

NOTICE OF  
**PUBLIC MEETING**

TO BE HELD  
**Thursday, August 4th at 12:15 p.m.**  
IN THE  
**OBC CONFERENCE ROOM**  
**(2<sup>nd</sup> FLOOR—NORBERT HILL CENTER)**

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

**TOPIC: EVICTION AND  
TERMINATION**

**This is a proposal to create a new Eviction and Termination law which would:**

- Contain the minimum framework for the Nation's termination and eviction processes.
- Delegate rulemaking authority to the Comprehensive Housing Division to develop rules to further govern the processes contained in this law *[see 709.4]*.
- Detail early contract termination, including causes and notice requirements, and name domestic abuse as defense to eviction *[see 709.6]*.
- Detail the process regarding failure to vacate following the notice of eviction or contract expiration *[see 709.6]*.
- Detail the withholding from and return of security deposits *[see 709.7]*.
- Provide an appeal process to the Oneida Judiciary *[see 709.8]*.

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings) or contact the Legislative Reference Office.

**PUBLIC COMMENT PERIOD  
OPEN UNTIL August 11, 2016**

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

**Legislative Reference Office**  
**PO Box 365 Oneida, WI 54155**  
**LOC@oneidation.org**  
Phone: (920) 869-4376 or (800) 236-2214  
Fax: (920) 869-4040



<i>Analysis by the Legislative Reference Office</i>							
<b>Title</b>	Eviction and Termination (law)						
<b>Requester</b>	Brandon Stevens	<b>Sponsor</b>	Brandon Stevens	<b>Drafter</b>	Krystal L. John	<b>Analyst</b>	Maureen Perkins
<b>Reason for Request</b>	An eviction law separate from the Leasing law and the Landlord-Tenant law is required to apply to leases and rental agreements under both laws.						
<b>Purpose</b>	The purpose of this law is to provide consistent procedures for terminating a contract and/or evicting an occupant which affords the applicant due process and protects all parties involved [see 709.1-1].						
<b>Authorized/ Affected Entities</b>	Comprehensive Housing Division (Division of Land Management, Oneida Housing Authority, Elderly Services), Oneida Judiciary, Oneida Police Department						
<b>Related Legislation</b>	Leasing law, Landlord-Tenant law, Real Property Law, Administrative Rulemaking law, Mortgage and Foreclosure law						
<b>Enforcement/ Due Process</b>	Parties may appeal actions taken pursuant to this law to the Oneida Judiciary [see 709.8-1].						

### Overview

This is a new law that details the current processes used by the Nation regarding terminating a contract which includes leases under the Leasing law (residential lease, agricultural lease or business lease) or rental agreements under the Landlord-Tenant law and evicting an occupant from the Nation’s lands or housing resources. The law also details the process followed when a contract expires and is not renewed, including if the occupant fails to vacate or remove personal property. The law contains the minimum framework and requirements related to the termination and resulting eviction processes. The Comprehensive Housing Division (CHD) has been delegated rulemaking authority under this law to develop rules which may contain more detailed requirements. This rulemaking authority is granted through the Administrative Rulemaking law.

The law applies to occupants of tribally owned property including rental agreements and leases that currently include residential leases (which cover homeowners who lease tribally owned land), agricultural leases and business leases. These leases are not detailed (there is no mention of residential, agricultural or business) in this law to allow for expansion of lease options without requiring this law to be updated. The law refers to the Leasing law which contains the detail regarding the types of leases the Nation offers. Termination means the contract is cancelled and eviction means the lessee (including property such as farm equipment or household items) are expelled from the property. The process and requirements to terminate and/or evict for each of these different types of contracts is the same.

The law details the causes for eviction, which include violation of the terms of the contract, alleged violation of any applicable law or rule and alleged commitment of one or more nuisance activities. The basis for allowing for eviction based upon an alleged violation is to protect the community from unlawful or disruptive occupants who are alleged to have violated the law but have not yet been convicted as the conviction process can take years. Without this provision, the Nation would not be able to terminate or evict until a conviction was received, which could expose the community to continued unlawful activity and create unsafe conditions. Similar





**Title 7 Land and Property - Chapter 709**  
**EVICTION AND TERMINATION**  
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709.1.	Purpose and Policy
709.2.	Adoption, Amendment, Repeal
709.3.	Definitions
709.4.	Comprehensive Housing Division Administrative Rulemaking Authority

11	709.5.	Early Contract Termination
12	709.6.	Failure to Vacate Following Notice of Eviction or Contract Expiration
13	709.7.	Withholding From and Return of Security Deposits
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**709.1. Purpose and Policy**

709.1-1. *Purpose.* The purpose of this law is to provide consistent procedures for terminating a contract and/or evicting an occupant which affords the applicant due process and protects all parties involved.

709.1-2. *Policy.* Is it the Nation’s policy to provide fair termination and eviction processes that preserves the peace, harmony, safety, health, general welfare and the Nation’s resources.

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**709.2. Adoption, Amendment, Repeal**

709.2-1. This law was adopted by the Oneida Business Committee by resolution \_\_\_\_\_.

709.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

709.2-3. 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.

709.2-4. 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.

709.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

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**709.3. Definitions**

709.3-1. This section 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.

(a) “Contract” means either a lease document pursuant to the Leasing law or a rental agreement pursuant to the Landlord-Tenant law.

(b) “Eviction” means to expel an occupant from the premises.

(c) “Nation” means the Oneida Nation.

(d) “Nuisance” means an occupant’s interference with another occupant’s use and enjoyment of the premises. Nuisance activities include, but are not limited to, allegations of harassment, disorderly conduct, battery, lewd and lascivious behavior, prostitution, theft, possession of stolen property, arson, illegal drug activity, gambling, animal violations, trespassing, weapons violations, noise violations, execution of warrants,

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50 alcohol violations, obstruction/resisting, inspection related calls in which a law  
51 enforcement agency responds.

52 (e) “Occupant” means the person granted the right to use or occupy a premises pursuant  
53 to a lease or rental agreement entered into in accordance with the Leasing law or  
54 Landlord-Tenant law respectively.

55 (f) “Owner” means the Nation in its capacity as a lessor as defined in the Leasing law or  
56 as a landlord as defined in the Landlord Tenant law.

57 (g) “Premises” means the property covered by a contract, including not only the real  
58 property and fixtures, but also any personal property furnished by the owner pursuant to a  
59 contract.

60 (h) “Rent” means the sum or amount agreed in the contract to be paid by the occupant to  
61 the owner for exclusive possession of the property for the period of time set by the  
62 contract.

63 (i) “Reservation” means all property within the exterior boundaries of the reservation of  
64 the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566,  
65 and any lands added thereto pursuant to federal law.

66 (j) “Rule” means a set of requirements, including citation fees and penalty schedules,  
67 enacted by the Comprehensive Housing Division in accordance with the Administrative  
68 Rulemaking law based on authority delegated in this law in order to implement, interpret  
69 and/or enforce this law.

70 (k) “Security Deposit” means a payment made to the owner by the occupant to ensure  
71 that payments will be made and other responsibilities of the contract performed.

72 (l) “Waste” means physical damage or deterioration caused to the premises, whether  
73 intentional or negligent.

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75 **709.4. Comprehensive Housing Division Administrative Rulemaking Authority**

76 709.4-1. The Comprehensive Housing Division may create rules to further govern the  
77 processes contained in this law.

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79 **709.5. Early Contract Termination**

80 709.5-1. *Causes for Early Contract Termination.* The owner may terminate the contract prior  
81 to the contract term and evict the occupant, if the occupant:

- 82 (a) Violates the terms of the contract;  
83 (b) Is alleged to have violated any applicable law or rule; and/or  
84 (c) Is alleged to have committed one or more nuisance activities.

85 709.5-2. *Domestic Abuse Defense to Eviction.* An occupant has a valid defense to eviction if  
86 he or she alleges that if not for the alleged domestic abuse, which is noticed to the owner with  
87 any of the following documentation, there would not be cause for eviction under section 709.5-1:

- 88 (a) An injunction order under Wis. Stat. 813.12(4) or any other law of the Nation  
89 protecting the tenant from a co-tenant;  
90 (b) An injunction order under Wis. Stat. 813.122 or any other law of the Nation  
91 protecting a child of the tenant from a co-tenant;  
92 (c) An injunction order under Wis. Stat. 813.125(4) or any other law of the Nation  
93 protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant’s  
94 engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02

95 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the  
96 same;

97 (d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the  
98 tenant;

99 (e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a  
100 child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;

101 (f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the  
102 tenant under Wis. Stat. 940.32; or

103 (g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant  
104 being arrested for committing a domestic abuse offense against the tenant under Wis.  
105 Stat. 968.075.

106 709.5-3. *Notice.* This section governs the amount of notice required to evict as well as the  
107 manner and form of notice required. When an owner provides notice in compliance with these  
108 requirements, the occupant is not entitled to possession or use of the premises after the date of  
109 the termination provided in the notice.

110 (a) *Eviction for Failure to Pay Rents.*

111 (1) If an occupant fails to pay any installment of rent when due, the occupant's  
112 contract is terminated if the owner gives the occupant notice requiring the tenant  
113 to pay rent or vacate on or before a date at least thirty (30) calendar days after the  
114 giving of the notice and if the occupant fails to pay accordingly.

115 (2) If an occupant has been given notice under 709.5-3(a)(1) and has paid the rent  
116 on or before the specified date, or been permitted by the owner to remain in  
117 possession contrary to such notice, and thereafter fails to pay a subsequent  
118 installment of rent on time within one (1) year of said notice, the occupant's  
119 contract is terminated if the owner, while the occupant is in default in payment of  
120 rent, gives the occupant notice to vacate on or before a date at least fourteen (14)  
121 calendar days after the giving of the notice.

122 (b) *Eviction for Waste or Contract Breach other than Rent Payment.*

123 (1) If an occupant commits waste or breaches any covenant or condition of the  
124 occupant's contract, other than for payment of rent, the occupant's tenancy is  
125 terminated if the owner gives the occupant a notice requiring the occupant to  
126 remedy the default or vacate the premises on or before a date at least thirty (30)  
127 calendar days after the giving of the notice, and if the occupant fails to comply  
128 with such notice. An occupant is deemed to be complying with the notice if  
129 promptly upon receipt of such notice the occupant takes reasonable steps to  
130 remedy the default and proceeds with reasonable diligence, or if damages are  
131 adequate protection for the owner and the occupant makes a bona fide and  
132 reasonable offer to pay the owner all damages for the occupant's breach.

133 (2) If within one (1) year from the giving of any notice under 709.5-3(b)(1), the  
134 occupant again commits waste or breaches the same or any other covenant or  
135 condition of the occupant's contract, other than for payment of rent, the  
136 occupant's contract is terminated if the owner, prior to the occupant's remedying  
137 the waste or breach, gives the occupant notice to vacate on or before a date at  
138 least fourteen (14) calendar days after the giving of the notice.

139 (c) *Eviction for Violation of Applicable Law or Rule or Nuisance by Occupant.* The  
140 owner may terminate an occupant's contract based on an alleged violation of an  
141 applicable law or rule or if the occupant commits a nuisance act.

142 (1) In order to terminate based on this section, the owner must have received  
143 notice, which may be from, but is not limited to, another occupant, law  
144 enforcement agency or a local government's office of the district attorney, which  
145 reports:

146 (A) a violation of an applicable law or rule on behalf of the occupant or in  
147 the occupant's unit, or

148 (B) a nuisance that exists in that occupant's unit or was caused by that  
149 occupant on the owner's property. In order to terminate the contract, the  
150 owner shall give the occupant written notice requiring the occupant to  
151 vacate on or before a date at least five (5) calendar days after the giving of  
152 the notice.

153 (2) The occupant may contest a termination based on a violation of applicable law  
154 or rule or nuisance by filing a complaint challenging the basis of the eviction with  
155 the Judiciary.

156 (3) If the occupant contests the termination prior to the termination date provided  
157 in the notice, the eviction is stayed and the contract may not be terminated  
158 without proof to the Judiciary by the owner by the greater preponderance of the  
159 credible evidence of the allegation that a violation of law and/or rule and/or  
160 nuisance exists in that occupant's unit or was caused by that occupant.

161 (4) Despite an owner's satisfaction of the proof requirements in section  
162 709.5(c)(3), the Judiciary may, at its discretion, stay an eviction by honoring any  
163 alternative agreement regarding pending actions entered into by the occupant and  
164 a court of competent jurisdiction pending successful completion of the alternative  
165 agreement.

166 (d) *Content, Form and Manner of Giving Notice.*

167 (1) *Notice Content.* Notices required to be provided under this law shall include  
168 the following:

169 (A) The violation of law and/or rule, committing of nuisance and/or breach  
170 of the contract, with citations to the applicable law, rule and/or contract  
171 clause;

172 (B) If the notice is pursuant to section 709.5-3(a), the current delinquent  
173 balance due;

174 (C) If the notice is pursuant to section 709.5-3(a) or (b):

175 (i) A statement that the occupant has a thirty (30) day period to  
176 cure;

177 (ii) The date the period to cure expires and the termination  
178 becomes effective in the event occupant does not cure; and

179 (iii) Potential consequences for failure to cure, which may include,  
180 but are not limited to eviction and the assessment of damages  
181 against the occupant.

182 (D) If notice is pursuant to section 709.5-3(c), a statement that the  
183 occupant may request a hearing with the Oneida Judiciary prior to the  
184 effective date of the termination provided on the notice, and that, if the

185 occupant timely files for a hearing, there is an automatic stay on the  
186 eviction pending the determination of the Oneida Judiciary;  
187 (E) The contact information for the Comprehensive Housing Division staff  
188 available to answer questions and/or hear concerns of the occupant related  
189 to the notice.

190 (2) *Notice to Individuals.* When providing notice to an occupant that is an  
191 individual, the owner shall use one of the following methods:

192 (A) Giving a copy of the notice personally to the occupant or by leaving a  
193 copy at the occupant's usual place of abode in the presence of some  
194 competent member of the occupant's family at least fourteen (14) years of  
195 age, who is informed of the contents of the notice, provided that the owner  
196 may request that the notice be personally served to the occupant by the  
197 Oneida Police Department;

198 (B) Leaving a copy with any competent person apparently in charge of the  
199 premises or occupying the premises or a part thereof, and by mailing a  
200 copy by first class mail to the occupant's last-known address;

201 (C) If notice cannot be given under subsection (A) or (B) with reasonable  
202 diligence, by affixing a copy of the notice on an entrance to the rented  
203 premises where it can be conveniently read and by mailing a copy by first  
204 class mail to the occupant's last-known address;

205 (D) By mailing a copy of the notice by registered or certified mail to the  
206 tenant at the tenant's last-known address;

207 (E) By serving the occupant as prescribed in the Rules of Civil Procedure  
208 for the service of a summons.

209 (3) *Notice to Corporations or Partnerships.* If notice is to be given to a  
210 corporation notice may be given by any method provided in subsection (1) except  
211 that notice under subsection (1)(A) may be given only to an officer, director,  
212 registered agent or managing agent, or left with an employee in the office of such  
213 officer or agent during regular business hours. If notice is to be given to a  
214 partnership, notice may be given by any method in subsection (1) except that  
215 notice under subsection (1)(A) may be given only to a general partner or  
216 managing agent of the partnership, or left with an employee in the office of such  
217 partner or agent during regular business hours, or left at the usual place of abode  
218 of a general partner in the presence of some competent member of the general  
219 partner's family at least fourteen (14) years of age, who is informed of the  
220 contents of the notice.

221 (4) *Notice to One (1) of Several Parties.* If there are two (2) or more co-occupants  
222 of the same premises, notice given to one (1) is deemed to be given to the others  
223 also.

224 (5) *Effect of Actual Receipt of Notice.* If notice is not properly given by one (1) of  
225 the methods specified in this section, but is actually received by the other party,  
226 the notice is deemed to be properly given; but the burden is upon the owner  
227 alleging actual receipt to prove the fact by clear and convincing evidence.

228 (e) *Contrary Provision in the Contract.* Except for leases entered into pursuant to the  
229 Leasing law, any termination provisions in a contract that are contrary to those provided  
230 in this law are invalid.

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**709.6. Failure to Vacate Following Notice of Eviction or Contract Expiration**

709.6-1. *Changing of Locks and Removal of Occupant.* If an occupant fails to vacate the premises following notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract, the owner shall secure and take possession of the premises once the timeframe in the notice of termination has expired.

(a) The Comprehensive Housing Division shall contact the Oneida Police Department to request that an Oneida Police Officer be on the scene while the locks are being changed.

(b) In the event the occupant has left personal property in the home, the occupant may retrieve the said personal property by contacting the Comprehensive Housing Division staff listed on the notice of termination. The Comprehensive Housing Division shall hold personal property for a minimum of five (5) business days, where a business day is Monday through Friday from 8:00 a.m. to 4:30 p.m. and excludes holidays recognized by the Nation.

(1) The Comprehensive Housing Division shall keep a written log of the date and the work time the Comprehensive Housing Division's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the premises after the expiration of the timeframe provided in the notice of termination.

(2) The Comprehensive Housing Division shall create rules further governing the disposition of personal property.

709.6-2. *Effect of Failure to Vacate.* A failure to vacate following notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract does not in any circumstances, regardless of acceptance of rent payments, create a periodic tenancy. For the purposes of this section, a periodic tenancy means when an occupant uses/occupies a premises without an effective and valid contract by paying rent on a periodic basis including, but not limited to, day-to-day, week-to-week and month-to-month.

709.6-3. *Damages for Failure to Vacate.* If an occupant remains in possession of the premises without consent of the owner after notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract, the owner may, at the owner's discretion, recover from the occupant damages suffered by the owner because of the failure of the occupant to vacate within the time required. In absence of proof of greater damages, the landlord shall recover as minimum damages twice the rental value apportioned on a daily basis for the time the occupant remains in possession. As used in this section, rental value means the amount for which the premises might reasonably have been rented, but not less than the amount actually paid or payable by the occupant for the prior rental period, and includes the money equivalent of any obligations undertaken by the occupant as part of the contract, such as regular property maintenance and repairs. Nothing in this section prevents the owner from seeking and recovering any other damages to which the owner may be entitled.

**709.7. Withholding From and Return of Security Deposits**

709.7-1. *Applicability.* This section applies only to contracts that require a security deposit.

274 709.7-2. *Standard Withholding Provisions.* When the owner returns a security deposit to an  
275 occupant after the occupant vacates the premises, the owner may withhold from the full amount  
276 of the security deposit only amounts reasonably necessary to pay for any of the following:

- 277 (a) Occupant damage, waste, or neglect of the premises;
- 278 (b) Unpaid rent for which the occupant is legally responsible;
- 279 (c) Payment that the tenant owes under the contract for utility service provided by the  
280 owner but not included in the rent;
- 281 (d) Payment that the tenant owes for direct utility service provided by a  
282 government-owned utility, to the extent that the landlord becomes liable for the tenant's  
283 nonpayment.
- 284 (e) Unpaid monthly municipal permit fees assessed against the occupant by a local unit  
285 of government, to the extent that the owner becomes liable for the occupant's  
286 nonpayment; and
- 287 (f) Any other payment for a reason provided in a nonstandard provision document  
288 described in 709.7-3.

289 709.7-3. *Nonstandard Withholding Provisions.* A contract may include one or more  
290 nonstandard withholding provisions that authorize the owner to withhold amounts from the  
291 occupant's security deposit for reasons not specified in 709.7-2(a) through (f). The owner shall  
292 provide any such nonstandard withholding provisions to the occupant in a separate written  
293 document entitled "Nonstandard Withholding Provisions." The owner shall specifically identify  
294 each nonstandard withholding provision with the occupant before the occupant enters into a  
295 contract with the owner. If the occupant signs his or her name, or writes his or her initials, by a  
296 nonstandard withholding provision, it is rebuttably presumed that the owner has specifically  
297 identified the nonstandard withholding provision with the occupant and that the occupant has  
298 agreed to it.

299 709.7-4. *Normal Wear and Tear.* This section does not authorize the owner to withhold any  
300 amount from a security deposit for normal wear and tear, or for other damages or losses for  
301 which the occupant cannot reasonably be held responsible under the terms of the contract, and  
302 applicable laws and/or rules of the Nation.

303 709.7-5. *Timing for Return of the Security Deposit.* The owner shall deliver or mail to an  
304 occupant the full amount of any security deposit paid by the occupant, less any amounts that may  
305 be withheld under subsections 709.7-2 and 709.7-3, within thirty (30) calendar days after any of  
306 the following:

- 307 (a) If the occupant vacates the premises on the original termination date of the contract,  
308 the date on which the contract terminates.
- 309 (b) If the occupant vacates the premises or is evicted before the original termination date  
310 of the contract, the date on which the occupant's rental agreement terminates or, if the  
311 owner re-rents the premises before the occupant's rental agreement terminates, the date  
312 on which the new occupant takes occupancy/use of the premises.

313 (c) If the occupant vacates the premises untimely or is removed from the premises  
314 pursuant to 709.6-1, the date on which the owner learns that the occupant has vacated the  
315 premises or has been removed from the premises under section 709.6-1.

316  
317 **709.8. Appeals**

318 709.8-1. Parties may appeal actions taken pursuant to this law to the Oneida Judiciary.

319  
320 *End.*

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Adopted – BC