

Chapter 71 Marriage

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What one does to get married

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71.1. Purpose and Policy

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

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

71.2. Adoption, Amendment, Conflicts

71.2-1. This law was adopted by the Oneida Business Committee by resolution BC-04-28-10-F and amended by resolutions BC-06-12-13-E, BC-05-27-15-A and BC-05-25-16-A.

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 This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

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

71.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

71.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

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

71.3. Definitions

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

(a) "Competent" means a person has attained the age of eighteen (18) years old and is able to make a legally binding commitment.

(b) "Court" means Family Court, which is a branch of the judicial arm of the Nation.

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

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

(e) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

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

- (g) "Marriage document" means that document issued by the Department which includes the marriage license as well as information concerning the marriage ceremony, the signatures of the witnesses and officiating person(s), and proof of filing.
- (h) "Marriage license" means that portion of the marriage document designated as such, which is the authorization for the marriage to take place.
- (i) "Nation" means the Oneida Nation.
- (j) "Officiating person" means the person or persons who perform the marriage ceremony.
- (k) "Reservation" means all the land within the exterior boundaries of the reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (l) "Rule" means a set of requirements, including citation fees and penalty schedules, enacted in accordance with the Administrative Rulemaking law.

71.4. Marriages, Generally

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

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

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

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

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

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

71.5. Marriage Document and Marriage Ceremony

71.5-1. *Fees.* Applicants are responsible for paying all fees at the time the application is filed. The Department shall promulgate rules that establish a fee schedule for a marriage license as long as those fees are consistent with this law.

71.5-2. *Marriage Document.* The Department shall issue a marriage document to the applicants within five (5) business days after the application is filed if, in addition to the other requirements in this law, the following conditions are met at the time a marriage license is applied for:

- (a) Either (1) or (2) applies to the applicants:
 - (1) each applicant:
 - (A) is a Tribal member; or
 - (B) resides on the reservation and is a member of an Indian tribe, band or community which is recognized by a state or the federal government.
 - (2) one of the applicants meets the requirements of section 71.5-2(a)(1)(A) or (B) and the other applicant consents to the Nation's jurisdiction to issue the license.

The completion of an application for a marriage license represents a person's consent to the Nation's jurisdiction to grant the license.

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

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

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

(e) The applicants pay any required fees.

71.5-3. *Objections.* Any relative of the applicants, Department official, or applicant that objects to an upcoming marriage may file a petition and sworn affidavit with the Court objecting to the marriage.

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

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

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

71.5-4. *Marriage Ceremony.*

(a) The marriage shall occur between six (6) days after the license is issued and thirty (30) days after the license is issued. The applicant may apply for a waiver of the initial five (5) day waiting period for an additional fee. The marriage license shall contain notification of these time limits.

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

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

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

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

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

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

71.5-5. *Officiating Persons.* The following persons are authorized as officiating persons under this law:

- (a) a traditional tribal practitioner or spiritual or religious leader and has registered with the Court; or
- (b) a Judge from the any branch of the Judiciary or a tribal, federal, or state judge or commissioner authorized to solemnize marriages under tribal, federal or state law; or
- (c) the Tribal Chairperson or a person designated by the Tribal Chairperson at the request of the persons being married; or
- (d) any ordained clergy person of any religious denomination, society, or sect; or
- (e) any person licensed by a religious body or appointed by a high-ranking clergy member, if the religious denomination, society, or sect allows the person to solemnize marriages; or
- (f) the parties themselves, by mutual declarations that they take each other as spouses, in accordance with the customs, rules, and regulations of any religious denomination, society, or sect to which either of the parties belongs; or
- (g) a former or retired Judge or Appeals Commissioner that served the Nation.

71.6. Marriages Conducted to Avoid the Law and Immaterial Irregularities

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

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

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

- (a) the officiating person(s) did not have the authority to solemnize the marriage; or
- (b) the marriage license was issued by a department or person who did not have jurisdiction to issue the license; or
- (c) the marriage license or application for the marriage license had an informality or irregularity; or
- (d) either or both of the witnesses to the marriage were incompetent.

71.7. Penalties

71.7-1. The Department shall promulgate rules that establish a fine schedule for persons who violate this law.

71.7-2. The Department shall be the responsible entity for the enforcement of this section.

71.7-3. All fines issued shall be paid to the Department within thirty (30) days of the issuance of the fine. Any person issued a fine under this law may contest the fine by filing an appeal with the Court prior to the deadline to pay the fine. The filing of an appeal shall stay the requirement to pay the fine. The notice of penalty issued shall inform the person penalized of the process to file his or her appeal.

End.

Adopted-BC-04-28-10-F
 Amended-BC-06-12-13-E
 Amended-BC-05-27-15-A
 Amended-BC-05-25-16-A