

# 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  
May 6, 2015 9:00 a.m.

- I. Call To Order and Approval of the Agenda**
- II. Minutes to be approved**
  - 1. April 15, 2015 LOC Meeting Minutes
- III. Current Business**
  - 1. Marriage Law Amendments
  - 2. Real Property Law Amendments
  - 3. Leasing Law
  - 4. Furlough Policy
  - 5. Comprehensive Policy Governing Boards, Committees and Commissions Amendments
  - 6. Employment Law
- IV. New Submissions**
  - 1. Petition: Genskow-OBC Accountability, Repeal Judiciary & Open Records Law
  - 2. Tribal Flag Code
- V. Additions**
- VI. Administrative Updates**
- 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

April 15, 2015 9:00 a.m.

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

**OTHERS PRESENT:** Taniquelle Thurner, Danelle Wilson, Rae Skenandore, Michelle Mays, RC Metoxen, Fawn Cottrell

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

Brandon Stevens called the April 15, 2015 Legislative Operating Committee meeting to order at 9:09 a.m.

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

### II. Minutes to be approved

#### 1. April 3, 2015 LOC Meeting Minutes

Motion by Tehassi Hill to approve the April 3, 2015 LOC meeting minutes; seconded by Jennifer Webster. Motion carried unanimously.

### III. Current Business

#### 1. Children's Code (01:29-06:58)

Motion by Tehassi Hill to defer the Children's Code for 60 days for the fiscal and administrative analysis; seconded by Fawn Billie. Motion carried unanimously.

#### 2. Furlough Policy (07:00-40:53)

Motion by Jennifer Webster to defer the Furlough Policy for two weeks for the noted considerations, minor changes, and a fiscal analysis; seconded by Fawn Billie. Motion carried unanimously.

#### 3. ONGO Emergency Amendments (40:54-42:00)

Motion by Fawn Billie to forward the ONGO Emergency Amendments to the Oneida Business Committee for consideration; seconded by Tehassi Hill. Motion carried unanimously.

### IV. New Submissions

### V. Additions

**VI. Administrative Updates**

**VII. Executive Session**

**VIII. Recess/Adjourn**

Motion by Jennifer Webster to adjourn the April 15, 2015 Legislative Operating Committee Meeting at 9:42 a.m.; seconded by Fawn Billie. Motion carried unanimously.



# Legislative Operating Committee

## May 6, 2015

# Marriage Law Amendments

**Submission Date:** November 11, 2014

✓ Public Meeting: **4/2/15**  
☐ 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.

**3/4/15 LOC:** Motion by Jennifer Webster to forward the Marriage Law Amendments to an April 2, 2015 public meeting; seconded by Fawn Billie. Motion carried unanimously.

**4/2/15:** Public meeting held.

### Next Steps:

- LOC to review the public meeting comment, make any necessary changes and direct that the Marriage Law Amendments be prepared for OBC consideration.



**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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**Memorandum**

**TO:** Legislative Operating Committee  
**FROM:** Jo Anne House, Chief Counsel  
Candice E. Skenandore, Legislative Analyst  
**DATE:** May 6, 2015  
**RE:** Marriage Law Amendments

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On April 2, 2015, a public meeting was held regarding amendments to the Marriage Law (Law). The Law would amend the definition of marriage to reflect that a marriage results in the creating of a legal status of spouses, as opposed to a legal status of husband and wife. In addition, the Law will remove the requirement that two adults of the “opposite sex” can marry. Also, if the parties themselves are the officiating person, they can mutually declare each other as spouses as opposed to husband and wife. Lastly, the Family Court Judge requested that Family Court will no longer establish guidelines for registering traditional tribal practitioners or spiritual or religious leaders who qualify as officiating persons in order to avoid confusion that the Family Court determines who qualifies as a traditional tribal practitioner or spiritual or religious leader.

This memorandum is submitted as a review of the written comments received during the public meeting process; there were no oral comments received at the public meeting itself. The public meeting draft with comments, as well as the comments received, have been attached for your review.

**Comment 1. Comment on Enforcement Responsibilities**

**Tonya Webster:** I don’t feel the Licensing Department should be the one to enforce the Penalty area (see below) within the Oneida Marriage Ordinance. Both Brown County Marriage Licensing and Madison Vital Statistics do not perform this. Both have separate areas who do the actual enforcing. Both Brown County and Madison said this should be done by some sort of legal area. The only way we would be able to prove fraud is if the applicants admitted to it. Also, the enforcement area is being removed from the Motor Vehicle Ordinance. Therefore, I think it would be best if this area is removed or reworded to have a legal department enforce the penalties.

*Response*

The comment is referring to sections 71.7-1 and 71.7-2:

**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.

The Tribe does not have a separate department for these actions; to create such a department may not be cost effective. Instead, the Tribe generally relies on the department to review the applications and marriage licensing activities and where violations occur to take necessary enforcement actions. The Oneida Law Office has legal counsel available to assist in reviewing enforcement correspondence/forms and assist in filing enforcement actions.

The enforcement of this ordinance does not require the department to investigate or find violations. It would be a part of the normal course of business, or where sufficient evidence is brought to the department's attention. This is similar to the language in section 51.9 of the Motor Vehicle law. It is not recommended that this section be changed.

## **Conclusion**

After review of the public meeting comments by the LOC, this item can be deferred to the LRO to prepare for OBC consideration.

**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

Analysis by the Legislative Reference Office					
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 was held on April 2, 2015. Revisions have been made to this Law that comply with drafting styles.

#### 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.<sup>1</sup> 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

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<sup>1</sup> **Tonya Webster:** I don't feel the Licensing Department should be the one to enforce the Penalty area within the Oneida Marriage Ordinance. Both Brown County Marriage Licensing and Madison Vital Statistics do not perform this. Both have separate areas who do the actual enforcing. Both Brown County and Madison said this should be done by some sort of legal area. The only way we would be able to prove fraud is if the applicants admitted to it. Also, the enforcement area is being removed from the Motor Vehicle Ordinance. Therefore, I think it would be best if this area is removed or reworded to have a legal department enforce the penalties



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**LEGISLATIVE OPERATING COMMITTEE**

Public Meeting on Marriage Law Amendments, Leasing and Real Property Law Amendments  
Business Committee Conference Room-2<sup>nd</sup> Floor

Norbert Hill Center

April 2, 2015 12:15 p.m.

**PRESENT:** Tehassi Hill, Fawn Billie, Tani Thurner, Candice Skenandore, Danelle Wilson, RC Metoxen, Diane Wilson, Michelle Hill

**Marriage Law Public Meeting (00:10-03:48)**

**Tehassi Hill:** Good afternoon, everybody, I'll call this public meeting to order at 12:16. Does it matter the order which we do them? All right. We'll start with the 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 registration 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 submit comments concerning the proposal. The public comment period is open until April 9<sup>th</sup>, 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 may be made during the Public Meeting. Written comments can be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, ... For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please go to the website. Are there any comments on the Marriage Law Amendments? Oh, someone in the crowd has their hand up. Ok. Hearing no interested parties wanting to make public comment at this time, we will close this portion of the public meeting and go on to our two other agenda items. Thank you.

**Leasing Law and Real Property Law Amendments (02:43-07:14)**

**Tehassi Hill:** Next up we have the Leasing Law adoption and Real Property Law amendments. The Legislative Operating Committee is hosting this Public Meeting to ... well, I read that already, I'll just go on to the stuff...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 of 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. The public comment period is open until April 9<sup>th</sup>. Are there any comments on this proposal? Seeing no public comments at this time on the Real Property Law amendments we'll close this portion of the public hearing, and just as a reminder you have until April 9<sup>th</sup> to get your written comments submitted, and we will go on to our third and final topic of this public meeting.

*(inaudible)*

**Tehassi Hill:** Oh, they're inter-tied? Okay. All right, well, we're done then. I will close this public meeting at 12... oh, we have a late arriver. I will ask if you have any testimony that you would like to share at this public meeting right now. Okay, we have another late arrival, do you have any testimony or comments on these legislative proposals at this time?

*(inaudible)*

**Fawn Billie:** Is it too high?

*(laughter)*

**Tehassi Hill:** All right, I'd like to thank everyone for coming today, we are closing the public meeting on these proposals. You have until April 9<sup>th</sup> to submit your comments. Thank you.

**-End of meeting-**

**Candice E. Skenandore**

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**From:** Tonya L. Webster  
**Sent:** Monday, April 06, 2015 11:02 AM  
**To:** Candice E. Skenandore  
**Subject:** Comments - Marriage Law

I don't feel the Licensing Department should be the one to enforce the Penalty area (see below) within the Oneida Marriage Ordinance. Both Brown County Marriage Licensing and Madison Vital Statistics do not perform this. Both have separate areas who do the actual enforcing. Both Brown County and Madison said this should be done by some sort of legal area. The only way we would be able to prove fraud is if the applicants admitted to it. Also, the enforcement area is being removed from the Motor Vehicle Ordinance. Therefore, I think it would be best if this area is removed or reworded to have a legal department enforce the penalties.

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- (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).
- (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).
- (e) Any person who violates any other provision of this law shall be fined no less than one hundred dollars (\$100).

*Thank You*

***Tonya Webster – License Administrator***  
 Oneida License Department  
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# Legislative Operating Committee

## May 6, 2015

# Real Property Law Amendments

**Submission Date:** March 4, 2015

☒ Public Meeting: 4/2/15  
☐ Emergency Enacted:

**LOC Sponsor:** Tehassi Hill

**Summary:** *Amendments to the leasing section of the Real Property Law are being proposed in order to be consistent with the proposed Leasing Law. The main amendment to the Real Property Law removes a provision that governs the leasing of Tribal land and replaces it with a provision that defers to the Leasing Law for the leasing of Tribal land.*

**3/4/15 LOC:** Motion by Tehassi Hill to add the Real Property Law Amendments to the active files list with himself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Tehassi Hill to forward the Real Property Law Amendments to an April 2, 2015 public meeting, seconded by Jennifer Webster. Motion carried unanimously.

**4/2/15:** Public meeting held.

### Next Steps:

- Review the Real Property Law Amendments and consider forwarding 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




P.O. Box 365  
Oneida, WI 54155  
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(800) 236-2214

<https://oneida-nsn.gov/Laws>

**Memorandum**

**TO:** Legislative Operating Committee  
**FROM:** Candice E. Skenandore  
**DATE:** May 6, 2015  
**RE:** Real Property Law Amendments



On April 2, 2015, a public meeting was held regarding amendments to the Real Property Law (Law). The main amendment to the 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.

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

**Conclusion**

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

# Oneida Tribe of Indians of Wisconsin

## Legislative Reference Office

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## Committee Members

Brandon Stevens, Chairperson  
Tehassi Hill, Vice Chairperson  
Fawn Billie, Councilmember  
David P. Jordan, Councilmember  
Jennifer Webster, Councilmember

## Memorandum

**To:** Oneida Business Committee  
**From:** Brandon Stevens, LOC Chairperson *BS*  
**Date:** May 13, 2015  
**Re:** Real Property Law Amendments

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Please find attached the following for your consideration:

1. Resolution: Real Property Law Amendments
2. Statement of Effect: Real Property Law Amendments
3. Fiscal Impact Statement: Real Property Law Amendments
4. Real Property Law Amendments (redline)
5. Real Property Law Amendments (clean)

### *Overview*

The attached Resolution will adopt amendments to the Real Property Law (Law). The main amendment to the Law includes removing the provision that governs leasing of Tribal land. This provision is replaced with a provision that defers to the Leasing Law for the leasing of Tribal land.

A public meeting was held on April 2, 2015 in accordance with the Legislative Procedures Act and no comments were received on the proposed changes.

### **Requested Action**

Approve the Resolution: Real Property Law Amendments.

**BC Resolution \_\_\_\_\_**  
*Real Property Law 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,** the Real Property Law was adopted in 1996 and contains provisions that outline the procedures for processing leases of Tribal land; and

**WHEREAS,** the proposed Leasing Law will now set out the Tribe's authority to issue, review, approve and enforce leases; and

**WHEREAS,** in order to ensure that the Real Property Law does not conflict with the proposed Leasing Law, the Real Property Law needs to be amended by replacing the provision that governs leasing of Tribal land with a provision that defers to the proposed Leasing Law for the leasing of Tribal land; and

**WHEREAS,** a public meeting on these amendments was held on April 2, 2015, in accordance with the Legislative Procedures Act.

**NOW THEREFORE BE IT RESOLVED,** that the attached amendments to the Real Property Law are hereby adopted and shall be effective the same date the Leasing Law goes into effect.

## **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**

#### *Real Property Law Amendments Resolution*

#### **Summary**

This Resolution adopts amendments to the Real Property Law. The main amendment to the Real Property Law removes the provision that governs leasing of Tribal land.

*Submitted by: Candice E. Skenandore, Legislative Analyst, Legislative Reference Office*

#### ***Analysis from Legislative Reference Office***

The Real Property Law was adopted by the Oneida Business Committee pursuant to BC-05-29-96-A and contains provisions that outline the procedures for processing leases of Tribal land. The proposed Leasing Law will now house these procedures; therefore, the provision found with the Real Property Law that governs leasing of Tribal land has been removed and replaced with a provision that defers to the proposed Leasing Law for leasing of Tribal land.

The Resolution specifies that the Real Property Law Amendments will not go into effect until the Leasing Law goes into effect. The Leasing Law requires approval from the Secretary of Interior.

A public meeting was held on April 2, 2015, in accordance with the Legislative Procedures Act; however, no public comments were received.

#### ***Conclusion***

There are no legal bars adopting this Resolution





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 TRIBE OF INDIANS OF WISCONSIN

## ONEIDA FINANCE OFFICE

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



Pa 139  
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: April 30, 2015

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer  
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of Real Property Law Amendments**

### **I. Background**

The Real Property Law was adopted by BC resolution BC-5-29-96-A and last amended by BC resolution BC-02-25-15-C. In 2012, the HEARTH Act allowed tribes to create leasing regulations which remove Secretarial approval from the lease approval process if the leasing regulation is first approved by the Secretary and is consistent with the requirements used by the Secretary.

### **II. Executive Summary of Findings**

The proposed amendments are brought forward in conjunction with the new Leasing Law. The provision that governs leasing land has been removed from the Real Property Law and is now placed in the Leasing Law. According to the Division of Land Management, there are no startup costs for personnel, office, or documentation associated with enacting this legislation. However, the Leasing Law requires Secretarial approval; therefore, the Real Property Law amendments should not take effect until the Leasing Law is ready for implementation.

### **III. Financial Impact**

No fiscal impact.

### **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 sufficient information to render a decision.

## CHAPTER 67 REAL PROPERTY LAW

### Tok/ske Kayanl/hsla Tsi? Ni'yohuntsya'té

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>	<i>See the proposed Leasing Law.</i>				
<b>Due Process</b>					
<b>Related Legislation</b>	A proposed Leasing Law is being considered in conjunction with these amendments.				
<b>Policy Mechanism</b>	<i>See the proposed Leasing Law.</i>				
<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 meeting was held on April 2, 2015. No comments were received during the public meeting or the public comment period that followed.

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## **CHAPTER 67**

### **REAL PROPERTY LAW**

#### **Tokʌske Kayanlʌhsla Tsiʔ Niʔyohuntsyaʔté**

The real/certain laws of the territory of the nation

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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 67.1-3a2(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, BC-04-28-10-E ~~and~~ BC-02-25-15-C and.

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.

<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



76.2-5. 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, 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.

- 154 67.4-8. Care. The broker must exercise a reasonable degree of care and skill while transacting  
155 the business of the principal.
- 156 67.4-9. Certified Survey Map. A map officially filed and approved by the County, Tribal or  
157 municipal governments, which provides the legal description of any land in question.
- 158 67.4-10. Contested Cases. A proceeding before an Agency in which an opportunity for a  
159 hearing before the Agency is required by law prior or subsequent to the determination of the  
160 Agency of the legal rights, duties, or privileges of specific parties unless otherwise provided for  
161 by tribal law. This includes the revocation, suspension or modification of a license or permit  
162 when a grant of such application is contested by a person directly affected by said licensing or  
163 permitting. See Oneida Administrative Procedures Act.
- 164 67.4-11. Counseling. Providing clients with competent independent advice based on sound  
165 judgment, on such things as alternative courses of action regarding the purchase, use and  
166 investment of property.
- 167 67.4-12. Development. The construction of improvements on land.
- 168 67.4-13. Disclosure. The broker's duty to keep the principal fully informed at all times of all  
169 facts or information the broker obtains that could affect the transaction.
- 170 67.4-14. Dual Agency. When a broker receives compensation from both buyer and seller in a  
171 transaction.
- 172 67.4-15. Education. The provision of information to both the real estate practitioner and the  
173 consumer.
- 174 67.4-16. Fiduciary. One who is placed in a position of trust and confidence and normally is  
175 responsible for the money and/or property of another. A broker and a salesperson are both  
176 fiduciaries.
- 177 67.4-17. Financing. Financing is the business of providing funds by means of a mortgage loan.
- 178 67.4-18. Fixtures. Articles that were once personal property but has been so affixed to land or a  
179 building that the law construes it to be part of the real estate.
- 180 67.4-19. Fraud. The intentional misrepresentation of a material fact in such a way as to harm or  
181 take advantage of another person. In addition to false statements about a property, the concept of  
182 fraud covers intentional concealment or nondisclosure of important facts.
- 183 67.4-20. Individual Fee Land. Land held in fee by an individual or group of individuals.
- 184 67.4-21. Individual Tribal Property. Real property owned by an Oneida Tribal member in fee or  
185 held in trust for that member by the United State of America.
- 186 67.4-22. Individual Trust Land. Land held by the United States of America in trust for the  
187 benefit of an individual Tribal member.
- 188 67.4-23. Intestate. One who dies without having made a will; or property not disposed of by  
189 will.
- 190 67.4-24. Judiciary. The judicial system that was established by Oneida General Tribal Council  
191 resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the  
192 Tribe.
- 193 67.4-25. Law of Agency. The body of law that governs the rights and duties of principal, agent  
194 and third persons.
- 195 67.4-26. Mobile Home. A building which, when originally constructed, was prefabricated and  
196 on wheels to allow movement from one location to another with minimal modifications  
197 necessary to attach utilities. It is considered to be personal unless it is permanently affixed to the  
198 land, at which point it is considered real property.
- 199 67.4-27. Personal property or Personalty. All property that does not fit the definition of real  
200 property, and usually the characteristic of being "movable."



67.4-28. 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.

67.4-29. Probate. An official authentication of a will, and/or official administration of an estate of a deceased person.

67.4-30. 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

67.4-31. 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.

67.4-32. Subsurface Rights. The rights to natural resources lying below the earth's surface.

67.4-33. Sun Rights. A solar energy owner's right to access to the sun.

67.4-34. Surface Rights. The rights to use the surface of the earth within boundaries defined in a transfer of real property.

67.4-35. Tribal Fee Land. Land held in fee by the Oneida Tribe.

67.4-36. Tribal Property. Real property owned by the Oneida Tribe in fee or held for the Tribe by United States of America.

67.4-37. Tribal Trust Land. Land held by the United States of America in trust for the benefit of the Oneida Tribe.

67.4-38. Tribe. Oneida Tribe of Indians of Wisconsin. Also known as the Sovereign Oneida Nation in Wisconsin, and On'oyote' 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 Judiciary can be found in the Judiciary's rules of procedure.

(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)  $\frac{1}{2}$  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.

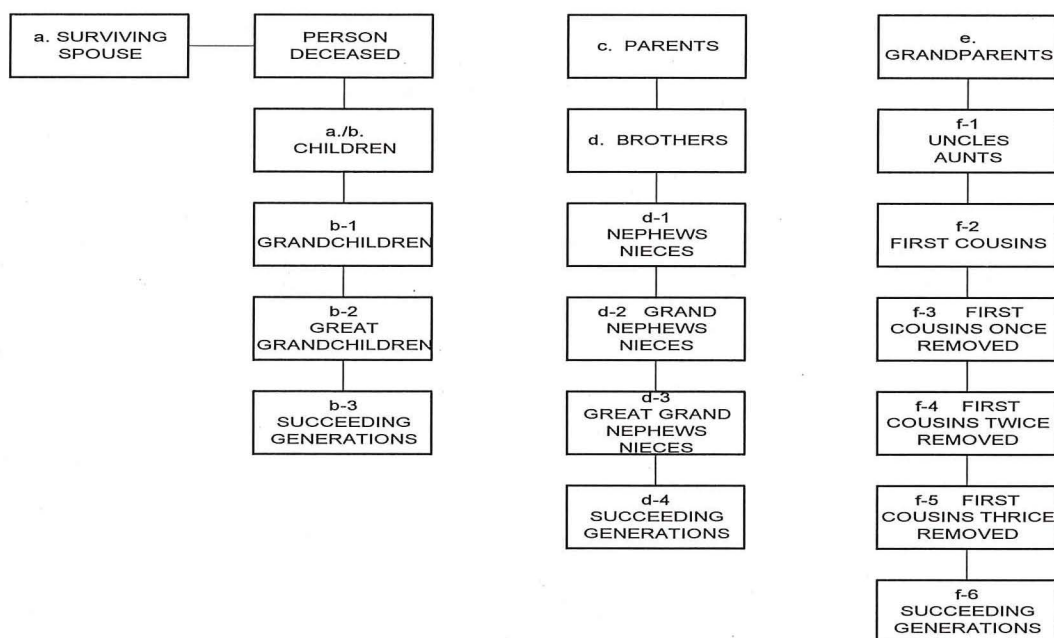
(c) All of the estate to the parents, equally divided, if no surviving spouse, children or children taking by right of representation.

(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 Judiciary 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 Judiciary 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 Judiciary 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 Judiciary 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.~~

~~67.11-5. 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.*



607 (a) *Tribal Property Brokers.* A Tribal Property Broker is defined as any person who has  
608 training in all aspects of real property, and acts for another person or the tribe to perform  
609 any of the following real property duties:

- 610 (1) selling;
- 611 (2) listing;
- 612 (3) buying;
- 613 (4) leasing;
- 614 (5) renting;
- 615 (6) exchanging;
- 616 (7) negotiating any of above activities.

617 (b) *Salespersons.* A Tribal Property Salesperson is defined as any person who assists a  
618 Broker in accomplishing any of the above real property duties, and has been certified to  
619 have received the level of training outlined in this Law.

620 (c) *Apprentices.* Any person desiring to act as an tribal property salesperson shall file  
621 with the Division of Land Management an application for a license. A GED, HSED or  
622 high school diploma is required, except for those who write and pass a preliminary  
623 examination covering general knowledge including reading, writing, arithmetic and  
624 general real estate terminology.

625 67.13-3. *Exceptions.* This Section does not apply to the following:

- 626 (a) persons who perform real property duties on their own property;
- 627 (b) receivers, trustees, administrators, executors, guardians or persons appointed by or  
628 acting under the judgment or order of any judicial system;
- 629 (c) tribal public officers while performing their official duties;
- 630 (d) banks, savings and loan associations and other designated financial institutions when  
631 transacting business within the scope of their corporate powers as provided by law;
- 632 (e) any licensed attorney who, incidental to the general practice of law, negotiates loans  
633 secured by real estate mortgages or encumbrances or transfers of real estate;
- 634 (f) employees, such as janitors, custodians or other employed by the tribe who show  
635 property or accept lease applications as an incidental part of their duties.
- 636 (g) persons who list, sell, or transfer real property for a cemetery association of a church,  
637 tribal program or other nonprofit organization.

638 67.13-4. *Licensing Procedure*

639 (a) *Education Requirements.* Conference seminars, courses at accredited institutions, and  
640 Oneida Career Center classes will be accepted as proof of the hours of education received  
641 by an applicant.

- 642 (1) Each applicant for a salesperson's license must submit to the Division of Land  
643 Management, proof of attendance at 45 classroom hours of educational programs  
644 dealing with State, Federal and Tribal transfer of Real Property. At least 25  
645 classroom hours shall cover Tribal and Federal real property law.

- 646 (2) Each applicant for a broker's license must submit to the Division of Land  
647 Management, proof of attendance at 90 classroom hours of education programs  
648 addressing State, Federal and Tribal transfer of Real Property.

649 (b) *Experience Requirements.* Each applicant for a tribal broker's license must submit to  
650 the Division of Land Management, proof of at least one year of experience as a real  
651 property salesperson, or as a broker in another jurisdiction.

652 (c) *Examination.* The Licensing Examination for tribal brokers and salespeople shall be  
653 administered through the Oneida Career Center.

- 654 (1) Land Commission will create a test which will contain the following materials:



- 655 (A) 50% Tribal Law  
656 (B) 30% Federal Law  
657 (C) 20% Wisconsin Law  
658 (2) A score of 75% or better on each portion of the examination is required to  
659 pass. If an applicant fails any of the three portions of the exam, that applicant will  
660 have six opportunities to retake the failed portion within the following six months.  
661 If that applicant cannot pass the failed portion within the following six months, he  
662 or she must retake the entire exam to qualify for a license.
- 663 (d) *Fees.* The following fees are applicable to tribal licensees. The Land Commission  
664 will establish an equitable fee schedule for the following:  
665 (1) issuance of a tribal salesperson or broker license  
666 (2) annual renewal fee for a tribal salesperson or broker license  
667 (3) late penalty for filing within 30 days of expiration  
668 (4) late penalty for filing within year of expiration  
669 (5) Test fee
- 670 (e) *Licensing.* An applicant who has passed the appropriate license examination and has  
671 complied with the necessary requirements will be granted a license by the Oneida Land  
672 Commission. The license authorizes the licensee to engage in the activities of a tribal real  
673 property broker or salesperson as described in this Law. All licenses shall show the name  
674 and business address of the licensee.
- 675 67.13-5. *Rules Of Responsibility*  
676 (a) The intent of this section is to establish minimum standards of conduct for real  
677 property licensees and to define that conduct which may result in Land Commission action  
678 to limit, suspend or revoke the license of a real property broker, salesperson or apprentice,  
679 or impose a fine.
- 680 (b) Violations of rules in this section may demonstrate that the licensee is incompetent, or  
681 has engaged in improper, fraudulent or dishonest dealings.  
682 (1) A licensee has an obligation to treat all parties to a transaction fairly.  
683 (2) In order to comply with Federal and Tribal law, licensees shall not  
684 discriminate against, nor deny equal services to, nor be a party to any plan or  
685 agreement to discriminate against a person because of sex, race, color, handicap,  
686 religion, national origin, sex or marital status of the person maintaining a  
687 household, lawful source of income, sexual orientation, age or ancestry.  
688 (3) Licensees shall not provide services which the licensee is not competent to  
689 provide unless the licensee engages the assistance of one who is competent.  
690 (4) Licensees shall be knowledgeable regarding laws, public policies and current  
691 market conditions on real estate matters and assist, guide and advise the buying  
692 and selling public based upon these factors.  
693 (5) Licensees shall not advertise in a matter which is false, deceptive, or  
694 misleading.  
695 (6) Licensees shall not personally accept any commission, rebate, or profit from  
696 any of their real property dealings.  
697 (7) Licensees shall not engage in activities that constitute the unauthorized  
698 practice of law.  
699 (8) Licensees shall not discourage any person from retaining an attorney.  
700 (9) Licensees shall not exaggerate, misrepresent or conceal material facts in the  
701 practice of real estate.  
702 (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.



799 **67.16. Organization.**

800 67.16-1. General

801 (a) The Division of Land Management shall administer all transactions that come under  
802 this Law.

803 (b) All tribal agencies will process any type of real property acquisition, including  
804 donations, through the Division of Land Management.

805  
806 67.16-2. Land Commission

807 (a) *Number of Commissioners.* The Commission shall be comprised of seven (7) elected  
808 Tribal members.

809 (b) *Term of Office.* The terms of office for the Commissioners shall be three (3) years.  
810 Terms shall be staggered with expiring positions elected every year. The first elected  
811 Land Commissioners shall serve according to the following formula, and staggering of  
812 terms shall begin thereafter:

813 (1) The three (3) candidates receiving the three highest number votes shall serve  
814 an initial term of three (3) years.

815 (2) The two (2) candidates receiving the next two highest number votes shall serve  
816 an initial term of two (2) years.

817 (3) The two (2) candidates receiving the next two highest number of votes shall  
818 serve an initial term of one (1) year.

819 (4) In the event of a tie vote in the first election, a coin toss shall determine which  
820 candidate shall serve the longer term.

821 (c) *Powers and Duties.* The Land Commission shall have the following powers and  
822 duties:

823 (1) The Land Commission shall set standards of professional competence and  
824 conduct for the professions detailed in this Law, review the examination grades of  
825 prospective new practitioners, grant licenses, investigate complaints of alleged  
826 unprofessional conduct, and perform other functions assigned to it by law.

827 (2) Hear and decide, as the original hearing body, contested cases that may arise  
828 from this Law.

829 (3) Implement and interpret the provisions of this Law.

830 67.16-3. Administration

831 (a) Director of Division of Land Management. The Director shall have the following  
832 powers and duties:

833 (1) Hire, train, and establish operational and objective commitments for support  
834 staff needed to implement this Law.

835 (2) Supervise staff in accordance with Tribal Personnel Policies and Procedures.

836 (3) Provide Declaratory Ruling per procedures in this Law and the Oneida Nation  
837 Administrative Procedures Act.

838 (4) Implement all aspects of this Law through the Oneida Tribal Planning and  
839 Budgeting Process.

840  
841 *End.*

842  
843  
844  
845 Adopted - BC-5-29-96-A

846 Amended-BC-3-01-06-D

847 Amended-BC-04-28-10-E

848 Amended - BC-02-25-15-C



## CHAPTER 67 REAL PROPERTY LAW

### Tok/Aske Kayanl/hsia Tsi? Ni'yohuntsya'té 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, BC-04-28-10-E, BC-02-25-15-C and \_\_\_\_\_.

67.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Oneida 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. Judiciary. 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.

67.4-25. Law of Agency. The body of law that governs the rights and duties of principal, agent and third persons.

67.4-26. 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.

67.4-27. Personal property or Personalty. All property that does not fit the definition of real property, and usually the characteristic of being "movable."

67.4-28. 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.

67.4-29. Probate. An official authentication of a will, and/or official administration of an estate of a deceased person.

67.4-30. 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

67.4-31. 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.

67.4-32. Subsurface Rights. The rights to natural resources lying below the earth's surface.

67.4-33. Sun Rights. A solar energy owner's right to access to the sun.

67.4-34. Surface Rights. The rights to use the surface of the earth within boundaries defined in a transfer of real property.

67.4-35. Tribal Fee Land. Land held in fee by the Oneida Tribe.

67.4-36. Tribal Property. Real property owned by the Oneida Tribe in fee or held for the Tribe by United States of America.

67.4-37. Tribal Trust Land. Land held by the United States of America in trust for the benefit of the Oneida Tribe.

67.4-38. Tribe. Oneida Tribe of Indians of Wisconsin. Also known as the Sovereign Oneida Nation in Wisconsin, and On/oyote? 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

264 Division of Land Management and the Aberdeen Title Plant for the United States Department of  
265 the Interior.

266 67.8-6. An involuntary Transfer of title may occur in the following ways:

267 (a) Tribal Eminent Domain is the right of the Tribal Government to acquire private land  
268 for public uses without the consent of private owners. Public uses include, but are not  
269 limited to, environmental protection, streets, highways, sanitary sewers, public  
270 utility/sites, waste treatment facilities and public housing. Attempts must first be made to  
271 negotiate an agreeable taking by the Tribal Government; thence provide an offer to  
272 purchase based on a tribal appraisal of the property; and provide compensation for the  
273 taking. Provision for required hearing on the taking and appeals to the Judiciary can be  
274 found in the Judiciary's rules of procedure.

275 (b) Foreclosures may occur whenever a tribal member ceases payment on a mortgage for  
276 leasehold improvements, a tribal home purchase agreement, or home improvement loan.  
277 If the loan is through a public lending institution the Tribe may choose to pursue its option  
278 to purchase the loan and finalize the foreclosure through the Division of Land  
279 Management. A decision to foreclose shall be handled as a Contested Case according to  
280 the Oneida Nation Administrative Procedures Act, Section 10. Contested Cases and 11.  
281 Appellate Review. Also see 14-5 of this Law.

282 (c) The Indian Land Consolidation Act was passed by Congress and became effective  
283 January 12, 1983 (Pub.L. No. 97-459, 96 Stat. 2515, and amended on October 30, 1984 by  
284 Pub.L. No. 98-608, 98 Stat. 3171). Section 207 of said Act is incorporated into this Law,  
285 which provides that if it is determined that the decedent's ownership in a given parcel of  
286 land is 2 percent or less of the total acreage, and that interest is incapable of earning  
287 \$100.00 in any one of the five (5) years from the date of the decedent's death, thence that  
288 ownership interest shall escheat, or pass, to the Tribe having jurisdiction over said land,  
289 for just compensation, unless the heirs can prove by substantial evidence that the above  
290 determination was wrong. This determination will be made through Probate proceedings  
291 in 67.9 of this Law.

292 (d) Upon the Tribe receiving majority consent from heirs, the Land Commission may  
293 approve an Order Transferring Inherited Interests under the authority of Section 205 of the  
294 Indian Land Consolidation Act provided that none of the Indians owning an undivided  
295 interest is willing to purchase or match the tribes offer.

296 (e) An Involuntary Transfer of Title cannot occur without a hearing in front of the Land  
297 Commission, or its designated subcommittee, under procedures of the Oneida Nation  
298 Administrative Procedures Act, Section 9. Declaratory Ruling, or Section 10. Contested  
299 Cases.

300 (f) Easements for Landlocked Properties. A procedure for handling a request for an  
301 easement will be developed and approved by the Land Commission.

302 67.8-7. Records. All documents pertaining to trust property within the Oneida Reservation shall  
303 be recorded in the United States of America Aberdeen Title Plant as well as the Division of Land  
304 Management. See also Section 12.

305 67.8-8. All Individual and Tribal lands purchased in fee shall be transferred to Trust held by the  
306 United States of America through procedures promulgated by the Division of Land Management,  
307 and supported by waivers approved by the Secretary of Interior or designate.

308

309 **67.9. Disposition Of Estates Of Deceased Tribal Members.**

310 67.9-1. The purpose of this section is to formalize laws to handle the disposition of deceased  
311 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:

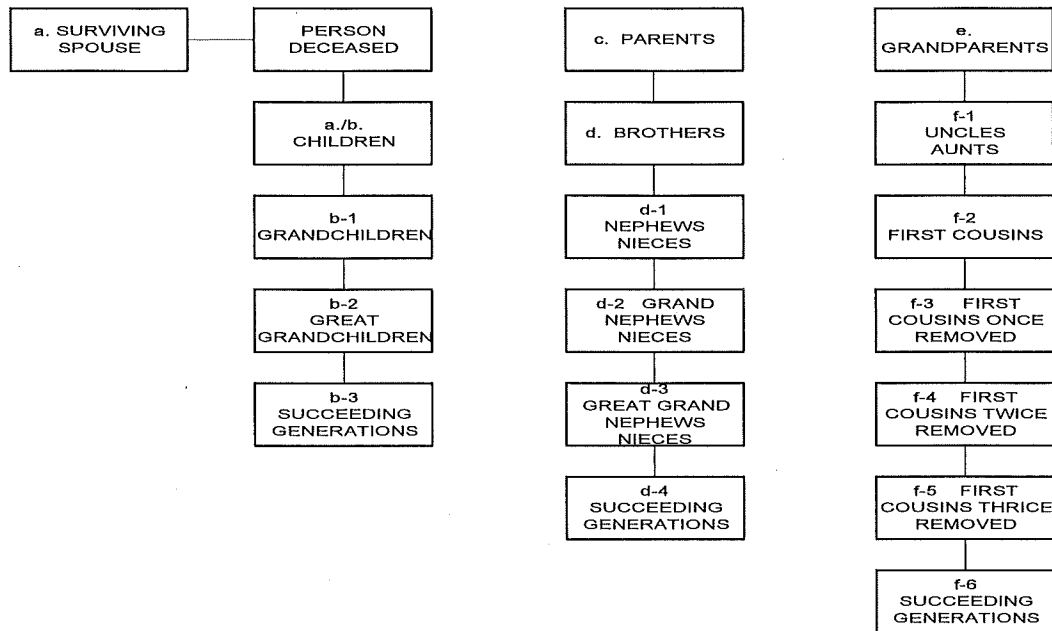
- 360 (1) Heirs of the decedent  
361 (2) A beneficiary named in any document offered for probate, such as the will of  
362 the decedent, land lease or sale agreement for real estate.  
363 (3) A person named as administrator or personal representative in any document  
364 offered for probate.  
365 (4) Additional persons as the Land Commission may by order include who may be  
366 affected by the actions of the Land Commission, or its designated sub-committee,  
367 whether by receipt of or denial of any property which is a part of the action.  
368 (c) Heirs: Any person who is entitled under Tribal law to an interest in the property of a  
369 decedent.

370 67.9-9. *Parties-in-interest*. The net estate of a decedent, not disposed of by will, passes to his/her  
371 surviving heirs or Parties-in-interest as follows:

- 372 (a) To the spouse:  
373 (1) All Real Property.  
374 (2) All other than Real Property if there are no surviving children of the decedent.  
375 (3) 1/2 of other than Real Property of the decedent's estate if there are surviving  
376 children of the decedent, or children of any deceased child of the decedent  
377 (grandchildren) who take by right of representation.  
378 (b) To Surviving Children and children of any deceased child of the decedent by rights of  
379 representation;  
380 (1) All of the estate if there is no surviving spouse, divided equally to all in the  
381 same degree of kinship to the decedent. Surviving children of a deceased child of  
382 the decedent will divide their parent's share.  
383 (c) All of the estate to the parents, equally divided, if no surviving spouse, children or  
384 children taking by right of representation.  
385 (d) All of the estate to the brothers and sisters and children of deceased brothers or sisters  
386 by representation, divided equally, If no surviving spouse, children, or parents.  
387 (e) All of the estate to the grandparents of the deceased divided equally, if no surviving  
388 spouse, children parents or brothers and sisters.  
389 (f) All of the estate divided equally to lineal descendants of the grandparents of the  
390 deceased in the same order as (b) thru (e) if no surviving spouse, children, parents  
391 brothers/sisters, or grandparents of the decedent.

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(g) Diagram of Intestate Succession as outlined in (a) thru (f) in Figure 1.



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(h) Any 2% interests, or less, in land, as defined in 8-6(c) of this Law.

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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.

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(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.

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(b) The hearing will generally adhere to the following format:

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(1) Rules for an open, nonjudgmental discussion shall be presented and accepted.

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(2) Probate file is reviewed and data added or corrected based on consensus of those present.

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(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.

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(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.

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(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

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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 Judiciary 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 Judiciary 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 Judiciary 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 Judiciary 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 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  
Amended – BC-02-25-15-C





# Legislative Operating Committee

## May 6, 2015

### Leasing Law

**Submission Date:** September 17, 2014

☒ Public Meeting: 4/2/15  
☐ Emergency Enacted:

**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.

**3/4/15 LOC:** Motion by Jennifer Webster to delete lines 209 through 225 and lines 231 through 245 from the legislative analysis and forward the Leasing Law to an April 2, 2015 public meeting; seconded by Fawn Billie. Motion carried unanimously.

*Noted for the Record: the considerations highlighted in the legislative analysis have been addressed by the LOC.*

**4/2/15:** Public meeting held.

#### Next Steps:

- Review the Leasing Law and consider forwarding 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



P.O. Box 365  
Oneida, WI 54155  
(920) 869-4376  
(800) 236-2214

<https://oneida-nsn.gov/Laws>

**Memorandum**

**TO:** Legislative Operating Committee  
**FROM:** Candice E. Skenandore, Legislative Analyst  
**DATE:** May 6, 2015  
**RE:** Leasing Law

*AL EK*

It is being proposed that the leasing provisions found in the current Real Property Law be removed and placed in the Leasing Law. On April 2, 2015, a public meeting was held regarding the Leasing Law which is a new law that establishes 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 results 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.

In addition, 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 appropriate entities and enforcing leases.

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

**Conclusion**

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

# Oneida Tribe of Indians of Wisconsin

## Legislative Reference Office

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## Committee Members

Brandon Stevens, Chairperson  
Tehassi Hill, Vice Chairperson  
Fawn Billie, Councilmember  
David P. Jordan, Councilmember  
Jennifer Webster, Councilmember

## Memorandum

**To:** Oneida Business Committee  
**From:** Brandon Stevens, LOC Chairperson *BS*  
**Date:** May 13, 2015  
**Re:** Leasing Law

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Please find attached the following for your consideration:

1. Resolution: Leasing Law
2. Statement of Effect: Leasing Law
3. Fiscal Impact Statement: Leasing Law
4. Legislative Analysis: Leasing Law
5. Leasing Law (clean)

### *Overview*

The attached Resolution will adopt the Leasing Law. The Leasing Law is a new law that establishes 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 2013 (HEARTH Act) which will result in the Tribe no longer needing approval from the Secretary of Interior for leases of Tribal trust land. The Leasing Law contains the process for approving leases, 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 has the responsibility, with Land Commission approval, for developing procedures and processes for offering and awarding leases and lease documents; managing leases; recording leases and lease documents with appropriate entities and enforcing leases.

A public meeting was held on April 2, 2015 in accordance with the Legislative Procedures Act and no comments were received on the proposed law.

### **Requested Action**

Approve the Resolution: Leasing Law.

**BC Resolution \_\_\_\_\_**  
*Leasing Law*

**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,** the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act of 2012 created a voluntary, alternative land leasing process available to Indian tribes by amending the Indian Long-Term Leasing Act of 1955; and

**WHEREAS,** under the HEARTH Act, once the governing Tribal leasing regulations have been submitted to, and approved by the Secretary of Interior, Indian tribes are authorized to negotiate and enter into leases without further approvals by the Secretary; and

**WHEREAS,** the purpose of the Leasing Law is to meet the requirements of the 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 Interior; and

**WHEREAS,** the proposed amendment to Real Property Law removes the provision that outlines the procedures for processing leases of Tribal land and replaces it with a provision that defers to the Leasing Law; and

**WHEREAS,** the Leasing Law sets out the Tribe's authority to issue, review, approve and enforce leases; and

**WHEREAS,** a public meeting on the Leasing Law and Real Property Law amendments was held on April 2, 2015, in accordance with the Legislative Procedures Act.

**NOW THEREFORE BE IT RESOLVED,** that the Leasing Law is hereby adopted.



## 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**

*Resolution: Leasing Law*

### **Summary**

This Resolution adopts the Leasing Law. The Leasing Law sets out the Tribe's authority to issue, review, approve and enforce leases.

*Submitted by: Candice E. Skenandore, Legislative Analyst, Legislative Reference Office*

### ***Analysis from Legislative Reference Office***

The Helping Expedite and Advance Responsible Tribal Home Ownership Act, better known as the HEARTH Act, created a voluntary, alternative land leasing process that is available to Indian tribes by amending the Indian Long-Term Leasing Act of 1955. In accordance with the HEARTH Act, once the governing Tribal leasing regulations have been submitted to and approved by the Secretary of Interior, Indian tribes are authorized to negotiate and enter into leases without further approvals by the Secretary.

The purpose of the Leasing Law is to meet the requirements of the 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 Interior.

In addition, the Resolution states that the Real Property Law removes the provision which outlines the procedures for processing leases of Tribal land and replaces it with a provision that defers to the Leasing Law.

A public meeting was held on April 2, 2015, in accordance with the Legislative Procedures Act; however, no public comments were received.

### ***Conclusion***

There are no legal bars adopting this Resolution



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 TRIBE OF INDIANS OF WISCONSIN

## ONEIDA FINANCE OFFICE

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



Pa 139  
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: April 30, 2015

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer  
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of the Leasing Law**

### **I. Background**

The Leasing law is new legislation to set out the Tribe's authority to issue, review, approve and enforce leases. The law also incorporates the requirements of the Federal HEARTH Act. The Act allows Tribes to remove the Secretary of the Interior from the lease approval process of Tribal trust land if the Tribe has leasing regulations in place that have been approved by the Secretary.

### **II. Executive Summary of Findings**

The Leasing Law incorporates the federal requirements previously needed for a lease on trust land and removes the Secretary's approval from the process. The new law will apply to both trust and fee land for agricultural, business, and residential leases. Environmental and Cultural review are required to comply with Federal requirements. According to the Division of Land Management, there are no startup costs for personnel, office, documentation associated with enacting this legislation. The estimated time for the Division of Land Management to comply with the law after implementation is 30 days after the Secretary's approval.

### **III. Financial Impact**

No fiscal impact.

### **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 sufficient information to render a decision.

## 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

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Leasing law (the Law)				
<b>Requester</b>	Nathan King, Legislative Affairs	<b>Drafter</b>	Lynn Franzmeier	<b>Analyst</b>	Tani Thurner
<b>Reason for Request</b>	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.				
<b>Purpose</b>	To set out the Tribe's authority to issue, review, approve and enforce leases of Tribal fee land and trust land.				
<b>Authorized/ Affected Entities</b>	Department of Land Management (DLM), Land Commission, Oneida Law Office, Cultural Heritage Department, Environmental Health & Safety Division, the Judiciary.				
<b>Due Process</b>	DLM decisions are appealable to the Judiciary.				
<b>Related Legislation</b>	Public Use of Tribal Land Law; correlating amendments are being made to the Real Property Law				
<b>Policy Mechanism</b>	Issuing leases to occupy/use Tribal trust and fee land.				
<b>Enforcement</b>	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.				

### Overview

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.

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.

*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.*

### **HEARTH Act – Background**

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

<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 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 was held on April 2, 2015. No comments were received during the public meeting or the public comment period that followed.

#### **Considerations**

- 65.11-2 states that “Land Management or other party may take appropriate emergency action, which includes cancelling the lease and/or securing judicial relief.” However, 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.

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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;

- 430 (2) Land Management is providing an incentive for businesses to locate on Tribal  
431 land, and must provide lease concessions, lease improvement credits, and lease  
432 abatements to attract such business; or  
433 (3) Land Management determines such action is in the best interest of the Tribe.  
434 (b) A lease may:  
435 (1) Be structured at a flat lease rate; and/or  
436 (2) Be structured at a flat lease rate plus a percentage of gross receipts, if the  
437 lessee is a business located in a shopping center, or the lessee generates over one  
438 million dollars (\$1,000,000.00) annually in gross receipts; and/or  
439 (3) Be structured based on a percentage of gross receipts, or based on a market  
440 indicator; and/or  
441 (4) Be structured to allow for lease rate adjustments. The lease shall specify how  
442 adjustments will be made, who will make such adjustments, when adjustments  
443 will go into effect, and how disputes shall be resolved; and/or  
444 (5) Be amended to allow for lease rate adjustments; and/or  
445 (6) Provide for periodic review. Such review shall give consideration to the  
446 economic conditions, exclusive of improvement or development required by the  
447 contract or the contribution value of such improvements.  
448 (c) Land Management shall keep written records of the basis used in determining the fair  
449 annual lease value, as well as the basis for adjustments. These records shall be presented  
450 to the lessee and included in any lease file.

451 65.8-7. *Performance Bond.* If a performance bond is required under a business lease, a  
452 performance bond shall be obtained by the lessee in an amount that reasonably assures  
453 performance on the lease. Such bond shall be for the purpose of guaranteeing the following:

- 454 (a) The annual lease payment;  
455 (b) The estimated development cost of improvements; and  
456 (c) Any additional amount necessary to ensure compliance with the lease.  
457

## 458 **65.9. Environmental and Cultural Reviews**

459 65.9-1. *Applicability.* Land Management shall not consider approving a lease or lease document  
460 until an environmental review and a cultural review have been completed.

461 65.9-2. *Environmental Reviews.* An environmental review shall be conducted by or at the  
462 request of the Environmental, Health and Safety Division on all proposed leases and lease  
463 documents. The environmental review shall be conducted in accordance with the process  
464 established under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to  
465 evaluate environmental effects of federal undertakings.

466 65.9-3. *Cultural Reviews.* A cultural review shall be conducted by or at the request of the  
467 Cultural Heritage Department on all proposed leases and lease documents. The cultural review  
468 shall be conducted in accordance with the permit review requirements for undertakings  
469 established in the Protection and Management of Archeological & Historical Resources law.

470 65.9-4. *Environmental and Cultural Review Completion.* The Environmental, Health and Safety  
471 Division shall forward a completed environmental review and the cultural review to Land  
472 Management for consideration in the approval or denial of a lease or lease document.

- 473 (a) Before approving a lease or lease document, Land Management may require any  
474 reasonable actions, as recommended within the environmental review or cultural review,  
475 be completed.  
476 (b) The Environmental, Health and Safety Division shall prepare an updated  
477 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.*



# Legislative Operating Committee

## May 6, 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.

**3/4/15 LOC:** Motion by Jennifer Webster to accept the Furlough Policy public meeting comments and defer those comments to an LOC work meeting to be held immediately following the completion of this LOC meeting, seconded by Fawn Billie. Motion carried unanimously.

Work meeting held, attendees include: Brandon Stevens, Tani Thurner, Jennifer Webster, Jo Anne House, Tehassi Hill, Fawn Billie, Lynn Franzmeier, Candice Skenandore, Fawn Cottrell, Danelle Wilson, Rae Skenandore

**04/15/15 LOC:** Motion by Jennifer Webster to defer the Furlough Policy for two weeks for the noted considerations, minor changes, and a fiscal analysis; seconded by Fawn Billie. Motion carried unanimously.

**Next Steps:**

- Review memorandum and defer to Sponsor to continue work and bring back when ready.

# 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:** Legislative Operating Committee  
**From:** Fawn Billie, Councilmember *FB*  
**Date:** May 6, 2015  
**Re:** Furlough Policy

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As a result of a discussion with Tani Thurner, Legislative Analyst, I have asked HRD's Employee Insurance manager Josh Cottrell to develop recommendations on how to address the technical aspects of implementation of the Furlough Policy. I have also notified Geraldine Danforth, Human Resources Manager of my request.

Mr. Cottrell has submitted recommendations, which are included with these meeting materials. I am requesting that we review these recommendations to determine whether further changes need to be made to the Furlough Policy or whether additional actions might be necessary before we present the Furlough Policy to the Oneida Business Committee for consideration of adoption.

If you have any questions, please let me know.

# ONEIDA TRIBE OF INDIANS OF WISCONSIN

## Human Resources Department

**Location:**

909 Packerland Dr  
Green Bay, WI 54303

Phone: (920)496-7000

<http://www.oneidationation.org/humanresources/>

**Mailing Address:**

P.O. Box 365  
Oneida, WI 54155-0365

Fax: (920)496-7490

Job Line: 1-800-236-7050

### MEMORANDUM

TO: Legislative Operating Committee (LOC)  
FR: Geraldine Danforth, Human Resources Area Manager  
DA: April 30, 2015  
RE: Furlough Policy – HRD Recommendations.

LOC has requested that HRD provide formal written recommendations on the following issues:

**Issue 1:** How to amend the HRD Leave of Absence Work Standard to cover employees on furlough – what provisions should be included? Who pays for their insurance, if any?

**Issue 2:** How to address the Affordable Care Act changes that make an employee eligible for benefits if they work an average of 30 hours a week. For example: if a furlough takes an employee's average below 30 hours a week – will they be affected, or are they still considered to have more than 30 "work" hours in a week because they were technically working "but for" the furlough? How should the tribe handle these situations and what needs to be in place – for full time OR any other employees? Are there any policy calls that need to be made?

HRD's recommendation for **Issue 1** is that section 4-6 of the Furlough Policy be changed to:  
*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.~~*

The Furlough Policy would then establish the rule that employees will continue to receive other benefits during a furlough. HRD would develop a Standard Operating Procedure that would clarify "other benefits" and how those benefits will continue during a furlough. The employee's insurance deductions would:

1. Continue as normal if the length of furlough is sporadic over a period of time. For example:
  - a. Employee A takes five (5) days of furlough that are taken one (1) day at a time over the course of the year. The employee's insurance deductions would continue to be taken out of their weekly paycheck.
  - b. Employee B takes eight (8) hours of furlough every week for six (6) months. The employee's insurance deductions would continue to be taken out of their weekly paycheck.
2. Be covered by Oneida if the length of furlough is for one (1) consecutive week or longer.
  - a. This process would be similar to how Oneida covers an employee's insurance when they are on a family/medical leave of absence. For example: an employee's



portion of Single Medical, Dental and Vision coverage is approximately \$28.55 a week. If they had Family Medical, Dental, and Vision coverage, their weekly premium is approximately \$75.80.

- b. Individual deductions such as payroll deductions, voluntary benefits, etc. would be the responsibility of the employee.
- c. HRD recommends that furloughs of one (1) consecutive week or longer be limited. When feasible, furloughs should be taken sporadically over a period of time (i.e. 5 days over the course of 6 months).

HRD's recommendation for **Issue 2** is to not factor in furlough time when determining an employee's average hours worked. A full time employee would still be considered a full time employee even if the furlough time brings their average hours to below 30 hours a week.

Yaw^ko

## 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>					
<b>Title</b>	The Furlough Policy ("The Policy")				
<b>Requester</b>	Oneida Business Committee (OBC)	<b>Drafter</b>	Lynn Franzmeier	<b>Analyst</b>	Tani Thurner
<b>Reason for Request</b>	On October 15, 2013, the Oneida Business Committee adopted a Furlough Policy on an emergency basis, which ultimately expired on October 9, 2014. During the 2011-14 term, the Legislative Operating Committee (LOC) had been processing the Policy for permanent adoption, and this term, the OBC directed the LOC to continue processing the Policy for permanent adoption.				
<b>Purpose</b>	This Policy sets out a process for the Tribe to furlough employees (temporarily reducing their work hours) as a cost-saving measure.				
<b>Authorized/ Affected Entities</b>	General Manager Level Positions, Supervisors, Human Resources Department (HRD) and the OBC all have responsibilities; all employees could be affected.				
<b>Due Process</b>	The Policy expressly states that furlough decisions cannot be appealed under any Tribal law, policy or the personnel grievance process. [7-1]				
<b>Related Legislation</b>	Layoff Policy; Personnel Policies and Procedures				
<b>Policy Mechanism</b>	Resolution adopted by OBC; Furlough Plans				
<b>Enforcement</b>	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 remedy an operating budget deficit. [1-1] This policy applies to all employees of the Tribe, specifically including employees of Tribal programs and enterprises, and political appointees. Elected and appointed officials are specifically excluded; so they are not subject to furloughs. [1-2 and 3-1(a)]

### What is a furlough?

A furlough is a temporary unpaid leave from work for a specified period of time. [3-1(b)] Employees may not use personal or vacation time while on furlough and are not eligible for back pay when they return to work [4-6 and 4-8].

- Employees must be furloughed on days they are normally scheduled to work, or on Tribal holidays, regardless of whether they were scheduled to work. [4-2]
- Employees on furlough cannot perform any work, including responding to work-related e-mail or voicemail and traveling on behalf of the Tribe. [4-4]
- A furlough does not constitute a break in continuous service. [4-4] Employees continue to receive all benefits as if they were on an unpaid leave of absence - except personal and vacation time do not accrue during a furlough. [4-6] This means that, depending on years of service, an employee will not accrue the following amount of personal/vacation time:
  - **0-3 years of service:** 0.554 hours for each full 8-hour day of furlough.
  - **4-7 years of service:** 0.708 hours for each full 8-hour day of furlough.
  - **8-14 years of service:** 0.923 hours for each full 8-hour day of furlough.
  - **15+ years of service:** 1.138 hours for each full 8-hour day of furlough.

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- Employees are responsible for contacting the State to determine if they qualify for unemployment insurance benefits while furloughed. [4-5]

### **Impact on workplace**

Furloughs must be scheduled in a way that allows departments to continue to provide a basic level of service. [5-2(b)] Within each area, temporary employees must be furloughed first; followed by any volunteers; and then all other employees are eligible to be furloughed. Section II. C of the Personnel Policies and Procedures identifies several temporary classifications – Emergency/Temp, Limited Term, Seasonal, Substitute/Relief, Youth Worker and Student/Intern. According to Josh Cottrell, Employee Insurance Manager, it appears that HRD would interpret this to mean that all of those temporary classifications would be furloughed first.

Employees cannot earn overtime during any pay period where another employee from the same department/agency is furloughed; and cannot earn additional duty pay for performing duties for furloughed employees from the same department/agency. [4-7(b)] Furloughs cannot be used for disciplinary reasons. [5-2(e)]

This Policy requires General Manager-Level positions (GM-level positions) to create/implement furlough plans, but does not identify requirements or a process for placing political appointees (i.e. OBC assistants) on furlough. It appears the intent is for the OBC to develop a standard operating procedure to govern such situations.

### **Furlough Plans**

GM-level Positions must develop furlough plans to be kept on file with HRD, setting forth how their respective departments/agencies intend to implement a furlough. A furlough plan must explain how employees will be selected and the estimated number of employees that would be affected; and must include a tentative schedule for a furlough and a summary of how the furlough will relieve budget shortfalls. This requirement is similar to the layoff plans that are required to be created in order to implement the Layoff Policy; except that furlough plans are not specifically required to be approved by the OBC; and HRD is not specifically given a role in helping to create furlough plans. [4-2(a), Article V]

### **Furlough Process**

The Policy sets out the following process:

1. OBC identifies that a furlough is necessary due to a decrease/lapse in revenue/funding, or any other budget situation warranting an unpaid leave. [4-1]
2. OBC gives the appropriate GM-Level positions a directive by passing a Resolution. (A GM-Level position is defined as "the highest level in the chain of command under the Oneida Business Committee, and who is responsible for a Tribal Department and/or Division") The Resolution must include furlough start and end dates. [4-1]
3. GM-Level positions must immediately carry out the furlough plans for his/her areas; and must notify the supervisors in their areas that furloughs are necessary. [4-2 and 6-1]
4. Supervisor identifies employees who will be furloughed. [6-1(a)]
5. Supervisor notifies employees of the furlough and of their furlough dates. Employees must be notified at least five days before their position is furloughed. [6-1(b) and 4-3]
6. Supervisor notifies HRD of the employees who were chosen to be furloughed and of their furlough dates. [6-1(c)]

### **Miscellaneous**

A Public Meeting was held on February 5, 2015, and the comments received from that

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meeting and during the public comment period have been reviewed and considered. Any changes made from that review have been incorporated into this draft.

### Considerations

The following are remaining issues that the LOC may want to consider:

- 4-8 says furloughs shall not be used for disciplinary reasons, but 7-1 says that employees cannot appeal a furlough decision. 4-8 may be difficult to enforce because it doesn't seem that an employee can appeal a furlough decision that s/he feels was disciplinary.
- There continue to exist technical decisions that will need to be made prior to implementation. For example:

- Josh Cottrell, Manager of HRD's Employee Insurance program has identified that the impact of the furlough could result in the employee continuing to receive health insurance benefits but payment for those benefits would be deducted from future payroll. Because a furlough could mean either reduced hours during a week or could be more similar to a short term lay-off, it may not be possible to identify how to address this in the policy given the number of options available.
- Under recent Tribal employee insurance plan changes (per the Affordable Care Act), all employees - including part-time and half-time employees - working an average of 30+ hours a week in a designated timeframe will be eligible for medical, dental and vision insurance the following year. This new requirement could affect some employees if the furlough drops the employee below the 30-hour weekly average. The proposed Policy does not address this question and there are no current procedures or policy guidelines in place.

It is recommended that the Legislative Operating Committee direct that the Human Resources Department develop a Standard Operating Procedure implementing this policy and identify furlough alternatives available to the operations and the Tribe/employee-related consequences prior to adoption in order to determine if language needs to be placed in the policy itself to provide direction. It is presumed that the cost of the alternatives to either the employee or the Tribe picking up this cost will be included in the fiscal analysis.

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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. 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

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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.

(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. 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.

4-4. *Continuous Service.* A furlough shall not constitute a break in continuous service. Employees shall not perform any work for the Tribe while furloughed. This includes responding to work-related e-mail and voice mail, as well as traveling on behalf of the Tribe.

4-5. *Unemployment.* Furloughed employees shall be responsible for contacting the State of Wisconsin Department of Workforce Development to determine if they qualify for unemployment insurance benefits. Eligibility for unemployment insurance benefits is determined by the State of Wisconsin.

4-6. *Benefits.* Employees shall not use or accrue personal or vacation time when on furlough.



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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.

4-7. *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.

4-8. *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.

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.
- (c) the estimated number of employees affected; and
- (d) a summary of how the furlough will relieve budgetary shortfalls.
- (e) Furloughs shall not be used for disciplinary reasons

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.*

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Emergency Adoption – BC-10-15-13-A  
Emergency Adoption Extension BC-04-09-14-D



# Legislative Operating Committee

## May 6, 2015

# Comprehensive Policy Governing Boards, Committees and Commissions Amendments

**Submission Date:** 9/17/14

☐ Public Meeting:  
☐ Emergency Enacted:  
 Expires:

**LOC Sponsor:** Jennifer Webster

**Summary:** *This item was carried over into the current term by the LOC. Amendments were requested to: prohibit individuals from serving on multiple boards, committees and commissions at one time; set term limits; and prohibit Tribal employees from serving on tribal boards, committees and commissions. In addition, the OBC directs that the appointment process be reviewed.*

**9/10/14 OBC:** Motion by Lisa Summers to direct the Tribal Secretary's Office to send formal correspondence to the Land Claims Commission requiring them to submit their reports by Friday and to request the LOC to bring back a recommendation on how to amend the Comprehensive Policy Governing Boards, Committees, and Commissions to include the withholding of stipends payments to Boards, Committees, and Commissions who do not provide their reports in a timely manner, seconded by Fawn Billie. Motion carried unanimously.

**9/17/14 LOC:** Motion by Jennifer Webster to add the Comprehensive Policy Governing Boards, Committees and Commissions Amendments to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

*Note: Jennifer Webster will be the sponsor for this item.*

**4/22/15 OBC:** Motion by Lisa Summers to direct the Comprehensive Policy Governing Boards, Committees, and Commissions appointment process be sent back to the Legislative Operating Committee for amendments and to bring back a recommendation on clarifying the process, seconded by Fawn Billie. Motion carried unanimously.

### Next Steps:

- Direct next steps

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## Comprehensive Policy Governing Boards, Committees and Commissions

Article I. Purpose and Policy  
Article II. Adoption, Amendment, Repeal  
Article III. Definitions  
Article IV. Applications  
Article V. Vacancies  
Article VI. Appointed Positions  
Article VII. Elected Positions

Article VIII. By-Laws of Boards, Committees and Commissions  
Article IX. Minutes  
Article X. Dissolution of Entities  
Article XI. Stipends, Reimbursement and Compensation for Services  
Article XII. Confidential Information  
Article XIII. Conflicts of Interest

### **Article I. Purpose and Policy**

1-1. It is the purpose of this policy to govern the standard procedures regarding the appointment of persons to boards, committees and commissions, creation of by-laws, maintenance of official records, compensation, and other items related to boards, committees and commissions. This policy does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.

1-2. It is the policy to have consistent and standard procedures for choosing and appointing the most qualified persons to boards, committees and commissions, for creation of by-laws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

### **Article II. Adoption, Amendment, Repeal**

2-1. This policy was adopted by the Oneida Business Committee by resolution # BC-5-14-97-F and amended by resolutions # BC-09-27-06-E and # BC-09-22-10-C.

2-2. This policy may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council, regardless of where the original adoption took place.

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. Any policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this policy is hereby repealed to the extent that it is inconsistent with or is contrary to this policy. Provided that meeting stipends for elected members of a board, committee or commission that are in effect on [adoption date of the amendments] shall remain unaffected, but prior exceptions to this policy for appointed entities shall be repealed to extent that meeting stipends are inconsistent with this policy.

### **Article III. Definitions**

3-1. This article shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

3-2. "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the General Tribal Council.

3-3. "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

3-4. "Application" means any process by which a person proceeds to be appointed to a vacancy.

3-5. "Appointment" means the process by which a person is chosen to fill a vacancy.

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3-6. "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.

3-7. "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.

3-8. "Per Diem" means the payment made by the Tribe to offset the costs of being out-of-town or to travel on behalf of the Oneida Tribe of Indians of Wisconsin.

3-9. "Stipend" means that amount paid by the Oneida Tribe of Indians of Wisconsin to persons serving on boards, committees and commissions of the Oneida Tribe of Indians of Wisconsin to offset the expenses of being a member on the board, committee or commission.

3-10. "Official" means any person appointed or elected to membership on an entity of the Oneida Tribe.

#### Article IV. Applications

4-1. All applications shall be generated by the Tribal Secretary's Office and approved by the Oneida Business Committee.

4-2. The content of applications shall be as follows:

a. questions designed to obtain the following information

1. name
2. address
3. phone number
4. enrollment number
5. position applied for

b. applications may contain any other questions necessary to obtain information necessary to making an informed decision as to the qualifications of any individual to hold any vacancy.

c. Form A-1, attached, is the current approved application form in use and shall be placed in the Tribal Secretary's Office and other locations specified by the Tribal Secretary's Office.

4-3. Applications shall be filed with the Tribal Secretary's office by 4:30 p.m. of the deadline date. Postmarked envelopes are accepted as filed if postmarked by the deadline date and received by the Tribal Secretary's Office within five (5) business days of the deadline. At the completion of the posted deadline for filing applications the Tribal Secretary shall notify by postcard all persons who have filed an application of the date the application was filed and whether it will be considered for the election or appointment. A tentative date for appointment will be placed on the post card with the instruction that this is a tentative date and further information can be requested by calling the Tribal Secretary's Office. Postcard information should be in substantially similar format as that in Figure 1.

	78	
	79	
Your application was received on:	80	4-4. Applications for elected positions
Tentative date for appointment or election:	81	shall be verified according to the
You application 9 is 9 is not being considered.	82	Oneida Election Ordinance.
	83	Applications for appointed positions shall
For more information, call the Tribal Secretary's Office at 869-2214.	84	be verified by the Tribal Secretary's
	85	Office as needed or as required in the by-
		laws of the entity.

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4-5. In the event that there are insufficient applicants after the deadline date has passed for appointed positions, the Tribal Chairperson may elect to

- a. Include within the pool of appointed persons late applications, or
- b. Repost for an additional time period. In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.

## **Article V. Vacancies**

5-1. This article shall govern when vacancies occur, and where and when notice of the vacancies shall be posted.

5-2. The following vacancies shall be effective as listed herein.

- a. End of Term. A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends as of the by-laws of the entity.
- b. Removal. Removal is effective, under adopted and approved procedures of the entity, when the final action has taken place. Where a final action is defined as
  - 1. failure to file a timely appeal,
  - 2. denial of appeal, or
  - 3. final written opinion is filed.
- c. Resignation. A resignation is effective upon:
  - 1. Deliverance of a letter to the entity, or
  - 2. Acceptance by motion of the entity of a verbal resignation.
- d. New Positions. Vacancies on new entities are effective upon adoption of by-laws.
- e. Interim Positions. Vacancies of interim positions are effective upon creation of interim positions by the Oneida Business Committee or General Tribal Council.

5-3. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee. The following guidelines are minimum notice requirements:

- a. End of Term. Entity should be notified 60 days prior to end of term by the Tribal Secretary.
- b. Removal or Resignation. Entity should be notified as soon as final action is taken by the Oneida Business Committee or General Tribal Council to accept the resignation, or final action according to any Removal law of the Tribe.

5-4. Notice of vacancies shall be by the Tribal Secretary's Office in the following locations:

- a. Tribal Secretary's Office
- b. The Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the South Eastern Wisconsin Oneida Tribal Services (SEOTS) building and the Highway 54 and E & EE Oneida One Stops.
- c. Kalihwisaks
- d. Minutes of the Oneida Business Committee, and
- e. Any reasonable location requested by the entity.

5-5. The Tribal Secretary's Office shall forward the notice of vacancy to the Oneida Business Committee for approval and direction to post notice as set out in this Article. The Tribal Secretary shall post notice of vacancies at the following times:

- a. End of Term. Automatically thirty days prior to completion of the term.
- b. Removal. Upon notice by Secretary, or other person authorized by the by-laws of the entity, to the Tribal Secretary's Office.
- c. Resignation. Upon notice by the Secretary, or other person authorized by the by-laws



of the entity, to the Tribal Secretary's Office.

d. New Positions. Upon one of the following conditions:

1. if not specified, immediately upon creation of entity or adoption of by-laws, whichever is later, or

2. upon date specified when creating the entity.

e. Interim Members. Upon one of the following:

1. upon completion of the term designated to hold in new entity, or

2. upon completion of vacant term of the pre-existing entity

f. Termination of appointment. At the next Oneida Business Committee meeting following the termination of appointment.

## **Article VI. Appointed Positions**

6-1. All appointments shall be made by the Oneida Business Committee at regular or special Oneida Business Committee meetings. Provided that, no applicant may be appointed who fails to meet the requirements set out in the entity's by-laws.

6-2. The following procedures shall be used to determine who shall be appointed:

a. Five (5) business days after close of notice, all applications shall be delivered to the Tribal Chairperson along with a summary of qualifications to hold office.

b. Within a reasonable time, the Tribal Chairperson shall:

1. choose an applicant for appointment, or

2. ask the Tribal Secretary's Office to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.

c. Forward choice of applicants to all Council members prior to appointment:

1. Council members may accept the Tribal Chairperson's selected applicants, or

2. Reject an applicant by majority vote of a quorum at any regular or special Oneida Business Committee meeting.

6-3. All appointments are official upon taking an oath at a regular or special Oneida Business Committee meeting and all rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Tribal Secretary shall notify the chosen persons when they should appear for taking the oath.

a. Originals of the signed oath shall be maintained by the Tribal Secretary's Office.

b. Copies of the oath shall be forwarded to the new member and the entity.

c. Wording of oaths shall be approved by the Oneida Business Committee and kept on file by the Tribal Secretary's Office.

1. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee:

I, ♣name♦, do hereby promise to uphold the laws and regulations of the Oneida Tribe of Indians of Wisconsin, the General Tribal Council, and the Tribal Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and with the strictest confidentiality.

I will carry out the duties and responsibilities as a member of the ♣entity name♦, and all recommendations shall be made in the best interest of the Oneida Tribe as a whole.

d. Revisions of oaths shall be approved by the Oneida Business Committee prior to usage.

e. All oaths shall be sufficient to make the appointee aware of their duty to the Oneida Tribe and as members of the entity.

6-4. The Tribal Secretary shall notify all applicants of the final status of their application. The

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179 Tribal Chairperson shall forward a list of all applicants to the Tribal Secretary and the final  
 180 decision regarding the selection after the procedures in sec. 6-2 are completed. Provided that,  
 181 the Tribal Secretary shall include on the notice to the applicant the following paragraph:

182 "The Oneida Tribe of Indians of Wisconsin reports all income paid by the Oneida Tribe in  
 183 whatever form. The Internal Revenue Service of the United States considers stipends paid to members of  
 184 boards, committees, and commissions to be income which may be offset by expenses related to that  
 185 income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is  
 186 also your responsibility to keep documentation of expenses related to this income."

187 6-5. *Termination of Appointment.* Appointed members of entities serve at the discretion of the  
 188 Oneida Business Committee. Upon the recommendation of the Tribal Chair, an appointed  
 189 member of an entity may have his or her appointment terminated by the Oneida Business  
 190 Committee by a two-thirds majority vote of the entire Oneida Business Committee.

## 192 **Article VII. Elected Positions**

193 7-1. All elected positions, unless otherwise noted in the by-laws of the entity, shall be  
 194 nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in  
 195 accordance with the Oneida Election Law. Provided that, when the Election Board notifies a  
 196 petitioner or nominee that he or she is eligible to be placed on the ballot, the following  
 197 paragraph shall be included:

198 "The Oneida Tribe of Indians of Wisconsin reports all income paid by the Tribe in whatever  
 199 form. The Internal Revenue Service of the United States considers stipends paid to members of boards,  
 200 committees, and commissions to be income which may be offset by expenses related to that income. You  
 201 will receive an income report which is also forwarded to the Internal Revenue Service, it is also your  
 202 responsibility to keep documentation of expenses related to this income."

203 7-2. All other processes shall be as directed in the Oneida Election Law.

204 7-3. All elected positions are official upon taking an oath at a regular or special Oneida  
 205 Business Committee meeting and all rights and delegated authorities of membership in the  
 206 entity shall vest upon taking the oath.

- 207 a. Originals of the signed oath shall be maintained by the Tribal Secretary's Office.
- 208 b. Copies of the oath shall be forwarded to the new member and the entity.
- 209 c. Wording of oaths shall be approved by the Oneida Business Committee and kept on  
 210 file by the Tribal Secretary's Office. The following oath is the standard oath to be used  
 211 unless a specific oath for the entity is pre-approved by the Oneida Business Committee:

212 I, ♣name♦, do hereby promise to uphold the laws and regulations of the Oneida Tribe  
 213 of Indians of Wisconsin, the General Tribal Council, and the Tribal Constitution. I will perform  
 214 my duties to the best of my ability and on behalf of the Oneida people with honor, respect,  
 215 dignity, and sincerity and with the strictest confidentiality.

216 I will carry out the duties and responsibilities as a member of the ♣entity name♦, and  
 217 all recommendations shall be made in the best interest of the Oneida Tribe as a whole.

- 218 d. Revisions of oaths shall be approved by the Oneida Business Committee prior to  
 219 usage.

- 220 e. All oaths shall be sufficient to make the appointee aware of their duty to the Tribe  
 221 and as members of the entity.

## 223 **Article VIII. By-Laws of Boards, Committees and Commissions**

224 8-1. By-Laws of all Boards, Committees and Commissions shall conform to this outline. All  
 225 existing entities must comply with this format and present by-laws for adoption within a  
 226 reasonable time after creation of the entity, or within a reasonable time after adoption of this  
 227 policy. By-laws must contain this minimum information, although more information is not

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prohibited.

8-2. Specifically excepted from this article are Task Forces and Ad Hoc Committees. However, these entities must have, at minimum, mission or goal statements for completion of the task.

8-3. There shall be the following Articles:

- a. Article I. Authority.
- b. Article II. Officers
- c. Article III. Meetings
- d. Article IV. Reporting
- e. Article V. Amendments

8-4. Sections. Articles shall be divided into "Sections" as set out.

a. "Article I. Authority" consists of the following information:

- 1. Name. All entities should list the full name of the entity. In addition, there should be listed any short name that will be officially used.
- 2. Authority. This section should state the citation and name, if any, of the creation document.
- 3. Office. There should be listed the official office or post box of the entity.
- 4. Membership. The following information should be in this section:
  - A. Number of members;
  - B. How elected or appointed;
  - C. How vacancies are filled
  - D. The qualifications of the members.

b. "Article II. Officers" consists of the following information:

- 1. Chair and Vice-Chair. This section creates the positions of the entity. Other positions may also be created here.
- 2. Chair duties. Because of the importance of this position, those duties and limitations should be specifically listed.
- 3. Vice-Chair duties. Because of the importance of this position, those duties and limitations should be specifically listed.
- 4. Additional Offices and Duties. There should be additional sections as needed for every office created in subsection 1 above.
- 5. How chosen. There should be specifically set out how a member of the entity will occupy an official position as set out in this Article.
- 6. Personnel. State entities authority for hiring personnel and the duties of such personnel.

c. "Article III. Meetings" consists of the following information:

- 1. Regular meetings. There shall be listed when and where regular meetings shall be held, and, how notice of the agenda, documents, and minutes will be disbursed to the members.
- 2. Emergency meetings. There shall be listed how Emergency meetings shall be called and noticed.
- 3. Quorum. This section shall list how many members create a quorum.
- 4. Order of Business. This section sets out how the agenda will be set up.
- 5. Voting. This section should list how voting shall be taken, what percentages shall be needed to pass different items.

d. "Article IV. Reporting" consists of the following information:

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1. Agenda items shall be in an identified format.
  2. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity.
  3. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented.
  4. Entities will report to the Oneida Business Committee member who is their designated liaison. This reporting format may be as the liaison and entity agree to, but not less than that required in any policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. Reports shall be made within a reasonable time after a meeting is held, or as the Oneida Business Committee member liaison and entity agree. Provided that, the agreement is to uphold the ability of the liaison to act as a support to that entity.
- e. "Article V. Amendments" consists of:
1. Amendments to By-laws. There should be described how amendments to the by-laws shall take place. Provided that, amendments conform to the requirements of this and any other policy. Provided further, that amendments are approved by the Oneida Business Committee prior to implementation.

#### **Article IX. Minutes**

- 9-1. All minutes shall be submitted to the Tribal Secretary's Office within a reasonable time after approval by the entity.
- 9-2. Actions taken by an entity are valid when minutes are approved, provided that, minutes are filed according to this Article, and any specific directions within approved by-laws.
- 9-3. No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the by-laws of that entity.
- 9-4. In the event of dissolution of an entity, all files and documents are required to be forwarded to the Tribal Secretary's Office for proper storage and disposal.

#### **Article X. Dissolution of Entities**

- 10-1. All entities of the Tribe shall be dissolved according to this Article. Provided that other specific directions may be included within by-laws.
- 10-2. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Tribal Secretary's Office for proper disposal within two weeks of dissolution.
- 10-3. All other entities of the Tribe shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee. Unless otherwise indicated, the materials generated by these entities shall be forwarded to the Tribal Secretary's Office for proper disposal within two weeks of dissolution.
- 10-4. All Chairpersons and Secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding materials.

#### **Article XI. Stipends, Reimbursement and Compensation for Service**

- 11-1. Compensation and reimbursement for expenses shall be as set out in this Article and according to procedures for payment as set out by the Oneida Tribe of Indians of Wisconsin.
- 11-2. The Oneida Tribe recognizes that persons serving on entities of the Tribe, whether elected

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or appointed, incur some expense. Therefore, the Tribe, in order to attract persons to serve on entities, shall pay stipends to these members in accordance with this Article.

11-3. *Meeting Stipends for Appointed Members.* Except provided in sub (a) and unless otherwise declined by the entity through its bylaws, or declined by a member(s), appointed members serving on entities shall be paid a stipend of no more than \$50 per month when at least one (1) meeting is conducted where a quorum has been established in accordance with the duly adopted by-laws of that entity. Provided that the meeting lasts for at least one (1) hour and that members collecting stipends must be present for at least one (1) hour of the meeting.

(a) Members serving on the Oneida Child Protective Board shall be exempt from the \$50 stipend per month limitation and shall receive a \$50 stipend for each meeting held in accordance with 11-3.

11-4. *Meeting Stipends for Elected Members.* Unless otherwise declined by the entity through its bylaws, or declined by a member(s), elected members serving on entities shall be paid a minimum stipend of \$50 for each meeting which has established a quorum in accordance with the duly adopted by-laws of that entity for at least one (1) hour, regardless of the length of the meeting. Members collecting stipends must be present for at least one (1) hour of the meeting, regardless of the length of the meeting.

11-5. The Oneida Business Committee shall periodically review the amounts provided for meeting stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending this Policy.

11-6. *Conferences and Training.* A member of any entity, elected or appointed, shall be reimbursed in accordance with the Tribal policy for travel and per diem, for attending a conference or training. Provided that:

(a) A member shall be eligible for a \$100 stipend for each full day the member is present at the conference or training, when attendance at the conference or training is required by law, bylaw or resolution.

(b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.

(c) No stipend payments shall be made for those days spent traveling to and from the conference or training.

11-7. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.

11-8. Task Force members and members of subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

## **Article XII. Confidential Information**

12-1. The Oneida Tribe is involved in numerous business ventures and governmental functions where it is necessary that private information be kept in the strictest confidence to assure the continued success and welfare of the Tribe. It is in the best interest of the Oneida Tribe that all officials maintain in a confidential manner all information, whether of historical, immediate, or future use or need. The Oneida Tribe desires that all officials who have access to the Oneida Tribe's confidential information be subject to specific limitations in order to protect the interest of the Oneida Tribe. It is the intention of the Oneida Tribe that no persons engaged in by the Tribe, nor their relatives or associates, benefit from the use of confidential information.

12-2. Confidential information means all information or data, whether printed, written, or oral,



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concerning business or customers of the Oneida Tribe, disclosed to, acquired by, or generated by officials in confidence at any time during their elected or appointed term or during their employment.

12-3. Confidential information shall be considered and kept as the private and privileged records of the Oneida Tribe and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.

12-4. An official will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Oneida Tribe shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Oneida Tribe and the entity.

12-5. Upon completion or termination of his/her elected or appointed term of membership in an entity, for any cause whatsoever, the official will surrender to the Oneida Tribe, in good condition, all records kept by the employee.

12-6. No official shall disclose confidential information acquired by reason of his/her relationship or status with the Oneida Tribe for his/her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.

### **Article XIII Conflicts of Interest**

#### *Subpart A. General*

13-1. The Oneida Tribe recognizes the ability of all persons to serve on entities of the Oneida Tribe. However, it is also recognized that the delegated authority and responsibilities of an entity may cause conflict with membership on other entities or employment.

13-2. It is the policy of the Oneida Tribe to request a candidate to disclose possible conflicts prior to election or appointment to allow the conflicts to be resolved in a timely manner.

13-3. Officials shall disclose and resolve conflicts of interest in a reasonable and timely manner. Failure to resolve conflicts shall result in removal from office for elected officials and may result in termination of appointment for appointed officials. Provided that, all applicants shall submit, with the application forms, a signed conflict of interest declaration disclosing all known conflicts.

13-4. This article sets forth specifically prohibited conflicts of interests. However, for any individual candidate or member on an entity, conflicts may arise within the by-laws of that entity or employment relationships.

13-5. No official shall act as a consultant, agent, representative for, or hold any position as an officer, director, partner, trustee, or belong as a member in a board, committee or commission, or the like without first disclosing such activity to determine possible conflicts of interest.

#### *Subpart B. Employment Interests*

13-6. No official shall hold office in an entity which has authority over the area in which the official is employed by the Oneida Tribe or elsewhere. The Oneida Tribe recognizes the ability of all persons to serve on entities of the Oneida Tribe, however, recognizes the conflict arising out of membership on an entity and employment in an area over which the entity has authority.

13-7. Employment is defined for this subpart as that area which the employee supervises or is supervised in regards to a specific subject matter.

13-8. Authority of an entity is defined for this subpart as that area over which the entity has

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subject matter jurisdiction delegated either by the Oneida Business Committee or Oneida General Tribal Council, and for which that authority may be regulatory, oversight, or otherwise.

*Subpart C. Financial Interests, Investments, and Gifts*

13-9. No official, or their immediate family, may have a financial interest in any transaction between the entity and an outside party where the official has a financial or familial relationship.

13-10. The following words are defined for the purposes of this subpart:

a. "Financial interest" means any profit sharing arrangements, rebates, payments, commissions, or compensation in any form, and shall include any form of ownership, regardless of ability to control the activities of the business. Provided that, this shall not include ownership of shares which, other than in combination with others, cannot exert a controlling influence on the activities of the business and in relation to the outstanding shares, the ownership of shares represents a small part of the whole.

b. "Transaction" means any activity wherein a provider of goods and/or services is compensated in any form.

c. "Immediate family" means the mother, father, sister, brother, daughter, son, granddaughter, grandson, grandfather, grandmother and these relationships with any spouse.

13-11. As referred to in this Subpart, entity includes for the purposes of defining conflicts, the programs or enterprises over which the entity has delegated authority.

13-12. Officials shall avoid personal investment in any business with which the Oneida Tribe has or is expected to have a contractual or other business relationship. Notwithstanding the foregoing, however, an investment by an official in a business with which the Oneida Tribe has dealings is permissible if the Oneida Business Committee or other delegated authority determines in writing that:

a. the investment is not made or cannot be considered to have been made on the basis of confidential information, and

b. the investment cannot be expected to adversely affect or influence the official's judgement in the performance of any services or obligations on behalf of the Oneida Tribe.

13-13. Officials shall not use their relationship with the Oneida Tribe to exercise undue influence to obtain anything which is not freely available to all prospective purchasers.

13-14. No official shall accept gifts, payments for personal gain, opportunities to invest, opportunities to act as an agent, a consultant, or a representative for actual or potential purchasers, sales sources, contractors, consultants, customers or suppliers, or accept any direct or indirect benefit from any actual or potential purchaser, sales source, contractor, consultant, customer, or supplier.

13-15. No official shall accept any gift, entertainment, service, loan, promise of future benefits or payment of any kind which the Oneida Business Committee or other delegated authority determines adversely affects or influence his/her judgement in the performance of any services, duties, obligations or responsibilities to the Oneida Tribe, or impairs confidence in the Oneida Tribe.

13-16. Notwithstanding the foregoing, however, officials may accept or provide business-related meals, entertainment, gifts or favors when the value involved is insignificant and the Oneida Business Committee or other delegated authority has determined that it clearly will not place

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him/her under any obligation.

*Subpart D. Competition With The Oneida Tribe*

13-17. No official shall enter into competition with the Oneida Tribe in the purchase or sale of any property, property rights or interests, without prior consent of the Oneida Tribe.

13-18. An official may enter into competition with the Oneida Tribe where the activity engaged is approved through an Oneida entrepreneur development program or other similar Oneida program and does not otherwise violate this policy.

*Subpart E. Use Of Tribal Assets*

13-19. All bank accounts for tribal funds shall be maintained in the name of the Oneida Tribe and will be reflected on the Oneida Tribe's books in accordance with Generally Accepted Accounting Procedures.

13-20. Each official shall comply with the system of internal accounting controls sufficient to provide assurances that:

- a. all transactions are executed in accordance with management's authorization; and
- b. access to assets is permitted only in accordance with management's authorization; and
- c. all transactions are recorded to permit preparation of financial statements in conformity with generally accepted accounting principles or other applicable criteria.

13-21. Any records created or obtained while as an official of an entity of the Oneida Tribe is/are the property of the Oneida Tribe and can only be removed or destroyed by approval from a quorum of the entity at a duly called meeting. All removal or destruction of documents must be made in accordance with the Open Records and Open Meetings law.

*Subpart F. Disclosure*

13-22. Each official shall disclose any outside activities or interests that conflict or suggest a potential conflict with the best interests of the Oneida Tribe by completely filling out the application for membership or informing the Oneida Business Committee or other designated authority after election or appointment of a conflict arising during membership on an entity.

*Subpart G. Reporting*

13-23. All conflicts or potential conflicts that arise during membership on an entity shall be immediately reported to the Tribal Secretary of the Oneida Tribe. Upon receiving information of a potential conflict of interest, the Tribal Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Oneida Tribe regarding the status of the official.

13-24. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the internal audit staff. If the internal audit staff finds evidence of noncompliance they shall notify the Oneida Law Office of the Oneida Tribe, who will then make a determination of further action to be taken, if any.

*Subpart H. Enforcement And Penalties*

13-25. Officials found to be in violation of this policy may be removed pursuant to the Removal Law if elected or have their appointment terminated if appointed.

13-26. Candidates for appointment or election to office found in violation of this policy may be

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503 disqualified from taking office.

504

505 *End.*

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509 Adopted - BC-8-2-95-A

510 Amended - BC-5-14-97-F

511 Emergency Amendments - BC-04-12-06-JJ

512 Amended - BC-9-27-06-E (permanent adoption of emergency amendments)

513 Amended - BC-09-22-10-C

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515



# Legislative Operating Committee

## May 6, 2015

### Employment Law

**Submission Date:** 9/17/14

☐ Public Meeting:  
☐ Emergency Enacted:  
 Expires:

**LOC Sponsor:** Brandon Stevens

**Summary:** *This item was carried over into the current term by the LOC. The original proposal is for the development of an employment law to replace the current Personnel Policies and Procedures (Previously titled "Personnel Policies and Procedures-Revisions").*

**9/17/14 LOC:** Motion by Jennifer Webster to add the Employment Law to the Active Files List, with Brandon Stevens as the sponsor; 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: 4) With regard to the Personnel Commission legislation, the Business Committee agrees that the Employment Law should continue forward and shall include consideration regarding how the Personnel Commission and/or their processes are incorporated into the Employment Law legislation; seconded by Trish King. Motion carried unanimously.

- **Next Steps:** Review the draft and direct next steps

## CHAPTER 300 EMPLOYMENT LAW

300.1. Purpose and Policy  
300.2. Adoption, Amendment, Repeal  
300.3 Definitions  
300.4. Human Resources Department  
300.5. Hiring  
300.6. Compensation and Benefits

300.7. General  
300.8. Employee Responsibilities  
300.9. Layoffs  
300.10. Employee Discipline and Grievances  
300.11. Violations

### **300.1. Purpose and Policy**

300.1-1. It is the purpose of this Law to define the Tribe's employee and employer responsibilities. This Law shall define the minimum standards regarding hiring, compensation and benefits, employee safety, protecting employer assets and progressive disciplinary action.

300.1-2. It is the policy of the Tribe to provide Tribal departments, divisions, and non-divisions latitude to create Human Resource practices to fit their individual industry standards through complimenting policy guided by this Law, while protecting employees from undue political pressure. In addition, while the provisions of certain federal laws may not specifically apply to the Tribe, the Tribe has determined that, unless otherwise specifically stated, the standards created under those federal laws will serve as a guide for the Tribe.

### **300.2. Adoption, Amendment, Repeal**

300.2-1. This Law was adopted by the Oneida General Tribal Council by resolution \_\_\_\_\_ and is effective six (6) months from the date of adoption.

300.2-2. This Law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

300.2-3. 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.

300.2-4. 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, the Oneida Tribal Management System and amendments to the Tribal Management System, including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985, are repealed.

300.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### **300.3 Definitions**

300.3-1. 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) "Back pay" shall mean money damages owed to an employee for a salary or wage that would have been earned in the time taken to litigate the employment dispute, minus amounts that are deducted from salary or income earned from a third-party employer.

(b) "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 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.

(c) "Immediate family member" means an individual's husband, wife, mother, father, son, daughter, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, brother-in-law, sister-in-law, first or second cousin, step-parent, or someone who is recognized by the Oneida General Tribal Council and/or its delegate as a member of the individual's extended family.

(d) "Involuntarily separated" means an employee is removed from employment through whatever means by the employer. This may include but is not limited to, investigative leave, suspension or termination.

(e) "Political appointee" means an individual appointed as an executive assistant by an individual Oneida Business Committee member or as an assistant by a board, committee or commission.

(f) "Sexual harassment" means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature where:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

(2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

(g) "Standard Operating Procedure" means an internal procedure that is created to govern how a division or department operates and performs its designated functions.

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

(i) "Tribal member" means an individual who is an enrolled member of the Oneida Tribe of Indians of Wisconsin.

#### **300.4. Human Resources Department**

300.4-1. *General Responsibilities.* There shall be a Human Resources Department which shall be responsible for:

(a) Developing rules necessary to carry out the intent of this Law and submitting them to the Oneida Business Committee for approval.

(b) Reviewing and approving Standard Operating Procedures throughout the Tribe.

(c) Issuing opinions for guidance regarding the application of this Law; policies and procedures promulgated to implement this Law; and Standard Operating Procedures.

(d) Keeping a record of all employment related decisions made by the judicial and hearing bodies that are authorized by law to hear employee grievances.

(e) Collecting and maintaining data on human resource related information including, but not limited to, information on hiring, appointments, firing, transfers, employee development, grievances, policy issues and insurances.

(1) The Human Resources Department shall provide quarterly reports to the Oneida Business Committee in accordance with the established reporting requirements and schedule sent out by the Tribal Secretary's office.

(2) The Oneida Business Committee shall not have direct access to employee information and/or personnel files, especially information relating to individual compensation or disciplines; provided that, the Tribal Chairperson shall have access to information on those personnel who directly report to him or her and

each Oneida Business Committee member shall have access to information on his or her political appointee(s).

300.4-2. *Administrative.* The sole administrative duties, including but not limited to sign-off, assessment, planning, budgeting, goal setting, continuous improvement and other day to day management decisions relating to the Human Resources Department shall be the responsibility of the Human Resources Department Manager, or designee.

300.4-3. *Authorities.*

(a) The Legislative Operating Committee shall:

(1) develop Tribal legislation relating to human resources;

(2) not have, create the appearance of, or attempt to create or have undue influence in day to day personnel related decisions.

(b) The Human Resources Department shall interpret, notify employees of and enforce the Tribe's employment rules.

(c) Individual Tribal departments, divisions, and non-divisions shall implement and comply with the Tribe's employment rules.

300.4-4. *Memorandum of Understanding.* The Oneida Business Committee and Human Resources Department shall enter into a memorandum of understanding which shall govern the relationship between the two entities and the responsibilities and expectations of each entity with regard to the management of the Human Resources Department.

### **300.5. Hiring**

300.5-1. *Hiring Philosophy.* The Tribe shall recruit, hire, retain and develop individuals who are culturally respectful, professionally competent and civically responsible. Upholding the Tribe's sovereignty and adhering to Tribal law are the Tribe's priorities in its hiring and employment practices.

(a) Federal policy since 1834 accords hiring preference to Indians. Additional legislation such as the Civil Rights Act of 1964 and the Education Amendments of 1972 specifically provide for preferential hiring of Indians by Indian tribes. The purposes of this preference are to:

(1) give Indians a greater participation in self-government;

(2) further the Government's trust obligation; and

(3) increase the positive effect of having Indians administer matters that affect Indian tribal life.

(b) As an employer, the Tribe seeks to employ individuals who possess the skills, abilities and background to meet the employment needs of the Tribe.

(c) As a sovereign Indian Tribe and a unique cultural group, the Tribe has determined that a highly desirable employment characteristic is knowledge of Oneida culture that can be attained only by membership in the Tribe or by being a descendant of the Tribe. Further, the Tribe recognizes the unique, shared culture of Native American Indians and has determined that a desirable employment characteristic is status as a member of an American Indian tribe. At a minimum, the Tribe has determined that some knowledge of Indian culture is a desirable employment characteristic.

300.5-2. The Tribe shall not discriminate against an employee or applicant based on an individual's sex, race, religion, national origin, pregnancy, age, marital status, sexual orientation, or disability; however, the Tribe shall follow the preferences outlined in 300.5-3 without violating this Law.

300.5-3. *Preferred Hiring.*

(a) Unless otherwise prohibited by law or grant funding requirements, the Tribe shall apply the following priorities of Oneida preference in staffing decisions:

(1) Tribal member.

(2) First generation Oneida descendant or individual with at least one-quarter (1/4) Oneida blood quantum who is enrolled in a federally recognized tribe other than the Oneida Tribe.

(3) Other Indians enrolled in a federally recognized tribe.

(4) Other (non-Indian).

(b) If a law or grant funding requirements prohibit the application of Oneida Preference in accordance with 300.5-3(a)(1), employees shall be selected in accordance with the Indian Preference requirements of said law or grant.

(c) Application of preference shall only apply when an applicant meets all the minimum requirements for the position applied for.

(d) *Oneida-Only Positions.* All top administrative and political appointee positions shall be held by Tribal members.<sup>1</sup> However, if a position requires specific skills and/or licensing by the state or federal government and there are not any available Tribal members who possess the necessary skills or licensing to perform the position, a non-Tribal member may be selected to fill the position.

300.5-4. *Education.* Employees under the age of fifty (50) who do not have a High School Diploma or its equivalent at the time of hire shall obtain a High School Diploma, a High School Equivalency Diploma or a General Equivalency Diploma within one (1) year of being hired. Employees that do not meet this deadline and have not been granted an extension from the Human Resources Department Manager shall be laid off until the employee provides documentation to the Human Resources Department Manager that he or she is in compliance with this section.

300.5-5. *Workplace Safety* The Tribe is committed to protecting the safety, health and well-being of all employees, and other individuals in the workplace. Alcohol and drug use pose a significant health and safety threat not only to the user but to customers and other employees. The Tribe shall establish policy that applies to all applicants for employment, whether external or internal, and all employees regarding prohibited drugs and/or alcohol.

300.5-6. *Conflicts.* No person shall be eligible for a position if he or she has a conflict of interest, as defined by the Conflict of Interest Policy, or if he or she would be directly supervised by an immediate family member.

300.5-7. *Right to Work.* No person shall be required to do any of the following in order to become or remain as an employee of the Tribe:

(a) resign or refrain from being a member of a labor organization;

(b) become or remain a member of a labor organization; or

(c) pay dues or other charges to a labor organization.

### **300.6. Compensation and Benefits**

300.6-1. *Compensation Plan* The Human Resources Department shall develop and institute an employee compensation plan, approved by the Oneida Business Committee, to assure equitable salary and wage levels. Wage adjustments and benefits available to employees are dependent upon available funding allocations.

<sup>1</sup> January 8, 1990 GTC: Debbie Powless moved that the General Manager's and all top administrative positions be held by enrolled tribal members, motion seconded. ... Main motion carried.

300.6-2. *Designation of Employees.* The Tribe shall use the standards created under the Fair Labor Standards Act to designate its employees as either nonexempt or exempt and to set minimum wage and maximum hour restrictions.

300.6-3. *Insurance and Retirement.* The Tribe may provide insurances and/or a retirement plan as a benefit to full-time employees. Emergency or temporary employees may not be eligible for these benefits.

300.6-4. *Time Off.* Tribal employees shall be allowed paid time off to the extent that paid time off is accumulated, as determined by continuous service for the Tribe.

300.6-5. *Leaves.* Employees of the Tribe shall be allowed leave under circumstances according to applicable Tribal rules. The Tribe may also offer an employee on leave the opportunity to return to work and conduct temporary, transitional work within the employee's functional capacity and/or rehabilitative needs.

### **300.7. General**

300.7-1. *Employee Development.* The Tribe encourages the advancement and transfer of employees in order to make the best possible use of human resources. Employees who wish to advance in the organization may work with the Human Resources Department to develop a personal development plan.

300.7-2. *Employee Records.* The Tribe collects information from employees to make personnel decisions and stores them within the Human Resources Department. All information contained in these files is private and confidential and shall only be released in the following situations:

(a) Current and past employees shall have access to their own employment files.

(b) The Tribe shall release applicable information to outside parties when obligated to do so by law.

(c) Other outside parties may have access to an employee's file with the employee's authorization.

300.7-3. *Safety and Fitness-for-Duty.* The Tribe shall maintain safety standards, in accordance with applicable Tribal law, to create a safe and healthy work environment for employees and to keep the number of job-related illnesses or injuries to a minimum. In addition, the Tribe shall also maintain standards that require employees to perform their essential job duties in a safe, secure, productive and effective manner.

300.7-4. *Worker's Compensation.* Employees shall be eligible for compensation and medical benefits for compensable injuries suffered in the employment of the Tribe in accordance with applicable Tribal law.

300.7-5. *Unemployment Insurance.* The Tribe adheres to the State of Wisconsin's unemployment insurance program and employees of the Tribe may be eligible for unemployment benefits in accordance with the provisions of the laws of the State of Wisconsin.

### **300.8. Employee Responsibilities**

300.8-1. *Harassment and Discrimination Prohibited.* Employees are prohibited from sexually harassing another individual or engaging in any conduct that harasses or discriminates against another based on sex, race, religion, national origin, pregnancy, age, marital status, sexual orientation, or disability.

300.8-2. *Child Abuse and Neglect Reporting.* All Tribal employees shall protect the health and welfare of the children with whom they come into contact during the course of their employment. In addition to those professional employees who have a duty to report child abuse or neglect, all employees who have children in their charge as an employee of the Tribe have a responsibility to report actual or suspected child abuse or neglect.

300.8-3. *Anonymous Information.* Employees who receive anonymous information shall confidentially forward a summary of the information to the Chief of the Oneida Police Department.

300.8-3. *Employee Protection.* Employees who disclose actions against the Tribe to prevent or eliminate waste, fraud and/or abuse of authority, Tribal assets and/or Tribal financial resources in the manner outlined in the Tribe's employee rules, shall be protected from retaliation for their disclosure.

300.8-4. *Reporting of Violations.* No employee may retaliate against or permit retaliation against an employee who reports violations of this Law or Tribal policy.

### **300.9. Layoffs**

300.9-1. Employees may be laid off to enable the Tribe to operate effectively and efficiently in varying economic conditions.

300.9-2. Employees who are placed on a layoff and recalled within twenty-six (26) weeks of the layoff date shall have continuous service, but shall not accumulate benefits during the layoff period. Employees who are not recalled within twenty-six (26) weeks of the layoff date shall have their employment terminated.

300.9-3. Layoffs shall not be used for disciplinary reasons and are not appealable.

### **300.10. Employee Discipline and Grievances**

300.10-1. The Human Resources Department shall develop and enforce disciplinary procedures for use by supervisors to correct unacceptable work performance or behavior.

300.10-2. Employees who disagree with a disciplinary action may contest the action within the procedures established by the Human Resources Department.

300.10-3. *Back Pay.* Employees who are involuntarily separated from employment may be eligible for back pay. The Tribe shall not include the following in any back pay amount:

(a) Punitive damages;

(b) Consequential damages (e.g. Penalties on early withdrawal of 401(k) account);

(c) Attorney's fees.

### **300.11. Violations**

300.11-1. Complaints of an alleged violation of this Law may be filed with the Tribe's judicial system. The Tribe's judicial system, upon finding that this Law was violated, shall be authorized to:

(a) impose compensatory damages, including attorney's fees and court costs, in cases of intentional discrimination; and/or

(b) award back pay to the individual.

End.

---



# Legislative Operating Committee AGENDA REFERRAL FORM



1) Today's Date: 4 / 23 / 2015 Date of Referral Action: 4 / 22 / 2015

2) Entity that referred this item to LOC: Oneida Business Committee

3) Individuals or Entities to contact regarding this item: Tribal Secretary's Office

4) Item referred: Petition: Genskow- Request Special GTC meeting to address 3 resolutions  
(OBC Accountability, Repeal Judiciary & Open Records Law)

5) Background information, including applicable actions and dates: A petition was submitted to the Tribal  
Secretary's Office on March 30, 2015 to "request a special GTC meeting to review and consider the  
attached resolution. In the event that Public hearings are required, we direct the Business Committee  
to hold the required Public Hearings and bring these resolutions to the GTC in tact." In addition, the  
petition requests that the OBC coordinate with Madelyn on the time of the meeting.

6) Due date: Update due 6/10/15, analysis due 6/24/15

*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



## Oneida Business Committee Meeting Agenda Request Form

1. Meeting Date Requested: 03 / 22 / 15

2. Nature of request

Session: ☒ Open ☐ Executive - justification required. See instructions for the applicable laws that define what is considered "executive" information, then choose from the list:

Agenda Header (choose one): General Tribal Council

Agenda item title (see instructions):

Petitioner Madelyn Genksow: Request Special GTC meeting to address 3 resolutions

Action requested (choose one)

☐ Information only

☒ Action - please describe:

To acknowledge receipt of the petition and direct the appropriate analyses be completed.

3. Justification

Why BC action is required (see instructions):

The attached petition with 3 resolutions was submitted to the Tribal Secretary's Office on March 30, 2015. The Enrollment Department verified all enrollment numbers on the petition. There are 60 signatures. The OBC needs to verify receipt of the verified petition and direct the appropriate analyses be completed.

4. Supporting Materials

Instructions

☒ Memo of explanation with required information (see instructions)

☐ Report ☐ Resolution ☐ Contract (check the box below if signature required)

☐ Other - please list (**Note:** multi-media presentations due to Tribal Clerk 2 days prior to meeting)

1. redacted, verified petition

3.

2.

4.

☐ Business Committee signature required

5. Submission Authorization

Authorized sponsor (choose one): Lisa Summers, Tribal Secretary

Requestor (if different from above):

Name, Title / Dept. or Tribal Member

Additional signature (as needed):

Name, Title / Dept.

Additional signature (as needed):

Name, Title / Dept.

1) Save a copy of this form in a pdf format.

2) Email this form and all supporting materials to: BC\_Agenda\_Requests@oneidanation.org

# Memo

To: Oneida Business Committee

From: Lisa Summers, Tribal Secretary *LJS*

Date: February 13, 2015

Re: Petition to request Special GTC meeting to review and consider 3 resolutions

This memorandum serves as a request for the Oneida Business Committee (OBC) to formally acknowledge receipt of a verified petition, and to send this petition to the Law, Finance, Legislative Reference and Direct Report Office for analyses.

## **Background**

On March 30, 2015, the Tribal Secretary's office received a petition which states the following:

*We the undersigned General Tribal Council members request a special GTC meeting to review and consider the attached resolutions. In the event that public hearings are required we direct the Business Committee to hold the required public hearings and bring these resolutions to the GTC intact.*

The petition was submitted to the Enrollment Department for verification Article III, Section 4 of Oneida's Constitution requirement for requesting a Special General Tribal Council (GTC) meeting were met. The Enrollment Department completed and submitted the required verification.

The next step is for the OBC to acknowledge receipt of the verified petition and then send the petition to the Law, Finance, Legislative Reference and Direct Report Offices for all appropriate analyses to be completed.

Once the analyses are complete, they will be submitted to the OBC agenda for acceptance. The final step will be for the OBC to determine an available GTC meeting date where the identified petition issues can be addressed.

## **Requested OBC Action**

1. Accept the verified petition submitted by Madelyn Genskow.
2. Send the verified petition to the Law, Finance, Legislative Reference and Direct Report Offices for the legal, financial, legislative and administrative analyses to be completed.
3. Direct the Law, Finance and Legislative Reference Offices to submit the analyses to the Tribal Secretary's office within 60 days, and that a progress report is submitted in 45 days.
4. Direct the Direct Report Offices to submit the appropriate administrative analyses to the Tribal Secretary's office within 30 days.

c: JoAnne House, Chief Counsel  
Larry Barton, Chief Financial Officer  
GTC Petitions File



Oneida Tribe of Indians of Wisconsin  
**ENROLLMENT DEPARTMENT**

**Latf?shanalo'loks**  
 (They Gather the Names)

P.O. BOX 365, ONEIDA, WI 54155-0365

PHONE: (920) 869-6200 \* 1-800-571-9902 FAX: (920) 869-2995  
[www.oneidanation.org/enrollment](http://www.oneidanation.org/enrollment)



TO: Oneida Tribal Secretary  
 FROM: Brooke Doxtator  
 DATE: 3/31/2015  
 SUBJECT: GTC Petition Verification Results

On 3/31/2015 the Oneida Enrollment Department received a petition authored by Madelyn Genskow regarding 3 Resolutions: BC Accountability, Repeal the Judiciary Law and Open Records Law.

**Results:**

61	Number of Printed Names on petition
60	Number of Printed Names verified as Enrolled Tribal Members
0	Number of Tribal Members that did not meet the age criteria of 21 years
1	Number of Printed Names that could not be verified
0	Number of Tribal Members invalidated due to Incompetency
(See Attached Legal Opinion dated 9/4/2014)	

Verified by:

Brooke Doxtator, Project Specialist      3/31/2015  
 Signature and Title      Date

If there are any questions please contact the Enrollment Department.



## PETITION FORM

NAME OF PETITIONER: MADELYN GENSLOWB.C. Coordinate  
with madelyn on  
We request that the (The) of the meeting

PURPOSE: We the under signed General Tribal Council members request a special GTC  
meeting to review and consider the attached resolutions. In the event that Public hearings are required we  
direct the Business Committee to hold the required Public Hearings and bring these resolutions to

DATE SUBMITTED TO ONEIDA TRIBAL SECRETARY: \_\_\_\_\_

RECEIVED

RECEIVED BY THE OFFICE  
OF TRIBAL SECRETARY  
ONEIDA BUSINESS COMMITTEE

MAR 31 2015

WE REQUEST A SAT. MEETING.

MAR 30 2015

Please Print Clearly - Use Full Given Name  
Oneida Enrollment Dept.

Printed Name	Address	D.O.B.	Enrollment #	Signature	ONEIDA TRIBE OF INDIANS OF WISCONSIN
			15142 ✓		
			5707 ✓		
			0997 ✓		
			1269 ✓		
			1276 ✓		
			14126 ✓		
			11315 ✓		
			11311 ✓		
			19578 ✓		
			14958 ✓		
			8063 ✓		
			14975 ✓		

T. In...ified

**ONEIDA BUSINESS COMMITTEE Accountability Resolution**

**WHEREAS**, it appears that the members of the **Business Committee** cannot make public statements regarding certain problems in the **Tribe** without a majority vote of the **Business Committee** and

**WHEREAS**, this has caused **Oneida General Tribal** directives to not be carried out because the **General Tribal Council** is not informed and

**WHEREAS**, it is documented that the **Resolution 11-15-08 C** requiring full disclosure was never carried out

**NOW THEREFORE BE IT RESOLVED .** The first item on every **Agenda** of the **Annual** and **Semi-Annual** meetings shall be that each individual member of the **Business Committee** must verbally report to the **GTC** if they, as an individual member of the **Business Committee**, know if there are any **GTC Directives** that are not being carried out.

**BE IT FINALLY RESOLVED** this item may not be deleted from the agenda.

**RECEIVED**

MAR 31 2015

Oneida Enrollment Dept.

RECEIVED

MAR 31 2015

Oneida Enrollment Dept.

**Resolution to Repeal the Judiciary Law, GTC Resolution 01-07-13-B, and GTC Resolution 07-01-13-A titled Adoption of Corrective Amendments to the Oneida Code of Laws and Oneida Tribal Policies regarding references to the Oneida Appeals Commission and/or Oneida Tribal Judicial System, and Business Committee Resolution 06-25-14-B.**

**Whereas, the Oneida General Tribal Council always has been and always shall be the Supreme power of the Oneida Indian Tribe of Wisconsin.**

**Whereas, in 2008 there was a StrateGlobe contract signed by officers of the Oneida Business Committee of \$575,500.00 without the knowledge of all the Business Committee and**

**Whereas, the fact that the StrateGlobe contract for \$575,500.00 is documented in Business Committee minutes dated May 14, 2008 page 12, and there is more discussion regarding StrateGlobe contract on May 28, 2008 minutes pages 8 and 9, and Business Committee minutes of June 11, 2008 page 6 document that Councilman Ed Delgado request the Oneida Business Committee have access to the StrateGlobe contract for information, and that a motion was made by a Business Committee member which was approved for the Business Committee to view the contract and**

**Whereas, this documents that the Oneida Tribal Attorneys allowed a situation where even the Oneida Business Committee did not have access to see the contract without a motion being made and**

**Whereas, Business Committee minutes dated June 11, 2008 page 9 document that after the Business Committee came out of Executive Session, the StrateGlobe contract was terminated and**

**Whereas, on November 15, 2008 the General Tribal Council approved a resolution submitted by Madelyn Genskow, Resolution 11-15-08-C, which read in part "no agent of the Tribe shall enter into any agreement with any corporation that prohibits full disclosure of all transactions (receipts and expenditures, and the nature of such funds) and that such an agreement is not binding to the Tribe and**

**Whereas, on January 7, 2013 the General Tribal Council adopted the Judiciary Act by Resolution 01-07-13-B and**

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page 1 of 5



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MAR 31 2015

Oneida Enrollment Dept.

Whereas, on July 1, 2013 the Business Committee presented **Resolution 07-01-13-A titled Adoption of Corrective Amendments to the Oneida Code of Laws and Oneida Tribal Policies Regarding References to the Oneida Appeals Commission and/or Oneida Judicial System**, to the General Tribal Council, and the General Tribal Council adopted it and

Whereas, the Oneida Business Committee used **GTC Resolution 07-01-13-A** as authority to pass **Business Committee Resolution 06-25-14-B** and

Whereas, in **Resolution 06-25-14-B**, which included the following words: **now therefore let it be resolved that the attached amendments to the Garnishment Law, Oneida Nation Gaming Ordinance, Open Records and Open Meeting Law, Oneida Worker's Compensation Law, and Zoning and Shoreland Protection Law were adopted by the B.C. effective November 1, 2014** and

Whereas, the **Open Records and Open Meetings Law** under **7.4** titled **"Limitations Upon Access and Exceptions"** the following is stated: The following shall be exempt from inspection and copying, Item (b) states: **Contracts or other agreements which specifically prohibit disclosure of the content of the contract or agreement to third parties** and

Whereas, this law under 7.18 titled **Enforcement** states **"The Judiciary shall have the power, in its discretion and upon good cause shown, to issue an appropriate order, injunction or prohibition to declare any action taken in violation of this law void in whole or in part"** and

Whereas, the Business Committee has misled the Oneida General Tribal Council and now the contracts and how the Oneida tribal money is spent is once again kept secret from the Oneida people.

Now therefore be it resolved, the General Tribal Council will regain its authority as the supreme power of the Oneida Tribe.

Be it further resolved, the **GTC Resolution 01-07-13B** that approved the **Judiciary** is repealed effective immediately.

page 2 of 5

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**Be it further resolved, that GTC Resolution 07-01-13A which the Business Committee used abusively is repealed effective immediately.**

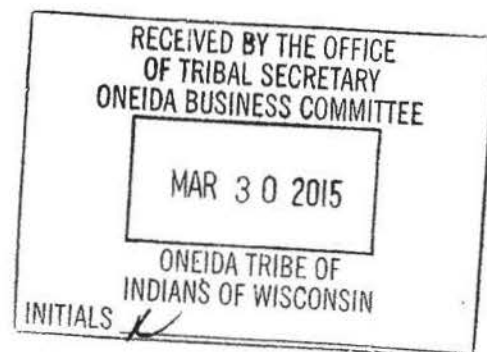
**Be it further resolved, that GTC Resolution 11-15-08C is restored, which will provide full disclosure to the Oneida people regarding how their money is spent.**

**Be it finally resolved, this resolution will provide full disclosure to all contracts, not just corporate.**

**RECEIVED**

**MAR 31 2015**

**Oneida Enrollment Dept.**



*page 3 of 5*

**Oneida Tribe of Indians of Wisconsin****BUSINESS COMMITTEE**

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

RECEIVED BY THE OFFICE  
OF TRIBAL SECRETARY  
ONEIDA BUSINESS COMMITTEE

MAR 30 2015



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MAR 31 2015

Oneida Enrollment Dept.



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.

ONEIDA TRIBE OF INDIANS OF WISCONSIN  
Box 365 • Oneida, WI 54155  
Telephone: 920-869-4364 • Fax: 920-869-4040

( General Tribal Council Resolution 11-15-08-C )

Treasurer's Report to include all Receipts and Expenditures and the Amount and Nature of all Funds in the Treasurer's Possession and Custody

- Whereas, the Oneida General Tribal Council is the duly recognized governing body of the Oneida Tribe of Indians of Wisconsin, and
- Whereas, the Oneida General Tribal Council has been delegated the authority of Article IV, Section I of the Oneida Tribal Constitution, and
- Whereas, the Oneida Business Committee may be delegated duties and responsibilities by the Oneida General Tribal Council and is at all times subject to the review powers of the Oneida General Tribal Council, and
- Whereas, Article I, Section 4 of the bylaws of the Tribe establishes that the Treasurer of the Oneida General Tribal Council shall accept, receive, receipt for, preserve and safeguard all funds in the custody of the Oneida General Tribal Council, whether such funds be Tribal funds or special funds for which the Oneida General Tribal Council is acting as trustee or custodian, and
- Whereas, aforementioned article and section of the bylaws of the Tribe further establishes that the Treasurer of the Oneida General Tribal Council shall deposit all funds in such depository as the Oneida General Tribal Council shall direct and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his or her possession and custody at each regular meeting of the Oneida General Tribal Council and at such other times as requested by the Oneida General Tribal Council or the Oneida Business Committee, and
- Whereas, while in session, the Oneida General Tribal Council in the past has been denied information regarding all receipts and expenditures of the Tribe including receipts and expenditures of all and including, but not limited to, component units (tribally chartered corporations and autonomous entities, limited liability companies, state chartered corporations, any tribal economic development authority, boards, committees and commissions, vendors and consultants) in the semi-annual and

(PAGE TO SEE THE FULL DISCLOSURE RESOLVE.) page 2

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page 4 of 5



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MAR 31 2015

Oneida Enrollment Dept.

Page Two Resolution 11-15-08-C

annual reports provided to the Oneida General Tribal Council at regularly scheduled Oneida General Tribal Council meetings, and

**Now Therefore Be It Resolved**, that the Oneida General Tribal Council hereby directs that all Treasurer reports hereinafter include an independently audited annual statement that provides the status or conclusion of all the receipts and debits in possession of the Treasurer of the Tribe including, but not limited to, all corporations owned in full or in part by the Tribe, and

**Be It Further Resolved**, that the Oneida General Tribal Council hereby directs that all Treasurer's reports to the Oneida General Tribal Council at the semi-annual and annual Oneida General Tribal Council meetings hereinafter include an independently audited annual financial statement that provides the status or conclusion of all receipts and debits in possession of the Treasurer of the Tribe and including, but not limited to component units (Tribally chartered corporations and autonomous entities, limited liability companies, state chartered corporations, any tribal economic development authority, boards, committees and commissions, vendors and consultants) owned in full or in part by the Tribe; and

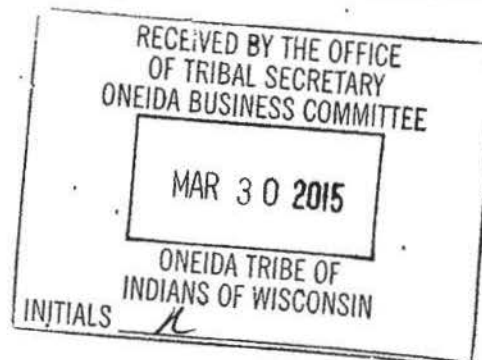
*X* **Be It Further Resolved**, that no "agent" of the Tribe shall enter into any agreement with any corporation that prohibits full disclosure of all transactions (receipts and expenditures and the nature of such funds) and that such an agreement is not binding to the Tribe, and

**Be It Finally Resolved**, that the Oneida General Tribal Council hereby directs implementation of this resolution at the next regular Oneida General Tribal Council meeting or at such special meeting of the Oneida General Tribal Council whereby a Treasurer's report is requested.

### CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida General Tribal Council in session with a quorum of 1,254 members present at a meeting duly called, noticed and held on the 15<sup>th</sup> day of November 2008, that the foregoing resolution was duly adopted at such meeting by a unanimous vote of those present and that said resolution has not been rescinded or amended in any way.

*Patricia Hoefft*  
Patricia Hoefft, Tribal Secretary  
ONEIDA BUSINESS COMMITTEE



RECEIVED BY THE OFFICE  
OF TRIBAL SECRETARY  
ONEIDA BUSINESS COMMITTEE

MAR 30 2015

ONEIDA TRIBE OF  
INDIANS OF WISCONSIN

INITIALS

## Resolution Regarding the Open Records Law

RECEIVED

MAR 31 2015

Oneida Enrollment Dept.

Where as, on March 25<sup>th</sup>, 2015 Oneida tribal member Yvonne Metivier, requested from the Oneida Records Dept. Research for minutes and audio for General Tribal Council meetings where by a motion was made to create the position of Ombudsman, and

Where as, Yvonne Metivier also on March 25<sup>th</sup>, 2015 requested, was there and General Tribal Council action to create the position of Internal Services Position? And

Where as, the request was denied by the Director of the Oneida Tribal records Department who cited the Open Records and Open Meeting Law 7.7.7. and

Where as, in the past requests have been made for research of minutes and audio of GTC meetings by tribal member Madelyn Genskow regarding GTC minutes and audio and Business Committee minutes, and requests were honored prior to March 25<sup>th</sup> 2015 and

Where as, the members of the General Tribal Council need access to tribal records in order to hold the Business Committee and Management accountable to the General Tribal Council.

Where as, when Madelyn Genskow requested information regarding the General Manager boxes and their content and who was in possession of those record boxes, she was told that the Internal Services Director could have access to those boxes but tribal members could not and

Where as the types of issues the Position of Ombudsman deals with has been radically changed since it was started by the GTC to address concerns at the Health Center and

Now therefore, be it resolved, the GTC orders that the GTC must approve the Open Records and Open Meetings Law in its entirety.



# Legislative Operating Committee AGENDA REFERRAL FORM



1) Today's Date: 4 / 28 / 2015 Date of Referral Action: 4 / 22 / 2015

2) Entity that referred this item to LOC: Oneida Business Committee

3) Individuals or Entities to contact regarding this item: Oneida Nation Veteran's Affairs Committee (ONVAC)

4) Item referred: Tribal Flag Code

5) Background information, including applicable actions and dates: The following motion was made at the 4/22/14 OBC meeting "Motion by Jennifer Webster to request the Legislative Operating Committee to develop a flag code policy and consider adding it to the active files list, seconded by Lisa Summers. Motion carried unanimously."

6) Due date: \_\_\_\_\_

*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



# CRS Report for Congress

## **The United States Flag: Federal Law Relating to Display and Associated Questions**

**Updated April 14, 2008**

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Legislative Attorney  
American Law Division



**Prepared for Members and  
Committees of Congress**

# The United States Flag: Federal Law Relating to Display and Associated Questions

## Summary

This report presents, verbatim, the United States “Flag Code” as found in Title 4 of the United States Code and the section of Title 36 which designates the Star-Spangled Banner as the national anthem and provides instructions on how to display the flag during its rendition. The “Flag Code” includes instruction and rules on such topics as the pledge of allegiance, display and use of the flag by civilians, time and occasions for display, position and manner of display, and how to show respect for the flag. The “Code” also grants to the President the authority to modify the rules governing the flag.

The report also addresses several of the frequently asked questions concerning the flag. The subject matter of these questions includes the pledge of allegiance and the court decisions concerning it, the nature of the codifications of customs concerning the flag in the “Flag Code,” display of the flag 24 hours a day, flying the flag in bad weather, flying the flag at half-staff, ornaments on the flag, destruction of worn flags, display of the U.S. flag with flags of other nations or of States, commercial use of the flag, size and proportion of the flag, and restrictions upon display of the flag by real estate associations.

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# The United States Flag: Federal Law Relating to Display and Associated Questions

## Background

Public concern and confusion regarding the proper respect shown to the United States flag has given rise to many questions on the law relating to the flag's handling, display, and use. Both the state governments and the federal government have enacted legislation on this subject.

On the national level the Federal Flag Code<sup>1</sup> provides uniform guidelines for the display of and respect shown to the flag. In addition to the Code, Congress has by statute designated the national anthem and set out the proper conduct during its presentation.<sup>2</sup> The Code is designed “for the use of such civilian groups or organizations as may not be required to conform with regulations promulgated by one or more executive departments” of the federal government.<sup>3</sup> Thus, the Flag Code does not prescribe any penalties for non-compliance nor does it include enforcement provisions; rather the Code functions simply as a guide to be voluntarily followed by civilians and civilian groups.

The Federal Flag Code does not purport to cover all possible situations. Although the Code empowers the President of the United States to alter, modify, repeal, or prescribe additional rules regarding the flag,<sup>4</sup> no federal agency has the authority to issue “official” rulings legally binding on civilians or civilian groups. Consequently, different interpretations of various provisions of the Code may continue to be made. The Flag Code itself, however, suggests a general rule by which practices involving the flag may be fairly tested: “No disrespect should be shown to the flag of the United States of America.”<sup>5</sup> Therefore, actions not specifically included in the Code may be deemed acceptable as long as proper respect is shown.

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<sup>1</sup> 4 U.S.C. §§ 4-10.

<sup>2</sup> 36 U.S.C. § 301.

<sup>3</sup> 4 U.S.C. § 5.

<sup>4</sup> 4 U.S.C. § 10.

<sup>5</sup> 4 U.S.C. § 8.

In addition to the Flag Code, a separate provision contained in the Federal Criminal Code established criminal penalties for certain treatment of the flag.<sup>6</sup> Prior to 1989, this provision provided criminal penalties for certain acts of desecration to the flag. In response to the Supreme Court decision in *Texas v. Johnson*<sup>7</sup> (which held that anti-desecration statutes are unconstitutional if aimed at suppressing one type of expression), Congress enacted the Flag Protection Act of 1989 to provide criminal penalties for certain acts which violate the physical integrity of the flag.<sup>8</sup> This law imposed a fine and/or up to one year in prison for knowingly mutilating, defacing, physically defiling, maintaining on the floor, or trampling upon any flag of the United States. In 1990, however, the Supreme Court held that the Flag Protection Act was unconstitutional as applied to a burning of the flag in a public protest.<sup>9</sup>

## **The Flag Code — History and Text**

On June 22, 1942, President Franklin D. Roosevelt approved House Joint Resolution 303 codifying the existing customs and rules governing the display and use of the flag of the United States by civilians.<sup>10</sup> Amendments were approved on December 22nd of that year.<sup>11</sup> The law included provisions of the code adopted by the National Flag Conference, held in Washington, D.C. on June 14, 1923, with certain amendments and additions. The Code was reenacted, with minor amendments, as part of the Bicentennial celebration.<sup>12</sup> In the 105<sup>th</sup> Congress, the Flag Code was removed from title 36 of the United States Code and recodified as part of title 4.<sup>13</sup>

### **Title 4 United States Code:**

#### **§ 4. Pledge of Allegiance to the Flag; Manner of Delivery.**

The Pledge of Allegiance to the Flag: “I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.”, should be rendered by standing at attention facing the flag with the right hand over the heart. When not in uniform men

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<sup>6</sup> 18 U.S.C. § 700.

<sup>7</sup> 491 U.S. 397 (1989). For further information on this case, *see*, CRS Report 89-394, *Texas v. Johnson: Flag Desecration and the First Amendment*.

<sup>8</sup> P.L. 101-131, the Flag Protection Act of 1989, amending 18 U.S.C. § 700.

<sup>9</sup> *United States v. Eichman*, 496 U.S. 310 (1990). For further information on this case, *see* CRS Report 90-301, *United States v. Eichman, the Flag Protection Act of 1989 Held Unconstitutional*. *See also*, CRS Report 95-709, *Flag Protection: A Brief History and Summary of Recent Supreme Court Decisions and Proposed Constitutional Amendment*.

<sup>10</sup> P.L. 623, 77<sup>th</sup> Cong., 56 Stat. 377.

<sup>11</sup> P.L. 829, 77<sup>th</sup> Cong., 56 Stat. 1074.

<sup>12</sup> P.L. 94-344.

<sup>13</sup> P.L. 105-225, § 300111.

should remove any non-religious headdress with their right hand and hold it at the left shoulder, the hand being over the heart<sup>14</sup>. Persons in uniform should remain silent, face the flag, and render the military salute.

### **§ 5. Display and Use of Flag by Civilians; Codification of Rules and Customs; Definition.**

The following codification of existing rules and customs pertaining to the display and use of the flag of the United States of America is established for the use of such civilians or civilian groups or organizations as may not be required to conform with regulations promulgated by one or more executive departments of the Government of the United States. The flag of the United States for the purpose of this chapter shall be defined according to Sections 1 and 2 of Title 4 and Executive Order 10834 issued pursuant thereto.

### **§ 6. Time and Occasions for Display.**

- (a) It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flagstaffs in the open. However, when a patriotic effect is desired, the flag may be displayed 24 hours a day if properly illuminated during the hours of darkness.
- (b) The flag should be hoisted briskly and lowered ceremoniously.
- (c) The flag should not be displayed on days when the weather is inclement, except when an all-weather flag is displayed.
- (d) The flag should be displayed on all days, especially on New Year's Day, January 1; Inauguration Day, January 20; Martin Luther King Jr.'s birthday, the third Monday in January;<sup>15</sup> Lincoln's Birthday, February 12; Washington's Birthday, third Monday in February; Easter Sunday (variable); Mother's Day, second Sunday in May; Armed Forces Day, third Saturday in May; Memorial Day (half-staff until noon), the last Monday in May; Flag Day, June 14; Independence Day, July 4; Labor Day, first Monday in September; Constitution Day, September 17; Columbus Day, second Monday in October; Navy Day, October 27; Veterans Day, November 11; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25; and such other days as may be proclaimed by the President of the United States; the birthdays of States (date of admission); and on State holidays.
- (e) The flag should be displayed daily on or near the main administration building of every public institution.
- (f) The flag should be displayed in or near every polling place on election days.

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<sup>14</sup> Under § 9 Veterans and members of the military not in uniform are now permitted to salute. *See*, 4 U.S.C. § 9 as amended by P.L. 110-181, § 594.

<sup>15</sup> Martin Luther King Jr.'s birthday was added by P.L. 106-80, 113 Stat. 1285.



- (g) The flag should be displayed during school days in or near every schoolhouse.

### **§ 7. Position and Manner of Display.**

The flag, when carried in a procession with another flag or flags, should be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.

- (a) The flag should not be displayed on a float in a parade except from a staff, or as provided in subsection (i) of this section.
- (b) The flag should not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat. When the flag is displayed on a motorcar, the staff should be fixed firmly to the chassis or clamped to the right fender.
- (c) No other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, except during church services conducted by naval chaplains at sea, when the church pennant may be flown above the flag during church services for the personnel of the Navy. No person shall display the flag of the United Nations or any other national or international flag equal, above, or in a position of superior prominence or honor to or in place of the flag of the United States or any Territory or possession thereof: Provided, That nothing in this section shall make unlawful the continuance of the practice heretofore followed of displaying the flag of the United Nations in a position of superior prominence or honor, and other national flags in positions of equal prominence or honor, with that of the flag of the United States at the headquarters of the United Nations.
- (d) The flag of the United States of America, when it is displayed with another flag against a wall from crossed staffs, should be on the right, the flag's own right, and its staff should be in front of the staff of the other flag.
- (e) The flag of the United States of America should be at the center and at the highest point of the group when a number of flags of States or localities or pennants of societies are grouped and displayed from staffs.
- (f) When flags of States, cities, or localities, or pennants of societies are flown on the same halyard with the flag of the United States, the latter should always be at the peak. When the flags are flown from adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the United States flag's right.
- (g) When flags of two or more nations are displayed, they are to be flown from separate staffs of the same height. The flags should be of approximately equal size. International usage forbids the display of the flag of one nation above that of another nation in time of peace.
- (h) When the flag of the United States is displayed from a staff projecting horizontally or at an angle from the window sill, balcony, or front of a building,

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the union of the flag should be placed at the peak of the staff unless the flag is at half-staff. When the flag is suspended over a sidewalk from a rope extending from a house to a pole at the edge of the sidewalk, the flag should be hoisted out, union first, from the building.

- (i) When displayed either horizontally or vertically against a wall, the union should be uppermost and to the flag's own right, that is, to the observer's left. When displayed in a window, the flag should be displayed in the same way, with the union or blue field to the left of the observer in the street.
- (j) When the flag is displayed over the middle of the street, it should be suspended vertically with the union to the north in an east and west street or to the east in a north and south street.
- (k) When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the flag of the United States of America should hold the position of superior prominence, in advance of the audience, and in the position of honor at the clergyman's or speaker's right as he faces the audience. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience.
- (l) The flag should form a distinctive feature of the ceremony of unveiling a statute or monument, but it should never be used as the covering for the statute or monument.
- (m) The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. On Memorial Day, the flag should be displayed at half-staff until noon only, then raised to the top of the staff. By order of the President, the flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a state, territory, or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instructions or orders, or in accordance with recognized customs or practices not inconsistent with law. In the event of the death of a present or former official of the government of any state, territory, or possession of the United States or the death of a member of the Armed Forces from any State, territory, or possession of the United States, the Governor of that State, territory, or possession may proclaim that the National flag shall be flown at half-staff, and the same authority is provided to the Mayor of the District of Columbia with respect to present or former officials of the District of Columbia and members of the Armed Forces from the District of Columbia. When the Governor of a State, territory, or possession, or the Mayor of the District of Columbia, issues a proclamation under the preceding sentence that the National flag be flown at half-staff in that State, territory, or possession or in the District of Columbia because of the death of a member of the Armed Forces, the National flag flown at any Federal installation or facility in the area covered by that proclamation shall be flown at half-staff consistent with that proclamation. The flag shall be flown at half-staff thirty days from the

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death of the President or a former President; ten days from the day of death of the Vice-President, the Chief Justice or a retired Chief Justice of the United States or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a Secretary of an executive or military department, a former Vice-President, or the Governor of a state, territory, or possession; and on the day of death and the following day for a Member of Congress. The flag shall be flown at half-staff on Peace Officers Memorial Day, unless that day is also Armed Forces Day. As used in this subsection —

- (1) The term “half-staff” means the position of the flag when it is one-half the distance between the top and bottom of the staff;
  - (2) the term “executive or military department” means any agency listed under Sections 101 and 102 of Title 5, United States Code; and
  - (3) the term “Member of Congress” means a Senator, a Representative, a Delegate, or the Resident Commissioner from Puerto Rico.
- (n) When the flag is used to cover a casket, it should be so placed that the union is at the head and over the left shoulder. The flag should not be lowered into the grave or allowed to touch the ground.
  - (o) When the flag is suspended across a corridor or lobby in a building with only one main entrance, it should be suspended vertically with the union of the flag to the observer’s left upon entering. If the building has more than one main entrance, the flag should be suspended vertically near the center of the corridor or lobby with the union to the north, when entrances are to the east and west or to the east when entrances are to the north and south. If there are entrances in more than two directions, the union should be to the east.

### **§ 8. Respect for Flag.**

No disrespect should be shown to the flag of the United States of America; the flag should not be dipped to any person or thing. Regimental colors, state flags, and organization or institutional flags are to be dipped as a mark of honor.

- (a) The flag should never be displayed with union down, except as a signal of dire distress in instances of extreme danger to life or property.
- (b) The flag should never touch anything beneath it, such as the ground, the floor, water, or merchandise.
- (c) The flag should never be carried flat or horizontally, but always aloft and free.
- (d) The flag should never be used as wearing apparel, bedding, or drapery. It should never be festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white, and red, always arranged with the blue above,

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the white in the middle, and the red below, should be used for covering a speaker's desk, draping in front of the platform, and for a decoration in general.

- (e) The flag should never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way.
- (f) The flag should never be used as a covering for a ceiling.
- (g) The flag should never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature.
- (h) The flag should never be used as a receptacle for receiving, holding, carrying, or delivering anything.
- (i) The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.
- (j) No part of the flag should ever be used as a costume or athletic uniform. However, a flag patch may be affixed to the uniform of military personnel, firemen, policemen, and members of patriotic organizations. The flag represents a living country and is itself considered a living thing. Therefore, the lapel flag pin being a replica, should be worn on the left lapel near the heart.
- (k) The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.

### **§ 9. Conduct During Hoisting, Lowering or Passing of Flag.**

During the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in review, all persons present in uniform should render the military salute. Members of the Armed Forces and veterans who are present but not in uniform may render the military salute. All other persons present should face the flag and stand at attention with the right hand over the heart, or if applicable, remove their headdress with their right hand and hold it at the left shoulder, the hand being over the heart. Citizens of other countries present should stand at attention. All such conduct toward the flag in a moving column should be rendered at the moment the flag passes.

### **§ 10. Modification of Rules and Customs by President.**

Any rule or custom pertaining to the display of the flag of the United States of America, set forth herein, may be altered, modified, or repealed, or additional rules with respect thereto may be prescribed, by the Commander-in-Chief of the Armed Forces of the United States, whenever he deems it to be appropriate or desirable; and any such alteration or additional rule shall be set forth in a proclamation.

## Title 36 United States Code:

### § 301. National Anthem.

- (a) Designation. — The composition consisting of the words and music known as the Star-Spangled Banner is the national anthem.
- (b) Conduct During Playing. — During a rendition of the national anthem —
  - (1) when the flag is displayed —
    - (A) all present except those in uniform should stand at attention facing the flag with the right hand over the heart;
    - (B) men not in uniform should remove their headdress with their right hand and hold the headdress at the left shoulder, the hand being over the heart; and
    - (C) individuals in uniform should give the military salute at the first note of the anthem and maintain that position until the last note.
  - (2) When the flag is not displayed, all present should face toward the music and act in the same manner they would if the flag were displayed.

## Frequently Asked Questions on Flag Display, Use, and Associated Matters

### Pledge of Allegiance

The Pledge of Allegiance is set forth in 4 U.S.C. § 4. In 1954, Congress added to the “Pledge of Allegiance” the phrase “under God” after “nation”.<sup>16</sup> Questions about the “Pledge of Allegiance” usually involve practices and requirements of local and state statutes mandating participation in the recitation of the “Pledge” in some manner (e.g., flag salute and pledge, standing quietly, standing at attention) in schools. Provisions involving compulsory participation in “Pledge” activities are usually attacked as violations of the free speech clause of the First Amendment or the free exercise of religion clause.

In 1943, the Supreme Court held that a state-required compulsory flag salute-Pledge of Allegiance violated the First Amendment rights of members of the Jehovah’s Witnesses religious group.<sup>17</sup> In 2002, a three-judge panel of the Ninth Circuit had held both the 1954 federal statute adding the words “under God” to the Pledge of Allegiance and a California school district policy requiring teachers to lead willing school children in reciting the pledge each school day to violate the

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<sup>16</sup> P.L. 396, 83<sup>rd</sup> Cong., 68 Stat. 249.

<sup>17</sup> See, *West Virginia Board of Education v. Barnett*, 319 U.S. 624 (1943).

Establishment Clause of the First Amendment.<sup>18</sup> A subsequent modification eliminated the holding regarding the federal statute but retained the ruling holding that the California statute coerces children into participating in a religious exercise.<sup>19</sup> The Supreme Court, on Flag Day 2004, reversed the Ninth Circuit, finding that *Newdow* lacked standing to challenge the school district's policy.<sup>20</sup>

## Nature of Codification of Customs and Rules

The Flag Code is a codification of customs and rules established for the use of certain civilians and civilian groups. No penalty or punishment is specified in the Flag Code for display of the flag of the United States in a manner other than as suggested. Cases which have construed the former 36 U.S.C. § 175<sup>21</sup> have concluded that the Flag Code does not proscribe conduct, but is merely declaratory and advisory.<sup>22</sup>

## Display of the Flag 24 Hours a Day

There is no absolute prohibition in federal law on flying the flag twenty-four hours a day. The Flag Code states:

It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flagstaffs in the open. However, when a patriotic effect is desired, the flag may be displayed 24 hours a day if properly illuminated during hours of darkness.<sup>23</sup>

There are eight sites in the United States where the flag is flown day and night under specific legal authority: Fort McHenry National Monument, Baltimore, Maryland;<sup>24</sup> Flag House Square, Baltimore, Maryland;<sup>25</sup> the United States Marine Corps Iwo Jima Memorial, Arlington, Virginia;<sup>26</sup> Lexington, Massachusetts;<sup>27</sup> the

<sup>18</sup> *Newdow v. U.S.*, 292 F.3d 597 (9<sup>th</sup> Cir. 2002). For a full discussion of this case, see CRS Report RS21250, *The Constitutionality of Including the Phrase "Under God" in the Pledge of Allegiance*.

<sup>19</sup> *Newdow v. U.S. Congress*, 328 F.3d 746 (9<sup>th</sup> Cir. 2003).

<sup>20</sup> *Elk Grove Unified School District v. Newdow*, 542 U.S.1 (2004).

<sup>21</sup> Now codified at 4 U.S.C. § 7.

<sup>22</sup> See e.g., *Homes v. Wallace*, 407 F. Supp. 493 (M.D. Ala.), aff'd without published opinion, 540 F.2d 1083 (5<sup>th</sup> Cir. 1976); and *State of Delaware ex. rel. Trader v. Hodsdon*, 265 F. Supp. 308 (D. Del. 1967); see also *N.A.A.C.P. v. Hunt*, 891 F.2d 1555 (11<sup>th</sup> Cir. 1990).

<sup>23</sup> 4 U.S.C. § 6(a).

<sup>24</sup> Proclamation No. 2795, July 2, 1948, 62 Stat. 1526.

<sup>25</sup> P.L. 319, 83<sup>rd</sup> Cong., 68 Stat. 35.

<sup>26</sup> Proclamation No. 3418, June 12, 1961, 75 Stat. 1068.

<sup>27</sup> P.L. 89-355, 79 Stat. 1294.



White House;<sup>28</sup> the Washington Monument;<sup>29</sup> United States Customs ports of entry;<sup>30</sup> and Valley Forge State Park, Pennsylvania.<sup>31</sup> The reports that accompanied these official acts indicate that the specific authority was intended only as a form of tribute to certain historic sites rather than as exceptions to the general rule of the Code.

As a matter of custom, and without specific statutory or official authorization, the flag is flown at night at many other sites, including the United States Capitol. It would seem that display of the flag in a respectful manner with appropriate lighting does not violate the spirit of the Flag Code since the dignity accorded to the flag is preserved by lighting that prevents its being enveloped in darkness.

## **Flying the Flag During Inclement Weather**

The Flag Code states:

The flag should not be displayed on days when the weather is inclement, except when an all weather flag is displayed.<sup>32</sup>

The language of this section reflects the now-popular use of flags made of synthetic fabrics that can withstand unfavorable weather conditions. It is not considered disrespectful to fly such a flag even during prolonged periods of inclement weather. However, since the section speaks in terms of “days when the weather is inclement,” it apparently does not contemplate that on an otherwise fair day, the flag should be lowered during brief periods of precipitation.

## **Flying the Flag at Half-Staff**

The Flag Code sets out detailed instructions on flying the flag at half-staff on Memorial Day and as a mark of respect to the memory of certain recently deceased public officials.<sup>33</sup> This section embodies the substance of Presidential Proclamation No. 3044,<sup>34</sup> entitled “Display of Flag at Half-Staff Upon Death of Certain Officials and Former Officials.”

The section provides that the President shall order the flag flown at half-staff for stipulated periods “upon the death of principal figures of the United States Government and the Governor of a state, territory, or possession.” After the death of other officials or foreign dignitaries, the flag may be flown at half-staff according to Presidential instructions or in accordance with recognized custom not inconsistent with law. In addition, the Governor of a state, territory, or possession, or the Mayor

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<sup>28</sup> Proclamation No. 4000, Sept. 4, 1970, 84 Stat. 2243.

<sup>29</sup> Proclamation No. 4064, July 10, 1971, 85 Stat. 916.

<sup>30</sup> Proclamation No. 4131, May 9, 1972, 86 Stat. 1633.

<sup>31</sup> P.L. 94-53, 89 Stat. 259.

<sup>32</sup> 4 U.S.C. § 6(c).

<sup>33</sup> 4 U.S.C. § 7(m).

<sup>34</sup> March 1, 1954, 68 Stat. C32.

of the District of Columbia, may direct that the national flag be flown at half-staff, in the event of the death of a present or former official of the respective government or in the event of the death of a member of the Armed Forces from that jurisdiction.<sup>35</sup>

Presidents also have ordered the flag to be flown at half-staff on the death of leading citizens, not covered by law, as a mark of official tribute to their service to the United States. Martin Luther King, Jr. is among those who have been so honored.

Again, the provisions of the Flag Code on flying the flag at half-staff are, like all the Code's provisions, a guide only. They do not apply, as a matter of law, to the display of the flag at half-staff by private individuals and organizations. No federal restrictions or court decisions are known that limit such an individual's lowering his own flag or that make such display alone a form of desecration.

## **Ornaments on Flag Staffs, Fringes on Flag**

The Flag Code is silent as to ornaments (finials) for flagstaffs. We know of no law or regulation which restricts the use of a finial on the staff. The eagle finial is used not only by the President, the Vice-President, and many other federal agencies, but also by many civilian organizations and private citizens. The selection of the type finial used is a matter of preference of the individual or organization.

The placing of a fringe on the flag is optional with the person or organization, and no Act of Congress or Executive Order either requires or prohibits the practice. Fringe is used on indoor flags only, as fringe on flags used outdoors would deteriorate rapidly. The fringe on a flag is considered an "honorable enrichment only" and its official use by the Army dates from 1895. A 1925 Attorney General's Opinion states:

The fringe does not appear to be regarded as an integral part of the flag, and its presence cannot be said to constitute an unauthorized addition to the design prescribed by statute. An external fringe is to be distinguished from letters, words, or emblematic designs printed or superimposed upon the body of the flag itself. Under the law, such additions might be open to objection as unauthorized; but the same is not necessarily true of the fringe.<sup>36</sup>

## **Destruction of Worn Flags**

The Flag Code states:

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<sup>35</sup> In 2007, P.L. 110-41, added the Mayor of the District of Columbia to this provision and authorized the Governors and the Mayor to issue proclamations to lower the flag to half-staff in honor of members of the Armed Forces from their jurisdiction.

<sup>36</sup> 34 Op. Atty. Gen. 483.

The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.<sup>37</sup>

The act is silent on procedures for burning a flag. It would seem that any procedure which is in good taste and shows no disrespect to the flag would be appropriate. The Flag Protection Act of 1989,<sup>38</sup> struck down albeit on grounds unrelated to this specific point,<sup>39</sup> prohibited *inter alia* “knowingly” burning of a flag of the United States, but excepted from prohibition “any conduct consisting of disposal of a flag when it has become worn or soiled.”

## **Display of United States Flag with Flags of Other Nations or of States**

The Flag Code sets out rules for position and manner of display of the flag in 4 U.S.C. § 7. The question as to the propriety of flying the flag of another nation at an equal level with that of the flag of the U.S. is not clear from the face of the statute. Section 7 contains two subsections on point and these provisions appear to be contradictory. Subsection 7(c) states:

- (c) No other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, except during church services conducted by naval chaplains at sea, when the church pennant may be flown above the flag during church services for the personnel of the Navy. No person shall display the flag of the United Nations or any other national or international flag equal, above, or in a position of superior prominence or honor to or in place of the flag of the United States or any Territory or possession thereof: Provided, That nothing in this section shall make unlawful the continuance of the practice heretofore followed of displaying the flag of the United Nations in a position of superior prominence or honor, and other national flags in positions of equal prominence or honor, with that of the flag of the United States at the headquarters of the United Nations.<sup>40</sup>

Subsection 7(g) states:

- (g) When flags of two or more nations are displayed, they are to be flown from separate staffs of the same height. The flags should be of approximately equal size. International usage forbids the display of the flag of one nation above that of another nation in time of peace.<sup>41</sup>

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<sup>37</sup> 4 U.S.C. § 8(k).

<sup>38</sup> P.L. 101-131.

<sup>39</sup> See, *United States v. Eichman*, 496 U.S. 310 (1990).

<sup>40</sup> 4 U.S.C. § 7(c).

<sup>41</sup> 4 U.S.C. § 7(g).

The wording of § 7(g) is identical to that of the original Flag Code enacted in 1942.<sup>42</sup> The second sentence of § 7(c) prohibiting flying international flags equal in height to the flag of the United States was not in the original Flag Code. This provision was added in 1953.<sup>43</sup> The legislative history of this amendment clearly states that its purpose was to “make it an offense against the United States to display the flag of the United Nations or any other national or international flag equal to, above, or in a position of superior prominence or honor to, or in place of, the flag of the United States at any place within the United States or any possession or territory thereof,....”<sup>44</sup> The only exception recognized is at the headquarters of the United Nations.

When a statute contains apparently contradictory provisions, the rules of statutory construction first mandate an attempt to interpret the provisions so both can be given effect. If this proves futile, the usual rule is to give effect to the latest in time. The reasoning is that this represents the most recent statement of the will of the legislature. Following this second rule of construction would lead to the conclusion that flying a flag of another nation at the same height as the flag of the United States may not be proper etiquette under the Federal Flag Code, but this creates no right of action in private individuals.<sup>45</sup>

When the United States flag is displayed with the flags of states of the union or municipalities and not with the flags of other nations, the federal flag, which represents all states, should be flown above and at the center of the other flags.<sup>46</sup>

Where there is only one flag pole, the federal flag should be displayed above state or municipal flags.<sup>47</sup>

## **Use of the Flag in Jewelry, Commercial Products, Wearing Apparel, and Advertising**

The Flag Code addresses the impropriety of using the flag as an article of personal adornment, a design on items of temporary use, and item of clothing.<sup>48</sup> The evident purpose of these suggested restraints is to limit the commercial or common usage of the flag and, thus, maintain its dignity. The 1976 amendments to the Code recognized the wearing of a flag patch or pin on the left side (near the heart) of uniforms of military personnel, firemen, policemen, and members of patriotic

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<sup>42</sup> P.L. 623, § 3(g), 77<sup>th</sup> Cong., 56 Stat. 377, 378.

<sup>43</sup> P.L. 107, 83<sup>rd</sup> Cong., 67 Stat. 142.

<sup>44</sup> S. Rept No. 258, 83<sup>rd</sup> Cong., 1<sup>st</sup> Sess. (1953).

<sup>45</sup> See, for example, *Holmes v. Wallace*, 407 F. Supp. 493 (M.D. Ala. 1976), *aff'd* without op., 540 F.2d 1083 (5<sup>th</sup> Cir. 1976).

<sup>46</sup> 4 U.S.C. § 7(e).

<sup>47</sup> 4 U.S.C. § 7(f).

<sup>48</sup> 4 U.S.C. § 8(i) & (j).

organizations.<sup>49</sup> The Code also states that the flag should never be used for advertising purposes in any manner whatsoever.<sup>50</sup>

While wearing the colors may be in poor taste and offensive to many, it is important to remember that the Flag Code is intended as a guide to be followed on a purely voluntary basis to insure proper respect for the flag. It is, at least, questionable whether statutes placing civil or criminal penalties on the wearing of clothing bearing or resembling a flag could be constitutionally enforced in light of Supreme Court decisions in the area of flag desecration.<sup>51</sup>

In the past, the Supreme Court has held that states may restrict use of pictures of the flag on commercial products.<sup>52</sup> There is a federal criminal prohibition on the use of the flag for advertising purposes in the District of Columbia.<sup>53</sup> While commercial speech does not receive the full protection of the First Amendment,<sup>54</sup> the status of these statutes and cases can not be taken for granted in light of *Eichman* and *Johnson*.

## Restrictions on Size and Proportions of the Flag

Questions on size and dimensions usually arise in the context of the display of huge flags. The Flag Code is silent on recommendations for proper flag size and dimensions. Regulations governing size and dimensions and other requirements for flags authorized for federal executive agencies can be found in Executive Order No. 10834.<sup>55</sup> These regulations provide that the length of the flag should be 1.9 times the width.

## Restrictions on Display of the Flag by Real Estate Associations

The Freedom to Display the American Flag Act of 2005<sup>56</sup> prohibits a condominium, cooperative, or real estate management association from adopting or enforcing any policy or agreement that would restrict or prevent a member of the association from displaying the flag in accordance with the Federal Flag Code on residential property to which the member has a separate ownership interest.

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<sup>49</sup> P.L. 94-344, § 1(16).

<sup>50</sup> 4 U.S.C. § 8(i).

<sup>51</sup> See, *United States v. Eichman*, 496 U.S. 310 (1990) and *Texas v. Johnson*, 491 U.S. 397 (1989).

<sup>52</sup> See, e.g., *Halter v. Nebraska*, 205 U.S. 34 (1907).

<sup>53</sup> 4 U.S.C. § 3.

<sup>54</sup> See, e.g., *Central Hudson Gas and Electric Co. V. PSC*, 447 U.S. 557 (1980).

<sup>55</sup> Aug. 21, 1959, 29 F.R. 6865; see 4 U.S.C. §§ 1-2.

<sup>56</sup> P.L. 109-243.



# May 2015

May 2015							June 2015						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
3	4	5	6	7	8	9	7	1	2	3	4	5	6
10	11	12	13	14	15	16	14	8	9	10	11	12	13
17	18	19	20	21	22	23	21	15	16	17	18	19	20
24	25	26	27	28	29	30	28	22	23	24	25	26	27
31								29	30				

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Apr 26	27	28	29	30	May 1	2
4/26 - 5/1							
	3	4	5	6	7	8	9
5/3 - 8		2:00pm 4:00pm Vehicle Driver PM Comment Review (ECR) - Candice E. Skenandore		9:00am 2:00pm LOC Meeting (BCCR)			
	10	11	12	13	14	15	16
5/10 - 15				BC Meeting (BCCR)			
	17	18	19	20	21	22	23
5/17 - 22				9:00am 2:00pm LOC Meeting (BCCR)		Oneida Code Talkers C	
	24	25	26	27	28	29	30
5/24 - 29		Memorial Day Holiday		BC Meeting (BCCR)			
	31	Jun 1	2	3	4	5	6
5/31 - 6/5							

# June 2015

June 2015						
Su	Mo	Tu	We	Th	Fr	Sa
7	1	2	3	4	5	6
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

July 2015						
Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	1	2	3	4
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
May 31 - Jun 6	May 31	Jun 1 6:00pm 9:00pm GTC Meeting (Radisson)	2	3 9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar	4	5	6
	7	8	9	10 BC Meeting (BCCR)	11	12	13
Jun 7 - 13							
	14	15	16	17 9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar	18	19	20
Jun 14 - 20							
	21	22	23	24 BC Meeting (BCCR)	25	26	27
Jun 21 - 27							
	28	29	30	Jul 1	2	3	4
Jun 28 - Jul 4							