

# Oneida Nation

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Oneida, WI 54155

## **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

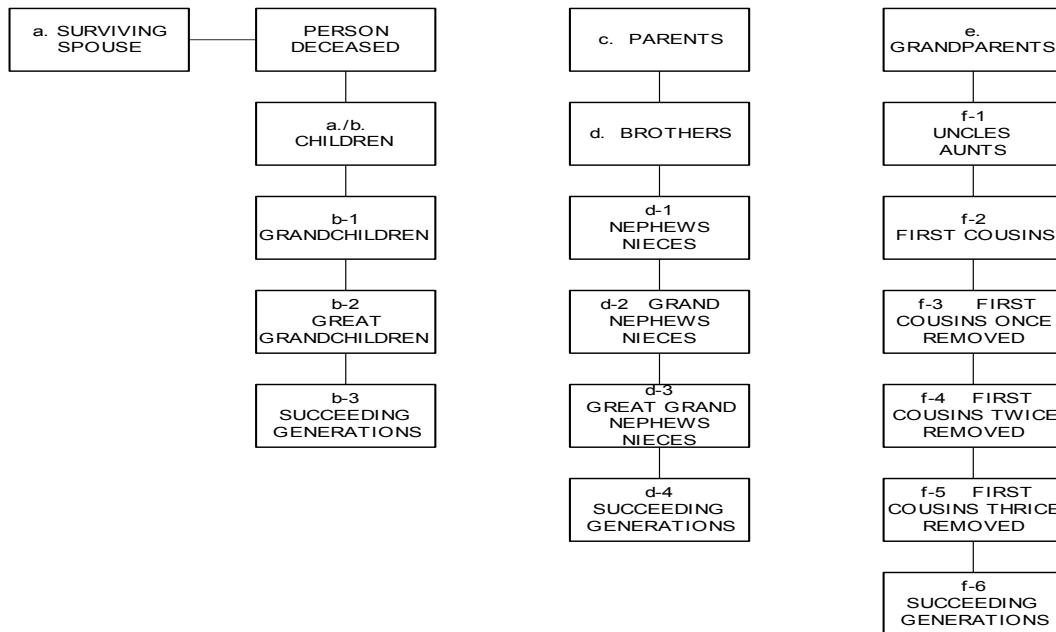
- (a) Children And Issue: Includes adopted children and children of unwed parents where paternity has been acknowledged, or established by court decree. This does not include non-adopted step-children.
- (b) Parties-in-interest: This includes:
  - (1) Heirs of the decedent
  - (2) A beneficiary named 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 14<sup>th</sup> 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."