whose salary is funded through external programs are subject to their respective program guidelines. This Policy does not address employees whose salary is funded through outside grants/funding; or whether/how they might be affected differently during a furlough. This is a policy call.
- 7-1 provides that employees do not have the right to appeal a furlough decision under any Tribal law/policy or the personnel grievance process. However, 4-9 says furloughs shall not be used for disciplinary reasons. As written, it may be difficult to enforce 4-9, because an employee could not appeal a furlough decision that the employee feels was used for disciplinary reasons.
- The definition of employee includes “political appointees” however that term is not defined. If this is intended to only refer to OBC assistants, it may help to clarify this, otherwise to identify what qualifies as a political appointee.
- This Policy states that temporary employees will be furloughed first. The term “temporary employee” is not defined in any Tribal law or policy. The Blue Book defines “Limited Term Employee<sup>10</sup>” and “Emergency Temp<sup>11</sup>” but it is not clear here which is intended by “temporary employee.”
  - By comparison – the Layoff Policy provides that Emergency Temporary employees (which it defines to include employees contracted for 90 days or less, interns, seasonal, and substitute relief workers) will be laid off first, then Limited Term Employees, then regular employees.
- 4-2 requires all GM-Level positions to “immediately carry out the furlough plans” for their departments/agencies, but the Policy does not state exactly what they are responsible for doing. 6-1 says that “upon notification from the appropriate [GM-Level] position that furloughs are necessary, a supervisor shall” identify those employees to be furloughed, notify them, and notify HRD. As such, it appears that the supervisors are the ones actually carrying out the furlough plans, so it may be more accurate to revise this provision to either state that the GM-Level positions will notify the supervisor, or to state that the Supervisors will immediately carry out the furlough plans.
- Under 4-8, employees are only ineligible for overtime during the same pay period that another employee from their area is furloughed; and for additional duty pay while an employee is furloughed. This would not prevent the furloughed employee from receiving overtime before or after the furlough period, and would not prevent other employees from receiving overtime or additional duty pay for doing the furloughed employee’s work

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10 PPP Addendum: “Limited Term: An employee who will be utilized for long term assignments over ninety (90) days, but no longer than two (2) years. A performance contract may be utilized in this position. A performance contract is used to establish specific goals and objectives that the employer wants accomplished in a specific time frame. The contract can be canceled according to the contract terms.”

11 PPP Addendum: “Emergency Temp: An employee who will be utilized for short term assignments; and the length of employment will not exceed (90) days.”



before or after the furlough. This is a policy call.

- It is not known if or how a full-time employee's status would be affected if the employee is furloughed for enough time to drop the employee down below the minimum required hours needed to maintain full-time employee status. For example, under new insurance plan changes, part-time and half-time employees working an average of 30+ hours a week in a "designated six-month timeframe" in 2015 will be eligible for medical, dental and vision insurance the following year. It is not clear what would happen if full-time employees are furloughed to the point where they drop below that 30+ hours a week. It may be beneficial to receive an analysis from HRD addressing how furlough affects full-time status and whether any benefits or eligibilities could or would be impacted in such a situation.

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## Furlough Policy

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### Article I. Purpose and Policy

1-1. *Purpose.* The purpose of this Policy is to enable the Tribe to implement a furlough as a tool to remedy an operating budget deficit.

1-2. *Policy.* This Policy shall apply to all employees of the Tribe.<sup>12</sup> To utilize a furlough, a decrease or lapse of revenue or funding and/or any other budget situation warranting an unpaid leave shall be identified.

### Article II. Adoption, Amendment, Repeal

2-1. This Policy was adopted by the Oneida Business Committee by resolution BC \_\_\_\_\_.

2-2. This Policy may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

2-3. Should a provision of this Policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policy which are considered to have legal force without the invalid portions.

2-4. In the event of a conflict between a provision of this Policy and a provision of another policy, the provisions of this Policy shall control.

2-5. This Policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### Article III. Definitions

3-1. This Article shall govern the definitions of words or phrases as used within this Policy. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Employee" shall mean any individual who is employed by the Tribe and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. "Employee" includes, but is not limited to, an individual employed by any program or enterprise of the Tribe and political appointees, but does not include elected or appointed officials, or individuals

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<sup>12</sup> **Wendy Alvarez:** Can regular contracted employees be placed on a Furlough (i.e GGM, Doctors, teachers)?



employed by a Tribally Chartered Corporation. For purposes of this Law, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.

(b) “Furlough” shall mean a temporary, unpaid leave from work for a specified period of time.

(c) “General Manager Level position” shall mean the highest level in the chain of command under the Oneida Business Committee and who is responsible for a Tribal Department and/or Division.

(d) “Supervisor” shall mean a person who directly oversees the work and performance of an employee on a daily basis.

(e) “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.

#### Article IV. Furlough

4-1. *Furlough Resolution.* If the Oneida Business Committee has identified the necessity for a furlough, a directive by resolution shall be given to the appropriate General Manager Level positions.<sup>1314</sup> The resolution shall direct the beginning and ending dates of the furlough.

4-2. *Implementation of Furlough Plans.* Upon the passage of a resolution directing that a furlough be implemented, all General Manager Level positions shall immediately carry out the furlough plans for his or her respective departments or agencies. An employee shall be furloughed on days that the employee is normally scheduled to work or on holidays recognized by the Tribe, whether the employee is normally scheduled to work or not.

4-3. *Notice.* A supervisor shall give an employee notice at least five (5) business days prior to a furlough being implemented for his or her position.<sup>15161718</sup>

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<sup>13</sup> **Rae Skenandore (oral comment):** (Please note, microphones were not used during the public meeting, so most of the oral comments do not have a name attached and were created based on a compilation of the notes taken at the meeting) Rae’s comments were with regards to: What’s the criteria to be used to implement the policy? Who decides that? Nothing in here gives us reasons why they would implement this. When does a situation call for a furlough. What financial reduction in Revenue will justify furloughs? 10%, 20% etc?]

**Brandon Stevens:** Okay, yeah, the Finance would recommend and then the BC would approve, and so that sounds like something that maybe the Finance, or -probably the Treasurer’s Office would recommend maybe providing, those steps you’re wanting to take, you know, if it’s all travel, is done first; all discretionary funds, or expenditures go away first. Those types of things are what you’re looking for, correct? A list of.. ‘this is what we do first, this is what we do last’ type thing – at least a general feel of how that goes, a schedule of how we...

<sup>14</sup> **Rae Skenandore (oral comment):** My comment is more about what financial conditions trigger a furlough.

**Brandon Stevens:** Okay, gotcha.

(inaudible – microphones were not used.)

**Brandon Stevens:** Okay, yeah, that’s an excellent suggestion, that’s more of a communication with the Treasurer’s office and how we carry that out. So that’s basically the process and we’re going to take this one a little slow. There’s other laws and policies we just give your comments, push it through if there’s no comments, but clearly there’s an interest in the furlough policy, and that’s understandable. So we’ll take it slow and try to communicate as much as we can to the organization, managers and employees about this policy, welcome any comments within that time.

<sup>15</sup> **Wendy Alvarez:** Supervisors must give employees at least five business days’ notice...(too short, 30 is more reasonable especially if benefits will be affected). Maybe a staggered notice (one day furlough = one week notice, two day furlough – two week notice)

<sup>16</sup> **Unknown (oral comment):** The comment was with regards to section 4-3 which says the supervisor must notify the employee at least 5 business days prior to being placed on furlough. The commenter doesn’t feel this isn’t enough time. The employee has to figure out the payroll deduction, apply for assistance, etc. Plus what happens if the furlough occurs during December and Christmas time. The employee needs more than 5 business days to figure stuff out. Most companies have a 30 day outlook prior to placing an employee on furlough. Suggest a 30 day

209 4-4. *Continuous Service.* A furlough shall not constitute a break in continuous service.  
210 Employees shall not perform any work for the Tribe while furloughed. This includes responding  
211 to work-related e-mail and voice mail, as well as traveling on behalf of the Tribe.

212 4-5. *Unemployment.* Eligibility for unemployment insurance benefits is determined by the State  
213 of Wisconsin. Furloughed employees shall be responsible for contacting the State of Wisconsin  
214 Department of Workforce Development to determine if they qualify for unemployment insurance  
215 benefits.

216 4-6. *Payroll Deductions.* An employee on furlough shall work with his or her supervisor, the  
217 Accounting Department and any other necessary departments and agencies to determine which  
218 previously authorized optional payroll deductions will continue to be deducted during the  
219 furlough period.<sup>19</sup> Any deductions discontinued during a furlough shall be the responsibility of

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notice, not a 5 business day notice.

**Brandon Stevens:** Trying to think how mine would go. If I were to get furloughed. I know the bank would do it immediately; it's just depending ... the separate agencies you are talking about, correct? Okay. Well, I don't know... it'd seem like, I guess the answer only is, is we can look at that and see if we can look at, maybe we can look at some of those possible situations that would arise and maybe we could look at extending that period a little longer or see how we could fix that, if indeed it is an issue. Five days does seem like a quick turnaround for an employee. I would say, for an employee. Yeah. We'll come back to that answer, we'll try to answer that for you, for everyone.

<sup>17</sup> **Unknown (oral comment):** The comment was that a 30 day notice would be better. This is not a friendly policy.

**Brandon Stevens:** Yeah I know I would love a thirty day notice, I guess the way we budget... we're a week-to-week. We're living by week-to-week. A drop comes in I think on Sunday, and we're almost paying right out from that. And like you said, December and January are our worst times of the year, as far as revenue. So we're getting there where we actually have those funds there. We do have the line of credit, those are the things we look at, instead of having the cash outlay from the drop in gaming; we always look at utilizing the line of credit in case of those. Like I said this is a last ditch thing we would ever do, we have a lot of options before this.

<sup>18</sup> **Unknown (oral comment):** "one thing to take into consideration that we could incorporate in the policy is a timetable whether it be a one day furlough, three day furlough, week furlough, two week furlough ... because depending on how long we need to take off..." [From LRO notes: Include a timetable that specifies if a furlough lasts a couple of hours, 1 day, 1 week, 2 weeks etc and maybe have different notice requirements for the different lengths of furloughs. An employee may need a longer notice for furloughs that last a couple weeks but if a furlough lasts a few hours then the 5 business day notice is sufficient. If we include a time table, that would be helpful.

**Brandon Stevens:** Okay, that makes sense, because Finance will tell us... they'll give us a number on what we're short and how long we expect to be in that mode. So that definitely makes sense on how we could look towards to give more of an expectation of a timeline for our employees to plan. So we'll definitely take a look at that, level of... you know, if it's \$2 million we're down, \$3 million, four, five, ten, or so on and so forth, we can look at how long we plan to utilize a furlough policy or other options instead.

<sup>19</sup> **Unknown (oral comment):** Comment regarding: Line 52 (4-6) says the supervisor will help with payroll deductions but as a supervisor I don't know much about payroll deductions. Wouldn't it be better if they worked with someone who does?]

**Brandon Stevens:** Yeah, cause there's a lot of different deductions that employees have, in and outside of the organization.

(inaudible – microphones were not used.)

**Brandon Stevens:** Okay, any necessary entities to determine which payroll deductions will continue during the furlough.

(inaudible – microphones were not used.)

**Brandon Stevens:** Okay, we can look at that. It looks like it's addressed in the next line, but we'll look at that to see if that really needs to be in there. Just 'employee work with whomever.'

Okay, if there's no other questions, the next steps is: we'll take all the considerations here today, take them back to the LRO and they'll look at any major policy decisions or changes that would warrant a possible another analysis, maybe a possible another public hearing. This is a big policy, people are going to be a little alarmed at it seeing that it's coming, so we're gonna want to be very careful about the implementation of a furlough; and

the employee.

4-7. *Benefits.* Employees shall not use or accrue personal or vacation time when on furlough. Employees shall continue to receive other benefits during a furlough in the same manner as an employee on an unpaid leave of absence receives benefits.

4-8. *Overtime and Additional Duty Pay.* When a furlough is implemented in a department or agency, no employee in that department or agency shall be eligible for:

(a) overtime during the same pay period that another employee from the same department or agency is on furlough; or

(b) additional duty pay for performing duties for other employees in his or her department or agency who are on furlough.

4-9. *Discipline.* Furloughs shall not be used for disciplinary reasons.

4-10. *Back Pay.* Employees on furlough shall not be eligible for back pay awards upon return to work.

## Article V. Furlough Plans

5-1. *Furlough Plans.* The General Manager Level positions shall develop furlough plans for their respective departments and agencies.<sup>2021</sup>

5-2. The furlough plans shall set forth how each department or agency intends to implement a furlough. The plan shall include, but not be limited to, the following:

(a) an explanation of how employees will be selected;

(1) Temporary employees shall be furloughed first, followed by employees who volunteer to be furloughed. All other employees shall then be eligible to be furloughed.

(b) a tentative schedule for a furlough;

(1) Furloughs shall be scheduled in a way that allows the departments to continue to provide a basic level of service.

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the adoption of a furlough policy, just to alleviate any unnecessary concern from the employee base. And the next process would be, if there's no major changes – and some of these suggestions are excellent suggestions; they wouldn't change the policy direction in any way; they're just additions that we could add in the policy so it wouldn't seem like we would need another public meeting on this. So the LOC would come up and we would review the changes, and if we hear anything from then on from any other management, employees, that might be considerations, they have ten days to submit testimony from this date. And any changes that you might want to see in the policy. And from there, the LOC will look at, and then adopt or pass it, and forward it to the Business Committee for their consideration, so the Business Committee will also take a look at it and see if they like it, maybe have revisions or changes. It happens. It doesn't happen too often.

<sup>20</sup> **Wendy Alvarez:** 5-1 Request that the General Manager level designate critical positions for their areas within their plan to be exempt to ensure business needs are met for customers and services, especially for revenue generating entities, health and safety.

<sup>21</sup> **Pat Pelky (oral comment):** Pat was questioning whether it is possible for the employee be a part of the GM level furlough plan. He expressed the desire to work with the employees and see if a plan can be developed with employee input. These plans could allow an employee to volunteer or be put on a rotating furlough. Are we looking for consistency in these plans? Afraid that there will be different types of furlough plans across the organization.

**Brandon Stevens:** OK. Yeah, we'll look at that five days; to be honest; the general intent of this furlough policy is one of those times we're not making payroll. And so those immediate expenses, I guess that's why the shortened timeline is there. They came close maybe twice over the last six years, that we came close to not making payroll. And those are the types of situations that we're really talking about, where there's a finite time period of a furlough, to alleviate the budget deficit. It's like the worst case scenario. And the worst case scenario is also making our employees pay for it. We'll definitely look at that five day notice, and probably talk with the Treasurer's office, Finance, to see if there's consideration of extending that time out.

- (c) the estimated number of employees affected; and  
(d) a summary of how the furlough will relieve budgetary shortfalls.  
5-3. All furlough plans shall be kept on file with the Human Resources Department.

## Article VI. Supervisor Responsibilities

6-1. Upon notification from the appropriate General Manager Level position that furloughs are necessary, a supervisor shall:

- (a) Identify those employees who will be furloughed.
- (b) Notify those employees that they will be furloughed and their furlough dates;
- (c) Notify the Human Resources Department of the chosen employees and their furlough dates.

## Article VII. Appeal

7-1. *Right to Appeal.* An employee who has been furloughed does not have the right to appeal such a decision under any Tribal law, policy or the personnel grievance process.

End.<sup>222324252627</sup>

<sup>22</sup> **Wendy Alvarez:** Emergency Temporary and Limited Term employees may be hired to replace furlough employees? The policy should state if they can or cannot hire in place of furloughed employees. This will need to be clear.

<sup>23</sup> **Wendy Alvarez:** Should there be a list of areas that would be furloughed first or last based on the Nations priorities? Example 1<sup>st</sup> Non-profit making entities 2<sup>nd</sup> services that may be absorbed by other areas (or reorganized.

<sup>24</sup> **Wendy Alvarez:** Furlough can mean one day off per week and still = a full time employee without loss of most benefits. This is not clear in the policy . As long as an employee works 30 hours per week they are full time.

<sup>25</sup> **Barb Kolitsch:** Below are some ideas that the HRD Training staff developed during the emergency Furlough policy. As you can see, the first thing we suggested was non-furlough options, second was voluntary furloughs and then finally we had involuntary furloughs (which was not included in this document because the current draft criteria was changed.)

**Non-Furlough Options – Policy suggestion: add non-furlough options to the policy, similar to layoffs, eliminate emergency temp employees first, ask for volunteers, etc. So my suggestion would be that when the areas develop their plan, they identify first non-furlough options, then volunteer, and finally involuntary furloughs.**

- 1.1 General Manager Level positions will identify essential positions within their area, not subject to non-furlough options. NOTE: If you require this in the policy, then employees may be less apt to accuse a manager of hand-selecting employees based on performance or using furlough as a discipline.

- 1.1.1 All non-essential positions may be subject non-furlough options.

- 1.2 General Manager positions or delegates may choose from any of the following (or combination of) to meet the payroll goal:

Voluntary choices:

- 1.2.1 Time off without pay/reduced work schedule (available to regular status and temporary employees) Some people would like to work less hours: parents of young children, employees who would like to reduce hours due to health or other life priorities, etc.

- 1.2.2 Layoff(s)

- 1.2.3 Leave of absence(s) Maybe an employee has been contemplating time off to start a business, or optional surgery, etc.

- 1.2.4 Attrition (not filling open positions)

Involuntary choices:

- 1.2.5 Ending temporary employee contracts (emergency temp, limited term, etc.)

- 1.2.6 Time off without pay/reduced work schedule (available to regular status and temporary employees)

- 1.2.7 Elimination of paid parental time (can still use vacation/personal, time off without pay, or

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264 Emergency Adoption – BC-10-15-13-A  
265 Emergency Adoption Extension BC-04-09-14-D

adjust the work schedule/flex time) for educationally sanctioned school functions. The Gaming Division already requires employees to use flex, personal, vacation or time without pay for Parental Time. Other Divisions could do the same when the financial situation requires adjustment.

#### Furlough Options

- 1.3 Furlough options shall be considered if the payroll goal has not been met by implementing non-furlough options.
- 1.4 General Manager Level positions will identify essential positions within their area, not subject to furlough.
  - 1.4.1 All non-essential positions may be subject furlough options.
- 1.5 General Manager positions or delegates may choose from any of the following (or combination of) to meet the payroll goal:
  - 1.5.1 Voluntary furlough(s)
    - 1.5.1.1 Full-schedule furlough (full work week)
    - 1.5.1.2 Less than full-schedule furlough (less than full work week)
  - 1.5.2 Involuntary furlough(s)
    - 1.5.2.1 Full-schedule furlough (full work week)
    - 1.5.2.2 Less than full-schedule furlough (less than full work week)

## **2.0 PROCEDURES**

### **First - Selection criteria for voluntary furlough and non-furlough options**

- 2.1 Determine what voluntary option(s) you will offer to non-essential positions based on business needs.
- 2.2 Offer voluntary option(s) to employees in non-essential positions.
  - 2.2.1 Give employees Options Matrix so they can understand the implications of their decision.
- 2.3 Determine which employee(s) in the identified non-essential positions will be allowed to take a voluntary option(s).
- 2.4 Submit payroll reduction plan to the Finance Office for approval prior to implementing the option(s) if payroll goal is met. If not, go to second options below.
- 2.5 Notify employee(s) of the approval of their voluntary option(s) choice(s).

If not enough employees volunteer to meet the payroll goal, use involuntary non-furlough options.

<sup>26</sup> **Unknown (oral comment):** *When an employee is on furlough, are they allowed to work at other jobs outside of the Tribe.]*

**Brandon Stevens:** I don't think; yeah, I don't think we have any control over that, so I would say... yeah?

There's nothing in here that would prohibit, so I would... I'm just thinking of situations that may arise out of it...

<sup>27</sup> **Brandon Stevens:** Okay, so the few things that I got is the five day... looking at the five day window of notice to the employees, whether or not that's fair or feasible for an employee to do the deductions and so on and so forth; and the management plan – it's a little tight, as well as the 5 day plan, to carry out, to do bigger plans, to extend the furlough out maybe longer, have people volunteer... we'll look at that, but generally what we're trying to say we want the management to take the initiative to develop those plans on how they're going to alleviate their budget, so along the lines of what you're saying, that's what we really want. And moving to as long a notice as we possibly could, you know, a 30 day notice was kind of the guideline there. And maybe a policy statement basically saying that this is utilized as one of the last options, for comfort, and then a timetable, for scheduling at certain levels so that employees would know how long they may be expected to be on furlough so they can better plan, and then the levels of budget reduction methods we've been using, kind of a general rule.

**Legislative Reference Office**

P.O. Box 365  
Oneida, WI 54155  
(920) 869-4375  
(800) 236-2214

**Committee Members**

Brandon Stevens, Chairperson  
Tehassi Hill, Vice Chairperson  
Fawn Billie, Councilmember  
Jennifer Webster, Councilmember

**LEGISLATIVE OPERATING COMMITTEE**

Public Meeting on Furlough Policy and Rules of Appellate Procedure  
Business Committee Conference Room-2<sup>nd</sup> Floor  
Norbert Hill Center  
February 5, 2015 12:15 p.m.

**PRESENT:** Brandon Stevens, Tehassi Hill, Fawn Billie, Lynn Franzmeier, Tani Thurner, Candice Skenandore, Layatalati Hill, Frank Cornelius, Ruth Montano, Cherice Santiago, Carol Chosa, Lynn Wautier, Matt J Denny Sr., Pat Pelky, Pearl Webster, Laurie Gaver, Paul Stenzel, Rae Skenandore, Layatalati Hill, Tim Skenandore

*(The Rules of Appellate Procedure portion of the transcript removed)*

**Furlough Policy Public Meeting (04:00-32:04)**

**Tehassi Hill:** The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would adopt a Furlough Policy to enable the Tribe to implement furloughs to correct an operating budget deficit by: granting the Oneida Business Committee the ability to authorize a furlough period through resolution; require General Manager-level positions to develop furlough plans for their areas; and prohibit furloughs from being used for disciplinary reasons. All the same information as I just read previously, about where to submit your comments to, and how to access the information; so at this point we'll look to the community for any input or comments on this particular topic of the Furlough Policy.

**Fawn Billie:** Okay, so I'll just talk about the Furlough Policy; this was just brought to our attention just before Budget. And one of the things was that the Furlough Policy in the past was just a temporary order, so now we just made it permanent. So it's just a permanent policy now.

**Brandon Stevens:** Do we have a sign in sheet? No one signed in to talk? Well, seeing as nobody wants to talk, I'll go through the new changes of the provisions. First is, the furlough shall not be used as disciplinary reason; supervisors must give employees at least five business days noticing before implementing a furlough for that employee's position; this appears to mean the employee must be notified at least five days before the first day of his or her furloughed time off. The OBC resolution must include furlough start and end dates; once the OBC adopts a resolution directing a furlough all GM level positions must immediately carry out the furlough plans for their department agencies. Employees cannot travel on behalf of the Tribe while on furlough. GM level positions must develop furlough plans setting forth on how their respective departments and agencies intend to implement a furlough. Furloughs must be scheduled in a way that allows the departments to continue to provide a basic level of service. These plans must be kept on file with HRD. A furlough



plan must include: an explanation of how employees will be selected; a tentative schedule for a furlough; the estimated number of employees affected; a summary of how the furlough will relieve budget shortfalls. While furloughed, employees do not accrue vacation or personal time, but otherwise continue to receive benefits as if they were on an unpaid leave of absence. The following chart, if you've got the copy in the back, outlines the years of service and accrual rates for which an employee accrues vacation or personal time. Expanded or changed provisions - the expired policy specifically stated that the Tribe shall not deny a request for unemployment compensation due to furloughs, but the proposed Policy does not. Instead of requiring all miscellaneous payroll deductions to stop during a furlough, the new Policy requires employees to work with their supervisor and any necessary entities to determine which payroll deductions will continue during the furlough - any discontinued payroll deductions are the employee's responsibility. Unlike the expired policy, this proposal does not require that Indian Preference be used, if available, to determine which employees which would be furloughed. Instead of stating that furloughed employees "shall not be separated from the Tribe" the proposed states that a furlough shall not constitute a break in continuous service. The expired policy stated that no overtime and/or additional duty pay can be provided as a result of a furlough. The proposed policy instead provides that employees are ineligible for overtime during any pay period where another employee from the same department/agency is furloughed. Employees cannot receive additional duty pay for performing duties for furloughed employees from the same department/agencies. And so, this isn't to alarm anyone or the employee base or anything; this is just a tool for, you know, if we get into a tight spot; and this will definitely be fully communicated with the community and the organization; probably from the Treasurer's office and the Business Committee. We'll have to adopt a resolution, and like every other time, we go through a whole list of options before we even think about implementing a furlough. This is just a standard policy that we're just moving forward, just to have on the books, so when and if we need to utilize it, we have it. And again, I just don't want to alarm anyone; let everyone know we're not thinking about it. We're just having it on the books. So basically that's just a rundown of the new provisions that are in the proposed Furlough Policy. If there's any questions, we could have a discussion, you don't have to submit testimony, this is more of an open meeting; we changed from a public hearing, which was formal - you get up, read and we just kind of sit and listen to you and shake our heads and now it's a public meeting where we can just talk about any possible directions, any concerns. This is your opportunity to talk with the LOC; and possibly give some input, maybe some understanding as well.

*(11:32 – 12:30) (inaudible – microphones were not used.) [The comment was with regards to section 4-3 which says the supervisor must notify the employee at least 5 business days prior to being placed on furlough. The commenter doesn't feel this isn't enough time. The employee has to figure out the payroll deduction, apply for assistance, etc. Plus what happens if the furlough occurs during December and Christmas time. The employee needs more than 5 business days to figure stuff out. Most companies have a 30 day outlook prior to placing an employee on furlough. Suggest a 30 day notice, not a 5 business day notice.]*

**Brandon Stevens:** Trying to think how mine would go. If I were to get furloughed. I know the bank would do it immediately; it's just depending ... the separate agencies you are talking about, correct? Okay. Well, I don't know... it'd seem like, I guess the answer only is, is we can look at that and see if we can look at, maybe we can look at some of those possible situations that would arise and maybe we could look at extending that period a little longer or see how we could fix that, if indeed it

is an issue. Five days does seem like a quick turnaround for an employee. I would say, for an employee. Yeah. We'll come back to that answer, we'll try to answer that for you, for everyone. Pat?

*(13:45 -15:30) (inaudible – microphones were not used.) [Pat Pelky was questioning whether it is possible for the employee be a part of the GM level furlough plan. He expressed the desire to work with the employees and see if a plan can be developed with employee input. These plans could allow an employee to volunteer or be put on a rotating furlough. Are we looking for consistency in these plans? Afraid that there will be different types of furlough plans across the organization.]*

**Brandon Stevens:** OK. Yeah, we'll look at that five days; to be honest; the general intent of this furlough policy is one of those times we're not making payroll. And so those immediate expenses, I guess that's why the shortened timeline is there. They came close maybe twice over the last six years, that we came close to not making payroll. And those are the types of situations that we're really talking about, where there's a finite time period of a furlough, to alleviate the budget deficit. It's like the worst case scenario. And the worst case scenario is also making our employees pay for it. We'll definitely look at that five day notice, and probably talk with the Treasurer's office, Finance, to see if there's consideration of extending that time out.

*(16:40-18:12) (inaudible – microphones were not used.) [The comment was that a 30- day notice would be better. This is not a friendly policy.]*

**Brandon Stevens:** Yeah I know I would love a thirty day notice, I guess the way we budget... we're a week-to-week. We're living by week-to-week. A drop comes in I think on Sunday, and we're almost paying right out from that. And like you said, December and January are our worst times of the year, as far as revenue. So we're getting there where we actually have those funds there. We do have the line of credit, those are the things we look at, instead of having the cash outlay from the drop in gaming; we always look at utilizing the line of credit in case of those. Like I said this is a last ditch thing we would ever do, we have a lot of options before this.

*(19:08-19:38) (inaudible – microphones were not used.)*

**Brandon Stevens:** Tim first.

*(19:40-20:40)(inaudible – microphones were not used.) ... “one thing to take into consideration that we could incorporate in the policy is a timetable whether it be a one day furlough, three day furlough, week furlough, two week furlough ... because depending on how long we need to take off...” [From LRO notes: Include a timetable that specifies if a furlough lasts a couple of hours, 1 day, 1 week, 2 weeks etc and maybe have different notice requirements for the different lengths of furloughs. An employee may need a longer notice for furloughs that last a couple weeks but if a furlough lasts a few hours then the 5 business day notice is sufficient. If we include a time table, that would be helpful.]*

**Brandon Stevens:** Okay, that makes sense, because Finance will tell us... they'll give us a number on what we're short and how long we expect to be in that mode. So that definitely makes sense on how we could look towards to give more of an expectation of a timeline for our employees to plan. So we'll definitely take a look at that, level of... you know, if it's \$2 million



we're down, \$3 million, four, five, ten, or so on and so forth, we can look at how long we plan to utilize a furlough policy or other options instead. Rae?

*(21:18-21:49) (inaudible – microphones were not used.) [Rae Skenandore: What's the criteria to be used to implement the policy? Who decides that? Nothing in here gives us reasons why they would implement this. When does a situation call for a furlough. What financial reduction in Revenue will justify furloughs? 10%, 20% etc?]*

**Brandon Stevens:** Okay, yeah, the Finance would recommend and then the BC would approve, and so that sounds like something that maybe the Finance, or -probably the Treasurer's Office would recommend maybe providing, those steps you're wanting to take, you know, if it's all travel, is done first; all discretionary funds, or expenditures go away first. Those types of things are what you're looking for, correct? A list of.. 'this is what we do first, this is what we do last' type thing – at least a general feel of how that goes, a schedule of how we...

*(22:40-22:50) (inaudible – microphones were not used.)*

**Brandon Stevens:** All right – any other questions? Any other concerns?

*(22:53-23:03) (inaudible – microphones were not used.) [When an employee is on furlough, are they allowed to work at other jobs outside of the Tribe.]*

**Brandon Stevens:** I don't think; yeah, I don't think we have any control over that, so I would say... yeah? There's nothing in here that would prohibit, so I would... I'm just thinking of situations that may arise out of it...

*(23:25 – 23:34) (inaudible – microphones were not used.)*

**Brandon Stevens:** We can definitely look at that, if it needs to be clear, if it needs to be definitely stated, but nothing's in here that prohibits that from happening.

*(23:43-23:55) (inaudible – microphones were not used.)*

**Brandon Stevens:** Okay, so the few things that I got is the five day... looking at the five day window of notice to the employees, whether or not that's fair or feasible for an employee to do the deductions and so on and so forth; and the management plan – it's a little tight, as well as the 5 day plan, to carry out, to do bigger plans, to extend the furlough out maybe longer, have people volunteer... we'll look at that, but generally what we're trying to say we want the management to take the initiative to develop those plans on how they're going to alleviate their budget, so along the lines of what you're saying, that's what we really want. And moving to as long a notice as we possibly could, you know, a 30 day notice was kind of the guideline there. And maybe a policy statement basically saying that this is utilized as one of the last options, for comfort, and then a timetable, for scheduling at certain levels so that employees would know how long they may be expected to be on furlough so they can better plan, and then the levels of budget reduction methods we've been using, kind of a general rule.

(25:23-25:54) *(inaudible – microphones were not used.) [Comment regarding: Line 52 (4-6) says the supervisor will help with payroll deductions but as a supervisor I don't know much about payroll deductions. Wouldn't it be better if they worked with someone who does?]*

**Brandon Stevens:** Yeah, cause there's a lot of different deductions that employees have, in and outside of the organization.

(26:01-26:13) *(inaudible – microphones were not used.)*

**Brandon Stevens:** Okay, any necessary entities to determine which payroll deductions will continue during the furlough.

(26:20-26:26) *(inaudible – microphones were not used.)*

**Brandon Stevens:** Okay, we can look at that. It looks like it's addressed in the next line, but we'll look at that to see if that really needs to be in there. Just 'employee work with whomever.' Okay, if there's no other questions, the next steps is: we'll take all the considerations here today, take them back to the LRO and they'll look at any major policy decisions or changes that would warrant a possible another analysis, maybe a possible another public hearing. This is a big policy, people are going to be a little alarmed at it seeing that it's coming, so we're gonna want to be very careful about the implementation of a furlough; and the adoption of a furlough policy, just to alleviate any unnecessary concern from the employee base. And the next process would be, if there's no major changes – and some of these suggestions are excellent suggestions; they wouldn't change the policy direction in any way; they're just additions that we could add in the policy so it wouldn't seem like we would need another public meeting on this. So the LOC would come up and we would review the changes, and if we hear anything from then on from any other management, employees, that might be considerations, they have ten days to submit testimony from this date. And any changes that you might want to see in the policy. And from there, the LOC will look at, and then adopt or pass it, and forward it to the Business Committee for their consideration, so the Business Committee will also take a look at it and see if they like it, maybe have revisions or changes. It happens. It doesn't happen too often.

(28:44-28:57) *(inaudible – microphones were not used.)*

**Brandon Stevens:** Yeah, the public hearing purpose is for that, but Fawn is the sponsor for that. And when we do the review of the analysis again, that's kind of another kick at the cat as we're looking at the comments and suggestions, for any employees and supervisors that come in, we have additional suggestions, things we missed or things that may come up, since then. We don't, we try and keep within the ten day testimony period, but that's generally what happens, but we don't prohibit anyone from coming up... especially with a policy like this. Rae?

(29:48-30:22) *(inaudible – microphones were not used.) [Rae Skenandore: My comment is more about what financial conditions trigger a furlough.]*

**Brandon Stevens:** Okay, gotcha.

(30:25-30:38) *(inaudible – microphones were not used.)*

**Brandon Stevens:** Okay, yeah, that's an excellent suggestion, that's more of a communication with the Treasurer's office and how we carry that out. So that's basically the process and we're going to take this one a little slow. There's other laws and policies we just give your comments, push it through if there's no comments, but clearly there's an interest in the furlough policy, and that's understandable. So we'll take it slow and try to communicate as much as we can to the organization, managers and employees about this policy, welcome any comments within that time. So if there's no other comments or concerns, I think we can close the public meeting at 12:46 and just reiterate Fawn is the sponsor and you can also approach any one of us about it. We'll definitely listen to concerns. Thank you for coming.

-End of meeting-

## Public Meeting – Furlough Policy

Can regular contracted employees be placed on a Furlough (i.e GGM, Doctors, teachers)?

Supervisors must give employees at least five business days' notice ... (too short, 30nis more reasonable especially if benefits will be affected). Maybe a staggered notice (one day furlough=one week notice, two day furlough-two week notice)

5-1 Request that the General Manager level designate critical positions for their areas within their plan to be exempt to ensure business needs are met for customers and services, especially for revenue generating entities, health and safety.

Emergency Temporary and Limited Term employees may be hired to replace furlough employees? The policy should state if they can or cannot hire in place of furloughed employees. This will need to be clear.

Should there be a list of areas that would be furloughed first or last based on the Nations priorities?  
Example: 1<sup>st</sup> Non-profit making entities 2<sup>nd</sup> services that may be absorbed by other areas (or reorganized.

Furlough can mean one day off per week and still = a full time employee without loss of most benefits. This is not clear in the policy. As long as an employee works 30 hours per week they are full time.

Respectfully submitted,

Thank you

*Wendy Alvarez*

*February 13, 2015*

**Lynn A. Franzmeier**

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**From:** Larae A. Gower  
**Sent:** Thursday, February 12, 2015 3:41 PM  
**To:** LOC  
**Subject:** Furlough Policy Comments  
**Attachments:** Furlough Policy Comment.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Please see the attached comments submitted for the Furlough Policy.

Larae Gower  
Employee Services Assistant Director  
Oneida Casino  
(920) 429-3045  
[lgower@oneidanation.org](mailto:lgower@oneidanation.org)

*The information contained in this e-mail is confidential and privileged. If you are not the intended recipient, please be advised that any use, copying, or dissemination of this information is prohibited. Please destroy this e-mail and immediately notify us of the erroneous transmission.*

## Furlough Policy Comments

Line/s	Comment
7	Define political appointees-give examples
9	Define political officials-give examples
27	How much notice does the Oneida Business Committee have to give to management that a furlough is coming? This only determines the amount of time the supervisor has to give notice to the employees.
30	Furlough should not extend more than 3 months and cannot occur more than twice per calendar year.
33	All travel should be cease if a furlough is necessary, for all employees, political appointees, political officials and Oneida Business Committee members unless preapproved and deemed as absolutely necessary. Substitute technology such as
49-50	The Oneida Tribe of Indians of Wisconsin will not contest employees filing for Unemployment Compensation with the State of Wisconsin.
52	Employees should work with Central Accounting Payroll and Human Resources regarding their payroll deductions.
61	Overtime is always a necessary consideration when dealing with external customers. The no overtime requirement conflicts with lines 35-36 that states "Furloughs must be scheduled in a way that allows the departments to continue to provide a basic level of service." It would be more reasonable to require monitoring and justification of overtime.
71-82	The Furlough Policy should not be approved until the issues of employee medical insurance are satisfactorily resolved. In addition, there is no reference made to ensure compliance with the Affordable Care Act. That Act may need to be reviewed and considered.
79-82	Furlough Procedures should be developed prior to the implementation of the furlough Policy to assist in avoiding passing a policy whose demands cannot be met. Mandatory training should be provided to all employees involved in developing and implementing Furlough Procedures.

**Lynn A. Franzmeier**

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**From:** Barbara A. Kolitsch  
**Sent:** Wednesday, February 11, 2015 8:17 AM  
**To:** LOC  
**Cc:** Geraldine R. Danforth; Matthew J. Denny  
**Subject:** Furlough public comments Feb 2015  
**Attachments:** Furlough public comments Feb 2015.docx

Attached are some considerations for the Furlough policy.

Overall the policy has improved, however, I feel that the organization should be **required to implement non-furlough options prior to involuntary furloughs**. There are always employees who are able to cut hours, do optional surgery, etc. And allowing this to meet a payroll reduction goal will allow other employees who struggle week-to-week feeding their families the ability to maintain hours.

If it's not in the policy, it's not likely the supervisors will seek non-furlough options prior to involuntary furloughs because it's not safe to do so.

Please feel free to contact me if you have any questions, or would like me to attend a meeting. Thank you!

*"Happiness cannot be traveled to, owned, earned, worn, or consumed. Happiness is the spiritual experience of living every minute with love, grace, and attitude." - Denis Waitley*

*Barb Kolitsch, Professional in Human Resources  
Training and Development Director  
Human Resource Department  
920-490-3649*

*Training Team Phone: 490-3620*



# Oneida Human Resources Department

To: LOC  
 From: Barb Kolitsch, Training and Development Director  
 Date: February 11, 2015  
 Re: Furlough policy

Below are some ideas that the HRD Training staff developed during the emergency Furlough policy. As you can see, the first thing we suggested was non-furlough options, second was voluntary furloughs and then finally we had involuntary furloughs (which was not included in this document because the current draft criteria was changed.)

**Non-Furlough Options – Policy suggestion: add non-furlough options to the policy, similar to layoffs, eliminate emergency temp employees first, ask for volunteers, etc. So my suggestion would be that when the areas develop their plan, they identify first non-furlough options, then volunteer, and finally involuntary furloughs.**

- 1.1 General Manager Level positions will identify essential positions within their area, not subject to non-furlough options. NOTE: If you require this in the policy, then employees may be less apt to accuse a manager of hand-selecting employees based on performance or using furlough as a discipline.
  - 1.1.1 All non-essential positions may be subject non-furlough options.
- 1.2 General Manager positions or delegates may choose from any of the following (or combination of) to meet the payroll goal:  
 Voluntary choices:
  - 1.2.1 Time off without pay/reduced work schedule (available to regular status and temporary employees) Some people would like to work less hours: parents of young children, employees who would like to reduce hours due to health or other life priorities, etc.
  - 1.2.2 Layoff(s)
  - 1.2.3 Leave of absence(s) Maybe an employee has been contemplating time off to start a business, or optional surgery, etc.
  - 1.2.4 Attrition (not filling open positions)
 Involuntary choices:
  - 1.2.5 Ending temporary employee contracts (emergency temp, limited term, etc.)
  - 1.2.6 Time off without pay/reduced work schedule (available to regular status and temporary employees)
  - 1.2.7 Elimination of paid parental time (can still use vacation/personal, time off without pay, or adjust the work schedule/flex time) for educationally sanctioned school functions. The Gaming Division already requires employees to use flex, personal, vacation or time without pay for Parental Time. Other Divisions could do the same when the financial situation



requires adjustment.

### Furlough Options

- 1.3 Furlough options shall be considered if the payroll goal has not been met by implementing non-furlough options.
- 1.4 General Manager Level positions will identify essential positions within their area, not subject to furlough.
  - 1.4.1 All non-essential positions may be subject furlough options.
- 1.5 General Manager positions or delegates may choose from any of the following (or combination of) to meet the payroll goal:
  - 1.5.1 Voluntary furlough(s)
    - 1.5.1.1 Full-schedule furlough (full work week)
    - 1.5.1.2 Less than full-schedule furlough (less than full work week)
  - 1.5.2 Involuntary furlough(s)
    - 1.5.2.1 Full-schedule furlough (full work week)
    - 1.5.2.2 Less than full-schedule furlough (less than full work week)

## **2.0 PROCEDURES**

### **First - Selection criteria for voluntary furlough and non-furlough options**

- 2.1 Determine what voluntary option(s) you will offer to non-essential positions based on business needs.
- 2.2 Offer voluntary option(s) to employees in non-essential positions.
  - 2.2.1 Give employees Options Matrix so they can understand the implications of their decision.
- 2.3 Determine which employee(s) in the identified non-essential positions will be allowed to take a voluntary option(s).
- 2.4 Submit payroll reduction plan to the Finance Office for approval prior to implementing the option(s) if payroll goal is met. If not, go to second options below.
- 2.5 Notify employee(s) of the approval of their voluntary option(s) choice(s).
- 2.6 If not enough employees volunteer to meet the payroll goal, use involuntary non-furlough options.

# Legislative Operating Committee



## Agenda Request Form

- 1) Request Date: 02/20/15
- 2) Contact Person(s): Lynn Franzmeier Dept: LRO  
Phone Number: x4417 Email: lfranzme@oneidanation.org
- 3) Agenda Title: Real Property Law Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
The Leasing Law will be considered for public meeting soon and amendments to the  
Real Property Law's section regarding leasing Tribal land needs to be updated to be  
consistent with the Leasing Law.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Public Meeting Notice
- 2) Drafts
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_
- 5) Please List any laws, ordinances or resolution that might be affected:  
\_\_\_\_\_
- 6) Please List all other departments or person(s) you have brought your concern to:  
Land Management/Law Office
- 7) Do you consider this request urgent? ☐ Yes ☒ No  
If yes, please indicate why: \_\_\_\_\_

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: \_\_\_\_\_

*Please send this form and all supporting materials to:*

**LOC@oneidanation.org**  
or  
**Legislative Operating Committee (LOC)**  
P.O. Box 365  
Oneida, WI 54155  
Phone 920-869-4376



*Notice of*  
**Public Meeting**  
*to be held*



**April 2, 2015 at 12:15 p.m.**

**OBC Conference Room - 2nd Floor, Norbert Hill Center**

***Topic: Leasing Law Adoption &  
Real Property Law Amendments***

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would adopt a Leasing Law and remove the leasing provisions from the current Real Property Law. This proposal would:

- ◆ Establish a process for approving leases on Tribal trust and fee land that complies with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) which would result in the Tribe no longer needing approval from the Secretary of Interior for leases of Tribal trust land. This process includes:
  - ◇ The terms and conditions that must be contained within a lease, including separate requirements for residential, agricultural and business leases.
  - ◇ How lease amendments and assignments, subleases, and encumbrances are approved.
  - ◇ A requirement that environmental and cultural reviews be completed before a lease or lease document is approved and what those reviews entail.
- ◆ Land Management is responsible for developing, with Land Commission approval, procedures and processes for offering and awarding leases and lease documents; managing leases; recording leases and lease documents with the appropriate entities; and enforcing leases.
- ◆ The Real Property Law amendments remove a provision that governs leasing of Tribal land and replaces it with a provision that defers to the Leasing Law for the leasing of Tribal land.

**All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.**

**Public Comment Period—Open until April 9, 2015**

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings) or contact the Legislative Reference Office (LRO), which is located on the second floor of the Norbert Hill Center, Oneida WI.

Mail: **Legislative Reference Office**  
**PO Box 365**  
**Oneida, WI 54155**

Phone: **(920) 869-4376 or (800) 236-2214**  
 E-Mail: **LOC@oneidanation.org**  
 Fax: **(920) 869-4040**

**CHAPTER 67**  
**REAL PROPERTY LAW**  
**Tokáske Kayanl̥hs̥la Tsiʔ Niʔyohuntsyaʔté**  
The real/certain laws of the territory of the nation

67.1. Purpose and Policy  
67.2. Adoption, Amendment, Conflicts  
67.3. Rules Of Statutory Construction  
67.4. Definitions  
67.5. Interests In Real Estate: Individual Or Tribal  
67.6. Holding Of Ownership  
67.7. Legal Descriptions  
67.8. Title Transfer

67.9. Disposition Of Estates Of Deceased Tribal Members  
67.10. Real Estate Trust Accounts  
67.11. Leasing of Real Property  
67.12. Records  
67.13. Real Estate Licensing  
67.14. Real Estate Financing  
67.15. Tribal Real Estate Taxes  
67.16. Organization

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Real Property Law (the Law)				
<b>Requester</b>	LRO	<b>Drafter</b>	Lynn Franzmeier	<b>Analyst</b>	Tani Thurner
<b>Reason for Request</b>	The proposed amendments delete provisions related to leasing Tribal land; as that topic would be addressed through a new Leasing law.				
<b>Purpose</b>	To reconcile this Law with a new law being proposed for adoption.				
<b>Authorized/ Affected Entities</b>	See the proposed Leasing Law.				
<b>Due Process</b>					
<b>Related Legislation</b>	A proposed Leasing Law is being considered in conjunction with these amendments.				
<b>Policy Mechanism</b>	See the proposed Leasing Law.				
<b>Enforcement</b>					

**Overview**

This request for amendments to the Real Property Law is being submitted in conjunction with a proposal for a new Tribal Leasing law (Leasing Law), which would govern the leasing of all Tribal trust and fee land.

Under the proposed amendments to this Law; section 67.11 (which governs the leasing of real property) would be mostly deleted and replaced with a single sentence, which states that "All leasing of tribal land shall be processed in accordance with the Tribe's Leasing law." [67.11-1]

The few requirements that are currently set out in this section of the Real Property Law would instead be set out in the proposed Leasing Law, albeit in greater detail - delegating the authority to process all leasing of Tribal land to the Division of Land Management (DLM); identifying three types of leases (commercial, agricultural, and residential leases); and identifying certain provisions that are required to be included in leases.

However, there are some provisions relating to leases which would still remain in the Real Property Law and that are not specifically set out in the new Leasing Law. They include:

- 1) Requiring that, for leases of tribal trust land, preference be given to Oneida Tribal citizens and programs.
- 2) Addressing what would happen if a lessee defaults on an approved encumbrance (i.e. a leasehold interest) on Tribal land – this Law grants DLM the right to correct the default and then to pursue remedies against the defaulting party under the Oneida Administrative Procedures Act. The Leasing Law does not address defaults in detail; but does grant DLM "all powers necessary and proper to enforce this Law and the lease terms"; and

adds that if DLM determines a lessee is in default; then DLM must take action to have the lessee cure the default or, if the default is not cured, DLM must cancel the lease.

### **Remaining References to Leases**

There are various provisions remaining in this Law which refer to leasing; but these are broader references where leasing is referenced alongside other real property transactions; and they do not affect the proposed Leasing law:

- 67.1 and 67.13 both include the leasing of Tribal land in the list of activities for which a Tribal Property License is required. The Leasing Law does not mention any requirement for a Tribal Property License in order to execute leases.
- 67.12-2 requires DLM to develop a system for timely recording of Reservation title documents, which includes leases.
- 67.7-6 states that an address is considered an adequate legal description of property listed for sale or lease to Tribal members.

### **Other**

Minor revisions are made to section 67.2 to ensure that section is in compliance with the Legislative Procedures Act; and an incorrect citation in 67.1-2 is revised to reflect the correct citation. These revisions do not affect the content of the Law.

This Law has not been updated since 2010 and these proposed amendments focus mainly on complementing the proposed Leasing Law. The LOC may want to consider reviewing this Law more closely in the future, including the definitions – for example, 67.5-4 defines “Life Lease” but then that term is not used again in the Law, so defining it is probably not necessary.

A public hearing has not been held.

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## **CHAPTER 67**

### **REAL PROPERTY LAW**

**Tok<sup>^</sup>ske Kayanl<sup>^</sup>hsla Tsi> Ni>yohuntsya-~~ts~~**

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#### **67.1. Purpose and Policy**

##### **67.1-1. Purpose**

(a) The purpose of this Law is to provide regulations and procedures for the transfer, control and management of the territory within the exterior boundaries of the Reservation of The Oneida Tribe of Indians of Wisconsin and such other lands as may be added within or without said boundary line; and to integrate these regulations and procedures with the present real property laws and practices of other federal and state sovereigns which may hold applicable jurisdiction within the reservation.

(b) In addition, this Law establishes a training and licensing mechanism for any person who lists, sells, buys, exchanges, leases, rents, or deals in any way with real property coming under the scope of this Law.

(c) Nothing in this Law shall be construed as a waiver of the sovereign immunity of the Oneida Tribe of Indians of Wisconsin.

##### **67.1-2. Policy**

(a) The provisions of this Law shall extend to all tribal lands and waters held in trust, all tribal lands and waters held in fee status, all fee status lands under the control of individual Oneida members, all heirship lands and waters and all individual and tribal

trust lands and waters, all within the exterior boundaries of the Oneida Tribe of Indians of Wisconsin Reservation; and to such other lands as may be hereafter added, both within and without the exterior boundaries of the Oneida Reservation, under any law of the United States, except as otherwise provided by law.

(b) The licensing provisions of this Law shall extend to any person who lists, sells, buys, exchanges, leases, rents or deals in any way with real property coming under 67.1-3a, 2(a), of this Law, including employees of the tribe.

(c) Any transaction which would add property to the tribal land base shall be administered through the Division of Land Management under the provisions of this Law.

(d) The sale of tribal land is specifically prohibited under this Law, except for the purposes of consolidation or partition of property.

(e) It is not intended by this Law to repeal, abrogate, annul, impair or interfere with any rules, regulations, or permits previously adopted or issued pursuant to tribal or federal laws. Further, it is intended that Wisconsin law be considered as an integral part of real property transfer occurring within or without the Reservation, insofar as the transaction is between a non-Oneida person(s) who hold fee simple title to land within the Reservation and the Tribe or a tribal member.

(f) Expenses and Fees. The Land Commission shall establish an equitable fee schedule for each activity or service provided in this Law. All fees collected will be used for the maintenance of services and management of lands which come under the authority of this Law.<sup>1</sup>

## **67.2. Adoption, Amendment, Conflicts**

67.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-5-29-96-A and amended by resolutions BC-3-01-06-D and BC-04-28-10-E.

67.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Oneida Administrative Legislative Procedures Act ~~by the Oneida Business Committee or the Oneida General Tribal Council~~.

67.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

67.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

67.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

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<sup>1</sup> Other laws that are relevant to the purpose and implementation of this Law include:

Oneida Shoreland Protection Ordinance

Oneida Zoning Ordinance

Oneida Administrative Procedures Act

25 CFR 150-179 (Land and Water)

25 CFR 15 (Probate)

25 CFR 261-265 (Heritage Preservation)

Wisconsin Statutes and Administrative Code relating to the practice of Real Estate

State and Federal Laws specifically cited in Ordinance

**67.3. Rules Of Statutory Construction**

67.3-1. General words are understood to be restricted in their meaning by more specific words which came before.

67.3-2. If the meaning of a general word cannot be reconciled with the meaning of a specific word in this Law the specific word will control.

67.3-3. When a series of words of general meaning is followed by words of limitation, the limitation will apply only to the last word in the list, unless otherwise stated.

67.3-4. The word “shall” is mandatory and the word “may” is permissive.

67.3-5. The Law should be read as a whole. The words are not meant to be isolated, and their meaning must be found in reference to the statement as a whole.

67.3-6. If a later enacted Law or statute cannot be read in agreement with an earlier enactment, the later enactment will control when interpreting the meaning from context.

67.3-7. “Land” is used to mean the earth’s surface extending downward to the center of the earth and upward to infinity, including things permanently attached by nature, such as tree and water.

67.3-8. “Real Estate” is used to mean the earth’s surface extending downward to the center of the earth and upward to infinity, including all things permanently attached to it, whether natural or permanent man-made additions.

67.3-9. “Real Property” or “Property” is used to mean the earth’s surface extending downward to the center of the earth and upward to infinity, including all things permanently attached to it, whether natural or permanent man-made additions, plus the bundle of legal rights which include control, exclusion, possession, disposition and enjoyment.

67.3-10. The word “Person” when used in this Law includes individuals, corporations or partnerships.

**67.4. Definitions**

67.4-1. Accounting. The responsibility of a broker to report the status of all funds received from or on behalf of the principal.

67.4-2. Agency. Any tribal entity, board, commission, committee, department or officer authorized by the Oneida Tribe to propose Law/rules for adoption by the Oneida Business Committee. The term “Agency” shall not include the Oneida Business Committee or a tribal appeals body.

67.4-3. Appraisal. A process of estimating a property’s value.

67.4-4. Attorney. A person trained and licensed to represent another person in court, to prepare documents defining or transferring rights in property and to give advice or counsel on matters of law.

67.4-5. Broker. A person who acts as an agent and negotiates the sale, purchase or rental of property on behalf of others for a fee, and must be licensed under this Law under certain circumstances.

67.4-6. Bundle of Rights. The “rights” of ownership include the right of possession, the right to control the property within the framework of the law, the right of enjoyment, the right of exclusion and the right of disposition.

67.4-7. Buyer. The person who hires a broker to find a parcel of real estate that has certain characteristics or is usable for specific purposes; or the person who buys a piece of real estate from a seller broker or salesperson.

67.4-8. Care. The broker must exercise a reasonable degree of care and skill while transacting the business of the principal.

67.4-9. Certified Survey Map. A map officially filed and approved by the County, Tribal or municipal governments, which provides the legal description of any land in question.

140 67.4-10. Contested Cases. A proceeding before an Agency in which an opportunity for a  
141 hearing before the Agency is required by law prior or subsequent to the determination of the  
142 Agency of the legal rights, duties, or privileges of specific parties unless otherwise provided for  
143 by tribal law. This includes the revocation, suspension or modification of a license or permit  
144 when a grant of such application is contested by a person directly affected by said licensing or  
145 permitting. See Oneida Administrative Procedures Act.

146 67.4-11. Counseling. Providing clients with competent independent advice based on sound  
147 judgment, on such things as alternative courses of action regarding the purchase, use and  
148 investment of property.

149 67.4-12. Development. The construction of improvements on land.

150 67.4-13. Disclosure. The broker's duty to keep the principal fully informed at all times of all  
151 facts or information the broker obtains that could affect the transaction.

152 67.4-14. Dual Agency. When a broker receives compensation from both buyer and seller in a  
153 transaction.

154 67.4-15. Education. The provision of information to both the real estate practitioner and the  
155 consumer.

156 67.4-16. Fiduciary. One who is placed in a position of trust and confidence and normally is  
157 responsible for the money and/or property of another. A broker and a salesperson are both  
158 fiduciaries.

159 67.4-17. Financing. Financing is the business of providing funds by means of a mortgage loan.

160 67.4-18. Fixtures. Articles that were once personal property but has been so affixed to land or a  
161 building that the law construes it to be part of the real estate.

162 67.4-19. Fraud. The intentional misrepresentation of a material fact in such a way as to harm or  
163 take advantage of another person. In addition to false statements about a property, the concept of  
164 fraud covers intentional concealment or nondisclosure of important facts.

165 67.4-20. Individual Fee Land. Land held in fee by an individual or group of individuals.

166 67.4-21. Individual Tribal Property. Real property owned by an Oneida Tribal member in fee or  
167 held in trust for that member by the United State of America.

168 67.4-22. Individual Trust Land. Land held by the United States of America in trust for the  
169 benefit of an individual Tribal member.

170 67.4-23. Intestate. One who dies without having made a will; or property not disposed of by  
171 will.

172 67.4-24. Law of Agency. The body of law that governs the rights and duties of principal, agent  
173 and third persons.

174 67.4-25. Mobile Home. A building which, when originally constructed, was prefabricated and  
175 on wheels to allow movement from one location to another with minimal modifications  
176 necessary to attach utilities. It is considered to be personal unless it is permanently affixed to the  
177 land, at which point it is considered real property.

178 67.4-26. Personal property or Personalty. All property that does not fit the definition of real  
179 property, and usually the characteristic of being "movable."

180 67.4-27. Plat Map. Map of a piece of property that may be a part of a larger parcel of real estate  
181 or may be composed of several smaller ones which the surveyor resurveys. This new map is  
182 called a Plat map, and it creates a new legal description which must be tied to the description on  
183 a Certified Survey Map(s), to be considered acceptable for transfer of property.

184 67.4-28. Probate. An official authentication of a will, and/or official administration of an estate  
185 of a deceased person.



67.4-29. Reservation. That area within the exterior boundaries as set out in the 1838 Treaty with the Oneida 7 Stat. 566, and that land purchased and held by the United States of America in trust for the Oneida Tribe of Indians of Wisconsin outside those exterior boundaries

67.4-30. Salesperson. A person who receives a fee or commission to work on behalf of the broker, and must be licensed under this Law under certain circumstances.

67.4-31. Subsurface Rights. The rights to natural resources lying below the earth's surface.

67.4-32. Sun Rights. A solar energy owner's right to access to the sun.

67.4-33. Surface Rights. The rights to use the surface of the earth within boundaries defined in a transfer of real property.

67.4-34. Tribal Fee Land. Land held in fee by the Oneida Tribe.

67.4-35. Tribal Property. Real property owned by the Oneida Tribe in fee or held for the Tribe by United States of America.

67.4-36. Tribal Trust Land. Land held by the United States of America in trust for the benefit of the Oneida Tribe.

67.4-37. Tribe. Oneida Tribe of Indians of Wisconsin. Also known as the Sovereign Oneida Nation in Wisconsin, and On<sup>^</sup>yote<sup>></sup> a-ká.

## **67.5. Interests In Real Estate: Individual Or Tribal**

67.5-1. Fee Simple Absolute. The greatest interest of ownership or distribution in a parcel of land that it is possible to own i.e. no conditions. Sometimes simply designated as fee. Tribal individuals, non-tribal individuals and tribal government may hold fee interest in land within the Oneida Reservation.

67.5-2. Leasehold. The interest in fee or trust property that is qualified by some future determinant such as time, age, or an act/incident.

67.5-3. Fee or Trust subject to a Condition. An interest which includes a proviso in the deed or will that upon the happening or failure to happen of a certain event, the title of the purchaser or devisee will be limited, enlarged, changed or terminated.

67.5-4. Life Lease. A lease of the right of use and occupancy of Tribal Fee or Trust Lands for the life of an individual either Oneida tribal or non-tribal.

67.5-5. Trust. Land held by the United States of America in trust for the Oneida Tribe of Indians of Wisconsin, or for a member of this tribe.

67.5-6. Life Use, or Estate. A claim or interest in individual trust property by a non-tribal spouse, not amounting to ownership, and limited by a term of life of the person in whom the right is vested.

## **67.6. Holding Of Ownership**

67.6-1. Interests in land by more than one person may be held in the following ways:

(a) Joint tenancy with right of survivorship: Each owner has an equal, undivided interest in the property. As an owner dies, their share is divided among the remaining owners, so the last living owner owns the entire property.

(b) Tenancy in common. Each owner has a percentage interest in the property. As an owner dies, that owner's interest is divided among his or her devisees or heirs. Two or more individuals holding property are tenants in common unless:

(1) a deed, transfer document or marital property agreement specifically states the property is held as joint tenants with rights of survivorship; or

(2) a married couple holds the property without a marital property agreement that specifically states the property is held as tenants in common.

**67.7. Legal Descriptions**

67.7-1. The legal description for any land transferred under this Law will be derived from a Certified Survey Map (CSM) or Plat of Survey completed by a registered Land Surveyor according to currently accepted minimum standards for property surveys. If the Plat of Survey changes the legal description of the CSM for the same piece of property, the CSM legal description will be used on transfer documents along with the Plat of Survey description designated “**Also Known as ...**” Section, Township, Range and Fourth Principal Meridian must be within all tribal legal descriptions.

67.7-2. Every land survey shall be made in accordance with the records of the County Register of Deeds for fee land, and in accordance with the records of the Oneida Division of Land Management for all trust lands. The surveyor shall acquire data necessary to retrace record title boundaries such as deeds, maps, certificates of title, Title Status Reports from the Bureau of Indian Affairs, Tribal Leases, Tribal Home Purchase Agreements, center line and other boundary line locations.

67.7-3. Legal description defining land boundaries shall be complete providing unequivocal identification of line or boundaries.

67.7-4. In addition to Survey Map requirements outlined in Wisconsin Administrative Code, Chapter A-E7, all surveys prepared for the Oneida Tribe should indicate setbacks, building locations and encroachments.

67.7-5. Legal descriptions will be used on transfer documents formalizing a purchase, real estate sale, lease, foreclosure, probate transfer to beneficiaries or trust acquisition and tribal resolutions indicating legislative approval.

67.7-6. When real estate is listed for sale or lease to tribal members, the address is considered an adequate legal description of the property.

**67.8. Title Transfer**

67.8-1. General. It is presumed that the intentions of parties to any real property transfer are to act in good faith. For this reason, this shall be liberally construed when faced with conflict or ambiguity in order to effectuate the intentions of the parties.

67.8-2. The Division of Land Management shall use only those title companies duly registered with the Department of Interior and approved by the Division of Land Management to update abstracts or provide Title Insurance on real property scheduled for trust acquisition.

(a) Title Companies must follow general guidelines provided by federal government in terms of form, content, period of search, destroyed or lost records and Abstractor’s Certificate.

(b) When researching Land title within the reservation which is being considered for trust acquisition, the Title Company will be requested to search the title back to the original allottee, to assure that patents or Indian Deeds were legally issued.

(c) Any valid liens or encumbrances shown by the Commitment for Title Insurance must be eliminated before the Title is transferred into Trust.

(d) After land is in trust, title search of County records is no longer acceptable. Title Status Reports from Oneida Division of Land Management or the Bureau of Indian Affairs shall be used to verify all valid encumbrances, if any, on the title. A valid encumbrance is one that has been preapproved, in writing, by the Division of Land Management.

67.8-3. The Warranty Deed is the formal document used by the Division of Land Management to transfer title from one party to another. It shall not be considered valid unless it is in writing and:

- (a) Identifies the grantor and grantee;
- (b) Provides the legal description of the land;
- (c) Identifies the interest conveyed, as well as any conditions, reservations, exceptions, or rights of way attached to the interest.
- (d) Is signed by or on behalf of each of the grantors;
- (e) Is signed by or on behalf of each spouse, and
- (f) Is delivered.

67.8-4. A Warranty Deed prepared for Trust Acquisition shall, in addition to that listed in 8-3, include the following:

- (a) The federal authority for Trust Acquisition;
- (b) Any exceptions or exclusions from State fees or other transfer requirements;
- (c) The approximate acreage of the real property being transferred to Trust; and
- (d) The authority and signature of the appropriate Department of Interior official who accepts the real property into Trust.

67.8-5. A Warranty Deed transferring fee simple title shall be recorded in the appropriate Register of Deeds office. Once the real property is in trust, the Title shall be recorded with the Oneida Division of Land Management and the Aberdeen Title Plant for the United States Department of the Interior.

67.8-6. An involuntary Transfer of title may occur in the following ways:

(a) Tribal Eminent Domain is the right of the Tribal Government to acquire private land for public uses without the consent of private owners. Public uses include, but are not limited to, environmental protection, streets, highways, sanitary sewers, public utility/sites, waste treatment facilities and public housing. Attempts must first be made to negotiate an agreeable taking by the Tribal Government; thence provide an offer to purchase based on a tribal appraisal of the property; and provide compensation for the taking. Provision for required hearing on the taking and appeals to the Oneida Appeals Commission can be found in the Oneida Administrative Procedures Act.

(b) Foreclosures may occur whenever a tribal member ceases payment on a mortgage for leasehold improvements, a tribal home purchase agreement, or home improvement loan. If the loan is through a public lending institution the Tribe may choose to pursue its option to purchase the loan and finalize the foreclosure through the Division of Land Management. A decision to foreclose shall be handled as a Contested Case according to the Oneida Nation Administrative Procedures Act, Section 10. Contested Cases and 11. Appellate Review. Also see 14-5 of this Law.

(c) The Indian Land Consolidation Act was passed by Congress and became effective January 12, 1983 (Pub.L. No. 97-459, 96 Stat. 2515, and amended on October 30, 1984 by Pub.L. No. 98-608, 98 Stat. 3171). Section 207 of said Act is incorporated into this Law, which provides that if it is determined that the decedent's ownership in a given parcel of land is 2 percent or less of the total acreage, and that interest is incapable of earning \$100.00 in any one of the five (5) years from the date of the decedent's death, thence that ownership interest shall escheat, or pass, to the Tribe having jurisdiction over said land, for just compensation, unless the heirs can prove by substantial evidence that the above determination was wrong. This determination will be made through Probate proceedings in 67.9 of this Law.

(d) Upon the Tribe receiving majority consent from heirs, the Land Commission may approve an Order Transferring Inherited Interests under the authority of Section 205 of the Indian Land Consolidation Act provided that none of the Indians owning an undivided interest is willing to purchase or match the tribes offer.

(e) An Involuntary Transfer of Title cannot occur without a hearing in front of the Land Commission, or its designated subcommittee, under procedures of the Oneida Nation Administrative Procedures Act, Section 9. Declaratory Ruling, or Section 10. Contested Cases.

(f) Easements for Landlocked Properties. A procedure for handling a request for an easement will be developed and approved by the Land Commission.

67.8-7. Records. All documents pertaining to trust property within the Oneida Reservation shall be recorded in the United States of America Aberdeen Title Plant as well as the Division of Land Management. See also Section 12.

67.8-8. All Individual and Tribal lands purchased in fee shall be transferred to Trust held by the United States of America through procedures promulgated by the Division of Land Management, and supported by waivers approved by the Secretary of Interior or designate.

#### **67.9. Disposition Of Estates Of Deceased Tribal Members**

67.9-1. The purpose of this section is to formalize laws to handle the disposition of deceased tribal members' trust property, with or without a will. The intent of this section is to provide procedures which make it possible for equitable and fair decisions to be made for the surviving family, as well as promoting ongoing peace and harmony within the community.

(a) Tribal members holding fee land within the reservation may use the laws and procedures of the State of Wisconsin or those of this Law.

(b) Tribal members holding trust land within the reservation shall use the laws and procedures of this Section.

67.9-2. Non-members of The Oneida Tribe and non-citizens of the United States cannot acquire Trust land through inheritance. Where interests are specifically devised to individuals ineligible to inherit the following options are provided:

(a) Sale of interest to the Oneida Tribe or an eligible heir for its fair market value;

(b) Acquire a life estate in the property if an ineligible spouse and/or minor child.

67.9-3. Interests of Heirs who cannot be found will be sold to the Oneida Tribe at fair market value, or to an eligible heir, and the money returned to the estate for distribution.

67.9-4. In the absence of any heir or devisee, interests will escheat to the Oneida Tribe of Indians of Wisconsin.

67.9-5. Personal property which does not come under the guidelines of this Law, and may be distributed at the traditional ten day meal by family members, include:

(a) Clothing, furnishings, jewelry, and personal effects of the deceased not valued at more than \$100 per item.

(b) Ceremonial clothing or artifacts, including eagle feathers, beadwork, dance sticks, flutes, drums, rattles, blankets, baskets, pottery, medicines, and animal skins.

67.9-6. The Land Commission, or its designated sub-committee, shall make a declaratory ruling by authority of the Administrative Procedures Act, Section 9, in any case brought before them by any person claiming to be an heir of the deceased and requesting any of the following determinations:

(a) Heirs of Oneida members who die without a will (intestate) and possessed of fee or trust property coming under the authority of the Oneida Tribe of Indians of Wisconsin;

(b) Approve or disapprove wills of deceased Oneida members disposing of trust property;

(c) Accept or reject full or partial renunciations of interest;

(d) Allow or disallow creditors' claims against estates of deceased Oneida members;

(e) Decree the distribution of all assets of a deceased Oneida member.

67.9-7. The Staff Attorney for the Division of Land Management will prepare a file for each probate hearing within 30 days of receipt of a Request for Probate Hearing from anyone claiming to be an heir of the deceased. Extensions to this 30 day requirement shall be requested from the Land Commission when proven necessary to complete the file. Relatives and agencies will be asked to cooperate in developing a complete probate file containing:

- (a) Family history information,
- (b) Death certificate,
- (c) Personal and Real Property Inventory,
- (d) BIA-IIM Account Report,
- (e) Creditor Claims,
- (f) Original will, if any,
- (g) Names, addresses and phone numbers of all parties-in-interest.

67.9-8. Definitions As Used In This Section

(a) Children And Issue: Includes adopted children and children of unwed parents where paternity has been acknowledged, or established by court decree. This does not include non-adopted step-children.

(b) Parties-in-interest: This includes:

- (1) Heirs of the decedent
- (2) A beneficiary named in any document offered for probate, such as the will of the decedent, land lease or sale agreement for real estate.
- (3) A person named as administrator or personal representative in any document offered for probate.
- (4) Additional persons as the Land Commission may by order include who may be affected by the actions of the Land Commission, or its designated sub-committee, whether by receipt of or denial of any property which is a part of the action.

(c) Heirs: Any person who is entitled under Tribal law to an interest in the property of a decedent.

67.9-9. *Parties-in-interest*. The net estate of a decedent, not disposed of by will, passes to his/her surviving heirs or Parties-in-interest as follows:

(a) To the spouse:

- (1) All Real Property.
- (2) All other than Real Property if there are no surviving children of the decedent.
- (3) 2 of other than Real Property of the decedent's estate if there are surviving children of the decedent, or children of any deceased child of the decedent (grandchildren) who take by right of representation.

(b) To Surviving Children and children of any deceased child of the decedent by rights of representation;

- (1) All of the estate if there is no surviving spouse, divided equally to all in the same degree of kinship to the decedent. Surviving children of a deceased child of the decedent will divide their parent's share.

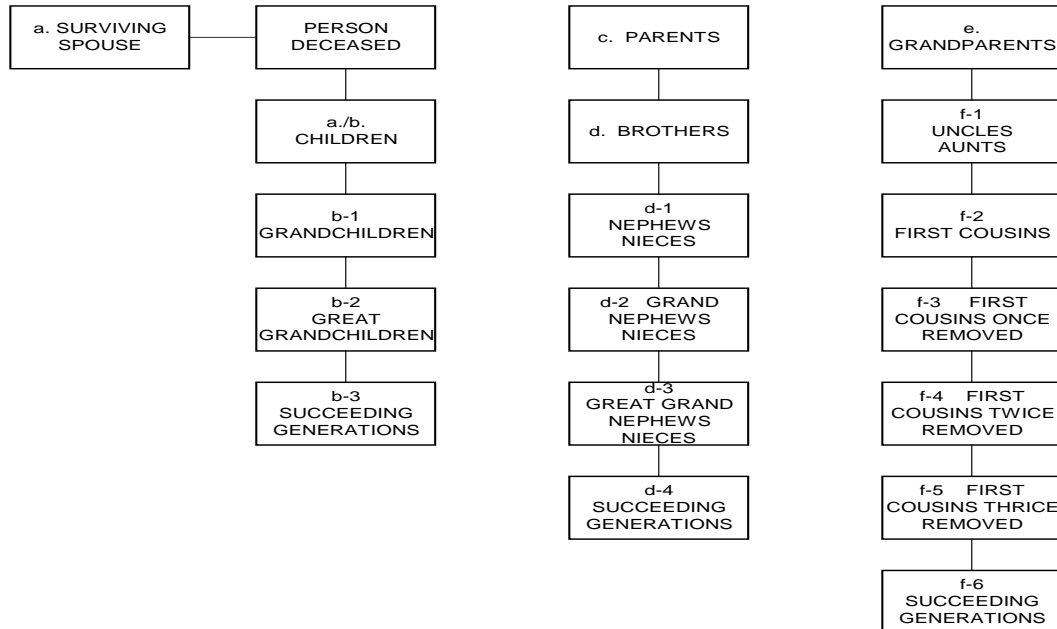
(c) All of the estate to the parents, equally divided, if no surviving spouse, children or children taking by right of representation.

(d) All of the estate to the brothers and sisters and children of deceased brothers or sisters by representation, divided equally, If no surviving spouse, children, or parents.

(e) All of the estate to the grandparents of the deceased divided equally, if no surviving spouse, children parents or brothers and sisters.

(f) All of the estate divided equally to lineal descendants of the grandparents of the deceased in the same order as (b) thru (e) if no surviving spouse, children, parents brothers/sisters, or grandparents of the decedent.

(g) Diagram of Intestate Succession as outlined in (a) thru (f) in Figure 1.



(h) Any 2% interests, or less, in land, as defined in 8-6(c) of this Law.  
67.9-10. When the Probate File is complete, it will be placed on the agenda for review by the Land Commission, who will first review it for sufficiency. If the Land Commission determines the file is incomplete, it is sent back to the Staff Attorney with further instructions. If the probate file is determined to be complete, a hearing shall be scheduled at a time when most, if not all, parties can attend.

(a) *Notice:* All parties-in-interest will be sent a certified personal notice of the hearing to their current or last known address. The hearing notice will also be posted at NORBERT HILL CENTER, LITTLE BEAR DEVELOPMENT CENTER and other public places within the reservation, and published in at least two issues of the Kalihwisaks, the Milwaukee Sentinel/Journal, a Green Bay Paper and an Appleton paper. The notice will include time and place for hearing, agenda, approximate length of hearing and contact person. This notice will be provided at least 10 days before the hearing takes place.

(b) The hearing will generally adhere to the following format:

- (1) Rules for an open, nonjudgmental discussion shall be presented and accepted.
- (2) Probate file is reviewed and data added or corrected based on consensus of those present.
- (3) Ample time is provided for full discussion of the process, presentation of additional data for the file, and defining of problems or disputes to be entered into the record.
- (4) All problems or disputes shall be settled in this hearing, with all parties-in-interest present and assisting in this resolution. This includes recommendations for clear partition of any real property held in undivided interest, and full discussion of creditor claims. This hearing shall be continued to another date only if unpredicted circumstances or unavailable information impedes the progress of resolution.

(5) When all problems, disputes and legal issues of the case have been resolved to the satisfaction of all parties-in-interest, the hearing body will issue its Final or Declaratory Ruling to the Director of Land Management, who will notify the Land Commission and all parties involved in the hearing. This Final Ruling takes effect 60 days after mailings.

67.9-11. A party to a probate hearing may seek a rehearing of any of the above determinations listed in 9-3 upon provision of a written request to the Director of the Division of Land Management within 60 days after the Declaratory Ruling is issued. It is the responsibility of the aggrieved party to make certain that adequate documentation necessitating a rehearing is attached to the request.

(a) This request must include affidavits, witness list, summary of testimony and other support documents which would provide a justifiable reason why any new information was not available at the original hearing.

(b) If basis for rehearing is alleged procedural irregularities, the request shall include complete documentation of these irregularities.

(c) If basis for rehearing is the constitutionality of the Law or its procedures, a legal brief shall be attached to the request which clearly establishes the legal rationale for this claim.

(d) If basis for rehearing is that the determination is clearly erroneous, arbitrary and/or capricious, a clear statement or legal brief summarizing the party's rationale for believing this to be true shall be attached to the request.

67.9-12. The Director of Land Management will place the petition for rehearing on the first agenda of the Land Commission following the receipt of the written request.

(a) The Land Commission may deny a rehearing if there is insufficient grounds for the petition, or if the petition is not filed in a timely fashion.

(b) The Land Commission may order a rehearing based on the merit of the petition. The petition and supporting papers are then sent to all participants of the first hearing along with the date for the rehearing.

(c) If a rehearing is ordered, the Land Commission will adhere to the same notice requirements as in the first hearing. In addition, the hearing body should be composed of the same individuals responsible for the first hearing. Based on the information presented at the rehearing, the hearing body may adhere to the former Ruling, modify or vacate it, or make such further determinations that are warranted.

67.9-13. Any Declaratory Ruling given under this Section may be appealed to the Oneida Nation Appeals Commission within 30 days from the date of the Ruling. The Ruling is sent to the Parties-in-interest with same documentation outlined in 9-6.

67.9-14. A party may petition the Oneida Appeals Commission to reopen the case within three years after the Declaratory Ruling has been mailed out if they can prove all of the following:

(a) They were not a participant in the first hearing;

(b) They were completely unaware that the first probate hearing occurred and they have proof that they were not duly noticed; and

(c) They have rights which were erroneously left out of the first probate hearing.

67.9-15. After looking at the record of the first hearing, the Appeals Commission may rule that the Petition To Reopen is not sufficient, or it may send an order to the Land Commission to provide a second hearing based on the evidence provided in the Petition.

67.9-16. All probate Declaratory Rulings of the Land Commission or Judgments of the Appeals Commission shall be recorded in the Division of Land Management.

(a) If fee land is part of the Ruling, it shall also be recorded at the County Register of Deeds.

(b) If trust land is part of the Ruling, it shall also be recorded at the Department of Interior  
Aberdeen Title Plant.

#### **67.10. Real Estate Trust Accounts**

67.10-1. A property trust account or escrow account shall be established by the Division of Land  
Management to deposit money or property being held for the following purposes:

- (a) To ensure receipt of mortgage satisfaction from seller;
- (b) Tax, insurance and utility payments held in escrow;
- (c) Security deposits on rental property;
- (d) Administrative fee;
- (e) Earnest money;
- (f) Any other receipts pertaining to real property transfer.

67.10-2. Division of Land Management Staff shall deposit all funds received within 48 hours.

67.10-3. The name Real Estate Trust Account and the Division of Land Management's name  
shall appear on all checks, share drafts or drafts from this account.

67.10-4. Within 10 days of opening or closing the account, the Division of Land Management  
shall notify the tribe's Internal Auditor of the name and number of the account, person(s)  
authorized to sign trust account checks and the name of the depository institution.

67.10-5. Receipt of earnest money shall be written on the relevant document pertaining to the  
transaction.

#### **67.11. Leasing of Real Property**

67.11-1. All leasing of tribal land shall be processed ~~through the Division of Land Management.~~  
~~67.11-2. Commercial, Agricultural and Residential Leases of tribal trust land are available, in~~  
~~accordance with preference given to Oneida tribal citizens and programs~~the Tribe's Leasing law.  
~~67.11-3. All leases shall include the responsibility of the lessee and lessor regarding the~~  
~~following principles:~~

- ~~(a) Possession of Leased Premises;~~
- ~~(b) Improvements;~~
- ~~(c) Maintenance of Premises;~~
- ~~(d) Assignment and Subleasing;~~
- ~~(e) Options to Renew;~~
- ~~(f) Destruction of Premises;~~
- ~~(g) Termination of Lease;~~
- ~~(h) Breach of Lease;~~
- ~~(i) Use of Premises;~~
- ~~(j) Term of Lease;~~
- ~~(k) Security Deposit.~~

~~67.11-4. Assignment of leasehold interest for the purpose of financing shall be processed and~~  
~~recorded at the appropriate office by the Division of Land Management. No assignment or related~~  
~~encumbrance to the leasehold interest shall be valid without approval and recordation through~~  
~~procedures established by the Division of Land Management.~~  
~~11-5. In the event of default by the~~  
~~Lessee of the terms of an approved encumbrance, and the Lessee's assignment reaches the point~~  
~~of sale or foreclosure, the Division of Land Management shall have the right to correct the~~  
~~default. If the default is corrected under these circumstances the Lessee will be subject to further~~  
~~proceedings under the Oneida Administrative Procedures Act, Section 10 Contested Cases, which~~  
~~may lead to termination of Lessee's lease, loss of improvements, revised payment schedule and/or~~  
~~Garnishment of Lessee's wages in order to pay the remainder of the default.~~



**67.12. Records**

67.12-1. *Purpose.* The purpose of recording is to provide evidence of activities that effect land title; preserve a record of the title document; and give constructive notice of changes to the title.

67.12-2. *Types Of Record.* The Division of Land Management shall develop a system for timely recording of Oneida Reservation title documents, including the following:

- (a) Deeds
- (b) Probate orders
- (c) Mortgages and other valid liens
- (d) Easements, covenants, restrictions
- (e) Certified Survey Maps and Plats of survey
- (f) Patents
- (g) Declarations of Involuntary Transfer or Taking
- (h) Satisfactions
- (i) Leases
- (j) Contracts
- (k) Home Purchase Agreements
- (l) Correction of Title defects

67.12-3. *Recordable Documents.* The original, a signed duplicate, or certified copy of the title document listed above shall be submitted for recording.

67.12-4. *Accessibility.* It is the policy of the Division of Land Management to allow access to land records and title documents unless such access would violate the Privacy Act (5 U.S.C. 552a).

67.12-5. *Certification.* Upon request, the Legal Services office will conduct a title examination of a tract of land by a qualified title examiner and provide a title status report to those persons authorized by law to receive such information, along with certification of these findings by the staff attorney.

67.12-6. *Tribal Seal.* The Land Commission is empowered to have made and provided to the Division of Land Management the seal of the Oneida Tribe to be used to authenticate documents which are certified by the staff attorney.

**67.13. Real Estate Licensing**

67.13-1. *General.* Any person engaged in the business of buying, selling, advertising, listing or leasing tribal property shall be required to hold a Tribal Property License. A license requirement is established in order to protect the tribe and its members from fraud, dishonesty or incompetence in the negotiation and transfer of real property.

67.13-2. *Who Must Be Licensed.*

(a) *Tribal Property Brokers.* A Tribal Property Broker is defined as any person who has training in all aspects of real property, and acts for another person or the tribe to perform any of the following real property duties:

- (1) selling;
- (2) listing;
- (3) buying;
- (4) leasing;
- (5) renting;
- (6) exchanging;
- (7) negotiating any of above activities.

(b) *Salespersons.* A Tribal Property Salesperson is defined as any person who assists a Broker in accomplishing any of the above real property duties, and has been certified to have received the level of training outlined in this Law.

(c) *Apprentices.* Any person desiring to act as an tribal property salesperson shall file with the Division of Land Management an application for a license. A GED, HSED or high school diploma is required, except for those who write and pass a preliminary examination covering general knowledge including reading, writing, arithmetic and general real estate terminology.

67.13-3. *Exceptions.* This Section does not apply to the following:

- (a) persons who perform real property duties on their own property;
- (b) receivers, trustees, administrators, executors, guardians or persons appointed by or acting under the judgment or order of any judicial system;
- (c) tribal public officers while performing their official duties;
- (d) banks, savings and loan associations and other designated financial institutions when transacting business within the scope of their corporate powers as provided by law;
- (e) any licensed attorney who, incidental to the general practice of law, negotiates loans secured by real estate mortgages or encumbrances or transfers of real estate;
- (f) employees, such as janitors, custodians or other employed by the tribe who show property or accept lease applications as an incidental part of their duties.
- (g) persons who list, sell, or transfer real property for a cemetery association of a church, tribal program or other nonprofit organization.

67.13-4. *Licensing Procedure*

(a) *Education Requirements.* Conference seminars, courses at accredited institutions, and Oneida Career Center classes will be accepted as proof of the hours of education received by an applicant.

(1) Each applicant for a salesperson's license must submit to the Division of Land Management, proof of attendance at 45 classroom hours of educational programs dealing with State, Federal and Tribal transfer of Real Property. At least 25 classroom hours shall cover Tribal and Federal real property law.

(2) Each applicant for a broker's license must submit to the Division of Land Management, proof of attendance at 90 classroom hours of education programs addressing State, Federal and Tribal transfer of Real Property.

(b) *Experience Requirements.* Each applicant for a tribal broker's license must submit to the Division of Land Management, proof of at least one year of experience as a real property salesperson, or as a broker in another jurisdiction.

(c) *Examination.* The Licensing Examination for tribal brokers and salespeople shall be administered through the Oneida Career Center.

(1) Land Commission will create a test which will contain the following materials:

- (A) 50% Tribal Law
- (B) 30% Federal Law
- (C) 20% Wisconsin Law

(2) A score of 75% or better on each portion of the examination is required to pass. If an applicant fails any of the three portions of the exam, that applicant will have six opportunities to retake the failed portion within the following six months. If that applicant cannot pass the failed portion within the following six months, he or she must retake the entire exam to qualify for a license.

(d) *Fees.* The following fees are applicable to tribal licensees. The Land Commission will establish an equitable fee schedule for the following:

- (1) issuance of a tribal salesperson or broker license
- (2) annual renewal fee for a tribal salesperson or broker license
- (3) late penalty for filing within 30 days of expiration
- (4) late penalty for filing within year of expiration
- (5) Test fee

(e) *Licensing.* An applicant who has passed the appropriate license examination and has complied with the necessary requirements will be granted a license by the Oneida Land Commission. The license authorizes the licensee to engage in the activities of a tribal real property broker or salesperson as described in this Law. All licenses shall show the name and business address of the licensee.

67.13-5. *Rules Of Responsibility*

(a) The intent of this section is to establish minimum standards of conduct for real property licensees and to define that conduct which may result in Land Commission action to limit, suspend or revoke the license of a real property broker, salesperson or apprentice, or impose a fine.

(b) Violations of rules in this section may demonstrate that the licensee is incompetent, or has engaged in improper, fraudulent or dishonest dealings.

(1) A licensee has an obligation to treat all parties to a transaction fairly.

(2) In order to comply with Federal and Tribal law, licensees shall not discriminate against, nor deny equal services to, nor be a party to any plan or agreement to discriminate against a person because of sex, race, color, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, sexual orientation, age or ancestry.

(3) Licensees shall not provide services which the licensee is not competent to provide unless the licensee engages the assistance of one who is competent.

(4) Licensees shall be knowledgeable regarding laws, public policies and current market conditions on real estate matters and assist, guide and advise the buying and selling public based upon these factors.

(5) Licensees shall not advertise in a matter which is false, deceptive, or misleading.

(6) Licensees shall not personally accept any commission, rebate, or profit from any of their real property dealings.

(7) Licensees shall not engage in activities that constitute the unauthorized practice of law.

(8) Licensees shall not discourage any person from retaining an attorney.

(9) Licensees shall not exaggerate, misrepresent or conceal material facts in the practice of real estate.

(10) Licensees shall not knowingly transmit false information.

(11) No licensee shall draft or use any document which the licensee knows falsely portrays an interest in real estate.

(12) Licensee shall not disclose any of the terms of one prospective buyer's offer to purchase to any other prospective buyer.

(13) Licensee shall not issue checks upon trust accounts which contain insufficient funds.

(14) Licensees shall notify the Division of Land Management if they are convicted of a crime, except motor vehicle offenses, so that a determination can be made whether the circumstances of the crime are substantially related to the practice of a tribal real property broker or salesperson.

(15) Licensees shall not render services while the ability of the licensee to competently perform duties is impaired by mental or emotional disorder, drugs or alcohol.

(16) Licensee shall not enter into overlapping agreements that could be construed as dual agency.

**67.13-6. Penalties For Violation Of This Law**

(a) Fines for minor infractions may be imposed by the Land Commission for any amount up to \$50.00. Minor infractions may include the first three infractions of the above listed offenses, or others as defined by the Land Commission.

(b) The Land Commission shall provide a fair hearing, as per Oneida Nation Administrative Procedure Act, Section 10. Contested Cases, for any person alleged to have violated this section, before a penalty is ordered.

(c) Major infractions of this section may lead to an action to limit, suspend or revoke the license of the defendant; disposition of a fine for any amount up to \$500; and/or penalties and judgments authorized by the Oneida Administrative Procedures Act Section 10(e).

**67.13-7. Licensing Fee For Non-tribal Brokers.** The Division of Land Management is empowered to develop a licensing fee schedule and collection procedures for all brokers who enter a consensual agreement to sell property to the Oneida tribe and are not licensed by this Law. These fees will be used for maintenance of services and management of Real Property within the authority of this Law.

**67.14. Real Estate Financing**

**67.14-1.** The goal of tribal loan programs is to maintain and improve the standard of living for tribal members, while protecting and expanding the Tribal Land base.

**67.14-2.** Consistent with available funds, the Division of Land Management shall provide loan programs for the following purposes:

- (a) Financing the purchase or down payment of existing homes and lands,
- (b) Construction of new homes,
- (c) Repair and improvement to existing homes,
- (d) Refinancing existing mortgages,
- (e) Purchasing or refinancing mobile homes,
- (f) Consolidation of Loans, and
- (g) Real Estate Tax Arrearage.

**67.14-3. Eligibility Requirements For All Loans:**

- (a) All applicants must be 21 years of age.
- (b) Applicant(s) must be an enrolled member of the Oneida Tribe.
- (c) Financed property must be located within the boundaries of the Oneida Reservation.
- (d) Applicants must have an acceptable credit rating.

**67.14-4.** All loan programs are provided only to tribal members in order to respond to the Oneida Tribe's legislative purpose of expanding and maintaining tribal jurisdiction over all land within the boundaries of the Oneida Reservation, while fulfilling basic membership needs for adequate housing.

(a) The applicant for any loan must list one to three Oneida Tribal members who will inherit any interest in Real Property mortgaged by a Tribal loan program, upon death of the applicant.

(b) If the spouse of an applicant is a non-tribal member, he/she may continue to pay off the loan, as long as he/she agrees to list three tribal beneficiaries in case of death. Once

the loan is satisfied, the designation of beneficiaries to the mortgaged interest in fee property will lapse.

(c) If the applicant and non-tribal spouse commence divorce proceedings, the Division of Land Management may

(1) refinance the enrolled member's loan balance so he/she may secure the entire property,

(2) provide an offer to purchase the entire property and pay off liens,

(3) consider some other financial agreement that would assist the tribal applicant in retaining property within the boundaries of the reservation.

(d) A non-tribal spouse shall sign an affidavit at the time that a tribal loan is accepted indicating he/she is informed of this regulation and consent to the tribal spouse receiving a mortgage against homestead property, held in fee, with this condition attached.

#### 67.14-5. *Foreclosures*

(a) *Default.* Any Tribal Loan that is in default for three consecutive months is subject to foreclosure proceedings, provided that a Notice of Arrears, showing the increasing amounts payable to cure the default, has been sent to the loan holder(s) each month by the Loan Officer.

(b) *Decision To Foreclose.*

(1) After three notices, the Loan Officer will provide the Director of Land Management, and the Loan Committee, all documents and information necessary to determine whether or not foreclosure proceedings should be started.

(2) Any recommendation to foreclose will be put on the next Land Commission agenda for concurrence, scheduling of a hearing, and designation of a three-person hearing body.

(3) Each member of the three-person hearing body will receive \$150 for being present at the scheduled hearing, reviewing all information presented, and providing a final decision, opinion, order or report based on their deliberations, except for employees of the Oneida Tribe who have permission to be a part of the hearing body as part of their job.

(4) The Director of Land Management will make provisions for necessary clerical support for the three-person hearing body.

### **67.15. Tribal Real Estate Taxes**

67.15-1. Regulations for the promulgation of a Real Estate Tax Code will be developed by the Division of Land Management by October 1, 1996, in order to provide for increasing costs for services provided to occupants of tribal land, such as environmental services, public roads, fire protection, recycling, garbage pick-up, water and sewer, transportation, traffic control, loans, and management of real property.

### **67.16. Organization**

#### 67.16-1. General

(a) The Division of Land Management shall administer all transactions that come under this Law.

(b) All tribal agencies will process any type of real property acquisition, including donations, through the Division of Land Management.

#### 67.16-2. Land Commission

(a) *Number of Commissioners.* The Commission shall be comprised of seven (7) elected Tribal members.

(b) *Term of Office.* The terms of office for the Commissioners shall be three (3) years. Terms shall be staggered with expiring positions elected every year. The first elected Land Commissioners shall serve according to the following formula, and staggering of terms shall begin thereafter:

(1) The three (3) candidates receiving the three highest number votes shall serve an initial term of three (3) years.

(2) The two (2) candidates receiving the next two highest number votes shall serve an initial term of two (2) years.

(3) The two (2) candidates receiving the next two highest number of votes shall serve an initial term of one (1) year.

(4) In the event of a tie vote in the first election, a coin toss shall determine which candidate shall serve the longer term.

(c) *Powers and Duties.* The Land Commission shall have the following powers and duties:

(1) The Land Commission shall set standards of professional competence and conduct for the professions detailed in this Law, review the examination grades of prospective new practitioners, grant licenses, investigate complaints of alleged unprofessional conduct, and perform other functions assigned to it by law.

(2) Hear and decide, as the original hearing body, contested cases that may arise from this Law.

(3) Implement and interpret the provisions of this Law.

#### 67.16-3. Administration

(a) Director of Division of Land Management. The Director shall have the following powers and duties:

(1) Hire, train, and establish operational and objective commitments for support staff needed to implement this Law.

(2) Supervise staff in accordance with Tribal Personnel Policies and Procedures.

(3) Provide Declaratory Ruling per procedures in this Law and the Oneida Nation Administrative Procedures Act.

(4) Implement all aspects of this Law through the Oneida Tribal Planning and Budgeting Process.

*End.*

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Adopted - BC-5-29-96-A  
Amended-BC-3-01-06-D  
Amended-BC-04-28-10-E

**CHAPTER 67**  
**REAL PROPERTY LAW**  
**Tokʼske Kayanlʼhsla Tsiʼ Niʼyohuntsyaʼté**  
The real/certain laws of the territory of the nation

67.1. Purpose and Policy	67.9. Disposition Of Estates Of Deceased Tribal Members
67.2. Adoption, Amendment, Conflicts	67.10. Real Estate Trust Accounts
67.3. Rules Of Statutory Construction	67.11. Leasing of Real Property
67.4. Definitions	67.12. Records
67.5. Interests In Real Estate: Individual Or Tribal	67.13. Real Estate Licensing
67.6. Holding Of Ownership	67.14. Real Estate Financing
67.7. Legal Descriptions	67.15. Tribal Real Estate Taxes
67.8. Title Transfer	67.16. Organization

**67.1. Purpose and Policy**

**67.1-1. Purpose**

(a) The purpose of this Law is to provide regulations and procedures for the transfer, control and management of the territory within the exterior boundaries of the Reservation of The Oneida Tribe of Indians of Wisconsin and such other lands as may be added within or without said boundary line; and to integrate these regulations and procedures with the present real property laws and practices of other federal and state sovereigns which may hold applicable jurisdiction within the reservation.

(b) In addition, this Law establishes a training and licensing mechanism for any person who lists, sells, buys, exchanges, leases, rents, or deals in any way with real property coming under the scope of this Law.

(c) Nothing in this Law shall be construed as a waiver of the sovereign immunity of the Oneida Tribe of Indians of Wisconsin.

**67.1-2. Policy**

(a) The provisions of this Law shall extend to all tribal lands and waters held in trust, all tribal lands and waters held in fee status, all fee status lands under the control of individual Oneida members, all heirship lands and waters and all individual and tribal trust lands and waters, all within the exterior boundaries of the Oneida Tribe of Indians of Wisconsin Reservation; and to such other lands as may be hereafter added, both within and without the exterior boundaries of the Oneida Reservation, under any law of the United States, except as otherwise provided by law.

(b) The licensing provisions of this Law shall extend to any person who lists, sells, buys, exchanges, leases, rents or deals in any way with real property coming under 67.1-2(a), of this Law, including employees of the tribe.

(c) Any transaction which would add property to the tribal land base shall be administered through the Division of Land Management under the provisions of this Law.

(d) The sale of tribal land is specifically prohibited under this Law, except for the purposes of consolidation or partition of property.

(e) It is not intended by this Law to repeal, abrogate, annul, impair or interfere with any rules, regulations, or permits previously adopted or issued pursuant to tribal or federal laws. Further, it is intended that Wisconsin law be considered as an integral part of real property transfer occurring within or without the Reservation, insofar as the transaction is between a non-Oneida person(s) who hold fee simple title to land within the Reservation and the Tribe or a tribal member.

(f) Expenses and Fees. The Land Commission shall establish an equitable fee schedule for each activity or service provided in this Law. All fees collected will be used for the maintenance of services and management of lands which come under the authority of this Law.<sup>1</sup>

## **67.2. Adoption, Amendment, Conflicts**

67.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-5-29-96-A and amended by resolutions BC-3-01-06-D and BC-04-28-10-E.

67.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

67.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

67.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

67.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

## **67.3. Rules Of Statutory Construction**

67.3-1. General words are understood to be restricted in their meaning by more specific words which came before.

67.3-2. If the meaning of a general word cannot be reconciled with the meaning of a specific word in this Law the specific word will control.

67.3-3. When a series of words of general meaning is followed by words of limitation, the limitation will apply only to the last word in the list, unless otherwise stated.

67.3-4. The word “shall” is mandatory and the word “may” is permissive.

67.3-5. The Law should be read as a whole. The words are not meant to be isolated, and their meaning must be found in reference to the statement as a whole.

67.3-6. If a later enacted Law or statute cannot be read in agreement with an earlier enactment, the later enactment will control when interpreting the meaning from context.

67.3-7. “Land” is used to mean the earth’s surface extending downward to the center of the earth and upward to infinity, including things permanently attached by nature, such as tree and water.

67.3-8. “Real Estate” is used to mean the earth’s surface extending downward to the center of the earth and upward to infinity, including all things permanently attached to it, whether natural or permanent man-made additions.

67.3-9. “Real Property” or “Property” is used to mean the earth’s surface extending downward to the center of the earth and upward to infinity, including all things permanently attached to it,

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<sup>1</sup> Other laws that are relevant to the purpose and implementation of this Law include:

Oneida Shoreland Protection Ordinance

Oneida Zoning Ordinance

Oneida Administrative Procedures Act

25 CFR 150-179 (Land and Water)

25 CFR 15 (Probate)

25 CFR 261-265 (Heritage Preservation)

Wisconsin Statutes and Administrative Code relating to the practice of Real Estate

State and Federal Laws specifically cited in Ordinance



whether natural or permanent man-made additions, plus the bundle of legal rights which include control, exclusion, possession, disposition and enjoyment.

67.3-10. The word "Person" when used in this Law includes individuals, corporations or partnerships.

#### **67.4. Definitions**

67.4-1. Accounting. The responsibility of a broker to report the status of all funds received from or on behalf of the principal.

67.4-2. Agency. Any tribal entity, board, commission, committee, department or officer authorized by the Oneida Tribe to propose Law/rules for adoption by the Oneida Business Committee. The term "Agency" shall not include the Oneida Business Committee or a tribal appeals body.

67.4-3. Appraisal. A process of estimating a property's value.

67.4-4. Attorney. A person trained and licensed to represent another person in court, to prepare documents defining or transferring rights in property and to give advice or counsel on matters of law.

67.4-5. Broker. A person who acts as an agent and negotiates the sale, purchase or rental of property on behalf of others for a fee, and must be licensed under this Law under certain circumstances.

67.4-6. Bundle of Rights. The "rights" of ownership include the right of possession, the right to control the property within the framework of the law, the right of enjoyment, the right of exclusion and the right of disposition.

67.4-7. Buyer. The person who hires a broker to find a parcel of real estate that has certain characteristics or is usable for specific purposes; or the person who buys a piece of real estate from a seller broker or salesperson.

67.4-8. Care. The broker must exercise a reasonable degree of care and skill while transacting the business of the principal.

67.4-9. Certified Survey Map. A map officially filed and approved by the County, Tribal or municipal governments, which provides the legal description of any land in question.

67.4-10. Contested Cases. A proceeding before an Agency in which an opportunity for a hearing before the Agency is required by law prior or subsequent to the determination of the Agency of the legal rights, duties, or privileges of specific parties unless otherwise provided for by tribal law. This includes the revocation, suspension or modification of a license or permit when a grant of such application is contested by a person directly affected by said licensing or permitting. See Oneida Administrative Procedures Act.

67.4-11. Counseling. Providing clients with competent independent advice based on sound judgment, on such things as alternative courses of action regarding the purchase, use and investment of property.

67.4-12. Development. The construction of improvements on land.

67.4-13. Disclosure. The broker's duty to keep the principal fully informed at all times of all facts or information the broker obtains that could affect the transaction.

67.4-14. Dual Agency. When a broker receives compensation from both buyer and seller in a transaction.

67.4-15. Education. The provision of information to both the real estate practitioner and the consumer.

67.4-16. Fiduciary. One who is placed in a position of trust and confidence and normally is responsible for the money and/or property of another. A broker and a salesperson are both fiduciaries.

- 67.4-17. Financing. Financing is the business of providing funds by means of a mortgage loan.
- 67.4-18. Fixtures. Articles that were once personal property but has been so affixed to land or a building that the law construes it to be part of the real estate.
- 67.4-19. Fraud. The intentional misrepresentation of a material fact in such a way as to harm or take advantage of another person. In addition to false statements about a property, the concept of fraud covers intentional concealment or nondisclosure of important facts.
- 67.4-20. Individual Fee Land. Land held in fee by an individual or group of individuals.
- 67.4-21. Individual Tribal Property. Real property owned by an Oneida Tribal member in fee or held in trust for that member by the United State of America.
- 67.4-22. Individual Trust Land. Land held by the United States of America in trust for the benefit of an individual Tribal member.
- 67.4-23. Intestate. One who dies without having made a will; or property not disposed of by will.
- 67.4-24. Law of Agency. The body of law that governs the rights and duties of principal, agent and third persons.
- 67.4-25. Mobile Home. A building which, when originally constructed, was prefabricated and on wheels to allow movement from one location to another with minimal modifications necessary to attach utilities. It is considered to be personal unless it is permanently affixed to the land, at which point it is considered real property.
- 67.4-26. Personal property or Personalty. All property that does not fit the definition of real property, and usually the characteristic of being “movable.”
- 67.4-27. Plat Map. Map of a piece of property that may be a part of a larger parcel of real estate or may be composed of several smaller ones which the surveyor resurveys. This new map is called a Plat map, and it creates a new legal description which must be tied to the description on a Certified Survey Map(s), to be considered acceptable for transfer of property.
- 67.4-28. Probate. An official authentication of a will, and/or official administration of an estate of a deceased person.
- 67.4-29. Reservation. That area within the exterior boundaries as set out in the 1838 Treaty with the Oneida 7 Stat. 566, and that land purchased and held by the United States of America in trust for the Oneida Tribe of Indians of Wisconsin outside those exterior boundaries
- 67.4-30. Salesperson. A person who receives a fee or commission to work on behalf of the broker, and must be licensed under this Law under certain circumstances.
- 67.4-31. Subsurface Rights. The rights to natural resources lying below the earth’s surface.
- 67.4-32. Sun Rights. A solar energy owner’s right to access to the sun.
- 67.4-33. Surface Rights. The rights to use the surface of the earth within boundaries defined in a transfer of real property.
- 67.4-34. Tribal Fee Land. Land held in fee by the Oneida Tribe.
- 67.4-35. Tribal Property. Real property owned by the Oneida Tribe in fee or held for the Tribe by United States of America.
- 67.4-36. Tribal Trust Land. Land held by the United States of America in trust for the benefit of the Oneida Tribe.
- 67.4-37. Tribe. Oneida Tribe of Indians of Wisconsin. Also known as the Sovereign Oneida Nation in Wisconsin, and On<sup>^</sup>yote<sup>></sup> a-ká.

## **67.5. Interests In Real Estate: Individual Or Tribal**

- 67.5-1. Fee Simple Absolute. The greatest interest of ownership or distribution in a parcel of land that it is possible to own i.e. no conditions. Sometimes simply designated as fee. Tribal

individuals, non-tribal individuals and tribal government may hold fee interest in land within the Oneida Reservation.

67.5-2. Leasehold. The interest in fee or trust property that is qualified by some future determinant such as time, age, or an act/incident.

67.5-3. Fee or Trust subject to a Condition. An interest which includes a proviso in the deed or will that upon the happening or failure to happen of a certain event, the title of the purchaser or devisee will be limited, enlarged, changed or terminated.

67.5-4. Life Lease. A lease of the right of use and occupancy of Tribal Fee or Trust Lands for the life of an individual either Oneida tribal or non-tribal.

67.5-5. Trust. Land held by the United States of America in trust for the Oneida Tribe of Indians of Wisconsin, or for a member of this tribe.

67.5-6. Life Use, or Estate. A claim or interest in individual trust property by a non-tribal spouse, not amounting to ownership, and limited by a term of life of the person in whom the right is vested.

#### **67.6. Holding Of Ownership**

67.6-1. Interests in land by more than one person may be held in the following ways:

(a) Joint tenancy with right of survivorship: Each owner has an equal, undivided interest in the property. As an owner dies, their share is divided among the remaining owners, so the last living owner owns the entire property.

(b) Tenancy in common. Each owner has a percentage interest in the property. As an owner dies, that owner's interest is divided among his or her devisees or heirs. Two or more individuals holding property are tenants in common unless:

(1) a deed, transfer document or marital property agreement specifically states the property is held as joint tenants with rights of survivorship; or

(2) a married couple holds the property without a marital property agreement that specifically states the property is held as tenants in common.

#### **67.7. Legal Descriptions**

67.7-1. The legal description for any land transferred under this Law will be derived from a Certified Survey Map (CSM) or Plat of Survey completed by a registered Land Surveyor according to currently accepted minimum standards for property surveys. If the Plat of Survey changes the legal description of the CSM for the same piece of property, the CSM legal description will be used on transfer documents along with the Plat of Survey description designated "**Also Known as ...**" Section, Township, Range and Fourth Principal Meridian must be within all tribal legal descriptions.

67.7-2. Every land survey shall be made in accordance with the records of the County Register of Deeds for fee land, and in accordance with the records of the Oneida Division of Land Management for all trust lands. The surveyor shall acquire data necessary to retrace record title boundaries such as deeds, maps, certificates of title, Title Status Reports from the Bureau of Indian Affairs, Tribal Leases, Tribal Home Purchase Agreements, center line and other boundary line locations.

67.7-3. Legal description defining land boundaries shall be complete providing unequivocal identification of line or boundaries.

67.7-4. In addition to Survey Map requirements outlined in Wisconsin Administrative Code, Chapter A-E7, all surveys prepared for the Oneida Tribe should indicate setbacks, building locations and encroachments.

67.7-5. Legal descriptions will be used on transfer documents formalizing a purchase, real estate sale, lease, foreclosure, probate transfer to beneficiaries or trust acquisition and tribal resolutions indicating legislative approval.

67.7-6. When real estate is listed for sale or lease to tribal members, the address is considered an adequate legal description of the property.

## **67.8. Title Transfer**

67.8-1. General. It is presumed that the intentions of parties to any real property transfer are to act in good faith. For this reason, this shall be liberally construed when faced with conflict or ambiguity in order to effectuate the intentions of the parties.

67.8-2. The Division of Land Management shall use only those title companies duly registered with the Department of Interior and approved by the Division of Land Management to update abstracts or provide Title Insurance on real property scheduled for trust acquisition.

(a) Title Companies must follow general guidelines provided by federal government in terms of form, content, period of search, destroyed or lost records and Abstracter's Certificate.

(b) When researching Land title within the reservation which is being considered for trust acquisition, the Title Company will be requested to search the title back to the original allottee, to assure that patents or Indian Deeds were legally issued.

(c) Any valid liens or encumbrances shown by the Commitment for Title Insurance must be eliminated before the Title is transferred into Trust.

(d) After land is in trust, title search of County records is no longer acceptable. Title Status Reports from Oneida Division of Land Management or the Bureau of Indian Affairs shall be used to verify all valid encumbrances, if any, on the title. A valid encumbrance is one that has been preapproved, in writing, by the Division of Land Management.

67.8-3. The Warranty Deed is the formal document used by the Division of Land Management to transfer title from one party to another. It shall not be considered valid unless it is in writing and:

(a) Identifies the grantor and grantee;

(b) Provides the legal description of the land;

(c) Identifies the interest conveyed, as well as any conditions, reservations, exceptions, or rights of way attached to the interest.

(d) Is signed by or on behalf of each of the grantors;

(e) Is signed by or on behalf of each spouse, and

(f) Is delivered.

67.8-4. A Warranty Deed prepared for Trust Acquisition shall, in addition to that listed in 8-3, include the following:

(a) The federal authority for Trust Acquisition:

(b) Any exceptions or exclusions from State fees or other transfer requirements;

(c) The approximate acreage of the real property being transferred to Trust; and

(d) The authority and signature of the appropriate Department of Interior official who accepts the real property into Trust.

67.8-5. A Warranty Deed transferring fee simple title shall be recorded in the appropriate Register of Deeds office. Once the real property is in trust, the Title shall be recorded with the Oneida Division of Land Management and the Aberdeen Title Plant for the United States Department of the Interior.

67.8-6. An involuntary Transfer of title may occur in the following ways:

(a) Tribal Eminent Domain is the right of the Tribal Government to acquire private land for public uses without the consent of private owners. Public uses include, but are not limited to, environmental protection, streets, highways, sanitary sewers, public utility/sites, waste treatment facilities and public housing. Attempts must first be made to negotiate an agreeable taking by the Tribal Government; thence provide an offer to purchase based on a tribal appraisal of the property; and provide compensation for the taking. Provision for required hearing on the taking and appeals to the Oneida Appeals Commission can be found in the Oneida Administrative Procedures Act.

(b) Foreclosures may occur whenever a tribal member ceases payment on a mortgage for leasehold improvements, a tribal home purchase agreement, or home improvement loan. If the loan is through a public lending institution the Tribe may choose to pursue its option to purchase the loan and finalize the foreclosure through the Division of Land Management. A decision to foreclose shall be handled as a Contested Case according to the Oneida Nation Administrative Procedures Act, Section 10. Contested Cases and 11. Appellate Review. Also see 14-5 of this Law.

(c) The Indian Land Consolidation Act was passed by Congress and became effective January 12, 1983 (Pub.L. No. 97-459, 96 Stat. 2515, and amended on October 30, 1984 by Pub.L. No. 98-608, 98 Stat. 3171). Section 207 of said Act is incorporated into this Law, which provides that if it is determined that the decedent's ownership in a given parcel of land is 2 percent or less of the total acreage, and that interest is incapable of earning \$100.00 in any one of the five (5) years from the date of the decedent's death, thence that ownership interest shall escheat, or pass, to the Tribe having jurisdiction over said land, for just compensation, unless the heirs can prove by substantial evidence that the above determination was wrong. This determination will be made through Probate proceedings in 67.9 of this Law.

(d) Upon the Tribe receiving majority consent from heirs, the Land Commission may approve an Order Transferring Inherited Interests under the authority of Section 205 of the Indian Land Consolidation Act provided that none of the Indians owning an undivided interest is willing to purchase or match the tribes offer.

(e) An Involuntary Transfer of Title cannot occur without a hearing in front of the Land Commission, or its designated subcommittee, under procedures of the Oneida Nation Administrative Procedures Act, Section 9. Declaratory Ruling, or Section 10. Contested Cases.

(f) Easements for Landlocked Properties. A procedure for handling a request for an easement will be developed and approved by the Land Commission.

67.8-7. Records. All documents pertaining to trust property within the Oneida Reservation shall be recorded in the United States of America Aberdeen Title Plant as well as the Division of Land Management. See also Section 12.

67.8-8. All Individual and Tribal lands purchased in fee shall be transferred to Trust held by the United States of America through procedures promulgated by the Division of Land Management, and supported by waivers approved by the Secretary of Interior or designate.

#### **67.9. Disposition Of Estates Of Deceased Tribal Members**

67.9-1. The purpose of this section is to formalize laws to handle the disposition of deceased tribal members' trust property, with or without a will. The intent of this section is to provide procedures which make it possible for equitable and fair decisions to be made for the surviving family, as well as promoting ongoing peace and harmony within the community.

(a) Tribal members holding fee land within the reservation may use the laws and procedures of the State of Wisconsin or those of this Law.

(b) Tribal members holding trust land within the reservation shall use the laws and procedures of this Section.

67.9-2. Non-members of The Oneida Tribe and non-citizens of the United States cannot acquire Trust land through inheritance. Where interests are specifically devised to individuals ineligible to inherit the following options are provided:

(a) Sale of interest to the Oneida Tribe or an eligible heir for its fair market value;

(b) Acquire a life estate in the property if an ineligible spouse and/or minor child.

67.9-3. Interests of Heirs who cannot be found will be sold to the Oneida Tribe at fair market value, or to an eligible heir, and the money returned to the estate for distribution.

67.9-4. In the absence of any heir or devisee, interests will escheat to the Oneida Tribe of Indians of Wisconsin.

67.9-5. Personal property which does not come under the guidelines of this Law, and may be distributed at the traditional ten day meal by family members, include:

(a) Clothing, furnishings, jewelry, and personal effects of the deceased not valued at more than \$100 per item.

(b) Ceremonial clothing or artifacts, including eagle feathers, beadwork, dance sticks, flutes, drums, rattles, blankets, baskets, pottery, medicines, and animal skins.

67.9-6. The Land Commission, or its designated sub-committee, shall make a declaratory ruling by authority of the Administrative Procedures Act, Section 9, in any case brought before them by any person claiming to be an heir of the deceased and requesting any of the following determinations:

(a) Heirs of Oneida members who die without a will (intestate) and possessed of fee or trust property coming under the authority of the Oneida Tribe of Indians of Wisconsin;

(b) Approve or disapprove wills of deceased Oneida members disposing of trust property;

(c) Accept or reject full or partial renunciations of interest;

(d) Allow or disallow creditors' claims against estates of deceased Oneida members;

(e) Decree the distribution of all assets of a deceased Oneida member.

67.9-7. The Staff Attorney for the Division of Land Management will prepare a file for each probate hearing within 30 days of receipt of a Request for Probate Hearing from anyone claiming to be an heir of the deceased. Extensions to this 30 day requirement shall be requested from the Land Commission when proven necessary to complete the file. Relatives and agencies will be asked to cooperate in developing a complete probate file containing:

(a) Family history information,

(b) Death certificate,

(c) Personal and Real Property Inventory,

(d) BIA-IIM Account Report,

(e) Creditor Claims,

(f) Original will, if any,

(g) Names, addresses and phone numbers of all parties-in-interest.

67.9-8. Definitions As Used In This Section

(a) Children And Issue: Includes adopted children and children of unwed parents where paternity has been acknowledged, or established by court decree. This does not include non-adopted step-children.

(b) Parties-in-interest: This includes:

(1) Heirs of the decedent

(2) A beneficiary named in any document offered for probate, such as the will of the decedent, land lease or sale agreement for real estate.

(3) A person named as administrator or personal representative in any document offered for probate.

(4) Additional persons as the Land Commission may by order include who may be affected by the actions of the Land Commission, or its designated sub-committee, whether by receipt of or denial of any property which is a part of the action.

(c) Heirs: Any person who is entitled under Tribal law to an interest in the property of a decedent.

67.9-9. *Parties-in-interest.* The net estate of a decedent, not disposed of by will, passes to his/her surviving heirs or Parties-in-interest as follows:

(a) To the spouse:

(1) All Real Property.

(2) All other than Real Property if there are no surviving children of the decedent.

(3) 2 of other than Real Property of the decedent's estate if there are surviving children of the decedent, or children of any deceased child of the decedent (grandchildren) who take by right of representation.

(b) To Surviving Children and children of any deceased child of the decedent by rights of representation;

(1) All of the estate if there is no surviving spouse, divided equally to all in the same degree of kinship to the decedent. Surviving children of a deceased child of the decedent will divide their parent's share.

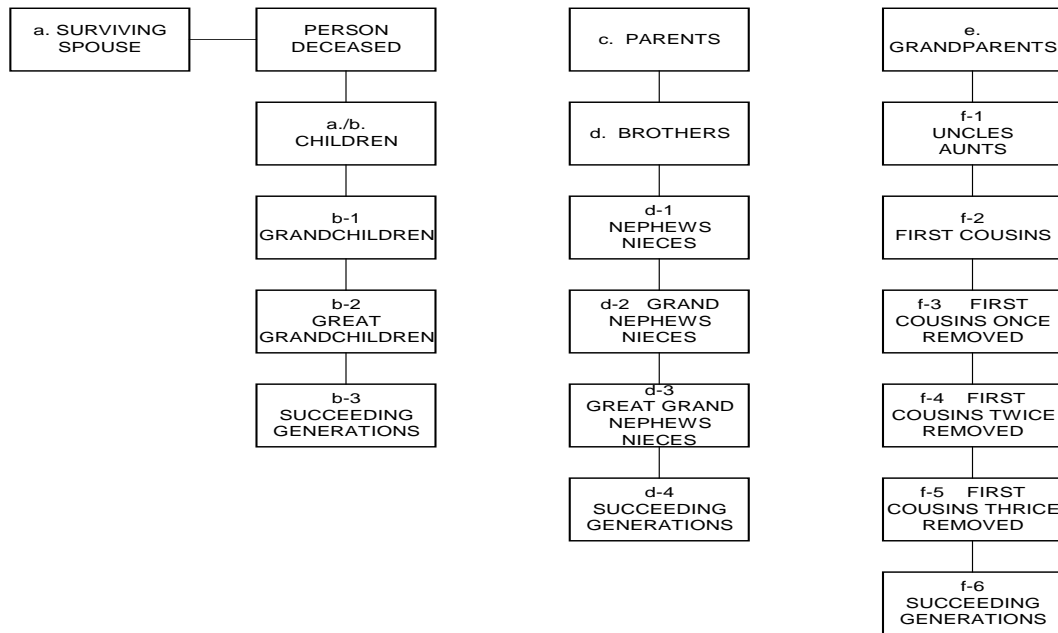
(c) All of the estate to the parents, equally divided, if no surviving spouse, children or children taking by right of representation.

(d) All of the estate to the brothers and sisters and children of deceased brothers or sisters by representation, divided equally, If no surviving spouse, children, or parents.

(e) All of the estate to the grandparents of the deceased divided equally, if no surviving spouse, children parents or brothers and sisters.

(f) All of the estate divided equally to lineal descendants of the grandparents of the deceased in the same order as (b) thru (e) if no surviving spouse, children, parents brothers/sisters, or grandparents of the decedent.

390 (g) Diagram of Intestate Succession as outlined in (a) thru (f) in Figure 1.



391 (h) Any 2% interests, or less, in land, as defined in 8-6(c) of this Law.  
 392 67.9-10. When the Probate File is complete, it will be placed on the agenda for review by the  
 393 Land Commission, who will first review it for sufficiency. If the Land Commission determines  
 394 the file is incomplete, it is sent back to the Staff Attorney with further instructions. If the probate  
 395 file is determined to be complete, a hearing shall be scheduled at a time when most, if not all,  
 396 parties can attend.

397 (a) *Notice:* All parties-in-interest will be sent a certified personal notice of the hearing to  
 398 their current or last known address. The hearing notice will also be posted at NORBERT  
 399 HILL CENTER, LITTLE BEAR DEVELOPMENT CENTER and other public places within the  
 400 reservation, and published in at least two issues of the Kalihwisaks, the Milwaukee  
 401 Sentinel/Journal, a Green Bay Paper and an Appleton paper. The notice will include time  
 402 and place for hearing, agenda, approximate length of hearing and contact person. This  
 403 notice will be provided at least 10 days before the hearing takes place.

404 (b) The hearing will generally adhere to the following format:

- 405 (1) Rules for an open, nonjudgmental discussion shall be presented and accepted.
- 406 (2) Probate file is reviewed and data added or corrected based on consensus of
- 407 those present.
- 408 (3) Ample time is provided for full discussion of the process, presentation of
- 409 additional data for the file, and defining of problems or disputes to be entered into
- 410 the record.
- 411 (4) All problems or disputes shall be settled in this hearing, with all parties-in-
- 412 interest present and assisting in this resolution. This includes recommendations for
- 413 clear partition of any real property held in undivided interest, and full discussion of
- 414 creditor claims. This hearing shall be continued to another date only if unpredicted
- 415 circumstances or unavailable information impedes the progress of resolution.
- 416 (5) When all problems, disputes and legal issues of the case have been resolved to
- 417 the satisfaction of all parties-in-interest, the hearing body will issue its Final or
- 418 Declaratory Ruling to the Director of Land Management, who will notify the Land



Commission and all parties involved in the hearing. This Final Ruling takes effect 60 days after mailings.

67.9-11. A party to a probate hearing may seek a rehearing of any of the above determinations listed in 9-3 upon provision of a written request to the Director of the Division of Land Management within 60 days after the Declaratory Ruling is issued. It is the responsibility of the aggrieved party to make certain that adequate documentation necessitating a rehearing is attached to the request.

(a) This request must include affidavits, witness list, summary of testimony and other support documents which would provide a justifiable reason why any new information was not available at the original hearing.

(b) If basis for rehearing is alleged procedural irregularities, the request shall include complete documentation of these irregularities.

(c) If basis for rehearing is the constitutionality of the Law or its procedures, a legal brief shall be attached to the request which clearly establishes the legal rationale for this claim.

(d) If basis for rehearing is that the determination is clearly erroneous, arbitrary and/or capricious, a clear statement or legal brief summarizing the party's rationale for believing this to be true shall be attached to the request.

67.9-12. The Director of Land Management will place the petition for rehearing on the first agenda of the Land Commission following the receipt of the written request.

(a) The Land Commission may deny a rehearing if there is insufficient grounds for the petition, or if the petition is not filed in a timely fashion.

(b) The Land Commission may order a rehearing based on the merit of the petition. The petition and supporting papers are then sent to all participants of the first hearing along with the date for the rehearing.

(c) If a rehearing is ordered, the Land Commission will adhere to the same notice requirements as in the first hearing. In addition, the hearing body should be composed of the same individuals responsible for the first hearing. Based on the information presented at the rehearing, the hearing body may adhere to the former Ruling, modify or vacate it, or make such further determinations that are warranted.

67.9-13. Any Declaratory Ruling given under this Section may be appealed to the Oneida Nation Appeals Commission within 30 days from the date of the Ruling. The Ruling is sent to the Parties-in-interest with same documentation outlined in 9-6.

67.9-14. A party may petition the Oneida Appeals Commission to reopen the case within three years after the Declaratory Ruling has been mailed out if they can prove all of the following:

(a) They were not a participant in the first hearing;

(b) They were completely unaware that the first probate hearing occurred and they have proof that they were not duly noticed; and

(c) They have rights which were erroneously left out of the first probate hearing.

67.9-15. After looking at the record of the first hearing, the Appeals Commission may rule that the Petition To Reopen is not sufficient, or it may send an order to the Land Commission to provide a second hearing based on the evidence provided in the Petition.

67.9-16. All probate Declaratory Rulings of the Land Commission or Judgments of the Appeals Commission shall be recorded in the Division of Land Management.

(a) If fee land is part of the Ruling, it shall also be recorded at the County Register of Deeds.

(b) If trust land is part of the Ruling, it shall also be recorded at the Department of Interior Aberdeen Title Plant.

**67.10. Real Estate Trust Accounts**

67.10-1. A property trust account or escrow account shall be established by the Division of Land Management to deposit money or property being held for the following purposes:

- (a) To ensure receipt of mortgage satisfaction from seller;
- (b) Tax, insurance and utility payments held in escrow;
- (c) Security deposits on rental property;
- (d) Administrative fee;
- (e) Earnest money;
- (f) Any other receipts pertaining to real property transfer.

67.10-2. Division of Land Management Staff shall deposit all funds received within 48 hours.

67.10-3. The name Real Estate Trust Account and the Division of Land Management's name shall appear on all checks, share drafts or drafts from this account.

67.10-4. Within 10 days of opening or closing the account, the Division of Land Management shall notify the tribe's Internal Auditor of the name and number of the account, person(s) authorized to sign trust account checks and the name of the depository institution.

67.10-5. Receipt of earnest money shall be written on the relevant document pertaining to the transaction.

**67.11. Leasing of Real Property**

67.11-1. All leasing of tribal land shall be processed in accordance with the Tribe's Leasing law.

**67.12. Records**

67.12-1. *Purpose.* The purpose of recording is to provide evidence of activities that effect land title; preserve a record of the title document; and give constructive notice of changes to the title.

67.12-2. *Types Of Record.* The Division of Land Management shall develop a system for timely recording of Oneida Reservation title documents, including the following:

- (a) Deeds
- (b) Probate orders
- (c) Mortgages and other valid liens
- (d) Easements, covenants, restrictions
- (e) Certified Survey Maps and Plats of survey
- (f) Patents
- (g) Declarations of Involuntary Transfer or Taking
- (h) Satisfactions
- (i) Leases
- (j) Contracts
- (k) Home Purchase Agreements
- (l) Correction of Title defects

67.12-3. *Recordable Documents.* The original, a signed duplicate, or certified copy of the title document listed above shall be submitted for recording.

67.12-4. *Accessibility.* It is the policy of the Division of Land Management to allow access to land records and title documents unless such access would violate the Privacy Act (5 U.S.C. 552a).

67.12-5. *Certification.* Upon request, the Legal Services office will conduct a title examination of a tract of land by a qualified title examiner and provide a title status report to those persons authorized by law to receive such information, along with certification of these findings by the staff attorney.

67.12-6. *Tribal Seal.* The Land Commission is empowered to have made and provided to the Division of Land Management the seal of the Oneida Tribe to be used to authenticate documents which are certified by the staff attorney.

### **67.13. Real Estate Licensing**

67.13-1. *General.* Any person engaged in the business of buying, selling, advertising, listing or leasing tribal property shall be required to hold a Tribal Property License. A license requirement is established in order to protect the tribe and its members from fraud, dishonesty or incompetence in the negotiation and transfer of real property.

67.13-2. *Who Must Be Licensed.*

(a) *Tribal Property Brokers.* A Tribal Property Broker is defined as any person who has training in all aspects of real property, and acts for another person or the tribe to perform any of the following real property duties:

- (1) selling;
- (2) listing;
- (3) buying;
- (4) leasing;
- (5) renting;
- (6) exchanging;
- (7) negotiating any of above activities.

(b) *Salespersons.* A Tribal Property Salesperson is defined as any person who assists a Broker in accomplishing any of the above real property duties, and has been certified to have received the level of training outlined in this Law.

(c) *Apprentices.* Any person desiring to act as an tribal property salesperson shall file with the Division of Land Management an application for a license. A GED, HSED or high school diploma is required, except for those who write and pass a preliminary examination covering general knowledge including reading, writing, arithmetic and general real estate terminology.

67.13-3. *Exceptions.* This Section does not apply to the following:

- (a) persons who perform real property duties on their own property;
- (b) receivers, trustees, administrators, executors, guardians or persons appointed by or acting under the judgment or order of any judicial system;
- (c) tribal public officers while performing their official duties;
- (d) banks, savings and loan associations and other designated financial institutions when transacting business within the scope of their corporate powers as provided by law;
- (e) any licensed attorney who, incidental to the general practice of law, negotiates loans secured by real estate mortgages or encumbrances or transfers of real estate;
- (f) employees, such as janitors, custodians or other employed by the tribe who show property or accept lease applications as an incidental part of their duties.
- (g) persons who list, sell, or transfer real property for a cemetery association of a church, tribal program or other nonprofit organization.

67.13-4. *Licensing Procedure*

(a) *Education Requirements.* Conference seminars, courses at accredited institutions, and Oneida Career Center classes will be accepted as proof of the hours of education received by an applicant.

- (1) Each applicant for a salesperson's license must submit to the Division of Land Management, proof of attendance at 45 classroom hours of educational programs

dealing with State, Federal and Tribal transfer of Real Property. At least 25 classroom hours shall cover Tribal and Federal real property law.

(2) Each applicant for a broker's license must submit to the Division of Land Management, proof of attendance at 90 classroom hours of education programs addressing State, Federal and Tribal transfer of Real Property.

(b) *Experience Requirements.* Each applicant for a tribal broker's license must submit to the Division of Land Management, proof of at least one year of experience as a real property salesperson, or as a broker in another jurisdiction.

(c) *Examination.* The Licensing Examination for tribal brokers and salespeople shall be administered through the Oneida Career Center.

(1) Land Commission will create a test which will contain the following materials:

(A) 50% Tribal Law

(B) 30% Federal Law

(C) 20% Wisconsin Law

(2) A score of 75% or better on each portion of the examination is required to pass. If an applicant fails any of the three portions of the exam, that applicant will have six opportunities to retake the failed portion within the following six months. If that applicant cannot pass the failed portion within the following six months, he or she must retake the entire exam to qualify for a license.

(d) *Fees.* The following fees are applicable to tribal licensees. The Land Commission will establish an equitable fee schedule for the following:

(1) issuance of a tribal salesperson or broker license

(2) annual renewal fee for a tribal salesperson or broker license

(3) late penalty for filing within 30 days of expiration

(4) late penalty for filing within year of expiration

(5) Test fee

(e) *Licensing.* An applicant who has passed the appropriate license examination and has complied with the necessary requirements will be granted a license by the Oneida Land Commission. The license authorizes the licensee to engage in the activities of a tribal real property broker or salesperson as described in this Law. All licenses shall show the name and business address of the licensee.

#### 67.13-5. *Rules Of Responsibility*

(a) The intent of this section is to establish minimum standards of conduct for real property licensees and to define that conduct which may result in Land Commission action to limit, suspend or revoke the license of a real property broker, salesperson or apprentice, or impose a fine.

(b) Violations of rules in this section may demonstrate that the licensee is incompetent, or has engaged in improper, fraudulent or dishonest dealings.

(1) A licensee has an obligation to treat all parties to a transaction fairly.

(2) In order to comply with Federal and Tribal law, licensees shall not discriminate against, nor deny equal services to, nor be a party to any plan or agreement to discriminate against a person because of sex, race, color, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, sexual orientation, age or ancestry.

(3) Licensees shall not provide services which the licensee is not competent to provide unless the licensee engages the assistance of one who is competent.

- (4) Licensees shall be knowledgeable regarding laws, public policies and current market conditions on real estate matters and assist, guide and advise the buying and selling public based upon these factors.
- (5) Licensees shall not advertise in a matter which is false, deceptive, or misleading.
- (6) Licensees shall not personally accept any commission, rebate, or profit from any of their real property dealings.
- (7) Licensees shall not engage in activities that constitute the unauthorized practice of law.
- (8) Licensees shall not discourage any person from retaining an attorney.
- (9) Licensees shall not exaggerate, misrepresent or conceal material facts in the practice of real estate.
- (10) Licensees shall not knowingly transmit false information.
- (11) No licensee shall draft or use any document which the licensee knows falsely portrays an interest in real estate.
- (12) Licensee shall not disclose any of the terms of one prospective buyer's offer to purchase to any other prospective buyer.
- (13) Licensee shall not issue checks upon trust accounts which contain insufficient funds.
- (14) Licensees shall notify the Division of Land Management if they are convicted of a crime, except motor vehicle offenses, so that a determination can be made whether the circumstances of the crime are substantially related to the practice of a tribal real property broker or salesperson.
- (15) Licensees shall not render services while the ability of the licensee to competently perform duties is impaired by mental or emotional disorder, drugs or alcohol.
- (16) Licensee shall not enter into overlapping agreements that could be construed as dual agency.

**67.13-6. Penalties For Violation Of This Law**

- (a) Fines for minor infractions may be imposed by the Land Commission for any amount up to \$50.00. Minor infractions may include the first three infractions of the above listed offenses, or others as defined by the Land Commission.
- (b) The Land Commission shall provide a fair hearing, as per Oneida Nation Administrative Procedure Act, Section 10. Contested Cases, for any person alleged to have violated this section, before a penalty is ordered.
- (c) Major infractions of this section may lead to an action to limit, suspend or revoke the license of the defendant; disposition of a fine for any amount up to \$500; and/or penalties and judgments authorized by the Oneida Administrative Procedures Act Section 10(e).

**67.13-7. Licensing Fee For Non-tribal Brokers.** The Division of Land Management is empowered to develop a licensing fee schedule and collection procedures for all brokers who enter a consensual agreement to sell property to the Oneida tribe and are not licensed by this Law. These fees will be used for maintenance of services and management of Real Property within the authority of this Law.

**67.14. Real Estate Financing**

**67.14-1.** The goal of tribal loan programs is to maintain and improve the standard of living for tribal members, while protecting and expanding the Tribal Land base.

67.14-2. Consistent with available funds, the Division of Land Management shall provide loan programs for the following purposes:

- (a) Financing the purchase or down payment of existing homes and lands,
- (b) Construction of new homes,
- (c) Repair and improvement to existing homes,
- (d) Refinancing existing mortgages,
- (e) Purchasing or refinancing mobile homes,
- (f) Consolidation of Loans, and
- (g) Real Estate Tax Arrearage.

67.14-3. *Eligibility Requirements For All Loans:*

- (a) All applicants must be 21 years of age.
- (b) Applicant(s) must be an enrolled member of the Oneida Tribe.
- (c) Financed property must be located within the boundaries of the Oneida Reservation.
- (d) Applicants must have an acceptable credit rating.

67.14-4. All loan programs are provided only to tribal members in order to respond to the Oneida Tribe's legislative purpose of expanding and maintaining tribal jurisdiction over all land within the boundaries of the Oneida Reservation, while fulfilling basic membership needs for adequate housing.

(a) The applicant for any loan must list one to three Oneida Tribal members who will inherit any interest in Real Property mortgaged by a Tribal loan program, upon death of the applicant.

(b) If the spouse of an applicant is a non-tribal member, he/she may continue to pay off the loan, as long as he/she agrees to list three tribal beneficiaries in case of death. Once the loan is satisfied, the designation of beneficiaries to the mortgaged interest in fee property will lapse.

(c) If the applicant and non-tribal spouse commence divorce proceedings, the Division of Land Management may

- (1) refinance the enrolled member's loan balance so he/she may secure the entire property,
- (2) provide an offer to purchase the entire property and pay off liens,
- (3) consider some other financial agreement that would assist the tribal applicant in retaining property within the boundaries of the reservation.

(d) A non-tribal spouse shall sign an affidavit at the time that a tribal loan is accepted indicating he/she is informed of this regulation and consent to the tribal spouse receiving a mortgage against homestead property, held in fee, with this condition attached.

67.14-5. *Foreclosures*

(a) *Default.* Any Tribal Loan that is in default for three consecutive months is subject to foreclosure proceedings, provided that a Notice of Arrears, showing the increasing amounts payable to cure the default, has been sent to the loan holder(s) each month by the Loan Officer.

(b) *Decision To Foreclose.*

(1) After three notices, the Loan Officer will provide the Director of Land Management, and the Loan Committee, all documents and information necessary to determine whether or not foreclosure proceedings should be started.

(2) Any recommendation to foreclose will be put on the next Land Commission agenda for concurrence, scheduling of a hearing, and designation of a three-person hearing body.

(3) Each member of the three-person hearing body will receive \$150 for being present at the scheduled hearing, reviewing all information presented, and providing a final decision, opinion, order or report based on their deliberations, except for employees of the Oneida Tribe who have permission to be a part of the hearing body as part of their job.

(4) The Director of Land Management will make provisions for necessary clerical support for the three-person hearing body.

#### **67.15. Tribal Real Estate Taxes**

67.15-1. Regulations for the promulgation of a Real Estate Tax Code will be developed by the Division of Land Management by October 1, 1996, in order to provide for increasing costs for services provided to occupants of tribal land, such as environmental services, public roads, fire protection, recycling, garbage pick-up, water and sewer, transportation, traffic control, loans, and management of real property.

#### **67.16. Organization**

##### **67.16-1. General**

(a) The Division of Land Management shall administer all transactions that come under this Law.

(b) All tribal agencies will process any type of real property acquisition, including donations, through the Division of Land Management.

##### **67.16-2. Land Commission**

(a) *Number of Commissioners.* The Commission shall be comprised of seven (7) elected Tribal members.

(b) *Term of Office.* The terms of office for the Commissioners shall be three (3) years. Terms shall be staggered with expiring positions elected every year. The first elected Land Commissioners shall serve according to the following formula, and staggering of terms shall begin thereafter:

(1) The three (3) candidates receiving the three highest number votes shall serve an initial term of three (3) years.

(2) The two (2) candidates receiving the next two highest number votes shall serve an initial term of two (2) years.

(3) The two (2) candidates receiving the next two highest number of votes shall serve an initial term of one (1) year.

(4) In the event of a tie vote in the first election, a coin toss shall determine which candidate shall serve the longer term.

(c) *Powers and Duties.* The Land Commission shall have the following powers and duties:

(1) The Land Commission shall set standards of professional competence and conduct for the professions detailed in this Law, review the examination grades of prospective new practitioners, grant licenses, investigate complaints of alleged unprofessional conduct, and perform other functions assigned to it by law.

(2) Hear and decide, as the original hearing body, contested cases that may arise from this Law.

(3) Implement and interpret the provisions of this Law.

##### **67.16-3. Administration**

(a) Director of Division of Land Management. The Director shall have the following powers and duties:

(1) Hire, train, and establish operational and objective commitments for support staff needed to implement this Law.

(2) Supervise staff in accordance with Tribal Personnel Policies and Procedures.

(3) Provide Declaratory Ruling per procedures in this Law and the Oneida Nation Administrative Procedures Act.

(4) Implement all aspects of this Law through the Oneida Tribal Planning and Budgeting Process.

*End.*

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Adopted - BC-5-29-96-A

Amended-BC-3-01-06-D

Amended-BC-04-28-10-E



# LOC Priority List

02/27/15

Below is the LOC priority list that the LOC submitted to the 2/11/15 OBC meeting. Based on this list, the OBC took the following action: Motion by Lisa Summers to accept the Legislative Operating Committee priority list, seconded by Trish King. Motion carried unanimously. Note: The following were suggested priority items: Organizational Restructure Regulations (Trish King), Membership Ordinance (Lisa Summers), and Fit for Duty Regulations (Melinda J. Danforth). A “second tier” priority list was also suggested.

## GTC DIRECTIVES

### **Petition: Budget Cuts, Swimming Lessons, GTC Directives and Home Repairs for Elders**

*Next Steps: Analyses submitted, waiting for GTC consideration*

### **Petition: Child Care Department Consumer Complaint Policy**

*Next Steps: A work meeting is scheduled for February 23, 2015*

### **Petition: Dialysis Center Development**

*Next Steps: Analysis submitted, waiting for GTC consideration*

### **Petition: Judiciary Support System**

*Next Steps: Analysis submitted, waiting for GTC consideration*

### **Petition: Raise Employee Salaries 99 Cents**

*Next Steps: Analysis submitted, waiting for GTC consideration*

## OBC DIRECTIVES

### **Comprehensive Policy Governing Boards, Committees and Commissions Amendments**

*Next Steps: Begin making amendments to the Policy*

### **Furlough Policy**

*Next Steps: Public meeting held on February 5, 2015; consider comments and either make changes or forward to OBC for consideration*

### **Higher Education**

*Next Steps: Continue drafting a Law that incorporates provisions of the Higher Education Student Handbook yet gives the Higher Education Office flexibility to operate*

## LOC PRIORITIES

### **BC Sanctions and Penalties**

*Next Steps: Research how this item affects the Code of Ethics, Removal Law and Comprehensive Policy Governing Boards, Committees and Commissions and decide to either combine this item with one or more of the mentioned legislation or continue to work on this item separately*

### **Budget Management and Control Law**

*Next Steps: Continue to draft the Law*

# LOC Priority List

02/27/15

## Children's Code

*Next Steps: An outline is being created regarding what a Children's Code would encompass and then a meeting will be scheduled with the interested parties to provide the Finance Department with the information they need to determine what the potential fiscal impact of this legislation would be.*

## Code of Ethics Law Amendments

*Next Steps: Continue making amendments to the Law*

## Employment Law

*Next Steps: Review proposed draft and either continue work on the draft or create a new draft*

## Removal Law Amendments

*Next Steps: Continue making amendments to the Law*

## ACTIVE FILES LIST

## Agriculture Law

Summary: Consider legislation that would enable the Tribe to identify agricultural products that can be grown on the Reservation, including industrial hemp, in order to exercise the Tribe's sovereignty and pursue economic diversification.

*Next Steps: Begin working on a draft, continue conducting monthly work meetings*

## Audit Committee Bylaws

Summary: Review the Audit Committee Charter and consider changing the charter to bylaws

*Next Steps: Begin work on this item*

## Audit Law Amendments

Summary: The Audit Committee requested establishing a standard requirement for correcting high risk findings. The Committee also requested that the OBC clarify roles and responsibilities related to Audit issue interpretations and resolutions, including: who is the primary authority to determine whether audit issues are pursued or closed, who can enforce the need for management action and what process should be adopted to achieve results so past audits can be resolved and closed.

*Next Steps: Review proposed draft and either continue work on the draft or create a new draft*

## Capping Damages and Awards from the Judicial System

Summary: Develop legislation that would cap damages and awards that can be rendered by the Judicial System

*Next Steps: Review proposed draft and either continue work on the draft or create a new draft*

# LOC Priority List

02/27/15

## **Election Law Amendments**

Summary: Amend the Law to prohibit Tribal members from running for more than one seat per election and serving on more than one board, committee or commission; add enforcement provisions for campaign violations; streamline the role of Election Board, require a Milwaukee polling site; add provisions regarding election observations and clarify the referendum process.

*Next Steps: The sponsor and the LRO are continuing to work on the draft.*

## **Employee Advocacy Law**

Summary: Develop a new Law that formally codifies the rules and requirements for Tribal employees who wish to serve as an advocate for other Tribal employees who are challenging disciplinary action.

*Next Steps: Review proposed draft and either continue work on the draft or create a new draft*

## **Environmental, Health and Safety Law**

Summary: Develop a new Law that enables the Environmental, Health and Safety Department (EHSD) to protect land, water, air, people and safety on the Reservation. EHSD shall have the authority to protect the Reservation, promote public health & safety and do business on the Reservation as well as perform duties such as creating rules in implementing this Law.

*Next Steps: The sponsor is reviewing the proposed draft and will determine whether it is ready to move forward for an analysis or if changes should be made*

## **Family Court Amendments: Bench Warrants**

Summary: Amendments to the Family Court to explicitly include bench warrant authority.

*Next Steps: Waiting on input for implementation from the appropriate departments*

## **Fitness For Duty Policy**

Summary: Develop a policy that allows supervisors to send employees for an assessment when it is believed that an employee presents a health and/or safety hazard to themselves, others or the Tribe.

*Next Steps: Review proposed draft and either continue work on the draft or create a new draft*

## **GTC Meetings Law**

Summary: Develop a new law to govern the scheduling and conducting of GTC meetings, including: a standard agenda format and a code of conduct for those in attendance; outlining the duties of those preparing and assisting with GTC meetings, and establishing how petitions would be processed.

*Next Steps: Review proposed draft and either continue work on the draft or create a new draft*

## **Guardianship Law**

Summary: Develop a Guardianship Law for minor children because the Child Custody, Placement and Visitation Law permits a third party (i.e. a non-parent) to petition for custody of a minor child, but does not address third-party guardianships.

# LOC Priority List

02/27/15

*Next Steps: Review proposed draft and either continue work on the draft or create a new draft*

## **Hunting, Fishing and Trapping Law Amendments**

Summary: Streamline the Law and separate policy making and management decisions from the Law to avoid yearly/bi-yearly updates to the Law.

*Next Steps: Review amendments to the Law that were submitted by ERB and Conservation.*

## **Investigative Leave Policy Amendments**

Summary: Because of a decision made the Oneida Appeals Commission it was requested that the section of the Policy which prohibits the use of investigative leave when a complaint is filed be deleted. In addition, the time period of the investigation should be reduced from 30 days to 15 days.

*Next Steps: Begin making amendments to the Policy*

## **Law Enforcement Ordinance Amendments: Conservation Officers**

Summary: In order to avoid confusion when it comes to issuing fines, OPD and the Law Office are asking that the Ordinance clarify that Conservation Wardens are not sworn police officers.

*Next Steps: Begin making amendments to the Ordinance*

## **Leasing Law**

Summary: Develop a new law would allow the Tribe to approve surface leases at their discretion, instead of the Secretary of Interior, so long as the Secretary of Interior has approved Tribal surface lease regulations.

*Next Steps: LOC considered the draft and analysis on February 4, 2015.*

## **Marriage Law Amendments**

Summary: Because the same-sex marriage ban was ruled unconstitutional in Wisconsin, this Law is being amended to recognize marriages conducted legally in Wisconsin, including same-sex marriages.

*Next Steps: A proposed draft is complete and a legislative analysis and fiscal impact statement are being developed.*

## **Membership Ordinance**

Summary: Trust/Enrollment Department requested amendments to the Ordinance to include an individual's New York Oneida blood and Oneida of the Thames blood when determining blood quantum for Tribal membership.

*Next Steps: Wait until the Sustain Oneida initiative gathers information and the Trust/Enrollment Department decides how to proceed*

## **Motor Vehicle Law Amendments**

Summary: Licensing Department proposed amendments to the Law to update the Law and remove the registration prices so they can be changed without having to amend the Law.

*Next Steps: A public meeting is scheduled for February 19, 2015*

# LOC Priority List

02/27/15

**Pow-wow Committee Bylaws**

Summary: The Pow-wow Committee has requested additions to the Committee bylaws which address qualifications for serving on the committee.

*Next Steps: Waiting for clarification and approval from Pow-wow Committee on the proposed bylaws*

**Rulemaking Law**

Summary: Develop a new Law in order to have a consistent process for Tribal agencies that have been granted rulemaking authority under Tribal laws to adopt of administrative rules.

*Next Steps: Develop the Law*

**Rules of Appellate Procedure Amendments**

Summary: The Judiciary requested that amendments be made to the Rules to improve the process.

*Next Steps: A public meeting was held on February 5, 2015, the LOC will review comments and either make changes or forward to the OBC for consideration*

**Tribal Hearing Bodies**

Summary: This was a request for the LRO to conduct research on Tribal Boards, Committees and Commissions to find out which are also hearing bodies and where the hearing body authority comes from.

*Next Steps: Decide how to proceed*

**Tribally-Owned Business Organization Code**

Summary: Because the Tribe has several Tribally-owned entities, a proposal seeks the adoption of a Tribal corporation's code.

*Next Steps: Develop the Code*

**Vehicle Driver Certification and Fleet Management**

Summary: Risk Management requests a new Law to govern employee/Tribal official use of vehicles while on Tribal business and replace the current Vehicle Driver Certification Policy and Fleet Management Policy.

*Next Steps: A public meeting is scheduled for February 19, 2015*

**Whistleblower Law**

Summary: Develop a new Law that will replace the Employee Protection Law which would provide a more comprehensive avenue for complaints to be processed in a confidential manner.

*Next Steps: Review proposed draft and either continue work on the draft or create a new draft*

**Workplace Violence Policy**

Summary: Develop a new Policy that provides guidance to Tribal employees to maintain an environment at and within the Tribe's property and events that is free of violence and the threats of violence.

*Next Steps: Develop the Policy*

# Oneida Tribe of Indians of Wisconsin

## Legislative Reference Office

P.O. Box 365

Oneida, WI 54155

(920) 869-4376

(800) 236-2214

<http://oneida-nsn.gov/LOC>



## Committee Members

Brandon Stevens, Chairperson

Tehassi Hill, Vice Chairperson

Fawn Billie, Councilmember

Jennifer Webster, Councilmember

## Memorandum

**To:** General Tribal Council  
**From:** Brandon Stevens, LOC Chairperson  
**Date:** February 25, 2015  
**Re:** Legislative Operating Committee Update

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Below is a summary of legislation the Legislative Operating Committee (LOC) is currently processing which General Tribal Council may have a particular interest in.

### Budget Management and Control Act

A draft of the Budget Management and Control Act is currently being reviewed and worked on by the Treasurer's Office. The Budget Management and Control Law would provide a consistent manner to govern the Tribal budget process, establish a procedural framework and oversee Tribal expenditures.

### Election Law

Amendments to the Election Law are currently being processed to: include a provision regarding how Business Committee vacancies would be filled; update the Referendum section; decrease the number of days before an election a caucus and primary must be held; require the disclosure of all applicants for vacant positions, not just the official candidate list; clarify the sections regarding campaigning and the solicitation and acceptance of campaign contributions; decreases the number of Business Committee council member positions that can appear on the general election ballot after a primary from 15 to 10; includes a section regarding chain-of-custody requirements for the voting record; allow a voter with physical limitations to determine who can assist him or her in the voting process; include a section on election observers; include a violations section.

The Election Board has received the latest draft of the Election Law for review and the LOC sponsor, Tehassi Hill, will review any comments received from the Board and bring back to the LOC when it is ready.

### Employment Law

The Employment Law would replace the current Personnel Policies and Procedures with a Law that defines the Tribe's employee and employer responsibilities and define the minimum standards regarding hiring, compensation and benefits, employee safety, protecting employer assets and progressive disciplinary action. In addition, Tribal departments, divisions, and non-divisions would be given latitude under the Law to create Human Resource practices to fit their individual industry standards.

### GTC Meetings Law

The GTC Meetings Law is a proposed law that will govern the scheduling and conducting of GTC meetings, including: a standard agenda format and a code of conduct for those in attendance; outlining the duties of those preparing and assisting with GTC meetings and establishing how petitions would be processed. The previous LOC had completed a draft and that draft is now under review by the current LOC sponsor, Fawn Billie.

### Membership Ordinance

Amendments to the Membership Ordinance were requested to include an individual's New York Oneida blood and Oneida of the Thames blood when determining blood quantum for membership in the Oneida Tribe of Indians of Wisconsin. Since submission of the request for amendments, the Trust/Enrollment Committee is working on a Sustain Oneida initiative to gather information that will be beneficial in determining what types of amendments should be made to the Membership Ordinance based on this request.

### Sanctions and Penalties Law

On October 15, 2014, the LOC considered a request for a Sanctions and Penalties Law (Law) to provide sanctions and penalties for violations of tribal law or policy committed by Elected and Appointed Government Officials (Government Officials), including the Business Committee. These sanctions and penalties include public apologies, verbal warnings, written warnings, censure, community service, fines, suspension of pay, stipend forfeiture, termination of appointment and removal.

Under the Law, the individual Boards, Committees and Commissions would be responsible for reviewing any reports of violations of the Law and determining whether a sanction or penalty should be applied and what that sanction or penalty will be. In addition, reports regarding any violations of Tribal law or policy by a Government Official, as well as any action taken based on those violations, are required to be presented to the General Tribal Council at the Annual and Semi-Annual meetings.

### **Requested Action**

Motion to accept the LOC update as FYI

If you have any questions please contact the LOC at (920) 869-4376 or [LOC@oneidanation.org](mailto:LOC@oneidanation.org)

## Chapter 6

### Sanctions and Penalties for Government Officials

6.1. Purpose and Policy  
6.2. Adoption, Amendment, Repeal  
6.3. Definitions

6.4. Sanctions and Penalties  
6.5. Reporting

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#### 6.1. Purpose and Policy

6.1-1. *Purpose.* It is the purpose of this Law to provide sanctions and penalties for Government Officials who violate Tribal law or policy.

6.1-2. *Policy.* It is the policy of the Tribe to enable the Oneida Business Committee and boards, committees and commissions to sanction and/or penalize Government Officials who do not uphold Tribal law and policy and to ensure no Government Official avoids a penalty or sanction because of an absence of a sanction or penalty in a Tribal law or policy.

#### 6.2. Adoption, Amendment, Repeal

6.2-1. This law was adopted by the Oneida Business Committee by resolution \_\_\_\_\_.

6.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

6.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

6.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

6.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

#### 6.3. Definitions

6.3-1. This section shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Government Official" means any person elected to the Oneida Business Committee, any other person elected or appointed to a board, committee, or commission created by the Oneida Business Committee or Oneida General Tribal Council, or any person appointed to a board, committee or commission to fill a vacancy. However, "Government Official" does not mean a judge serving on the Judiciary.

(b) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

(c) "Notice" means written correspondence from a board, committee or commission which provides a Government Official with the sanction(s) or penalties imposed upon him or her through official board, committee or commission action.

(d) "Official Tribal Newspaper" means the Kalihwisaks.

(e) "Tribe" means the Oneida Tribe of Indians of Wisconsin.

#### 6.4. Sanctions and Penalties

6.4-1. Sanctions and penalties shall be utilized for Government Officials for violations of Tribal law or policy. These sanctions and penalties may be used in addition to, or in the absence of, any enforcement provisions contained within the Tribal law or policy violated. With the exception of



censure, all sanctions and penalties shall be approved by majority vote of the respective Government Official's board, committee, or commission.

6.4-2. Each day a Government Official is not in compliance with an approved sanction or penalty shall constitute a new violation. Sanctions and penalties include application of a single penalty or sanction, or a combination of penalties or sanctions as identified herein:

(a) Public apology presented through the official Tribal newspaper.

(b) Verbal warning issued during a meeting of the board, committee or commission. The verbal warning shall include notice to the Government Official that he or she is expected to comply with the Tribal law or policy violated, and the Government Official shall sign a written acknowledgement of those expectations.

(c) Written warning, issued during a meeting of the board, committee or commission. The written warning shall include notice to the Government Official that he or she is expected to comply with the Tribal law or policy violated, and the Government Official shall sign a written acknowledgement of those expectations.

(d) Censure of published news articles, other public opinions or speaking on behalf of the Business Committee, or the board, committee or commission elected or appointed to.

(1) Censure shall not exceed a six (6) month period per violation; and

(2) Censure shall be approved by a two-thirds (2/3) vote of the Government Official's respective board, committee or commission.

(e) Community service, not to exceed ten (10) hours per violation. Community service hours shall be completed within ninety (90) days of issuance, or the Government Official shall be subject to additional sanctions or penalties.

(f) A monetary penalty, in the form of a fine, suspension without pay or stipend forfeiture.

(g) Initiation of proceedings to have the Government Official removed from office, if elected or have his or her appointment terminated, if appointed.

6.4-3. The administration of three (3) sanctions or penalties within the same term of office for a Government Official is grounds for:

(a) a presentation to General Tribal Council to determine if removal proceeding should begin, provided that the Government Official is elected. The Business Committee shall be responsible for administering the process to bring such presentation to the General Tribal Council.

(b) a presentation to the Oneida Business Committee to determine if a Government Official's appointment should be terminated; provided that the Government Official is appointed. The Government Official's board, committee or commission shall be responsible for administering the process to bring such presentation to the Oneida Business Committee.

6.4-4. *Non-Monetary Sanctions.* Within fifteen (15) days of being noticed of a non-monetary sanction or penalty, the Government Official shall comply with the sanction by completing the applicable action(s):

(a) Submitting a written apology to the official Tribal newspaper.

(b) Providing written acknowledgement to the Oneida Business Committee or issuing board, committee, or commission of any expectations contained within a verbal or written warning(s).

(c) Placing public or published comments on the Oneida Business Committee or issuing board, committee, or commission agenda for approval for the duration of the censure.

(d) Scheduling community service hours with a Tribal program or a non-profit organization, and providing written notice to the Oneida Business Committee or issuing

board, committee, or commission of the location and dates service hours are to be completed.

6.4-5. *Monetary Penalties.*

(a) If a fine is imposed as a monetary penalty, the following shall apply. Offenses accumulate only during the same term of office.

(1) Minimum of fifty dollars (\$50.00) and maximum of one hundred dollars (\$100.00) per violation, for the first (1<sup>st</sup>) offense.

(2) Minimum of one hundred dollars (\$100.00) and maximum of two hundred dollars (\$200.00) per violation for the second (2<sup>nd</sup>) offense.

(3) Minimum of two hundred dollars (\$200.00) and maximum of five hundred dollars (\$500.00) per violation for the third (3<sup>rd</sup>) offense.

(b) A suspension without pay can last no more than one (1) day per violation.

(c) Only those stipends earned while violating a Tribal law or policy may be forfeited.

(d) The Oneida Police Department shall be responsible for issuing monetary penalties.

(1) The Oneida Police Department shall develop and maintain operating procedures on how issued fines shall be administered to government officials. The operating procedures shall be reviewed by the Oneida Police Department at least annually to ensure compliance with this Law.

(2) Penalties shall be issued within five (5) business days after being imposed.

(3) Penalties shall be paid in full within thirty (30) days of issuance and are payable to the Tribe.

(4) Penalties unpaid at the end of the thirty (30) days shall be garnished from the Government Official's pay in accordance with the Tribe's Garnishment Ordinance.

(5) A request for an extension on a fine payment can be made by filing a request with the Judiciary; provided that no extension shall exceed sixty (60) additional days. Individuals whose fines are not paid in full within the extension period are subject to garnishment as outlined in 6.4-6(d), and may be subject to applicable civil or criminal violations in accordance with Tribal law, or in the absence of Tribal law, local or state ordinances.

6.4-7. *Pay Suspensions.*

(a) The Human Resource and Payroll Departments shall be responsible for oversight and administration of pay suspensions.

(1) Within sixty (60) days of this Law being passed, the Human Resources Department shall develop internal operating procedures on how to administer pay suspensions for Government Officials.

(2) The internal operating procedures shall be reviewed by the Human Resources department at least annually to ensure compliance with this Law.

(b) The pay suspension shall be taken consecutively.

(c) Any pay suspension issued shall be administered within two (2) weeks of the expiration of 6.4-6(c).

(d) Personal, vacation or flex time may not be utilized to cover the hours under suspension.

6.4-8. Funds received from the issuance of monetary penalties shall be assigned to the Oneida Language Endowment Fund.

**6.5. Reporting**

6.5-1. *Reporting a Violation.* Violations of Tribal law or policy, as well as any other dishonest or illegal acts shall be reported with the offending Government Officials' board, committee or commission Chairperson. If the violation involves the Chairperson, the violation may be reported to the Vice-Chairperson. The Tribe shall not tolerate reprisals against any Government Official(s), employee(s) or community member(s) who, in good faith, makes such reports.

(a) Reports of violations shall be in writing and signed;

(b) Within sixty (60) days after the receipt of the report, the board, committee, or commission shall:

(1) Acknowledge receipt of the report;

(2) Address the report during a meeting of the board, committee or commission;

(3) Determine whether a sanction and/or penalty is to be applied;

(4) Provide written notice to the affected Government Official; and

(5) Provide written notice to the other appropriate Tribal agencies for implementation.

6.5-2. *Reporting to General Tribal Council.* Each board, committee and commission shall provide a report on any violations of Tribal law or policy reported to them under this Law at the Annual and Semi Annual General Tribal Council meetings. This report shall include a summary of any complaints received, implemented sanctions or penalties and the respective outcomes.

End.

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# March 2015

March 2015						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April 2015						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Mar 1 - 7	Mar 1	2	3	4	5	6	7
				9:00am 2:00pm LOC Meeting (BCCR)			
Mar 8 - 14	8	9	10	11	12	13	14
				BC Meeting (BCCR)			
Mar 15 - 21	15	16	17	18	19	20	21
				9:00am 2:00pm LOC Meeting (BCCR)			
Mar 22 - 28	22	23	24	25	26	27	28
				BC Meeting (BCCR)			10:00am GTC Meeting (Radisson)
Mar 29 - Apr 4	29	30	31	Apr 1	2	3	4

# April 2015

April 2015							May 2015						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	1	2	3	4	3	4	5	6	7	1	2
12	13	14	8	9	10	11	10	11	12	13	14	8	9
19	20	21	22	23	24	25	17	18	19	20	21	22	23
26	27	28	29	30			24	25	26	27	28	29	30
							31						

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Mar 29 - Apr 4	Mar 29	30	31	Apr 1	2	3	4
				9:00am 2:00pm LOC Meeting (BCCR)		12:00pm 4:30pm Good Friday-Offices Close	
Apr 5 - 11	5	6	7	8	9	10	11
				BC Meeting (BCCR)			
Apr 12 - 18	12	13	14	15	16	17	18
				9:00am 2:00pm LOC Meeting (BCCR)			
Apr 19 - 25	19	20	21	22	23	24	25
				BC Meeting (BCCR)			
Apr 26 - May 2	26	27	28	29	30	May 1	2