**Oneida Nation**
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov

# LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center
September 21, 2016 9:00 a.m.

**I. Call to Order and Approval of the Agenda**

**II. Minutes to be approved**

1. August 17, 2016 LOC Meeting Minutes

**III. Current Business**

1. Eviction and Termination Law
2. Landlord – Tenant Law
3. Real Property Law Amendments
4. Business Committee Meetings Law
5. Community Support Fund (Handout)

**IV. New Submissions**

1. Continuing Budget Resolution SOE

**V. Additions**

**VI. Administrative Updates**

1. Quarterly Report
2. Law Drafting SOP and Stylebook

**VII. Executive Session**

**VIII. Recess/Adjourn**



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# LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center
August 17, 2016 9:00 a.m.

**Present:** Brandon Stevens, Tehassi Hill, David P. Jordan
**Excused**: Jennifer Webster, Fawn Billie
**Others Present:** Jennifer Falck, Taniquelle Thurner, Maureen Perkins, Krystal John, Danelle Wilson, Don Miller, Pat Garvey, Tanya Webster, Dianne McLester-Heim, Rae Skenandore

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

Brandon Stevens called the August 17, 2016 Legislative Operating Committee meeting to order at 9:01 a.m.

Motion by Tehassi Hill to adopt the agenda; seconded by David P. Jordan. Motion carried unanimously.

## II. Minutes to be approved

1. **August 3, 2016 LOC Meeting Minutes**

   Motion by David P. Jordan to approve the August 3, 2016 Legislative Operating Committee meeting minutes; seconded by Tehassi Hill. Motion carried unanimously.

## III. Current Business

1. **Vendor Licensing Law Amendments**

   Motion by Tehassi Hill to accept the public meeting comments and defer them to a work meeting; seconded by David P. Jordan. Motion carried unanimously.

2. **Conflict of Interest Policy Emergency Amendments**

   Motion by David P. Jordan to add the Conflict of Interest Policy Emergency Amendments to the active files list, with Brandon Stevens as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

3. **Employment Law**

   Motion by David P. Jordan to accept the updated Employment Law draft and legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.

   *Note: The updated draft of the Employment Law incorporates feedback from the June 3 and June 15 Oneida Business Committee work meetings.*

4. **Landlord-Tenant Law**

   Motion by Tehassi Hill to accept the public meeting comments and make directed changes to the law, seconded by David P. Jordan. Motion carried unanimously.



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*Note: Directed changes include accepting the recommendation in comment 1 of the memo and to delete 710.4-3(a) and (b).*

Motion by Tehassi Hill to direct the Legislative Reference Office to prepare an adoption packet for the Landlord-Tenant law; seconded by David P. Jordan. Motion carried unanimously.

**5. Eviction and Termination Law**

Motion by Tehassi Hill to accept the public meeting comments and make directed changes to the law; seconded by David P. Jordan. Motion carried unanimously.

*Note: Directed changes include accepting the recommendations in comment 2 of the memo and to insert "habitual" before "noise violations" in section 709.3-1(d).*

Motion by David P. Jordan to direct the Legislative Reference Office to prepare an adoption packet for the Eviction and Termination Law, seconded by Tehassi Hill. Motion carried unanimously.

**6. Election Law Permanent Amendments**

Motion by David P. Jordan to direct the Legislative Reference Office to prepare a public meeting packet for the Election Law permanent amendments; seconded by Tehassi Hill. Motion carried unanimously.

## IV. New Submissions

**1. Nonprofit Incorporation Law**

Motion by David P. Jordan to add Nonprofit Incorporation Law to the active files list as medium priority, listing David P. Jordan as the sponsor; seconded by Tehassi Hill. Motion carried unanimously:

**2. Tobacco Ordinance Amendments**

Motion by Tehassi Hill to add Tobacco Ordinance Amendments to the active files list as medium priority, listing Tehassi Hill as the sponsor; seconded by David P. Jordan. Motion carried unanimously

**3. Election Law – Campaign Financing**

Motion by Tehassi Hill to add Election Law-Campaign Financing to the active files list as a low priority, listing Tehassi Hill as the sponsor; seconded by David P. Jordan. Motion carried unanimously.

## V. Additions

## VI. Administrative Updates

### 1. Rulemaking Format Administrative Update

Motion by Tehassi Hill to enter the e-poll results into the record; seconded by David P. Jordan. Motion carried unanimously.

*Note: The e-poll approved the updated format for rules and authorized retroactively using that format for Marriage law Rules 1 and 2.*

## VII. Executive Session

## VIII. Recess/Adjourn

Motion by Tehassi Hill to adjourn the August 17, 2016 Legislative Operating Committee meeting at 9:38 a.m.; seconded by David P. Jordan. Motion carried unanimously.


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Legislative Operating Committee
September 21, 2016

# Eviction and Termination

| | |
|---|---|
| **Submission Date:** 01/06/16 | **Public Meeting:** 8/4/16 |
| **LOC Sponsor:** Brandon Stevens | **Emergency Enacted:** n/a<br>**Expires:** n/a |

**Summary:** *This is a new law that will create a streamlined eviction and termination process which provides the rights and responsibilities of all parties involved and applies to leases held pursuant to the Leasing law and rental agreements held pursuant to the Landlord-Tenant law.*

**1/6/16 LOC:** Motion by Fawn Billie to add the Eviction law to the Active Files List with Brandon Stevens as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

**3/2/16 LOC:** Motion by Jennifer Webster to accept the Eviction Law status update memorandum and defer to the sponsor to bring this item back when ready; seconded by Tehassi Hill. Motion carried unanimously.

**4/19/16 LOC:** Work meeting held. Attendees include: Diane Wilson, Michelle Hill, Corrine Robelia-Zhuckkahos, Scott Denny, Rebecca Webster and Krystal John.

**4/26/16 LOC:** Work meeting held. Attendees include: Brandon Stevens, Diane Wilson, Corrine Robelia-Zhuckkahos, Scott Denny, Rebecca Webster and Krystal John.

**5/4/16 LOC:** Motion by David P. Jordan to accept the draft of the Eviction and Termination law and defer to the Legislative Reference Office for a legislative analysis; seconded by Jennifer Webster. Motion carried unanimously.

**7/6/16 LOC:** Motion by Tehassi Hill to accept the legislative analysis for the Eviction and Termination law and to approve the public meeting packet which schedules a public meeting for August 4, 2016; seconded by David P. Jordan. Motion carried unanimously.

**8/2/16:** Update meeting held with sponsor, drafter, analyst.

**8/4/16**: Public meeting held.

**8/17/16 LOC:** Motion by Tehassi Hill to accept the public meeting comments and make directed changes to the law; seconded by David P. Jordan. Motion carried unanimously.

*Note: Directed changes include accepting the recommendations in comment 2 of the memo and to insert "habitual" before "noise violations" in section 709.3-1(d).*



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Motion by David P. Jordan to direct the Legislative Reference Office to prepare an adoption packet for the Eviction and Termination Law, seconded by Tehassi Hill. Motion carried unanimously.

**Next Steps:**

- Accept the Eviction and Termination adoption packet.
- Forward adoption packet to the Oneida Business Committee for consideration.



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# Title 7. Land and Property - Chapter 709
# EVICTION AND TERMINATION
## shakonato·líhe? okhale? washakonahtú·tha? Aolihwá·ke
*they shoo them away – they vanished them – issues*

709.1. Purpose and Policy
709.2. Adoption, Amendment, Repeal
709.3. Definitions
709.4. Administrative Rulemaking Authority
709.5. Early Contract Termination
709.6. Failure to Vacate Following Notice of Eviction or Contract Expiration
709.7. Withholding From and Return of Security Deposits
709.8. Appeals

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### 709.1. Purpose and Policy

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

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

### 709.2. Adoption, Amendment, Repeal

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

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

709.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

709.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

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

### 709.3. Definitions

709.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" means the entity responsible for housing matters specifically related to contracts governed by this law as defined by Oneida Business Committee Resolution.[1]

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

(c) "Eviction" means to expel an occupant from the premises.

(d) "Nation" means the Oneida Nation.

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[1] *See* BC Resolution _____ providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general residential contracts, the Oneida Housing Authority for income-based residential contracts and Elder Services for residential contracts through the Elder Services program.

(e) "Nuisance" means an occupant's interference with another occupant's use and enjoyment of the premises. Nuisance activities include, but are not limited to, allegations of harassment, disorderly conduct, battery, lewd and lascivious behavior, prostitution, theft, possession of stolen property, arson, illegal drug activity, gambling, animal violations, trespassing, weapons violations, habitual noise violations (as defined in the rules which the Land Commission and the Comprehensive Housing Division shall jointly establish), execution of warrants, alcohol violations, obstruction/resisting, inspection related calls in which a law enforcement agency responds.

(f) "Occupant" means the person granted the right to use or occupy a premises pursuant to a lease or rental agreement entered into in accordance with the Leasing law or Landlord-Tenant law respectively.

(g) "Owner" means the Nation in its capacity as a lessor as defined in the Leasing law or as a landlord as defined in the Landlord Tenant law.

(h) "Premises" means the property covered by a contract, including not only the real property and fixtures, but also any personal property furnished by the owner pursuant to a contract.

(i) "Rent" means the sum or amount agreed in the contract to be paid by the occupant to the owner for exclusive possession of the property for the period of time set by the contract.

(j) "Rule" means a set of requirements, including citation fees and penalty schedules, enacted in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

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

(l) "Waste" means physical damage or deterioration caused to the premises, whether intentional or negligent.

**709.4. Administrative Rulemaking Authority**

709.4-1. *Residential Contracts.* The Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts.

709.4-2. *Agricultural and Business Contracts.* The Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to agricultural and business contracts.

**709.5. Early Contract Termination**

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

(a) Violates the terms of the contract;

(b) Is alleged to have violated any applicable law or rule; and/or

(c) Is alleged to have committed one or more nuisance activities.

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

(a) An injunction order under Wis. Stat. 813.12(4) or any other law of the Nation protecting the tenant from a co-tenant;

(b) An injunction order under Wis. Stat. 813.122 or any other law of the Nation protecting a child of the tenant from a co-tenant;

(c) An injunction order under Wis. Stat. 813.125(4) or any other law of the Nation protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;

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

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

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

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

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

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

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

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

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

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

(2) If within one (1) year from the giving of any notice under 709.5-3(b)(1), the occupant again commits waste or breaches the same or any other covenant or condition of the occupant's contract, other than for payment of rent, the

occupant's contract is terminated if the owner, prior to the occupant's remedying the waste or breach, gives the occupant notice to vacate on or before a date at least fourteen (14) calendar days after the giving of the notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) If notice is pursuant to section 709.5-3(c), a statement that the occupant may request a hearing with the Oneida Judiciary prior to the effective date of the termination provided on the notice, and that, if the occupant timely files for a hearing, there is an automatic stay on the eviction pending the determination of the Oneida Judiciary;

(E) The contact information for the Comprehensive Housing Division staff available to answer questions and/or hear concerns of the occupant related to the notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property in relation to residential contracts and the Land Commission and the Division of Land Management shall jointly create rules further governing the disposition of personal property in relation to agricultural and business contracts.

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

709.6-3. *Damages for Failure to Vacate*. If an occupant remains in possession of the premises without consent of the owner after notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract, the owner may, at the owner's discretion, recover from the occupant damages suffered by the owner because of the failure of the occupant to vacate within the time required. In absence of proof of greater damages, the landlord shall recover as minimum damages twice the rental value apportioned on a daily basis for the time the occupant remains in possession. As used in this section, rental value means the amount for which the premises might reasonably have been rented, but not less than the amount actually paid or payable by the occupant for the prior rental period, and includes the money equivalent of any obligations undertaken by the occupant as part of the contract, such as regular property

maintenance and repairs. Nothing in this section prevents the owner from seeking and recovering any other damages to which the owner may be entitled.

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

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

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

(a) Occupant damage, waste, or neglect of the premises;

(b) Unpaid rent for which the occupant is legally responsible;

(c) Payment that the tenant owes under the contract for utility service provided by the owner but not included in the rent;

(d) Payment that the tenant owes for direct utility service provided by a government−owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.

(e) Unpaid monthly municipal permit fees assessed against the occupant by a local unit of government, to the extent that the owner becomes liable for the occupant's nonpayment; and

(f) Any other payment for a reason provided in a nonstandard provision document described in 709.7-3.

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

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

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

(a) If the occupant vacates the premises on the original termination date of the contract, the date on which the contract terminates.

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

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

**709.8. Appeals**

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

*End.*

Adopted – BC

**Oneida Nation**
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
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| | |
|---|---|
| TO: | Oneida Business Committee |
| FROM: | Brandon Stevens, LOC Chairperson BS |
| DATE: | October 5, 2016 |
| RE: | Eviction and Termination Law |

Please find the following attached backup documentation for your consideration of the Eviction and Termination law:

1. Resolution: Eviction and Termination (Law)
2. Statement of Effect: Eviction and Termination (Law)
3. Eviction and Termination (Law) Legislative Analysis
4. Eviction and Termination (Law) Draft
5. Eviction and Termination (Law) Fiscal Impact Statement

*Overview*

This resolution adopts a new Eviction and Termination law. This is a new law which:

- Contains the minimum framework for the Nation's termination and eviction processes.
- Delegates joint rulemaking authority to the Comprehensive Housing Division and the Land Commission to develop rules to further govern the processes contained in this law related to residential contracts. *[see 709.4-1].*
- Delegates joint rulemaking authority to the Division of Land Management and the Land Commission to develop rules to further govern the processes contained in this law related to agricultural and business contracts. *[see 709.4-2].*
- Details early contract termination, including causes and notice requirements, and identifies domestic abuse as a defense to eviction *[see 709.6].*
- Details the process regarding failure to vacate following the notice of eviction or contract expiration *[see 709.6].*
- Details the withholding from and return of security deposits [*see 709.7].*
- Provides an appeal process to the Oneida Judiciary *[see 709.8].*

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on August 4, 2016 with a comment period closing on August 11, 2016. Those comments were accepted and considered by the Legislative Operating Committee (LOC) at the August 17, 2016 LOC meeting.

**Requested Action**
Approve the resolution: Eviction and Termination (Law)



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**BC Resolution _____**

*Eviction and Termination Law*

**WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

**WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and

**WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

**WHEREAS,** the Nation has adopted the Leasing law, which covers residential land leases and agricultural and business leases (which may include land and improvements), and the Landlord-Tenant law, which governs rental agreements for residential land and improvements; and

**WHEREAS,** the Nation does not have any laws in its code that govern the eviction and termination process related to leases under the Leasing law or rental agreements under the Landlord-Tenant law; and

**WHEREAS,** currently the eviction process, including the appeal of eviction process, is included in various standard operating procedures from the Division of Land Management, the Oneida Housing Authority and Elder Services; and

**WHEREAS,** in order to provide consistency, this law contains the minimum framework required to terminate a lease or rental agreement (defined as a contract in the law), evict and withhold from a security deposit; and

**WHEREAS,** this law provides that the Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts, and

**WHEREAS,** this law provides that the Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to agricultural and business contracts; and

**WHEREAS,** this law names the Oneida Judiciary as the hearing body able to hear appeals arising under this law (the Land Commission previously had hearing body authority for all leases and Division of Land Management administered rental agreements); and

**WHEREAS,** a public meeting on the proposed Law was held on August 4, 2016 in accordance with the Legislative Procedures Act; and

**NOW THEREFORE BE IT RESOLVED,** that within 120 calendar days the Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property in relation to residential contracts and the Land Commission and the Division of Land Management shall jointly create rules further governing the disposition of personal property in relation to agricultural and business contracts; and

**NOW THEREFORE BE IT FURTHER RESOLVED,** that the Landlord-Tenant law is hereby adopted and shall become effective in 120 calendar days; and

**NOW THEREFORE BE IT FINALLY RESOLVED,** that because the provision of this law which names the Oneida Judiciary as the hearing body for appeals conflicts with section 67.11-5 of the Real Property law adopted by resolution BC-02-25-15-C, this resolution repeals the second sentence of that section which reads:

> 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.

**Oneida Nation**
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov

**Statement of Effect**
*Resolution: Eviction and Termination Law*

***Summary***

This resolution adopts a new Eviction and Termination law. This is a new law which:

- Contains the minimum framework for the Nation's termination and eviction processes.
- Delegates joint rulemaking authority to the Comprehensive Housing Division and the Land Commission to develop rules to further govern the processes contained in this law related to residential contracts. *[see 709.4-1]*.
- Delegates joint rulemaking authority to the Division of Land Management and the Land Commission to develop rules to further govern the processes contained in this law related to agricultural and business contracts. *[see 709.4-2]*.
- Details early contract termination, including causes and notice requirements, and names domestic abuse as defense to eviction *[see 709.6]*.
- Details the process regarding failure to vacate following the notice of eviction or contract expiration *[see 709.6]*.
- Details the withholding from and return of security deposits [*see 709.7]*.
- Provides an appeal process to the Oneida Judiciary *[see 709.8]*.

*Submitted by Krystal L. John, Staff Attorney*

***Analysis***

This resolution adopts the Eviction and Termination law which includes the provisions summarized above.

As noted in the resolution, currently the termination and eviction process, including the appeal of eviction process, is included in various standard operating procedures from the Division of Land Management, the Oneida Housing Authority and Elder Services.

In order to provide consistency, this law contains the minimum framework required to terminate a lease or rental agreement (defined as a contract in the law), evict and withhold from a security deposit. In regards to rulemaking authority, the Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts. The Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to agricultural and business contracts.

Under this law, the Oneida Judiciary is the hearing body able to hear appeals (the Land Commission previously had hearing body authority for all leases and Division of Land Management administered rental agreements).



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The only law that the Nation currently has in its code that mentions a termination and/or eviction, is the leasing portion of the Real Property law. That version of the Real Property law is only in effect until the Leasing law is approved by the Bureau of Indian Affairs (BIA). Upon approval of the Leasing law, an updated version of the Real Property law becomes effective which removes all detail related leases and references the Leasing law. Adoption of this law conflicts with the currently effective version of the Real Property law which was adopted by resolution BC-02-25-15-C, but does not conflict with the updated version of the Real Property law which was adopted by resolution BC-05-13-15-B.

In regards to the currently effective version of the Real Property law which was adopted by resolution BC-02-25-15-C, section 67.11-5 provides as follows:

> 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.

The second sentence of that section conflicts with this law because this law names the Oneida Judiciary as the hearing body for all appeals arising out of this law and the Oneida Judiciary does not operate under the Oneida Administrative Procedures Act.

In regards to the updated version of the Real Property law which was adopted by resolution BC-05-13-15-B and is effective upon the BIA's approval of the Leasing law, section 67.11-1 provides as follows:

> All leasing of tribal land shall be processed in accordance with the Tribe's Leasing law.

Nothing in the Leasing law adopted by resolution BC-05-13-15-C conflicts with the provisions of this law as it is silent as to terminations and evictions. The Leasing law adopted by resolution BC-05-13-15-C was not approved by the BIA and the Legislative Operating Committee has been working on revisions to comply with the BIA's requirements. The current draft of the revised Leasing law which is under review with the BIA specifically includes a reference to this Eviction and Termination law. Accordingly, should the revised version be approved by the BIA and adopted as a law, this Eviction and Termination law would be incorporated into the Leasing law by reference.

***Conclusion***

Provided that the adopting resolution repeals the second sentence of section 67.11-5 of the Real Property Law adopted by resolution BC-02-25-15-C, adoption of this resolution would not conflict with the Nation's laws.



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ONEIDA

# Eviction and Termination

| Analysis by the Legislative Reference Office | | | | | |
|---|---|---|---|---|---|
| **Title** | Eviction and Termination (law) | | | | |
| **Sponsor** | Brandon Stevens | **Drafter** | Krystal L. John | **Analyst** | Maureen Perkins |
| **Requester & Reason for Request** | Land Commission and Legislative Operating Committee<br>An eviction law separate from the Leasing law and the Landlord-Tenant law is required to apply to leases and rental agreements under both laws. | | | | |
| **Purpose** | The purpose of this law is to provide consistent procedures for terminating a contract and/or evicting an occupant which affords the applicant due process and protects all parties involved *[see 709.1-1].* | | | | |
| **Authorized/ Affected Entities** | Comprehensive Housing Division (Division of Land Management, Oneida Housing Authority, Elder Services), Land Commission, Oneida Judiciary, Oneida Police Department | | | | |
| **Related Legislation** | Leasing law, Landlord-Tenant law, Real Property Law, Administrative Rulemaking law, Mortgage and Foreclosure law | | | | |
| **Enforcement & Due Process** | Parties may appeal actions taken pursuant to this law to the Oneida Judiciary *[see 709.8-1].* | | | | |
| **Public Meeting Status** | A public meeting was held on August 4, 2016. This draft includes LOC directed changes based on comments received during the public comment period. | | | | |

## Overview

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

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

or household items) are expelled from the property. The process and requirements to terminate and/or evict for each of these different types of contracts is the same.

The law details the causes for eviction, which include violation of the terms of the contract, alleged violation of any applicable law or rule and alleged commitment of one or more nuisance activities. The basis for allowing for eviction based upon an alleged violation is to protect the community from unlawful or disruptive occupants who are alleged to have violated the law but have not yet been convicted as the conviction process can take years. Without this provision, the Nation would not be able to terminate or evict until a conviction was received, which could expose the community to continued unlawful activity and create unsafe conditions. Similar provisions have been recently added to state law. Community members who receive notice of termination or eviction based upon allegation may contest the termination or eviction to the Judiciary within the established timeline (detailed on the notice) which will automatically stop the eviction pending the Judiciary's determination. The Judiciary may, at its discretion, recognize alternative agreements regarding pending actions reached between the occupant and a court of competent jurisdiction pending successful completion of the alternative agreement. Domestic abuse is listed as a valid defense against eviction under circumstances detailed in the law.

The notice requirements, including the contents of the notice and the manner the notice is given to occupants, are detailed for each cause of termination and eviction and the requirements must be followed in order for the eviction to be valid. The process the CHD will use in the case of a failure to vacate following a notice of eviction or contract expiration is detailed and requires that the Oneida Police Department be on scene while locks are changed, explains disposition of personal property left on the premises and the assessment of damages to the occupant for failure to vacate the premises following a notice of eviction or contract expiration. The CHD and Land Commission are required to create rules further detailing the disposition of personal property. Detail regarding security deposits, including withholding and timing for return, is provided.

- Contains the minimum framework for the Nation's termination and eviction processes.
- Delegates joint rulemaking authority to the Comprehensive Housing Division and the Land Commission to develop rules to further govern the processes contained in this law related to residential contracts *[see 709.4-1]*.
- Delegates joint rulemaking authority to the Land Commission and the Division of Land Management related to agricultural and business contracts *[see 709.4-2]*.
- Details early contract termination, including causes and notice requirements, and names domestic abuse as defense to eviction *[see 709.6]*.
- Details the process regarding failure to vacate following the notice of eviction or contract expiration *[see 709.6]*.
- Details the withholding from and return of security deposits [*see 709.7]*.
- Provides an appeal process to the Oneida Judiciary *[see 709.8]*.

**Administrative Rulemaking**

- The Comprehensive Housing Division (CHD), the Land Commission and the Division of Land Management are delegated joint rulemaking authority under this law and are required to develop and implement the following rules prior to the implementation of this law:
    - The Land Commission and the Comprehensive Housing Division shall jointly

create rules further governing the disposition of personal property in relation to residential contracts and the Land Commission and the Division of Land Management shall jointly create rules further governing the disposition of personal property in relation to agricultural and business contracts. *[see 709.6-1(b)(2)]*.

- The Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts *[see 709.4-1]*.
- The Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to agricultural and business contracts. *[see 709.4-2]*.

**Considerations**

- The LOC may consider including the types of lease contracts currently covered under the law (residential, agricultural and business leases) while leaving room for additional leases without requiring the law to be updated. Under this law, you must refer to the Leasing law to find this detail.
  - Suggested language: "Contract" means either a lease document, including but not limited to residential, agricultural and business leases pursuant to the Leasing Law or a rental agreement pursuant to the Landlord-Tenant law.
- This law references the Comprehensive Housing Division (CHD). The CHD is scheduled for implementation October 1, 2016. The BC resolution adopting this law will be accompanied by second resolution that defines the CHD. Each department or division within the CHD (Oneida Housing Authority, Division of Land Management and Elder Services) will be required to create rules delegated under this law until the CHD is implemented.
- This law, the Real Property Law amendments, the Landlord-Tenant law and the Leasing Law are all inter-related. The Real Property Law currently in effect contains provisions relating to the termination of leases that conflict with this law *[see 67.11-5 of current Real Property Law]*. However, this Eviction and Termination law will govern upon adoption. The current proposed amendments to the Real Property Law pull the detail related to lease terminations out of the Real Property Law and reference this Eviction and Termination law instead.

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# Title 7. Land and Property - Chapter 709
# EVICTION AND TERMINATION
## shakonato·líhe? okhale? washakonahtú·tha? Aolihwá·ke
*they shoo them away – they vanished them – issues*

709.1. Purpose and Policy
709.2. Adoption, Amendment, Repeal
709.3. Definitions
709.4. Administrative Rulemaking Authority
709.5. Early Contract Termination
709.6. Failure to Vacate Following Notice of Eviction or Contract Expiration
709.7. Withholding From and Return of Security Deposits
709.8. Appeals

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### 709.1. Purpose and Policy

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

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

### 709.2. Adoption, Amendment, Repeal

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

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

709.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

709.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

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

### 709.3. Definitions

709.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" means the entity responsible for housing matters specifically related to contracts governed by this law as defined by Oneida Business Committee Resolution.[1]

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

(c) "Eviction" means to expel an occupant from the premises.

(d) "Nation" means the Oneida Nation.

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[1] *See* BC Resolution _____ providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general residential contracts, the Oneida Housing Authority for income-based residential contracts and Elder Services for residential contracts through the Elder Services program.

(e) "Nuisance" means an occupant's interference with another occupant's use and enjoyment of the premises. Nuisance activities include, but are not limited to, allegations of harassment, disorderly conduct, battery, lewd and lascivious behavior, prostitution, theft, possession of stolen property, arson, illegal drug activity, gambling, animal violations, trespassing, weapons violations, habitual noise violations (as defined in the rules which the Land Commission and the Comprehensive Housing Division shall jointly establish), execution of warrants, alcohol violations, obstruction/resisting, inspection related calls in which a law enforcement agency responds.

(f) "Occupant" means the person granted the right to use or occupy a premises pursuant to a lease or rental agreement entered into in accordance with the Leasing law or Landlord-Tenant law respectively.

(g) "Owner" means the Nation in its capacity as a lessor as defined in the Leasing law or as a landlord as defined in the Landlord Tenant law.

(h) "Premises" means the property covered by a contract, including not only the real property and fixtures, but also any personal property furnished by the owner pursuant to a contract.

(i) "Rent" means the sum or amount agreed in the contract to be paid by the occupant to the owner for exclusive possession of the property for the period of time set by the contract.

(j) "Rule" means a set of requirements, including citation fees and penalty schedules, enacted in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

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

(l) "Waste" means physical damage or deterioration caused to the premises, whether intentional or negligent.

**709.4. Administrative Rulemaking Authority**

709.4-1. *Residential Contracts.* The Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts.

709.4-2. *Agricultural and Business Contracts.* The Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to agricultural and business contracts.

**709.5. Early Contract Termination**

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

(a) Violates the terms of the contract;

(b) Is alleged to have violated any applicable law or rule; and/or

(c) Is alleged to have committed one or more nuisance activities.

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

(a) An injunction order under Wis. Stat. 813.12(4) or any other law of the Nation protecting the tenant from a co-tenant;

(b) An injunction order under Wis. Stat. 813.122 or any other law of the Nation protecting a child of the tenant from a co-tenant;

(c) An injunction order under Wis. Stat. 813.125(4) or any other law of the Nation protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;

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

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

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

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

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

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

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

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

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

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

(2) If within one (1) year from the giving of any notice under 709.5-3(b)(1), the occupant again commits waste or breaches the same or any other covenant or condition of the occupant's contract, other than for payment of rent, the

occupant's contract is terminated if the owner, prior to the occupant's remedying the waste or breach, gives the occupant notice to vacate on or before a date at least fourteen (14) calendar days after the giving of the notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) If notice is pursuant to section 709.5-3(c), a statement that the occupant may request a hearing with the Oneida Judiciary prior to the effective date of the termination provided on the notice, and that, if the occupant timely files for a hearing, there is an automatic stay on the eviction pending the determination of the Oneida Judiciary;

(E) The contact information for the Comprehensive Housing Division staff available to answer questions and/or hear concerns of the occupant related to the notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property in relation to residential contracts and the Land Commission and the Division of Land Management shall jointly create rules further governing the disposition of personal property in relation to agricultural and business contracts.

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

709.6-3. *Damages for Failure to Vacate*. If an occupant remains in possession of the premises without consent of the owner after notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract, the owner may, at the owner's discretion, recover from the occupant damages suffered by the owner because of the failure of the occupant to vacate within the time required. In absence of proof of greater damages, the landlord shall recover as minimum damages twice the rental value apportioned on a daily basis for the time the occupant remains in possession. As used in this section, rental value means the amount for which the premises might reasonably have been rented, but not less than the amount actually paid or payable by the occupant for the prior rental period, and includes the money equivalent of any obligations undertaken by the occupant as part of the contract, such as regular property

maintenance and repairs. Nothing in this section prevents the owner from seeking and recovering any other damages to which the owner may be entitled.

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

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

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

(a) Occupant damage, waste, or neglect of the premises;

(b) Unpaid rent for which the occupant is legally responsible;

(c) Payment that the tenant owes under the contract for utility service provided by the owner but not included in the rent;

(d) Payment that the tenant owes for direct utility service provided by a government−owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.

(e) Unpaid monthly municipal permit fees assessed against the occupant by a local unit of government, to the extent that the owner becomes liable for the occupant's nonpayment; and

(f) Any other payment for a reason provided in a nonstandard provision document described in 709.7-3.

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

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

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

(a) If the occupant vacates the premises on the original termination date of the contract, the date on which the contract terminates.

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

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

**709.8. Appeals**

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

*End.*

Adopted – BC

# MEMORANDUM

To: Larry Barton, Chief Financial Officer

Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer

From: Rae M. Skenandore

Date: August 23, 2016

Re: **Financial Impact of the Eviction and Termination Law**

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## I. Background

This is a new Law on Eviction and Termination that was requested by the Oneida Land Commission. The following summary was provided by the Legislative Reference Office.

- The proposed Law contains the minimum framework and requirements related to the termination of a contract and resulting eviction processes.
- The Division of Land Management and the Land Commission have jointly delegated rulemaking authority under this Law to develop and implement the following rules prior to the implementation of this Law:
  - Rules governing the disposition of personal property
  - The Comprehensive Housing Division (CHD) and the Land Commission may jointly create rules to further govern the processes contained in this Law; except where Federal funding is required in which case the CHD has sole authority
- The Law applies to occupants of Tribally owned property including rental agreements and leases.
- Termination means the contract is cancelled and eviction means the lessee (including property such as farm equipment or household items) are expelled from the property.
- The Law details early contract termination, including causes and notice requirements, and names specific defenses to eviction.
- Details the process regarding failure to vacate following the notice of eviction or contract expiration.
- Details the withholding from and return of security deposits;
- Provides an appeal process to the Oneida Judiciary.

## II. Executive Summary of Findings

A "Fiscal Impact Statement" means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

The new Law simply details the current processes used by the Nation in the termination of a contract, which includes leases, rental agreements, and evictions from the Nations lands or housing resources. The Oneida Land Commission currently acts as the original Hearing Body for evictions and three Commissioners are required to hold a hearing. The stipend paid for an eviction hearing is $50.00 per commissioner. In Fiscal Year 2014-2015 only one foreclosure hearing was held for a cost of approximately $150.00. Any savings from transferring the hearing body authority from the Oneida Land Commission to the Judiciary would be negligible due to their existing operating expenses.

According to DOLM and the Oneida Judiciary, there will be no additional startup, personnel, office, or documentation costs associated with implementing the Law.

With the Rulemaking Authority jointly delegated to the Division of Land Management and the Land Commission, a minimum of 60-90 days would be required to approve the Administrative Rules for this Law.

## III. Financial Impact

No fiscal impact.

## IV. Recommendation

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that General Tribal Council has full information with which to render a decision.

**BC Resolution _____**

*Defining Comprehensive Housing Division in the Eviction and Termination Law*

**WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

**WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and

**WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

**WHEREAS,** the Oneida Business Committee adopted the Eviction and Termination law with resolution BC 09-14-16__; and

**WHEREAS,** the Eviction and Termination law assigns responsibilities and authorities, including rulemaking authority, to the Comprehensive Housing Division; and

**WHEREAS,** the Eviction and Termination law defines the Comprehensive Housing Division as the entity responsible for housing matters specifically related to contracts governed by this law as defined by Oneida Business Committee Resolution; and

**NOW THEREFORE BE IT RESOLVED,** that for the purposes of the Eviction and Termination law the Oneida Business Committee hereby defines the Comprehensive Housing Division as the Division of Land Management for general residential contracts, the Oneida Housing Authority for income-based residential contracts and Elder Services for residential contracts through the Elder Services program.

**Oneida Nation**
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
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**Statement of Effect**

*Resolution: Defining Comprehensive Housing Division in the Eviction and Termination Law*

***Summary***

This resolution defines the Comprehensive Housing Division, for the purposes of the Eviction and Termination law, as the Division of Land Management for general residential contracts, the Oneida Housing Authority for income-based residential contracts and Elder Services for residential contracts through the Elder Services program.

*Submitted by Krystal L. John, Staff Attorney*

***Analysis***

The Eviction and Termination law assigns responsibilities and authorities, including rulemaking authority, to the Comprehensive Housing Division. The Comprehensive Housing Division is under development as part of the Oneida Business Committee's reorganization; however, it has not yet been formally created.

The Eviction and Termination law assigns responsibilities and authorities to the Comprehensive Housing Division and provides that the Oneida Business Committee shall define that Division by resolution. This allows the law to be adopted now with reference to the Comprehensive Housing Division and prevents the need for amendments to the law at the time that the Comprehensive Housing Division is formally created. Accordingly, this resolution defines the Comprehensive Housing Division for the purposes of the Eviction and Termination law as the Division of Land Management for general residential contracts, the Oneida Housing Authority for income-based residential contracts and Elder Services for residential contracts through the Elder Services program. When the new Comprehensive Housing Division is created, the definition of Comprehensive Housing Division will be required to be updated by Oneida Business Committee resolution, and will not require the law to be amended using the process required by the Legislative Procedures Act.

***Conclusion***

Adoption of this Resolution would not conflict with the Nation's laws.

**Oneida Nation**
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Legislative Operating Committee
September 21, 2016

# Landlord – Tenant Law

| | |
|---|---|
| **Submission Date:** 10/07/15 | **Public Meeting:** 7/21/16 |
| **LOC Sponsor:** David P. Jordan | **Emergency Enacted:** n/a<br>**Expires:** n/a |

**Summary:** *Is a new law that will explain the roles and responsibilities of the Landlord and Tenant. This law is being developed because the Land Commission's hearing authority is being transferred to the Judiciary.*

**10/7/15 LOC:** Motion by David P. Jordan to add the Real Property Law Amendments, Probate Law, Mortgage Law, Landlord-Tenant Law and Land Commission Bylaws Amendments to the Active Files List with himself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

**12/16/15 LOC:** Motion by Fawn Billie to accept the memorandum update as FYI and to defer the Landlord-Tenant Law back to the sponsor and to bring back when ready; seconded by Jennifer Webster. Motion carried unanimously.

**4/20/16 LOC:** Motion by Tehassi Hill to accept the draft Landlord-Tenant Law and forward it to the Legislative Reference Office for a legislative analysis; seconded by Fawn Billie. Motion carried unanimously.

**6/15/16 LOC:** Motion by David P. Jordan to accept the legislative analysis for Landlord-Tenant law and to approve the public meeting packet for a public meeting date on July 21, 2016; seconded by Fawn Billie. Motion carried unanimously.

**8/2/16:** Update meeting held with sponsor, drafter, analyst, LRO Director.

**8/17/16 LOC:** Motion by Tehassi Hill to accept the public meeting comments and make directed change to the law, seconded by David P. Jordan. Motion carried unanimously.

*Note: Directed changes include accepting the recommendation in comment 1 of the memo and to delete 710.4-3(a) and (b).*

Motion by Tehassi Hill to direct the Legislative Reference Office to prepare an adoption packet for the Landlord-Tenant law; seconded by David P. Jordan. Motion carried unanimously.

**Next Steps:**
- Approve the Landlord-Tenant law adoption packet.
- Forward to the Oneida Business Committee for consideration.



A good mind. A good heart. A strong fire.

# Title 7. Property - Chapter 710
## LANDLORD-TENANT
## Tsi? Yuhwʌtsyawá·ku Aolihwá·ke
*where it bound to the earth - issues*

710.1. Purpose and Policy
710.2. Adoption, Amendment, Repeal
710.3. Definitions
710.4. Rental Programs
710.5. Rental Agreement Documents
710.6. Rights and Duties of Landlords and Tenants
710.7. Domestic Abuse Protections
710.8. Sex Offender Registry
710.9. Termination of Tenancy at Death of Tenant
710.10. Appeals

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### 710.1. Purpose and Policy

710.1-1. *Purpose*. The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants within the Reservation.

710.1-2. *Policy*. Is it the Nation's policy to provide a fair process to all landlords and tenants that preserves the peace, harmony, safety, health, general welfare and the Nation's resources.

### 710.2. Adoption, Amendment, Repeal

710.2-1. This law was adopted by the Oneida Business Committee by resolution _____.

710.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

710.2-3. 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.

710.2-4. 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.

710.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

### 710.3. Definitions

710.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(~~a~~(a) "Comprehensive Housing Division" means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.[1]

(b) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.

(~~b~~c) "Nation" means the Oneida Nation.

(~~c~~d) "Premises" means the property covered by a rental agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.

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[1] *See* BC Resolution _____ providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

(~~d~~e) "Rental Agreement" means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less.

(~~e~~f)"Reservation" means all property 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.

~~(f~~(g) "Rule" means a set of requirements, including citation fees and penalty schedules, enacted ~~by~~jointly by the Land Commission and the Comprehensive Housing Division in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law~~.~~, provided that where such requirements relate solely to premises administered pursuant to federal funding, the Comprehensive Housing Division has sole authority.

(~~g~~h) "Tenant" means the person granted the right to use or occupy a premises pursuant to a rental agreement.

(~~h~~i)"Security Deposit" means a payment made to the landlord by the tenant to ensure that rent will be paid and other responsibilities of the rental agreement performed.

**710.4. Rental Programs**

710.4-1. *Available Rental Programs.* Consistent with available funds, the Comprehensive Housing Division shall provide residential rental programs for providing housing to the following types of tenants and the Oneida Land Commission and the Comprehensive Housing Division shall jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program:

(a) Elder tribal members;
(b) Low-income Oneida tribal members and families; and
(c) Tribal members in general.

710.4-2. *Rental Eligibility Requirements.* In order to be eligible for a rental agreement, applicants shall meet the following conditions:

(a) Be eighteen (18) years of age at the time of the application;
(b) Have no felony or drug convictions within the past two (2) years from the date of application, provided that a pardon or forgiveness received pursuant to the Pardon and Forgiveness law may provide an exception to this condition;
(c) Meet the local governments' laws' requirements regarding residency restrictions for convicted sex offenders;
(d) Meet the income requirements for entering the rental agreement as determined by the rental program's governing rules;
(e) Not hold a residential lease with the Nation; and
(f) Meet any other eligibility requirements set by the rental program's rules, which may not be less strict than this law, but may be stricter than this law.

710.4-3. *Tenant Selection.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

~~(a) At a minimum, the Comprehensive Housing Division shall ensure that the rental agreement selection rules provide a preference to applicants:~~

~~(1) With a disability recognized by a medical professional, and/or~~

~~(2) Having veteran status with relevant proof of service, which may include, but is not limited to, a DD214 Discharge Form, Reservist Identification Card, or National Guard Identification Card.~~

~~(b) Nothing in this section may be interpreted to place a requirement on a landlord to modify existing rental units in order to provide additional housing that is handicap accessible.~~

**710.5. Rental Agreement Documents**

710.5-1. *Severability of Rental Agreement Provisions.* The provisions of a rental agreement are severable. If any provision of a rental agreement is void or unenforceable by reason of any law, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not affect other provisions of the rental agreement that can be given effect without the invalid or unenforceable provision.

710.5-2. *Requirements of Rental Agreements and Terminations.* A rental agreement or termination of a rental agreement is not enforceable unless it meets the requirements of this law and is in writing.

(a) All rental agreements shall:

(1) Set forth the amount of rent or other consideration provided in exchange for the ability to use/occupy the premises;

(2) Set forth the required amount of security deposit and require payment of the security deposit prior to the tenant(s) taking use/occupancy of the premises;

(3) Set the time of commencement and expiration of the rental agreement;

(4) Provide a reasonably definite description of the premises;

(5) State that nothing in the agreement may be considered a waiver of the Nation's sovereign immunity, provided that tenants may seek enforcement of a rental agreement or dispute an action taken pursuant to a rental agreement with the Oneida Judiciary; and

(6) Be signed by both the landlord and the tenant(s) prior to the tenant(s) taking use/occupancy of the premises;

(A) The rental agreement is not required to be signed by all adults using/occupying the premises, provided that the rights and responsibilities contained in the rental agreement do not extend to persons that are not named as tenants in the rental agreement.

(B) Unless legally separated, if a tenant(s) is married, the landlord shall require that each spouse sign the rental agreement.

(b) Any provision of a rental agreement that does any of the following is void and unenforceable.

(1) Allows a landlord to do or threaten to do any of the following because a tenant has contacted an entity for law enforcement services, health services or safety services:

(A) Increase rent;

(B) Decrease services;

(C) Bring an action for eviction pursuant to the Eviction law; and/or

(D) Refuse to renew a rental agreement.

(2) Except as otherwise provided in this law in regards to domestic abuse, authorizes the eviction or exclusion of a tenant from the premises other than through the process described in the Eviction law.

(3) Requires the tenant to pay attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement except as supported by a court order.

(4) States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This subsection does not affect ordinary maintenance obligations of a tenant under 710.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(5) Imposes liability on the tenant for any of the following:

(A) Personal injury arising from causes clearly beyond the tenant's control.

(B) Property damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees. This subsection does not affect ordinary maintenance obligations of a tenant under 710.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(6) Waives any obligation on the part of the landlord to deliver the premises in a fit and habitable condition or to maintain the premises during the tenant's tenancy.

(7) Allows for periodic tenancy, which for the purposes of this section means when a tenant uses/occupies a premises without an effective and valid rental agreement by paying rent on a periodic basis including, but not limited to, day-to-day, week-to-week and month-to-month.

710.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

**710.6. Rights and Duties of Landlords and Tenants**

710.6-1. This section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision found in a valid rental agreement.

710.6-2. *Disposition of Personal Property Left by the Tenant.* If the tenant moves from or is evicted from the premises and leaves personal property, the landlord may presume that the tenant has abandoned the personal property and may dispose of said property in any manner that the landlord, in his or her sole discretion, determines is appropriate, provided that:

(a) The landlord shall hold personal property for a minimum of five (5) business days and the tenant may retrieve said personal property by contacting the landlord.

(b) The landlord shall keep a written log of the date and the work time that the Nation's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the property after the expiration of the timeframe provided in the order to vacate.

(c) The Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property.

710.6-3. *Repairs; Untenability.* This section applies to all leases if there is no contrary provision in writing signed by both parties.

(a) *Duties of the Landlord.*

(1) Except for repairs made necessary by the negligence of, or improper use of the premises by the tenant, the landlord has a duty to do all of the following:

(A) Keep in a reasonable state of repair portions of the premises over which the landlord maintains control.

(B) Keep in a reasonable state of repair all equipment under the landlord's control necessary to supply services that the landlord has expressly or impliedly agreed to furnish to the tenant, such as heat, water, elevator, or air conditioning.

(C) Make all necessary structural repairs.

(D) Except as provided in section 710.6-3(b)(2), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

(E) Comply with any laws or rules of the Nation that are applicable to the premises.

(2) If the premises are part of a building where other parts are occupied by one (1) or more other tenants, negligence or improper use by one (1) tenant does not relieve the landlord from the landlord's duty to make repairs as provided in 710.6-3(a)(1), provided that the landlord may require the responsible tenant to pay for such repairs.

(3) A landlord shall disclose to a prospective tenant, before entering into a rental agreement with or accepting any earnest money or security deposit from the prospective tenant, any violation of either the Building Code of the Oneida Nation or the Zoning and Shoreland Protection Ordinance if all of the following apply:

(A) The landlord has actual knowledge of the violation;

(B) The violation affects the dwelling unit that is the subject of the prospective rental agreement or a common area of the premises;

(C) The violation presents a significant threat to the prospective tenant's health or safety; and

(D) The violation has not yet been corrected but the landlord shall correct the violation prior to the tenant taking occupancy of the premises.

(4) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either section 710.6-3(b) or (c) governs.

(5) The landlord is responsible for all required pest control to keep the premises in a safe and healthy condition, provided that where an infestation has occurred due to the acts or inaction of the tenant the pest control costs may be assessed against the tenant.

(b) *Duties of the Tenant.*

(1) If the premises are damaged, including by an infestation of insects or other pests, due to the acts or inaction of the tenant, the landlord may elect to allow the tenant to remediate or repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the remediation, repair, or redecoration, and in such case the tenant shall reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proven otherwise by the tenant.

(2) The tenant shall keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order.

(3) Tenants shall comply with all laws and rules of the Nation.

(c) *Untenability.* If the premises become untenable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of section 710.6-3(a) materially affecting the health or safety of the tenant, the tenant may move from the premises unless the landlord promptly repairs, rebuilds or eliminates the health hazard or the substantial violation of 710.6-3(a) materially affecting the health or safety of the tenant.

(1) The tenant may also move and terminate the rental agreement if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on the tenant.

(2) If the tenant remains in possession, the landlord shall decrease rent for each month to the extent the tenant is deprived of the full normal use of the premises. The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing how and when rent is decreased pursuant to this section. This subsection does not authorize rent to be withheld in full, if the tenant remains in possession.

(3) If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenable and the landlord shall repay any rent paid in advance apportioned to the period after the premises become untenable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

(d) *Check-in sheet*. Landlords shall provide all new tenants with a check-in sheet when the tenant commences his or her occupancy of the premises that the tenant may use to make comments, if any, about the condition of the premises. The landlord shall provide the tenant with seven (7) days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord. The landlord is not required to provide the check-in sheet to a tenant upon renewal of a rental agreement.

(e) *Notice to Enter Required.* The landlord shall provide twenty-four (24) hour written notice prior to entering the tenant's premises where notice is required to either be personally served to the tenant or posted on the premises. A landlord is exempt from this notice requirement in the case of an emergency welfare check. The basis of a welfare check may include, but is not limited to the following:

(1) The landlord believes the tenant's or a child's wellbeing may be in jeopardy based on reports of child abuse or neglect, medical concerns, suspicious activity or other reported information;

(2) The landlord suspects the tenant has abandoned the premises; and/or

(3) The landlord receives notice that the premise's utilities have been disconnected.

(f) *Acts of tenant not to affect rights of landlord.* No act of a tenant in acknowledging as landlord a person other than the tenant's original landlord can prejudice the right of the original landlord to possession of the premises.

(g) *Annual Inspection Required.* In the event the tenant renews the rental agreement for additional terms, the landlord shall, at a minimum, inspect the premises once annually.

**710.7. Domestic Abuse Protections**

710.7-1. If a tenant notices the landlord of domestic abuse with of any of the following documentation, regardless of marital status, the landlord shall change the locks to the premises

and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the domestic abuser:

(a) An injunction order under Wis. Stat. 813.12(4) protecting the tenant from a co-tenant;

(b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a co-tenant;

(c) An injunction order under Wis. Stat. 813.125(4) protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;

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

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

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

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

710.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a co-tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to remain on the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date the rental agreement is modified. If the latter applies, in addition to removing the co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to extend its duration.

710.7-3. The Eviction law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

**710.8. Sex Offender Registry**

710.8-1. Should a tenant request information about whether any other tenants are required to register as a sex offender, the landlord shall provide the tenant with written notice that he or she may obtain information about the sex offender registry and persons registered within the registry by contacting the department of corrections. The landlord shall include in such notice the appropriate telephone number and internet site of the department of corrections.

**710.9. Termination of Tenancy at Death of Tenant**

710.9-1. If a tenant dies, his or her tenancy is terminated on the earlier of the following:

(a) Sixty (60) days after the landlord receives notice, is advised, or otherwise becomes aware of the tenant's death;

(b) The expiration of the term of the rental agreement.

710.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination of his or her tenancy. A landlord may not contact or communicate with a member of the deceased tenant's family for the purpose of obtaining from the family member rent for which the family member has no liability.

710.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises from any obligation under a rental agreement or any other liability to the landlord.

710.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date of the Tribal member tenant's death. If the latter applies, the landlord shall revise the rental agreement to extend its duration.

**710.10. Appeals**

710.10-1. Parties may appeal actions taken pursuant to this law and/or a rental agreement to the Oneida Judiciary.

*End.*

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Adopted – BC

**Oneida Nation**
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov

| | |
|---|---|
| TO: | Oneida Business Committee |
| FROM: | Brandon Stevens, LOC Chairperson |
| DATE: | October 5, 2016 |
| RE: | Landlord-Tenant Law |

Please find the following attached backup documentation for your consideration of the Landlord-Tenant law:

1. Resolution: Landlord-Tenant (Law)
2. Statement of Effect: Landlord-Tenant (Law)
3. Landlord-Tenant (Law) Legislative Analysis
4. Landlord-Tenant (Law) Draft
5. Landlord-Tenant (Law) Fiscal Impact Statement

*Overview*

This resolution adopts a new Landlord-Tenant law. This is a new law which:

- Provides rental programs offered to Tribal member by the Nation within the Reservation boundaries and includes eligibility requirements and tenant selection criteria *[see 710.4]*.
- Provides detail related to rental agreement provisions and terminations and specifies that assignments of rental agreements are not permitted *[see 710.5]*.
- Details the rights and responsibilities of the Nation as landlord and Tribal members as tenants including disposition of personal property, repairs, damage, pest control, check-in sheets, required notice to enter, and annual inspections *[see 710.6]*.
- Provides provisions related to domestic abuse and sex offender registration *[see 710.7 and 710.8]*.
- Details the process required in the event of a tenant's death *[see 710.9]*.
- Identifies the Comprehensive Housing Division and the Land Commission as the entities delegated authority to jointly develop rules under this law; except where federal funding is required in which case the CHD has sole authority *[see 710.3-1(f) and 710.4-1 and 710.4-3 and 710.6-2 and 710.6-2(c) and 710.6-3(c)(2)]*.
- Identifies the Oneida Judiciary as the original hearing body authority for all actions taken under this law *[see 710.10]*.

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on July 21, 2016 with a comment period closing on July 28, 2016. Those comments were accepted and considered by the Legislative Operating Committee (LOC) at the August 17, 2016 LOC meeting.

**Requested Action**
Approve the Resolution: Landlord-Tenant (Law)



A good mind. A good heart. A strong fire.

**BC Resolution _____**

*Landlord-Tenant Law*

**WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

**WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and

**WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

**WHEREAS,** the Nation currently offers rental programs through the Division of Land Management, the Oneida Housing Authority and Elder Services; and

**WHEREAS,** the rental programs minimum requirements, selection criteria and rights and responsibilities of the landlord, the Nation, and the tenants are not included in the Real Property law or any other law and are contained only in standard operating procedures of the Division of Land Management, the Oneida Housing Authority and Elder Services; and

**WHEREAS,** an assessment of the rental programs has determined that it would be beneficial to create a law that contains the minimum framework that is similar for all of the Nation's rental programs and to delegate rulemaking authority in the law which would allowing for specific more detailed requirements for each program in the rules; and

**WHEREAS,** this law contains minimum eligibility requirements, selection criteria and rights and responsibilities of the landlord, the Nation, and the tenants and delegates joint rulemaking authority to the Land Commission and the Comprehensive Housing Division to create rules naming each rental program and the specific requirements related to each, and

**WHEREAS,** this law provides that, at a minimum, rental programs are required to be developed that functions to serve (1) the general population; (2) the low-income population; and (3) the elder population; and

**WHEREAS,** this law names the Oneida Judiciary as the hearing body able to hear appeals arising under this law (the Land Commission previously had hearing body authority for Division of Land Management administered rental agreements);

**WHEREAS,** a public meeting on the proposed Law was held on July 21, 2016 in accordance with the Legislative Procedures Act; and

**NOW THEREFORE BE IT RESOLVED,** that the Landlord-Tenant law is hereby adopted; and shall become effective upon the adoption of the rental rules as required under section 710.4-1.

**Oneida Nation**
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov

**Statement of Effect**
*Resolution: Landlord-Tenant Law*

***Summary***

This resolution adopts a new Landlord-Tenant law. This is a new law which:

- Provides rental programs offered to Tribal members by the Nation within the reservation boundaries and includes eligibility requirements and tenant selection criteria *[see 710.4]*.
- Provides detail related to rental agreement provisions and terminations and specifies that assignments of rental agreements are not permitted *[see 710.5]*.
- Details the rights and responsibilities of the Nation as landlord and Tribal members as tenants including disposition of personal property, repairs, damage, pest control, check-in sheet, required notice to enter, and annual inspections *[see 710.6]*.
- Provides provisions related to domestic abuse and sex offender registration *[see 710.7 and 710.8]*.
- Details the process required in the event of a tenant's death *[see 710.9]*.
- Identifies the Comprehensive Housing Division and the Land Commission as the entities delegated authority to jointly develop rules under this law; except where federal funding is required in which case the CHD has sole authority *[see 710.3-1(f) and 710.4-1 and 710.4-3 and 710.6-2 and 710.6-2(c) and 710.6-3(c)(2)]*.
- Identifies the Oneida Judiciary as the original hearing body authority for all actions taken under this law *[see 710.10]*.

*Submitted by Krystal L. John, Staff Attorney*

***Analysis***

This Resolution adopts the Landlord-Tenant law which includes the provisions summarized above.

As noted in the resolution, the rental programs minimum requirements, selection criteria and rights and responsibilities of the landlord, the Nation, and the tenants are not included in the Real Property law or any other law and are contained only in standard operating procedures of the Division of Land Management, the Oneida Housing Authority and Elder Services.

This law contains minimum eligibility requirements, selection criteria and rights and responsibilities of the landlord, the Nation, and the tenants and delegates joint rulemaking authority to the Land Commission and the Comprehensive Housing Division to create rules naming each rental program and the specific requirements related to each. Further, this law provides that, at a minimum, rental programs are required to be developed that functions to serve (1) the general population; (2) the low-income population; and (3) the elder population.



A good mind. A good heart. A strong fire.

This law names the Oneida Judiciary as the hearing body able to hear appeals arising under this law (the Land Commission previously had hearing body authority for Division of Land Management administered rental agreements).

***Conclusion***

Because the subject matter of this law is not contained in any other laws of the Nation, adoption of this Resolution would not conflict with any of the Nation's laws.



A good mind. A good heart. A strong fire.

ONEIDA

# LANDLORD-TENANT

| *Analysis by the Legislative Reference Office* | | | | | |
|---|---|---|---|---|---|
| **Title** | Landlord-Tenant (law) | | | | |
| **Sponsor** | David P. Jordan | **Drafter** | Krystal L. John | **Analyst** | Maureen Perkins |
| **Requester & Reason for Request** | Land Commission<br>To transfer the Land Commissions' hearing body authority to the Judiciary. | | | | |
| **Purpose** | The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants within the reservation *[see 710.1-1].* | | | | |
| **Authorized/ Affected Entities** | Comprehensive Housing Division (Oneida Housing Authority, Division of Land Management and Elder Services), Land Commission, Oneida Tribal members, their spouses and occupants who rent and occupy premises under this law | | | | |
| **Related Legislation** | Eviction and Termination law, Administrative Rulemaking law, Building Code, Zoning and Shoreline Protection Ordinance, Pardon and Forgiveness law, and Real Property law | | | | |
| **Enforcement & Due Process** | Parties may appeal actions taken pursuant to this law and/or a rental agreement to the Oneida Judiciary *[see 710.10].* | | | | |
| **Public Meeting Status** | A public meeting was held on July 21, 2016. This draft includes LOC directed changes based on comments received during the public comment period. | | | | |

## Overview

This is a new law that provides overarching guidance for landlords and tenants related to all Tribal departments and divisions that provide rental housing opportunities within the reservation. Currently, each department or division is operating under their own standard operating procedures related to the programs they offer. This law standardizes the core processes and delegates each department or division authority through the Comprehensive Housing Division (which is in the process of being developed) to create rules that provide the detail related to rental housing within their programs. This law provides the framework and the Comprehensive Housing Division and the Land Commission will provide the detail within rules developed jointly under the authority delegated under this law per the Administrative Rulemaking law.

The Landlord-Tenant law:

- Provides rental programs offered to Tribal members by the Nation within the reservation boundaries and includes eligibility requirements and tenant selection criteria *[see 710.4]*.
- Provides detail related to rental agreement provisions and terminations and specifies that assignments of rental agreements are not permitted *[see 710.5]*.
- Details the rights and responsibilities of the Nation as landlord and Tribal members as tenants including disposition of personal property, repairs, damage, pest control, check-in

sheet, required notice to enter, and annual inspections *[see 710.6]*.

- Provides provisions related to domestic abuse and sex offender registration *[see 710.7 and 710.8]*.
- Details the process required in the event of a tenant's death *[see 710.9]*.
- Identifies the Comprehensive Housing Division and the Land Commission as the entities delegated authority to jointly develop rules under this law; except where federal funding is required in which case the CHD has sole authority *[see 710.3-1(f) and 710.4-1 and 710.4-3 and 710.6-2 and 710.6-2(c) and 710.6-3(c)(2)]*.
- Identifies the Oneida Judiciary as the original hearing body authority for all actions taken under this law *[see 710.10]*.

**Administrative Rulemaking**

- The CHD and the Land Commission have joint rulemaking authority under this law and are required to develop and implement the following rules prior to the implementation of this law:
    1. Establish rules naming residential rental programs and providing the specific requirements and regulations, including eligibility requirements, that apply to each program *[see 710.4-1 and 710.4-2(f)]*.
    2. The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements *[see 710.4-3]*.
    3. Create rules further governing the disposition of personal property *[see 710.6-2(c)]*.
    4. Develop rules governing how and when rent is decreased due to untenability due to damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of section 710.6-3(a) materially affecting the health or safety of the tenant *[see 710.6-3(c)(2)]*.

**Other**

- Please refer to the fiscal impact statement for any financial impacts.

**Considerations**

- This law references the Comprehensive Housing Division (CHD). The CHD is scheduled for implementation October 1, 2016. The BC resolution adopting this law will be accompanied by second resolution that defines the CHD. Each department or division within the CHD (Oneida Housing Authority, Division of Land Management and Elder Services) will be required to create rules delegated under this law until the CHD is implemented.

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# Title 7. Property - Chapter 710
## LANDLORD-TENANT
## Tsi? Yuhwʌtsyawá·ku Aolihwá·ke
*where it bound to the earth - issues*

710.1. Purpose and Policy
710.2. Adoption, Amendment, Repeal
710.3. Definitions
710.4. Rental Programs
710.5. Rental Agreement Documents
710.6. Rights and Duties of Landlords and Tenants
710.7. Domestic Abuse Protections
710.8. Sex Offender Registry
710.9. Termination of Tenancy at Death of Tenant
710.10. Appeals

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### 710.1. Purpose and Policy

710.1-1. *Purpose*. The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants within the reservation.

710.1-2. *Policy*. Is it the Nation's policy to provide a fair process to all landlords and tenants that preserves the peace, harmony, safety, health, general welfare and the Nation's resources.

### 710.2. Adoption, Amendment, Repeal

710.2-1. This law was adopted by the Oneida Business Committee by resolution _____.

710.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

710.2-3. 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.

710.2-4. 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.

710.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

### 710.3. Definitions

710.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.[1]

(b) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.

(c) "Nation" means the Oneida Nation.

(d) "Premises" means the property covered by a rental agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.

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[1] *See* BC Resolution _____ providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

(e) "Rental Agreement" means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less.

(f) "Reservation" means all property 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.

(g) "Rule" means a set of requirements, including citation fees and penalty schedules, enacted jointly by the Land Commission and the Comprehensive Housing Division in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law, provided that where such requirements relate solely to premises administered pursuant to federal funding, the Comprehensive Housing Division has sole authority.

(h) "Tenant" means the person granted the right to use or occupy a premises pursuant to a rental agreement.

(i) "Security Deposit" means a payment made to the landlord by the tenant to ensure that rent will be paid and other responsibilities of the rental agreement performed.

## 710.4. Rental Programs

710.4-1. *Available Rental Programs.* Consistent with available funds, the Comprehensive Housing Division shall provide residential rental programs for providing housing to the following types of tenants and the Oneida Land Commission and the Comprehensive Housing Division shall jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program:

(a) Elder tribal members;

(b) Low-income Oneida tribal members and families; and

(c) Tribal members in general.

710.4-2. *Rental Eligibility Requirements.* In order to be eligible for a rental agreement, applicants shall meet the following conditions:

(a) Be eighteen (18) years of age at the time of the application;

(b) Have no felony or drug convictions within the past two (2) years from the date of application, provided that a pardon or forgiveness received pursuant to the Pardon and Forgiveness law may provide an exception to this condition;

(c) Meet the local governments' laws' requirements regarding residency restrictions for convicted sex offenders;

(d) Meet the income requirements for entering the rental agreement as determined by the rental program's governing rules;

(e) Not hold a residential lease with the Nation; and

(f) Meet any other eligibility requirements set by the rental program's rules, which may not be less strict than this law, but may be stricter than this law.

710.4-3. *Tenant Selection.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

## 710.5. Rental Agreement Documents

710.5-1. *Severability of Rental Agreement Provisions.* The provisions of a rental agreement are severable. If any provision of a rental agreement is void or unenforceable by reason of any

law, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not affect other provisions of the rental agreement that can be given effect without the invalid or unenforceable provision.

710.5-2. *Requirements of Rental Agreements and Terminations.* A rental agreement or termination of a rental agreement is not enforceable unless it meets the requirements of this law and is in writing.

(a) All rental agreements shall:

(1) Set forth the amount of rent or other consideration provided in exchange for the ability to use/occupy the premises;

(2) Set forth the required amount of security deposit and require payment of the security deposit prior to the tenant(s) taking use/occupancy of the premises;

(3) Set the time of commencement and expiration of the rental agreement;

(4) Provide a reasonably definite description of the premises;

(5) State that nothing in the agreement may be considered a waiver of the Nation's sovereign immunity, provided that tenants may seek enforcement of a rental agreement or dispute an action taken pursuant to a rental agreement with the Oneida Judiciary; and

(6) Be signed by both the landlord and the tenant(s) prior to the tenant(s) taking use/occupancy of the premises;

(A) The rental agreement is not required to be signed by all adults using/occupying the premises, provided that the rights and responsibilities contained in the rental agreement do not extend to persons that are not named as tenants in the rental agreement.

(B) Unless legally separated, if a tenant(s) is married, the landlord shall require that each spouse sign the rental agreement.

(b) Any provision of a rental agreement that does any of the following is void and unenforceable.

(1) Allows a landlord to do or threaten to do any of the following because a tenant has contacted an entity for law enforcement services, health services or safety services:

(A) Increase rent;

(B) Decrease services;

(C) Bring an action for eviction pursuant to the Eviction law; and/or

(D) Refuse to renew a rental agreement.

(2) Except as otherwise provided in this law in regards to domestic abuse, authorizes the eviction or exclusion of a tenant from the premises other than through the process described in the Eviction law.

(3) Requires the tenant to pay attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement except as supported by a court order.

(4) States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This subsection does not affect ordinary maintenance obligations of a tenant under 710.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(5) Imposes liability on the tenant for any of the following:

(A) Personal injury arising from causes clearly beyond the tenant's control.

(B) Property damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees. This subsection does not affect ordinary maintenance obligations of a tenant under 710.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(6) Waives any obligation on the part of the landlord to deliver the premises in a fit and habitable condition or to maintain the premises during the tenant's tenancy.

(7) Allows for periodic tenancy, which for the purposes of this section means when a tenant uses/occupies a premises without an effective and valid rental agreement by paying rent on a periodic basis including, but not limited to, day-to-day, week-to-week and month-to-month.

710.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

**710.6. Rights and Duties of Landlords and Tenants**

710.6-1. This section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision found in a valid rental agreement.

710.6-2. *Disposition of Personal Property Left by the Tenant.* If the tenant moves from or is evicted from the premises and leaves personal property, the landlord may presume that the tenant has abandoned the personal property and may dispose of said property in any manner that the landlord, in his or her sole discretion, determines is appropriate, provided that:

(a) The landlord shall hold personal property for a minimum of five (5) business days and the tenant may retrieve said personal property by contacting the landlord.

(b) The landlord shall keep a written log of the date and the work time that the Nation's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the property after the expiration of the timeframe provided in the order to vacate.

(c) The Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property.

710.6-3. *Repairs; Untenability.* This section applies to all leases if there is no contrary provision in writing signed by both parties.

(a) *Duties of the Landlord.*

(1) Except for repairs made necessary by the negligence of, or improper use of the premises by the tenant, the landlord has a duty to do all of the following:

(A) Keep in a reasonable state of repair portions of the premises over which the landlord maintains control.

(B) Keep in a reasonable state of repair all equipment under the landlord's control necessary to supply services that the landlord has expressly or impliedly agreed to furnish to the tenant, such as heat, water, elevator, or air conditioning.

(C) Make all necessary structural repairs.

(D) Except as provided in section 710.6-3(b)(2), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

(E) Comply with any laws or rules of the Nation that are applicable to the premises.

(2) If the premises are part of a building where other parts are occupied by one (1) or more other tenants, negligence or improper use by one (1) tenant does not relieve the landlord from the landlord's duty to make repairs as provided in 710.6-3(a)(1), provided that the landlord may require the responsible tenant to pay for such repairs.

(3) A landlord shall disclose to a prospective tenant, before entering into a rental agreement with or accepting any earnest money or security deposit from the prospective tenant, any violation of either the Building Code of the Oneida Nation or the Zoning and Shoreland Protection Ordinance if all of the following apply:

(A) The landlord has actual knowledge of the violation;

(B) The violation affects the dwelling unit that is the subject of the prospective rental agreement or a common area of the premises;

(C) The violation presents a significant threat to the prospective tenant's health or safety; and

(D) The violation has not yet been corrected but the landlord shall correct the violation prior to the tenant taking occupancy of the premises.

(4) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either section 710.6-3(b) or (c) governs.

(5) The landlord is responsible for all required pest control to keep the premises in a safe and healthy condition, provided that where an infestation has occurred due to the acts or inaction of the tenant the pest control costs may be assessed against the tenant.

(b) *Duties of the Tenant.*

(1) If the premises are damaged, including by an infestation of insects or other pests, due to the acts or inaction of the tenant, the landlord may elect to allow the tenant to remediate or repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the remediation, repair, or redecoration, and in such case the tenant shall reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proven otherwise by the tenant.

(2) The tenant shall keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order.

(3) Tenants shall comply with all laws and rules of the Nation.

(c) *Untenability.* If the premises become untenable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of section 710.6-3(a) materially affecting the health or safety of the tenant, the tenant may move from the premises unless the landlord promptly repairs, rebuilds or eliminates the health hazard or the substantial violation of 710.6-3(a) materially affecting the health or safety of the tenant.

(1) The tenant may also move and terminate the rental agreement if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on the tenant.

(2) If the tenant remains in possession, the landlord shall decrease rent for each month to the extent the tenant is deprived of the full normal use of the premises. The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing how and when rent is decreased pursuant to this section. This subsection does not authorize rent to be withheld in full, if the tenant remains in possession.

(3) If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenable and the landlord shall repay any rent paid in advance apportioned to the period after the premises become untenable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

(d) *Check-in sheet*. Landlords shall provide all new tenants with a check-in sheet when the tenant commences his or her occupancy of the premises that the tenant may use to make comments, if any, about the condition of the premises. The landlord shall provide the tenant with seven (7) days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord. The landlord is not required to provide the check-in sheet to a tenant upon renewal of a rental agreement.

(e) *Notice to Enter Required.* The landlord shall provide twenty-four (24) hour written notice prior to entering the tenant's premises where notice is required to either be personally served to the tenant or posted on the premises. A landlord is exempt from this notice requirement in the case of an emergency welfare check. The basis of a welfare check may include, but is not limited to the following:

(1) The landlord believes the tenant's or a child's wellbeing may be in jeopardy based on reports of child abuse or neglect, medical concerns, suspicious activity or other reported information;

(2) The landlord suspects the tenant has abandoned the premises; and/or

(3) The landlord receives notice that the premise's utilities have been disconnected.

(f) *Acts of tenant not to affect rights of landlord.* No act of a tenant in acknowledging as landlord a person other than the tenant's original landlord can prejudice the right of the original landlord to possession of the premises.

(g) *Annual Inspection Required.* In the event the tenant renews the rental agreement for additional terms, the landlord shall, at a minimum, inspect the premises once annually.

**710.7. Domestic Abuse Protections**

710.7-1. If a tenant notices the landlord of domestic abuse with of any of the following documentation, regardless of marital status, the landlord shall change the locks to the premises and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the domestic abuser:

(a) An injunction order under Wis. Stat. 813.12(4) protecting the tenant from a co-tenant;

(b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a co-tenant;

(c) An injunction order under Wis. Stat. 813.125(4) protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;

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

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

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

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

710.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a co-tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to remain on the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date the rental agreement is modified. If the latter applies, in addition to removing the co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to extend its duration.

710.7-3. The Eviction law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

**710.8. Sex Offender Registry**

710.8-1. Should a tenant request information about whether any other tenants are required to register as a sex offender, the landlord shall provide the tenant with written notice that he or she may obtain information about the sex offender registry and persons registered within the registry by contacting the department of corrections. The landlord shall include in such notice the appropriate telephone number and internet site of the department of corrections.

**710.9. Termination of Tenancy at Death of Tenant**

710.9-1. If a tenant dies, his or her tenancy is terminated on the earlier of the following:

(a) Sixty (60) days after the landlord receives notice, is advised, or otherwise becomes aware of the tenant's death;

(b) The expiration of the term of the rental agreement.

710.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination of his or her tenancy. A landlord may not contact or communicate with a member of the deceased tenant's family for the purpose of obtaining from the family member rent for which the family member has no liability.

710.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises from any obligation under a rental agreement or any other liability to the landlord.

710.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date of the Tribal member tenant's death. If the latter applies, the landlord shall revise the rental agreement to extend its duration.

**710.10. Appeals**

710.10-1. Parties may appeal actions taken pursuant to this law and/or a rental agreement to the Oneida Judiciary.

*End.*

Adopted – BC

ONEIDA

# MEMORANDUM

To: Larry Barton, Chief Financial Officer

RaLinda R. Ninham-Lamberies, Assistant Chief Financial Officer

From: Rae M. Skenandore

Date: August 25, 2016

Re: **Financial Impact of the Landlord Tenant Law**

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## I. Background

This new proposed Law was requested by the Oneida Land Commission. The Law provides guidance for landlords and tenants and applies to all Tribal departments and divisions that provide rental housing opportunities within the Reservation. It also standardizes the core processes and delegates authority through the Comprehensive Housing Division (under development). The Law identifies the Comprehensive Housing Division (CHD) and the Land Commission as the entities delegated authority to jointly develop Rules under this Law; except where Federal funding is required in which case the CHD has sole authority. The following is a summary of the key aspects of the Law:

- Governs residential rental programs for the following types of tenants:
  - Elder Tribal members;
  - Low-income Oneida Tribal members and families; and
  - Tribal members in general.
- Applies to occupants of Nation owned property including rental agreements and leases.
- Includes the following eligibility requirements:
  - Be eighteen (18) years of age at the time of the application;
  - Have no felony or drug convictions within the past two (2) years from the date of application, provided that a pardon or forgiveness received pursuant to the Pardon and Forgiveness law may provide an exception to this condition;
  - Meet the local government's laws requirements regarding residency restrictions for convicted sex offenders;
  - Meet the income requirements for entering the rental agreement as determined by the rental program's governing rules;
  - Not hold a current residential lease with the Nation; and
  - Meet any other eligibility requirements set by the rental program's rules, which may not be less strict than this Law, but may be stricter than this law.

- Sets forth the requirements of Rental Agreements.
- Sets forth the rights and responsibilities of the Nation as landlord and Tribal members as tenants.
- Provides provisions to protect tenants that are victims of domestic abuse.
- Includes a provision to provide information on sex offenders through the registry.
- Details the process required in the event of a tenant's death.
- Identifies the Oneida Judiciary as the original hearing body authority for all actions taken under this law.

## II. Executive Summary of Findings

A "Fiscal Impact Statement" means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

The intent of the new Law is to standardize requirements, operations, and procedures of the various Tribal entities engaged in residential rental agreements and leases. Currently, Elder Services, Housing, and the Division of Land Management provide rental opportunities to Tribal Members.

The following two issues raised do not have a direct Fiscal impact. However, they may impact future revenue or potential services provided by the Oneida Nation if the Law is implemented.

First, the Law is restricted to serving three populations. Tribal elders, Tribal members and families that qualify for low income housing under Federal guidelines, and Tribal members in general. Under this Law, no Tribal entity could rent to non-Oneida Tribal member or individuals that are not Tribal. It should be noted that any development opportunities that would include rentals for individuals that are not Oneida members are prohibited under this Law

Second, again the intent of the Law is to standardize requirements, operations, procedures, and due process of the various Tribal entities engaged in residential rental agreements and leases. However, the eligibility requirements of one program are listed as a requirement for all rentals. This Law would prohibit any Tribal entity from providing transitional or independent housing for ex-offenders regardless of the type of felony. For example, a fourth Operating While Intoxicated (OWI) is an automatic felony under Wisconsin State Law. Individuals convicted of a fourth OWI would be prohibited from entering into a lease or rental agreement with any Tribal entity for the period of two years.

The Oneida Land Commission currently acts as the original Hearing Body for disputes under leases or rental agreements. The stipend paid for a hearing is $50.00 per commissioner and three Commissioners are required for a hearing. Any savings from transferring the hearing

body authority from the Oneida Land Commission to the Judiciary would be negligible due to their existing operating expenses.

According to Division Of Land Management and the Oneida Judiciary, there will be no additional startup, personnel, office, or documentation costs associated with implementing the Law.

Rulemaking Authority is jointly delegated to the Division of Land Management and the Land Commission. The Administrative Rules for this Law will be completed within 120 days. Upon the approval of the Rules, the Law can be implemented.

## III. Financial Impact

No fiscal impact.

## IV. Recommendation

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that General Tribal Council has full information with which to render a decision.

**BC Resolution _____**

*Defining Comprehensive Housing Division in the Landlord-Tenant Law*

**WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

**WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and

**WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

**WHEREAS,** the Oneida Business Committee adopted the Landlord-Tenant law with resolution BC 09-14-16__; and

**WHEREAS,** the Landlord-Tenant law assigns responsibilities and authorities, including rulemaking authority, to the Comprehensive Housing Division; and

**WHEREAS,** the Landlord-Tenant law defines the Comprehensive Housing Division as the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution; and

**NOW THEREFORE BE IT RESOLVED,** that for the purposes of the Landlord-Tenant law the Oneida Business Committee hereby defines the Comprehensive Housing Division as the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

**Oneida Nation**
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov

**Statement of Effect**

*Resolution: Defining Comprehensive Housing Division in the Landlord-Tenant Law*

***Summary***

This resolution defines the Comprehensive Housing Division, for the purposes of the Landlord-Tenant law, the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

*Submitted by Krystal L. John, Staff Attorney*

***Analysis***

The Landlord-Tenant law assigns responsibilities and authorities, including rulemaking authority, to the Comprehensive Housing Division. The Comprehensive Housing Division is under development as part of the Oneida Business Committee's reorganization; however, it has not yet been formally created.

The Landlord-Tenant law assigns responsibilities and authorities to the Comprehensive Housing Division and provides that the Oneida Business Committee shall define that Division by resolution. This allows the law to be adopted now with reference to the Comprehensive Housing Division and prevents the need for amendments to the law at the time that the Comprehensive Housing Division is formally created. Accordingly, this resolution defines the Comprehensive Housing Division for the purposes of the Landlord-Tenant law as the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program. When the new Comprehensive Housing Division is created, the definition of Comprehensive Housing Division will be required to be updated by Oneida Business Committee resolution, and will not require the law to be amended using the process required by the Legislative Procedures Act.

***Conclusion***

Adoption of this Resolution would not conflict with the Nation's laws.

**Oneida Nation**
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov

Legislative Operating Committee
September 21, 2016

# Real Property Law Amendments

| | |
|---|---|
| **Submission Date:** 10/7/15 | **Public Meeting:** None Yet |
| **LOC Sponsor:** David P. Jordan | **Emergency Enacted:** n/a<br>**Expires:** n/a |

**Summary:** *These amendments will transfer all Land Commission hearing responsibilities to the Judiciary.*

**10/7/15 LOC:** Motion by David P. Jordan to add the Real Property Law Amendments, Probate Law, Mortgage Law, Landlord-Tenant Law and Land Commission Bylaws Amendments to the Active Files List with himself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

**12/11/15:** Work meeting held. Attendees include: David P. Jordan, Brandon Stevens, Rae Skenandore, Nicole Rommel, Rebecca Webster, Maureen Perkins and Krystal John.

**12/16/15 LOC:** Motion by Jennifer Webster to accept the memorandum update as FYI and to defer the Real Property Law Amendments back to the sponsor and to bring back when ready; seconded by Tehassi Hill. Motion carried unanimously.

**12/16/15:** Work meeting held. Attendees include: David P. Jordan, Rae Skenandore, Rebecca Webster, Krystal John, Maureen Perkins and Nicole Rommel.

**1/20/16 LOC:** Motion by David P. Jordan to defer the Real Property Law Amendments to the Legislative Reference Office for legislative analysis and to the Finance Department for a fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.

**Next Steps:**

- Accept legislative analysis and the public meeting packet and direct LRO staff to hold a public meeting October 20, 2016.



A good mind. A good heart. A strong fire.

NOTICE OF

# PUBLIC MEETING

TO BE HELD

## Thursday, OCTOBER 20th 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 licensing requirements for persons purchasing property on behalf of the Nation.
- Provisions related to rental housing opportunities provided by the Nation were drafted into the Landlord-Tenant law.
- Provisions related to mortgages and foreclosures within the Nation's mortgage programs were drafted into the Mortgage and Foreclosure law.
- Provisions related to terminating or evicting from the Nation's leasing or rental programs were drafted into 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 OCTOBER 27, 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@oneidanation.org**
Phone: **(920) 869-4376 or (800) 236-2214**
Fax: **(920) 869-4040**

# Real Property Law Amendments

| Analysis by the Legislative Reference Office | | | | | |
|---|---|---|---|---|---|
| **Title** | Real Property law (amendments) | | | | |
| **Sponsor** | David P. Jordan | **Drafter** | Krystal L. John | **Analyst** | Maureen Perkins |
| **Requester & Reason for Request** | Land Commission<br>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 601.7-6].*<br>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].*<br>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 has not been held. | | | | |

## Overview

The Real Property Law has been redrafted; pulling out content into three separate laws (Landlord-Tenant, Mortgage and Foreclosure, and Eviction and Termination).[1] Additionally, hearing body authority was removed from the Land Commission and transferred to the Judiciary,

[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.

the probate process was updated and Wisconsin State real estate licensing requirements were added for persons purchasing property on behalf of the Nation.

Provisions were pulled from the current Real Property Law and drafted into the following laws:

- Provisions related to rental housing opportunities provided by the Nation were drafted into the Landlord-Tenant law.
- Provisions related to mortgages and foreclosures within the Nation's mortgage programs were drafted into the Mortgage and Foreclosure law.
- Provisions related to terminating or evicting from the Nation's leasing or rental programs were drafted into the Eviction and Termination law.

**Proposed Amendments**

- The amended law clarifies that the Nation's jurisdiction extends to the Reservation boundaries and Tribal trust land outside the Reservation boundaries. The current law states that it governs the land within the Reservation Boundaries and such other lands as may be added within or without said boundary line. *[see 67.1-1 and 1-2]* but the proposed law clarifies that jurisdiction also extends to tribal trust land held outside the Reservation boundaries *[see 601.1-1]*.
- The Rules of Statutory Construction *[see 67.2 of current law]* were removed from the current Real Property law as this provision was intended to guide contested cases; these provisions are not necessary under this amended draft because the Judiciary will hear contested cases – these rules are not typically included in laws.
- The probate section *[see 67.9 of current law]* was reworked and the Division of Land Management and the Oneida Land Commission were given rulemaking authority to jointly develop rules related to probate *[see 601.8]* under the Administrative Rulemaking law.
- Real Estate Trust Accounts section *[see 67.10 of current law]* was removed as these functions are performed through the rules under the Mortgage and Foreclosure law and detail regarding where the funds are kept is not necessary in this law.
- The Leasing law references tribal land only and does not include Tribal fee land *[see 65.4-1 of current Leasing law]*. The Leasing law is drafted to align with the HEARTH Act (federal legislation) which only applies to tribal land and excludes lands held in trust for individual Indian landowners as well as mineral leases. The amended Real Property law states that all leases, including rental agreements, go through the Leasing law process regardless of whether the lease is on Tribal trust land or Tribal fee land *[see 601.9-1]*.
- General contracts were removed from the records section *[see 601.10]*. There was little guidance under the current law *[see 67.12-2 of current law]* and records that were not useful were recorded. The amended law refocuses the Oneida Register of Deeds to only accept records that affect land titles.
- The real estate licensing section *[see 67.13 of current law]* was amended to remove the Nation's Tribal Property License requirement and instead require a current State of Wisconsin real estate license. Under the amended law, a Wisconsin Real Estate License is required for all persons engaged in the acquisition of Tribal fee land *[see 601.11-1]*. Persons acquiring Tribal fee land on behalf of the Nation are regular employees of the Nation and are not be eligible for a commission *[601.11-1(a)]*. Requiring a State of

Wisconsin real estate license places those who purchase land on behalf of the Nation on equal footing with the seller, which is an advantage to the Nation. Also, the Nation's Tribal Property License program lacked oversight, which will now be provided through State licensing. Finally, by requiring a Wisconsin real estate license the Land Commission is removed from enforcement issues.

- Trust Asset and Accounting Management System (TAAMS) certification was added to the real estate licensing and certification section *[see 601.11]*. 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 Tribe 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(a) 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 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 602.12-3]*.
- 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**

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

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

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# Title 6. Property and Land – Chapter 601
# REAL PROPERTY
## Tokʌ́ske Kayanlʌ́hsla Tsiʔ Niʔyohuntsyaˑté
*The real/certain laws of the territory of the nation*

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

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 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 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.

(c) "Easement" means a real property right to cross or otherwise utilize the land of another for a specified purpose.

(d) "Estate" means a person's interest in real property or other property.

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

(f) "Guardian Ad Litem" means a guardian appointed by the Judiciary on behalf of an incompetent or minor party.

(g) "Individual Fee Land" means real property held in fee status by an individual or group of individuals.

(h) "Individual Trust Land" means individual Tribal land held in trust by the United States of America for the benefit of a Tribal member.

(i) "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.

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

(k) "Leasehold Mortgage" means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

(l) "Nation" means the Oneida Nation.

(m) "Personal Representative" means a person to whom authority to administer a decedent's estate have been granted by the Division of Land Management or the Judiciary.

(n) "Probate" or "Administration" means any proceeding relating to a decedent's estate, whether there is or is not a will.

(o) "Real Property" means land and anything growing on, attached to, or erected on the land, excluding anything that may be severed without injury to the land.

(p) "Reservation" means all the property 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.

(q) "Restricted Fee Status" means an interest in real property which includes a provision 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.

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

(s) "TAAMS" (Trust Asset and Accounting Management System) means the Bureau of Indian Affairs system for maintaining and tracking land title documents and all legal documents relating to land transactions.

(t) "Title Status Report" means a report issued by the Bureau of Indian Affairs after a title examination which shows the proper legal description of a tract of Tribal land; current ownership, including any applicable conditions, exceptions, restrictions or encumbrances on records; and whether the land is in unrestricted, restricted, trust, or

other status as indicated by the records in a Land Titles and Records Office. (v) "Tribal Fee Land" means Tribal land held in fee status by the Nation within the reservation.

(w) "Tribal Land" means Tribal fee land and Tribal trust land.

(x) "Tribal Member" means an individual who is an enrolled member of the Nation.

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

**601.4. General Provisions**

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

601.4-2. *Tribal Land Base.* Any transaction which adds real property to the Tribal land base must be administered through the Division of Land Management under the provisions of this law.

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

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

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

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

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

**601.5. Holding of Ownership**

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

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

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

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

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

**601.6. Legal Descriptions**

601.6-1. The legal description for any real property transferred under this law must be derived from a certified survey map or 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 certified survey map for the same piece of property, the certified survey map's legal description will be used on transfer documents along with the survey description, which must be designated as "Also Known As ..." Section, township, range and fourth principal meridian shall be included in all legal descriptions.

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

601.6-3. Legal descriptions defining land boundaries must be complete providing unequivocal identification of line or boundaries.

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

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

601.6-6. When real estate is listed for sale or lease to Tribal members, the address is adequate legal description of the real property.

**601.7. Title Transfer**

601.7-1. *Trust Acquisition*. The Division of Land Management shall use 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 shall follow general guidelines provided by the federal government in terms of form, content, period of search, destroyed or lost records and abstracter's certificate.

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

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

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

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

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

(a) A valid deed shall:

(1) Be in writing;

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

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

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

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

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

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

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

(1) The federal authority for trust acquisition;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**601.8. Probate**

601.8-1. 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. The Division of Land Management and the Oneida Land Commission shall jointly create any rules necessary to administer probate estates. The Division of Land Management shall:

(a) Process applications for probate administration;

(b) Receive proof of heirship demonstrating a party is entitled to receive an intestate decedent's property pursuant to applicable laws and rules;

(c) Receive consent to serve forms and in undisputed matters, issue domiciliary letters;

(d) Require and receive affidavits of service;

(e) Receive waiver and consent to probate administration forms and any related affidavits;
(f) Issue notice to creditors of the probate's administration, receive creditor claims for consideration and settlement, and issue discharge of creditors when appropriate;
(g) Receive and process all estate inventories;
(h) Receive and process, when possible, land transactions in accordance with this law and receive proof of recording documents;
(i) Receive estate receipts;
(j) In undisputed matters, receive and process statement of personal representative to close estate and issue discharge of personal representative; and
(k) Refer disputed matters to the Judiciary, transfer probate and related documents, and participate in the Judiciary's proceedings as necessary.

601.8-2. 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. In addition, the Judiciary shall hear and administer probate estates in which the Division of Land Management seeks appointment as a personal representative.

**601.9. Leasing of Real Property**

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

(a) For the purposes of this law, leasing refers to all leases made pursuant to the Leasing law and all rental agreements made pursuant to the Landlord-Tenant law.
(b) The Leasing law definition of Tribal land does not include Tribal fee land, however pursuant to this law, leases of Tribal fee land lasting longer than one (1) year that are not made as part of the homeownership program which uses federal funding must be administered and processed using the Leasing law.

**601.10. Records**

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

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

(a) Deeds;
(b) Probate orders;
(c) Mortgages and other valid liens;
(d) Easements, covenants, and restrictions;
(e) Certified survey maps and plats of survey;
(f) Patents;
(g) Declarations of involuntary transfer or taking;
(h) Satisfactions;
(i) Leases made pursuant to the Leasing law;

(j) Home ownership agreements made pursuant to the Landlord-Tenant law;
(k) Marriage agreements; and
(l) Correction of title defects.

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

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

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

**601.11. Real Estate Licensing and Certification**

601.11-1. *Wisconsin Real Estate License Required.* All persons engaging in the acquisition of Tribal fee land on behalf of the Nation shall have and maintain a valid Wisconsin real estate license.

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

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

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

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

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

**601.12. Organization**

601.12-1. *Comprehensive Housing Division.* The Comprehensive Housing Division shall oversee all residential transactions within the reservation and shall process and administer said transactions using the applicable of the Landlord-Tenant law, the Mortgage and Foreclosure law and/or the Eviction and Termination law. In addition, 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.

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

(a) Interpret the provisions of this law and create policy to guide the Division of Land Management in implementing the same;
(b) Approve or deny all easements and land use licenses;

(c) Review and adopt the Division of Land Management's standard operating procedures for entering into agriculture and commercial leases pursuant to the Leasing law;

(d) Approve or deny all acquisition of Tribal land;

(e) Allocate and assign land uses to all Tribal land, except those uses governed by the Public Use of Tribal Land law, based on rules which the Oneida Land Commission shall develop; and

(f) Name all buildings, roads, parks and the like on Tribal land.

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

(a) Forward requests for easements and land use licenses to the Oneida Land Commission based on the easement and land use license rules jointly developed by the Division of Land Management and the Oneida Land Commission;

(b) Administer and oversee the Oneida Nation Register of Deeds;

(c) Enter into and administer agricultural and commercial leases pursuant to the Leasing law and the Eviction and Termination law and any corresponding rules;

(d) Prepare title reports and process trust transactions; and

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

*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
Amended-BC-05-13-15-B

**Oneida Nation**
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
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Legislative Operating Committee
September 21, 2016

# Business Committee Meetings Law

| | |
|---|---|
| **Submission Date:** 8/27/15 | **Public Meeting:** n/a |
| **LOC Sponsor:** Brandon Stevens | **Emergency Enacted:** n/a<br>**Expires:** n/a |

**Summary:** *This is a proposal for a new law to govern the structure of the Oneida Business Committee Meetings, creating a more efficient process for conducting Tribal business.*

**9/2/15 LOC:** Motion by Jennifer Webster to add the Business Committee Meetings Law to the active files list; seconded by Tehassi Hill. Motion carried unanimously.

**11/4/15 LOC:** Motion by Fawn Billie to accept the memorandum for the Business Committee Meetings Law as FYI and defer to the sponsor to bring back when ready; seconded by Tehassi Hill. Motion carried unanimously.

**Next Steps:**

- Accept the draft of the Business Committee Meetings Law and defer to the Legislative Reference Office for a legislative analysis and to the Finance Department for a fiscal impact statement.



A good mind. A good heart. A strong fire.

# Title 1. Government – Chapter 117
# ONEIDA BUSINESS COMMITTEE MEETINGS

117.1. Purpose and Policy
117.2. Adoption, Amendment, Repeal
117.3. Definitions
117.4. Rules of Order
117.5. Schedule of Meetings
117.6. Agenda
117.7. Additional Responsibilities
117.8. Enforcement

---

## 117.1. Purpose and Policy

117.1-1. *Purpose.* The purpose of this law is to identify how the Oneida Business Committee will carry out its responsibilities. Meetings of the Oneida Business Committee are for the purpose of conducting the business of the Oneida Nation as delegated to the Oneida Business Committee under the Constitution of the Nation.

117.1-2. *Policy.* It is the policy of the Oneida Business Committee to be clear and consistent in its actions and to be guided by the responsibilities grounded in the Oneida culture and the Oneida Nation Constitution. It is further the policy that Oneida Business Committee meetings to be open to the public and to have discussions related to the items on the agenda in order to have the widest possible viewpoint, to request and receive technical advice and respect conflicting views.

## 117.2. Adoption, Amendment, Repeal

117.2-1. This law was adopted by the Oneida Business Committee resolution BC #-_____.

117.2-2. This law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

117.2-3. 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.

117.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, the following resolutions/actions are affected as follows.

(a) BC-08-14-91-A (Resolution regarding discussion of individuals is specifically superseded by this law)

117.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

## 117.3. Definitions

117.3-1. This section shall govern the definitions of words or phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a)

(b)

## 117.4. Rules of Order

117.4-1. *General.* The Oneida Business Committee shall utilize Robert's Rules of Order, current edition, for the procedural rules of its meetings except as specifically modified by the Constitution. The Oneida Business Committee may, by resolution:

(a) amend, modify, or direct that a rule shall not apply; and

(b) adopt Standard Operating Procedures that provide administrative guidance in the application of rules.

117.4-2. *Discussion of Individuals.* There is a need for frank and honest discussions in all meetings of the Oneida Business Committee and other Tribal entities. Such discussions often include personal observations, evaluations, and judgments of other personnel and individuals and that discussions of this nature in open session undermines the morale and trust of employees and members. *Cf. Resolution # BC-08-14-91-A.*

(a) It is the policy of the Oneida Nation that discussion in open and public meetings of the Oneida Business Committee be strictly conducted in an orderly, civil manner avoiding acrimony and ad hoc remarks.

(b) All Tribal members and employees whose performance responsibilities or activities will be discussed at open meetings of the Oneida Business Committee will be given adequate notice to appear at the meeting or that matter must be reserved for Executive Session.

(c) Should any information be received at any meeting of the Oneida Business Committee that implicates the integrity, honesty, or morality of a Tribal member or employee, such information shall be immediately referred to Executive Session without action or further discussion.

117.4-3. *Public Comment.*

(a) The Oneida Business Committee meeting is for the purposes of giving direction regarding the business of the Nation as delegated by the General Tribal Council and the Constitution. However, public comment is a resource for ideas and concerns to be raised and addressed by the Oneida Business Committee.

(b) A Public Comment period is set forth on the agenda which will allow individuals to make comments. All comments are subject to the limitations of 117.4-2 when discussing individuals or groups. The comment period is not a question and answer period, it may be extended by the Chair upon request and approval of the Oneida Business Committee. No action is required to accept or otherwise take action regarding a comment being made. Comments may be any of the following:

1. A request to have the Oneida Business Committee review an issue or action.
2. A comment on an item on the agenda.
3. Praise regarding an individual, an employee, a board, committee, commission, program or group.
4. A public notice about an activity or fundraising event.
5. Other comments deemed pertinent by the Chairperson.

(c) Public comments shall not be entertained on any other portion of the agenda. Upon conclusion of the public comment period, the Oneida Business Committee shall, by motion, close the public comment period and open the regular business session of the agenda.

**117.5. Schedule of Meetings**

117.5-1. *Annual Schedule.* The Tribal Secretary shall present, on or around August of each year, a proposed schedule for regular meetings of the Oneida Business Committee in a resolution for action by the Oneida Business Committee. The Oneida Business Committee shall adopt its annual meeting schedule by resolution.

117.5-2. *Reporting Schedule.* The Tribal Secretary shall present, on or around August of each year, a proposed schedule for presentation of quarterly reports by boards, committees, commissions, corporations, and organizational units of the Nation's operations at regular

meetings of the Oneida Business Committee in a resolution for action by the Oneida Business Committee. The Oneida Business Committee shall adopt the annual reporting schedule by resolution.

**117.6. Agenda**

117.6-1. *Agenda – Regular Meetings.* The agenda of regular meetings of the Oneida Business Committee shall contain the following sections and the general characteristics of each section is defined.

(a) *I. Call to Order.* The meeting shall be called to order, shall establish the existence of a quorum, and identify reasons why members of the Oneida Business Committee are not present.

(b) *II. Adopt the Agenda.* The agenda for the meeting shall contain necessary subsections so as to identify each item. If there are amendments to the agenda, they should be made during this item, but are not required to be done under this item.

(c) *III. Oath of Office.* Individuals who have been elected or appointed to an office on a board, committee, commission, as a police officer or other employee requiring an oath to be taken, or an agent or member of a corporate board, shall be given the oath of office,

(d) *IV. Public Comment.* This section of the agenda shall be one hour in length and open to any comment presented by an individual; after which time the meeting will be closed to public comment and the Business Committee shall begin the official business on the agenda.

(e) *V. Minutes.* The minutes of each regular, special and emergency meeting of the Oneida Business Committee presented for approval shall be listed in this section.

(f) *VI. Resolutions.* Any resolution approving or adopting an action, supporting or appointing a position or individual, and all other resolutions to be acted upon by the Oneida Business Committee shall be presented in this section.

(g) *VII. Appointments.* Actions regarding appointments to boards, committees, commissions, corporate entities, and other membership on entities shall be taken in this section in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions and other laws, policies and rules.

(h) *VIII. Standing Committees.* Standing committees are entities of the Oneida Business Committee delegated certain responsibilities to act, and whose actions are reported to, the Oneida Business Committee. Such actions may require further approval by the Oneida Business Committee to carry out, such as the Finance Committee meeting minutes, or adoption of laws and rules presented by the Legislative Operating Committee. Items presented in this section shall include minutes, quarterly reports, and other actions presented by the Standing Committee.

(i) *IX. General Tribal Council.* This section shall be utilized to address issues related to scheduling General Tribal Council meetings, accepting and directing action regarding petitions, and approving materials for presentation at General Tribal Council meetings.

(j) *X. Standing Items.* This section shall be utilized to present items which the Oneida Business Committee has determined require a constant, short term, presence on the agenda because repeat actions and/or follow-up actions may be necessary.

(k) *XI. Unfinished Business.* This section shall be utilized when agenda items from prior regular, special, or emergency meetings were unable to be completed.

(l) *XII. Tabled Business.* This section shall be utilized when an agenda item has been specifically tabled from a prior meeting. The item on the agenda shall be clearly labeled as a tabled action and the date of the meeting at which it was tabled shall be noted.

(m) *XIII. New Business.* Any business brought before the Oneida Business Committee that does not otherwise fit in any of the categories listed in this section shall be placed in this section.

(n) *XIV. Travel Reports.* This section shall be used to present reports regarding approved travel required to be presented to or approved by the Oneida Business Committee.

(o) *XV. Travel Requests.* This section shall be used to present requests for travel by an Oneida Business Committee member or where approval by the Oneida Business Committee is required.

(p) *XVI. Reports.* This section shall be used to present quarterly reports as directed by the Oneida Business Committee.

(q) *XVII. Executive Session.* This section shall be used to discuss matters that require confidentiality and meet the requirements set forth in the Open Records and Open Meetings Law for limitations upon access and exceptions. This section may be organized to meet the needs of the Oneida Business Committee.

117.6-2. *Requests to Present Agenda Items.* In general, the following officers and individuals are authorized to present items on the agenda of the Oneida Business Committee.

(a) *Oneida Business Committee Members.* Each member of the Oneida Business Committee is authorized to present items to be placed on the agenda for discussion and/or action.

(b) *Chairpersons of Boards, Committees or Commissions.* Chairpersons, on behalf of boards, committees or commissions, shall be authorized to submit the following to be placed on the agenda:

(1) quarterly reports; and

(2) contracts for the entity itself requiring Oneida Business Committee approval.

All other items must be placed on the agenda by the Oneida Business Committee member assigned as a liaison.

(c) *Direct Reports.* Employees who are identified as direct reports to the Oneida Business Committee shall be authorized to submit the following to be placed on the agenda:

(1) quarterly reports;

(2) contracts of the entity requiring Oneida Business Committee approval; and

(3) requests for actions under the section "XIII. New Business."

(d) *Corporations.* Chairs or Agents on behalf of corporate entities shall be authorized to submit the quarterly reports of the corporation, as directed by the corporate charter to be placed on the agenda. All other items must be placed on the agenda by the Oneida Business Committee member assigned as a liaison.

**117.7. Additional Responsibilities**

117.7-1. *Sergeant-at-Arms.* The Oneida Business Committee shall designate an individual to serve as the sergeant-at-arms for Oneida Business Committee meetings. The sergeant-at-arms shall oversee the security of the meeting and ensure the safety of all present.

117.7-2. *Oneida Business Committee Meeting Attendees.*

(a) Keeping in line with the Oneida principle of Kalihwi·yó, all attendees including the Oneida Business Committee members are expected to treat each other with respect and kindness. Attendees shall not:

(1) Use profanity, interrupt others, heckle or threaten people, disrespect property or exhibit behavior that disrupts the meeting or endangers the safety of other attendees.

(2) Be under the influence of alcohol or illegal drugs.

(3) Have a weapon on their person in violation of any applicable law.

(4) Take action that violates the laws of the Nation.

(5) Videotaping or recording any meeting of the Oneida Business Committee without expressed permission.

(b) *Removal of a Disorderly or Disruptive Person.* If a meeting is willfully interrupted by a person and the meeting cannot proceed forward or the person violates section 17.7-2(a), the Oneida Business Committee shall inform the person he or she will be removed from the meeting. After a warning, the Chairperson may order the sergeant-at-arms to remove the person from the meeting. No person shall be removed from a public meeting except for an actual breach of the peace committed at the meeting. An individual removed from an Oneida Business Committee meeting shall not be allowed to return for the duration of the meeting.

**117.8. Enforcement**

117.8-1. This law shall be enforced according to Robert's Rules of Order.

117.8-2. *Enforcement by the Chairperson.* The Chairperson may request members of the public who do not follow this law be removed from a Business Committee meeting by a member of Oneida Security or Oneida Law Enforcement. The Chairperson's decision is final and is not appealable.

117.8-3. *Enforcement by an Oneida Business Committee Officer or Member.* Officers and Members of the Oneida Business Committee are authorized, under Robert's Rules of Order, to request a point of order to direct compliance with the rules of order, rules set forth in this law, or rules set forth in resolutions or Standard Operating Procedures adopted by the Oneida Business Committee.

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Oneida Business Committee
Legislative Operating Committee
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# FY16 3rd Quarter Report
## Legislative Operating Committee

**Third Quarter Summary:**
Marriage Law Amendments and Election Law Emergency Amendments were adopted by the OBC.

The OBC adopted the Election Law Emergency Amendments on April 27, 2016. Adoption of these amendments were necessary to ensure compliance with recent changes made to the Oneida Constitution, which changed the voting age from 21 to 18. This was done on an emergency basis because a caucus was scheduled for May 7, 2016.

The OBC adopted the Marriage Law Amendments on May 25, 2016. This was an effort to provide for a way to waive the standard waiting period, provide for an administrative fee for changes to an application, and to provide a process to adopt a fee schedule.

**Third Quarter Agenda Items:**

| Sponsor | New Laws | Amendments | Petitions/Bylaws |
|---|---|---|---|
| **Brandon Stevens, LOC Chair** | Eviction & Termination | | Metivier: Per Capita |
| | Employment | | Debraska: Per Capita |
| **Tehassi Hill, LOC Vice Chair** | | Leasing Law | |
| | | Election Law | |
| **Fawn Billie** | Research Protection | Marriage Law | |
| | Higher Education | | |
| **David Jordan** | | Garnishments | |
| | | Cemetery Law | |
| | | Back Pay | |
| | | Per Capita | |
| **Jenny Webster** | Fitness for Duty | Vendor Licensing | Debraska: Health Board |
| | Rules of Administrative Procedure | | Trust/Enrollments Bylaws |
| | Seal & Flag | | |

**Administrative Items that didn't require sponsorship:**
Administrative Rulemaking templates and Code of Laws reorganization



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**LOC Meeting Dates:**
April 6, April 20, May 4, May 18, June 1, June 15

**Public Meetings-**
Back Pay Amendments- May 5
Per Capita Amendments- May 19
Leasing Law- May 19
Fitness for Duty- May 19
Garnishment Amendments- June 3
Per Capita Amendments- June 16
Mortgage & Foreclosure- June 30

**2014-2017 Active Files List as of June 30, 2016:**

- 56 open legislative items
- 18 completed items
- 1 item denied by the LOC (Per Capita Emergency Amendments)
- 10 Outstanding Administrative Actions
- 11 Completed Administrative Actions

**General Tribal Council and Oneida Business Committee Priorities**
The GTC and OBC priority items from the Active Files List remained the same from Quarter 2 to Quarter 3. GTC priorities included the Higher Education Law and the Child Care Consumer Complaint Law. OBC priorities included the Back Pay Law, and the Oneida Seal & Flag Law.

**Legislative Reference Office Activities**
An LRO Director was hired and began on June 20, 2016. As of June 30, there were two Legislative Analysts and an LRO Director, but no Staff Attorneys in the office. The LRO Director is working with the LOC Chairman to hire two Staff Attorneys. The LRO staff is working very hard to get the activities of the LOC completed.

**Fourth Quarter Plans**

- The LOC will work with the LRO Director to review the current Active Files List and set forth updated priorities for the remainder of this LOC term.
- The LRO Director will work with the Chief Counsel to identify high priority items and assign them to Staff Attorneys from the Law Office.
- The LRO will begin strategic planning for office activities and goals.
- Attorneys will be hired for the LRO.

**Report Prepared By:**

Brandon Stevens 9/6/16
**Brandon Stevens, LOC Chairperson** **Date**

J. A. Falck 9/6/16
**Jennifer Falck, LRO Director** **Date**


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## Memorandum

**TO:** Legislative Operating Committee
**FROM:** Jennifer Falck, Legislative Reference Office Director JF
**DATE:** September 16, 2016
**RE:** Legislative Drafting SOP and Legislative Stylebook

The Legislative Reference Office is reviewing and updating its current operating processes and procedures. Our goal is to formalize and streamline our operations in order to improve efficiency.

As part of this effort, we are submitting two documents for your information. Attached you will find:

1. An updated Law Drafting Standard Operating Procedure (SOP), and
2. A new legislative stylebook.

The updated SOP and the new stylebook are the end result of a collaborative effort among the LRO staff. The main changes to the SOP were to remove two sections which set out specific law drafting style requirements; and to add those requirements to the legislative stylebook.

The stylebook formalizes the various drafting and formatting requirements for various types of legislation, and includes appendices that provide additional information. The fourth appendix includes four legislative templates – for drafting laws, bylaws, OBC resolutions and GTC resolutions.

It is our hope that the stylebook and templates will provide consistency across the Code of Laws, and will be a useful tool for training new LRO staff in the future.

Please let me know if you have any questions.

# LEGISLATIVE REFERENCE OFFICE
# STANDARD OPERATING PROCEDURE

**Title: Legislative Drafting**
**Origination Date: December 19, 2005**
**Revision Date: September 8, 2016**
**Author: LRO**
**Approvals:**

9/14/16 — Brandon Stevens, LOC Chair — Date
9/14/16 — Jennifer Falck, LRO Director — Date

1.0 **PURPOSE.** To formalize the process for legislative drafting.

**2.0 DEFINITIONS**

**1.1 "LOC" means the Legislative Operating Committee.**

**1.2 "LRO" means the Oneida Legislative Reference Office.**

**3.0 SPONSORSHIP OF PROPOSALS**

3.1 LOC members are responsible for the proposals he or she sponsors. Such responsibilities include, but are not limited to:

3.1.1. Providing policy guidance when required

3.1.2. Approving LRO drafts before they are submitted to the LOC,

3.1.3. Maintaining communication with the drafting attorney and the LRO Director, and

3.1.4. Presenting the draft before the LOC.

3.2 In addition to the LOC members' responsibilities for sponsored items, LOC members may direct the LRO as appropriate. Examples of appropriate directions include, but are not limited to:

3.2.1. Requesting revisions be made to a draft before the draft is presented to the LOC.

3.2.2. Requesting feedback from the affected parties if it has not already been done by the LRO attorneys, and

3.2.3. Directing the LRO to place an item on the LOC agenda.

**4.0 DRAFTING OF LEGISLATION**

4.1 The LRO attorneys have the primary responsibility for drafting legislation, resolutions, by-laws, and rules. Other LRO staff may draft new legislation and/or make edits to existing drafts when approved by the LRO Director.

4.2 Drafting attorneys shall focus their time on the priority legislation that the LOC has set forth.

4.3 Any drafts, statements of effect, bylaws, or any other documents created by LRO staff shall be saved and maintained accordingly in the G drive.

**5.0 INPUT AND COMMENTS**

5.1 The LRO Director and the drafter will work with the sponsor and may use their discretion in contacting individuals and entities affected by a proposed law.

5.2 Whenever deemed necessary, the LRO attorney may forward work that interprets legislation, and/or statements of effect, to Chief Counsel (Oneida Law Office) for comments.

5.3 Draft language may be suggested in OBC and/or LOC meetings. However, actual drafting during these meetings is discouraged.

## 6.0 GENERAL RULES FOR DRAFTING

6.1 Legislation shall be drafted in accordance with the requirements set out in the LRO's Legislative Stylebook, including the style and formatting templates therein.

## 7.0 OPEN RECORDS

7.1 Draft legislation that has been submitted for a vote, or that has been included in a LOC meeting packet or in a public meeting packet is public information, as defined by the Open Records and Open Meetings Law.

7.2 Draft legislation that has not been voted on or approved for public hearing is not required to be made available as an open record.

7.3 Refer to the LRO's Open Records Request SOP for information on how to fulfill an open records request.

## 8.0 REFERENCES

Oneida Nation Legislative Stylebook
LRO SOP - Open Records Requests
Open Records and Open Meetings law.

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# Oneida Nation
# Legislative Stylebook

Legislative Reference Office
PO Box 365
Oneida, WI 54115
LOC@Oneidanation.org
(920) 869-4376

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If a question is not answered herein, consult the Wisconsin Legislative Reference Bureau's *Drafting Manual*, and if the question is still not answered, consult *The Chicago Manual of Style*. The LRO Director will resolve disagreements about grammar and style.

**Effectiveness/Applicability**

This Legislative Stylebook is effective as of September 12, 2016; and supersedes all prior rules and standard operating procedures governing the drafting and formatting style for Oneida laws, policies, bylaws, and related legislation.

It is intended that this stylebook will be a living document, regularly updated and revised by the Legislative Reference Office to reflect the evolving body of law which governs the Oneida Nation, including laws, resolutions, bylaws, and administrative rules.

Future amendments to this stylebook shall become effective immediately upon approval by the Legislative Reference Office Director.

# Section 1. Requirements for Specific Law Sections

**1.1. Purpose and Policy**

The Purpose and Policy section should include two subsections:

__.1-1. *Purpose.* The purpose of this law is to… *[per the LPA: direct why the law is needed. The purpose should indicate governing or directing reasons why it is being implemented.]*

__.1-2. *Policy.* It is the policy of the Oneida Nation to *[Per the LPA: indicate the direction the law is to take, including impetus or underlying goal of the regulation.]*

**1.2. Adoption, Amendment, Repeal**

Section 2 in each law should include this exact language:

__.2-1. This Law was adopted by the [Oneida Business Committee or General Tribal Council] by resolution BC-05-15-14-C and amended by BC-12-10-14-A and BC-01-13-16-C.
__.2-2. This Law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
__.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.
__.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, this law repeals the following:
(a)
__.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

Typically, laws are adopted by the Oneida Business Committee. However, certain laws/policies/bylaws/etc., have been adopted by GTC, meaning they can generally only be amended by GTC. These include:

1. The Membership Ordinance
2. Judiciary Law
3. Legislative Procedures Act
4. Election Law
5. Removal Law
6. Trust Enrollment Committee Bylaws – last approved by GTC on July 2, 2012.

Sometimes, GTC may adopt a law but then give OBC authority to amend it in the future. For example, the Notary Act was adopted by GTC but specifically authorizes OBC to make amendments. Also, there have been situations where GTC has authorized the OBC to adopt minor technical changes to laws, including GTC laws. When this happens, the law may have last been amended by OBC, even though it is a GTC law.

Some laws require other approval before they can be amended. For example, the Leasing Law requires approval from the Secretary of the US Department of the Interior before substantive changes can be made. These requirements are typically noted in the "Adoption, Amendment, Repeal" section.

*Repeals*
In section 2-4; if the law does not repeal any other laws, policies, resolutions, etc; then do not include the sentence "Provided that, this law repeals the following…" This is only used when a repeal is necessary.

The Legislative Procedures Act (LPA) states the following about repeals mentioned in 2-4:
"A repeal may be specific to documents, or general to subjects. No mention of severability of sections is necessary. All laws of the Tribe may have the appropriate portions severed and allow the remainder of the law to continue in effect."

**1.3. Definitions**
The definitions section should begin with this exact language:

__.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)

Definitions should be in alphabetical order and should each start with:
(a) "[defined word]" means …. (Use "means" instead of "shall mean.")

Words that are defined should not be capitalized when used, unless the word is a proper noun. For example, do not capitalize "law" when referencing another law, or "section" when referencing another section in the law. In the definitions section, if the defined term is more than one word – only the first word is capitalized, unless it is a proper noun.

The definitions section contains definitions of words used in a technical sense - any word used in the ordinary and everyday sense usually doesn't need a definition (except for standard definitions – see Appendix A.) Use a definition when there is more than one meaning for a word or phrase and the intended meaning is either not apparent from the context or more specific than the generally recognized meaning.

Check the existing definitions of other laws to see if the word has already been defined elsewhere - if so; try to use the same definition that has already been used.

A definition is also sometimes used for efficiency or economy of expression. It may permit removal of words from the substantive text that will shorten that text and make it easier for the reader to understand. If a complicated provision can be shortened by substituting a term for a phrase without compromising accuracy, define and use the term.

*Example:* When referring to one particular Oneida board several times in a law; adding "Board" means the Environmental Resource Board" to the definitions section means the term "Board" can be used throughout the law instead of repeating "Environmental Resource Board" several times.

However, if more than one of the same *type* of entity (i.e. department, office, board, etc.) is referred to in the law several times, do not do this if it could cause confusion – for example, if a law references both the Conservation Department and the Oneida Police Department multiple times, then referring to one of them only as "Department" could create confusion.

Definitions should not include nondefinitional material – doing so hides the operative provision and makes the proposal more difficult to understand and amend. In particular, avoid placing legal requirements in the definitions – those go in the body of the law.

**Examples:**

CORRECT: "Board" means the Oneida Tiling and Grouting Commission.

INCORRECT: "Board" means the Oneida Tiling and Grouting Commission, which is hereby delegated the authority to regulate the tiling and grouting of all of the Nation's buildings. *(The authority should be delegated in the body of the law, not here.)*

CORRECT: "Statement" means a document which is prepared by the Internal Accounting Department, which identifies all financial transactions occurring during a specified period of time.

INCORRECT: "Statement" means a document, which shall be prepared by the Internal Accounting Department, and which shall include a chronological list of all financial transactions occurring during a six-week period, listed alphabetically. *(This appears to be delegating responsibilities to the Department, and setting out requirements for what a statement must include and how it is done.)*

When deciding whether to insert a definition into a law, consider whether the word or phrase:

- is critical to correctly interpreting the law
- is self–defining; and
- is defined in standard or legal dictionaries or in case law.

It is best to insert a definition if the word or phrase is only defined in specialized trade dictionaries because those publications are not widely available. If there is more than one definition of the word or phrase in standard or legal dictionaries, consider whether the intended definition is clear.

Without a definition, the common and approved usage of a nontechnical word or phrase is presumed to be the usage intended, and this usage will be determined by reference to a recognized dictionary.

Avoid circular definitions. When the definition of A depends on the meaning of B and the definition of B depends on the meaning of A, it is not possible to determine the exact meaning of either term. The following is an example of a circular definition:

*"Hill" means a usually rounded elevation of land that is lower than a mountain.*

*"Mountain" means a landmass that projects above its surroundings and is higher than a hill.*

Do not use the term being defined in its own definition unless the definition merely particularizes a more general term, as in "'personal campaign committee" means a campaign committee formed by a candidate," or "'child' includes an adopted child."

Do not give two or more terms the same meaning. Select one term and use it uniformly. Also, once you have defined a term, do not use the term to have any meaning other than the defined meaning. Instead, substitute a different term for the second meaning.

### 1.4. Titles

*Law Titles.* Avoid using "Oneida" or "Law" in the title unless absolutely necessary – the law will be codified in the Oneida Code of Laws so either term in the title is redundant; and starting the title with "Oneida" also makes it confusing to alphabetize the laws.

*Titles for Sections and Subsections.*

- Per the LPA: The titles to sections and subsections of laws are descriptions of the text of a law, are not part of the law and cannot alter the meaning of the text of a law.
- Subsections are not typically required to have a title (although they are required in section 1); but subsection titles can be used whenever they may help to organize the content.
- When renumbering material into or out of a section, remember to amend the title, if necessary, to reflect the changed content.

**1.5. Footnote History**

At the end of each law, under the section line, the footnote history should include the history of all actions taken to adopt, amend or repeal that law. This section may also include any prior versions of the law that were later repealed. This section should be in chronological order. It should only note the following, with either the resolution number, or, if no resolution number, then it should note the other relevant action, such as the OBC motion, including the meeting date where the action occurred.

Adopted BC-12-11-18-C
Emergency amended BC-12-11-18-C
Extension of emergency amendments BC-12-11-18-C
Amended BC-12-11-18-C
Repealed 12-11-18 (OBC motion)
Superseded by BC-12-11-18-C

*Note:* The footnote history sections should list all emergency adoptions/amendments, as well as any permanent actions. Section 2-1 should not include prior emergency adoptions/amendments, but should note when the law is currently adopted on an emergency basis.

# Section 2. Content Organization

Per the LPA, after the first three required sections: "All other sections within any law shall be in order from general to specific. General provisions shall be stated first, specific provisions later. Sections shall be broken into logical areas, and paragraphs within sections shall be used where needed. Lists are by way of example and are not exclusive unless specifically stated otherwise.

Although there is no firm rule, typically the following occur:

- Section 4 (the first section after definitions) will set out authorities and responsibilities (who is responsible for carrying out the law? Who has the main responsibilities identified in the law? Who is delegated authority by the law?) This is also a good place to identify any rulemaking authority.
- The last section of a law will set out enforcement and/or appeal rights.

## 2.1. Laws vs. Bylaws vs. Rules

Do not put provisions in laws that are typically found in bylaws or rules. When amending an existing law, remove provisions that should be established by rule. If the current law does not delegate rulemaking authority to an entity, then rulemaking authority should be specifically granted through the amendments. When discussing amendment options with the sponsor, the attorney should note that those provisions would be better established through rulemaking. When granting rulemaking authority through an amendment, ensure that the entity with the delegated authority is made aware that they will need to create such a rule.

Typically, laws paint a broader picture – the main requirements – and the law will give authority to an entity to develop rules, which are intended to contain more detailed requirements in order to carry out the law. One major benefit of developing rules is that they enable particularized requirements to be changed more frequently, without needing to go through the entire legislative process of amending the law. *See the next section and/or the Administrative Rulemaking law for more information.*

Similarly, laws may establish or delegate authority to a board, committee or commission, but many of the specifics about that entity should be set out in bylaws (which are required to be approved by the OBC before they can become effective, anyhow).

*Common examples of provisions that belong in bylaws for a board, committee, or commission, and which should not typically be addressed in a law include:*

- The composition of a board, committee, or commission – i.e. how many members, how appointed or elected, how officers are selected
- When or how often the entity meets, issues related to stipends, etc.
- Procedure as to how the bylaws can be adopted or amended.
- Qualifications for members.
- Any other requirements that identify what bylaws must contain, as set out in the Comprehensive Policy Governing Boards, Committees, and Commissions (Comprehensive Policy)

## 2.2. Administrative Rulemaking

- See the Administrative Rulemaking law.
- Which entities are delegated rulemaking authority, if any is delegated?
- Is the delegation of rulemaking authority specific and direct?

- Exactly what rulemaking authority is delegated?
- Do any of the entities mentioned in the law already have rulemaking authority delegated through other laws? Do they already have any rules in place?
- Will any existing rules need to be amended because they conflict with this law?

*Common examples of provisions that belong in rules created by an entity and which are not typically addressed in a law include:*

- Fine Schedules and Fee Schedules
- Specific annual deadlines.
- Requirements that may change frequently. For example, the Hunting, Fishing, and Trapping law should not list the types of ammunition that can be used to hunt a particular species, or bag limits, or size limits; because these requirements may change from year to year, or every couple of years; so those are more appropriate in a rule.

In addition to administrative rulemaking, does the law delegate any other authority to an entity to create internal rules? Typically, if a set of requirements only applies internally within an entity (i.e. SOPs), and does not affect the general public or other entities, there is no need to mention such authority.

### 2.3. Enforcement

- Who is responsible for enforcing the law?
- What actions can be taken to enforce the law?
    - Although there has been inconsistency in the past, the Administrative Rulemaking law now formally recognizes that fee schedules and fine schedules can be established by rule. Are there any existing fee/fine schedules in place? Will any have to be created? If so, ensure that the proper agency is delegated rulemaking authority to do so.
- Is there due process for any enforcement actions taken? What rights does a person have to challenge any enforcement action taken against them, for example, a citation?

### 2.4. Hearings and Appeals

- Would the Judiciary have subject matter jurisdiction over the action?
- Does the law specifically identify whether/how any entity actions/decisions can be appealed?
- Are there any timelines for appeal?
- Does the Judiciary (or other hearing body) already have the procedural requirements in place for filing actions related to this law? Typically, these are covered in the Rules of Civil Procedure or the Rules of Appellate procedure. If procedural requirements are in place, it is usually not necessary to repeat those in the other law.
- When it is necessary to go into detail about hearing bodies, there are three elements that should be considered – and if not mentioned in other rules of procedure, then they may need to be mentioned in the law:
    1. <u>Identifying the parties</u> – for example, in an action against a person who has violated the law: who is the other party? Who is responsible for appearing in court?
    2. <u>Burden of proof</u> – in any action, who is responsible for proving the case? For example, in an enforcement action, does the agency have the responsibility of

proving that the respondent committed a violation; or does the respondent have the responsibility of proving they did not commit the violation?

3. Standard of proof – in some cases, it may be necessary to identify a standard of proof. When a law requires a party to prove something, do they need to prove it:
    - With clear and convincing evidence?
    - Beyond a reasonable doubt?
    - By a preponderance of the evidence?

- Remember that the Nation is not currently exercising criminal jurisdiction. Avoid criminal law terminology - do not refer to a party as a defendant; use "respondent" instead. Note that "beyond a reasonable doubt" is typically a standard of proof used for criminal charges.
- When a law includes enforcement actions, it should also note which persons are subject to the jurisdiction of the law (i.e. subject-matter jurisdiction and personal jurisdiction); and if possible, it may be beneficial to identify what could happen to persons who are caught violating the law who are not subject to the jurisdiction of the Nation.
- When a law governs subject matter that is governed/regulated by multiple jurisdictions, determine whether it is necessary/beneficial to identify whether enforcement action under this law precludes enforcement action/prosecution under any other laws – including other Oneida laws, state laws, etc.

## 2.5. Jurisdiction

*Trial Court – Subject Matter Jurisdiction*

Section 150.5-2 of the Judiciary law gives the Judiciary's Trial Court subject-matter jurisdiction over cases and controversies arising under:

- Tribal laws which specifically authorize the Trial Court to exercise jurisdiction.
- The Oneida Constitution.
- Where an agency has denied a person a benefit or has provided a person with an incorrect or incomplete benefit, or has imposed a fine on a person, and the person has exhausted the process provided by law, if any, for review of the action, and
    (1) a hearing body has not been designated by law for the purpose of an appeal; or
    (2) there is no law providing that the agency's decision is final and/or not appealable.
- A dispute over a written contract, where at least 1 of the parties is an agency or where both parties meet the personal jurisdiction requirements of that law (but there is a 24-month statute of limitations – see the law for more information.)
- Where a declaratory judgment is sought to determine the validity of a Tribal law. But these can only be issued when it appears that the law or its threatened application affects the legal rights and privileges of the petitioner, and only if the law violates the Constitution or was adopted in violation of the LPA.
- Small claims actions where the amount in controversy is $5,000 or less.

*Court of Appeals – Subject Matter Jurisdiction*

Section 150.8-2 of the Judiciary Law establishes the Court of Appeals as the court of final appeal within the Tribe, but also limits the jurisdiction of the Court of Appeals to <u>review of</u>:

- final orders, sentences and judgments of the Trial Court;
- appeals of agency decisions or administrative decisions where a provision of Tribal law expressly vests such jurisdiction in the Court of Appeals; and
- interlocutory appeals of an intermediate ruling, judgment or order during an original hearing, that wishes to seek intermediate relief.

Two things to note about the Court of Appeals subject-matter jurisdiction:

1. Agency decisions and administrative decisions cannot be appealed unless a provision of Oneida law expressly vests jurisdiction in the Court of Appeals.
2. For interlocutory appeals, the Judiciary law specifically states that "The Court of Appeals shall implement rules that address the timelines for the initial review of an interlocutory appeal, criteria for acceptance of an interlocutory appeal, and procedures for the hearing of such an appeal" – do not create new rules for interlocutory appeals within a particular law.

### 2.6. Interpretation

When a dispute is brought before a court, the dispute generally boils down to the interpretation of a law. Laws should be drafted as clearly as possible, to ensure that the court does no more interpretation than necessary – every time a judge determines the meaning of a law, the judge is creating precedent – and essentially creating/establishing law. This blurs the separation of powers.

To avoid situations where judges are forced to interpret, check each provision for:

- Plain meaning – how would a layperson understand it?
- Ambiguity – can a provision be understood in multiple ways?
- Conflict with other laws, rules, GTC directives, etc.
- Clarity and directness – is it clear and straight to the point?

# Section 3. Formatting

## 3.1. Oneida Font

Oneida language is used frequently in titles, and is occasionally used in other words in a law. When a word is written in Oneida, the Oneida font should be used, but only for the specific Oneida word – the rest of the sentence should be in regular Times New Roman font/format.

| To get this Oneida symbol: | á | é | í | ó | ʎ | ú | ʌ | ? | · |
|---|---|---|---|---|---|---|---|---|---|
| Type this, using Oneida font: | @ | # | $ | % | ^ | & | < | > | = |

Check to make sure all Oneida words use the correct letters, and include underlining/spacing correctly.

## 3.2. Writing Numbers

All numbers should be spelled out with Arabic numbers included in parentheses.

*Example:* "There are three (3) ways to ..." or "Within four (4) days"

However, if the number is a specific number more than four digits long, it may just be written in Arabic, if writing it out would look awkward.

*Example:* "The contractor shall provide a deposit of $1,750,432.83 for..." (It would look awkward to write out "The contractor shall provide a deposit of one million, seven hundred fifty thousand, four hundred thirty two dollars and eighty-three cents ($1,750,432.83) for ..."

Symbols should be used for measurements, as appropriate:

| Correct | Incorrect |
|---|---|
| ten feet (10') tall | ten (10) feet tall |
| ten inches (10") tall | ten (10) inches tall |
| Fifty percent (50%) | Fifty (50) percent |
| one-half (1/2) or Two-thirds (2/3) | one (1) half or Two (2) thirds |
| Ten dollars ($10) | Ten (10) dollars |
| One hundred eighty degrees (180°) | One hundred eighty (180) degrees |

*Money.* When writing whole dollar amounts, do not place a ".00" at the end. When writing dollar amounts that are not whole dollar amounts; write the entire amount including the fraction after the decimal; do not round up or down when given a specific number.

## 3.3. Dates, Days and Deadlines

When a date includes a month, a day, and a year, set off the year by commas; when the date includes only the month and year, do not use a comma. "The taxes imposed by this section beginning on January 1, 2011, and ending on March 31, 2011, are due in April 2011."

Do not include date modifiers in a law:

CORRECT: January 12

INCORRECT: January 12th

*Avoid ambiguity.* Do not use “from” before a date. It is unclear whether you intend to include the date itself. Instead, use “beginning on” or “after” depending upon your intent. Also, instead of saying “on or before June 30, 2011,” just say “before July 1, 2011.”

*Computing days.* Either “days” or “business days” should be used to count dates. Ideally, use one or the other throughout the law for consistency; not both within a single law.

- When using business days, include a standard definition for business days.
- If only “days” is used; there is no need to define calendar days, or to explain that days means calendar days; because the term is used in its ordinary and everyday sense.

*Obsolete dates.* Avoid including specific dates or timelines that will become obsolete within a specific time period after the law is adopted – once those timelines are met, they will become provisions with no meaning and no further application. Instead, specific dates/timelines are usually set out in adopting resolutions that accompany a law for adoption.

The following examples of obsolete dates/timelines are from the Real Property Law (BC-2-25-15-C):

> “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 […]
>
> 67.16-2(b) The terms of office for the [Land] 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.

### 3.4. Punctuation

*Dummy quotes.* Avoid using "dummy quotes like these"; instead, make sure the quotation marks are “curved like these.”

| Correct | Incorrect |
|---|---|
| “ ” and | " " and |

*Periods and commas inside quotation marks.* If a period or comma follows the last word of a quotation, place the period or comma inside the last quotation mark.

*Commas.* In a series of three or more terms with a single conjunction, use a comma after each term except the last. For example, write “red, white, and blue” or “plastic, wood, or metal.”

*Parentheses.* Avoid using parentheses. If certain material is important to the thought or concept expressed in the rule, the material should be set apart with commas, not parentheses.

### 3.5. Citations within the same law

When possible, avoid citing/referencing other sections within the same law, unless the citation/reference is absolutely necessary.

> CORRECT: "Once the Committee has received a legislation request, the Committee shall…"
>
> INCORRECT: Once the Committee has received a legislation request in accordance with section 9.2-5(a)(b), the Committee shall…

Similarly, it is best to avoid citing/referencing other specific sections of other Oneida laws, policies and rules. The main reason for this is because any law/policy/rule may be amended occasionally, which could result in changed section numbers.

*Citation Format.* The following apply, however there may be certain, narrowly limited exceptions to these requirements.

(a) State law. Citations to Wisconsin law should be written as "Wis. Stat. 764.05."

(b) Federal law. Citations to federal law should be written as "26 U.S.C. 1401"; there is no need to state "et seq." or to include an adoption date or even "as hereinafter amended" or any other extraneous language.

(c) Oneida law. Citations to other Oneida laws should just state the official name of the other Oneida law.

(1) If possible, avoid referencing a specific section or subsection; as these may change if the law is amended in the future.

(2) When citing another Oneida law, for example the Administrative Rulemaking law, the word "law" should not be capitalized unless it is actually part of the title of the law.

(d) Resolutions. When referencing a resolution, it should be written as "BC-4-14-16-A" or "GTC-3-16-02-A". The first two digits are the month, the second two are the day, the last two are the year, and then the letter of the resolution, if any. Hyphens should be used and in between each set of letters/numbers, no number or "pound" symbols.

There is no need to add "et seq." or "as hereafter amended" or similar provisions to the end of a citation; just cite as noted above.

### 3.6. Specific Formatting/Spelling Requirements

| ***The word*** | ***The rule*** |
|---|---|
| bylaws | No hyphen, should not be capitalized. |
| federal | Not capitalized (as in "federal law") |
| judgment | Although it is occasionally accepted either way, it is LRO policy to use "judgment," not "judgement" to refer to a court decision. |
| resolution | Should not be capitalized |
| state | Not capitalized. For example: "state of Wisconsin requirements" or "in the laws of any other state or tribe." |

### 3.7. Subsections

Subsections are used to create a logical flow within a section. They organize content and break requirements down into simpler pieces that make it easier to read. When a sentence contains several clauses or lists multiple options, it is often easier to read when they are separated:

| Instead of saying this: | Break it up like this: |
|---|---|
| 3.1. Each LOC responsible for the proposals he or she sponsors. Such responsibilities include, but are not limited to; providing policy guidance when required, approving LRO drafts before they are submitted to the LOC, maintain communication with the drafting attorney and the LRO Director, and presenting on the draft when before the LOC. | 3.1. Each LOC responsible for the proposals he or she sponsors. Such responsibilities include, but are not limited to;<br>(a) providing policy guidance when required,<br>(b) approving LRO drafts before they are submitted to the LOC,<br>(c) maintaining communication with the drafting attorney and the LRO Director, and<br>(d) presenting on the draft when before the LOC. |

However, if at all possible, avoid organizing material such that there is only one subsection standing by itself. It may be appropriate in a few limited situations, such as when an exception must be created, but typically, it is better to revise the provision to incorporate the material, rather than creating a separate subsection.

| Instead of saying this: | The subsection could be merged like this: |
|---|---|
| 3.1 LOC members are responsible for the proposals he or she sponsors.<br>(a) LOC members shall review each sponsored item before it is presented to the LOC. | 3.1 Each LOC member is responsible for the proposals he or she sponsors, and shall review each sponsored item before it is presented to the LOC. |

Each statutory unit that follows an introduction should form a complete sentence when read with the introduction. When a partial sentence is followed by a list, <u>each sentence should independently finish the partial sentence</u>.

- When a section is followed by a list of separately numbered items, ensure that the same punctuation is used consistently – periods, commas or semicolons at the end of each provision; and the last provision should end with a period.
- Lists should clearly identify whether the requirement applies to **any, all, exactly one, one or more, or any or all**, of the listed items.

| ***Correct*** | ***Incorrect*** |
|---|---|
| […] Each application for a building permit shall be accompanied by two (2) copies of the site plan, drawn to scale, […] showing:<br>(1) the actual dimensions of the lot to be built upon;<br>(2) the size and location of the building or buildings to be erected;<br>(3) the proper relationship of the building or buildings to the exterior lines of existing or proposed streets shown on the official map; and<br>(4) such other information as may be necessary to provide for the enforcement of this Code. | […] Each application for a building permit shall be accompanied by two (2) copies of the site plan, drawn to scale, […] showing:<br>(1) The site plan shall identify the actual dimensions of the lot to be built upon;<br>(2) showing the size and location of the building or buildings to be erected;<br>(3) including the proper relationship of the building or buildings to the exterior lines of existing or proposed streets shown on the official map; and<br>(4) and such other information as may be necessary to provide for the enforcement of this Code. |

*Example:* From section 66.6-3(a) of the Building Code.

Whenever the word “including” is used, either list every single thing that could be included; or use the term “including, but not limited to.”

### 3.8. Tribe, Tribal and Nation

With the 2015 Constitutional amendments, the official name of the entity is “Oneida Nation.” The OBC has established that, as a policy, the use of “Tribe” or “Tribal” is to be avoided except where it is particularly necessary. The following are examples of suggested terminology:

| Use | Instead of: |
|---|---|
| Enrolled members of the Nation | Enrolled Tribal members |
| Oneida Nation | Oneida Tribe of Indians of Wisconsin |
| Budget of the Nation | Tribal budget |
| Laws of the Nation | Tribal law |
| Office of the Nation’s Secretary | Tribal Secretary’s Office |
| General Tribal Council | *This stays the same.* |

Although the terms are to be avoided whenever possible, in reference to the Oneida Nation; there still may be times where the terms “Tribe” or “Tribal” need to be used. Capitalized “Tribe” refers to the Oneida Nation; lower-case “tribe” refers to all Indian tribes in general.

# Section 4. Terminology

## 4.1. Acronyms

Acronyms may be used in a law if the acronym is defined and identifies the subject of the acronym. Otherwise, if an acronym is only used once, it should follow the full name, and be placed in parentheses.

## 4.2. Consistency in Terminology

Avoid using different words or phrases (synonyms) to refer to the same thing; use consistent terminology. Always say the same thing in the same way and say different things in different ways. One of the judicial canons of construction (i.e. standard rules of thumb) for judges interpreting laws, is that "by using a different word, the lawmaker must have intended a different meaning. If the lawmaker had intended the same meaning, s/he would have used the same word."

- *For example, see Landwehr v. Landwehr, 291 Wis. 2d 49, (2006) [because two provisions of 1999 budget bill used different terms they were intended to have different meanings].*

## 4.3. "Law" and "Rule"

The term "law" should be used consistently, not "ordinance", "code", "act", or other similar words. As a policy, the LOC has determined that all existing policies will be re-titled as laws. Once the last policy is re-titled, the term "law" should be used by itself, consistently throughout the code of laws. When revising a law, ensure that references to other "Tribal laws, policies, codes, acts, ordinances, regulations," etc.; are revised to just refer to other "Oneida laws" or "laws of the Nation" or "laws and rules of the Nation"

The term "rule" should be used when referring to rules established by authorized agencies, in accordance with the Administrative Rulemaking law. Avoid (and when amending existing laws, replace) references to "regulations" "requirements" "office policies" and "procedures", etc. with references to rules. However, ensure the intent is met – entities can still have internal SOPs, which are different from rules.

## 4.4. Mandatory or Permissive Actions

Use "shall" to denote a mandatory or absolute duty, obligation or directive (*i.e.* where something is required to be done). Use "may" to denote an optional or permissive power or privilege, right, or grant of discretionary authority (*i.e.* where something is allowed to be done).

Avoid use of a negative subject with an affirmative "shall." The term "No person shall" is incorrect and could be interpreted to mean "no person is required to." The correct way to express a prohibition is either "No person may . . ." or "A person may not . . . ."

Avoid using "are to," "will," "must," "is required to," "is" or similar terms in place of "shall", when the provision is establishing a legal requirement.

Do not use "shall" to direct the wrong entity. For example, "the clerk shall receive a salary of $30,000 per year" is incorrect because it makes no sense to direct someone to receive a salary. It would be better to write something like "the Board shall pay the clerk a salary of $30,000 per year."

Avoid imposing requirements that do not identify a responsible entity, because they are difficult to enforce. For example, if a Law states that "The Nation shall require applicants to disclose all conflicts of interest," and an applicant does not disclose the conflict, it would be difficult to

identify who was responsible for doing this. It would be better to write something like "Applicants shall disclose all conflicts of interest" or "The Secretary shall notify all applicants that they are required to disclose conflicts of interest."

Use "may;" not "can" to grant permission; "can" means "able to" and imparts no legal authority.

Avoid redundancy – "shall be required to" is not needed; "shall" is sufficient.

**4.5. Use of "Should"**

Do not write "The department should." Use "The department shall" or "The department may." Do not write "The department should not." Rather, use "The department may not."

# Section 5. Style

**5.1. General.**

Laws should be clearly written, concise, easily understandable, and should avoid repetitiveness, redundancy, and unnecessary legal jargon.

Express the requester's intent in a way that is as easy as possible to understand. To that end, use short, simple sentences and to avoid the unnecessary use of dependent clauses, complex sentences, or other complicated sentence structures.

- If a word has the same meaning as a phrase, use the word. Use only necessary words. In construing statutes, courts consider each word and try to give it meaning. Unnecessary language is more likely to mislead than to help.
- If possible, use familiar words and phrases that best express the intended meaning according to common usage.

Use a pronoun only if its referent is unmistakable. Avoid use of "their" or other similar terms where it could be unclear who the "their" is. Do not use "it," "the," "that," "this," "these," or "those" in reference to a noun unless the noun is so positioned that the reference is clear.

**5.2. Things to Avoid**

- **Legalese and Vague Words/Phrases.** Legalese adds little to understanding, usually is meaningless, and is never necessary. Often, legalese can be omitted without changing a sentence's meaning or creating ambiguity. In other cases, simpler words can be substituted. Examples include: *thereby, therein, therewith, wherein, whereto, hereinafter referred to, the said, the aforesaid, unless otherwise provided by law*, and similar terms.
- **Vague references.** This means words like: "Thereto," "hereto", heretofore", "herewith" "herein," "thereafter," "above," "below," "aforementioned" "hereafter," "heretofore mentioned," and "hereunder." Their reference is unclear, especially if the statute is later amended. Instead, if a reference is necessary, use specific references, such as "in this law" or "under this section." Also, avoid the use of the vague term "etc." in a law.
- **Rhetorical Flourishes.** Avoid rhetorical flourishes such as "of any kind," "of any nature," or "under any circumstances."
- **"Said" and "Such" in place of an article.** For example, "said form" should be "the form." If necessary to avoid ambiguity, use specific references; for example, "the form specified in 65.5-2(a)." Never use "the said" – use one or the other.
- **Indefinite Words and References.** Try to avoid indefinite words such as "frequently," "untimely," "unseasonable," or "temporarily." Use precise references, and try to leave as little as possible to be open to interpretation.
- **Duly.** The word adds nothing to text that is designed to have a legal effect.
- **Double negatives:**
    - Incorrect: A person not ineligible to be certified may...
    - Correct: A person eligible to be certified may...
- **Redundancy and Repetitiveness.** In particular, processes should read like a process, in order. Then there is little need to reference a prior requirement or to repeat the requirements already stated earlier.
    - Incorrect: After a Public Meeting has been held by the Legislative Operating Committee in accordance with the requirements of 17.8-1, (which sets out the requirements for the LOC to hold a public meeting)
    - Correct: After a Public Meeting has been held

- **Passive Verbs.** Using them frequently makes it unclear who has the responsibility to carry out a law.
  Correct: "the clerk of the circuit court shall appoint one or more deputies"
  Incorrect: "one or more deputies shall be appointed."

Whenever possible and appropriate, use the following word substitutions, which either use simpler terminology, or are more concise:

| Do Not Use | Use | Do Not Use | Use | Do Not Use | Use |
|---|---|---|---|---|---|
| Accorded | given | admit of | allow | afforded | given |
| ascertain | determine | cause it to be done | have it done | cease | stop |
| cognizant of | aware of | contiguous to | next to | Effectuate | Carry out |
| Deem | Consider | For a period of | For | In the event that | if |
| Employ (to mean "use") | Use | Endeavor | Try | Evince | Show |
| execute | sign | Does not operate to | Does not | Institute | Begin, start |
| interrogate | question | During the course of | while | Occasion (verb) | Cause |
| Of each year | Annually | Render | Give, make, issue | Prior to | before |
| Optimum | Best | Preserve | Keep | Adequate number of | enough |
| Pursuant to | Under | No later than | By, before | Require | Need |
| Subsequent | Later | Subsequent to | After | By means of | By |
| Utilize | Use | cease | stop | Excessive number of | Too many |
| provision of law | law | or, in the alternative | or | For the purpose of | To |
| At the place | Where | At the same time | when | During such time as | While |
| In excess of | More than | For the duration of | During, while | | |

**5.3. Present Tense**.
A law is regarded as speaking in the present, as of the time it is read or applied. Use the present tense, for example, "the disposition is valid ..." except when stating a condition precedent to the statute's operation, for example, "Each public agency that has been included under the agreement shall withhold ...."

However, avoid *"Present words."* Words such as "currently," "now," and "formerly," are meaningless once the law is published.

**5.4. Directness.**
If you can express a concept positively or negatively, express it positively:
(a) *Incorrect:* This section does not apply to a person who is under 60 years of age.
(b) *Correct:* This section applies to a person only if the person is at least 60 years of age.

**5.5. Singular Terminology.**
Do not use "(s)" to indicate that the word may be singular or plural. Generally use the singular form of a word, unless the plural is exclusively intended or unless it is necessary to make it clear that something applies in the aggregate or to avoid the unintended implication that every person with specified qualifications is entitled to a grant or other benefit. Do not use the singular and plural of the same word joined by "or." For example, do not say "The applicant shall submit the required fee or fees."

**5.6. Legal Effect.**
A law consists of provisions intended to have a legal effect. Do not include material that has no legal effect in a draft law. This material impairs the usefulness of the statutes and may contribute to misinterpretation and confusion. It is a well−established principle of statutory construction that the legislature always intends that every word is necessary. Using this principle, a court may improperly narrow or broaden the scope of a provision because the legislature went out of its way to point out something that was not required. If something obviously does or does not apply, do not say so. Let the words speak for themselves. Material without legal effect includes examples, illustrations, rationale, background information, estimates, projections, suggestions, advice, or argumentative matter. Also, when drafting a new section, it is unnecessary to include a provision identifying what the section contains. A title may be added if necessary, but provisions should have legal effect, not identify what the law is about to address.

Similarly, avoid intent statements. Do not write "The legislature intends that the department shall." Use "The department shall" or "The department may." Expressions of intent make it unclear whether the statement is a command or an encouragement.

**5.7. Model Laws**
The LRO occasionally receives requests to model a draft after a different law (usually from another jurisdiction) that is similar to the requested draft. The requester may feel that, due to the enactment of the model proposal and its successful administration and favorable judicial review, the wording of the model is preferable to any other wording. However, changes may be necessary. Federal laws and the laws of other states are often drafted in an archaic style and may contain material that is unnecessary here because it is covered by other provisions of Oneida law. In addition, the material often must be reworked to blend with Oneida law.

**5.8. Valid Premises**
Do not incorporate a reference to any occurrence or action that is based on a legally or factually invalid premise. For example, if a law has not been enacted, do not base another law on the assumption that it will be enacted – the OBC may decline to adopt the other law, and then the reference is incorrect.

> *Exception*: A draft law may reference another law, rule, entity, etc., which is not in existence at the time the draft law is adopted; but only if the draft law and/or adopting resolution clearly identifies <u>what will occur</u> until the other law, rule, entity, etc. is adopted – i.e. what will happen if the premise until the premise becomes valid.

**5.9. Modifiers.**
Be careful that you modify only the words that you intend to modify.
For example, is ambiguous: does "18−year− old" modify only "parolee" or does it also modify "probationer" and "convict"? Similarly, is ambiguous.

| | | |
|---|---|---|
| **Ambiguous term** | "an 18−year−old parolee, probationer, or convict shall" | "licensees may hunt moose, deer, or ducks that are not on the endangered species list" |
| **If you intend the modifier to modify all of the terms in a series, write something such as:** | "a person who is a parolee, probationer, or convict and who is at least 18 years old shall" | licensees may hunt any species of the following that is not on the endangered species list:<br>1. Moose.<br>2. Deer.<br>3. Ducks. |

| | | |
|---|---|---|
| **If you intend the modifier to modify only one term in a series, write something like:** | "a probationer who is at least 18 years old, a parolee or a convict shall" | "licensees may hunt any of the following:<br>1. Moose.<br>2. Deer.<br>3. Ducks that are not on the endangered species list." |

### 5.10. Gender-Neutral Language

When drafting or amending legislation, avoid or eliminate terminology that is not sex-neutral. Avoid the repetitious use of the phrases "he or she" and "his or her." Do not use slashed alternatives, such as "he/she," "his/her" or "s/he." In most cases, a pronoun can be replaced with the noun to which it refers; for example, "~~he~~ the secretary shall set fees for state parks." In other cases, a pronoun is unnecessary and should be deleted; for example, "The commissioner or ~~his~~ a designee shall be present."

### 5.11. "If" "When" or "Where"

"Where" denotes place only. When you are expressing a condition that may never occur, use "if," not "when" or "where."

*Example:* If the suspect resists arrest, the officer may use force to subdue him or her.

If the condition may occur more than once, use "whenever" or "if."

If the condition is certain to occur, use "when," not "if," or "whenever."

*Example:* When this section takes effect, the court shall dismiss all pending proceedings.

### 5.12. Common Word Mix-Ups.

| | | |
|---|---|---|
| ***Affect*** is both a noun and a verb. When used as a noun it means an observable expression of emotion. When used as a verb it conveys action against or upon a person, or influence. | ***Effect*** is both a noun and a verb. When used as a noun it means that which is brought about as a result or an impression. When used as a verb it conveys accomplishment or achievement of a result. | |
| ***Biannual*** means twice a year. Use "semiannual" instead. | ***Biennial*** means once every two years. | |
| ***Capital*** means capital city, money or assets, first–rate, or related to physical improvements. | ***Capitol*** means the statehouse. | |
| ***Ensure*** means to make certain or guarantee. | ***Insure*** means to procure insurance for something. *NOTE: To avoid ambiguity, use "insure" in drafting only when discussing insurance.* | ***Assure*** means to try to increase another's confidence or to make certain. |
| ***Continual*** means frequently recurring. It refers to time and implies close succession. | ***Continuous*** means uninterrupted. It refers to time and space and implies continuity. | |
| ***Farther*** pertains to actual distance. | ***Further*** means additional or more advanced. | |
| ***Therefor*** means in place of, for that, or for it.<br>In drafting, use one of those synonyms instead of "therefor." | ***Therefore*** means consequently or on that ground. | |
| ***Principal*** means primary, main, major, chief, or the head of an elementary school. | ***Principle*** means belief, attitude, fundamental understanding. | |

## Section 6. Specific Requirements for Drafting/Amending Bylaws

Appendix C contains a template for bylaws, which sets out the formatting requirements and boilerplate language that is commonly used or that is required.

The Comprehensive Policy sets out specific requirements for what must be included in the bylaws for each board, committee and commission. Under that law, bylaws must contain certain information, at a minimum. In addition to those items, there are other requirements that the LRO tries to ensure are included in each entity's bylaws, either because they are regularly included in several existing sets of bylaws; or because they are information that is most appropriately included.

**Article I. Authority**

1. *Name.* The full name of the entity, and any short name that will be officially used.
2. *Authority.* The citation and name, if any, of the creation document.
3. *Office.* The official office or post box of the entity. (the address in the template is the default address commonly used)
4. *Membership.*
   - A. *Number of members.* (this should identify any different *types* of members, as well. For example, if one member must be an OBC member, and if two must be elders, list that here).
   - B. *How elected or appointed (*including term lengths)
   - C. *How vacancies are filled* (specifically – what happens if there is less than a year left in the term? What if there is more than a year left in the term?)

     *Example for appointed position vacancy:* If a vacancy occurs on the [entity], the [entity] shall provide written notice to the Oneida Nation Secretary so that the Oneida Business Committee may fill the vacancy through the appointment process, in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions. The [entity] may submit recommendations to the Nation's Chairperson as to possible candidates. Vacancies of less than one (1) year shall be filled for the remainder of the term and for a new three (3) year term. Vacancies greater than one (1) year remaining of the term shall be filled for the remainder of the term.
   - D. Qualifications of members (minimum requirements, etc.) Common qualifications include, but are not limited to:

     -not being employed by a specific department/division that works for the entity;
     -residing in Brown/Outagamie counties;
     -enrolled members of the Nation.
     -specific education/experience requirements.

In addition to the items above, bylaws also commonly address the following in this section, and it may be beneficial to consider adding them:

- Causes for termination or removal, if any, in addition to those set out in the Comprehensive Policy and the Removal Law.
- Stipends - what stipends members are eligible to receive, and the requirements for collecting each stipend, if any, in addition to those in the Comprehensive Policy.
- Identify any training requirements that will apply for members – i.e. what training they must do while a member of the entity.
- Identify that the entity is a standing committee of the OBC, for those entities that are standing committees.

## Article II. Officers

1. *Chair and Vice-Chair [and any other officer positions] – creating those officer postions.*
2. *Chair duties.* Specifically list this officer's duties and limitations
3. *Vice-Chair duties*. Specifically list this officer's duties and limitations
4. *Additional Offices and Duties.* For any other positions created in subsection 1, specifically add a new subsection for each other officer's duties and limitations.
5. *How Chosen.* How officers are chosen.
6. *Personnel.* The entity's authority for hiring personnel and the duties of such personnel.

Common duties for Chairpersons include:

(a) Preside at all meetings of the [entity];
(b) Sign all correspondence of the [entity];
(c) Submit the approved minutes to the Nation's Secretary for action and approval by the Oneida Business Committee;
(d) Monitor the budget of the [entity];
(e) Submit annual and semi-annual reports to General Tribal Council; and
(f) Other duties as assigned by the [entity].

Common duties for Vice-Chairpersons include:
(a) work with the Chairperson in all matters that concern the [entity].
(b) In the absence or incapacity of the [entity] Chairperson, the Vice-Chairperson shall perform the duties of the Chairperson.

The most common other officers are a Secretary and/or a Treasurer.
Common Secretary duties include:

(a) Assist the Chairperson to call meetings and notify the [entity] members.
(b) Maintain the minutes, reports and correspondence of the [entity].
(c) Perform the Chairperson's duties under section 2-2, except subsections _____ in the absence of the Chairperson and Vice Chairperson.
(d) Assist the Chairperson to submit quarterly reports to the Oneida Business Committee and annual and semi-annual reports to the General Tribal Council.
(e) Ensure the [entity] meeting minutes are recorded and reviewed by the Board.
(f) Assist the Chairperson to submit approved and signed [entity] meeting minutes to the Nation's Secretary.
(g) Other duties as assigned by the [entity].

The Entity's authority for hiring personnel – typically this section just states:

- The [entity] does not have authority to hire personnel for the benefit of the [entity].

However, if the entity does have authority to hire personnel, refer to other bylaws for appropriate language.

Other Common Provisions in Article II include:

- The entity's varying levels of budgetary sign-off authority and which members are authorized to sign-off at each level; and require that the Purchasing Department shall approve all sign-off designations.
- Which officers/members have the authority to sign off on travel on behalf of the entity.

## Article III. Meetings

1. *Regular meetings.* When/where held; how notice of the agenda, documents, and minutes will be disbursed to members.
2. *Emergency meetings.* How called and noticed.
3. *Quorum.* How many members create a quorum.

4. *Order of Business.* How the agenda will be set up (categories)
5. *Voting.* How voting shall be taken, percentages needed to pass different items.

For regular meetings – identify dates and times, if known – otherwise, state how the meetings will be scheduled, or how a meeting schedule will be established.
Common provisions include:

(a) The meeting dates, time and location may change from time to time as determined by the [entity] but shall be within the Reservation boundaries unless notified to the [entity] membership prior to designating the meeting location.
(b) Notice of meeting location, agenda, and materials shall be forwarded by the Chairperson with the assistance of the [secretary/vice-chairperson/etc].

Typically, bylaws also identify how special meetings can be called, and this has been reflected in the attached template. Examples of language:
3-2. *Special Meetings.* Special meetings of the [entity] may be called by the [entity] Chairperson.

(a) Special meetings are meetings which are called to address a specific purpose, and which convene at a time other than regularly scheduled meetings.
(b) Special meetings shall require written notice to each member of the [entity] at least twenty-four (24) hours prior to the meeting start time.

For Emergency meetings, bylaws are required to note how they may be called. Suggested language:
Emergency meetings of the [entity] may be called by _____
(a) Emergency meetings shall [describe what they are, and how/when they can be called]
(b) Emergency meetings shall require written or telephone or any other notice to each member of the [entity] at least _____ prior to the meeting start time.

Order of Business: Potential language:

(a) Call to Order and Approval of the Agenda
(b) Minutes
(c) Current Business
(d) New Submissions
(e) Additions
(f) Administrative Updates
(g) Executive Session
(h) Recess/Adjourn

For Quorum – the bylaws must identify how many persons constitute a quorum, and should also identify whether this includes any officers. At a minimum, entities must require a majority of current members, in order to have a quorum. Ensure that the bylaws reflect that. In this section, it is recommended that the language also state whether the Chairperson can always vote, or whether s/he only votes in case of a tie.

Other potential provisions:

- Ensure the bylaws are clear on the difference between an emergency and special meeting, and what happens if a regular meeting date falls on a holiday.
- Identify whether and how task forces/subcommittees/ad hoc committees can be formed, and how they are dissolved, and what happens to the records from that sub-entity after dissolution.
- Identify that meetings are run in accordance with Robert's Rules of Order (or other rules for meetings).
- Identify how absences can be excused – i.e. who must be notified? How far in advance? Does the entity have to approve the absence for it to be excused? Example:

- In the event a [entity] member is not able to attend a meeting, the [entity] member shall contact the [entity person] or designee by 10:00 a.m. the day of the meeting in order to be excused from the meeting.
- If the [entity] member contacts the [entity person] or designee after the 10:00 a.m. deadline, the [entity] shall consider the circumstances and make a determination by a majority vote, to approve or deny the [entity] member as excused.

**Article IV. Reporting**

Typically, the language in this section is boilerplate – use the language in the template, if possible.

However, it may be beneficial to add in language addressing when minutes have to be submitted to the Secretary, or when actions taken by the entity are valid.

*Examples:*

4-2(a) All minutes shall be submitted to the Oneida Nation Secretary's Office within <u>thirty (30) calendar days after approval by the [entity].</u>

(b) Actions taken by the [entity] are valid when minutes are approved, provided that, minutes are submitted to the Secretary of the Nation in accordance with 4-2(a).

- This section often includes additional provisions governing reporting – i.e. what reports are due (quarterly, annual, semi-annual, etc) and who is responsible for those.
- This section often also includes
  - Deadlines for submitting minutes – see the Comprehensive Policy 105.10-1. Entities shall submit all minutes to the Secretary within a reasonable time after approval by the entity.
  - A provision identifying when actions taken by the entity are valid - see the Comprehensive Policy, 105.10-2.: Actions taken by an entity are valid when minutes are approved, provided that, minutes are filed in accordance with this section and the entity's approved by-laws.
- Also note: The Comprehensive Policy states that "105.10-3. No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the by-laws of that entity." – ensure that this is addressed in the bylaws, if necessary.
-

**Article V. Amendments**

1. Amendments to By-laws. How the bylaws can be amended.

**Other Things to Consider**

- Various entities have hearing body authority. For those entities, ensure that the bylaws identify how hearings are conducted – what rules will be used for the hearing? How are those rules established? Usually, entities with hearing body authority will go into more detail in an Article 6.
- Some entities set out, in Article 1, usually, the purpose/mission of the entity. Other entities set out an Article 6 which identifies specific duties for all members, or for the entire entity.
- Whenever a law, resolution, etc., establishes/delegates any authority to the entity:
  - Make sure that is cited in the "authority" section.
  - Make sure that the requirements set out in the law/resolution match the requirements set out in the bylaws. For example, the Election Law contains many

requirements for the Election Board, such as the number of members on the Board. Ensure that the bylaws match those requirements.
    - Ensure that any listed duties match. Sometimes a law will give an entity specific responsibilities while the bylaws list an entirely different set of responsibilities. The bylaws should track any laws/etc. that set out the purpose/duties of the entity.
    - If a law delegates rulemaking authority to an entity, it may be helpful to note that in the bylaws, particularly if the bylaws already set out other duties/authorities for the entity.
- Verify that the bylaws conform to any the minimum requirements set out other laws:
    - Example: The Open Records and Open Meetings law, particularly where it comes to notice being published before meetings, etc.
- Verify that the bylaws track the minimum requirements set out in other sections (aside from section 8-4) of the Comprehensive Policy – for example, the stipend requirements.
- It is not necessary to repeat requirements found in other laws, policies, resolutions, etc. that set out requirements already.
    - For example, there is no need to include a specific list of ethics requirements for an entity; since the Code of Ethics already applies. There is also no need to specifically require, in the bylaws, that an entity follow the Code of Ethics (or any other law). Those laws cover all that. However, if new requirements are desired, that are not cited in other laws/resolutions, etc.; it may be appropriate to add those and to note that these additional requirements apply in addition to all other laws of the nation, including but not limited to, the _____ law.
    - For another example: The Comprehensive Policy already sets out how a member may resign from an entity. There is no need to repeat this in the bylaws – if the entity wants it mentioned; the bylaws just need to state that resignation is "in accordance with the Comprehensive Policy" – or if the requirements are different, perhaps noting how they are different from the Comprehensive Policy.

## Section 7. Specific Requirements for Resolutions

Resolutions are documents that formalize actions taken by the OBC or GTC. Resolutions have the same force and effect as law; and in fact, laws are adopted by resolution.

As the attached templates show, there are two types of resolutions – OBC resolutions, and GTC resolutions. The most common resolutions prepared by the LRO are the resolutions by which the OBC adopts a new law or amendments to a law. However, the LRO may be called on to prepare any number of different types of resolutions.

There are different parts to a resolution:

**1. WHEREAS provisions.**

These are the provisions that set out the facts. The first two "WHEREAS" sections in the GTC resolution, and the first three "WHEREAS" sections in the OBC resolution, are boilerplate and do not change from one resolution to the next – that language must always be used. This language identifies the authority of the OBC or GTC to adopt that resolution.

After the introductory WHEREAS sections, there are typically several more WHEREAS sections – these are where the resolution identifies the reasons for the resolution – for example:

- Providing background/history information
- Explaining why the resolution is necessary
- For resolutions to adopt amendments to laws, the WHEREAS sections often identify exactly what changes will be made to the law
- For resolutions to adopt a new law, the WHEREAS sections often identify (broadly) the sorts of requirements the new law will impose.

Each "WHEREAS" section ends with a semicolon, followed by the word "and", except the last "WHEREAS" section ends with a period.

**2. NOW THEREFORE BE IT RESOLVED** provisions.

This provision identifies the specific action that is being taken by the resolution. Sometimes, a resolution will include more than one action. When this occurs, different language is added.

For resolutions with two resolves, the first one states "NOW THEREFORE BE IT RESOLVED" and the second one states "NOW THEREFORE BE IT FURTHER RESOLVED"

For resolutions with three or more resolves, the first one states "NOW THEREFORE BE IT RESOLVED, and the last one states "NOW THEREFORE BE IT FINALLY RESOLVED", but all others in between state "NOW THEREFORE BE IT FURTHER RESOLVED."

Tips for Resolutions:

- Ensure that any effective dates are included – note that the LPA states that "Unless specified otherwise in the adopting resolution or the law, the effective date of a law, amendment or repeal shall be ten (10) business days after the date of adoption of the resolution." [LPA, 16.9-3]
- Each provision should be short and succinct and easy to read, and should not be longer than a single sentence. Do not end a sentence with a period and start a new one in a resolution.
- Remember that resolutions exist as a history of actions taken by the GTC or OBC. They are also often the only real historical evidence of what the OBC or GTC may have been intending at the time they were adopted. Resolutions should paint a picture of what action is being taken, and why it is being taken.

Unless requested otherwise, it is usually better to establish specific legal requirements that will govern individuals by law, not by resolution. For example, in 2011, the OBC adopted a resolution which prohibited the carrying of concealed weapons on Tribal land and at Tribal events. But a person who is online, trying to find out whether the Nation has any conceal-carry laws in place, will look at the Code of Laws – perhaps the Hunting, Fishing and Trapping law. But the average person would not normally think to review resolutions to find out if an activity is illegal. Further, in the 8 years between 2007 and 2015, the OBC adopted over 850 resolutions. In that same time, GTC has adopted at least 32 other directions. This is a large number of resolutions to have to sift through to determine which ones contain legal requirements.

## Appendix A – Standardized Definitions

If a law uses any of the following terms, ensure that the standardized definition is included in the definitions section.

- "Constitution" means the Oneida Nation Constitution.
- "Nation" means the Oneida Nation.
- "Business day" means Monday-Friday, 8:30 a.m. to 4:30 p.m.; excluding the Nation's recognized holidays.

***This appendix is incomplete; additional definitions will be provided shortly.***

# Appendix B – Boards, Committees and Commissions

There are currently 7 entities with mostly elected officials, and 11 with appointed officials.

**Elected Entities (members are elected, unless noted otherwise)**

- **Oneida Nation Commission on Aging (ONCOA) - 9 members**
- **Election Board - 9 members**[1]
- **Oneida Gaming Commission - 4 members**[2]
- **Land Commission - 7 members**
- **Oneida Nation School Board - 9 members**
- **Trust Enrollment Committee - 9 members**
- **Land Claims Commission - 7 members**[3]

**Appointed Entities (members are appointed, unless noted otherwise)**

- **Anna John Resident Centered Care Community Board - 7 members**
- **Oneida Nation Arts Board - 7-13 members**
- **Oneida Child Protective Board - 7 members**[4]
- **Environmental Resource Board (ERB) - 9 members**
- **Oneida Community Library Board - 5 members**
- **Pardon & Forgiveness Screening Committee - 5 members and 3 alternates**
- **Oneida Personnel Commission -12-15 members**
- **Oneida Police Commission -5 members**
- **Pow-wow Committee - 9 members**
- **Oneida Nation Veterans Affairs Committee (ONVAC)- 9 members**
- **SEOTS Advisory Board -7 members**

There are also five OBC standing committees, these are considered more like permanent sub-committees of the OBC, and their membership is generally comprised, at least partly, of OBC members:

- **Audit Committee - 4 OBC members, 1 appointed community member**
- **Finance Committee - 7 members – 1 appointed community elder, 3 OBC members, and 3 employees (GM, Gaming GM, and CFO.)**
- **Legislative Operating Committee (LOC) - 5 members – all non-officer members of the OBC**
- **Community Development and Planning Committee (CDPC) - Operates by charter, not bylaws.**
- **Quality of Life Planning Committee - Operates by charter, not bylaws.**

Note: There are various other entities that are either on the books but defunct/obsolete, or that are established as required by a grant, but that are not appointed by the OBC or elected. *Examples: Head Start Program Policy Council, Oneida Nation Emergency Planning Committee, Health Board.* There are also various Tribal Corporation Boards, Committees and Commissions, but they are not governed by the Comprehensive Policy and are not really relevant to the Code of Laws or any existing bylaws.

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[1] The OBC can also appoint additional members as needed, who serve during an election and are dismissed afterwards. Also, this is not noted in the bylaws, but is in the Election law. The Bylaws need updating.
[2] Per ONGO, the OBC can increase this number by resolution
[3] **One member must be an OBC member.**
[4] Must be appointed by resolution

# Appendix C – Potentially Related Legislation

There are various laws and policies that complement each other, sometimes overlapping, sometimes supporting each other (or sometimes written the same way). It may be helpful to keep related laws and policies in mind when drafting or amending a law; particularly to see how changes to one might affect another. The following is a list of all of the Nation's laws and policies, grouped into categories of similar or related topics.

Note: This is not related to the Code Reorganization, which groups chapters together under different categories.

**Government Operations**

Election Law
Comprehensive Policy Governing Boards, Committees and Commissions
Removal Law
Code of Ethics
Conflict of Interest Policy
Open Records and Open Meetings Law
Sovereign Immunity
Administrative Procedures Act
Audit Law

**Employment/Workplace-Related Laws and Policies:**

Code of Ethics (this law governs both officials and employees)
Early Return to Work
Military Service Employee Protection Act
Safety Law
Worker's Compensation
Vehicle Driver Certification Policy
Travel and Expense Policy
Social Media Policy
Policy on Reporting Child Abuse and Neglect
Investigative Leave Policy
Layoff Policy
Back Pay Policy
Attorney Contract Policy
Employee Protection Policy
Drug and Alcohol Free Workplace
Early Childhood Program – Internal Investigation of Complaints
Furlough Policy
Fleet Management Policy
Paper Reduction Policy
Clean Air Policy
Anonymous Letters Policy
Computer Resources Ordinance
Independent Contractor Policy
Garnishment Ordinance

**Laws Governing the Judiciary**

Judiciary Canons of Judicial Conduct
Judiciary Law
Judiciary Rules of Appellate Procedure
Judiciary Rules of Civil Procedure
Judiciary Rules of Evidence
Family Court
Family Court Rules

**Administration of specific programs/funds**

Community Support Fund Policy
Children's Burial Fund Policy
Disposition of Excess Tribal Property
GTC Ten Day Notice Policy
Oneida Nation Arts Program - Dollars for Arts Project Policies
Trust Scholarship Fund Policy
Endowments Law

**Family Laws**

Child Custody, Placement, Visitation
Child Support Law
Marriage Law
Divorce, Annulment and Legal Separation
Paternity Law

**Licensing and Regulation Laws**

Alcohol Beverage Licensing Law
Motor Vehicle Registration Law
Food Service Code
Vendor Licensing
Tattooing and Body Piercing
Room Tax Law

Indian Preference in Contracting
Notary Act
Tobacco Ordinance
Gaming Ordinance (ONGO)

**Environmental and Cultural Laws and Policies**

Hunting, Fishing and Trapping Law
Non-Metallic Mine Reclamation
Protection and Management of Archeological and Historical Resources
Public Use of Tribal Land
Tribal Environmental Response
Water Resources Ordinance
Tribal Environmental Quality Review
Woodcutting
Cemetery Law

**Land Regulation and Development**

Building Code
Local Land Use Regulation and Reimbursement
Leasing Law
Mortgage and Foreclosure
Real Property Law
Recycling & Solid Waste Disposal
Sanitation Ordinance
Well Abandonment Law
Zoning and Shoreland Protection
On-Site Waste Disposal Ordinance
Condominium Ordinance
Domestic Animals (Tribal Regulation)
All-Terrain Vehicle Law

**Membership and Member Benefits**

Hall of Fame
Membership Ordinance
Pardon and Forgiveness
Per Capita Law
Small Business Loans

**Law Enforcement**

Emergency Management & Homeland Security
Law Enforcement Ordinance

**Lawmaking and Rulemaking**

Administrative Rulemaking
Legislative Procedures Act

# Appendix D – Templates for Laws, Bylaws, OBC Resolutions, GTC Resolutions

*(see the following pages)*

# Chapter 132
# SAMPLE
# Onʌyote?a.ká
*Oneida Translation*

__.1. Purpose and Policy
__.2. Adoption, Amendment, Repeal
__.3. Definitions
__.4 Authority
__.5. Formatting Laws
__.6. Enforcement/Appeals

## __.1. Purpose and Policy

__.1-1. *Purpose.* The purpose of this law is to… [direct why the law is needed. The purpose should indicate governing or directing reasons why it is being implemented (see the LPA).]

__.1-2. *Policy.* It is the policy of the Oneida Nation to [indicate the direction the law is to take, including impetus or underlying goal of the regulation.]

## __.2. Adoption, Amendment, Repeal

__.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-05-15-14-C and amended by BC-12-10-14-A and BC-01-13-16-C.

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

__.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.

__.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, this law repeals the following:

(a) [This is optional, it is only used when something is being repealed. *Per the LPA*: A repeal may be specific to documents, or general to subjects. No mention of severability of sections is necessary. All laws of the Tribe may have the appropriate portions severed and allow the remainder of the law to continue in effect.]

__.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

## __.3. Definitions

__.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.

## __.4. Authority

__.4-1. *Margins.*

(a) Margins are justified throughout the body of the document. The title section at the top is centered. Do not justify margins in the table of contents.

(b) One inch (1") margins for the top and sides; .813" for the bottom margin.

(c) Subsections are indented one tab stop (1/2 inch).

(d) Do not set the document to automatically number subsections.

__4.2. *Fonts and spacing.*

(a) *Titles.*

(1) The first line of each law is the Chapter number. Times New Roman (TNR) size 12 font, bold.

(2) The second line is the title of the law. TNR size 12 bold, all caps.

(3) If possible, add an Oneida title for the third line. Oneida Font, size 12, bold.

(4) If an Oneida title is added, the fourth line is the translation. TNR size 12, italics, not bold.

(b) All section titles are bold; subsection titles are in italics. There is a period after subsection titles; but not at the end of section titles.

(c) The Table of Contents is TNR size 8, using a two-column format. Periods after the numbers, no periods at the end of the titles.

(d) At the end of the law, *"End."* should be written, size 10 TNR, italics.

(e) All section titles are bold; subsection titles are in italics. There is no period at the end of a section title; but there is a period at the end of subsection titles.

(f) The body of the law (i.e. everything under the table of contents and above the "End") should be Times New Roman (TNR) regular 12 point font.

(g) The footnote history for each law should contain a list of all actions to adopt, amend or repeal the law, as shown below. This is done in TNR size 10 font.

__4.3. *Spacing.*

(a) There should be one line space after sections; no line space after subsections.

(b) There should be a size 8 font line space after the title section, before the table of contents. There is no space between the table of contents and the line that follows.

(c) There is a one size 12 font line space after the line before the first section of the law.

(d) At the end of the law, there is one line space before the "*End.*" There is no line space after.

(e) Within the law, there should be only one (1) space after a period, before the start of the next provision or the title.

__4.4. *Page numbers.* Insert page numbering at center bottom (footer) using the chapter number – page number format. For example, page 1 of chapter 7 would be numbered "7-1".

__4.5. *Section Numbering.* In accordance with the LPA: All laws shall be numbered in the following consistent manner "1-1(a)(1)(A)(i)" where:

(a) "1-1" means the first section.

(b) "(a)" means the first subsection

(c) "(1)" means the second subsection

(d) "(A)" means the third subsection

(e) "(i)" means the fourth subsection.

(f) All other numbering after the fourth subsection shall be in a logical manner.

*Note: There may be situations where a first or third subsection contains more than 26 items. In those situations, the 27th letter would be a double (aa) [or (AA)], followed by (bb), (cc), and so on. If there are more than 52 subsections, the letters become (aaa), (bbb), etc.*

__4.5. *Drafting and Adoption.* Please note the following:

(a) Drafts also include the draft number and date in the header section; upper right corner; Eras Medium ITC font, size 12. The draft number and date should be deleted from the final, adopted law.

(b) Drafts also include line numbering, continuous throughout the entire document. This is also deleted from the final, adopted law.

*End.*

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Adopted – BC-05-15-14-C
Emergency Amended – BC-07-23-14-C
Amended – BC-12-10-14-A

# NAME OF ENTITY BYLAWS

## Article I. Authority

1-1. *Name.* The name of this [board/committee/commission/etc.] shall be the [Full name of entity], hereinafter referred to as "[entity]."

1-2. *Authority.* The [entity] was established by _____and is delegated authority by _____ and is further recognized by the adoption of these bylaws on _____ and amended on _____, _____ and _____.

1-3. *Office.* The official mailing address of the [entity] shall be:

[Full name of entity]
P.O. Box 365
Oneida, WI 54155

1-4. *Membership.*

(a) *Number of Members.* The [entity] shall be comprised of [_] members.

(b) *How Elected. [*Or *How Appointed]*.

[Entity] members shall be appointed by the Oneida Business Committee in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions.

*[or]*

[Entity] members shall be elected by the Oneida Nation membership in accordance with the Election law.

(c) *How Vacancies are Filled.*

(d) *Qualifications*. In addition to any requirements established by Oneida law, members shall meet the following qualifications:

## Article II. Officers

2-1. *Officers.* The [entity] shall have **two (2)** officers: Chairperson and Vice-Chairperson. [there may be additional officers, such as secretary, treasurer, etc. These should be listed here.

2-2. *Duties of the Chairperson*. The [entity] Chairperson shall:

2-3. *Duties of the Vice-Chairperson.* The Vice-Chair shall

2-4. *Additional Offices and Duties.* [This is optional, but any other officers, such as a secretary, treasurer, etc. should each have their own section listing their duties, like 2-2 and 2-3 do for the chair and vice-chair. If there are no other offices, then this section is skipped and "How Chosen" becomes 2-4.]

Example: 2-5. *Secretary Duties.* The Secretary of [entity] shall:

2-5. *How Chosen.* The [entity] shall meet within [_____ days/hours] of _____ to elect officer positions. The officer positions shall be chosen by majority vote of all [entity] members in attendance at the meeting. This vote shall be made part of the [entity] record.

(a) *Length of Term.* The term of office for [entity] officers shall be _____.

(b) *Resignation.* An [entity] officer may resign as an [entity] officer by presenting his or her resignation in writing to the [entity]. Resignations are effective upon approval of the [entity].

(c) *Officer Vacancy.* In the event of a vacancy in an officer position, the [entity] shall vote to elect a new officer at a duly called [entity] meeting. The officer position shall be elected by majority vote of all present [entity] members.

2-5. *Personnel.*

**Article III. Meetings**

3-1. *Regular Meetings.* The [entity] meetings shall be held on _____.

3-2. *Special Meetings.*

3-3. *Emergency Meetings.*

3-4. *Quorum.* A quorum shall consist of _____ persons, and shall include the [entity] Chairperson or Vice-Chairperson.

3-5. *Order of Business.* Agendas for the regular meetings of the [entity] shall contain the following order of business:

3-5. *Voting.* Voting shall be in accordance with simple majority vote of the [entity] members present at a duly called meeting. The [entity] Chairperson shall have voting privileges in all matters which come before the [entity] **OR** The [entity] Chairperson shall only vote in case of a tie.

**Article IV. Reporting**

4-1. *Format*. Agenda items shall be in an identified format.

4-2. *Minutes.* Minutes shall be typed and in a consistent format designed to generate the most informative record of [entity] meetings.

4-3. *Backup.* Handouts, reports, memoranda and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented.

4-4. *Reporting.* The [entity] shall report to the Oneida Business Committee member who is their designated liaison. This reporting format may be as the liaison and [entity] agree to, but not less than that required in any policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. Reports shall be made within a reasonable time after a meeting is held, or as the Oneida Business Committee member liaison and [entity] agree. Provided that, the agreement is to uphold the ability of the liaison to act as a support to that [entity].

**Article V. Amendments**

5-1. *Amendments to Bylaws*. The [entity] may amend these bylaws upon approval of the [entity] at a regularly scheduled meeting. Amendments shall become effective upon approval by the Oneida Business Committee.

[entity] Approval Date of _____.

Oneida Business Committee Approval Date of _____.

| | |
|---|---|
| _____ | _____ |
| _____, Chairperson | _____, Secretary |
| Name of Entity | Oneida Business Committee |

**Note: The Secretary's Office will format the bylaws to include the signature lines at the end**

**BC Resolution _____**

*This is a brief description of what the resolution does*

**WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

**WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and

**WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Nation Constitution by the Oneida General Tribal Council; and

**WHEREAS,** [ ]; and

**WHEREAS,** [ ]; and

**WHEREAS,** [ ].

**NOW THEREFORE BE IT RESOLVED,** that [ ].

**NOW THEREFORE BE IT FURTHER RESOLVED,** that [ ].

**NOW THEREFORE BE IT FINALLY RESOLVED,** that the Oneida Business Committee hereby [ ].

**GTC Resolution _____**

*This is the title (description of the resolution)*

**WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

**WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and

**WHEREAS,** [ ]; and

**WHEREAS,** [ ]; and

**WHEREAS,** [ ].

**NOW THEREFORE BE IT RESOLVED,** that [ ].

**NOW THEREFORE BE IT FURTHER RESOLVED,** that [ ].

**NOW THEREFORE BE IT FINALLY RESOLVED,** that the General Tribal Council hereby [ ].

# September 2016

September 2016

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

October 2016

| Su | Mo | Tu | We | Th | Fr | Sa |
|---|---|---|---|---|---|---|
| | | | | | | 1 |
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| 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 31 | | | | | |

| | Monday | Tuesday | Wednesday | Thursday | Friday |
|---|---|---|---|---|---|
| Aug 29 - Sep 2 | **Aug 29** | **30** | **31** | **Sep 1** | **2** |
| Sep 5 - 9 | **5**<br>Labor Day Holiday | **6** | **7**<br>9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar | **8** | **9** |
| Sep 12 - 16 | **12** | **13** | **14**<br>BC Meeting (BCCR) | **15** | **16** |
| Sep 19 - 23 | **19** | **20** | **21**<br>9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar | **22** | **23** |
| Sep 26 - 30 | **26** | **27** | **28**<br>BC Meeting (BCCR) | **29** | **30** |

# October 2016

October 2016

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| 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 31 | | | | | |

November 2016

| Su | Mo | Tu | We | Th | Fr | Sa |
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| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | | | |

| | Monday | Tuesday | Wednesday | Thursday | Friday |
|---|---|---|---|---|---|
| Oct 3 - 7 | **Oct 3** | **4** | **5** | **6** | **7** |
| | | | 9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar | | |
| Oct 10 - 14 | **10** | **11** | **12** | **13** | **14** |
| | | | BC Meeting (BCCR) | | |
| Oct 17 - 21 | **17** | **18** | **19** | **20** | **21** |
| | | | 9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar | | |
| Oct 24 - 28 | **24** | **25** | **26** | **27** | **28** |
| | | | BC Meeting (BCCR) | | |
| Oct 31 - Nov 4 | **31** | **Nov 1** | **2** | **3** | **4** |
| | | | | | |