

Title 6. Property and Land – Chapter 602

LEASING

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we're loaning/leasing law

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602.1. Purpose and Policy

602.1-1. *Purpose.* The purpose of this law is to set out the Nation's authority to issue, review, approve and enforce leases. In addition, the purpose of this law is to meet the requirements of the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) by establishing a process under which the Nation will be able to approve leases on tribal land without additional approval of the Secretary of the Interior.

602.1-2. *Policy.* It is the policy of the Nation to set out the expectations and responsibilities of the lessor and lessees of tribal land and to ensure the leasing of tribal land results in minimal risk to the Nation.

602.2. Adoption, Amendment, Repeal

602.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-13-15-C and amended by resolution BC-10-26-16-C and becomes effective thirty (30) calendar days after approval by the Secretary of the Interior.

602.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act. Major, substantive changes to this law may not take effect until they have been approved by the Secretary of the Interior. Minor, technical amendments may take effect upon adoption by the Oneida Business Committee.

602.2-3. 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.

602.2-4. 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.

(a) To the extent that this law conflicts with any applicable federal statutes or regulations, the federal statute or regulation controls.

(b) To the extent that any lease to which this law applies conflicts with this law, this law controls.

602.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

602.3. Definitions

602.3-1. 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) "Assignment" means an agreement between a lessee and an assignee whereby the assignee acquires all or some of the lessee's rights and assumes all or some of the lessee's obligations under a lease.

(b) "Cultural Heritage Department" means the entity responsible for conducting cultural reviews as required under this law.

- (c) “Cultural Review” means a review of the anticipated effects of a proposed lease document on archaeological, cultural and/or historic resources.
- (d) “Environmental, Health and Safety Division” means the entity responsible for conducting environmental reviews as required under this law.
- (e) “Environmental Review” means a review of the anticipated environmental effects of a proposed lease document.
- (f) “Guardian” means one who has legal authority and duty, as appointed by a court of competent jurisdiction, to care for another’s person or property because of the other’s infancy, incapacity or disability.
- (g) “Improvements” means buildings, other structures, and associated infrastructure attached to the leased premises.
- (h) “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.
- (i) “Land Management” means the Division of Land Management or other entity responsible for entering into leases of tribal land.
- (j) “Lease” means a written contract between the Nation and a lessee, whereby the lessee is granted a right to use or occupy tribal land, for a specified purpose and duration.
- (k) “Lease Document” means a lease, lease amendment, assignment, sublease or leasehold mortgage.
- (l) “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.
- (m) “Lessee” means a person or entity who has acquired a legal right to use or occupy tribal land by a lease under this law, or one who has the right to use or occupy a property under a lease.
- (n) “Lessor” means the Nation, in its capacity as the legal, beneficial and/or equitable owner of tribal land subject to a lease.
- (o) “Nation” means the Oneida Nation.
- (p) “Performance Bond” means a bond given to ensure the timely performance of a lease.
- (q) “Rule” means a set of requirements, including fee schedules, enacted jointly by Land Management and 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.
- (r) “Secretary” means the Secretary of the Interior, U.S. Department of the Interior, or its authorized representative.
- (s) “Sublease” means a written agreement by which the lessee grants to a person or entity a right to use or occupy no greater than that held by the lessee under the lease.
- (t) “Tribal 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.

602.4. General Provisions

602.4-1. *Applicable Land.* This law applies to all tribal land.

602.4-2. *Applicable Leases.*

- (a) Except as excluded in (b) below, or as contrary to applicable federal statutes and

regulations, this law applies to all residential, agricultural and business leases executed by the Nation and to all actions and decisions taken in connection with those leases. Provided that, nothing herein may be construed to affect the terms and conditions of leases existing when this law goes into effect or amendments, assignments, subleases or encumbrances made to those leases.

(b) This law does not apply to mineral leases, any lease of individually owned Indian allotted land in accordance with 25 U.S.C. 415(h)(2), leases included in the Nation's home ownership programs administered using federal funding or leases lasting one (1) year or less.

602.4-3. *Applicable Law.* In addition to this law, leases approved under this law are subject to:

- (a) all of the Nation's laws, except to the extent those laws are inconsistent with applicable federal law; and
- (b) applicable federal laws.

602.4-4. Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the Nation under federal law, the Secretary may, upon reasonable notice from the Nation and at the discretion of the Secretary, enforce the provisions of, or cancel, any residential, agricultural or business lease on tribal land executed by the Nation. The United States may not be liable for losses sustained by any party to a residential, agricultural or business lease executed pursuant to this law.

602.4-5. Lease parties shall resolve all disputes over residential, agricultural and business leases under the Nation's laws and in accordance with federal law. Nothing in this law may be construed to waive the Nation's sovereign immunity.

602.4-6. After the Secretary approves this law, all leases of tribal land approved and executed under this law may become effective without federal approval under 25 U.S.C. 415(h), unless the Secretary rescinds approval of this law and reassumes responsibility for such approval.

602.5. Lease Document Requirements

602.5-1. *Information and Application.* Land Management shall approve and execute all leases. Land Management shall make available information on obtaining residential, agricultural or business lease documents. Parties interested in obtaining a residential, agricultural or business lease document shall submit an application to Land Management pursuant to the rules which Land Management and the Oneida Land Commission shall jointly develop.

(a) Land Management shall develop, and the Oneida Land Commission shall approve, the format and requirements set out in the lease document applications for different types of leases, as well as additional procedures and processes to be followed when offering and awarding lease documents.

602.5-2. *Terms and Conditions.* Land Management shall ensure leases are in writing and contain, at a minimum, the following:

- (a) A description of the land or building being leased including surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems which meet the requirements of the Land Titles and Records Office of the Bureau of Indian Affairs;
- (b) The effective date and term of the lease;
- (c) The purpose of the lease and authorized uses of the leased premises;
- (d) The parties to the lease;
- (e) How much rent is due, when it is due, who receives it, what form(s) of payment is acceptable, and whether any late payment charges or special fees apply and the rate of interest to be charged if the lessee fails to make payments in a timely manner;

- (f) Whether there will be rental reviews or adjustments, how and when they will be done, when any adjustments will be effective and how disputes regarding adjustments will be resolved;
- (g) Who is responsible for any taxes applied to the property and/or improvements;
- (h) Due diligence requirements that apply, if any;
- (i) Performance bond and insurance requirements that apply, if any;
- (j) Land Management has the right, at any reasonable time during the term of the lease and upon reasonable notice, in accordance with this law and any other applicable laws, policies and rules of the Nation, to enter the leased premises for inspection and to ensure compliance with the lease;
- (k) The lessee holds the United States and the Nation harmless from any loss, liability or damages resulting from the lessee's use or occupation of the leased premises;
- (l) The lessee indemnifies the United States and the Nation against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Nation for liability or cost arising from the Nation's negligence or willful misconduct; and
- (m) Land Management may, at its discretion, treat as a lease violation any failure by the lessee to cooperate with a request to make appropriate records, reports or information available for inspection and duplication.

602.5-3. *Improvements.* Land Management shall ensure lease documents set out requirements related to improvements, including:

- (a) whether improvements may be constructed;
- (b) ownership of improvements;
- (c) responsibility for constructing, operating, maintaining and managing improvements;
- (d) whether the lessee shall submit development plans and/or construction management schedules to Land Management for approval prior to beginning construction of any improvements;
- (e) removal of improvements;
- (f) whether a lessee may develop equity in improvements and sell its interest in the lease based on the equity; and
- (g) the lessor's right of first refusal to purchase the lessee's interest, if any.

602.5-4. *Obtaining a Lease Document.* Land Management shall ensure lease documents are entered into by written consent of the lessor and the lessee unless otherwise provided herein and that the lease documents contain effective dates.

- (a) The lease may authorize subleases only upon approval and execution from Land Management. This in no way relieves the parties from carrying out their duties under the lease.
- (b) The lease may authorize leasehold mortgages on the leasehold interest for the purpose of financing to develop and improve the premises. Land Management shall approve the leasehold mortgage.
- (c) The lease may not authorize mortgages that encumber title to tribal land.

602.5-5. *Payments.* For any lease requiring payments to be made to the lessor, the lessor shall provide the Secretary with such documentation of the lease payments as the Secretary may request to enable the Secretary to discharge the trust responsibility of the United States.

602.5-6. *Environmental and Cultural Reviews.* Land Management may not approve a lease until an environmental review and a cultural review, as required under section 602.9, have been

completed. Leases approved and executed in violation of this section are null and void.

602.5-7. *Documentation.* The following are required for a party to enter into a lease:

- (a) a signed lease; and
- (b) any reports, surveys and site assessments needed to comply with the Nation's environmental, cultural resource and land use requirements.

602.6. Residential Leases

602.6-1. In addition to the requirements that apply to all leases under section 602.5, the requirements of this section also apply to residential leases.

602.6-2. A residential lease is required for the lease of land suited or used for the construction, improvement, and/or maintenance of a dwelling and related structures on the premises, and otherwise to use or occupy said premises for residential purposes.

602.6-3. *Duration.* Residential leases may not exceed seventy-five (75) years.

602.6-4. *Appraisal, Local Studies.*

(a) Land Management shall determine the fair annual lease value using an appraisal or equivalent procedure performed by Land Management utilizing the following data: improvement cost, replacement cost, earning capacity, and sales and lease data of comparable sites. Land Management shall ensure that an appraisal log reporting the methods of appraisal and value of the tribal land is attached to every residential lease.

(b) Alternatively, Land Management shall determine the fair annual lease value using an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or another commonly accepted method of appraisal. Land Management shall ensure that an appraisal log describing the method of appraisal and value of the tribal land is attached to every residential lease.

602.6-5. *Fair Annual Lease Value.* Land Management may offer residential leases at reduced rates if it determines that doing so is in the best interest of the Nation. Under such circumstances an appraisal is not required. In all other circumstances, a residential lease may not be approved for less than the present fair annual lease value as set forth in the appraisal.

602.6-6. *Lease by Guardian.* A parent or legal guardian may enter into a residential lease on behalf of his or her child or ward.

602.7. Agricultural Leases

602.7-1. In addition to the requirements that apply to all leases under section 602.5, the requirements of this section also apply to agricultural leases.

602.7-2. An agricultural lease is required for the lease of land suited or used for the production of crops, livestock or other agricultural products, or land suited or used for a business that supports the surrounding agricultural community.

602.7-3. *Duration and Renewal.* Agricultural leases may not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.

602.7-4. *Management of Land.* Land Management shall ensure that agricultural leases require the lessee to manage land in accordance with the conservation plan that the Nation shall develop and any agricultural resource management plan and/or other appropriate stipulations developed by the Nation.

602.7-5. *Lease Valuation.* Agricultural leases are valued based on the bidding process required as part of the lease award process included in the rules, which Land Management and the Oneida Land Commission shall jointly develop.

602.8. Business Leases

602.8-1. In addition to the requirements that apply to all leases under section 602.5, the requirements of this section also apply to business leases.

602.8-2. A business lease is required for the lease of land suited or used for business purposes including retail, office, manufacturing, storage, or other business purposes; and public purposes, including religious, educational, recreational, cultural, or other public purposes.

602.8-3. *Duration and Renewal.* Business leases may not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.

602.8-4. *Supporting Documents.* All applicants for business leases shall submit the following documents to Land Management:

- (a) financial statement;
- (b) site survey and legal description, if applicable;
- (c) other documents as may be required by any business leasing management plan developed by the Nation.

602.8-5. *Appraisal, Local Studies.*

(a) Land Management shall determine the fair annual lease value using an appraisal or equivalent procedure performed by Land Management utilizing the following data: improvement cost, replacement cost, earning capacity, and sales and lease data of comparable sites. Land Management shall ensure that an appraisal log reporting the methods of appraisal and value of the tribal land is attached to every business site lease.

(b) Alternatively, Land Management shall determine the fair annual lease value using an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or another commonly accepted method of appraisal. Land Management shall ensure that an appraisal log describing the method of appraisal and value of the tribal land is attached to every business site lease.

602.8-6. *Fair Annual Lease Value.*

(a) No lease may be approved for less than the present fair annual lease value as set forth in the appraisal, except as follows:

- (1) The lessee is in the development period;
- (2) Land Management is providing an incentive for businesses to locate on tribal land, and is providing lease concessions, lease improvement credits, and lease abatements to attract such business; or
- (3) Land Management determines such action is in the best interest of the Nation.

(b) A lease may:

- (1) Be structured at a flat lease rate; and/or
- (2) Be structured at a flat lease rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center, or the lessee generates over one million dollars (\$1,000,000.00) annually in gross receipts; and/or
- (3) Be structured based on a percentage of gross receipts, or based on a market indicator; and/or
- (4) Be structured to allow for lease rate adjustments; Land Management shall ensure that the lease specifies how adjustments will be made, who will make such adjustments, when adjustments go into effect, and how disputes may be resolved; and/or
- (5) Be amended to allow for lease rate adjustments; and/or
- (6) Provide for periodic review giving consideration to the economic conditions, exclusive of improvement or development required by the contract or the

contribution value of such improvements.

(c) Land Management shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments and shall present such records to the lessee and include them in any lease file.

602.8-7. *Performance Bond.* If a performance bond is required under a business lease, the lessee shall obtain the performance bond in an amount that reasonably assures performance on the lease. Land Management may require performance bonds for the purpose of guaranteeing any of the following:

- (a) The annual lease payment;
- (b) The estimated development cost of improvements; and
- (c) Any additional amount necessary to ensure compliance with the lease.

602.9. Environmental and Cultural Reviews

602.9-1. *Applicability.* Land Management may not consider approving a lease document until an environmental review and a cultural review have been completed.

602.9-2. *Environmental Reviews.* The Nation is solely responsible for ensuring that the environmental review has been completed in accordance with this law. The Environmental, Health and Safety Division or its designee shall conduct an environmental review on all proposed lease documents in accordance with the process established under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to evaluate environmental effects of federal undertakings and, at a minimum, the process shall:

- (a) Identify and evaluate any significant effects of the proposed action on the environment;
- (b) Establish a process for notifying the public of significant environmental impacts;
- (c) Ensure that the public has a reasonable opportunity to provide comments regarding the action and its environmental impacts;
- (d) Require the Nation to respond to relevant and substantive comments received from the public.

602.9-3. *Cultural Reviews.* The Cultural Heritage Department or its designee shall conduct a cultural review on all proposed lease documents in accordance with the permit review requirements for undertakings established in the Protection and Management of Archeological & Historical Resources law.

602.9-4. *Environmental and Cultural Review Completion.* The Environmental, Health and Safety Division shall forward a completed environmental review and the cultural review to Land Management for consideration in the approval or denial of a lease document.

- (a) Before approving a lease document, Land Management may require any reasonable actions, as recommended within the environmental review or cultural review, be completed.
- (b) The Environmental, Health and Safety Division shall prepare an updated environmental review and the Cultural Heritage Department shall prepare an updated cultural review upon completion of any reasonable actions.

602.10. Lease Management

602.10-1. *Management Plan.* Land Management shall:

- (a) manage existing leases as well as those executed pursuant to this law; and
- (b) institute a leasing management plan that employs sound real estate management practices, and addresses accounting, collections, monitoring, enforcement, relief, and remedies.

602.10-2. *Accounting.* Land Management shall implement an accounting system that generates invoices, accounts for payments, and dates of when rate adjustments should be made. Nothing in this section may be construed to absolve the lessee of its duties under a lease.

602.10-3. *Recording Lease Documents.* Land Management shall provide all lease documents of tribal land, except residential subleases, to the Bureau of Indian Affairs for encoding and to be forwarded to the Land Titles and Records Office. Land Management shall record all lease documents of tribal land with the Oneida Nation Register of Deeds. Land Management shall also distribute a copy of the recorded lease documents to the lessee.

602.10-4. *Ownership of Records.* Records of activities taken pursuant to this law with respect to tribal land are the property of the United States and the Nation. Records compiled, developed or received by the lessor in the course of business with the Secretary are the Nation's property.

602.10-5. *Administrative Fees.* Land Management and the Oneida Land Commission may jointly develop rules requiring administrative fees for costs associated with issuing a lease document, or conducting any other administrative transaction.

602.11. Enforcement

602.11-1. Land Management is delegated all powers necessary and proper to enforce the lease terms, this law and any rules developed pursuant to this law. This includes, but is not limited to, the power to enter the premises, assess penalties, assess late payments and cancel leases. Land Management may request the Oneida Law Office assist in enforcement of this law, rules and leases.

602.11-2. *Harmful or Threatening Activities.* If a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, Land Management or another interested party may take appropriate emergency action, which may include cancelling the lease and/or securing judicial relief.

602.11-3. *Holdovers and Trespass.* If a lessee remains in possession of a property after the expiration or cancellation of a lease, or a person occupies a property without Land Management's approval, Land Management shall take action to recover possession of the property; and/or pursue additional remedies, such as damages, if applicable.

602.11-4. *Defaults.* If Land Management determines a lessee is in default, Land Management shall take action to have the lessee cure the default or, if the default is not cured, cancel the lease pursuant to the Eviction and Termination law.

602.11-5. *Penalties.* Unless the lease provides otherwise, interest charges and late payment penalties apply in the absence of any specific notice to the lessee from Land Management, and Land Management shall treat the failure to pay such amounts as a breach of the lease.

602.12. Leasing Actions

602.12-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a lease document.

602.12-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a lease document.

602.12-3. The lessor is the Division of Land Management in regards to taking actions authorized under this law and complaints filed with the Oneida Judiciary shall name the Division of Land Management and the specific lease program.

End.

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Adopted-BC-10-26-16-C, pending BIA approval