

NOTICE OF
PUBLIC MEETING

TO BE HELD

Thursday, December 1st at 12:15 p.m.

IN THE

OBC CONFERENCE ROOM

(2nd 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: REAL PROPERTY LAW
AMENDMENTS**

This is a proposal to amend an existing Tribal Law which would:

- ◆ Remove hearing body authority from the Oneida Land Commission and transfer to the Judiciary.
- ◆ Update probate process.
- ◆ Add Wisconsin State real estate education requirements for persons purchasing property on behalf of the Nation. (As originally noticed in the October 20, 2016 public meeting there was a requirements for a Wisconsin real estate license.)
- ◆ Provisions related to rental housing opportunities provided by the Nation are moved to the Landlord-Tenant law.
- ◆ Provisions related to mortgages and foreclosures within the Nation's programs are moved to the Mortgage and Foreclosure law.
- ◆ Provisions related to terminating or evicting from the Nation's leasing or rental programs are moved to the Eviction and Termination law.

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 or contact the Legislative Reference Office.

**PUBLIC COMMENT PERIOD
OPEN UNTIL DECEMBER 8, 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@oneidationation.org
Phone: (920) 869-4376 or (800) 236-2214
Fax: (920) 869-4040**



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Real Property Law Amendments

<i>Analysis by the Legislative Reference Office</i>					
Title	Real Property law (amendments)				
Sponsor	David P. Jordan	Drafter	Krystal L. John	Analyst	Maureen Perkins
Requester & Reason for Request	Land Commission While the primary focus of the amendments is to transfer hearing body authority from the land Commission to the Judiciary, the law requires extensive updating to provide greater clarity as to the intent of the law. Additionally, content was pulled from this law and created into other laws.				
Purpose	The purpose of this law is to provide regulations and procedures for the transfer, control and management of the territory within the reservation; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the reservation; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions.				
Authorized/ Affected Entities	Oneida Land Commission, Division of Land Management, Comprehensive Housing Division, Oneida Judiciary, Oneida Nation Register of Deeds,				
Related Legislation	Mortgage and Foreclosure law, Land Ordinance, Leasing law, Landlord-Tenant law, Eviction and Termination law, Public Use of Tribal Land law, Land Commission Bylaws				
Enforcement & Due Process	All involuntary transfers of title require a Judiciary hearing [see 601.7-3]. The Division of Land Management shall process and administer probate estates and, where necessary, shall refer probate estates to the Oneida Judiciary for formal administration [see 601.8-1]. The Judiciary shall hear and administer disputed probate estates or matters requiring appointment of a guardian ad litem and shall have all the above powers conferred upon the Division of Land Management in such cases [see 601.8-2].				
Public Meeting Status	A public meeting was held October 20, 2016.				

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Overview

8 The Real Property Law has been redrafted; pulling out content into three separate laws
9 (Landlord-Tenant, Mortgage and Foreclosure, and Eviction and Termination).¹ Additionally,
10 hearing body authority was removed from the Land Commission and transferred to the Judiciary,
11 the probate process was updated and Wisconsin State real estate education and testing

¹ It should be noted that the version of this law that is currently effective also includes provisions related to leasing. This detail was pulled out into the Leasing law with the amended version of the Real Property law that was adopted by BC-05-13-15-B and will become effective upon the BIA's approval of our Leasing law. These amendments to the Real Property law incorporate the Leasing law by reference, and upon adoption will replace the version of this law adopted by BC-05-13-15-B.

12 requirements were added for persons purchasing property on behalf of the Nation.
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14 Provisions were pulled from the current Real Property Law and drafted into the following
15 laws:

- 16 ■ Provisions related to rental housing opportunities provided by the Nation were drafted
17 into the Landlord-Tenant law.
 - 18 ■ Provisions related to mortgages and foreclosures within the Nation’s mortgage programs
19 were drafted into the Mortgage and Foreclosure law.
 - 20 ■ Provisions related to terminating or evicting from the Nation’s leasing or rental programs
21 were drafted into the Eviction and Termination law.
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23 **Proposed Amendments**

- 24 ■ The Rules of Statutory Construction [*see 67.2 of current law*] were removed from the
25 current Real Property law as this provision was intended to guide contested cases; these
26 provisions are not necessary under this amended draft because the Judiciary will hear
27 contested cases – these rules are not typically included in laws.
- 28 ■ The probate section [*see 67.9 of current law*] was reworked and the Division of Land
29 Management and the Oneida Land Commission were given rulemaking authority to
30 jointly develop rules related to probate [*see 601.8*] under the Administrative Rulemaking
31 law.
- 32 ■ Real Estate Trust Accounts section [*see 67.10 of current law*] was removed as these
33 functions are performed through the rules under the Mortgage and Foreclosure law and
34 detail regarding where the funds are kept is not necessary in this law.
- 35 ■ The Leasing law references tribal land only and does not include Tribal fee land [*see*
36 *602.4-3*]. The Leasing law is drafted to align with the HEARTH Act (federal legislation)
37 which only applies to tribal land and excludes lands held in fee status, held in trust for
38 individual Indian landowners as well as mineral leases. These proposed Real Property
39 law amendments state that all leases, go through the Leasing law process regardless of
40 whether the lease is on Tribal trust land or Tribal fee land [*see 601.9-1*].
- 41 ■ General contracts were removed from the records section [*see 601.10*]. There was little
42 guidance under the current law [*see 67.12-2 of current law*] and records that were not
43 useful were recorded. The amended law refocuses the Oneida Register of Deeds to only
44 accept records that affect land titles.
- 45 ■ The real estate licensing section [*see 67.13 of current law*] was amended to remove the
46 Nation’s Tribal Property License requirement and instead require- State of Wisconsin real
47 estate education and exam. Under the amended law, Wisconsin Real Estate education
48 and exam is required for all persons performing real estate closings [*see 601.11-1*]. An
49 Oneida specific training is still required that focuses directly on the Nation’s acquisition
50 goals and the unique circumstances that apply to Indian nations. Persons acquiring Tribal
51 fee land on behalf of the Nation are regular employees of the Nation and are not be
52 eligible for a commission [*601.11-1(a)*]. Requiring State of Wisconsin education and
53 exam places those who purchase land on behalf of the Nation on equal footing with the
54 seller, which is an advantage to the Nation. Also, the Nation’s Tribal Property License
55 program lacked oversight, which will now be provided through Wisconsin State real
56 estate education. Finally, by requiring Wisconsin real estate education the Land
57 Commission is removed from enforcement issues arising from questions regarding

- 58 licensing complaints.
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- The amendments require that two additional Division of Land Management staff are educated and trained as backups to the primary staff member engaged in acquisition of land on behalf of the Nation *[see 601.11-1(b).]*
 - Trust Asset and Accounting Management System (TAAMS) certification was added to the real estate licensing and certification section *[see 601.11-2]*. The TAAMS system is required by the BIA to track land title documents and land transactions, contracts and leases as well as reporting.
 - The Tribal Real Estate Tax section was removed from the current law *[see 67.15 of current law]* because the Real Estate Tax Code referenced was never developed and is not currently intended to be developed.
 - The Land Ordinance is applicable only to valid land assignments existing as of January 1, 2016, and is repealed when the last existing land assignment expires. Further, the amendments add that the Nation may not acknowledge any new land assignments – and in order to be eligible for a Tribal loan issued against an interest in a land assignment, it must first be converted to a residential lease *[see 601.2-4 and current 67.5-4]*. Land assignments are being phased out because the Nation no longer uses land assignments and has moved to residential leases instead.
 - The term of office was removed from the Organization section pertaining to the Oneida Land Commission *[see 67.16-2(b) of current law]* as this detail appropriately appears in the bylaws of the Land Commission. The amended law only includes the Land Commission’s responsibilities that are directly related to this law *[see 601.12-3]*.
 - The disposition of estates of deceased Tribal members section of the current law *[see 67.9]* was amended to the probate section *[see 601.8]*.
 - The amended law moves the appointment of a personal representative earlier in the process *[see 601.8-1(j)]*.
 - The Oneida Land Commission will no longer have the authority to create the Nation’s seal to be used by the Division of Land Management *[see 67.12-6 of current law]*. The Nation’s seal will now be provided by the Tribal Secretary *[see 601.10-5]*.

Rulemaking Authority

89 The following entities have been granted Rulemaking Authority to develop rules under this law:

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- The Division of Land Management and the Oneida Land Commission shall jointly develop rules regarding requests for easements for landlocked properties *[see 601.7-3(e)]*.
 - The Division of Land Management and the Oneida Land Commission shall further develop rules related to probate *[see 601.8-1]*. The rules will include timelines to ensure timely probate completion and land consolidation *[see 601.7-3(c)(3)]*.
 - The Oneida Land Commission shall develop rules to allocate and assign land uses to all Tribal land, except uses governed by the Public Use of Tribal Land law *[see 601.12-2(e)]*.
 - The Oneida Land Commission and the Comprehensive Housing Division shall exercise joint rulemaking authority to provide process requirements, including but not limited to advertising, notice, prequalification, and selection, that apply in all circumstances when the Nation is selling a residential property *[see 601.12-1]*.
 - The Division of Land Management and the Oneida Land Commission shall develop

104 easement and land use license rules *[see 601.12-3(a)]*.

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Title 6. Property and Land – Chapter 601
REAL PROPERTY
Tok^ske Kayanl^hsla Tsi> Ni>yohuntsya=#
The real/certain laws of the territory of the nation

601.1. Purpose and Policy	601.7. Title Transfer
601.2. Adoption, Amendment, Repeal	601.8. Probate
601.3. Definitions	601.9. Leasing of Real Property
601.4. General Provisions	601.10. Records
601.5. Holding of Ownership	601.11. Real Estate Education Requirements and Certifications
601.6. Legal Descriptions	601.12. Organization

601.1. Purpose and Policy

601.1-1. *Purpose.* The purpose of this law is to provide regulations and procedures for the transfer, control and management of the territory within the ~~reservation~~Reservation; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the ~~reservation~~Reservation; and to establish licensing and certification requirements for the Nation’s employees dealing with real property transactions.

601.1-2. *Policy.* It is the policy of the Nation to set out the responsibilities and expectations for persons purchasing and/or managing real property on behalf of the Nation and/or within the ~~reservation~~Reservation and to provide real property holder’s rights and responsibilities. In addition, it is the Nation’s policy that probated estates shall be settled expeditiously and without undue delay.

601.2. Adoption, Amendment, Repeal

601.2-1. 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 BC-05-13-15-B.

601.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

601.2-3. 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.

601.2-4. 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:

~~(a) — The, the~~ Land Ordinance is applicable only to valid land assignments existing as of January 1, 2016 and is hereby repealed upon the expiration of the last existing land assignment.

601.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

601.3. Definitions

601.3-1. 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, subject to 601.4-5.

(a) “Broker” means a person who acts as an agent and negotiates the sale, purchase or rental of real property on behalf of others for a fee.

(b) “Certified Survey Map” means a map which provides the legal description of real property and is officially filed and approved by the county, Tribal or municipal governments.

38 | (c) “Comprehensive Housing Division” means the entity responsible for housing matters
39 | as defined by Oneida Business Committee Resolution.¹

40 | (ed) “Easement” means a real property right to cross or otherwise utilize the land of
41 | another for a specified purpose.

42 | (de) “Estate” means a person’s interest in real property or other property.

43 | (ef) “Fiduciary” means a person required to act for the benefit of another person on all
44 | matters within the scope of their relationship and by such a relationship owes another
45 | duties of good faith, trust, confidence and candor. For the purposes of this law, both
46 | brokers and salespersons are “fiduciaries.”

47 | (fg) “Guardian Ad Litem” means a guardian appointed by the Judiciary on behalf of an
48 | incompetent or minor party.

49 | (gh) “Individual Fee Land” means real property held in fee status by an individual or
50 | group of individuals.

51 | (hi) “Individual Trust Land” means individual Tribal land held in trust by the United
52 | States of America for the benefit of a Tribal member.

53 | (ij) “Judiciary” means the judicial system that was established by Oneida General Tribal
54 | Council resolution GTC-01-07-13-B to administer the judicial authorities and
55 | responsibilities of the Nation.

56 | (jk) “Land Use License” means an agreement entered into by the Nation providing a party
57 | the right to occupy and/or utilize a specified piece of Tribal land for a specific purpose
58 | and a specific duration, which may require the Nation to be compensated for such use.

59 | (kl) “Leasehold Mortgage” means a mortgage, deed of trust, or other instrument that
60 | pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the
61 | lessee to a lender or other mortgagee.

62 | (lm) “Nation” means the Oneida Nation.

63 | (mn) “Personal Representative” means a person to whom authority to administer a
64 | decedent’s estate have been granted by the Division of Land Management or the
65 | Judiciary.

66 | (no) “Probate” or “Administration” means any proceeding relating to a decedent’s estate,
67 | whether there is or is not a will.

68 | (op) “Real Property” means land and anything growing on, attached to, or erected on the
69 | land, excluding anything that may be severed without injury to the land.

70 | (pq) “Reservation” means all the property within the exterior boundaries of the
71 | Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida
72 | 7 Stat. 566, and any lands added thereto pursuant to federal law.

73 | (qr) “Restricted Fee Status” means an interest in real property which includes a provision
74 | in the deed or will that, upon the happening or failure to happen of a certain event, the
75 | title of the purchaser or devisee will be limited, enlarged, changed or terminated.

76 | (rs) “Rule” means a set of requirements, including fee schedules, enacted by the
77 | Comprehensive Housing Division, Division of Land Management and/or the Oneida
78 | Land Commission in accordance with the Administrative Rulemaking law based on
79 | authority delegated in this law in order to implement, interpret and/or enforce this law.

¹ See BC Resolutions 08-10-16-L, 10-12-16-B and 10-12-16-D defining the Comprehensive Housing Division for purposes of the Mortgage and Foreclosure law, Eviction and Termination law and Landlord-Tenant law respectively..

80 | (~~st~~) “TAAMS” (Trust Asset and Accounting Management System) means the Bureau of
81 | Indian Affairs system for maintaining and tracking land title documents and all legal
82 | documents relating to land transactions.

83 | (~~tu~~) “Title Status Report” means a report issued by the Bureau of Indian Affairs after a
84 | title examination which shows the proper legal description of a tract of Tribal land;
85 | current ownership, including any applicable conditions, exceptions, restrictions or
86 | encumbrances on records; and whether the land is in unrestricted, restricted, trust, or
87 | other status as indicated by the records in a Land Titles and Records Office. (v) “Tribal
88 | Fee Land” means Tribal land held in fee status by the Nation within the

89 | ~~reservation~~Reservation.

90 | (~~wv~~) “Tribal Land” means Tribal fee land and Tribal trust land.

91 | (~~xw~~) “Tribal Member” means an individual who is an enrolled member of the Nation.

92 | (~~yx~~) “Tribal Trust Land” means the surface estate of land or any interest therein held by
93 | the United States in trust for the Nation; land held by the Nation subject to federal
94 | restrictions against alienation or encumbrance; land reserved for federal purposes; and/or
95 | land held by the United States in trust for the Nation under Section 17 of the Indian
96 | Reorganization Act, 25 U.S.C §477, et. seq.

99 | **601.4. General Provisions**

100 | 601.4-1. *Applicable Real Property.* The provisions of this law extend to all Tribal land, Tribal
101 | member’s individual fee land, and individual trust land within the ~~reservation~~Reservation
102 | boundaries and all Tribal trust land.

103 | 601.4-2. *Tribal Land Base.* ~~Any transaction~~The Division of Land Management shall administer
104 | all transactions which ~~addsadd~~ adds real property to the Tribal land base ~~must be administered through~~
105 | ~~the Division of Land Management~~ under the provisions of this law.

106 | 601.4-3. *Sale of Tribal Land Prohibited.* The sale of Tribal land is specifically prohibited by
107 | this law, unless the intent of the transaction is the consolidation or partition of Tribal trust land
108 | and/or individual trust land.

109 | 601.4-4. *New Land Assignments Prohibited.* The Nation may not acknowledge any new land
110 | assignments. Further, in order to be eligible for a Tribal loan issued against a real property
111 | interest held as a land assignment, the land assignment ~~must~~shall first be converted to a
112 | residential lease.

113 | 601.4-5 *Wisconsin Probate Code and its Related Chapters.* In instances where the Nation
114 | lacks definition, procedure, or legal precedent in a probate matter, the Nation shall use
115 | Wisconsin’s Probate Code and its related chapters for guidance.

116 | 601.4-6. *Wisconsin Real Property Law.* The Nation shall follow all applicable portions of the
117 | Wisconsin Real Property Law when acquiring individual fee land.

118 | 601.4-7. *No Waiver of Sovereign Immunity.* Nothing in this law may be construed as a waiver
119 | of the Nation’s sovereign immunity.

121 | **601.5. Holding of Ownership**

122 | 601.5-1. Interests in real property by more than one (1) person may be held in the following
123 | ways:

124 | (a) *Joint Tenancy with the Right of Survivorship.* Pursuant to this ownership ~~mechanism~~
125 | ~~method~~ each owner has an equal, undivided interest in the real property. When an owner

126 dies, his/her share is divided among the remaining owners; the last living owner owns the
127 entire property.

128 (1) Real property owned by married persons is held under this mechanism unless
129 they have executed a valid marital property agreement specifically stating that the
130 real property in question is held as tenants in common.

131 (b) *Tenancy in Common*. Pursuant to this ownership ~~mechanism~~ method each owner has
132 a percentage of divided interest in the real property. When an owner dies, his/her interest
133 is divided among his/her devisees or heirs.

134 (1) Real property owned by more than one (1) person, other than married persons,
135 is owned under this mechanism unless a deed, or transfer document specifically
136 states the real property is held as joint tenants with rights of survivorship.

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138 **601.6. Legal Descriptions**

139 601.6-1. The legal description for any real property transferred under this law ~~must~~ shall be
140 derived from a certified survey map or survey completed by a registered land surveyor according
141 to currently accepted minimum industry standards for property surveys. If the plat of survey
142 changes the legal description of the certified survey map for the same piece of property, the
143 certified survey map's legal description ~~will~~ shall be used on transfer documents along with the
144 survey description, which ~~must~~ shall be designated as "Also Known As ..." Section, township,
145 range and fourth principal meridian shall be included in all legal descriptions.

146 601.6-2. Every land survey ~~must~~ shall be made in accordance with the county register of deeds'
147 records for fee land, and in accordance with the Oneida Nation Register of Deed's records for
148 Tribal Trust Lands and Individual Trust Lands. The surveyor shall acquire data necessary to
149 retrace record title boundaries such as deeds, maps, certificates of title, title status reports, Tribal
150 leases, Tribal home purchase agreements, center line and other boundary line locations.

151 601.6-3. Legal descriptions defining land boundaries ~~must~~ shall be complete, providing
152 unequivocal identification of line or boundaries.

153 601.6-4. All surveys prepared for the Nation ~~must~~ shall comply with survey requirements
154 outlined in the Wisconsin Administrative Code, Chapter A-E7 and indicate setbacks, building
155 locations and encroachments, as applicable.

156 601.6-5. Legal descriptions ~~must~~ shall be used on transfer documents formalizing a purchase,
157 real estate sale, lease, foreclosure, probate transfer, trust acquisition and Tribal resolutions.

158 601.6-6. When real estate is listed, noticed and/or advertised as available for sale, rent or lease
159 to Tribal members, the address is an adequate legal description of the real property.

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161 **601.7. Title Transfer**

162 601.7-1. *Trust Acquisition*. The Division of Land Management shall use title companies duly
163 registered with the Department of Interior and approved by the Division of Land Management to
164 update abstracts or provide title insurance on real property scheduled for trust acquisition.

165 (a) The Division of Land Management shall ensure that Title-title companies ~~shall~~
166 general guidelines provided by the federal government in terms of form, content, period
167 of search, destroyed or lost records and abstracter's certificate.

168 (b) When researching land title for real property within the reservation ~~Reservation~~ which
169 is being considered for trust acquisition, the Division of Land Management staff shall
170 request the title company to search the title back to the original allottee, in order to assure
171 that patents or Indian deeds were legally issued.

172 (c) Any valid liens or encumbrances shown by the commitment for title insurance shall
173 be eliminated before the title is transferred into trust.

174 (d) After land is in trust both a title search of county records and a title status report
175 requested by the Division of Land Management from the Bureau of Indian Affairs shall
176 verify all valid encumbrances, if any, on the title. For the purposes of this section, a valid
177 encumbrance is one that has been preapproved, in writing, by the Division of Land
178 Management based on a standard operating procedure that is effective upon approval by
179 the Oneida Land Commission.

180 (e) Division of Land Management applications to convert Tribal fee land into Tribal trust
181 land require an Oneida Land Commission resolution approving the said conversion.

182 601.7-2. *Deeds.* A deed is the formal document used by the Division of Land Management to
183 transfer title from one party to another.

184 (a) A valid deed shall:

185 (1) Be in writing;

186 (2) Identify the grantor (seller) and grantee (buyer);

187 (3) Provide the legal description of the real property;

188 (4) Identify the interest conveyed, as well as any conditions, reservations,
189 exceptions, or rights of way attached to the interest;

190 (5) Be signed by or on behalf of each of the grantors (sellers);

191 (6) Be signed by or on behalf of each spouse of each of the grantors (sellers), if
192 applicable; and

193 (7) Be delivered to the grantee (buyer).

194 (b) In addition to the requirements listed in section 601.7-3(a), a deed prepared for trust
195 acquisition shall include:

196 (1) The federal authority for trust acquisition;

197 (2) Any exceptions or exclusions from the State of Wisconsin's fees or other
198 transfer requirements;

199 (3) The approximate acreage of the real property being transferred to trust; and

200 (4) The authority and signature of the appropriate Department of Interior official
201 who accepts the real property into trust.

202 (c) A deed transferring fee simple title ~~must~~shall be recorded in the appropriate register of
203 deeds office, provided that, once the real property is in trust, the title ~~must~~shall be
204 recorded with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs
205 Land Titles and Records Office.

206 601.7-3. *Involuntary Transfer of Title.* All involuntary transfers of title require a hearing and
207 order from the Judiciary, and may occur in the following ways:

208 (a) Eminent Domain. Eminent domain is the right of the Nation's government to acquire
209 private land for public uses without the consent of private owners.

210 (1) For the purposes of this section, public uses include, but are not limited to,
211 environmental protection, streets, highways, sanitary sewers, public utility/sites,
212 waste treatment facilities and public housing.

213 (2) Prior to exercising eminent domain, the Nation ~~must~~shall first attempt to
214 negotiate an agreeable taking by making an offer to purchase based on an
215 appraisal of the real property. The appraisal amount may be based on an appraisal
216 provided by the Nation. In the event the property owner objects to the Nation's
217 appraisal, they may obtain an independent appraisal at their own cost. For the

218 purposes of this section, an appraisal means process for estimating a piece of real
219 property's value.

220 (3) The Nation's exercise of eminent domain may be appealed to the Judiciary.

221 (b) Foreclosure. Foreclosures may occur subject to the Mortgage and Foreclosure law
222 when a Tribal member ceases payment on a leasehold mortgage.

223 (c) Tribal Land Consolidation. Section 207 of the Indian Land Consolidation Act
224 (Pub.L. No. 97-459, 96 Stat. 2515, and amended on October 30, 1984 by Pub.L. No. 98-
225 608, 98 Stat. 3171) is incorporated into this law, which provides a mechanism for real
226 property within the ~~reservation~~Reservation to escheat, or pass, to the Nation.

227 (1) Pursuant to section 207 of the Indian Land Consolidation Act, an ownership
228 interest in real property escheats, or passes, to the Nation under the following
229 circumstances, provided that the Nation shall provide just compensation for the
230 interest:

231 (A) The real property is within the ~~reservation~~Reservation boundaries;

232 (B) The decedent's ownership in the given parcel of land is two percent
233 (2%) or less of the total acreage; and

234 (C) The interest is incapable of earning one hundred dollars (\$100.00) in
235 any one (1) of the five (5) years immediately following the decedent's
236 death.

237 (2) A decedent's heirs may appeal a land consolidation under this section to the
238 Judiciary.

239 (3) Land consolidation is subject to the probate requirements, as included in this
240 law and accompanying rules.

241 (d) Transferring Interests Inherited by Non-Tribal Members. If the owner of an interest
242 of real property which is held in trust or restricted fee status located within the
243 ~~reservation~~Reservation devises such interest to a non-Tribal member, the Nation may
244 acquire the said interest by paying the fair market value of the interest determined as of
245 the date of the decedent's death. Such transfer is effective upon receipt of an order
246 transferring inherited interests from the Judiciary pursuant to section 205 of the Indian
247 Land Consolidation Act.

248 (1) An order transferring inherited interests may not be granted if:

249 (A) While the decedent's estate is pending, the non-Indian devisee
250 denounces his or her interest in favor of a Tribal member person;

251 (B) The interest is part of a family farm that is devised to a member of the
252 immediate family of the decedent, provided that such a restriction
253 ~~must~~shall be recorded as part of the deed relating to the interest involved;
254 or

255 (C) The devisee agrees in writing that the Nation may acquire the interest
256 for fair market value only if the interest is offered for sale to a person or
257 entity that is not a member of the immediate family of the owner of the
258 interest.

259 (e) Easements for Landlocked Properties. The Division of Land Management and the
260 Oneida Land Commission shall jointly develop rules regarding requests for easements for
261 landlocked properties.

262 601.7-4. Division of Land Management shall work with the Oneida Law Office in order to
263 pursue an involuntary transfer of title.

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265 **601.8. Probate**

266 601.8-1. The Division of Land Management shall process and administer probate estates and,
267 where necessary, shall refer probate estates to the Oneida Judiciary for formal administration.
268 The Division of Land Management and the Oneida Land Commission shall jointly create any
269 rules necessary to administer probate estates. The Division of Land Management shall:

- 270 (a) Process applications for probate administration;
271 (b) Receive proof of heirship demonstrating a party is entitled to receive an intestate
272 decedent's property pursuant to applicable laws and rules;
273 (c) Receive consent to serve forms and in undisputed matters, issue domiciliary letters;
274 (d) Require and receive affidavits of service;
275 (e) Receive waiver and consent to probate administration forms and any related
276 affidavits;
277 (f) Issue notice to creditors of the probate's administration, receive creditor claims for
278 consideration and settlement, and issue discharge of creditors when appropriate;
279 (g) Receive and process all estate inventories;
280 (h) Receive and process, when possible, land transactions in accordance with this law and
281 receive proof of recording documents;
282 (i) Receive estate receipts;
283 (j) In undisputed matters, receive and process statement of personal representative to
284 close estate and issue discharge of personal representative; and
285 (k) Refer disputed matters to the Judiciary, transfer probate and related documents, and
286 participate in the Judiciary's proceedings as necessary.

287 601.8-2. The Judiciary shall hear and administer disputed probate estates or matters requiring
288 appointment of a guardian ad litem and shall have all the above powers conferred upon the
289 Division of Land Management in such cases. In addition, the Judiciary shall hear and administer
290 probate estates in which the Division of Land Management seeks appointment as a personal
291 representative.

292
293 **601.9. Leasing of Real Property**

294 601.9-1. The ~~Comprehensive Housing Division shall administer and process all leasing of~~
295 ~~Tribal land for residential purposes.~~ The Division of Land Management shall administer and
296 process all leasing of Tribal land for residential, agricultural and commercial purposes:

297 ~~(a) For the purposes of this law, leasing refers to all leases made pursuant to in~~
298 ~~accordance with the Leasing law and all rental agreements made pursuant to the~~
299 ~~Landlord-Tenant law.~~

300 ~~(b) ———.~~ The Leasing law definition of Tribal land does not include Tribal fee land, ~~however;~~
301 pursuant to this law, the Division of Land Management shall administer and process all leases of
302 Tribal fee land lasting longer than one (1) year that are not made as part of the homeownership
303 program ~~which uses~~ using federal funding ~~must be administered and processed using in~~
304 accordance with the Leasing law.

305
306 **601.10. Records**

307 601.10-1. *Purpose.* The Division of Land Management shall oversee the administration of the
308 Oneida Nation Register of Deeds which shall accept and record documents related to real
309 property located within the ~~reservation~~ Reservation.

310 601.10-2. *Types of Records.* The Oneida Nation Register of Deeds may only accept documents
311 that provide evidence of activities affecting real property title, preserve the record of a title

312 document and give constructive notice of changes to a title document. Further, said documents
313 | ~~must~~shall be originals, signed duplicates or certified copies. The following documents may be
314 accepted by the Oneida Nation Register of Deeds.

- 315 (a) Deeds;
- 316 (b) Probate orders;
- 317 (c) Mortgages and other valid liens;
- 318 (d) Easements, covenants, and restrictions;
- 319 (e) Certified survey maps and plats of survey;
- 320 (f) Patents;
- 321 (g) Declarations of involuntary transfer or taking;
- 322 (h) Satisfactions;
- 323 (i) Leases made pursuant to the Leasing law;
- 324 (j) Home ownership agreements made pursuant to the Landlord-Tenant law;
- 325 (k) Marriage agreements; and
- 326 (l) Correction of title defects.

327 601.10-3. *Accessibility*. The Oneida Nation Register of Deeds shall provide open access to land
328 records and title documents.

329 601.10-4. *Trust Land*. All documents pertaining to Tribal trust land and Individual trust land
330 shall be recorded with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs
331 Land Titles and Records Office.

332 601.10-5. *Tribal Seal*. The Nation’s Secretary shall provide the Division of Land Management
333 with the Nation’s seal to be used to authenticate documents which are certified by the Oneida
334 Nation Register of Deeds.

335
336 | **601.11. Real Estate ~~Licensing and Certification~~Education Requirements and**
337 **Certifications**

338 601.11-1. *Wisconsin Real Estate ~~License-Education and Exam~~ Required*. All persons engaging
339 in the acquisition of Tribal fee land on behalf of the Nation, specifically those performing real
340 estate closings, shall ~~have and maintain a valid pass the~~ Wisconsin ~~real estate~~ Real Estate License
341 Exam. ~~Such persons are not required to obtain a Wisconsin Real Estate License, but are required~~
342 ~~to fulfill the pre-license-~~

343 ~~(a) ——— education requirement, pass the licensing exam and fulfill a minimum of twelve (12)~~
344 ~~hours or four (4) courses of continuing education requirements as required of Wisconsin real~~
345 ~~estate licensees. The Division of Land Management Director shall select which continuing~~
346 ~~education courses are required and the Oneida Law Office shall provide the Director with a~~
347 ~~recommendation. In addition to Wisconsin’s minimum education requirements as applied to the~~
348 ~~Nation’s real estate employees in this law, the Division of Land Management shall require such~~
349 ~~employees to attend real estate training specific to the Nation’s goals and unique positions as the~~
350 ~~Oneida Law Office shall offer on an as-needed basis.~~

351 ~~(a) While Wisconsin real estate law allows ~~brokers~~persons engaged in the sale of real~~
352 ~~estate to earn a commission-based on real property transactions~~, persons acquiring Tribal
353 fee land on behalf of the Nation are regular employees of the Nation and, therefore, shall
354 waive any commission for which they might otherwise be eligible.

355 ~~(b) All persons engaging in the acquisition of Tribal land shall comply with the~~
356 ~~requirements and conduct standards applicable to the maintenance of a Wisconsin real~~
357 ~~estate license.~~

358 | (b) It is critical to the Oneida Nation’s goal to reacquire property within the original
359 | Reservation boundaries to have employees educated and experienced in executing real
360 | estate transactions. Accordingly, the Division of Land Management shall employ a
361 | minimum of one (1) employee whose primary focus is real estate acquisitions and shall
362 | ensure that a minimum of two (2) employees are educated and trained as backups to the
363 | primary.

364 601.11-2. *TAAMS Certification Required.* All persons responsible for encoding leasing
365 information shall obtain a TAAMS certification, which includes, but is not limited to, the
366 following positions:

- 367 (a) Residential and Commercial Leasing Specialists;
- 368 (b) Land Title and Trust Manager; and
- 369 (c) Title Examiner.

370 601.11-3. *Fiduciary Responsibility.* All persons engaged in the buying or selling of Tribal land
371 shall, at all times, act as a fiduciary to the Nation. Further, all such persons shall comply with all
372 applicable Tribal and federal laws.

374 **601.12. Organization**

375 601.12-1. *Comprehensive Housing Division.* The Comprehensive Housing Division shall
376 oversee all residential transactions, excluding residential leases, within the
377 ~~reservation~~Reservation and shall process and administer said transactions using the applicable of
378 the Landlord-Tenant law, the Mortgage and Foreclosure law and/or the Eviction and Termination
379 law. In addition, the Oneida Land Commission and the Comprehensive Housing Division shall
380 exercise joint rulemaking authority to provide process requirements, including but not limited to
381 advertising, notice, prequalification, and selection, that apply in all circumstances when the
382 Nation is selling a residential property.

383 601.12-2. *Oneida Land Commission.* The Oneida Land Commission is comprised of seven (7)
384 elected Tribal members and shall:

- 385 (a) Interpret the provisions of this law and create policy to guide the Division of Land
386 Management in implementing the same;
- 387 (b) Approve or deny all easements and land use licenses;
- 388 (c) Review and adopt the Division of Land Management’s standard operating procedures
389 for entering into agriculture and commercial leases pursuant to the Leasing law;
- 390 (d) Approve or deny all acquisition of Tribal land;
- 391 (e) Allocate and assign land uses to all Tribal land, except those uses governed by the
392 Public Use of Tribal Land law, based on rules which the Oneida Land Commission shall
393 develop; and
- 394 (f) Name all buildings, roads, parks and the like on Tribal land.

395 601.12-3. *Division of Land Management.* The Division of Land Management shall implement
396 this law in accordance with the policy directives provided by the Oneida Land Commission. The
397 Division of Land Management shall:

- 398 (a) Forward requests for easements and land use licenses to the Oneida Land
399 Commission based on the easement and land use license rules jointly developed by the
400 Division of Land Management and the Oneida Land Commission;
- 401 (b) Administer and oversee the Oneida Nation Register of Deeds;
- 402 | (c) Enter into and administer residential, agricultural and commercial leases pursuant to
403 the Leasing law and the Eviction and Termination law and any corresponding rules;
- 404 (d) Prepare title reports and process trust transactions; and

405 (e) Process land acquisition transactions as approved by the Oneida Land Commission.

406

407 *End.*

~~408~~

410

411 Adopted - BC-5-29-96-A

412 Amended-BC-3-01-06-D

413 Amended-BC-04-28-10-E

414 Amended – BC-02-25-15-C

415 Amended-BC-05-13-15-B

Title 6. Property and Land – Chapter 601
REAL PROPERTY
Tok^ske Kayanl^hsla Tsi> Ni>yohuntsya=#
The real/certain laws of the territory of the nation

601.1. Purpose and Policy	601.7. Title Transfer
601.2. Adoption, Amendment, Repeal	601.8. Probate
601.3. Definitions	601.9. Leasing of Real Property
601.4. General Provisions	601.10. Records
601.5. Holding of Ownership	601.11. Real Estate Education Requirements and Certifications
601.6. Legal Descriptions	601.12. Organization

- 1 **601.1. Purpose and Policy**
- 2 601.1-1. *Purpose.* The purpose of this law is to provide regulations and procedures for the
- 3 transfer, control and management of the territory within the Reservation; to integrate these
- 4 regulations and procedures with the real property laws and practices of other federal and state
- 5 sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and
- 6 certification requirements for the Nation’s employees dealing with real property transactions.
- 7 601.1-2. *Policy.* It is the policy of the Nation to set out the responsibilities and expectations for
- 8 persons purchasing and/or managing real property on behalf of the Nation and/or within the
- 9 Reservation and to provide real property holder’s rights and responsibilities. In addition, it is the
- 10 Nation’s policy that probated estates shall be settled expeditiously and without undue delay.
- 11
- 12 **601.2. Adoption, Amendment, Repeal**
- 13 601.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-29-96-A
- 14 and amended by resolutions BC-3-01-06-D, BC-04-28-10-E, BC-02-25-15-C and BC-05-13-15-
- 15 B.
- 16 601.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to
- 17 the procedures set out in the Legislative Procedures Act.
- 18 601.2-3. Should a provision of this law or the application thereof to any person or
- 19 circumstances be held as invalid, such invalidity shall not affect other provisions of this law
- 20 which are considered to have legal force without the invalid portions.
- 21 601.2-4. In the event of a conflict between a provision of this law and a provision of another
- 22 law, the provisions of this law shall control, provided that, the Land Ordinance is applicable only
- 23 to valid land assignments existing as of January 1, 2016 and is hereby repealed upon the
- 24 expiration of the last existing land assignment.
- 25 601.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
- 26
- 27 **601.3. Definitions**
- 28 601.3-1. This section shall govern the definitions of words and phrases used within this law.
- 29 All words not defined herein shall be used in their ordinary and everyday sense, subject to 601.4-
- 30 5.
- 31 (a) “Broker” means a person who acts as an agent and negotiates the sale, purchase or
- 32 rental of real property on behalf of others for a fee.
- 33 (b) “Certified Survey Map” means a map which provides the legal description of real
- 34 property and is officially filed and approved by the county, Tribal or municipal
- 35 governments.

- 36 (c) “Comprehensive Housing Division” means the entity responsible for housing matters
37 as defined by Oneida Business Committee Resolution.¹
38 (d) “Easement” means a real property right to cross or otherwise utilize the land of
39 another for a specified purpose.
40 (e) “Estate” means a person’s interest in real property or other property.
41 (f) “Fiduciary” means a person required to act for the benefit of another person on all
42 matters within the scope of their relationship and by such a relationship owes another
43 duties of good faith, trust, confidence and candor. For the purposes of this law, both
44 brokers and salespersons are “fiduciaries.”
45 (g) “Guardian Ad Litem” means a guardian appointed by the Judiciary on behalf of an
46 incompetent or minor party.
47 (h) “Individual Fee Land” means real property held in fee status by an individual or
48 group of individuals.
49 (i) “Individual Trust Land” means individual Tribal land held in trust by the United
50 States of America for the benefit of a Tribal member.
51 (j) “Judiciary” means the judicial system that was established by Oneida General Tribal
52 Council resolution GTC-01-07-13-B to administer the judicial authorities and
53 responsibilities of the Nation.
54 (k) “Land Use License” means an agreement entered into by the Nation providing a party
55 the right to occupy and/or utilize a specified piece of Tribal land for a specific purpose
56 and a specific duration, which may require the Nation to be compensated for such use.
57 (l) “Leasehold Mortgage” means a mortgage, deed of trust, or other instrument that
58 pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the
59 lessee to a lender or other mortgagee.
60 (m) “Nation” means the Oneida Nation.
61 (n) “Personal Representative” means a person to whom authority to administer a
62 decedent’s estate have been granted by the Division of Land Management or the
63 Judiciary.
64 (o) “Probate” or “Administration” means any proceeding relating to a decedent’s estate,
65 whether there is or is not a will.
66 (p) “Real Property” means land and anything growing on, attached to, or erected on the
67 land, excluding anything that may be severed without injury to the land.
68 (q) “Reservation” means all the property within the exterior boundaries of the
69 Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida
70 7 Stat. 566, and any lands added thereto pursuant to federal law.
71 (r) “Restricted Fee Status” means an interest in real property which includes a provision
72 in the deed or will that, upon the happening or failure to happen of a certain event, the
73 title of the purchaser or devisee will be limited, enlarged, changed or terminated.
74 (s) “Rule” means a set of requirements, including fee schedules, enacted by the
75 Comprehensive Housing Division, Division of Land Management and/or the Oneida
76 Land Commission in accordance with the Administrative Rulemaking law based on
77 authority delegated in this law in order to implement, interpret and/or enforce this law.

¹ See BC Resolutions 08-10-16-L, 10-12-16-B and 10-12-16-D defining the Comprehensive Housing Division for purposes of the Mortgage and Foreclosure law, Eviction and Termination law and Landlord-Tenant law respectively..

78 (t) “TAAMS” (Trust Asset and Accounting Management System) means the Bureau of
79 Indian Affairs system for maintaining and tracking land title documents and all legal
80 documents relating to land transactions.

81 (u) “Title Status Report” means a report issued by the Bureau of Indian Affairs after a
82 title examination which shows the proper legal description of a tract of Tribal land;
83 current ownership, including any applicable conditions, exceptions, restrictions or
84 encumbrances on records; and whether the land is in unrestricted, restricted, trust, or
85 other status as indicated by the records in a Land Titles and Records Office. (v) “Tribal
86 Fee Land” means Tribal land held in fee status by the Nation within the Reservation.

87 (v) “Tribal Land” means Tribal fee land and Tribal trust land.

88 (w) “Tribal Member” means an individual who is an enrolled member of the Nation.

89 (x) “Tribal Trust Land” means the surface estate of land or any interest therein held by
90 the United States in trust for the Nation; land held by the Nation subject to federal
91 restrictions against alienation or encumbrance; land reserved for federal purposes; and/or
92 land held by the United States in trust for the Nation under Section 17 of the Indian
93 Reorganization Act, 25 U.S.C §477, et. seq.

94
95 **601.4. General Provisions**

96 601.4-1. *Applicable Real Property.* The provisions of this law extend to all Tribal land, Tribal
97 member’s individual fee land, and individual trust land within the Reservation boundaries and all
98 Tribal trust land.

99 601.4-2. *Tribal Land Base.* The Division of Land Management shall administer all transactions
100 which add real property to the Tribal land base under the provisions of this law.

101 601.4-3. *Sale of Tribal Land Prohibited.* The sale of Tribal land is specifically prohibited by
102 this law, unless the intent of the transaction is the consolidation or partition of Tribal trust land
103 and/or individual trust land.

104 601.4-4. *New Land Assignments Prohibited.* The Nation may not acknowledge any new land
105 assignments. Further, in order to be eligible for a Tribal loan issued against a real property
106 interest held as a land assignment, the land assignment shall first be converted to a residential
107 lease.

108 601.4-5 *Wisconsin Probate Code and its Related Chapters.* In instances where the Nation
109 lacks definition, procedure, or legal precedent in a probate matter, the Nation shall use
110 Wisconsin’s Probate Code and its related chapters for guidance.

111 601.4-6. *Wisconsin Real Property Law.* The Nation shall follow all applicable portions of the
112 Wisconsin Real Property Law when acquiring individual fee land.

113 601.4-7. *No Waiver of Sovereign Immunity.* Nothing in this law may be construed as a waiver
114 of the Nation’s sovereign immunity.

115
116 **601.5. Holding of Ownership**

117 601.5-1. Interests in real property by more than one (1) person may be held in the following
118 ways:

119 (a) *Joint Tenancy with the Right of Survivorship.* Pursuant to this ownership method
120 each owner has an equal, undivided interest in the real property. When an owner dies,
121 his/her share is divided among the remaining owners; the last living owner owns the
122 entire property.

123 (1) Real property owned by married persons is held under this mechanism unless
124 they have executed a valid marital property agreement specifically stating that the
125 real property in question is held as tenants in common.

126 (b) *Tenancy in Common*. Pursuant to this ownership method each owner has a
127 percentage of divided interest in the real property. When an owner dies, his/her interest
128 is divided among his/her devisees or heirs.

129 (1) Real property owned by more than one (1) person, other than married persons,
130 is owned under this mechanism unless a deed or transfer document specifically
131 states the real property is held as joint tenants with rights of survivorship.
132

133 **601.6. Legal Descriptions**

134 601.6-1. The legal description for any real property transferred under this law shall be derived
135 from a certified survey map or survey completed by a registered land surveyor according to
136 currently accepted minimum industry standards for property surveys. If the plat of survey
137 changes the legal description of the certified survey map for the same piece of property, the
138 certified survey map's legal description shall be used on transfer documents along with the
139 survey description, which shall be designated as "Also Known As ..." Section, township, range
140 and fourth principal meridian shall be included in all legal descriptions.

141 601.6-2. Every land survey shall be made in accordance with the county register of deeds'
142 records for fee land, and in accordance with the Oneida Nation Register of Deed's records for
143 Tribal Trust Lands and Individual Trust Lands. The surveyor shall acquire data necessary to
144 retrace record title boundaries such as deeds, maps, certificates of title, title status reports, Tribal
145 leases, Tribal home purchase agreements, center line and other boundary line locations.

146 601.6-3. Legal descriptions defining land boundaries shall be complete, providing unequivocal
147 identification of line or boundaries.

148 601.6-4. All surveys prepared for the Nation shall comply with survey requirements outlined in
149 the Wisconsin Administrative Code, Chapter A-E7 and indicate setbacks, building locations and
150 encroachments, as applicable.

151 601.6-5. Legal descriptions shall be used on transfer documents formalizing a purchase, real
152 estate sale, lease, foreclosure, probate transfer, trust acquisition and Tribal resolutions.

153 601.6-6. When real estate is listed, noticed and/or advertised as available for sale, rent or lease
154 to Tribal members, the address is an adequate legal description of the real property.
155

156 **601.7. Title Transfer**

157 601.7-1. *Trust Acquisition*. The Division of Land Management shall use title companies duly
158 registered with the Department of Interior and approved by the Division of Land Management to
159 update abstracts or provide title insurance on real property scheduled for trust acquisition.

160 (a) The Division of Land Management shall ensure that title companies follow general
161 guidelines provided by the federal government in terms of form, content, period of
162 search, destroyed or lost records and abstracter's certificate.

163 (b) When researching land title for real property within the Reservation which is being
164 considered for trust acquisition, the Division of Land Management staff shall request the
165 title company to search the title back to the original allottee, in order to assure that
166 patents or Indian deeds were legally issued.

167 (c) Any valid liens or encumbrances shown by the commitment for title insurance shall
168 be eliminated before the title is transferred into trust.

169 (d) After land is in trust both a title search of county records and a title status report
170 requested by the Division of Land Management from the Bureau of Indian Affairs shall
171 verify all valid encumbrances, if any, on the title. For the purposes of this section, a valid
172 encumbrance is one that has been preapproved, in writing, by the Division of Land
173 Management based on a standard operating procedure that is effective upon approval by
174 the Oneida Land Commission.

175 (e) Division of Land Management applications to convert Tribal fee land into Tribal trust
176 land require an Oneida Land Commission resolution approving the said conversion.

177 601.7-2. *Deeds.* A deed is the formal document used by the Division of Land Management to
178 transfer title from one party to another.

179 (a) A valid deed shall:

180 (1) Be in writing;

181 (2) Identify the grantor (seller) and grantee (buyer);

182 (3) Provide the legal description of the real property;

183 (4) Identify the interest conveyed, as well as any conditions, reservations,
184 exceptions, or rights of way attached to the interest;

185 (5) Be signed by or on behalf of each of the grantors (sellers);

186 (6) Be signed by or on behalf of each spouse of each of the grantors (sellers), if
187 applicable; and

188 (7) Be delivered to the grantee (buyer).

189 (b) In addition to the requirements listed in section 601.7-3(a), a deed prepared for trust
190 acquisition shall include:

191 (1) The federal authority for trust acquisition;

192 (2) Any exceptions or exclusions from the State of Wisconsin's fees or other
193 transfer requirements;

194 (3) The approximate acreage of the real property being transferred to trust; and

195 (4) The authority and signature of the appropriate Department of Interior official
196 who accepts the real property into trust.

197 (c) A deed transferring fee simple title shall be recorded in the appropriate register of
198 deeds office, provided that, once the real property is in trust, the title shall be recorded
199 with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs Land Titles
200 and Records Office.

201 601.7-3. *Involuntary Transfer of Title.* All involuntary transfers of title require a hearing and
202 order from the Judiciary, and may occur in the following ways:

203 (a) Eminent Domain. Eminent domain is the right of the Nation's government to acquire
204 private land for public uses without the consent of private owners.

205 (1) For the purposes of this section, public uses include, but are not limited to,
206 environmental protection, streets, highways, sanitary sewers, public utility/sites,
207 waste treatment facilities and public housing.

208 (2) Prior to exercising eminent domain, the Nation shall first attempt to negotiate
209 an agreeable taking by making an offer to purchase based on an appraisal of the
210 real property. The appraisal amount may be based on an appraisal provided by
211 the Nation. In the event the property owner objects to the Nation's appraisal, they
212 may obtain an independent appraisal at their own cost. For the purposes of this
213 section, an appraisal means process for estimating a piece of real property's value.

214 (3) The Nation's exercise of eminent domain may be appealed to the Judiciary.

215 (b) Foreclosure. Foreclosures may occur subject to the Mortgage and Foreclosure law
216 when a Tribal member ceases payment on a leasehold mortgage.

217 (c) Tribal Land Consolidation. Section 207 of the Indian Land Consolidation Act
218 (Pub.L. No. 97-459, 96 Stat. 2515, and amended on October 30, 1984 by Pub.L. No. 98-
219 608, 98 Stat. 3171) is incorporated into this law, which provides a mechanism for real
220 property within the Reservation to escheat, or pass, to the Nation.

221 (1) Pursuant to section 207 of the Indian Land Consolidation Act, an ownership
222 interest in real property escheats, or passes, to the Nation under the following
223 circumstances, provided that the Nation shall provide just compensation for the
224 interest:

225 (A) The real property is within the Reservation boundaries;

226 (B) The decedent's ownership in the given parcel of land is two percent
227 (2%) or less of the total acreage; and

228 (C) The interest is incapable of earning one hundred dollars (\$100.00) in
229 any one (1) of the five (5) years immediately following the decedent's
230 death.

231 (2) A decedent's heirs may appeal a land consolidation under this section to the
232 Judiciary.

233 (3) Land consolidation is subject to the probate requirements, as included in this
234 law and accompanying rules.

235 (d) Transferring Interests Inherited by Non-Tribal Members. If the owner of an interest
236 of real property which is held in trust or restricted fee status located within the
237 Reservation devises such interest to a non-Tribal member, the Nation may acquire the
238 said interest by paying the fair market value of the interest determined as of the date of
239 the decedent's death. Such transfer is effective upon receipt of an order transferring
240 inherited interests from the Judiciary pursuant to section 205 of the Indian Land
241 Consolidation Act.

242 (1) An order transferring inherited interests may not be granted if:

243 (A) While the decedent's estate is pending, the non-Indian devisee
244 denounces his or her interest in favor of a Tribal member person;

245 (B) The interest is part of a family farm that is devised to a member of the
246 immediate family of the decedent, provided that such a restriction shall be
247 recorded as part of the deed relating to the interest involved; or

248 (C) The devisee agrees in writing that the Nation may acquire the interest
249 for fair market value only if the interest is offered for sale to a person or
250 entity that is not a member of the immediate family of the owner of the
251 interest.

252 (e) Easements for Landlocked Properties. The Division of Land Management and the
253 Oneida Land Commission shall jointly develop rules regarding requests for easements for
254 landlocked properties.

255 601.7-4. Division of Land Management shall work with the Oneida Law Office in order to
256 pursue an involuntary transfer of title.

257

258 **601.8. Probate**

259 601.8-1. The Division of Land Management shall process and administer probate estates and,
260 where necessary, shall refer probate estates to the Oneida Judiciary for formal administration.

261 The Division of Land Management and the Oneida Land Commission shall jointly create any
262 rules necessary to administer probate estates. The Division of Land Management shall:

- 263 (a) Process applications for probate administration;
- 264 (b) Receive proof of heirship demonstrating a party is entitled to receive an intestate
265 decedent's property pursuant to applicable laws and rules;
- 266 (c) Receive consent to serve forms and in undisputed matters, issue domiciliary letters;
- 267 (d) Require and receive affidavits of service;
- 268 (e) Receive waiver and consent to probate administration forms and any related
269 affidavits;
- 270 (f) Issue notice to creditors of the probate's administration, receive creditor claims for
271 consideration and settlement, and issue discharge of creditors when appropriate;
- 272 (g) Receive and process all estate inventories;
- 273 (h) Receive and process, when possible, land transactions in accordance with this law and
274 receive proof of recording documents;
- 275 (i) Receive estate receipts;
- 276 (j) In undisputed matters, receive and process statement of personal representative to
277 close estate and issue discharge of personal representative; and
- 278 (k) Refer disputed matters to the Judiciary, transfer probate and related documents, and
279 participate in the Judiciary's proceedings as necessary.

280 601.8-2. The Judiciary shall hear and administer disputed probate estates or matters requiring
281 appointment of a guardian ad litem and shall have all the above powers conferred upon the
282 Division of Land Management in such cases. In addition, the Judiciary shall hear and administer
283 probate estates in which the Division of Land Management seeks appointment as a personal
284 representative.

285

286 **601.9. Leasing of Real Property**

287 601.9-1. The Division of Land Management shall administer and process all leasing of Tribal
288 land for residential, agricultural and commercial purposes in accordance with the Leasing law.
289 The Leasing law definition of Tribal land does not include Tribal fee land; pursuant to this law,
290 the Division of Land Management shall administer and process all leases of Tribal fee land
291 lasting longer than one (1) year that are not made as part of the homeownership program using
292 federal funding in accordance with the Leasing law.

293

294 **601.10. Records**

295 601.10-1. *Purpose.* The Division of Land Management shall oversee the administration of the
296 Oneida Nation Register of Deeds which shall accept and record documents related to real
297 property located within the Reservation.

298 601.10-2. *Types of Records.* The Oneida Nation Register of Deeds may only accept documents
299 that provide evidence of activities affecting real property title, preserve the record of a title
300 document and give constructive notice of changes to a title document. Further, said documents
301 shall be originals, signed duplicates or certified copies. The following documents may be
302 accepted by the Oneida Nation Register of Deeds.

- 303 (a) Deeds;
- 304 (b) Probate orders;
- 305 (c) Mortgages and other valid liens;
- 306 (d) Easements, covenants, and restrictions;
- 307 (e) Certified survey maps and plats of survey;

- 308 (f) Patents;
- 309 (g) Declarations of involuntary transfer or taking;
- 310 (h) Satisfactions;
- 311 (i) Leases made pursuant to the Leasing law;
- 312 (j) Home ownership agreements made pursuant to the Landlord-Tenant law;
- 313 (k) Marriage agreements; and
- 314 (l) Correction of title defects.

315 601.10-3. *Accessibility*. The Oneida Nation Register of Deeds shall provide open access to land
316 records and title documents.

317 601.10-4. *Trust Land*. All documents pertaining to Tribal trust land and Individual trust land
318 shall be recorded with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs
319 Land Titles and Records Office.

320 601.10-5. *Tribal Seal*. The Nation's Secretary shall provide the Division of Land Management
321 with the Nation's seal to be used to authenticate documents which are certified by the Oneida
322 Nation Register of Deeds.

323

324 **601.11. Real Estate Education Requirements and Certifications**

325 601.11-1. *Wisconsin Real Estate Education and Exam Required*. All persons engaging in the
326 acquisition of Tribal fee land on behalf of the Nation, specifically those performing real estate
327 closings, shall pass the Wisconsin Real Estate License Exam. Such persons are not required to
328 obtain a Wisconsin Real Estate License, but are required to fulfill the pre-license education
329 requirement, pass the licensing exam and fulfill a minimum of twelve (12) hours or four (4)
330 courses of continuing education requirements as required of Wisconsin real estate licensees. The
331 Division of Land Management Director shall select which continuing education courses are
332 required and the Oneida Law Office shall provide the Director with a recommendation. In
333 addition to Wisconsin's minimum education requirements as applied to the Nation's real estate
334 employees in this law, the Division of Land Management shall require such employees to attend
335 real estate training specific to the Nation's goals and unique positions as the Oneida Law Office
336 shall offer on an as-needed basis.

337 (a) While Wisconsin real estate law allows persons engaged in the sale of real estate to
338 earn a commission, persons acquiring Tribal fee land on behalf of the Nation are regular
339 employees of the Nation and, therefore, shall waive any commission for which they
340 might otherwise be eligible.

341 (b) It is critical to the Oneida Nation's goal to reacquire property within the original
342 Reservation boundaries to have employees educated and experienced in executing real
343 estate transactions. Accordingly, the Division of Land Management shall employ a
344 minimum of one (1) employee whose primary focus is real estate acquisitions and shall
345 ensure that a minimum of two (2) employees are educated and trained as backups to the
346 primary.

347 601.11-2. *TAAMS Certification Required*. All persons responsible for encoding leasing
348 information shall obtain a TAAMS certification, which includes, but is not limited to, the
349 following positions:

- 350 (a) Residential and Commercial Leasing Specialists;
- 351 (b) Land Title and Trust Manager; and
- 352 (c) Title Examiner.

353 601.11-3. *Fiduciary Responsibility*. All persons engaged in the buying or selling of Tribal land
354 shall, at all times, act as a fiduciary to the Nation. Further, all such persons shall comply with all
355 applicable Tribal and federal laws.
356

357 **601.12. Organization**

358 601.12-1. *Comprehensive Housing Division*. The Comprehensive Housing Division shall
359 oversee all residential transactions, excluding residential leases, within the Reservation and shall
360 process and administer said transactions using the applicable of the Landlord-Tenant law, the
361 Mortgage and Foreclosure law and/or the Eviction and Termination law. In addition, the Oneida
362 Land Commission and the Comprehensive Housing Division shall exercise joint rulemaking
363 authority to provide process requirements, including but not limited to advertising, notice,
364 prequalification, and selection, that apply in all circumstances when the Nation is selling a
365 residential property.

366 601.12-2. *Oneida Land Commission*. The Oneida Land Commission is comprised of seven (7)
367 elected Tribal members and shall:

- 368 (a) Interpret the provisions of this law and create policy to guide the Division of Land
369 Management in implementing the same;
370 (b) Approve or deny all easements and land use licenses;
371 (c) Review and adopt the Division of Land Management’s standard operating procedures
372 for entering into agriculture and commercial leases pursuant to the Leasing law;
373 (d) Approve or deny all acquisition of Tribal land;
374 (e) Allocate and assign land uses to all Tribal land, except those uses governed by the
375 Public Use of Tribal Land law, based on rules which the Oneida Land Commission shall
376 develop; and
377 (f) Name all buildings, roads, parks and the like on Tribal land.

378 601.12-3. *Division of Land Management*. The Division of Land Management shall implement
379 this law in accordance with the policy directives provided by the Oneida Land Commission. The
380 Division of Land Management shall:

- 381 (a) Forward requests for easements and land use licenses to the Oneida Land
382 Commission based on the easement and land use license rules jointly developed by the
383 Division of Land Management and the Oneida Land Commission;
384 (b) Administer and oversee the Oneida Nation Register of Deeds;
385 (c) Enter into and administer residential, agricultural and commercial leases pursuant to
386 the Leasing law and the Eviction and Termination law and any corresponding rules;
387 (d) Prepare title reports and process trust transactions; and
388 (e) Process land acquisition transactions as approved by the Oneida Land Commission.
389

390 *End.*

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392
393

394 Adopted - BC-5-29-96-A
395 Amended-BC-3-01-06-D
396 Amended-BC-04-28-10-E
397 Amended – BC-02-25-15-C
398 Amended-BC-05-13-15-B