CHAPTER 67
REAL PROPERTY LAW
Tokʌ́ske Kayanlʌ́hsla Tsi? Ni?yohuntsya·té
The real/certain laws of the territory of the nation

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67.1. Purpose and Policy.

67.1-1. *Purpose*

(a) The purpose of this Law is to provide regulations and procedures for the transfer, control and management of the territory within the exterior boundaries of the Reservation of The Oneida Tribe of Indians of Wisconsin and such other lands as may be added within or without said boundary line; and to integrate these regulations and procedures with the present real property laws and practices of other federal and state sovereigns which may hold applicable jurisdiction within the reservation.

(b) In addition, this Law establishes a training and licensing mechanism for any person who lists, sells, buys, exchanges, leases, rents, or deals in any way with real property coming under the scope of this Law.

(c) Nothing in this Law shall be construed as a waiver of the sovereign immunity of the Oneida Tribe of Indians of Wisconsin.

67.1-2. *Policy*

(a) The provisions of this Law shall extend to all tribal lands and waters held in trust, all tribal lands and waters held in fee status, all fee status lands under the control of individual Oneida members, all heirship lands and waters and all individual and tribal trust lands and waters, all within the exterior boundaries of the Oneida Tribe of Indians of Wisconsin Reservation; and to such other lands as may be hereafter added, both within and without the exterior boundaries of the Oneida Reservation, under any law of the United States, except as otherwise provided by law.

(b) The licensing provisions of this Law shall extend to any person who lists, sells, buys, exchanges, leases, rents or deals in any way with real property coming under 1-3a, of this Law, including employees of the tribe.

(c) Any transaction which would add property to the tribal land base shall be administered through the Division of Land Management under the provisions of this Law.

(d) The sale of tribal land is specifically prohibited under this Law, except for the purposes of consolidation or partition of property.

(e) It is not intended by this Law to repeal, abrogate, annul, impair or interfere with any rules, regulations, or permits previously adopted or issued pursuant to tribal or federal laws. Further, it is intended that Wisconsin law be considered as an integral part of real property transfer occurring within or without the Reservation, insofar as the transaction is between a non-Oneida person(s) who hold fee simple title to land within the Reservation and the Tribe or a tribal member.

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(b) The licensing provisions of this Law shall extend to any person who lists, sells, buys, exchanges, leases, rents or deals in any way with real property coming under 1-3a, of this Law, including employees of the tribe.

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(e) It is not intended by this Law to repeal, abrogate, annul, impair or interfere with any rules, regulations, or permits previously adopted or issued pursuant to tribal or federal laws. Further, it is intended that Wisconsin law be considered as an integral part of real property transfer occurring within or without the Reservation, insofar as the transaction is between a non-Oneida person(s) who hold fee simple title to land within the Reservation and the Tribe or a tribal member.

(f) Expenses and Fees. The Land Commission shall establish an equitable fee schedule for each activity or service provided in this Law. All fees collected will be used for the maintenance of services and management of lands which come under the authority of this Law.[1]

67.2. Adoption, Amendment, Conflicts.

67.2-1. This Law was adopted by the Oneida Business Committee by BC-5-29-96-A and amended by BC-3-01-06-D, BC-04-28-10-E and BC-02-25-15-C.

67.2-2. This Law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

67.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

67.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

76.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

67.3. Rules Of Statutory Construction.

67.3-1. General words are understood to be restricted in their meaning by more specific words which came before.

67.3-2. If the meaning of a general word cannot be reconciled with the meaning of a specific word in this Law the specific word will control.

67.3-3. When a series of words of general meaning is followed by words of limitation, the limitation will apply only to the last word in the list, unless otherwise stated.

67.3-4. The word "shall" is mandatory and the word "may" is permissive.

67.3-5. The Law should be read as a whole. The words are not meant to be isolated, and their meaning must be found in reference to the statement as a whole.

67.3-6. If a later enacted Law or statute cannot be read in agreement with an earlier enactment, the later enactment will control when interpreting the meaning from context.

67.3-7. "Land" is used to mean the earth's surface extending downward to the center of the earth and upward to infinity, including things permanently attached by nature, such as tree and water.

67.3-8. "Real Estate" is used to mean the earth's surface extending downward to the center of the earth and upward to infinity, including all things permanently attached to it, whether natural or permanent man-made additions.

67.3-9. "Real Property" or "Property" is used to mean the earth's surface extending downward to the center of the earth and upward to infinity, including all things permanently attached to it,

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[1] Other laws that are relevant to the purpose and implementation of this Law include:

Oneida Shoreland Protection Ordinance
Oneida Zoning Ordinance
Oneida Administrative Procedures Act
25 CFR 150-179 (Land and Water)
25 CFR 15 (Probate)
25 CFR 261-265 (Heritage Preservation)
Wisconsin Statutes and Administrative Code relating to the practice of Real Estate
State and Federal Laws specifically cited in Ordinance

whether natural or permanent man-made additions, plus the bundle of legal rights which include control, exclusion, possession, disposition and enjoyment.
67.3-10. The word "Person" when used in this Law includes individuals, corporations or partnerships.

67.4. Definitions.
67.4-1. Accounting. The responsibility of a broker to report the status of all funds received from or on behalf of the principal.
67.4-2. Agency. Any tribal entity, board, commission, committee, department or officer authorized by the Oneida Tribe to propose Law/rules for adoption by the Oneida Business Committee. The term "Agency" shall not include the Oneida Business Committee or a tribal appeals body.
67.4-3. Appraisal. A process of estimating a property's value.
67.4-4. Attorney. A person trained and licensed to represent another person in court, to prepare documents defining or transferring rights in property and to give advice or counsel on matters of law.
67.4-5. Broker. A person who acts as an agent and negotiates the sale, purchase or rental of property on behalf of others for a fee, and must be licensed under this Law under certain circumstances.
67.4-6. Bundle of Rights. The "rights" of ownership include the right of possession, the right to control the property within the framework of the law, the right of enjoyment, the right of exclusion and the right of disposition.
67.4-7. Buyer. The person who hires a broker to find a parcel of real estate that has certain characteristics or is usable for specific purposes; or the person who buys a piece of real estate from a seller broker or salesperson.
67.4-8. Care. The broker must exercise a reasonable degree of care and skill while transacting the business of the principal.
67.4-9. Certified Survey Map. A map officially filed and approved by the County, Tribal or municipal governments, which provides the legal description of any land in question.
67.4-10. Contested Cases. A proceeding before an Agency in which an opportunity for a hearing before the Agency is required by law prior or subsequent to the determination of the Agency of the legal rights, duties, or privileges of specific parties unless otherwise provided for by tribal law. This includes the revocation, suspension or modification of a license or permit when a grant of such application is contested by a person directly affected by said licensing or permitting. See Oneida Administrative Procedures Act.
67.4-11. Counseling. Providing clients with competent independent advice based on sound judgment, on such things as alternative courses of action regarding the purchase, use and investment of property.
67.4-12. Development. The construction of improvements on land.
67.4-13. Disclosure. The broker's duty to keep the principal fully informed at all times of all facts or information the broker obtains that could affect the transaction.
67.4-14. Dual Agency. When a broker receives compensation from both buyer and seller in a transaction.
67.4-15. Education. The provision of information to both the real estate practitioner and the consumer.
67.4-16. Fiduciary. One who is placed in a position of trust and confidence and normally is responsible for the money and/or property of another. A broker and a salesperson are both fiduciaries.

67.4-17. Financing. Financing is the business of providing funds by means of a mortgage loan.
67.4-18. Fixtures. Articles that were once personal property but has been so affixed to land or a building that the law construes it to be part of the real estate.
67.4-19. Fraud. The intentional misrepresentation of a material fact in such a way as to harm or take advantage of another person. In addition to false statements about a property, the concept of fraud covers intentional concealment or nondisclosure of important facts.
67.4-20. Individual Fee Land. Land held in fee by an individual or group of individuals.
67.4-21. Individual Tribal Property. Real property owned by an Oneida Tribal member in fee or held in trust for that member by the United State of America.
67.4-22. Individual Trust Land. Land held by the United States of America in trust for the benefit of an individual Tribal member.
67.4-23. Intestate. One who dies without having made a will; or property not disposed of by will.
67.4-24. Judiciary. The judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
67.4-25. Law of Agency. The body of law that governs the rights and duties of principal, agent and third persons.
67.4-26. Mobile Home. A building which, when originally constructed, was prefabricated and on wheels to allow movement from one location to another with minimal modifications necessary to attach utilities. It is considered to be personal unless it is permanently affixed to the land, at which point it is considered real property.
67.4-27. Personal property or Personalty. All property that does not fit the definition of real property, and usually the characteristic of being "movable."
67.4-28. Plat Map. Map of a piece of property that may be a part of a larger parcel of real estate or may be composed of several smaller ones which the surveyor resurveys. This new map is called a Plat map, and it creates a new legal description which must be tied to the description on a Certified Survey Map(s), to be considered acceptable for transfer of property.
67.4-29. Probate. An official authentication of a will, and/or official administration of an estate of a deceased person.
67.4-30. Reservation. That area within the exterior boundaries as set out in the 1838 Treaty with the Oneida 7 Stat. 566, and that land purchased and held by the United States of America in trust for the Oneida Tribe of Indians of Wisconsin outside those exterior boundaries
67.4-31. Salesperson. A person who receives a fee or commission to work on behalf of the broker, and must be licensed under this Law under certain circumstances.
67.4-32. Subsurface Rights. The rights to natural resources lying below the earth's surface.
67.4-33. Sun Rights. A solar energy owner's right to access to the sun.
67.4-34. Surface Rights. The rights to use the surface of the earth within boundaries defined in a transfer of real property.
67.4-35. Tribal Fee Land. Land held in fee by the Oneida Tribe.
67.4-36. Tribal Property. Real property owned by the Oneida Tribe in fee or held for the Tribe by United States of America.
67.4-37. Tribal Trust Land. Land held by the United States of America in trust for the benefit of the Oneida Tribe.
67.4-38. Tribe. Oneida Tribe of Indians of Wisconsin. Also known as the Sovereign Oneida Nation in Wisconsin, and On^yote> a·ká.

67.5. Interests In Real Estate: Individual Or Tribal.

67.5-1. Fee Simple Absolute. The greatest interest of ownership or distribution in a parcel of land that it is possible to own i.e. no conditions. Sometimes simply designated as fee. Tribal individuals, non-tribal individuals and tribal government may hold fee interest in land within the Oneida Reservation.
67.5-2. Leasehold. The interest in fee or trust property that is qualified by some future determinant such as time, age, or an act/incident.
67.5-3. Fee or Trust subject to a Condition. An interest which includes a proviso in the deed or will that upon the happening or failure to happen of a certain event, the title of the purchaser or devisee will be limited, enlarged, changed or terminated.
67.5-4. Life Lease. A lease of the right of use and occupancy of Tribal Fee or Trust Lands for the life of an individual either Oneida tribal or non-tribal.
67.5-5. Trust. Land held by the United States of America in trust for the Oneida Tribe of Indians of Wisconsin, or for a member of this tribe.
67.5-6. Life Use, or Estate. A claim or interest in individual trust property by a non-tribal spouse, not amounting to ownership, and limited by a term of life of the person in whom the right is vested.

67.6. Holding Of Ownership.
67.6-1. Interests in land by more than one person may be held in the following ways:

(a) Joint tenancy with right of survivorship: Each owner has an equal, undivided interest in the property. As an owner dies, their share is divided among the remaining owners, so the last living owner owns the entire property.

(b) Tenancy in common. Each owner has a percentage interest in the property. As an owner dies, that owner's interest is divided among his or her devisees or heirs. Two or more individuals holding property are tenants in common unless:

(1) a deed, transfer document or marital property agreement specifically states the property is held as joint tenants with rights of survivorship; or

(2) a married couple holds the property without a marital property agreement that specifically states the property is held as tenants in common.

67.7. Legal Descriptions.
67.7-1. The legal description for any land transferred under this Law will be derived from a Certified Survey Map (CSM) or Plat of Survey completed by a registered Land Surveyor according to currently accepted minimum standards for property surveys. If the Plat of Survey changes the legal description of the CSM for the same piece of property, the CSM legal description will be used on transfer documents along with the Plat of Survey description designated **"Also Known as ..."** Section, Township, Range and Fourth Principal Meridian must be within all tribal legal descriptions.
67.7-2. Every land survey shall be made in accordance with the records of the County Register of Deeds for fee land, and in accordance with the records of the Oneida Division of Land Management for all trust lands. The surveyor shall acquire data necessary to retrace record title boundaries such as deeds, maps, certificates of title, Title Status Reports from the Bureau of Indian Affairs, Tribal Leases, Tribal Home Purchase Agreements, center line and other boundary line locations.
67.7-3. Legal description defining land boundaries shall be complete providing unequivocal identification of line or boundaries.

67.7-4. In addition to Survey Map requirements outlined in Wisconsin Administrative Code, Chapter A-E7, all surveys prepared for the Oneida Tribe should indicate setbacks, building locations and encroachments.
67.7-5. Legal descriptions will be used on transfer documents formalizing a purchase, real estate sale, lease, foreclosure, probate transfer to beneficiaries or trust acquisition and tribal resolutions indicating legislative approval.
67.7-6. When real estate is listed for sale or lease to tribal members, the address is considered an adequate legal description of the property.

67.8. Title Transfer.
67.8-1. General. It is presumed that the intentions of parties to any real property transfer are to act in good faith. For this reason, this shall be liberally construed when faced with conflict or ambiguity in order to effectuate the intentions of the parties.
67.8-2. The Division of Land Management shall use only those title companies duly registered with the Department of Interior and approved by the Division of Land Management to update abstracts or provide Title Insurance on real property scheduled for trust acquisition.

(a) Title Companies must follow general guidelines provided by federal government in terms of form, content, period of search, destroyed or lost records and Abstracter's Certificate.

(b) When researching Land title within the reservation which is being considered for trust acquisition, the Title Company will be requested to search the title back to the original allottee, to assure that patents or Indian Deeds were legally issued.

(c) Any valid liens or encumbrances shown by the Commitment for Title Insurance must be eliminated before the Title is transferred into Trust.

(d) After land is in trust, title search of County records is no longer acceptable. Title Status Reports from Oneida Division of Land Management or the Bureau of Indian Affairs shall be used to verify all valid encumbrances, if any, on the title. A valid encumbrance is one that has been preapproved, in writing, by the Division of Land Management.

67.8-3. The Warranty Deed is the formal document used by the Division of Land Management to transfer title from one party to another. It shall not be considered valid unless it is in writing and:

(a) Identifies the grantor and grantee;
(b) Provides the legal description of the land;
(c) Identifies the interest conveyed, as well as any conditions, reservations, exceptions, or rights of way attached to the interest.
(d) Is signed by or on behalf of each of the grantors;
(e) Is signed by or on behalf of each spouse, and
(f) Is delivered.

67.8-4. A Warranty Deed prepared for Trust Acquisition shall, in addition to that listed in 8-3, include the following:

(a) The federal authority for Trust Acquisition:
(b) Any exceptions or exclusions from State fees or other transfer requirements;
(c) The approximate acreage of the real property being transferred to Trust; and
(d) The authority and signature of the appropriate Department of Interior official who accepts the real property into Trust.

67.8-5. A Warranty Deed transferring fee simple title shall be recorded in the appropriate Register of Deeds office. Once the real property is in trust, the Title shall be recorded with the Oneida

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

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

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

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

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

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

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

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

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

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

67.9. Disposition Of Estates Of Deceased Tribal Members.

67.9-1. The purpose of this section is to formalize laws to handle the disposition of deceased tribal members' trust property, with or without a will. The intent of this section is to provide

procedures which make it possible for equitable and fair decisions to be made for the surviving family, as well as promoting ongoing peace and harmony within the community.

(a) Tribal members holding fee land within the reservation may use the laws and procedures of the State of Wisconsin or those of this Law.

(b) Tribal members holding trust land within the reservation shall use the laws and procedures of this Section.

67.9-2. Non-members of The Oneida Tribe and non-citizens of the United States cannot acquire Trust land through inheritance. Where interests are specifically devised to individuals ineligible to inherit the following options are provided:

(a) Sale of interest to the Oneida Tribe or an eligible heir for its fair market value;

(b) Acquire a life estate in the property if an ineligible spouse and/or minor child.

67.9-3. Interests of Heirs who cannot be found will be sold to the Oneida Tribe at fair market value, or to an eligible heir, and the money returned to the estate for distribution.

67.9-4. In the absence of any heir or devisee, interests will escheat to the Oneida Tribe of Indians of Wisconsin.

67.9-5. Personal property which does not come under the guidelines of this Law, and may be distributed at the traditional ten day meal by family members, include:

(a) Clothing, furnishings, jewelry, and personal effects of the deceased not valued at more than $100 per item.

(b) Ceremonial clothing or artifacts, including eagle feathers, beadwork, dance sticks, flutes, drums, rattles, blankets, baskets, pottery, medicines, and animal skins.

67.9-6. The Land Commission, or its designated sub-committee, shall make a declaratory ruling by authority of the Administrative Procedures Act, Section 9, in any case brought before them by any person claiming to be an heir of the deceased and requesting any of the following determinations:

(a) Heirs of Oneida members who die without a will (intestate) and possessed of fee or trust property coming under the authority of the Oneida Tribe of Indians of Wisconsin;

(b) Approve or disapprove wills of deceased Oneida members disposing of trust property;

(c) Accept or reject full or partial renunciations of interest;

(d) Allow or disallow creditors' claims against estates of deceased Oneida members;

(e) Decree the distribution of all assets of a deceased Oneida member.

67.9-7. The Staff Attorney for the Division of Land Management will prepare a file for each probate hearing within 30 days of receipt of a Request for Probate Hearing from anyone claiming to be an heir of the deceased. Extensions to this 30 day requirement shall be requested from the Land Commission when proven necessary to complete the file. Relatives and agencies will be asked to cooperate in developing a complete probate file containing:

(a) Family history information,

(b) Death certificate,

(c) Personal and Real Property Inventory,

(d) BIA-IIM Account Report,

(e) Creditor Claims,

(f) Original will, if any,

(g) Names, addresses and phone numbers of all parties-in-interest.

67.9-8. Definitions As Used In This Section

(a) Children And Issue: Includes adopted children and children of unwed parents where paternity has been acknowledged, or established by court decree. This does not include non-adopted step-children.

(b) Parties-in-interest: This includes:

(1) Heirs of the decedent

(2) A beneficiary named in any document offered for probate, such as the will of the decedent, land lease or sale agreement for real estate.

(3) A person named as administrator or personal representative in any document offered for probate.

(4) Additional persons as the Land Commission may by order include who may be affected by the actions of the Land Commission, or its designated sub-committee, whether by receipt of or denial of any property which is a part of the action.

(c) Heirs: Any person who is entitled under Tribal law to an interest in the property of a decedent.

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

(a) To the spouse:

(1) All Real Property.

(2) All other than Real Property if there are no surviving children of the decedent.

(3) 2 of other than Real Property of the decedent's estate if there are surviving children of the decedent, or children of any deceased child of the decedent (grandchildren) who take by right of representation.

(b) To Surviving Children and children of any deceased child of the decedent by rights of representation;

(1) All of the estate if there is no surviving spouse, divided equally to all in the same degree of kinship to the decedent. Surviving children of a deceased child of the decedent will divide their parent's share.

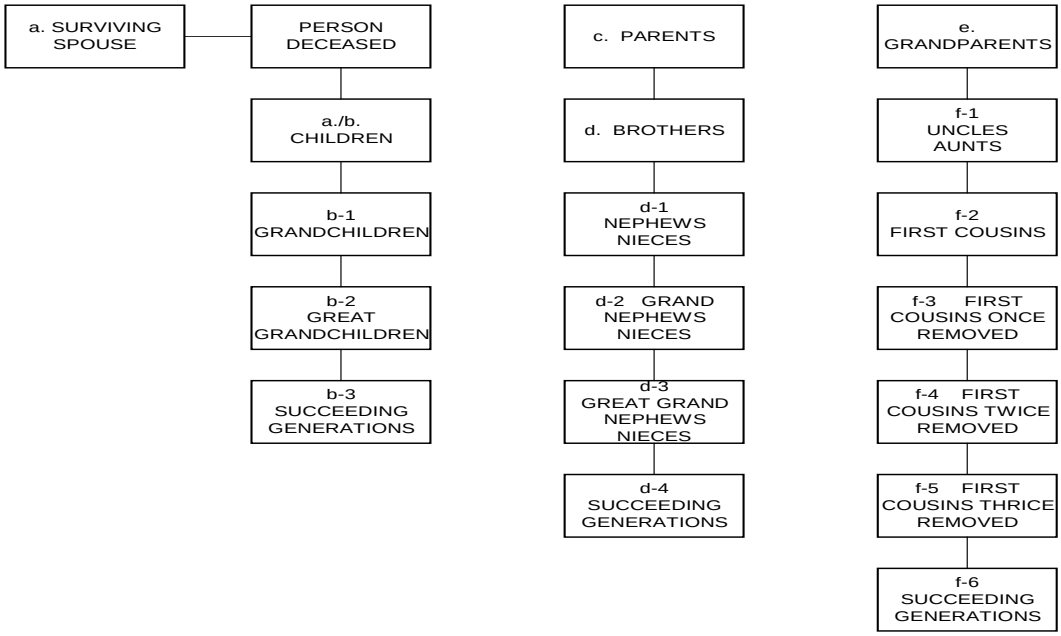
(c) All of the estate to the parents, equally divided, if no surviving spouse, children or children taking by right of representation.

(d) All of the estate to the brothers and sisters and children of deceased brothers or sisters by representation, divided equally, If no surviving spouse, children, or parents.

(e) All of the estate to the grandparents of the deceased divided equally, if no surviving spouse, children parents or brothers and sisters.

(f) All of the estate divided equally to lineal descendants of the grandparents of the deceased in the same order as (b) thru (e) if no surviving spouse, children, parents brothers/sisters, or grandparents of the decedent.

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



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

67.9-10. When the Probate File is complete, it will be placed on the agenda for review by the Land Commission, who will first review it for sufficiency. If the Land Commission determines the file is incomplete, it is sent back to the Staff Attorney with further instructions. If the probate file is determined to be complete, a hearing shall be scheduled at a time when most, if not all, parties can attend.

(a) *Notice*: All parties-in-interest will be sent a certified personal notice of the hearing to their current or last known address. The hearing notice will also be posted at NORBERT HILL CENTER, LITTLE BEAR DEVELOPMENT CENTER and other public places within the reservation, and published in at least two issues of the Kalihwisaks, the Milwaukee Sentinel/Journal, a Green Bay Paper and an Appleton paper. The notice will include time and place for hearing, agenda, approximate length of hearing and contact person. This notice will be provided at least 10 days before the hearing takes place.

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

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

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

(3) Ample time is provided for full discussion of the process, presentation of additional data for the file, and defining of problems or disputes to be entered into the record.

(4) All problems or disputes shall be settled in this hearing, with all parties-in-interest present and assisting in this resolution. This includes recommendations for clear partition of any real property held in undivided interest, and full discussion of creditor claims. This hearing shall be continued to another date only if unpredicted circumstances or unavailable information impedes the progress of resolution.

(5) When all problems, disputes and legal issues of the case have been resolved to the satisfaction of all parties-in-interest, the hearing body will issue its Final or Declaratory Ruling to the Director of Land Management, who will notify the Land

Commission and all parties involved in the hearing. This Final Ruling takes effect 60 days after mailings.

67.9-11. A party to a probate hearing may seek a rehearing of any of the above determinations listed in 9-3 upon provision of a written request to the Director of the Division of Land Management within 60 days after the Declaratory Ruling is issued. It is the responsibility of the aggrieved party to make certain that adequate documentation necessitating a rehearing is attached to the request.

(a) This request must include affidavits, witness list, summary of testimony and other support documents which would provide a justifiable reason why any new information was not available at the original hearing.

(b) If basis for rehearing is alleged procedural irregularities, the request shall include complete documentation of these irregularities.

(c) If basis for rehearing is the constitutionality of the Law or its procedures, a legal brief shall be attached to the request which clearly establishes the legal rationale for this claim.

(d) If basis for rehearing is that the determination is clearly erroneous, arbitrary and/or capricious, a clear statement or legal brief summarizing the party's rationale for believing this to be true shall be attached to the request.

67.9-12. The Director of Land Management will place the petition for rehearing on the first agenda of the Land Commission following the receipt of the written request.

(a) The Land Commission may deny a rehearing if there is insufficient grounds for the petition, or if the petition is not filed in a timely fashion.

(b) The Land Commission may order a rehearing based on the merit of the petition. The petition and supporting papers are then sent to all participants of the first hearing along with the date for the rehearing.

(c) If a rehearing is ordered, the Land Commission will adhere to the same notice requirements as in the first hearing. In addition, the hearing body should be composed of the same individuals responsible for the first hearing. Based on the information presented at the rehearing, the hearing body may adhere to the former Ruling, modify or vacate it, or make such further determinations that are warranted.

67.9-13. Any Declaratory Ruling given under this Section may be appealed to the Judiciary within 30 days from the date of the Ruling. The Ruling is sent to the Parties-in-interest with same documentation outlined in 9-6.

67.9-14. A party may petition the Judiciary to reopen the case within three years after the Declaratory Ruling has been mailed out if they can prove all of the following:

(a) They were not a participant in the first hearing;

(b) They were completely unaware that the first probate hearing occurred and they have proof that they were not duly noticed; and

(c) They have rights which were erroneously left out of the first probate hearing.

67.9-15. After looking at the record of the first hearing, the Judiciary may rule that the Petition To Reopen is not sufficient, or it may send an order to the Land Commission to provide a second hearing based on the evidence provided in the Petition.

67.9-16. All probate Declaratory Rulings of the Land Commission or Judgments of the Judiciary shall be recorded in the Division of Land Management.

(a) If fee land is part of the Ruling, it shall also be recorded at the County Register of Deeds.

(b) If trust land is part of the Ruling, it shall also be recorded at the Department of Interior Aberdeen Title Plant.

67.10. Real Estate Trust Accounts.

67.10-1. A property trust account or escrow account shall be established by the Division of Land Management to deposit money or property being held for the following purposes:

(a) To ensure receipt of mortgage satisfaction from seller;
(b) Tax, insurance and utility payments held in escrow;
(c) Security deposits on rental property;
(d) Administrative fee;
(e) Earnest money;
(f) Any other receipts pertaining to real property transfer.

67.10-2. Division of Land Management Staff shall deposit all funds received within 48 hours.

67.10-3. The name Real Estate Trust Account and the Division of Land Management's name shall appear on all checks, share drafts or drafts from this account.

67.10-4. Within 10 days of opening or closing the account, the Division of Land Management shall notify the tribe's Internal Auditor of the name and number of the account, person(s) authorized to sign trust account checks and the name of the depository institution.

67.10-5. Receipt of earnest money shall be written on the relevant document pertaining to the transaction.

67.11. Leasing Of Real Property.

67.11-1. All leasing of tribal land shall be processed through the Division of Land Management.

67.11-2. Commercial, Agricultural and Residential Leases of tribal trust land are available, with preference given to Oneida tribal citizens and programs.

67.11-3. All leases shall include the responsibility of the lessee and lessor regarding the following principles:

(a) Possession of Leased Premises;
(b) Improvements,
(c) Maintenance of Premises,
(d) Assignment and Subleasing,
(e) Options to Renew,
(f) Destruction of Premises,
(g) Termination of Lease,
(h) Breach of Lease,
(i) Use of Premises,
(j) Term of Lease,
(k) Security Deposit.

67.11-4. Assignment of leasehold interest for the purpose of financing shall be processed and recorded at the appropriate office by the Division of Land Management. No assignment or related encumbrance to the leasehold interest shall be valid without approval and recordation through procedures established by the Division of Land Management.

67.11-5. In the event of default by the Lessee of the terms of an approved encumbrance, and the Lessee's assignment reaches the point of sale or foreclosure, the Division of Land Management shall have the right to correct the default. If the default is corrected under these circumstances the Lessee will be subject to further proceedings under the Oneida Administrative Procedures Act, Section 10 Contested Cases, which may lead to termination of Lessee's lease, loss of improvements, revised payment schedule and/or Garnishment of Lessee's wages in order to pay the remainder of the default.

67.12. Records.

67.12-1. *Purpose.* The purpose of recording is to provide evidence of activities that effect land title; preserve a record of the title document; and give constructive notice of changes to the title.
67.12-2. *Types Of Record.* The Division of Land Management shall develop a system for timely recording of Oneida Reservation title documents, including the following:

(a) Deeds
(b) Probate orders
(c) Mortgages and other valid liens
(d) Easements, covenants, restrictions
(e) Certified Survey Maps and Plats of survey
(f) Patents
(g) Declarations of Involuntary Transfer or Taking
(h) Satisfactions
(i) Leases
(j) Contracts
(k) Home Purchase Agreements
(l) Correction of Title defects

67.12-3. *Recordable Documents.* The original, a signed duplicate, or certified copy of the title document listed above shall be submitted for recording.
67.12-4. *Accessibility.* It is the policy of the Division of Land Management to allow access to land records and title documents unless such access would violate the Privacy Act (5 U.S.C. 552a).
67.12-5. *Certification.* Upon request, the Legal Services office will conduct a title examination of a tract of land by a qualified title examiner and provide a title status report to those persons authorized by law to receive such information, along with certification of these findings by the staff attorney.
67.12-6. *Tribal Seal.* The Land Commission is empowered to have made and provided to the Division of Land Management the seal of the Oneida Tribe to be used to authenticate documents which are certified by the staff attorney.

67.13. Real Estate Licensing.
67.13-1. *General.* Any person engaged in the business of buying, selling, advertising, listing or leasing tribal property shall be required to hold a Tribal Property License. A license requirement is established in order to protect the tribe and its members from fraud, dishonesty or incompetence in the negotiation and transfer of real property.
67.13-2. *Who Must Be Licensed.*

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

(1) selling;
(2) listing;
(3) buying;
(4) leasing;
(5) renting;
(6) exchanging;
(7) negotiating any of above activities.

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

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

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

(a) persons who perform real property duties on their own property;

(b) receivers, trustees, administrators, executors, guardians or persons appointed by or acting under the judgment or order of any judicial system;

(c) tribal public officers while performing their official duties;

(d) banks, savings and loan associations and other designated financial institutions when transacting business within the scope of their corporate powers as provided by law;

(e) any licensed attorney who, incidental to the general practice of law, negotiates loans secured by real estate mortgages or encumbrances or transfers of real estate;

(f) employees, such as janitors, custodians or other employed by the tribe who show property or accept lease applications as an incidental part of their duties.

(g) persons who list, sell, or transfer real property for a cemetery association of a church, tribal program or other nonprofit organization.

67.13-4. *Licensing Procedure*

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

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

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

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

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

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

(A) 50% Tribal Law

(B) 30% Federal Law

(C) 20% Wisconsin Law

(2) A score of 75% or better on each portion of the examination is required to pass. If an applicant fails any of the three portions of the exam, that applicant will have six opportunities to retake the failed portion within the following six months. If that applicant cannot pass the failed portion within the following six months, he or she must retake the entire exam to qualify for a license.

(d) *Fees.* The following fees are applicable to tribal licensees. The Land Commission will establish an equitable fee schedule for the following:

(1) issuance of a tribal salesperson or broker license

(2) annual renewal fee for a tribal salesperson or broker license

(3) late penalty for filing within 30 days of expiration

(4) late penalty for filing within year of expiration

(5) Test fee

(e) *Licensing.* An applicant who has passed the appropriate license examination and has complied with the necessary requirements will be granted a license by the Oneida Land Commission. The license authorizes the licensee to engage in the activities of a tribal real property broker or salesperson as described in this Law. All licenses shall show the name and business address of the licensee.

67.13-5. *Rules Of Responsibility*

(a) The intent of this section is to establish minimum standards of conduct for real property licensees and to define that conduct which may result in Land Commission action to limit, suspend or revoke the license of a real property broker, salesperson or apprentice, or impose a fine.

(b) Violations of rules in this section may demonstrate that the licensee is incompetent, or has engaged in improper, fraudulent or dishonest dealings.

(1) A licensee has an obligation to treat all parties to a transaction fairly.

(2) In order to comply with Federal and Tribal law, licensees shall not discriminate against, nor deny equal services to, nor be a party to any plan or agreement to discriminate against a person because of sex, race, color, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, sexual orientation, age or ancestry.

(3) Licensees shall not provide services which the licensee is not competent to provide unless the licensee engages the assistance of one who is competent.

(4) Licensees shall be knowledgeable regarding laws, public policies and current market conditions on real estate matters and assist, guide and advise the buying and selling public based upon these factors.

(5) Licensees shall not advertise in a matter which is false, deceptive, or misleading.

(6) Licensees shall not personally accept any commission, rebate, or profit from any of their real property dealings.

(7) Licensees shall not engage in activities that constitute the unauthorized practice of law.

(8) Licensees shall not discourage any person from retaining an attorney.

(9) Licensees shall not exaggerate, misrepresent or conceal material facts in the practice of real estate.

(10) Licensees shall not knowingly transmit false information.

(11) No licensee shall draft or use any document which the licensee knows falsely portrays an interest in real estate.

(12) Licensee shall not disclose any of the terms of one prospective buyer's offer to purchase to any other prospective buyer.

(13) Licensee shall not issue checks upon trust accounts which contain insufficient funds.

(14) Licensees shall notify the Division of Land Management if they are convicted of a crime, except motor vehicle offenses, so that a determination can be made whether the circumstances of the crime are substantially related to the practice of a tribal real property broker or salesperson.

(15) Licensees shall not render services while the ability of the licensee to competently perform duties is impaired by mental or emotional disorder, drugs or alcohol.

(16) Licensee shall not enter into overlapping agreements that could be construed as dual agency.

67.13-6. *Penalties For Violation Of This Law*

(a) Fines for minor infractions may be imposed by the Land Commission for any amount up to $50.00. Minor infractions may include the first three infractions of the above listed offenses, or others as defined by the Land Commission.

(b) The Land Commission shall provide a fair hearing, as per Oneida Nation Administrative Procedure Act, Section 10. Contested Cases, for any person alleged to have violated this section, before a penalty is ordered.

(c) Major infractions of this section may lead to an action to limit, suspend or revoke the license of the defendant; disposition of a fine for any amount up to $500; and/or penalties and judgments authorized by the Oneida Administrative Procedures Act Section 10(e).

67.13-7. *Licensing Fee For Non-tribal Brokers.* The Division of Land Management is empowered to develop a licensing fee schedule and collection procedures for all brokers who enter a consensual agreement to sell property to the Oneida tribe and are not licensed by this Law. These fees will be used for maintenance of services and management of Real Property within the authority of this Law.

67.14. Real Estate Financing.

67.14-1. The goal of tribal loan programs is to maintain and improve the standard of living for tribal members, while protecting and expanding the Tribal Land base.

67.14-2. Consistent with available funds, the Division of Land Management shall provide loan programs for the following purposes:

(a) Financing the purchase or down payment of existing homes and lands,
(b) Construction of new homes,
(c) Repair and improvement to existing homes,
(d) Refinancing existing mortgages,
(e) Purchasing or refinancing mobile homes,
(f) Consolidation of Loans, and
(g) Real Estate Tax Arrearage.

67.14-3. *Eligibility Requirements For All Loans:*

(a) All applicants must be 21 years of age.
(b) Applicant(s) must be an enrolled member of the Oneida Tribe.
(c) Financed property must be located within the boundaries of the Oneida Reservation.
(d) Applicants must have an acceptable credit rating.

67.14-4. All loan programs are provided only to tribal members in order to respond to the Oneida Tribe's legislative purpose of expanding and maintaining tribal jurisdiction over all land within the boundaries of the Oneida Reservation, while fulfilling basic membership needs for adequate housing.

(a) The applicant for any loan must list one to three Oneida Tribal members who will inherit any interest in Real Property mortgaged by a Tribal loan program, upon death of the applicant.

(b) If the spouse of an applicant is a non-tribal member, he/she may continue to pay off the loan, as long as he/she agrees to list three tribal beneficiaries in case of death. Once the loan is satisfied, the designation of beneficiaries to the mortgaged interest in fee property will lapse.

(c) If the applicant and non-tribal spouse commence divorce proceedings, the Division of Land Management may

(1) refinance the enrolled member's loan balance so he/she may secure the entire property,

(2) provide an offer to purchase the entire property and pay off liens,

(3) consider some other financial agreement that would assist the tribal applicant in retaining property within the boundaries of the reservation.

(d) A non-tribal spouse shall sign an affidavit at the time that a tribal loan is accepted indicating he/she is informed of this regulation and consent to the tribal spouse receiving a mortgage against homestead property, held in fee, with this condition attached.

67.14-5. *Foreclosures*

(a) *Default.* Any Tribal Loan that is in default for three consecutive months is subject to foreclosure proceedings, provided that a Notice of Arrears, showing the increasing amounts payable to cure the default, has been sent to the loan holder(s) each month by the Loan Officer.

(b) *Decision To Foreclose.*

(1) After three notices, the Loan Officer will provide the Director of Land Management, and the Loan Committee, all documents and information necessary to determine whether or not foreclosure proceedings should be started.

(2) Any recommendation to foreclose will be put on the next Land Commission agenda for concurrence, scheduling of a hearing, and designation of a three-person hearing body.

(3) Each member of the three-person hearing body will receive $150 for being present at the scheduled hearing, reviewing all information presented, and providing a final decision, opinion, order or report based on their deliberations, except for employees of the Oneida Tribe who have permission to be a part of the hearing body as part of their job.

(4) The Director of Land Management will make provisions for necessary clerical support for the three-person hearing body.

67.15. Tribal Real Estate Taxes.

67.15-1. Regulations for the promulgation of a Real Estate Tax Code will be developed by the Division of Land Management by October 1, 1996, in order to provide for increasing costs for services provided to occupants of tribal land, such as environmental services, public roads, fire protection, recycling, garbage pick-up, water and sewer, transportation, traffic control, loans, and management of real property.

67.16. Organization.

67.16-1. General

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

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

67.16-2. Land Commission

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

(b) *Term of Office.* The terms of office for the Commissioners shall be three (3) years. Terms shall be staggered with expiring positions elected every year. The first elected

Land Commissioners shall serve according to the following formula, and staggering of terms shall begin thereafter:

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

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

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

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

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

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

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

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

67.16-3. Administration

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

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

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

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

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

End.

Adopted - BC-5-29-96-A
Amended-BC-3-01-06-D
Amended-BC-04-28-10-E
Amended – BC-02-25-15-C