

Title 6. Property and Land – Chapter 601
REAL PROPERTY
Tokáске Kayanláhsla Tsi? Ni?yohuntsya-té
The real/certain laws of the territory of the nation

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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 and all tribal land; 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, BC-05-13-15-B, and BC-02-08-17-A.

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 This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.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that, the Land Ordinance is applicable only to valid land assignments existing as of January 1, 2016 and is hereby repealed upon the expiration of the last existing land assignment.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) “Comprehensive Housing Division” means the entity responsible for housing matters as defined by Oneida Business Committee Resolution.¹
- (d) “Easement” means a real property right to cross or otherwise utilize the land of another for a specified purpose.
- (e) “Estate” means a person’s interest in real property or other property.
- (f) “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.”
- (g) “Guardian Ad Litem” means a guardian appointed by the Judiciary on behalf of an incompetent or minor party.
- (h) “Individual Fee Land” means real property held in fee status by an individual or group of individuals.
- (i) “Individual Trust Land” means individual Tribal land held in trust by the United States of America for the benefit of a Tribal member.
- (j) “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.
- (k) “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.
- (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) “Nation” means the Oneida Nation.
- (n) “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.
- (o) “Probate” or “Administration” means any proceeding relating to a decedent’s estate, whether there is or is not a will.
- (p) “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.
- (q) “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.
- (r) “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.
- (s) “Rule” means a set of requirements, including fee schedules, enacted by the Comprehensive Housing Division, Division of Land Management, Oneida Planning Department 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.

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

(t) “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.

(u) “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.

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

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

(x) “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 member’s individual fee land and Tribal member’s individual trust land within the Reservation boundaries and all Tribal land.

601.4-2. *Tribal Land Base.* The Division of Land Management shall administer all transactions which add real property to the Tribal land base 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 shall 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, other than married persons, is owned under this mechanism unless a deed or 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 shall be derived from a certified survey map or survey completed by a registered land surveyor according to currently accepted minimum industry 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 shall be used on transfer documents along with the survey description, which shall 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 shall 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 shall be complete, providing unequivocal identification of line or boundaries.

601.6-4. All surveys prepared for the Nation shall 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 shall 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, noticed and/or advertised as available for sale, rent or lease to Tribal members, the address is an 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 shall be recorded in the appropriate register of deeds office, provided that, once the real property is in trust, the title shall 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 Tribal member individual fee land within the Reservation 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 shall 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 shall 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;

This section is not currently effective. Please see attached Resolution BC-06-14-17-A for the applicable governance of probate matters.

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

(1) 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 Education Requirements and Certifications

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

(a) While Wisconsin real estate law allows persons engaged in the sale of real estate to earn a commission, 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) It is critical to the Oneida Nation's goal to reacquire property within the original Reservation boundaries to have employees educated and experienced in executing real estate transactions. Accordingly, the Division of Land Management shall employ a minimum of one (1) employee whose primary focus is real estate acquisitions and shall ensure that a minimum of two (2) employees are educated and trained as backups to the primary.

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, excluding residential leases, 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 the Land Use Technical Unit rules which the Oneida Planning Department shall develop in collaboration with affected Oneida divisions and departments and the Oneida Land Commission; 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 residential, 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
Amended-BC-02-08-17-A

Oneida Nation

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BC Resolution # 06-14-17-A Real Property Law Probate Rules Extension

- 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,** the Oneida Business Committee adopted the Real Property law pursuant to resolution BC-05-29-96-A and amended the law by resolutions: BC-03-01-06-D, BC-04-28-10-E, BC-02-25-15-C, BC-05-13-15-B, and most recently with BC-02-08-17-A; and
- WHEREAS,** the most recent amendments will become effective on June 25, 2017; and
- WHEREAS,** the most recent amendments update the probate process, transfer the Oneida Land Commission's original hearing body authority to the Oneida Judiciary, and delegate joint administrative rulemaking authority to the Division of Land Management and the Oneida Land Commission; and
- WHEREAS,** the Division of Land Management and the Oneida Land Commission are required to create rules further defining the process for probate administration; and
- WHEREAS,** all rules developed by the Division of Land Management and the Oneida Land Commission were required to be effective on June 25, 2017; and
- WHEREAS,** additional time is needed to develop and make effective the rules regarding the process for probate administration in accordance with the process set forth in the Administrative Rulemaking law; and
- WHEREAS,** section 601.8 of the Real Property law is insufficient without the addition of the promulgated rules because it does not contain the process for probate administration; and

NOW THEREFORE BE IT RESOLVED, that in recognition that the Division of Land Management and the Oneida Land Commission have not yet promulgated the rules governing probate administration, the following provision shall replace section 601.8 of the Real Property law until the probate rules are promulgated and effective:

601.8. Disposition Of Estates Of Deceased Tribal Members.

601.8-1. The purpose of this section is to formalize laws to handle the disposition of deceased tribal members' trust property, with or without a will. The intent of this section is to provide procedures which make it possible for equitable and fair decisions to be made for the surviving family, as well as promoting ongoing peace and harmony within the community.

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

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

601.8-2. Non-members of The Oneida Tribe and non-citizens of the United States cannot acquire Trust land through inheritance. Where interests are specifically devised to individuals ineligible to inherit the following options are provided:

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

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

601.8-3. Interests of Heirs who cannot be found will be sold to the Oneida Tribe at fair market value, or to an eligible heir, and the money returned to the estate for distribution.

601.8-4. In the absence of any heir or devisee, interests will escheat to the Oneida Tribe of Indians of Wisconsin.

601.8-5. Personal property which does not come under the guidelines of this Law, and may be distributed at the traditional ten day meal by family members, include:

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

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

601.8-6. The Land Commission, or its designated sub-committee, shall make a declaratory ruling by authority of the Administrative Procedures Act, Section 9, in any case brought before them by any person claiming to be an heir of the deceased and requesting any of the following determinations:

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

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

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

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

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

601.8-7. The Staff Attorney for the Division of Land Management will prepare a file for each probate hearing within 30 days of receipt of a Request for Probate Hearing from anyone claiming to be an heir of the deceased. Extensions to this 30 day requirement shall be requested from the Land Commission when proven necessary to complete the file. Relatives and agencies will be asked to cooperate in developing a complete probate file containing:

(a) Family history information,

(b) Death certificate,

(c) Personal and Real Property Inventory,

(d) BIA-IIM Account Report,

(e) Creditor Claims,

(f) Original will, if any,

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

601.8-8. Definitions As Used In This Section

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

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

(1) Heirs of the decedent

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

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

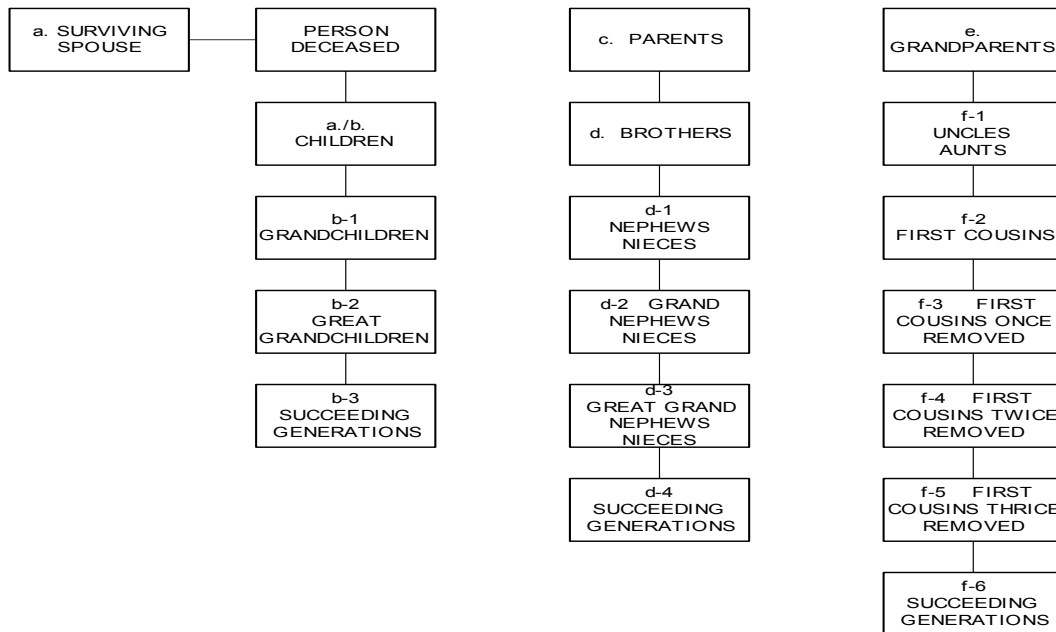
(4) Additional persons as the Land Commission may by order include who may be affected by the actions of the Land Commission, or its designated sub-

committee, whether by receipt of or denial of any property which is a part of the action.

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

601.8-9. *Parties-in-interest.* The net estate of a decedent, not disposed of by will, passes to his/her surviving heirs or Parties-in-interest as follows:

- (a) To the spouse:
 - (1) All Real Property.
 - (2) All other than Real Property if there are no surviving children of the decedent.
 - (3) 1/2 of other than Real Property of the decedent's estate if there are surviving children of the decedent, or children of any deceased child of the decedent (grandchildren) who take by right of representation.
- (b) To Surviving Children and children of any deceased child of the decedent by rights of representation;
 - (1) All of the estate if there is no surviving spouse, divided equally to all in the same degree of kinship to the decedent. Surviving children of a deceased child of the decedent will divide their parent's share.
- (c) All of the estate to the parents, equally divided, if no surviving spouse, children or children taking by right of representation.
- (d) All of the estate to the brothers and sisters and children of deceased brothers or sisters by representation, divided equally, If no surviving spouse, children, or parents.
- (e) All of the estate to the grandparents of the deceased divided equally, if no surviving spouse, children parents or brothers and sisters.
- (f) All of the estate divided equally to lineal descendants of the grandparents of the deceased in the same order as (b) thru (e) if no surviving spouse, children, parents brothers/sisters, or grandparents of the decedent.
- (g) Diagram of Intestate Succession as outlined in (a) thru (f) in Figure 1.



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

601.8-10. When the Probate File is complete, it will be placed on the agenda for review by the Land Commission, who will first review it for sufficiency. If the Land Commission determines the file is incomplete, it is sent back to the Staff Attorney with further instructions. If the probate file is determined to be complete, a hearing shall be scheduled at a time when most, if not all, parties can attend.

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

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

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

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

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

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

(5) When all problems, disputes and legal issues of the case have been resolved to the satisfaction of all parties-in-interest, the hearing body will issue its Final or Declaratory Ruling to the Director of Land Management, who will notify the Land Commission and all parties involved in the hearing. This Final Ruling takes effect 60 days after mailings.

601.8-11. A party to a probate hearing may seek a rehearing of any of the above determinations listed in 8-3 upon provision of a written request to the Director of the Division of Land Management within 60 days after the Declaratory Ruling is issued. It is the responsibility of the aggrieved party to make certain that adequate documentation necessitating a rehearing is attached to the request.

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

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

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

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

601.8-12. The Director of Land Management will place the petition for rehearing on the first agenda of the Land Commission following the receipt of the written request.

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

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

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

601.8-13. Any Declaratory Ruling given under this Section may be appealed to the Judiciary within 30 days from the date of the Ruling. The Ruling is sent to the Parties-in-interest with same documentation outlined in 8-6.

601.8-14. A party may petition the Judiciary to reopen the case within three years after the Declaratory Ruling has been mailed out if they can prove all of the following:

- (a) They were not a participant in the first hearing;
- (b) They were completely unaware that the first probate hearing occurred and they have proof that they were not duly noticed; and
- (c) They have rights which were erroneously left out of the first probate hearing.

601.8-15. After looking at the record of the first hearing, the Judiciary may rule that the Petition To Reopen is not sufficient, or it may send an order to the Land Commission to provide a second hearing based on the evidence provided in the Petition.


601.8-16. All probate Declaratory Rulings of the Land Commission or Judgments of the Judiciary shall be recorded in the Division of Land Management.

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

NOW THEREFORE BE IT FURTHER RESOLVED, that the effective date of the most recent amendments to the Real Property Law contained in resolution BC-02-08-17-A shall remain June 25, 2017, but the time allotted to create administrative rules governing the process for probate administration is extended until the probate rules are promulgated and effective.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 7 members voted in an electronic poll held on the 14th day of June, 2017; that the forgoing resolution was duly adopted at such meeting by a vote of 7 members for, 0 members against, and 1 member not voting; and that said resolution has not been rescinded or amended in any way. This e-poll will be presented for ratification at the next Oneida Business Committee scheduled on June 28, 2017.


Lisa Summers, Tribal Secretary
Oneida Business Committee

*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."

Oneida Nation

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Oneida, WI 54155

BC Resolution # 02-08-17-A Adoption of Real Property Law Amendments

- 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 Real Property Law pursuant to resolution BC-05-29-96-A and amended the Law by resolutions: BC-03-01-06-D, BC-04-28-10-E and BC-02-25-15-C; and
- WHEREAS,** these amendments update the probate process and delegate joint administrative rulemaking authority to the Division of Land Management and the Oneida Land Commission; and
- WHEREAS,** the Division of Land Management and the Oneida Land Commission are required to create rules further defining the process for probate administration; and
- WHEREAS,** these amendments add Wisconsin State real estate education requirements for persons purchasing property on behalf of the Nation; and
- WHEREAS,** these amendments transfer the Oneida Land Commission's original hearing body authority to the Oneida Judiciary; and
- WHEREAS,** these amendments remove provisions related to rental housing opportunities, mortgages and foreclosures and terminations and evictions as such subject matters are addressed in the Landlord-Tenant Law, the Mortgage and Foreclosure Law, the Eviction and Termination Law; and
- WHEREAS,** these amendments remove provisions related to the leasing from the Nation as such subject matter is addressed in the Leasing Law; and
- WHEREAS,** the Leasing Law's effective date is contingent upon approval of the Leasing Law by the Secretary of the Department of Interior; and
- WHEREAS,** public meetings regarding these amendments were held on October 20, 2016 and December 1, 2016, in accordance with the Legislative Procedures Act; and

NOW THEREFORE BE IT RESOLVED, that all parties required to create administrative rules to further support the Real Property Law have all such rules finalized to become effective on June 25, 2017, provided that the rules related to residential sales by the Nation may have an earlier effective date.

NOW THEREFORE BE IT FURTHER RESOLVED, that in recognition that the Leasing Law is not effective until it receives approval from the Secretary of the Department of Interior, the following provision shall replace section 601.9 of the Real Property Law until the Leasing Law is effective should the Leasing Law not be effective by the effective date of these amendments:

601.9. Leasing of Real Property

601.9-1. All leasing of tribal land shall be processed through the Division of Land Management.

601.9-2. Commercial, Agricultural and Residential Leases of tribal trust land are available, with preference given to Oneida tribal citizens and programs.

601.9-3. All leases shall include the responsibility of the lessee and lessor regarding the following principles:

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

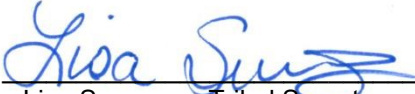
601.9-4. Assignment of leasehold interest for the purpose of financing shall be processed and recorded at the appropriate office by the Division of Land Management. No assignment or related encumbrance to the leasehold interest shall be valid without approval and recordation through procedures established by the Division of Land Management.

601.9-5. In the event of default by the lessee of the terms of an approved encumbrance, and the lessee's assignment reaches the point of sale or foreclosure, the Division of Land Management shall have the right to correct the default. If the default is corrected under these circumstances the lessee will be subject to further proceedings 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.

NOW THEREFORE BE IT FINALLY RESOLVED, that these Real Property Law amendments are hereby adopted and shall become effective on June 25, 2017.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 9 members were present at a meeting duly called, noticed and held on the 8th day of February, 2017; that the forgoing resolution was duly adopted at such meeting by a vote of 8 members for, 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.


Lisa Summers, Tribal Secretary
Oneida Business Committee

*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."