



## **LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center

November 2, 2016 9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be approved**
  - 1. October 20, 2016 LOC Meeting Minutes
- III. Current Business**
  - 1. Oneida Nation Seal and Flag Law
  - 2. Real Property Law Amendments
  - 3. Per Capita Law Amendments
- IV. New Submissions**
  - 1. Drug and Alcohol Free Law for Elected and Appointed Officials
- V. Additions**
- VI. Administrative Updates**
  - 1. Post Law Adoption SOP
  - 2. Election Law Amendments Analysis E-Poll
- VII. Executive Session**
- VIII. Recess/Adjourn**



## LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center

October 20, 2016 9:00 a.m.

**Present:** Brandon Stevens, Tehassi Hill, Jennifer Webster, David P. Jordan, Fawn Billie

**Others Present:** Jennifer Falck, Tani Thurner, Clorissa Santiago, Maureen Perkins, Rhiannon Metoxen, Cathy Bachhuber, Krystal John, Terry Cornelius

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

Brandon Stevens called the October 20, 2016 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda; seconded by Tehassi Hill. Motion carried unanimously.

### II. Minutes to be approved

#### 1. October 5, 2016 LOC Meeting Minutes

Motion by David P. Jordan to approve the October 5, 2016 LOC meeting minutes; seconded by Fawn Billie. Motion carried, with Jennifer Webster abstaining.

### III. Current Business

#### 1. Back Pay Amendments

Motion by David P. Jordan to approve the Back Pay law adoption packet, including the financial impact statement, and to forward to the Oneida Business Committee for consideration; seconded by Tehassi Hill. Motion carried unanimously.

#### 2. Election Law Amendments

Motion by Tehassi Hill to approve the Election Law Amendments adoption packet and to forward to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

#### 3. Leasing Law Amendments

Motion by Tehassi Hill to approve the Leasing Law Amendments adoption packet, with the addition of an Oneida translation to the title and forward to the Oneida Business Committee for consideration; and direct the Legislative Reference Office to prepare a submittal packet for BIA review upon adoption; seconded by Fawn Billie. Motion carried unanimously.

#### 4. Budget Management and Control Law

Motion by Jennifer Webster to accept the Budget Management and Control Law draft and forward to the LRO for a legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.

## **5. Employment Law**

Motion by David P. Jordan to approve the Employment Law packet and forward to the Oneida Business Committee to be placed on the Annual General Tribal Council meeting agenda for January 2017; seconded by Fawn Billie. Motion carried unanimously.

## **IV. New Submissions**

### **1. Drug and Alcohol Free Workplace Policy Emergency Amendments**

Motion by Fawn Billie to add Drug and Alcohol Free Workplace Policy Amendments to the active files list with Fawn Billie and Jennifer Webster as co-sponsors; Seconded by David P. Jordan. Motion Carried unanimously.

Motion by Fawn Billie to approve the emergency adoption packet and forward to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

### **2. Petition: Genskow/Metivier**

Motion by David P. Jordan to add Genskow/Metivier petition to the active files list with Brandon Stevens as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Fawn Billie to approve the statement of effect and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

## **V. Additions**

## **VI. Administrative Updates**

### **1. Election Law – Campaign Finance Memo**

Motion by Jennifer Webster to accept the Election Law-Campaign Finance memo as information; seconded by Fawn Billie. Motion carried unanimously.

## **VII. Executive Session**

## **VIII. Recess/Adjourn**

Motion by David P. Jordan to adjourn the October 20, 2016 Legislative Operating Committee meeting at 9:16 a.m.; seconded by Jennifer Webster. Motion carried unanimously.



Legislative Operating Committee  
November 2, 2016

## Oneida Nation Seal and Flag

<b>Submission Date:</b> 4/22/15	<b>Public Meeting:</b> 10/01/2015
<b>LOC Sponsor:</b> Jennifer Webster	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *The OBC requested that the LOC develop a flag code policy. ONVAC received complaints from non-Tribal members about how the Tribal Flag is displayed. ONVAC's concerns are there is no protocol for those who oversee flag responsibilities to follow, no one is identified as the person that has the authority to lower the flag to half-staff, what should the height and position of the Tribal Flag be compared to the US Flag, etc.*

- 4/22/15 OBC:** Motion by Jennifer Webster to request the Legislative Operating Committee to develop a flag code policy and consider adding it to the active files list, seconded by Lisa Summers. Motion carried unanimously.
- 5/6/15 LOC:** Motion by Jennifer Webster to add the Tribal Flag Code to the active files list with herself as the sponsor and defer the Tribal Flag Code to a Legislative Operating Committee work meeting; seconded by Fawn Billie. Motion carried unanimously.
- 6/8/15:** Work Meeting held. Attendees included John Breuninger, Kerry Metoxen, Lynn Franzmeier, Candice Skenandore, Brandon Stevens, Tehassi Hill, Jenny Webster, Fawn Billie, Danelle Wilson, David Jordan, Apache Danforth, RC Metoxen.
- 6/30/15:** Work Meeting held. Attendees included John Breuninger, Douglass McIntyre, Candice Skenandore.
- 7/1/15 LOC:** Motion by David P. Jordan to accept the memorandum regarding the Flag Code update as FYI; seconded by Tehassi Hill. Motion carried unanimously.
- 7/24/15:** Work meeting held. Attendees included Jennifer Webster, David P. Jordan, Candice Skenandore, Douglass McIntyre.
- 8/5/15 LOC:** Motion by Tehassi Hill to defer the Oneida Flag Policy for a legislative analysis and a fiscal impact statement and bring back in two weeks; seconded by David P. Jordan. Motion carried unanimously.
- 8/19/15 LOC:** Motion by David P. Jordan to accept the legislative analysis, extend the financial impact statement, and direct the Legislative Reference Office to bring the Oneida Flag Code back to the next LOC meeting, to set a date for a Public Meeting, and to make the changes from "Oneida Nation" back to "Oneida Indian Tribe of Wisconsin"; seconded by Fawn Billie. Motion carried unanimously.
- 9/2/15 LOC:** Motion by Jennifer Webster to forward the current draft and analysis of the Oneida Flag Policy for a public meeting to be held on October 1, 2015; seconded by Fawn Billie. Motion carried unanimously.
- 10/1/15:** Public meeting held.
- 11/4/15 LOC:** Motion by Jennifer Webster to accept the public meeting comments and defer review to a work meeting on November 6; seconded by Tehassi Hill. Motion carried unanimously.
- 11/6/15:** Work meeting held. Attendees include: John Breuninger, Kerry Metoxen, Douglass McIntyre, Candice Skenandore, Jennifer Webster, David P. Jordan.
- 6/1/16 LOC:** Motion by Jennifer Webster to incorporate provisions for the Tribal seal into the current draft of the Flag Law and to bring back a draft to the June 15, 2016 LOC meeting so that

the LOC can determine whether to hold a second public meeting; seconded by Fawn Billie. Motion carried unanimously.

**6/8/16 OBC:** Motion by Lisa Summers to accept the branding update and seal color #2597, and that the final adjustments to the bear face shading be completed through Intergovernmental Affairs & Communications, seconded by Fawn Billie. Motion carried unanimously.

**6/15/16 LOC:** Motion by Tehassi Hill to defer the Oneida Seal and Flag Law to the Legislative Reference Office for an updated legislative analysis and to prepare for a second public meeting; seconded by Jennifer Webster. Motion carried unanimously.

**8/2/16:** Update meeting held. Attorney will review draft and return to analyst.

### **Next Steps:**

- Accept legislative analysis and the public meeting packet and direct LRO staff to hold a second public meeting December 1, 2016.

NOTICE OF

# PUBLIC MEETING

TO BE HELD

**Thursday, DECEMBER 1st at 12:15 p.m.**

IN THE

**OBC CONFERENCE ROOM**

**(2<sup>nd</sup> 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: ONEIDA NATION SEAL AND FLAG

**This is a proposal to create a new Oneida Nation Seal and Flag Law which would:**

- ♦ Recognize the official Oneida Nation Seal and describe where the seal should be used;
- ♦ Give authority to the Oneida Nation Secretary to govern the placement, maintenance and authorized use of the Oneida Nation seal;
- ♦ Recognize the importance of publically demonstrating the sovereign authority and jurisdiction of the Nation through the proper flying of the Oneida Flag;
- ♦ Require all current and future Oneida Nation-owned buildings on the reservation that fly the Flag to do so pursuant to this law;
- ♦ Identify who is responsible for Flag duties;
- ♦ List the requirements for how the Flag is to be displayed; and
- ♦ Explain how the Flag is to be respected.

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](http://www.oneida-nsn.gov/Register/PublicMeetings) or contact the Legislative Reference Office.

## PUBLIC COMMENT PERIOD OPEN UNTIL DECEMBER 8, 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**



## Oneida Nation Seal and Flag

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<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Oneida Nation Seal and Flag				
<b>Sponsor</b>	Jennifer Webster	<b>Drafter</b>	Clorissa N. Santiago	<b>Analyst</b>	Maureen Perkins
<b>Requester &amp; Reason for Request</b>	<p>Oneida Business Committee</p> <p>The OBC deferred the law to the LOC because ONVAC was receiving complaints from non-Tribal members on how the Nation's Flag is displayed. ONVAC has concerns that there is no protocol for those who oversee flag responsibilities. The official Oneida Nation seal was added to this law once it was developed.</p>				
<b>Purpose</b>	<p>The purpose of this law is for the Oneida Nation to exercise the fundamental right of sovereignty and self-determination by setting forth the official governmental Seal and Flag for the Oneida Nation, its use and who shall be responsible for safekeeping and authorizing its use [see 116.1-1].</p>				
<b>Authorized/ Affected Entities</b>	<p>All of the Nation's entities and Oneida-owned buildings within the reservation that currently possess or will possess flag poles, stationary flagstuffs or other means to display a flag must adhere to this law [see 116.5-2]. Oneida owned enterprises are exempt from this law [see 116.3-1(d)].</p>				
<b>Related Legislation</b>	<p>Where the law is ambiguous or does not address a situation, the Federal Flag Code can be used as a guide [see 116.4-1].</p> <p>Personal Policies and Procedures, Administrative Rulemaking</p>				
<b>Enforcement &amp; Due Process</b>	<p>Where the law is ambiguous or does not address a situation, the Federal Flag Code can be used as a guide [see 116.4-1]. An employee can grieve any disciplinary action pursuant to the Nation's laws, rules and policies governing employment [see <i>Personnel Policies and Procedures, Section V.D.3</i>].</p>				
<b>Public Meeting Status</b>	<p>A public meeting was held on October 1, 2015, and public comments submitted during the public meeting and ensuing public comment period have been considered in the preparation of this draft.</p> <p>A second public meeting is proposed for December 1, 2016.</p>				

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### Overview

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After receiving a number of complaints on how the Oneida Flag (Flag) and US flag are flown within the Reservation, the Oneida Nation Veteran's Affairs Committee (ONVAC) requested that legislation be developed to provide for a consistent way in which the Oneida Nation displays the Flag. On April 22, 2015, the Oneida Business Committee (OBC) made a motion to "request the Legislative Operating Committee to develop a flag code policy . . ." The Federal Flag Code was used as guide in developing this law. In addition, collaboration with ONVAC representatives also participated in creating this law. The Oneida Nation Seal was added to this law to regulate the use of the official Oneida Nation Seal and logo. This law:

- Recognizes the importance of exercising the fundamental right of sovereignty and self-

determination of the Oneida Nation by setting forth the official governmental seal and flag *[see 116.1-1]*.

- Reserves use of the Oneida Nation Seal to authenticate official government minutes, resolutions, publications, correspondence, documents, and contracts *[see 116.4-2]*. All other documents are to use the Oneida logo *[see 116.4-3]*.
- Grants the Oneida Secretary rulemaking authority to create rules to govern the placement, maintenance and authorized use of the official Oneida Nation Seal *[see 116.3-1(g) and 116.4-4]*.
- Requires all current and future Oneida entities and Oneida Nation-owned buildings on the reservation that fly the Oneida Flag to do so pursuant to this law; excluding Oneida enterprises *[see 116.5-2 and 116.3-1(d)]*.
- Identifies who is responsible for Oneida Flag duties and if an employee violates this law, he/she can be disciplined *[116.5-2(a) and 116.8]*.
- Explains how the Flag is to be respected *[see 116.6-5]*.
- Lists the requirements for how the Flag is to be displayed *[see 116.6]*.
- Identifies how the Flag is to be displayed outside of the reservation *[see 116.6-6]*.
- Employees who violate this law may be subject to discipline according to the Nation's laws, rules and policies governing employment *[see 116.8]*. Currently this refers to the Personnel Policies and Procedures.

#### **Oneida Nation Seal**

- The current version of the Real Property Law names the Land Commission as the authorized entity to have made and provided to the Division of Land Management the seal of the Oneida Tribe *[see 67.12-6]*. The Real Property Law Amendments currently under consideration remove this provision and instead name the Nation's Secretary as providing the Division of Land Management with the Nation's Seal *[see 601.10-5 of current Real Property Law Amendments]*.

#### **Considerations**

The Legislative Operating Committee may want to consider the following:

- There are several versions of the Oneida Flag currently being flown. The LOC may want to consider a resolution recognizing an official Oneida Flag.
- The law requires that every classroom display the Flag *[see 116.6-1(d)]*. The Oneida Nation High School will need to approximately 20 Flags in order to comply with this law. It is unknown how many, if any, Flags are needed for the Elementary School or Head Start.
- The enforcement mechanism for this law only covers employees *[see 116.8]*. The LOC may want to consider a penalty for Tribal Members who are not employees of the Nation and elected or appointed officials who violate this law.

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## Title 1. Government and Finances – Chapter 116

### ONEIDA NATION SEAL AND FLAG Policy

#### Onlayote'a'ká Kak/hote? Kayanl/hsla?

#### *People of the standing stone – cloth standing up – laws*

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11	Article VI. Display of the Oneida Flag within the	20	116.6. Display of the Oneida Flag
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#### Article I 116.1. Purpose and Policy

116.1-1. Purpose. The purpose of this Policy law is for the Oneida Nation to exercise ~~its~~the fundamental right ~~to exercise of sovereignty and~~ self-determination ~~and set by setting~~ forth the proper rules, display and customs of the flag of the Oneida Nation, the flag of the United State of America official governmental Seal and ~~of other Sovereigns displayed by the Nation's entities and employees.~~

1-2. It is the policy of the Nation to proudly display the rich cultural heritage of Flag for the Oneida Nation ~~as a sovereign nation, its use and who shall be responsible for safekeeping and to~~ provide the respect and dignity owed to the flags of the Oneida Nation, the United States of America ~~and the flags of other Sovereigns, authorizing its use.~~

~~Article II~~ 116.1-2. Policy. The Oneida Nation Seal is a unique symbol reserved for official government use which signifies the Nation's culture and sovereignty. The Oneida Flag shall represent the jurisdiction and sovereignty of the Oneida Nation when flown.

#### 116.2. Adoption, Amendment, Repeal

116.2-1. This Policy is law was adopted by the Oneida Business Committee by resolution \_\_\_\_\_.

116.2-2. This Policy law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set ~~forth out~~ in the Legislative Procedures Act.

116.2-3. Should a provision of this Policy law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Policy law which are considered to have legal force without the invalid ~~portion(s).~~portions.

116.2-4. In the event of a conflict between a provision of this Policy law and a provision of another ~~policy law~~, the provisions of this Policy law shall control.

116.2-5 This Policy law is adopted under authority of the Constitution of the Oneida Nation.

#### Article III 116.3. Definitions

116.3-1. This ~~article~~section shall govern the definitions of words or phrases ~~as used herein~~within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Half-staff"<sup>22"</sup> means the position of the flag when it is one-half (1/2) the distance between the top and bottom of the staff.

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(b) "Nation" means the Oneida Nation.

(c) "Oneida Flag" means the official flag of the Oneida Nation.

~~(d)~~ "Oneida-owned building" means a building owned by the Nation within the boundaries of the reservation, but excludes Oneida enterprises.

(e) "Proper illumination" means a light specifically placed to illuminate the flag or having a light source sufficient to illuminate the flag so it is recognizable by the casual observer.

(f) "Reservation" means all the land within the exterior boundaries of the Reservation ~~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.

~~(e) "Sovereigns" means any other Indian Nation, State or localities~~

#### Article IV. General

~~4.1.~~ (g) "Rule" means a set of requirements, including citation fees and penalty schedules, enacted by the Oneida Nation Secretary in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and enforce this law.

(h) "Seal" means the governmental seal of the Oneida Nation used to authenticate governmental documents and actions.

#### 116.4. Oneida Nation Seal

116.4-1. The Oneida Nation Seal shall be as set forth in the following graphic:



116.4-2. The Seal shall appear on the following documents:

- (a) at the top of all minutes and resolutions of the Oneida Business Committee, Oneida Business Committee Standing Committees and General Tribal Council;
- (b) on all publications authorized by the Oneida Nation;
- (c) on all official correspondence of the Oneida Nation;
- (d) on all official documents of the Oneida Nation; and
- (e) on all official contracts of the Oneida Nation.

116.4-3. The Oneida Nation Seal shall be reserved specifically for all official government documents described in 116.4-2. All other documents are to use the Oneida logo. All Oneida Nation entities shall use the brand logo in any place that our historic logo/seal or other departmental logo were located and utilized. The Oneida logo shall be set forth in the following graphic:



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116.4-4. Oneida Nation Secretary Rulemaking Authority. The Oneida Nation Secretary shall create rules to govern the placement, maintenance and authorized use of the official Oneida Nation Seal.

#### 116.5. Oneida Nation Flag

116.5-1. Where ~~the Policy~~ this law is ambiguous or does not address a situation, the Federal Flag Code may be used as a guide.

116.5-2. All Oneida ~~Nation entities and Oneida~~-owned buildings within the Reservation that currently possess flagpoles, stationary flagstaffs or other means to display a flag and those entities and ~~Oneida~~-owned buildings that later establish the means to display a flag shall adhere to this ~~Policy~~ law.

#### Article V. Procedures

5-1.(a) The ~~supervisor~~ building manager or their equivalent of each Oneida ~~owned~~ building ~~described in section 4-3~~ shall appoint a designee ~~responsible for~~ to perform the duties ~~under set within~~ this ~~Policy~~ law.

5-2. ~~Employees found violating this Policy may be subject to discipline in accordance with the Nation's personnel procedures and policies.~~

#### Article VI

#### 116.6. Display of the Oneida Flag within the Reservation

116.6-1. Location, time and occasions for display. As the Oneida Flag represents the Nation's sovereignty, it ~~should~~ shall be displayed according to the following requirements:

- (a) The Oneida Flag ~~must~~ may be displayed on all days.
- (b) The Oneida Flag ~~must~~ may only be displayed from sunrise to sunset on buildings and on stationary flagstaffs in the open. However, ~~when a patriotic effect is desired~~, the flag may be displayed twenty-four (24) hours a day if the Oneida Flag is an all-weather flag and ~~the Oneida Flag~~ is properly illuminated during the hours of darkness.
- (d) The Oneida Flag shall be displayed during school days near ~~every schoolhouse~~ each of the Nation's schools and inside each classroom.
- (e) The Oneida Flag shall be displayed in and near every polling place within the ~~Reservation on~~ reservation on the Nation's election days.
- (f) The Oneida Flag may be mandated to be displayed through resolution of the Oneida Business Committee.

116.6-2. Conduct during hoisting, lowering or passing of the Oneida Flag. The Oneida Flag shall be hoisted briskly and lowered ceremoniously.

116.6-3. Position of the Flag. The position of a flag ~~among others~~ is an important symbol of prominence and sovereignty, therefore the following requirements ~~must~~ shall be adhered to:

- (a) ~~Only~~ When flags of two or more countries or Indian Tribes are displayed, the flags are to be flown from separate flagstaffs or flag of the United States may ever be poles that are displayed at the same height as and shall be approximately of equal size.
- (i) The Oneida Nation has a number of buildings with uneven flag poles. Until it is financially feasible to change the existing flag poles to allow the Oneida Flag- and United States flag to fly at the same height, the United States flag shall fly from the highest flag pole, when appropriate, and the Oneida Flag shall fly from

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the flag pole furthest to the right to show prominence. Additionally, any future flag poles shall be constructed in such a way that complies with this law.

(b) The Oneida Flag shall be displayed to the furthest right ~~to show in the position of~~ superior prominence.

~~(c) When the Oneida Flag and the United States flag are both displayed, they are to be flown from separate staffs of the same height and the flags shall be of approximately equal size.~~

~~(d)~~(c) When other flags are flown from adjacent staffs, the Oneida Flag shall be hoisted first and lowered last.

(ed) When flags of other ~~Sovereigns~~states, localities or pennants of societies are flown on the same halyard with the Oneida Flag, the Oneida Flag shall always be at the top.

116.6-4. *Manner of Display.* The Oneida Flag ~~must~~shall be displayed as follows:

(a) When carried in a procession with another flag or flags, the Oneida Flag shall be either on the marching right; that is, the Flag's own right, or, if there is a line of other flags, in front of the center of that line.

(b) When the Oneida Flag is displayed with another flag against a wall from crossed staffs, the Oneida Flag shall be on the right, the ~~flag's~~Flag's own right, and its staff shall be in front of the staff of the other flag.

(c) The Oneida Flag shall only be displayed horizontally against a wall, the Oneida Flag shall be placed in the upright position. When displayed in a window, the flag shall be displayed in the upright position facing the appropriate way to an observer outside the building.

(d) When the Oneida Flag is displayed over the middle of the street, the Oneida Flag shall be suspended horizontally and ~~must~~shall be placed in the upright position.

(e) When used on a speaker's platform, the flag, if displayed flat, shall be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the Oneida Flag ~~must~~shall hold the position of superior prominence, in advance of the audience, and in the position of honor at the clergy's or speaker's right as he or she faces the audience. Any other flag so displayed shall be placed on the left of the clergyman or speaker or to the right of the audience.

(f) When the Oneida Flag is suspended across a corridor or lobby, it shall be suspended in the upright position facing the main entrance.

(g) The Oneida Flag shall form a distinctive feature of the ceremony of unveiling a statue or monument, but it shall never be used as the covering for the statue or monument.

116.6-5. *Display of Respect.* At certain times, the Oneida Flag shall be lowered to ~~Half~~half-staff as a sign of respect. In doing so, the Flag shall be first hoisted to the peak for an instant and then lowered to the ~~Half~~half-staff position. The Oneida Flag shall be again raised to the peak before it is lowered for the day.

(a) On ~~or prior to~~ the following days, the Oneida Flag shall be lowered to ~~Half~~half-staff:

(i) Oneida Code Talker Day

(ii) Memorial Day ~~but only until noon, which it shall be raised to top of the staff again-~~

(iii) Flag Day

(iv) Veteran's Day

(b) As a sign of respect, when the United States flag is lowered to ~~Half~~half-staff, the Oneida Flag shall also be lowered.

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(c) By a directive of the Oneida Business Committee Chairperson, or his or her designee if the Oneida Business Committee Chairperson is not available, the Oneida Flag shall be flown at Half-half-staff upon the death of a ~~tribal~~-member of the Nation and remain at Half-half-staff until after the funeral.

(d) The Oneida Flag ~~may~~shall be lowered to Half-half-staff by directive of the Oneida Business Committee Chairperson for other reasons he or she deems ~~needed~~appropriate.

116.6-6. Display Off Reservation. When outside of the boundaries of the Reservation, the proper display protocol of the jurisdiction shall be followed.

#### Article VII 116.7. Respect for Flag

116.7-1. No disrespect shall be shown to the Oneida flag-of-the Oneida Nation, the United States flag or the flags of any other Sovereigns:country, Indian Tribe, state or locality.

(a) During the ceremony of hoisting or lowering the flag Oneida Flag or when the flag Oneida Flag is passing in a parade or in review, all persons present shall face the flag and stand at attention.

(b) The Oneida Flag and United States flag shall not be dipped to any person or thing. Regimental colors, Statestate flags, and organization or institutional flags shall be dipped as a mark of honor.

(c) The Oneida Flag shall never be displayed upside down.

(d) The Oneida Flag shall never touch anything beneath it, such as the ground, the floor, or water.

(e) The Oneida Flag shall never be carried flat or horizontally, but always aloft and free.

(f) The Oneida Flag shall never be draped, drawn back, tied up, folded, but always allowed to fall free.

(g) The Oneida Flag shall never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way.

(h) The Oneida Flag shall never be used as a covering for a ceiling.

(i) The Oneida Flag shall never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature besides the Oneida Flag's design.

(j) The Oneida Flag shall never be used as a receptacle for receiving, holding, carrying, or delivering anything.

~~(k) No part of the Oneida Flag shall ever be used as a costume or athletic uniform. However, an Oneida Flag patch may be affixed to the uniform of military personnel, firefighter, police officer, and members of patriotic organizations. The lapel Flag pin being a replica, shall be worn on the left lapel near the heart.~~

(4)(k) The Oneida Flag, when it is in such condition that it is no longer a fitting emblem for display, shall be destroyed in a dignified way, preferably by burning.

#### Article VIII. Display of the Oneida Flag off Reservation

~~8-1. When outside of the boundaries of the Reservation, the proper display protocol of the jurisdiction shall be followed.~~

#### 116.8. Enforcement

116.8-1. Employees found violating this law may be subject to discipline in accordance with the Nation's laws, rules and policies governing employment.

End.

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**Title 1. Government and Finances – Chapter 116**  
**ONEIDA NATION SEAL AND FLAG**  
**OnΛyote'a'ká' Kak/hote' Kayanl/hsla'**  
*People of the standing stone – cloth standing up – laws*

6 116.1. Purpose and Policy  
7 116.2. Adoption, Amendment, Repeal  
8 116.3. Definitions  
9 116.4. Oneida Nation Seal

10 116.5. Oneida Nation Flag  
11 116.6. Display of the Oneida Flag  
12 116.7. Respect for Flag  
13 116.8. Enforcement

**116.1. Purpose and Policy**

116.1-1. *Purpose.* The purpose of this law is for the Oneida Nation to exercise the fundamental right of sovereignty and self-determination by setting forth the official governmental Seal and Flag for the Oneida Nation, its use and who shall be responsible for safekeeping and authorizing its use.

116.1-2. *Policy.* The Oneida Nation Seal is a unique symbol reserved for official government use which signifies the Nation's culture and sovereignty. The Oneida Flag shall represent the jurisdiction and sovereignty of the Oneida Nation when flown.

**116.2. Adoption, Amendment, Repeal**

116.2-1. This law was adopted by the Oneida Business Committee by resolution \_\_\_\_\_.

116.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

116.2-3. 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.

116.2-4. 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.

116.2-5 This law is adopted under authority of the Constitution of the Oneida Nation.

**116.3. Definitions**

116.3-1. 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) "Half-staff" means the position of the flag when it is one-half (1/2) the distance between the top and bottom of the staff.

(b) "Nation" means the Oneida Nation.

(c) "Oneida Flag" means the official flag of the Oneida Nation.

(d) "Oneida-owned building" means a building owned by the Nation within the boundaries of the reservation, but excludes Oneida enterprises.

(e) "Proper illumination" means a light specifically placed to illuminate the flag or having a light source sufficient to illuminate the flag so it is recognizable by the casual observer.

(f) "Reservation" means all the land within the exterior boundaries of the reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(g) "Rule" means a set of requirements, including citation fees and penalty

schedules, enacted by the Oneida Nation Secretary in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and enforce this law.

(h) “Seal” means the governmental seal of the Oneida Nation used to authenticate governmental documents and actions.

#### **116.4. Oneida Nation Seal**

116.4-1. The Oneida Nation Seal shall be as set forth in the following graphic:



116.4-2. The Seal shall appear on the following documents:

- (a) at the top of all minutes and resolutions of the Oneida Business Committee, Oneida Business Committee Standing Committees and General Tribal Council;
- (b) on all publications authorized by the Oneida Nation;
- (c) on all official correspondence of the Oneida Nation;
- (d) on all official documents of the Oneida Nation; and
- (e) on all official contracts of the Oneida Nation.

116.4-3. The Oneida Nation Seal shall be reserved specifically for all official government documents described in 116.4-2. All other documents are to use the Oneida logo. All Oneida Nation entities shall use the brand logo in any place that our historic logo/seal or other departmental logo were located and utilized. The Oneida logo shall be set forth in the following graphic:



116.4-4. *Oneida Nation Secretary Rulemaking Authority.* The Oneida Nation Secretary shall create rules to govern the placement, maintenance and authorized use of the official Oneida Nation Seal.

#### **116.5. Oneida Nation Flag**

116.5-1. Where this law is ambiguous or does not address a situation, the Federal Flag Code may be used as a guide.

116.5-2. All Oneida-owned buildings within the Reservation that currently possess flagpoles, stationary flagstaffs or other means to display a flag and those entities and Oneida-owned buildings that later establish the means to display a flag shall adhere to this law.

- (a) The building manager or their equivalent of each Oneida-owned building shall appoint a designee to perform the duties set within this law.

#### **116.6. Display of the Oneida Flag**

116.6-1. *Location, time and occasions for display.* As the Oneida Flag represents the Nation’s sovereignty, it shall be displayed according to the following requirements:

(a) The Oneida Flag may be displayed on all days.

(b) The Oneida Flag may only be displayed from sunrise to sunset on buildings and on stationary flagstaffs in the open. However, the flag may be displayed twenty-four (24) hours a day if the Oneida Flag is an all-weather flag and is properly illuminated during the hours of darkness.

(d) The Oneida Flag shall be displayed during school days near each of the Nation's schools and inside each classroom.

(e) The Oneida Flag shall be displayed in and near every polling place within the reservation on the Nation's election days.

(f) The Oneida Flag may be mandated to be displayed through resolution of the Oneida Business Committee.

116.6-2. *Conduct during hoisting, lowering or passing of the Oneida Flag.* The Oneida Flag shall be hoisted briskly and lowered ceremoniously.

116.6-3. *Position of the Flag.* The position of a flag is an important symbol of prominence and sovereignty, therefore the following requirements shall be adhered to:

(a) When flags of two or more countries or Indian Tribes are displayed, the flags are to be flown from separate flagstaffs or flag poles that are displayed at the same height and shall be approximately of equal size.

(i) The Oneida Nation has a number of buildings with uneven flag poles. Until it is financially feasible to change the existing flag poles to allow the Oneida Flag and United States flag to fly at the same height, the United States flag shall fly from the highest flag pole, when appropriate, and the Oneida Flag shall fly from the flag pole furthest to the right to show prominence. Additionally, any future flag poles shall be constructed in such a way that complies with this law.

(b) The Oneida Flag shall be displayed to the furthest right in the position of superior prominence.

(c) When other flags are flown from adjacent staffs, the Oneida Flag shall be hoisted first and lowered last.

(d) When flags of other states, localities or pennants of societies are flown on the same halyard with the Oneida Flag, the Oneida Flag shall always be at the top.

116.6-4. *Manner of Display.* The Oneida Flag shall be displayed as follows:

(a) When carried in a procession with another flag or flags, the Oneida Flag shall be either on the marching right; that is, the Flag's own right, or, if there is a line of other flags, in front of the center of that line.

(b) When the Oneida Flag is displayed with another flag against a wall from crossed staffs, the Oneida Flag shall be on the right, the Flag's own right, and its staff shall be in front of the staff of the other flag.

(c) The Oneida Flag shall only be displayed horizontally against a wall, the Oneida Flag shall be placed in the upright position. When displayed in a window, the flag shall be displayed in the upright position facing the appropriate way to an observer outside the building.

(d) When the Oneida Flag is displayed over the middle of the street, the Oneida Flag shall be suspended horizontally and shall be placed in the upright position.

(e) When used on a speaker's platform, the flag, if displayed flat, shall be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the Oneida Flag shall hold the position of superior prominence, in advance of

the audience, and in the position of honor at the clergy's or speaker's right as he or she faces the audience. Any other flag so displayed shall be placed on the left of the clergyman or speaker or to the right of the audience.

(f) When the Oneida Flag is suspended across a corridor or lobby, it shall be suspended in the upright position facing the main entrance.

(g) The Oneida Flag shall form a distinctive feature of the ceremony of unveiling a statue or monument, but it shall never be used as the covering for the statue or monument.

116.6-5. *Display of Respect.* At certain times, the Oneida Flag shall be lowered to half-staff as a sign of respect. In doing so, the Flag shall be first hoisted to the peak for an instant and then lowered to the half-staff position. The Oneida Flag shall be again raised to the peak before it is lowered for the day.

(a) On or prior to the following days, the Oneida Flag shall be lowered to half-staff:

(i) Oneida Code Talker Day

(ii) Memorial Day

(iii) Flag Day

(iv) Veteran's Day

(b) As a sign of respect, when the United States flag is lowered to half-staff, the Oneida Flag shall also be lowered.

(c) By a directive of the Oneida Business Committee Chairperson, or his or her designee if the Oneida Business Committee Chairperson is not available, the Oneida Flag shall be flown at half-staff upon the death of a member of the Nation and remain at half-staff until after the funeral.

(d) The Oneida Flag shall be lowered to half-staff by directive of the Oneida Business Committee Chairperson for other reasons he or she deems appropriate.

116.6-6. *Display Off Reservation.* When outside of the boundaries of the Reservation, the proper display protocol of the jurisdiction shall be followed.

## **116.7. Respect for Flag**

116.7-1. No disrespect shall be shown to the Oneida flag, the United States flag or the flags of any other country, Indian Tribe, state or locality.

(a) During the ceremony of hoisting or lowering the Oneida Flag or when the Oneida Flag is passing in a parade or in review, all persons present shall face the flag and stand at attention.

(b) The Oneida Flag and United States flag shall not be dipped to any person or thing. Regimental colors, state flags, and organization or institutional flags shall be dipped as a mark of honor.

(c) The Oneida Flag shall never be displayed upside down.

(d) The Oneida Flag shall never touch anything beneath it, such as the ground, the floor, or water.

(e) The Oneida Flag shall never be carried flat or horizontally, but always aloft and free.

(f) The Oneida Flag shall never be draped, drawn back, tied up, folded, but always allowed to fall free.

(g) The Oneida Flag shall never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way.

(h) The Oneida Flag shall never be used as a covering for a ceiling.

(i) The Oneida Flag shall never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature besides the Oneida Flag's design.

(j) The Oneida Flag shall never be used as a receptacle for receiving, holding, carrying, or delivering anything.

(k) The Oneida Flag, when it is in such condition that it is no longer a fitting emblem for display, shall be destroyed in a dignified way, preferably by burning.

**116.8. Enforcement**

116.8-1. Employees found violating this law may be subject to discipline in accordance with the Nation's laws, rules and policies governing employment.

*End.*

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Legislative Operating Committee  
November 2, 2016

## Real Property Law Amendments

<b>Submission Date:</b> 10/07/15	<b>Public Meeting:</b> 10/20/16
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> n/a <b>Expires:</b> 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.

**8/2/16:** Update meeting held.

**9/21/16 LOC:** Motion by Davis Jordan to accept the legislative analysis and the public meeting and direct the LOC to hold a public meeting on October 20, 2016; seconded by Fawn Billie. Motion carried unanimously.

**10/13/16:** Quarterly Sponsor Update Meeting held. Present: David Jordan, Krystal John, Leyne Oroscso, Tani Thurner, Maurenn Perkins, Clorissa Santiago. Public meeting will be on 10/20/16. Then a work meeting is scheduled for 10/27/16 with the Land Commission to discuss Realtor licensing.

**10/27/16:** Work meeting held. Attendees include: Tehassi Hill, Jennifer Webster, Leyne Oroscso, Cathy Bachuber, Rhiannon Metoxen, Jay Rasmussen, Don McLester, Krystal John and Maureen Perkins.

**Next Steps:**

- Accept and review the public meeting comments;
- Determine whether an additional public meeting is required based on revisions made to the Real Property Law amendments due to the public meeting comments; and
- Provided that an additional public meeting is not required, direct the LRO to prepare an adoption packet for the Real Property law amendments including the updated draft and analysis.



TO: Legislative Operating Committee (LOC)  
FROM: Krystal L. John, Staff Attorney  
DATE: November 2, 2016  
RE: Real Property Law Amendments: Public Meeting Comment Review

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On October 20, 2016, a public meeting was held regarding amendments to the Real Property 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.

This memorandum is submitted as a review of the oral comments received during the public meeting process and written comments received within the public comment period. The public meeting draft with comments is attached for your review.

### **Comment 1 – Personal Representative**

601.3-1(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.

#### *Comment*

Cathy Bachuber (written and oral): 601.3(m) Is the intent that a personal representative declaration/determination from another jurisdiction (like Brown County) intended to not be recognized by the Nation until it is approved by the DOLM or the Judiciary? Or is the intent for the personal representative to only be required to be approved by the DOLM or the Judiciary in cases where the personal representative was not already determined in another jurisdiction?

#### *Response*

No, it is not the intent that a personal representative/declaration/determination from another jurisdiction would not be recognized by the Nation until it is recognized by the DOLM or the Judiciary. It is merely providing a definition for personal representative as used within the Nation’s probate system. It is possible that Tribal trust assets may not be a part of the deceased estate, in which case the surviving parties may choose to address the estate completely in another jurisdiction

and not participate in the Nation's probate process at all. There are no recommended revisions based on this comment.

## **Comment 2 – Use of “Comprehensive Housing Division” Title**

601.3-1(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.

### *Comment*

Cathy Bachuber (written and oral): 601.3(r). The “Comprehensive Housing Division, Division of Land Management” are referenced. Are these going to be the final titles of the division(s) related to housing? If not, I would suggest that a more generic title be used like the Nation's Division designated to handle housing responsibilities.

### *Response*

As far as I am aware, the title for the new housing division is confirmed to be the “Comprehensive Housing Division” (CHD). That being said, I believe that the reorganization is being submitted to the General Tribal Council (GTC) for its review and it is possible that changes may be directed at such time. The commenter raises a valid point and I recommend that the issue be addressed as has already been done with the Mortgage and Foreclosure, Landlord-Tenant and Eviction and Termination laws by including a definition of the CHD in the definitions section which requires the Oneida Business Committee to define the CHD by resolution. This way, if the title is changed, it can be addressed by resolution without having to revise the entire law and the LOC will not have to wait for GTC's action in order to implement these amendments.

## **Comment 3 – Wisconsin Real Property Law**

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.

### *Comment*

Cathy Bachuber (written and oral): 601.4-6 only references individual fee land. Does this adequately cover property acquired by the Nation for the commercial /business purposes?

### *Response*

Yes, this adequately covers property acquired by the Nation for commercial/business purposes because, unless held as individual trust land (in which case Wisconsin law will not apply) such properties will be held as individual fee land at the time they are acquired by the Nation. The Wisconsin Real Property law covers all real property and is not limited to properties acquired/sold for residential purposes. There are no recommended revisions based on this comment.

## **Comment 4 – Holding of Ownership**

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.

#### *Comment*

Cathy Bachuber (written and oral):

(A) 601.5 suggest spelling out what exactly “mechanism” is referring to. Assume in (a) it is referring to joint tenancy and in (b) tenancy in common but this may not be clear or correct for another reader.

(B) Is the intent of 601.5-1(a)(1) to say that marital property can be owed in something other than equally (50/50)? Or is this referring to if there is a co-signer or 3rd person who owns the property with a married couple? In which case wouldn’t the married couple portion still be required to be equal amongst each other regardless? For example, person 1 owns 50%, husband 25%, wife 25%.

#### *Response*

In response to comment 4(A), I am not sure where the confusion lies. The word “mechanism” is referring to a means to hold ownership. I do not believe that there is anything to spell out and do not recommend any revisions based on this comment. That being said, if the LOC finds the word “mechanism” could generate confusion, I may suggest replacing it with “method.”

In response to comment 4(B), yes, 601.5-1(a)(1) means that property between a married couple may be held as tenancy in common, if, and only if, the couple executes a marital property agreement specifically stating that the real property in question is held as tenants in common.

### **Comment 5 – Minimum Standards for Property Surveys**

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.

#### *Comment*

Cathy Bachuber (written and oral): 601.6-1 Who set the “currently accepted Minimum Standards for Property Surveys?” Is this an approval that should be outlined in a rule or other process in case they need amendments? In which case should a reference to such authority be added to this section? Or are the minimum standards an industry standard that should be referenced?

#### *Response*

The phrase “currently accepted minimum standards for property surveys” relates to general industry standards. If the LOC determines that this is not clear, it could be clarified by simply adding the word “industry” between “minimum” and “standards.” The specific requirements that reference the Wisconsin Administrative Code are contained in section 601.6-4 which reads as follows:

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.

### **Comment 6 – Listing of Real Estate**

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.

#### *Comment*

Cathy Bachuber (written and oral): Is 601.6-6 intended to reference the notice of real estate to tribal members? In which case the street address is sufficient. Or is this provision meant to apply to all of the legal documents needed, including land leases, for that property? Legal descriptions have been used in the past for the resolutions coming before the BC, not sure if that is done anymore.

#### *Response*

This is intended to the listing/advertising/notice of real property as available to Tribal members. It is not referencing leasing documents, which in accordance with section 601.9 is governed by the Leasing law. I recommend clarifying the sentence as follows:

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.

### **Comment 7 – Title Companies**

601.7-1(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 abstractor’s certificate.

#### *Comment*

Cathy Bachuber (written and oral): 601.7-1(a) Are title companies obligated to follow our laws? It is already assumed they would be required to follow federal laws regardless, correct? Is this provision intended to required DOLM to verify these standards were met? In which case should it be reworded to reflect that?

#### *Response*

Title companies are not automatically required to follow the Nation’s law, but through contract, the Nation may require a contracted title company to follow the Nation’s laws. Yes, it is already assumed that title companies are required to follow federal laws, regardless of any such statement of lack thereof in our laws. However, the subject provision does not require title companies to comply with federal “laws,” rather it requires title companies to comply with federal “guidelines,” which are not mandatory upon title companies. I do not have any recommended revisions based on this comment, however, if the LOC determines that there is confusion as to who is responsible for contracting with title companies, it could be re-written as follows:

The Division of Land Management shall ensure that Title-title companies ~~shall~~ follow general guidelines provided by the federal government in terms of form, content, period of search, destroyed or lost records and abstractor's certificate.

## **Comment 8 – 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.

### *Comment*

Oneida Land Commission (written):

- (A) The licensing requirement may be best placed in a job description instead of the law. We understand the LRO is working to standardize laws and licensing requirements may be appearing in more laws moving forward.
- (B) The provision leaves open an interpretation as to who this requirement applies to. The Land Commission makes this comment even with the understanding that this can be spelled out more clearly in Land Commission rules.
- (C) It is not clear whether this would apply to current employees and if so, what that transition would look like.

### *Response*

In response to comment 8(A), the Oneida Land Commission (LC) is correct that such requirements are generally included in position descriptions, and if these laws are amended would be required to be placed in such descriptions. However, position description revisions are usually initiated by the Human Resources Department or management. By including such requirements in the law, the LOC is legislative mandating that such positions be required to attain such education/training.

In response to comment 8(B), the LC is correct that there may be differences of opinion as to who this requirements applies to. I recommend clarifying this by specifically applying this requirement to persons conducting real estate closings on behalf of the Nation as seen in my full recommendation provided below.

In response to comment 8(C), the LC is correct that it is not clear in the law whether the new requirements would apply to current employees and, if so, what that transition would look like. As the application to current employees is not a permanent provisions needed in the law, I intend to address this concern in the adopting resolution. My understanding is that it is intended to apply to current employees and that a yet to be determined timeframe will be provided in order to allow them to come into compliance.

In addition to these comments, the LC raised other concerns regarding the licensing provision in a meeting held with the LOC on October 27, 2016. During that meeting, it was decided that those employees handling real estate transactions will not be required to be licensed, by the state or the Nation. They will have to take the Wisconsin Real Estate License Exam (which requires a pre-licensing education requirement to be satisfied) and to comply with continuing education requirements as if they were licensed. In addition, the Oneida Law Office would be required to provide such employees with a one-time Oneida based training that focuses on our goals when acquiring land, requirements for bringing fee land into trust and trust land jurisdictional issues. Lastly, DOLM would be required to have one employee primarily focused on real estate transactions and a minimum of two educated and trained back-ups.

Based on these comments and the work meeting held on October 27, 2016, my recommended revisions to this section are as follows:

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.

**Title 6. Property and Land – Chapter 601**  
**REAL PROPERTY**  
**Tok^ske Kayanl^hsla Tsi> Ni>yohuntsya=**  
*The real/certain laws of the territory of the nation*

601.1.	Purpose and Policy	601.7.	Title Transfer
601.2.	Adoption, Amendment, Repeal	601.8.	Probate
601.3.	Definitions	601.9.	Leasing of Real Property
601.4.	General Provisions	601.10.	Records
601.5.	Holding of Ownership	601.11.	Real Estate Licensing and Certification
601.6.	Legal Descriptions	601.12.	Organization

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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; 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.<sup>1</sup>

(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.<sup>2</sup>

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<sup>1</sup> **Cathy Bachuber (written and oral):** 601.3(m) Is the intent that a personal representative declaration/determination from another jurisdiction (like Brown County) intended to not be recognized by the Nation until it is approved by the DOLM or the Judiciary? Or is the intent for the personal representative to only be required to be approved by the DOLM or the Judiciary in cases where the personal representative was not already determined in another jurisdiction?

<sup>2</sup> **Cathy Bachuber (written and oral):** 601.3(r). The “Comprehensive Housing Division, Division of Land

(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.<sup>3</sup>

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

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Management” are referenced. Are these going to be the final titles of the division(s) related to housing? If not, I would suggest that a more generic title be used like the Nation’s Division designated to handle housing responsibilities.

<sup>3</sup> **Cathy Bachuber (written and oral):** 601.4-6 only references individual fee land. Does this adequately cover property acquired by the Nation for the commercial /business purposes?

**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.<sup>4</sup>

**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.<sup>5</sup> 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.

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<sup>4</sup> **Cathy Bachuber (written and oral):** 601.5 suggest spelling out what exactly "mechanism" is referring to. Assume in (a) it is referring to joint tenancy and in (b) tenancy in common but this may not be clear or correct for another reader.

Is the intent of 601.5-1(a)(1) to say that marital property can be owed in something other than equally (50/50)? Or is this referring to if there is a co-signer or 3rd person who owns the property with a married couple? In which case wouldn't the married couple portion still be required to be equal amongst each other regardless? For example, person 1 owns 50%, husband 25%, wife 25%.

<sup>5</sup> **Cathy Bachuber (written and oral):** 601.6-1 Who set the "currently accepted Minimum Standards for Property Surveys?" Is this an approval that should be outlined in a rule or other process in case they need amendments? In which case should a reference to such authority be added to this section? Or are the minimum standards an industry standard that should be referenced?

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.<sup>6</sup>

#### **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 abstractor's certificate.<sup>7</sup>

(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).

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<sup>6</sup> **Cathy Bachuber (written and oral):** Is 601.6-6 intended to reference the notice of real estate to tribal members? In which case the street address is sufficient. Or is this provision meant to apply to all of the legal documents needed, including land leases, for that property? Legal descriptions have been used in the past for the resolutions coming before the BC, not sure if that is done anymore.

<sup>7</sup> **Cathy Bachuber (written and oral):** 601.7-1(a) Are title companies obligated to follow our laws? It is already assumed they would be required to follow federal laws regardless, correct? Is this provision intended to required DOLM to verify these standards were met? In which case should it be reworded to reflect that?

(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.<sup>8</sup>

**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

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<sup>8</sup> **Oneida Land Commission (written):** (1) The licensing requirement may be best placed in a job description instead of the law. We understand the LRO is working to standardize laws and licensing requirements may be appearing in more laws moving forward. (2) The provision leaves open an interpretation as to who this requirement applies to. The Land Commission makes this comment even with the understanding that this can be spelled out more clearly in Land Commission rules. (3) It is not clear whether this would apply to current employees and if so, what that transition would look like.

(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.**<sup>9</sup>

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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

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<sup>9</sup> **Cathy Bachuber (written and oral):** “Shall” or “may” should be used in order to avoid ambiguousness. There are many places in the law where “must” or “will” is used which don’t carry the same importance as the word “shall”, which is a clear requirement.

601.3-1(a) and (g) have extra spaces before the paragraphs start.  
601.3-1(u) is skipped/not used  
601.3-1(v) needs its own paragraph, it is combined with 601.3-1(t).  
601.6-6. add “an” to “...the address is an adequate legal description...”



**LEGISLATIVE OPERATING COMMITTEE  
PUBLIC MEETING**

**Real Property Law Amendments**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
October 20, 2016 12:15 p.m.

**Present:** Brandon Stevens, Jennifer Webster, Maureen Perkins, Clorissa Santiago, Cathy Bachhuber, Leyne Orosco

**Brandon Stevens:** Greetings. The time is 12:15 p.m. and today's date is Thursday October 20, 2016. I will now call the public meeting for the Real Property Law amendments to order. The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday September 22, 2016. In attendance from the LOC is Brandon Stevens, Chair, and Jennifer Webster, Member.

We will begin today's public meeting for Real Property Law amendments. This is a proposal that would:

- Remove hearing body authority from the Oneida Land Commission and transfer the authority to the Judiciary.
- Update the 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 in 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.

The LOC may impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons. Just note for the record that there is nobody in attendance on the sign in sheet.

**Cathy Bachhuber:** My name is Cathy Bachhuber and I just had questions on the Real Property public hearing.

### **Personal Representative**

For the personal representative under 601.3(m) Is the intent that a personal representative declaration/determination from another jurisdiction (like Brown County) intended to not be recognized by the Nation until it is approved by the DOLM or the Judiciary? Or is the intent for the personal representative to only be required to be approved by the DOLM or the Judiciary in cases where the personal representative was not already determined in another jurisdiction? Because I think that section is not really clear.

### **Division Title**

In section 601.3(r) The “Comprehensive Housing Division and Division of Land Management” are referenced. Are these going to be the final titles of the division(s) related to housing? If not, I would suggest that a more generic title be used like the Nation’s Division designated to handle housing responsibilities. Something similar to what we used for the APA when we were getting ready to process that. I’m not sure what the exact language was.

### **Real Property**

601.4-6 Only references individual fee land for real property. Does this adequately cover property acquired by the Nation for the commercial /business purposes?

### **Mechanism**

601.5 suggest spelling out what exactly “mechanism” is referring to. Assume in (a) it is referring to joint tenancy and in (b) tenancy in common but this may not be clear or correct for another reader.

### **Tenants in Common**

Is the intent of 601.5-1(a)(1) to say that marital property can be owned in something other than equally (50/50) by married people? Or is this referring to cases where there is a co-signer or 3<sup>rd</sup> person who would own the property with the married couple? In which case wouldn’t the married couple portion still be required to be equal amongst each other, like amongst the husband and wife regardless? For example, person 1 owns 50%, and the husband and wife husband own 50%. Wouldn’t they each have to own 25%, because of our marital laws? I’m not really sure what the intent of that one was.

### **Minimum Standards for Property Surveys**

601.6-1 Who sets the “currently accepted Minimum Standards for Property Surveys?” Is this an approval that should be outlined in a rule or other process in case they need amendments? In which case should a reference to such authority be added to this section? Or are the minimum standards an industry standard that should be referenced?

### **Listing of Real Estate**

In 601.6-6 is it intended to reference the notice of real estate to tribal members? So other in words is that just a statement on giving notices? In which case the street address would sufficient, so that seems fine, but then I think it should say that it is referencing a notice. Or is this provision meant to apply to all of the legal documents needed when selling to a tribal member, including land leases, for that property? Legal descriptions have been used in the past for the resolutions coming before the BC, but I'm not sure if that is done anymore.

### **Title Companies**

601.7-1(a) Are title companies obligated to follow our laws? It is already assumed they would be required to follow federal laws regardless? Is this provision intended to require DOLM to verify these standards were met? In which case should be reworded to reflect that it's only requiring the DOLM to verify the standards were met.

### **General Comments**

It's my personal opinion, that "Shall" or "may" should be used in order to avoid ambiguousness language in laws. There are many places in the law where "must" or "will" is used which don't carry the same importance as the word "shall", which is a clear requirement when you say shall you have to. May is..., you don't have to.

### **Formatting**

601.3-1(a) and (g) have extra spaces before the paragraphs start.

601.3-1(u) is skipped/not used

601.3-1(v) needs its own paragraph, it is combined with 601.3-1(t).

601.6-6. add "an" to "...the address is an adequate legal description..."

And that is all that I have.

**Brandon Stevens:** Alright, thank you Cathy.

With there being no more speakers registered, the public meeting for Real Property law amendments is now closed at 12:30 p.m. Written comments may be submitted until close of business on Thursday, October 27, 2016. Thank you.

**-End of Meeting-**

## Jay T. Rasmussen

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**From:** sharon powless <sharon\_powless@yahoo.com>  
**Sent:** Tuesday, October 25, 2016 4:47 PM  
**To:** Rebecca Webster; Jay T. Rasmussen; Racquel L. Hill; sherrole@hotmail.com; mclesterdonald@yahoo.com  
**Subject:** Re: Draft Comments

Looks good. don't need to after applies in 2.

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**From:** Rebecca Webster <[rwebster@d.umn.edu](mailto:rwebster@d.umn.edu)>  
**To:** JRASMUSS@oneidanation.org; Rocky Hill <[rhill2@oneidanation.org](mailto:rhill2@oneidanation.org)>; sharon\_powless@yahoo.com; sherrole@hotmail.com; mclesterdonald@yahoo.com  
**Sent:** Monday, October 24, 2016 5:15 PM  
**Subject:** Draft Comments

The Land Commission is concerned about the proposed amendments concerning state real estate licensing provisions for certain Land Management employees. Lines 327-337. The concerns are as follows:

1. The licensing requirement may be best placed in a job description instead of the law. We understand the LRO is working to standardize laws and licensing requirements may be appearing in more laws moving forward. *legislative force update job descriptions*
2. The provision leaves open an interpretation as to who this requirement applies to. The Land Commission makes this comment even with the understanding that this can be spelled out more clearly in Land Commission rules.
3. It is not clear whether this would apply to current employees and if so, what that transition would look like.

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## **Real Property Public Hearing Comments**

October 20, 2016

### **Personal Representative**

601.3(m) Is the intent that a personal representative declaration/determination from another jurisdiction (like Brown County) intended to not be recognized by the Nation until it is approved by the DOLM or the Judiciary? Or is the intent for the personal representative to only be required to be approved by the DOLM or the Judiciary in cases where the personal representative was not already determined in another jurisdiction?

### **Division Title**

601.3(r). The "Comprehensive Housing Division, Division of Land Management" are referenced. Are these going to be the final titles of the division(s) related to housing? If not, I would suggest that a more generic title be used like the Nation's Division designated to handle housing responsibilities.

### **Real Property**

601.4-6 only references individual fee land. Does this adequately cover property acquired by the Nation for the commercial /business purposes?

### **Mechanism**

601.5 suggest spelling out what exactly "mechanism" is referring to. Assume in (a) it is referring to joint tenancy and in (b) tenancy in common but this may not be clear or correct for another reader.

### **Tenants in Common**

Is the intent of 601.5-1(a)(1) to say that marital property can be owed in something other than equally (50/50)? Or is this referring to if there is a co-signer or 3<sup>rd</sup> person who owns the property with a married couple? In which case wouldn't the married couple portion still be required to be equal amongst each other regardless? For example, person 1 owns 50%, husband 25%, wife 25%.

### **Minimum Standards for Property Surveys**

601.6-1 Who set the "currently accepted Minimum Standards for Property Surveys?" Is this an approval that should be outlined in a rule or other process in case they need amendments? In which case should a reference to such authority be added to this section? Or are the minimum standards an industry standard that should be referenced?

### **Listing of Real Estate**

Is 601.6-6 intended to reference the notice of real estate to tribal members? In which case the street address is sufficient. Or is this provision meant to apply to all of the legal documents needed, including

land leases, for that property? Legal descriptions have been used in the past for the resolutions coming before the BC, not sure if that is done anymore.

### **Title Companies**

601.7-1(a) Are title companies obligated to follow our laws? It is already assumed they would be required to follow federal laws regardless, correct? Is this provision intended to required DOLM to verify these standards were met? In which case should it be reworded to reflect that?

### **General Comments**

"Shall" or "may" should be used in order to avoid ambiguousness. There are many places in the law where "must" or "will" is used which don't carry the same importance as the word "shall", which is a clear requirement.

### **Formatting**

601.3-1(a) and (g) have extra spaces before the paragraphs start.

601.3-1(u) is skipped/not used

601.3-1(v) needs its own paragraph, it is combined with 601.3-1(t).

601.6-6. add "an" to "...the address is an adequate legal description..."

*Submitted by  
Cathy Bachhuber  
10/20/16*

**Title 6. Property and Land – Chapter 601**  
**REAL PROPERTY**  
**Tok<sup>^</sup>ske Kayanl<sup>^</sup>hsla Tsi<sup>></sup> Ni<sup>></sup>yohuntsya<sup>=</sup>#**  
*The real/certain laws of the territory of the nation*

601.1.	Purpose and Policy	601.7.	Title Transfer
601.2.	Adoption, Amendment, Repeal	601.8.	Probate
601.3.	Definitions	601.9.	Leasing of Real Property
601.4.	General Provisions	601.10.	Records
601.5.	Holding of Ownership	601.11.	Real Estate Education Requirements and Certifications
601.6.	Legal Descriptions	601.12.	Organization

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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~~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~~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~~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, 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.<sup>1</sup>

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

(de) “Estate” means a person’s interest in real property or other property.

(ef) “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.”

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

~~(gh)~~ “Individual Fee Land” means real property held in fee status by an individual or group of individuals.

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

(ij) “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.

(jk) “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.

~~(kl)~~ “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.

~~(lm)~~ “Nation” means the Oneida Nation.

~~(mn)~~ “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.

~~(no)~~ “Probate” or “Administration” means any proceeding relating to a decedent’s estate, whether there is or is not a will.

(op) “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.

(pq) “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.

(qr) “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.

(rs) “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.

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<sup>1</sup> 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..

(~~st~~) “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.

(~~tu~~) “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~~ Reservation.

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

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

(~~yx~~) “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~~ Reservation boundaries and all Tribal trust land.

601.4-2. *Tribal Land Base*. ~~Any transaction~~ The Division of Land Management shall administer all transactions which ~~adds~~ add 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~~ 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 ~~must~~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 ~~will~~shall be used on transfer documents along with the survey description, which ~~must~~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 ~~must~~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 ~~must~~shall be complete, providing unequivocal identification of line or boundaries.

601.6-4. All surveys prepared for the Nation ~~must~~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 ~~must~~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~~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~~shall be recorded in the appropriate register of deeds office, provided that, once the real property is in trust, the title ~~must~~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 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~~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~~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~~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~~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~~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;
- (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 residential, agricultural and commercial purposes:

~~(a) For the purposes of this law, leasing refers to all leases made pursuant to in accordance with 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, 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 ~~which uses~~ using federal funding ~~must be administered and processed using 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~~ 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~~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
- (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~~Education Requirements and Certifications**

601.11-1. *Wisconsin Real Estate ~~License-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 ~~have and maintain a valid~~pass the Wisconsin ~~real estate~~Real Estate License Exam. Such persons are not required to obtain a Wisconsin Real Estate License, but are required to fulfill the pre-license-

(a) ——— 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 ~~brokers~~persons engaged in the sale of real estate 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.

(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~~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 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

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

406

407 *End.*

~~408~~

410

411 Adopted - BC-5-29-96-A

412 Amended-BC-3-01-06-D

413 Amended-BC-04-28-10-E

414 Amended – BC-02-25-15-C

415 Amended-BC-05-13-15-B

**Title 6. Property and Land – Chapter 601**  
**REAL PROPERTY**  
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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; 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, 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.<sup>1</sup>
- (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 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.

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<sup>1</sup> 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 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.* 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 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 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;
- (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
- (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 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 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 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.*

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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



## Real Property Law Amendments

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Real Property law (amendments)				
<b>Sponsor</b>	David P. Jordan	<b>Drafter</b>	Krystal L. John	<b>Analyst</b>	Maureen Perkins
<b>Requester &amp; Reason for Request</b>	Land Commission 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.				
<b>Purpose</b>	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.				
<b>Authorized/ Affected Entities</b>	Oneida Land Commission, Division of Land Management, Comprehensive Housing Division, Oneida Judiciary, Oneida Nation Register of Deeds,				
<b>Related Legislation</b>	Mortgage and Foreclosure law, Land Ordinance, Leasing law, Landlord-Tenant law, Eviction and Termination law, Public Use of Tribal Land law, Land Commission Bylaws				
<b>Enforcement &amp; Due Process</b>	All involuntary transfers of title require a Judiciary hearing [see 601.7-3]. 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]. 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].				
<b>Public Meeting Status</b>	A public meeting was held October 20, 2016.				

### Overview

The Real Property Law has been redrafted; pulling out content into three separate laws (Landlord-Tenant, Mortgage and Foreclosure, and Eviction and Termination).<sup>1</sup> Additionally, hearing body authority was removed from the Land Commission and transferred to the Judiciary, the probate process was updated and Wisconsin State real estate education and testing requirements were added for persons purchasing property on behalf of the Nation.

<sup>1</sup> 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.

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 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 602.4-3]*. The Leasing law is drafted to align with the HEARTH Act (federal legislation) which only applies to tribal land and excludes lands held in fee status, held in trust for individual Indian landowners as well as mineral leases. These proposed Real Property law amendments state that all leases, 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 State of Wisconsin real estate education and exam. Under the amended law, Wisconsin Real Estate education and exam is required for all persons performing real estate closings *[see 601.11-1]*. An Oneida specific training is still required that focuses directly on the Nation's acquisition goals and the unique circumstances that apply to Indian nations. 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 State of Wisconsin education and exam 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 Wisconsin State real estate education. Finally, by requiring Wisconsin real estate education the Land Commission is removed from enforcement issues arising from questions regarding licensing complaints.

- 59     ▪ The amendments require that two additional Division of Land Management staff are
- 60     educated and trained as backups to the primary staff member engaged in acquisition of
- 61     land on behalf of the Nation *[see 601.11-1(b).]*
- 62     ▪ Trust Asset and Accounting Management System (TAAMS) certification was added to
- 63     the real estate licensing and certification section *[see 601.11-2]*. The TAAMS system is
- 64     required by the BIA to track land title documents and land transactions, contracts and
- 65     leases as well as reporting.
- 66     ▪ The Tribal Real Estate Tax section was removed from the current law *[see 67.15 of*
- 67     *current law]* because the Real Estate Tax Code referenced was never developed and is
- 68     not currently intended to be developed.
- 69     ▪ The Land Ordinance is applicable only to valid land assignments existing as of January 1,
- 70     2016, and is repealed when the last existing land assignment expires. Further, the
- 71     amendments add that the Nation may not acknowledge any new land assignments – and
- 72     in order to be eligible for a Tribal loan issued against an interest in a land assignment, it
- 73     must first be converted to a residential lease *[see 601.2-4 and current 67.5-4]*. Land
- 74     assignments are being phased out because the Nation no longer uses land assignments
- 75     and has moved to residential leases instead.
- 76     ▪ The term of office was removed from the Organization section pertaining to the Oneida
- 77     Land Commission *[see 67.16-2(b) of current law]* as this detail appropriately appears in
- 78     the bylaws of the Land Commission. The amended law only includes the Land
- 79     Commission’s responsibilities that are directly related to this law *[see 601.12-3]*.
- 80     ▪ The disposition of estates of deceased Tribal members section of the current law *[see*
- 81     *67.9]* was amended to the probate section *[see 601.8]*.
- 82         ▪ The amended law moves the appointment of a personal representative
- 83         earlier in the process *[see 601.8-1(j)]*.
- 84     ▪ The Oneida Land Commission will no longer have the authority to create the Nation’s
- 85     seal to be used by the Division of Land Management *[see 67.12-6 of current law]*. The
- 86     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:

- 90     ▪ The Division of Land Management and the Oneida Land Commission shall jointly
- 91     develop rules regarding requests for easements for landlocked properties *[see 601.7-*
- 92     *3(e)]*.
- 93     ▪ The Division of Land Management and the Oneida Land Commission shall further
- 94     develop rules related to probate *[see 601.8-1]*. The rules will include timelines to ensure
- 95     timely probate completion and land consolidation *[see 601.7-3(c)(3)]*.
- 96     ▪ The Oneida Land Commission shall develop rules to allocate and assign land uses to all
- 97     Tribal land, except uses governed by the Public Use of Tribal Land law *[see 601.12-*
- 98     *2(e)]*.
- 99     ▪ The Oneida Land Commission and the Comprehensive Housing Division shall exercise
- 100    joint rulemaking authority to provide process requirements, including but not limited to
- 101    advertising, notice, prequalification, and selection, that apply in all circumstances when
- 102    the Nation is selling a residential property *[see 601.12-1]*.
- 103    ▪ The Division of Land Management and the Oneida Land Commission shall develop
- 104    easement and land use license rules *[see 601.12-3(a)]*.



Legislative Operating Committee  
November 2, 2016

## Per Capita Law Amendments

<b>Submission Date:</b> 7/10/15	<b>Public Meeting:</b> 5/19/2016 6/16/2016
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This request from the Trust Enrollment Department was submitted to clarify several provisions of the law, modify the frequency of form requirements and in elder distributions, and incorporate fees for stop payments and closed bank accounts.*

- 7/15/15 LOC:** Motion by Jennifer Webster to add the Per Capita Law Amendments to the active files list with David P. Jordan as the sponsor; seconded by Fawn Billie. Motion carried unanimously.
- 9/16/15 LOC:** Motion by David P. Jordan to accept the update as FYI and defer the Per Capita Law Amendments to the Legislative Reference Office and to bring back in 30 days for an update; seconded by Fawn Billie. Motion carried unanimously.
- 10/21/15 LOC:** Motion by David P. Jordan to accept the memorandum as FYI and to defer the Per Capita Law Amendments to the sponsor to continue to work with the Trust Enrollment Committee and to bring a draft back on November 4, 2015; seconded by Fawn Billie. Motion carried unanimously.
- 10/23/15:** Work meeting held, attendees include: Cheryl Skolaski, David P. Jordan, Caroyl Long, Douglass McIntyre, Bonnie Pigman, Leyne Orosco, Lisa Kelly Skenandore, Candice Skenandore.
- 10/26/15:** Work meeting held, attendees include: Caroyl Long, Bonnie Pigman, Misty Cannon, Leyne Orosco, Lisa Kelly Skenandore, Candice Skenandore, Susan White, Krystal John.
- 11/4/15 LOC:** Motion by Jennifer Webster to defer to Legislative Reference Office for legislative analysis and fiscal impact; seconded by Fawn Billie. Motion carried unanimously.
- 2/3/16 LOC:** Motion by Tehassi Hill to defer the Per Capita Law Amendments to a work meeting with the Trust Enrollment Department, the Finance Department, Law Office and the sponsor and bring back to the LOC

within the next 30 days; seconded by David P. Jordan. Motion carried unanimously.

**3/2/16 LOC:** Motion by Jennifer Webster to accept the Per Capita Law Amendments status update memorandum and defer to the sponsor to bring back an updated draft with an updated legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.

**4/6/16 LOC:** Motion by Jennifer Webster to prepare the Per Capita Law Amendments for a public meeting to be held on May 19, 2016; seconded by David P. Jordan. Motion carried unanimously.

**4/20/16 LOC:** Motion by Tehassi Hill to enter the April 7, 2016 e-poll results for the Per Capita Law Amendments; seconded by Fawn Billie. Motion carried unanimously.

*Note: the April 7th 2016 e-poll directed the Legislative Reference Office to update the draft Per Capita Law Amendments and legislative analysis to include the revisions discussed in the memo.*

Motion by Tehassi Hill to approve the Per Capita Law Amendments Public Meeting packet, noting one update to be made to the legislative analysis, and deleting one definition from the draft law; seconded by Fawn Billie. Motion carried unanimously.

*Note: the update to the legislative analysis would identify one additional new duty of the Trust Enrollment Department: calculating the amount of attachments. The definition to be deleted is for "proof of education", since there are duplicate definitions.*

**5/19/16:** *Public Meeting held.*

**6/1/16 LOC:** Motion by David P. Jordan to accept the results of the e-poll conducted on May 19, 2016 which approved the public meeting packet for an additional public meeting to be held for the Per Capita Law amendments on June 16, 2016 at 12:15 p.m.; seconded by Jennifer Webster. Motion carried unanimously.

*Note: This will be the second public meeting for Per Capita Law Amendments.*

**6/16/16:** *Public Meeting held.*

**7/6/16 LOC:** Motion by Tehassi Hill to accept the public meeting comments regarding the Per Capita law amendments from the May 19, 2016 and June 16, 2016 public meetings and direct desired changes; seconded by David P. Jordan. Motion carried unanimously.

*Note: Directed change: remove the word automatic from section 123.6-1(d)(1)(C)(i).*

**7/25/16:** Work Meeting held. Meeting held for an update on the status of this item. Attendees include Maureen Perkins, Jen Falck, Tani Thurner, Jo Anne House.

**10/13/16:** Quarterly Sponsor Update Meeting held. Present: David Jordan, Krystal John, Leyne Orosco, Tani Thurner, Maureen Perkins, Clorissa Santiago. Waiting for new draft.

**10/24/16:** Work Meeting held. Present: David Jordan, Krystal John, Jennifer Falk, Jo Anne House, Maureen Perkins. Changes directed.

**Next Steps:**

- Determine whether an additional public meeting is required based on revisions made to the Per Capita law amendments since the public meeting;
- Provided that an additional public meeting is not required, direct the LRO to prepare an adoption packet for the Per Capita law amendments, including the updated draft and analysis.

**Title 1. Government and Finances – Chapter 9123**

**PER CAPITA**

**Shakotiw\$ Stawih# Olihw@ke**

*Issues concerning where they give the money*

123.1. Purpose and Policy

123.2. Adoption, Amendment, Repeal

123.3. Definitions

123.4. General

123.5. Distributions

123.6. Minor/Majority Age Beneficiaries and Legally Incompetent

Adults

123.7. Per Capita Actions

**9123.1. Purpose and Policy**

9123.1-1. *Purpose.* The purpose of this law is:

(a) To specify the procedure to be followed in the event that per capita payments are distributed by the Nation; and

(b) To clearly state the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments.

9123.1-2. *Policy.* It is the policy of the Nation to have a consistent methodology for distribution of per capita payments, including payments derived from gaming revenues and regulated by IGRA.

**9123.2. Adoption, Amendment, Repeal**

9123.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-7-12-00-B and amended by resolution BC-11-06-02-A, BC-6-16-04-C, BC-04-22-09-A, BC-05-09-12-B and BC-08-14-13-D and \_\_\_\_\_.

9123.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

9123.2-3. 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.

9123.2-4. 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 Oneida Business Committee resolution 11-06-02-A.

9123.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**9123.3. Definitions**

9123.3-1. 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) “Adult” means a Tribal member who is at least eighteen (18) years of age on or before September 1<sup>st</sup> of a given year.

(b) “Arrears” means the amount of money a Tribal member has not paid pursuant to the most recent child support court order against him or her.

(c) “Court of competent jurisdiction” means the Judiciary, a state or federal court or another court recognized by the Judiciary as having the jurisdiction to hear and determine a particular legal proceeding.

(d) “Day” means calendar days, unless otherwise specifically stated.

(e) “Debtor” means a Tribal member owing a debt to an Oneida entity.

(f) “Direct Deposit” means the electronic distribution of funds.

(g) “Distribution” means the transfer of funds to Tribal members.

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- (h) "IGRA" means the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et.seq.
- (i) "Judiciary" means the Nation's judicial system, which includes the Family Court, Trial Court and/or Appellate Court.
- (j) "Legally Incompetent Adult" means a Tribal member who is at least eighteen (18) years of age and has been declared incompetent by a court of competent jurisdiction pursuant to applicable law.
- (k) "Majority Age Beneficiary" means a Tribal member who has reached eighteen (18) years of age by September 1<sup>st</sup> and is eligible to claim a trust account for the first time in the distribution year.
- (l) "Minor Beneficiary" means a Tribal member who is less than eighteen (18) years age.
- (m) "Nation" means the Oneida Nation.
- (n) "Oneida Entity" means a department, board, committee, commission or chartered corporation of the Nation or the Judiciary.
- (o) "Outstanding Check" means a check that has been written by the Nation, but has not yet cleared the bank on which it was drawn.
- (p) "Per Capita Payment" means the amount authorized by the General Tribal Council to be distributed to Tribal members.
- (q) "Pooled Account" means the account set up by the General Tribal Council or Oneida Business Committee, through resolution, for the purpose of managing undistributed funds pursuant to the Nation's laws.
- (r) "Proof of Education" means the documents identified in Article III of the Per Capita Trust Agreement as acceptable to demonstrate that the tribal member has received a high school diploma or its equivalent.
- (s) "Tribal Member" means an individual who is an enrolled member of the Nation.
- (t) "Trust Account" means an account(s) established by the Trust Enrollment Committee for the purpose of maintaining per capita funds for persons pursuant to the Nation's revenue allocation plan, which includes, but is not limited to, minor beneficiaries and legally incompetent adults.
- (u) "Trust Enrollment Committee" means that body designated by the General Tribal Council to manage the trust funds for the Nation on behalf of Tribal members, and which is also responsible for the Nation's enrollment records.
- (v) "Trust Fund Accountant" means the third party professionals hired by the Trust Enrollment Committee to oversee trust accounts established pursuant to this law.

#### **9123.4. General**

9123.4-1. This section sets forth the responsibilities delegated under this law.

9123.4-2. *Supersedes.* This law supersedes any contradictory language contained in any other per capita payment plan.

9123.4-3. *Budgetary Limitations.* This law may not be construed as mandating a per capita payment; per capita payments may only be issued at the direction of the General Tribal Council through adoption of a resolution.

9123.4-4. *Oneida Business Committee.* The Oneida Business Committee shall:

- (a) Identify and allocate funds available for per capita payments;

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- (b) Forward approved revenue allocation plans to the Bureau of Indian Affairs;
- (c) Transfer funds to the appropriate Oneida entity(ies) pursuant to the Nation's laws within a reasonable time frame;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Trust Enrollment Committee.

**9123.4-5. *Trust Enrollment Committee.*** The Trust Enrollment Committee shall:

- (a) Manage trust accounts related to per capita payments with fiduciary responsibility;
- (b) Maintain the Nation's membership rolls so that the Trust Enrollment Department can accurately identify which Tribal members are eligible for distribution;
- (c) Provide input to the Finance Department regarding per capita matters included in the Nation's revenue allocation plan;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Oneida Business Committee.

**9123.4-6. *Trust Enrollment Department.*** When a per capita payment is approved, the Trust Enrollment Department shall:

- (a) Develop and finalize a list of the eligible distribution recipients broken down into the following categories: minor beneficiaries, majority age beneficiaries, legally incompetent adults, adults and elders. For the purposes of this section, elder means a Tribal member who meets the age requirements as of December 31<sup>st</sup> of a given year to be eligible for an elder distribution as determined by the effective General Tribal Council Resolution.
- (b) Provide the finalized list of Tribal members eligible to receive the distribution to the Oneida Accounting Division and trust fund accountant.
- (c) Send membership distribution and trust account forms and receipts related to the same.
- (d) Manage and maintain the Enrollment Database including, but not limited to, membership and distribution information.
- (e) Process the distribution data and forward the data to the Oneida Accounting Division and trust fund accountant.
- (f) Ensure the availability and liquidity of funds for transfer of the trust funds under the authorization of the Trust Enrollment Committee.
- (g) Provide fund transfer instructions to the relevant initiating institution: the custodial bank or the Oneida Accounting Division.
- (h) Work with the Trust Enrollment Committee to establish any necessary trust accounts.
- (i) Monitor all trust accounts for the purposes of necessary reporting, claims and distribution verification.
- (j) Record issued, voided, redeemed, and outstanding check trust account distributions in the Enrollment Database.
- (k) Complete trust account reconciliations.
- (l) Calculate attachment amounts for collection of Oneida entity debts and implement

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Oneida entity attachments.

9123.4-7. Oneida Accounting Division. When a per capita payment is approved, the Oneida Accounting Division shall:

- (a) Initiate and complete the funds transfer upon receipt of funds transfer instructions from the authorizing Oneida entity and shall ensure that the physical movement of funds happens no later than one (1) business day prior to the distribution date.
- (b) Record issued, voided and outstanding check distributions on the general ledger.
- (c) Complete bank account reconciliations.

9123.4-8. Tribal Treasurer. The office of the Oneida Treasurer shall identify funds and shall timely transfer the necessary amount of relevant funds to the Trust Enrollment Committee, the trust fund accountant and the Oneida Accounting Division.

9123.4-9. Attachments. Per capita payments are benefits offered by the Nation to Tribal members. All per capita payments, except distributions to or from a trust account for a beneficiary, may be subject to attachment prior to distribution in accordance with this section. Entities seeking to attach a per capita payment shall follow the timelines identified in this law.

(a) Per capita payments may only be attached for the following purposes, and in the following order:

(1) Child support arrears ordered by a court of competent jurisdiction. After child support arrears are fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payments for the payment of debt owed to an Oneida entity.

(A) If a Tribal member owes arrears in more than one (1) child support order, the Oneida Nation Child Support Agency shall equally divide the per capita payment based on the number of court orders under which arrears are owed.

(2) Debt owed to an Oneida entity that is past due. After child support arrears and debt owed to an Oneida entity have been fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payment for the payment of a federal tax levy.

(A) "Debt owed to an Oneida entity" includes any money owed to an Oneida entity and any fines that have been issued by an Oneida entity.

(B) If a Tribal member owes debt to more than one (1) Oneida entity, the Trust Enrollment Department shall equally divide the per capita payment based on the number of Oneida entities that are owed debt.

(3) A federal tax levy.

(b) If the amount of the per capita payment exceeds the amount of the attachment, the Trust Enrollment Department shall distribute the remaining balance to the Tribal member, provided the Tribal member has met the distribution requirements contained in this law. If there is a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 9123.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 9123.5-5.

(c) *Child Support Attachments.* Claimants or their designated representative shall submit all requests for attachments for child support arrears to the Oneida Nation Child Support

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Agency.

(1) After receiving an initial attachment request for child support arrears, the Oneida Nation Child Support Agency shall send a one-time notice and a voluntary federal income tax withholding request form to those Tribal members whose per capita payment will be attached for child support arrears.

(2) The Oneida Nation Child Support Agency shall prepare a certified accounting of all attachment requests and forward the accounting to the Judiciary.

(3) The Trust Enrollment Department may not attach a Tribal member's per capita payment to collect child support arrears without first having received an order of determination issued by the Judiciary.

(4) After the child support arrears have been satisfied, if an attachment request is submitted for the same Tribal member's per capita payment based on new child support arrears, the Oneida Nation Child Support Agency shall issue another one-time notice and federal income tax withholding form in accordance with 9123.4-9(c)(1).

(d) *Oneida Entity Debt Attachments.* Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested under section 9123.4-9(d)(5).

(1) *Notice of Indebtedness.* Prior to initiating an attachment, the Oneida entity owed the debt shall provide written notice of indebtedness to the debtor by first (1<sup>st</sup>) class mail at the debtor's last known address.

(A) *Frequency of Notice.* Oneida entities shall send debtors notice of indebtedness for each month a debt is owed with each notice being sent a minimum of thirty (30) calendar days apart. Oneida entities shall send two (2) consecutive monthly notices prior to the debt becoming eligible for attachment.

(B) *Notice Content.* Oneida entities shall include the following in their notices of indebtedness:

- (i) How many notices of indebtedness have been provided prior to the subject notice and the dates of all prior notices;
- (ii) The amount of the debtor's indebtedness;
- (iii) Information for making payment on the debt; and
- (iv) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the second consecutive monthly notice, the entity may initiate an automatic attachment of the Tribal member's per capita payment.

(2) *Initiating an Attachment.* After thirty (30) calendar days have lapsed since the Oneida entity sent the second consecutive monthly notice of indebtedness, the Oneida entity may initiate an attachment by providing the debtor with a final notice of indebtedness with intent to attach. The Oneida entity shall send the final notice to the debtor by certified mail. Additionally, the Oneida entity shall post notice of intent to attach in the Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed a debt and the Oneida entity's

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contact information for payment. The Oneida entity shall submit its request to post to the newspaper at the same time as the final notice with intent to attach is mailed in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request an attachment hearing.

(A) The Oneida entity shall include the following in the final notice of indebtedness with intent to attach:

(i) The dates of all prior notices of indebtedness provided to the debtor;

(ii) The amount of the debtor's indebtedness;

(iii) Information for making payment on the debt;

(iv) An explanation that this is the final notice and the Oneida entity has by this final notice initiated an attachment against the debtor;

(v) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach that the Trust Enrollment Department will automatically attach the debtor's available per capita payment in order to satisfy the debt;

(vi) An explanation that the debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to attach and that the debtor is responsible for any filing fees required by the Judiciary; and

(vii) A membership distribution form which the debtor shall submit to the Trust Enrollment Department no later than September 1<sup>st</sup> in order for voluntary federal income taxes to be withheld.

(B) *Attachment Deadlines.* In order for the Trust Enrollment Department to implement an attachment for a current per capita payment distribution, Oneida Entities shall:

(i) Send the Trust Enrollment Department a one-time final accounting of all debts subject to attachment no later than July 31<sup>st</sup>, provided that, in order for a debt to be included in the final accounting, the Oneida entity's shall have sent the debtor a final notice of indebtedness with intent to attach in which the debtor's thirty (30) day period to resolve the debt or request an attachment hearing with the Judiciary expires on or before July 31<sup>st</sup>; and

(ii) Receive, review and respond to the withholding report, in accordance with the deadline provided by the Trust Enrollment Department.

(3) *Calculating the Attachment Amount.* The Trust Enrollment Department shall

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determine the amount of per capita payment attachment based on the order provided in section 9123.4-9(a).

(4) *Payment of Debt Prior to Attachment.* A debtor may make payments towards a debt subject to attachment at any time.

(A) Oneida entities shall keep record of all debtors payments and shall only include unpaid debts in their final accounting submitted to the Trust Enrollment Department.

~~(A)~~ Once the Oneida entity has submitted the final accounting to the Trust Enrollment Department, the attachment amount may not be modified. If a debtor makes a payment towards a debt subject to attachment after the final accounting has been submitted to the Trust Enrollment Department, the Oneida entity shall reimburse the debtor for payments received in excess of the amount of the debt noticed to the debtor within thirty (30) calendar days from its receipt of the per capita payment attachment.

(5) *Requesting an Attachment Hearing.* A debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach, provided that the debtor shall include a copy of the final notice of indebtedness with intent to attach with the petition.

~~-(A)-~~ The debtor shall pay any filing fees required by the Judiciary before the Judiciary may consider the petition complete.

(B) When a request for an attachment hearing is timely made, the Oneida entity is still not required to obtain a judgment, but shall receive an attachment order before the Trust Enrollment Department may attach a per capita payment to collect debt owed to the Oneida entity.

(6) *Multiple Attachments.* If a single per capita payment is not sufficient to satisfy the debt owed to an Oneida entity, the Oneida entity shall follow the process contained in section 9123.4-9(d)(1)-(5) for each per capita payment it seeks to attach.

(e) *Federal Tax Levy Attachments.* Claimants or their designated representatives shall submit all requests for attachments for a federal tax levy to the Judiciary. The Trust Enrollment Department may not attach a Tribal member's per capita payment to collect a federal tax levy without first having received an order of determination from the Judiciary.

(f) The Judiciary may order and the Trust Enrollment Department may implement attachments against per capita payments of Tribal members who do not return a notarized membership payment form as required under 9123.5-2(b)(1) or who refuse a payment under 9123.5-2(f). If the amount of the per capita payment exceeds the amount of the attachment resulting in a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 9123.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 9123.5-5.

9123.4-10. *Federal Income Tax Withholding.*

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(a) *Voluntary*. The Trust Enrollment Department shall withhold federal income taxes from a distribution only when the following applies:

(1) Tribal members whose per capita payment is not subject to attachment in accordance with section 9123.4-9 may voluntarily request to have federal income tax withheld, provided that Tribal members shall make such requests in accordance with the applicable distribution deadlines.

(2) If the Trust Enrollment Department receives a timely voluntary request to have federal income tax withheld from a Tribal ~~members~~member whose per capita payment is subject to attachment in accordance with section 9123.4-9, the Trust Enrollment Department shall apply the federal income tax withholding to the applicable distribution before any attachments are applied.

(b) *Mandatory*. A Tribal member who meets all of the requirements of this law, but refuses to provide the Trust Enrollment Department with his or her social security number or individual tax identification number is subject to mandatory federal income tax withholding from his or her per capita payment, as required by federal law.

(c) *IRS Publication 15a*. The Nation shall comply with the most recent edition of IRS Publication 15a.

### **9123.5. Distributions**

9123.5-1. General. This section sets forth the required processes for distribution of per capita payments.

9123.5-2. Deadlines. The following deadlines apply in regards to the annual per capita payment. Where the dates fall on a Saturday, Sunday, or holiday the deadline is construed to be the close of business on the following business day. For any additional per capita payments, the Trust Enrollment Committee may establish dates and deadlines associated with those payments, as needed.

(a) *Eligibility*. Eligibility falls into the following categories:

(1) *Filing Deadlines*. An individual who is not a Tribal member shall file a new enrollment application no later than the close of business on January 31<sup>st</sup> in order to be considered eligible for the following per capita payment.

(A) *Enrollment Deadlines*. An individual is considered enrolled for the purposes of a per capita payment if the individual has been approved for enrollment by a vote of the Oneida Business Committee by March 31<sup>st</sup>.

(B) A newly enrolled Tribal member is eligible only for per capita payments authorized to be distributed following the effective date of his or her enrollment; he or she is not eligible to receive any per capita payments that were distributed prior to the effective date of his or her enrollment.

(2) *Dual Enrollment*. A Tribal member who is dually enrolled with another Indian tribe is not eligible for a per capita payment unless his or her relinquishment from the other tribe has been processed and written verification that the member is no longer enrolled with that tribe has been received by the Trust Enrollment Department by September 1<sup>st</sup>.

(b) *Distribution Documents*.

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(1) *Adult Distribution Form and Instructions.* Unless and until the Trust Enrollment Department modifies the Adult Distribution Form and Instructions by creating rules, the Trust Enrollment Department shall comply with the following.

(A) Prior to July 1<sup>st</sup> of the year the Trust Enrollment Department shall mail membership distribution forms and instructions to ~~those who do not have a direct deposit record on file with the Trust Enrollment Department.~~

~~(i) all adult Tribal members.~~ Adults shall complete, notarize and return a notarized membership distribution form to the Trust Enrollment Department by close of business on or before September 1<sup>st</sup> in order to be eligible for a per capita distribution.

~~(B) Prior to July 1<sup>st</sup> of the year the Trust Enrollment Department shall mail receipts to those who have a direct deposit record on file with the Trust Enrollment Department. Adults receiving the receipts are not required to submit a membership distribution form unless an adult wishes to remove his or her direct deposit record.~~

~~(i) An adult wishing to remove his or her direct deposit record shall complete, notarize and return all applicable forms to the Trust Enrollment Department by close of business on or before the distribution form deadline.~~

~~(C)~~(B) The Trust Enrollment Department shall make available late membership distribution forms and shall accept such forms in compliance with section 9123.5-2(e).

(2) *Majority Age Beneficiary Distribution Form and Instructions.*

(A) Prior to April 1<sup>st</sup> of the year the Trust Enrollment Department shall mail trust account forms and instructions to eligible majority age beneficiaries for trust account distributions.

(B) The Trust Enrollment Department shall make available late trust account forms and shall accept such forms in accordance with Article III of the Per Capita Trust Agreement.

(c) *Annual Distribution Date.* The Trust Enrollment Department shall distribute all annual per capita payments on or before September 30<sup>th</sup>, excluding those to beneficiary trust accounts, which are governed by the Per Capita Trust Agreement.

(d) *Direct Deposit.* Adults and majority age beneficiaries may submit a direct deposit form at any time, provided that in order for it to be applied to an upcoming distribution, the Tribal member shall submit the direct deposit form by the applicable per capita or trust account distribution form deadline.

(1) The Trust Enrollment Department shall deduct any fees associated with reissuing a distribution from the reissued distribution. (Fees may include, but are not limited to, stop payment and direct deposit bank rejection fees).

(2) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 9123.5-2(e)(2)(A).

(e) *Request for a Prior Per Capita Payment.*

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(1) *Unclaimed Payment.* Tribal members shall submit a request for a prior adult per capita payment, for which the Tribal member was eligible, but was not claimed or fully attached, by September 1<sup>st</sup> of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1, 2001. If a request is not received by the deadline date, the payment expires and the Trust Enrollment Department shall deposit such funds in a pooled account in accordance with 9123.5-5.

(A) The Trust Enrollment Department shall distribute prior per capita payments requested by eligible adults according to the Trust Enrollment Committee's rules regarding distribution timelines.

(B) The Trust Enrollment Department shall distribute prior per capita payments requested by a majority age beneficiary in accordance with Article III of the Per Capita Trust Agreement.

(2) *Distribution of Outstanding Checks including rejected Direct Deposit funds.* Tribal members shall submit a request for an adult or majority age beneficiary's prior distribution, for which a Tribal member already claimed, but did not redeem, by September 1<sup>st</sup> of the next year. For example, if a distribution's original issue date is in 2000, then the deadline is September 1, 2001.

(A) An adult, beneficiary or majority age beneficiary's distribution may only be reissued once. After the distribution/rejected direct deposit funds are reissued, the Tribal member has ninety (90) days to redeem it or the distribution will expire and may not be reissued. The Trust Enrollment Department shall deposit expired funds in a pooled account in accordance with 9123.5-5.

(B) The Trust Enrollment Department shall deduct any fees associated with reissuing a distribution from the reissued distribution. (Fees may include but are not limited to stop payment and direct deposit bank rejection fees).

(i) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 9123.5-2(e)(2)(A).

(f) *Refusal of Distributions.* An adult or majority age beneficiary may refuse any distribution due to him or her, including a trust account distribution, by completing a refusal form available with the Trust Enrollment Department. However, if the Judiciary has approved an attachment of an adult distribution, only the remaining portion of the distribution, if any, may be refused. Majority age beneficiary and legally incompetent adult distributions are not attachable.

(1) Upon submitting the refusal form to the Trust Enrollment Department, the adult or majority age beneficiary irrevocably waives his or her right to the specific distribution as indicated on the form.

(2) Tribal members seeking to refuse a distribution shall submit refusal forms in accordance with the distribution deadline.

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(3) The Trust Enrollment Department shall deposit refused distributions in a pooled account in accordance with 9123.5-5.

9123.5-3. Deceased Tribal Members.

(a) Deceased Tribal Member Distribution Forms. Tribal members are ~~ineligible~~eligible to receive a distribution ~~if his or her date of death occurs on or before so long as the Tribal member has complied with~~ the distribution ~~date documents and/or distribution rule(s) requirements.~~ This includes distributions identified to be deposited to a trust account.

~~(a) Deceased Adult.~~ The estate of a deceased ~~adult Tribal member~~ may not submit a membership distribution form on behalf of the deceased to claim a distribution. ~~The Trust Enrollment Department shall deposit per capita payments reserved for deceased adults in a pooled account in accordance with 9.5-5.~~ The Tribal member is only eligible for the distribution if the Tribal member either personally or through an appointed representative submits the distribution form while the Tribal member is still living.

~~(b) Deceased Minor/Majority Age Beneficiary. The value of a or Legally Incompetent Adult.~~

(1) When a there is a Beneficiary Designation Form on Record. A minor/majority age beneficiary's or a legally incompetent adult's trust account balance upon death is inheritable on the date of the upon the date of the beneficiary's death in accordance with the most recent beneficiary designation form on record as applicable. Within thirty (30) calendar days of learning of a minor/majority age beneficiary's death or legally incompetent adult's death, the Trust Enrollment Department shall provide notice of any remaining trust account balance to designated beneficiary using the last address on file. Should a designated beneficiary claim the remaining trust account balance, the Trust Enrollment Department shall issue the distribution in the name of the first available designated beneficiary(s). If a designated beneficiary does not request distribution of the remaining balance of a trust account within one (1) year after the Trust Enrollment Department's date of notice, the Trust Enrollment Department shall liquidate and deposit the trust fund account as follows:

(A) For the remaining balance in minor/majority age beneficiary's trust account, to the Oneida Youth Leadership Institute.

(B) For the remaining balance in a legally income adult's trust account, to the General Fund.

(2) When there is No Beneficiary Designation Form on Record. The Trust Enrollment Committee shall establish rules ~~creating the processes by which an application for distribution may be made.~~ The distribution may be defining potentially interested parties in the event there is no signed beneficiary designation form on record. The Trust Enrollment Committee shall also include in such rules notice provisions that put those potentially interested parties on notice that the Nation has a probate process and the potential consequences of a failure to comply with the probate process. Where a distribution is issued either in the name of the deceased minor/majority age beneficiary or the in accordance with the issuance of a domiciliary letter naming a personal representative of the

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estate, the Trust Enrollment Department shall issue the distribution in the name of the estate of the minor/majority age beneficiary or the legally incompetent adult.

~~(1) If the trust account funds for a deceased minor/majority beneficiary are not claimed by the estate of the deceased within one (1) year after the date of the minor/majority age beneficiary's death, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 9.5-5.~~

~~(e) *Deceased Legally Incompetent Adult.* The balance of a legally incompetent adult's trust account is inheritable as of the date of his or her death. The Trust Enrollment Committee shall establish rules creating the processes by which the deceased's estate may apply for distribution of the trust account funds. The distribution may be issued either in the name of the deceased legally incompetent adult or the estate of the deceased legally incompetent adult.~~

~~(1) If the trust account funds for a deceased legally incompetent adult are not claimed by the estate of the deceased within one (1) year after the date of the legally incompetent adult's death, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 9.5-5.~~

9123.5-4. *Relinquishment of Tribal Membership.* Tribal members are ineligible for any current, future and/or prior per capita payment distributions as of the date his or her Tribal membership is relinquished.

(a) *Relinquished Adult.* The Trust Enrollment Department shall deposit funds set aside for a relinquished adult's distribution in a pooled account in accordance with 9123.5-5.

(b) *Majority Age/Minor Beneficiary Relinquishment.* Upon a majority age/minor beneficiary's relinquishment the following provisions apply:

(1) The Trust Enrollment Department shall deposit any funds in a trust account for a majority age/minor beneficiary in a joint savings account in the name of the Trust Enrollment Committee and the relinquished majority age/minor beneficiary.

(2) A relinquished majority age/minor beneficiary is eligible to claim the joint savings account if he or she is eighteen (18) years of age by September 1<sup>st</sup> of the distribution year and submits the majority age distribution form by July 1<sup>st</sup> of the same year. In addition, a relinquished majority/minor age beneficiary shall claim any remaining funds held in the joint savings account prior to the first distribution following his or her twenty-first (21<sup>st</sup>) birthday.

(3) A relinquished majority age/minor beneficiary may refuse his or her joint savings account funds at the age of eighteen (18). The proof of education requirement is not required to refuse joint savings account funds, however the relinquished majority age/minor beneficiary shall satisfy the requirements of section 9123.5-2(f).

(4) The Trust Enrollment Department shall follow the Trust Enrollment Committee's standard operating procedure for allocating any fees necessary for the establishment and maintenance of a relinquished majority age/minor beneficiary's joint savings account to the said account.

(5) The Trust Enrollment Department shall deposit any unclaimed joint savings account funds in a Pooled Account in accordance with section 9123.5-5.

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(c) *Legally Incompetent Adult Relinquishment.* Upon a legally incompetent adult's relinquishment the Trust Enrollment Department shall disburse any funds in a trust account for the legally incompetent adult to the guardian of the legally incompetent adult.

(1) If the trust account funds for a legally incompetent adult are not claimed within one (1) year after the date of relinquishment, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 9123.5-5.

9123.5-5. *Pooled Account.* Pooled account funds are managed by the Trust Enrollment Committee, to be used for a purpose designated by General Tribal Council. Pooled account funds result from the following.

(a) *Expiration of Unclaimed Per Capita Payments.* Tribal Members' rights to unclaimed Per Capita Payments expire upon the occurrence of any one (1) of the following:

- (1) A Tribal member submits a refusal form under 9123.5-2(f);
- (2) A Tribal member fails to request a prior distribution or trust account funds within the time provided under this law and/or the Per Capita Trust Agreement;
- (3) An adult's death occurs prior to a distribution date; or
- (4) The estate of a deceased majority age/minor beneficiary fails to request distribution of the trust account within the time provided under 9123.5-3(b).
- (5) The guardian of a deceased legally incompetent adult fails to request distribution of the trust account within the time provided under 9123.5-3(c).

#### **9123.6. — Minor/Majority Age Beneficiaries and Legally Incompetent Adults**

9123.6-1. *Minor Beneficiaries.* This section sets forth a consistent method to protect and preserve the interests of minor beneficiaries in any distribution to which a minor beneficiary may be eligible. All distributions to minor beneficiaries are governed by this law, IGRA and the Per Capita Trust Agreement.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring and distributing the trust accounts. The Trust Enrollment Committee may choose to maintain pooled or individual accounts, separate accounts for each distribution or series of distributions, or any other combination which is in the best interests of the beneficiaries and which is consistent with the terms of the Per Capita Trust Agreement and the Trust Enrollment Committee's investment policy.

(1) The Trust Enrollment Committee is responsible for the protection and preservation of per capita payment funds for beneficiaries. As part of that responsibility, the Trust Enrollment Committee shall complete and issue any necessary reports to the beneficiaries. The Trust Enrollment Committee shall develop rules, which establish valuation dates and frequency of reports and identify data critical to the completion of the reports. The Trust Enrollment Committee may delegate such reporting responsibilities to duly selected vendors.

(b) *Costs of Account.* The Trust Enrollment Department shall apply administrative costs related to a trust account to the said account. Administrative costs are those costs related to third party fees and expenses resulting from managing the accounts. Administrative

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costs do not include any costs related to the expenses of the Trust Enrollment Committee or Trust Enrollment Department.

(c) *No Guarantee.* It is the Trust Enrollment Committee's responsibility to invest beneficiaries' distributions in accordance with the Per Capita Trust Agreement. Because the market affects the value of trust accounts, beneficiaries are not guaranteed any specific amount of distribution made prior to becoming a majority age beneficiary.

(d) *Disbursement to Majority Age Beneficiaries.* Disbursement of trust account funds to majority age beneficiaries is governed by the Per Capita Trust Agreement, provided that to be eligible for a distribution, the majority age beneficiary is required to:

(1) Meet the age and education requirements where:

(A) If the majority age beneficiary has proof of education by September 1<sup>st</sup> of the distribution year as required by the Per Capita Trust Agreement, he or she is eligible for distribution at eighteen (18) years of age.

(B) If the majority age beneficiary does not have proof of education by September 1<sup>st</sup> of the Distribution year as required by the Per Capita Trust Agreement, he or she remains eligible to claim their trust account funds upon reaching twenty-one (21) years of age.

(C) *Exceptions.* The following Tribal members are exempt from the requirement to provide proof of education in order to be eligible for a minor trust account distribution prior to reaching twenty-one (21) years of age:

(i) Majority age beneficiaries declared to be a legally incompetent adult under 9123.6-2. In such circumstances, the Trust Enrollment Department shall ~~automatically~~ liquidate and deposit any funds from the minor's trust account into a legally incompetent adult trust account.

(ii) Majority age beneficiaries who have a learning or other disability that has been medically diagnosed and are able to present a certificate of attendance showing he or she has attended twelve (12) years of school. In such circumstances, that certificate of attendance is deemed the equivalent to proof of education.

(D) *Fraudulent Proof of a Diploma.* In the event the Trust Enrollment Department deems that a majority age beneficiary has submitted fraudulent proof of education, the Trust Enrollment Department shall:

(i) If distribution has not been made to the Tribal member, withhold distribution of the trust account funds until the requirements of this law have been met;

(ii) Impose a fine against the Tribal member of one-third (1/3) of the Tribal member's entire trust account funds;

(iii) Notify the Tribal member of the following:

(a) His or her proof of education has been deemed fraudulent;

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(b) If not already distributed to the Tribal member, the trust account funds may not be distributed until he or she submits valid proof of education or reaches twenty-one (21) years of age;

(c) A fine of one-third (1/3) of the Tribal member's entire trust account funds has been imposed; and

(d) How to appeal the Trust Enrollment Department's determination of the fraudulent proof of education, including any applicable time limits.

(iv) If necessary to satisfy the fine, take action to have the Tribal member's future per capita payments attached in accordance with this law.

(v) Deposit any funds collected to pay a fine imposed pursuant to this section in a pooled account in accordance with 9123.5-5.

(2) Complete and submit a majority age beneficiary distribution form and/or deferral payment agreement by July 1<sup>st</sup> of the distribution year. A majority age beneficiary may postpone distribution of all or some of his or her trust account funds by entering into a deferral payment agreement pursuant to the Per Capita Trust Agreement.

9123.6-2. *Legally Incompetent Adults.* This section sets forth a consistent method to protect and preserve the interests of legally incompetent adults in any distribution for which they may be eligible. If a distribution includes legally incompetent adults as eligible recipients, the Trust Enrollment Department shall deposit such distributions into a trust account in accordance with IGRA.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring, and distributing trust accounts. When an adult is declared legally incompetent, the Trust Enrollment Department shall place any distribution that is claimed on his or her behalf in a trust account for health, welfare and/or education expenses. The Trust Enrollment Committee shall develop rules for determining when a guardian qualifies for distribution from an established trust account.

(b) *Reversal of Incompetency.* If a court of competent jurisdiction determines that an adult is no longer legally incompetent, the adult shall provide the Trust Enrollment Department with a certified copy of the order. Provided that the adult is eligible for the distribution and has followed the processes required under this law, upon receipt of an order reversing incompetency, the Trust Enrollment Department shall distribute any funds held in the trust account for the legally incompetent adult to the adult now deemed competent.

9123.6-3. *Beneficiary Designation Forms.* The Trust Enrollment Department shall provide all minor/majority age beneficiaries and legally incompetent adults with beneficiary designation forms which name a beneficiary to inherit any remaining trust account balance in the event of the minor/majority age beneficiary's or legally incompetent adult's death. Once every year, the

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Trust Enrollment Department shall mail such forms out to newly enrolled Tribal members, all persons that became a majority age beneficiary in that year and Tribal members declared a legally incompetent adult in that year or had a new guardian appointed in that year. The beneficiary designation form is required to include the following:

- (a) An explanation of the effect of and benefits to designating a beneficiary(s);
- (b) An explanation of the potential consequences to not naming a beneficiary(s); and
- (c) A signature field for the applicable of the parent/guardian or majority age beneficiary with an explanation of when each party is expected to sign.

### **123.7. —Appeals Per Capita Actions**

~~9123.7-1. Any Tribal member or guardian of a Tribal member may appeal a decision. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding a per capita payment actions taken pursuant to this law and/or distribution to rules.~~

~~123.7-2. 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 rules.~~

~~123.7-3. In regards to taking actions authorized under this law, complaints filed with the Oneida Judiciary shall name the Trust Enrollment Department.~~

*End.*

Adopted - BC-7-12-00-B

Emergency Amendments – BC-01-03-01-B

Emergency Amendments - BC-2-28-01-E

Amendments - BC-11-06-02-A (Elder Per Capita)

Emergency Amendments - BC-6-25-03-G (Child support priority for attachment)

Amendments - BC-6-16-04-C (Child support priority for attachment)

Emergency Amendments - BC-9-12-07-A (one-time per capita payment)

Amendments – BC-04-22-09-A (High School Diploma; legally incompetent adults)

Emergency Amendments – BC-06-08-11-D (Fraudulent diploma; dual enrollments)

Emergency Amendments extended – BC-11-09-11-E (Fraudulent diploma; dual enrollments)

Amendments Adopted – BC-05-09-12-B (Fraudulent diploma, dual enrollments)

Emergency Amendments – BC-09-12-12-A (Change in distribution date) Expired 3-12-13

Amendments Adopted – BC-08-14-13-D

**Title 1. Government and Finances – Chapter 123**

**PER CAPITA**

**Shakotiw\$ Stawih# Olihwa@ke**

*Issues concerning where they give the money*

123.1. Purpose and Policy

123.2. Adoption, Amendment, Repeal

123.3. Definitions

123.4. General

123.5. Distributions

123.6. Minor/Majority Age Beneficiaries and Legally Incompetent

Adults

123.7. Per Capita Actions

**123.1. Purpose and Policy**

123.1-1. *Purpose.* The purpose of this law is:

(a) To specify the procedure to be followed in the event that per capita payments are distributed by the Nation; and

(b) To clearly state the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments.

123.1-2. *Policy.* It is the policy of the Nation to have a consistent methodology for distribution of per capita payments, including payments derived from gaming revenues and regulated by IGRA.

**123.2. Adoption, Amendment, Repeal**

123.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-7-12-00-B and amended by resolution BC-11-06-02-A, BC-6-16-04-C, BC-04-22-09-A, BC-05-09-12-B and BC-08-14-13-D and \_\_\_\_\_.

123.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

123.2-3. 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.

123.2-4. 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 Oneida Business Committee resolution 11-06-02-A.

123.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**123.3. Definitions**

123.3-1. 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) “Adult” means a Tribal member who is at least eighteen (18) years of age on or before September 1<sup>st</sup> of a given year.

(b) “Arrears” means the amount of money a Tribal member has not paid pursuant to the most recent child support court order against him or her.

(c) “Court of competent jurisdiction” means the Judiciary, a state or federal court or another court recognized by the Judiciary as having the jurisdiction to hear and determine a particular legal proceeding.

(d) “Day” means calendar days, unless otherwise specifically stated.

(e) “Debtor” means a Tribal member owing a debt to an Oneida entity.

(f) “Direct Deposit” means the electronic distribution of funds.

(g) “Distribution” means the transfer of funds to Tribal members.

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- (h) "IGRA" means the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et.seq.
- (i) "Judiciary" means the Nation's judicial system, which includes the Family Court, Trial Court and/or Appellate Court.
- (j) "Legally Incompetent Adult" means a Tribal member who is at least eighteen (18) years of age and has been declared incompetent by a court of competent jurisdiction pursuant to applicable law.
- (k) "Majority Age Beneficiary" means a Tribal member who has reached eighteen (18) years of age by September 1<sup>st</sup> and is eligible to claim a trust account for the first time in the distribution year.
- (l) "Minor Beneficiary" means a Tribal member who is less than eighteen (18) years age.
- (m) "Nation" means the Oneida Nation.
- (n) "Oneida Entity" means a department, board, committee, commission or chartered corporation of the Nation or the Judiciary.
- (o) "Outstanding Check" means a check that has been written by the Nation, but has not yet cleared the bank on which it was drawn.
- (p) "Per Capita Payment" means the amount authorized by the General Tribal Council to be distributed to Tribal members.
- (q) "Pooled Account" means the account set up by the General Tribal Council or Oneida Business Committee, through resolution, for the purpose of managing undistributed funds pursuant to the Nation's laws.
- (r) "Proof of Education" means the documents identified in Article III of the Per Capita Trust Agreement as acceptable to demonstrate that the tribal member has received a high school diploma or its equivalent.
- (s) "Tribal Member" means an individual who is an enrolled member of the Nation.
- (t) "Trust Account" means an account(s) established by the Trust Enrollment Committee for the purpose of maintaining per capita funds for persons pursuant to the Nation's revenue allocation plan, which includes, but is not limited to, minor beneficiaries and legally incompetent adults.
- (u) "Trust Enrollment Committee" means that body designated by the General Tribal Council to manage the trust funds for the Nation on behalf of Tribal members, and which is also responsible for the Nation's enrollment records.
- (v) "Trust Fund Accountant" means the third party professionals hired by the Trust Enrollment Committee to oversee trust accounts established pursuant to this law.

#### **123.4. General**

123.4-1. This section sets forth the responsibilities delegated under this law.

123.4-2. *Supersedes.* This law supersedes any contradictory language contained in any other per capita payment plan.

123.4-3. *Budgetary Limitations.* This law may not be construed as mandating a per capita payment; per capita payments may only be issued at the direction of the General Tribal Council through adoption of a resolution.

123.4-4. *Oneida Business Committee.* The Oneida Business Committee shall:

- (a) Identify and allocate funds available for per capita payments;

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- (b) Forward approved revenue allocation plans to the Bureau of Indian Affairs;
- (c) Transfer funds to the appropriate Oneida entity(ies) pursuant to the Nation's laws within a reasonable time frame;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Trust Enrollment Committee.

123.4-5. *Trust Enrollment Committee.* The Trust Enrollment Committee shall:

- (a) Manage trust accounts related to per capita payments with fiduciary responsibility;
- (b) Maintain the Nation's membership rolls so that the Trust Enrollment Department can accurately identify which Tribal members are eligible for distribution;
- (c) Provide input to the Finance Department regarding per capita matters included in the Nation's revenue allocation plan;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Oneida Business Committee.

123.4-6. *Trust Enrollment Department.* When a per capita payment is approved, the Trust Enrollment Department shall:

- (a) Develop and finalize a list of the eligible distribution recipients broken down into the following categories: minor beneficiaries, majority age beneficiaries, legally incompetent adults, adults and elders. For the purposes of this section, elder means a Tribal member who meets the age requirements as of December 31<sup>st</sup> of a given year to be eligible for an elder distribution as determined by the effective General Tribal Council Resolution.
- (b) Provide the finalized list of Tribal members eligible to receive the distribution to the Oneida Accounting Division and trust fund accountant.
- (c) Send membership distribution and trust account forms and receipts related to the same.
- (d) Manage and maintain the Enrollment Database including, but not limited to, membership and distribution information.
- (e) Process the distribution data and forward the data to the Oneida Accounting Division and trust fund accountant.
- (f) Ensure the availability and liquidity of funds for transfer of the trust funds under the authorization of the Trust Enrollment Committee.
- (g) Provide fund transfer instructions to the relevant initiating institution: the custodial bank or the Oneida Accounting Division.
- (h) Work with the Trust Enrollment Committee to establish any necessary trust accounts.
- (i) Monitor all trust accounts for the purposes of necessary reporting, claims and distribution verification.
- (j) Record issued, voided, redeemed, and outstanding check trust account distributions in the Enrollment Database.
- (k) Complete trust account reconciliations.
- (l) Calculate attachment amounts for collection of Oneida entity debts and implement

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Oneida entity attachments.

123.4-7. *Oneida Accounting Division*. When a per capita payment is approved, the Oneida Accounting Division shall:

- (a) Initiate and complete the funds transfer upon receipt of funds transfer instructions from the authorizing Oneida entity and shall ensure that the physical movement of funds happens no later than one (1) business day prior to the distribution date.
- (b) Record issued, voided and outstanding check distributions on the general ledger.
- (c) Complete bank account reconciliations.

123.4-8. *Tribal Treasurer*. The office of the Oneida Treasurer shall identify funds and shall timely transfer the necessary amount of relevant funds to the Trust Enrollment Committee, the trust fund accountant and the Oneida Accounting Division.

123.4-9. *Attachments*. Per capita payments are benefits offered by the Nation to Tribal members. All per capita payments, except distributions to or from a trust account for a beneficiary, may be subject to attachment prior to distribution in accordance with this section. Entities seeking to attach a per capita payment shall follow the timelines identified in this law.

(a) Per capita payments may only be attached for the following purposes, and in the following order:

(1) Child support arrears ordered by a court of competent jurisdiction. After child support arrears are fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payments for the payment of debt owed to an Oneida entity.

(A) If a Tribal member owes arrears in more than one (1) child support order, the Oneida Nation Child Support Agency shall equally divide the per capita payment based on the number of court orders under which arrears are owed.

(2) Debt owed to an Oneida entity that is past due. After child support arrears and debt owed to an Oneida entity have been fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payment for the payment of a federal tax levy.

(A) "Debt owed to an Oneida entity" includes any money owed to an Oneida entity and any fines that have been issued by an Oneida entity.

(B) If a Tribal member owes debt to more than one (1) Oneida entity, the Trust Enrollment Department shall equally divide the per capita payment based on the number of Oneida entities that are owed debt.

(3) A federal tax levy.

(b) If the amount of the per capita payment exceeds the amount of the attachment, the Trust Enrollment Department shall distribute the remaining balance to the Tribal member, provided the Tribal member has met the distribution requirements contained in this law. If there is a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 123.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 123.5-5.

(c) *Child Support Attachments*. Claimants or their designated representative shall submit all requests for attachments for child support arrears to the Oneida Nation Child Support

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Agency.

(1) After receiving an initial attachment request for child support arrears, the Oneida Nation Child Support Agency shall send a one-time notice and a voluntary federal income tax withholding request form to those Tribal members whose per capita payment will be attached for child support arrears.

(2) The Oneida Nation Child Support Agency shall prepare a certified accounting of all attachment requests and forward the accounting to the Judiciary.

(3) The Trust Enrollment Department may not attach a Tribal member's per capita payment to collect child support arrears without first having received an order of determination issued by the Judiciary.

(4) After the child support arrears have been satisfied, if an attachment request is submitted for the same Tribal member's per capita payment based on new child support arrears, the Oneida Nation Child Support Agency shall issue another one-time notice and federal income tax withholding form in accordance with 123.4-9(c)(1).

(d) *Oneida Entity Debt Attachments.* Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested under section 123.4-9(d)(5).

(1) *Notice of Indebtedness.* Prior to initiating an attachment, the Oneida entity owed the debt shall provide written notice of indebtedness to the debtor by first (1<sup>st</sup>) class mail at the debtor's last known address.

(A) *Frequency of Notice.* Oneida entities shall send debtors notice of indebtedness for each month a debt is owed with each notice being sent a minimum of thirty (30) calendar days apart. Oneida entities shall send two (2) consecutive monthly notices prior to the debt becoming eligible for attachment.

(B) *Notice Content.* Oneida entities shall include the following in their notices of indebtedness:

(i) How many notices of indebtedness have been provided prior to the subject notice and the dates of all prior notices;

(ii) The amount of the debtor's indebtedness;

(iii) Information for making payment on the debt; and

(iv) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the second consecutive monthly notice, the entity may initiate an automatic attachment of the Tribal member's per capita payment.

(2) *Initiating an Attachment.* After thirty (30) calendar days have lapsed since the Oneida entity sent the second consecutive monthly notice of indebtedness, the Oneida entity may initiate an attachment by providing the debtor with a final notice of indebtedness with intent to attach. The Oneida entity shall send the final notice to the debtor by certified mail. Additionally, the Oneida entity shall post notice of intent to attach in the Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed a debt and the Oneida entity's

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contact information for payment. The Oneida entity shall submit its request to post to the newspaper at the same time as the final notice with intent to attach is mailed in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request an attachment hearing.

(A) The Oneida entity shall include the following in the final notice of indebtedness with intent to attach:

(i) The dates of all prior notices of indebtedness provided to the debtor;

(ii) The amount of the debtor's indebtedness;

(iii) Information for making payment on the debt;

(iv) An explanation that this is the final notice and the Oneida entity has by this final notice initiated an attachment against the debtor;

(v) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach that the Trust Enrollment Department will automatically attach the debtor's available per capita payment in order to satisfy the debt;

(vi) An explanation that the debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to attach and that the debtor is responsible for any filing fees required by the Judiciary; and

(vii) A membership distribution form which the debtor shall submit to the Trust Enrollment Department no later than September 1<sup>st</sup> in order for voluntary federal income taxes to be withheld.

(B) *Attachment Deadlines.* In order for the Trust Enrollment Department to implement an attachment for a current per capita payment distribution, Oneida Entities shall:

(i) Send the Trust Enrollment Department a one-time final accounting of all debts subject to attachment no later than July 31<sup>st</sup>, provided that, in order for a debt to be included in the final accounting, the Oneida entity's shall have sent the debtor a final notice of indebtedness with intent to attach in which the debtor's thirty (30) day period to resolve the debt or request an attachment hearing with the Judiciary expires on or before July 31<sup>st</sup>; and

(ii) Receive, review and respond to the withholding report, in accordance with the deadline provided by the Trust Enrollment Department.

(3) *Calculating the Attachment Amount.* The Trust Enrollment Department shall

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determine the amount of per capita payment attachment based on the order provided in section 123.4-9(a).

(4) *Payment of Debt Prior to Attachment.* A debtor may make payments towards a debt subject to attachment at any time.

(A) Oneida entities shall keep record of all debtors payments and shall only include unpaid debts in their final accounting submitted to the Trust Enrollment Department.

(B) Once the Oneida entity has submitted the final accounting to the Trust Enrollment Department, the attachment amount may not be modified. If a debtor makes a payment towards a debt subject to attachment after the final accounting has been submitted to the Trust Enrollment Department, the Oneida entity shall reimburse the debtor for payments received in excess of the amount of the debt noticed to the debtor within thirty (30) calendar days from its receipt of the per capita payment attachment.

(5) *Requesting an Attachment Hearing.* A debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach, provided that the debtor shall include a copy of the final notice of indebtedness with intent to attach with the petition.

(A) The debtor shall pay any filing fees required by the Judiciary before the Judiciary may consider the petition complete.

(B) When a request for an attachment hearing is timely made, the Oneida entity is still not required to obtain a judgment, but shall receive an attachment order before the Trust Enrollment Department may attach a per capita payment to collect debt owed to the Oneida entity.

(6) *Multiple Attachments.* If a single per capita payment is not sufficient to satisfy the debt owed to an Oneida entity, the Oneida entity shall follow the process contained in section 123.4-9(d)(1)-(5) for each per capita payment it seeks to attach.

(e) *Federal Tax Levy Attachments.* Claimants or their designated representatives shall submit all requests for attachments for a federal tax levy to the Judiciary. The Trust Enrollment Department may not attach a Tribal member's per capita payment to collect a federal tax levy without first having received an order of determination from the Judiciary.

(f) The Judiciary may order and the Trust Enrollment Department may implement attachments against per capita payments of Tribal members who do not return a notarized membership payment form as required under 123.5-2(b)(1) or who refuse a payment under 123.5-2(f). If the amount of the per capita payment exceeds the amount of the attachment resulting in a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 123.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 123.5-5.

#### 123.4-10. *Federal Income Tax Withholding.*

(a) *Voluntary.* The Trust Enrollment Department shall withhold federal income taxes

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from a distribution only when the following applies:

(1) Tribal members whose per capita payment is not subject to attachment in accordance with section 123.4-9 may voluntarily request to have federal income tax withheld, provided that Tribal members shall make such requests in accordance with the applicable distribution deadlines.

(2) If the Trust Enrollment Department receives a timely voluntary request to have federal income tax withheld from a Tribal member whose per capita payment is subject to attachment in accordance with section 123.4-9, the Trust Enrollment Department shall apply the federal income tax withholding to the applicable distribution before any attachments are applied.

(b) *Mandatory*. A Tribal member who meets all of the requirements of this law, but refuses to provide the Trust Enrollment Department with his or her social security number or individual tax identification number is subject to mandatory federal income tax withholding from his or her per capita payment, as required by federal law.

(c) *IRS Publication 15a*. The Nation shall comply with the most recent edition of IRS Publication 15a.

### 123.5. Distributions

123.5-1. *General*. This section sets forth the required processes for distribution of per capita payments.

123.5-2. *Deadlines*. The following deadlines apply in regards to the annual per capita payment. Where the dates fall on a Saturday, Sunday, or holiday the deadline is construed to be the close of business on the following business day. For any additional per capita payments, the Trust Enrollment Committee may establish dates and deadlines associated with those payments, as needed.

(a) *Eligibility*. Eligibility falls into the following categories:

(1) *Filing Deadlines*. An individual who is not a Tribal member shall file a new enrollment application no later than the close of business on January 31<sup>st</sup> in order to be considered eligible for the following per capita payment.

(A) *Enrollment Deadlines*. An individual is considered enrolled for the purposes of a per capita payment if the individual has been approved for enrollment by a vote of the Oneida Business Committee by March 31<sup>st</sup>.

(B) A newly enrolled Tribal member is eligible only for per capita payments authorized to be distributed following the effective date of his or her enrollment; he or she is not eligible to receive any per capita payments that were distributed prior to the effective date of his or her enrollment.

(2) *Dual Enrollment*. A Tribal member who is dually enrolled with another Indian tribe is not eligible for a per capita payment unless his or her relinquishment from the other tribe has been processed and written verification that the member is no longer enrolled with that tribe has been received by the Trust Enrollment Department by September 1<sup>st</sup>.

(b) *Distribution Documents*.

(1) *Adult Distribution Form and Instructions*. Unless and until the Trust

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Enrollment Department modifies the Adult Distribution Form and Instructions by creating rules, the Trust Enrollment Department shall comply with the following.

(A) Prior to July 1<sup>st</sup> of the year the Trust Enrollment Department shall mail membership distribution forms and instructions to all adult Tribal members. Adults shall complete, notarize and return a notarized membership distribution form to the Trust Enrollment Department by close of business on or before September 1<sup>st</sup> in order to be eligible for a per capita distribution.

(B) The Trust Enrollment Department shall make available late membership distribution forms and shall accept such forms in compliance with section 123.5-2(e).

(2) *Majority Age Beneficiary Distribution Form and Instructions.*

(A) Prior to April 1<sup>st</sup> of the year the Trust Enrollment Department shall mail trust account forms and instructions to eligible majority age beneficiaries for trust account distributions.

(B) The Trust Enrollment Department shall make available late trust account forms and shall accept such forms in accordance with Article III of the Per Capita Trust Agreement.

(c) *Annual Distribution Date.* The Trust Enrollment Department shall distribute all annual per capita payments on or before September 30<sup>th</sup>, excluding those to beneficiary trust accounts, which are governed by the Per Capita Trust Agreement.

(d) *Direct Deposit.* Adults and majority age beneficiaries may submit a direct deposit form at any time, provided that in order for it to be applied to an upcoming distribution, the Tribal member shall submit the direct deposit form by the applicable per capita or trust account distribution form deadline.

(1) The Trust Enrollment Department shall deduct any fees associated with reissuing a distribution from the reissued distribution. (Fees may include, but are not limited to, stop payment and direct deposit bank rejection fees).

(2) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 123.5-2(e)(2)(A).

(e) *Request for a Prior Per Capita Payment.*

(1) *Unclaimed Payment.* Tribal members shall submit a request for a prior adult per capita payment, for which the Tribal member was eligible, but was not claimed or fully attached, by September 1<sup>st</sup> of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1, 2001. If a request is not received by the deadline date, the payment expires and the Trust Enrollment Department shall deposit such funds in a pooled account in accordance with 123.5-5.

(A) The Trust Enrollment Department shall distribute prior per capita payments requested by eligible adults according to the Trust Enrollment Committee's rules regarding distribution timelines.

(B) The Trust Enrollment Department shall distribute prior per capita

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payments requested by a majority age beneficiary in accordance with Article III of the Per Capita Trust Agreement.

(2) *Distribution of Outstanding Checks including rejected Direct Deposit funds.* Tribal members shall submit a request for an adult or majority age beneficiary's prior distribution, for which a Tribal member already claimed, but did not redeem, by September 1<sup>st</sup> of the next year. For example, if a distribution's original issue date is in 2000, then the deadline is September 1, 2001.

(A) An adult, beneficiary or majority age beneficiary's distribution may only be reissued once. After the distribution/rejected direct deposit funds are reissued, the Tribal member has ninety (90) days to redeem it or the distribution will expire and may not be reissued. The Trust Enrollment Department shall deposit expired funds in a pooled account in accordance with 123.5-5.

(B) The Trust Enrollment Department shall deduct any fees associated with reissuing a distribution from the reissued distribution. (Fees may include but are not limited to stop payment and direct deposit bank rejection fees).

(i) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 123.5-2(e)(2)(A).

(f) *Refusal of Distributions.* An adult or majority age beneficiary may refuse any distribution due to him or her, including a trust account distribution, by completing a refusal form available with the Trust Enrollment Department. However, if the Judiciary has approved an attachment of an adult distribution, only the remaining portion of the distribution, if any, may be refused. Majority age beneficiary and legally incompetent adult distributions are not attachable.

(1) Upon submitting the refusal form to the Trust Enrollment Department, the adult or majority age beneficiary irrevocably waives his or her right to the specific distribution as indicated on the form.

(2) Tribal members seeking to refuse a distribution shall submit refusal forms in accordance with the distribution deadline.

(3) The Trust Enrollment Department shall deposit refused distributions in a pooled account in accordance with 123.5-5.

### 123.5-3. *Deceased Tribal Members.*

(a) *Deceased Tribal Member Distribution Forms.* Tribal members are eligible to receive a distribution so long as the Tribal member has complied with the distribution documents and/or distribution rule(s) requirements. This includes distributions identified to be deposited to a trust account. The estate of a deceased Tribal member may not submit a membership distribution form on behalf of the deceased to claim a distribution. The Tribal member is only eligible for the distribution if the Tribal member either personally or through an appointed representative submits the distribution form while the Tribal member is still living.

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(b) *Deceased Minor/Majority Age Beneficiary or Legally Incompetent Adult.*

(1) *When there is a Beneficiary Designation Form on Record.* A minor/majority age beneficiary's or a legally incompetent adult's trust account balance upon death is inheritable upon the date of the beneficiary's death in accordance with the most recent beneficiary designation form on record as applicable. Within thirty (30) calendar days of learning of a minor/majority age beneficiary's or legally incompetent adult's death, the Trust Enrollment Department shall provide notice of any remaining trust account balance to designated beneficiary using the last address on file. Should a designated beneficiary claim the remaining trust account balance, the Trust Enrollment Department shall issue the distribution in the name of the first available designated beneficiary(s). If a designated beneficiary does not request distribution of the remaining balance of a trust account within one (1) year after the Trust Enrollment Department's date of notice, the Trust Enrollment Department shall liquidate and deposit the trust fund account as follows:

(A) For the remaining balance in minor/majority age beneficiary's trust account, to the Oneida Youth Leadership Institute.

(B) For the remaining balance in a legally income adult's trust account, to the General Fund.

(2) *When there is No Beneficiary Designation Form on Record.* The Trust Enrollment Committee shall establish rules defining potentially interested parties in the event there is no signed beneficiary designation form on record. The Trust Enrollment Committee shall also include in such rules notice provisions that put those potentially interested parties on notice that the Nation has a probate process and the potential consequences of a failure to comply with the probate process. Where a distribution is issued in accordance with the issuance of a domiciliary letter naming a personal representative of the estate, the Trust Enrollment Department shall issue the distribution in the name of the estate of the minor/majority age beneficiary or the legally incompetent adult.

123.5-4. *Relinquishment of Tribal Membership.* Tribal members are ineligible for any current, future and/or prior per capita payment distributions as of the date his or her Tribal membership is relinquished.

(a) *Relinquished Adult.* The Trust Enrollment Department shall deposit funds set aside for a relinquished adult's distribution in a pooled account in accordance with 123.5-5.

(b) *Majority Age/Minor Beneficiary Relinquishment.* Upon a majority age/minor beneficiary's relinquishment the following provisions apply:

(1) The Trust Enrollment Department shall deposit any funds in a trust account for a majority age/minor beneficiary in a joint savings account in the name of the Trust Enrollment Committee and the relinquished majority age/minor beneficiary.

(2) A relinquished majority age/minor beneficiary is eligible to claim the joint savings account if he or she is eighteen (18) years of age by September 1<sup>st</sup> of the distribution year and submits the majority age distribution form by July 1<sup>st</sup> of the same year. In addition, a relinquished majority/minor age beneficiary shall claim

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any remaining funds held in the joint savings account prior to the first distribution following his or her twenty-first (21<sup>st</sup>) birthday.

(3) A relinquished majority age/minor beneficiary may refuse his or her joint savings account funds at the age of eighteen (18). The proof of education requirement is not required to refuse joint savings account funds, however the relinquished majority age/minor beneficiary shall satisfy the requirements of section 123.5-2(f).

(4) The Trust Enrollment Department shall follow the Trust Enrollment Committee's standard operating procedure for allocating any fees necessary for the establishment and maintenance of a relinquished majority age/minor beneficiary's joint savings account to the said account.

(5) The Trust Enrollment Department shall deposit any unclaimed joint savings account funds in a Pooled Account in accordance with section 123.5-5.

(c) *Legally Incompetent Adult Relinquishment.* Upon a legally incompetent adult's relinquishment the Trust Enrollment Department shall disburse any funds in a trust account for the legally incompetent adult to the guardian of the legally incompetent adult.

(1) If the trust account funds for a legally incompetent adult are not claimed within one (1) year after the date of relinquishment, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 123.5-5.

123.5-5. *Pooled Account.* Pooled account funds are managed by the Trust Enrollment Committee, to be used for a purpose designated by General Tribal Council. Pooled account funds result from the following.

(a) *Expiration of Unclaimed Per Capita Payments.* Tribal Members' rights to unclaimed Per Capita Payments expire upon the occurrence of any one (1) of the following:

(1) A Tribal member submits a refusal form under 123.5-2(f);

(2) A Tribal member fails to request a prior distribution or trust account funds within the time provided under this law and/or the Per Capita Trust Agreement;

(3) An adult's death occurs prior to a distribution date; or

(4) The estate of a deceased majority age/minor beneficiary fails to request distribution of the trust account within the time provided under 123.5-3(b).

(5) The guardian of a deceased legally incompetent adult fails to request distribution of the trust account within the time provided under 123.5-3(c).

## **123.6. Minor/Majority Age Beneficiaries and Legally Incompetent Adults**

123.6-1. *Minor Beneficiaries.* This section sets forth a consistent method to protect and preserve the interests of minor beneficiaries in any distribution to which a minor beneficiary may be eligible. All distributions to minor beneficiaries are governed by this law, IGRA and the Per Capita Trust Agreement.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring and distributing the trust accounts. The Trust Enrollment Committee may choose to maintain pooled or individual accounts, separate accounts for each distribution or series of distributions, or any other

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combination which is in the best interests of the beneficiaries and which is consistent with the terms of the Per Capita Trust Agreement and the Trust Enrollment Committee's investment policy.

(1) The Trust Enrollment Committee is responsible for the protection and preservation of per capita payment funds for beneficiaries. As part of that responsibility, the Trust Enrollment Committee shall complete and issue any necessary reports to the beneficiaries. The Trust Enrollment Committee shall develop rules, which establish valuation dates and frequency of reports and identify data critical to the completion of the reports. The Trust Enrollment Committee may delegate such reporting responsibilities to duly selected vendors.

(b) *Costs of Account.* The Trust Enrollment Department shall apply administrative costs related to a trust account to the said account. Administrative costs are those costs related to third party fees and expenses resulting from managing the accounts. Administrative costs do not include any costs related to the expenses of the Trust Enrollment Committee or Trust Enrollment Department.

(c) *No Guarantee.* It is the Trust Enrollment Committee's responsibility to invest beneficiaries' distributions in accordance with the Per Capita Trust Agreement. Because the market affects the value of trust accounts, beneficiaries are not guaranteed any specific amount of distribution made prior to becoming a majority age beneficiary.

(d) *Disbursement to Majority Age Beneficiaries.* Disbursement of trust account funds to majority age beneficiaries is governed by the Per Capita Trust Agreement, provided that to be eligible for a distribution, the majority age beneficiary is required to:

(1) Meet the age and education requirements where:

(A) If the majority age beneficiary has proof of education by September 1<sup>st</sup> of the distribution year as required by the Per Capita Trust Agreement, he or she is eligible for distribution at eighteen (18) years of age.

(B) If the majority age beneficiary does not have proof of education by September 1<sup>st</sup> of the Distribution year as required by the Per Capita Trust Agreement, he or she remains eligible to claim their trust account funds upon reaching twenty-one (21) years of age.

(C) *Exceptions.* The following Tribal members are exempt from the requirement to provide proof of education in order to be eligible for a minor trust account distribution prior to reaching twenty-one (21) years of age:

(i) Majority age beneficiaries declared to be a legally incompetent adult under 123.6-2. In such circumstances, the Trust Enrollment Department shall liquidate and deposit any funds from the minor's trust account into a legally incompetent adult trust account.

(ii) Majority age beneficiaries who have a learning or other disability that has been medically diagnosed and are able to present a certificate of attendance showing he or she has attended twelve (12) years of school. In such circumstances, that certificate of attendance is deemed the equivalent to proof of education.

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(D) *Fraudulent Proof of a Diploma*. In the event the Trust Enrollment Department deems that a majority age beneficiary has submitted fraudulent proof of education, the Trust Enrollment Department shall:

(i) If distribution has not been made to the Tribal member, withhold distribution of the trust account funds until the requirements of this law have been met;

(ii) Impose a fine against the Tribal member of one-third (1/3) of the Tribal member's entire trust account funds;

(iii) Notify the Tribal member of the following:

(a) His or her proof of education has been deemed fraudulent;

(b) If not already distributed to the Tribal member, the trust account funds may not be distributed until he or she submits valid proof of education or reaches twenty-one (21) years of age;

(c) A fine of one-third (1/3) of the Tribal member's entire trust account funds has been imposed; and

(d) How to appeal the Trust Enrollment Department's determination of the fraudulent proof of education, including any applicable time limits.

(iv) If necessary to satisfy the fine, take action to have the Tribal member's future per capita payments attached in accordance with this law.

(v) Deposit any funds collected to pay a fine imposed pursuant to this section in a pooled account in accordance with 123.5-5.

(2) Complete and submit a majority age beneficiary distribution form and/or deferral payment agreement by July 1<sup>st</sup> of the distribution year. A majority age beneficiary may postpone distribution of all or some of his or her trust account funds by entering into a deferral payment agreement pursuant to the Per Capita Trust Agreement.

123.6-2. *Legally Incompetent Adults*. This section sets forth a consistent method to protect and preserve the interests of legally incompetent adults in any distribution for which they may be eligible. If a distribution includes legally incompetent adults as eligible recipients, the Trust Enrollment Department shall deposit such distributions into a trust account in accordance with IGRA.

(a) *The Trust Enrollment Committee*. The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring, and distributing trust accounts. When an adult is declared legally incompetent, the Trust Enrollment Department shall place any distribution that is claimed on his or her behalf in a trust account for health, welfare and/or education expenses. The Trust Enrollment Committee shall develop rules for determining when a guardian qualifies for distribution from an established trust account.

(b) *Reversal of Incompetency*. If a court of competent jurisdiction determines that an

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adult is no longer legally incompetent, the adult shall provide the Trust Enrollment Department with a certified copy of the order. Provided that the adult is eligible for the distribution and has followed the processes required under this law, upon receipt of an order reversing incompetency, the Trust Enrollment Department shall distribute any funds held in the trust account for the legally incompetent adult to the adult now deemed competent.

123.6-3. *Beneficiary Designation Forms.* The Trust Enrollment Department shall provide all minor/majority age beneficiaries and legally incompetent adults with beneficiary designation forms which name a beneficiary to inherit any remaining trust account balance in the event of the minor/majority age beneficiary's or legally incompetent adult's death. Once every year, the Trust Enrollment Department shall mail such forms out to newly enrolled Tribal members, all persons that became a majority age beneficiary in that year and Tribal members declared a legally incompetent adult in that year or had a new guardian appointed in that year. The beneficiary designation form is required to include the following:

- (a) An explanation of the effect of and benefits to designating a beneficiary(s);
- (b) An explanation of the potential consequences to not naming a beneficiary(s); and
- (c) A signature field for the applicable of the parent/guardian or majority age beneficiary with an explanation of when each party is expected to sign.

### 123.7. Per Capita Actions

123.7-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or rules.

123.7-2. 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 rules.

123.7-3. In regards to taking actions authorized under this law, complaints filed with the Oneida Judiciary shall name the Trust Enrollment Department.

*End.*

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Adopted - BC-7-12-00-B

Emergency Amendments – BC-01-03-01-B

Emergency Amendments - BC-2-28-01-E

Amendments - BC-11-06-02-A (Elder Per Capita)

Emergency Amendments - BC-6-25-03-G (Child support priority for attachment)

Amendments - BC-6-16-04-C (Child support priority for attachment)

Emergency Amendments - BC-9-12-07-A (one-time per capita payment)

Amendments – BC-04-22-09-A (High School Diploma; legally incompetent adults)

Emergency Amendments – BC-06-08-11-D (Fraudulent diploma; dual enrollments)

Emergency Amendments extended – BC-11-09-11-E (Fraudulent diploma; dual enrollments)

Amendments Adopted – BC-05-09-12-B (Fraudulent diploma, dual enrollments)

Emergency Amendments – BC-09-12-12-A (Change in distribution date) Expired 3-12-13

Amendments Adopted – BC-08-14-13-D



## Per Capita Amendments

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Per Capita (law) Amendments				
<b>Sponsor</b>	David P. Jordan	<b>Drafter</b>	Krystal L. John	<b>Analyst</b>	Maureen Perkins
<b>Requester &amp; Reason for Request</b>	Trust Department. To 1) clarify minor and majority age beneficiary references as they relate to deferrals and hardships; 2) make changes in Elder distributions; 3) incorporate fees for stop payments and closed bank accounts and 4) review how resolutions BC-01-28-04-A and BC-11-06-02 are affected by the proposed changes and original intent, as they apply to the law.				
<b>Purpose</b>	The purpose of this law is to specify the procedures to be followed in the event that per capita payments are distributed by the Nation and to clearly state the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments [See 123.1-1].				
<b>Authorized/ Affected Entities</b>	Oneida Business Committee, Trust Enrollment Committee, Trust Enrollment Department, Judiciary, Oneida Accounting Department, Oneida Nation Child Support Agency, other Oneida Entities that may be owed a debt/fine by a Tribal member.				
<b>Related Legislation</b>	Per Capita Trust Agreement, Tribal Revenue Allocation Plan, Child Support Law and Accompanying Rules, Memorandum of Agreement, Judiciary				
<b>Enforcement &amp; Due Process</b>	Any Tribal member or guardian of a Tribal member can file a complaint regarding actions taken according to this law and/or rules [See 123.7] or an attachment [See 123.4-9(d)(5)] to the Judiciary. Attachments may be ordered by the Judiciary for child support arrears or a federal tax levy [See 123.4-9(a)(1) and 123.4-9(a)(3)]. Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested [see 123.4-9(d) and 123.4-9(d)(5)]. Debt owed to an Oneida Entity includes any money owed and any fines that have been issued by the Oneida Entity [See 123.4-9(a)(2)(A)]. The Judiciary may order attachments against per capita payments of Tribal members who have not returned a notarized membership payment form or who refuse a per capita payment [See 123.4-9(f)]. All fees associated with reissuing a distribution must be applied to the distribution [see See 123.5-2(e)(2)(B)] unless it is an error on the Nation's behalf [See 123.5-2(e)(2)(B)(i)].				
<b>Public Meeting Status</b>	Public meetings were held May 19 and June 16, 2016. The LOC has reviewed the public comments received during the public comment period; any changes made based on the public comments received have been incorporated into this draft.				

### Overview

The proposed Per Capita law amendments were requested by the Trust Enrollment Department (formerly known individually as the Trust Department and the Enrollment Department) to reduce the frequency of per capita distributions to elders while still maintaining the elders payments by placing elders on the same distribution schedule as adults, create the majority age beneficiary category distinct from minor beneficiary, and establish bank fees for

closed accounts and returned distributions. Additional amendments include: repeals BC resolution 11-06-02-A, merges Trust and Enrollment Departments into one Trust Enrollment Department, recognizes the Trust Enrollment Committee (the current law recognizes the Trust Committee), eliminates deadlines related to attachments, eliminates the requirement for Oneida entities to receive an attachment order from the Judiciary unless an attachment hearing is requested and eliminates the role of the Trust Enrollment Committee to hold administrative hearings.

**Analysis was requested regarding the following resolutions:**

▪ **BC Resolution 11-06-02-A**

- This resolution amended the Per Capita Ordinance to create a separate per capita payment schedule for elders who turn 62 and 65 in a distribution year. The amendments added age 65 to the definition of elder in the Per Capita Ordinance. The resolution also established that elders who turn 62 or 65 by December 31<sup>st</sup> were to receive the respective elders' per capita payment for that September 30<sup>th</sup> distribution year. Those who turn 62 or 65 after September 30<sup>th</sup> were to receive their respective first time elder per capita payment in the month following their birth date. This establishes that there are additional elders payments sent after September 30<sup>th</sup> of a distribution year for those who are turning 62 and 65 after September 30 of that distribution year.
  - The proposed amendments still honor December 31<sup>st</sup> as the cut off for elders who reach the age determined by the GTC resolution in the distribution year that takes place on September 30<sup>th</sup>. These distributions; however, will occur on September 30<sup>th</sup> along with all adult distributions. Elders who reach age categories established by the GTC resolution between October 1<sup>st</sup> and December 31<sup>st</sup> will receive their elders' payments early on September 30<sup>th</sup> of that distribution year.
  - BC Resolution 11-06-02-A conflicts with the proposed amendments in that there is not a separate schedule for elders' payments in the proposed law as established by this resolution. Elders are classified as adults in the definition and therefore follow the adult distribution timeline.
    - Adult is defined as a Tribal member who is at least eighteen (18) years of age on or before September 1<sup>st</sup> of a given year [See 123.3-1(a)].

	<b>BC Resolution 11-06-02-A</b>	<b>Current Law</b>	<b>Proposed Amendments</b>
definition	Elder: shall mean those tribal members who are age 62 years or over, or 65 years or over, as of December 31 of a given year.	<b>9.3-1(e)</b> "Elder" shall mean those Tribal members who are age 62 years or over, or 65 years or over, as of December 31st of a given year.	<b>123.3-1</b> "Adult" means a Tribal member who is at least eighteen (18) years of age on or before September 1 <sup>st</sup> of a given year. <b>123.7-2(1)</b> For the purposes of this section, elder means a Tribal Member who meets the age requirements as of

			December 31st of a given year to be eligible for an elder distribution as determined by the effective General Tribal Council Resolution.
	<b>BC Resolution 11-06-02-A</b>	<b>Current Law</b>	<b>Proposed Amendments</b>
Payments / Distributions	<p>(c) Payments Sent. Per capita payments shall be mailed on September 30<sup>th</sup>.</p> <p>1) After September 30, and through December 31, first time elder per capita payments shall be sent in the month following birth date.</p>	<p>9.5-3(d) (d) Annual Payments. Annual per capita payments shall be distributed on or before September 30th. First time elder per capita payments for those Tribal members who turn sixty-two (62) or sixty-five (65) after September 30th, and through December 31st, shall be distributed at the end of the month of the elder's birth date.</p> <p>(e) (1) Prior Payments: Elders. Prior payments requested by eligible elders on or before the twentieth (20th) day of the month shall be distributed by the last business day of that month. Prior payments requested by elders after the twentieth (20th) day of the month shall be distributed by the last business day of the next month.</p>	<p>123.5-2 (c) Annual Distribution Date. The Trust Enrollment Department shall distribute all annual per capita payments on or before September 30<sup>th</sup>, excluding those to beneficiary trust accounts, which are governed by the Per Capita Trust Agreement.</p>

- **Impact.** BC Resolution 11-06-02-A conflicts with the proposed amendments.
  - This law repeals BC Resolution 11-06-02-A considering that elders will still receive their elders' payments in the distribution year according to the proposed Per Capita Law amendments.
- **Special BC Resolution 1-28-04-A**
  - This resolution was passed at the Special BC meeting held in lieu of the GTC Annual Meeting due to a lack of quorum. This resolution designates the interest from the unclaimed unallocated per capita pooled account to be applied to the Oneida Language Revitalization Program.

- Please note that the pooled account itself has not been designated for use by the GTC through this resolution; only the interest from the account was allocated, the principal of the account shall not be depleted.
- **Impact.** This resolution has no legislative impact on the proposed amendments.

### Proposed Amendments

This section will highlight each of the major proposed amendments to the law and will indicate whether there is overlap or conflict with the Per Capita Trust Agreement.

- **Repeals BC Resolution 11-06-02-A**

- **Impact.** The separate process for elders' per capita distributions has been eliminated; all adult distributions will follow the same distribution schedule.

- **Trust Enrollment Committee.** Added responsibilities include: provide input to the Finance Department regarding per capita matters included in the Nation's revenue allocation plan *[see 123.4-5(c)]*.

- **Impact.** No legislative impact or conflict.

- **Trust Enrollment Department.** Added responsibilities include:

- Ensure the availability and liquidity of funds for transfer of the trust funds under the authorization of the Trust Enrollment Committee *[see 123.4-6(f)]*.
- Calculate attachment amounts for collection of Oneida entity debts and implement Oneida entity attachments *[see 123.4-6(l)]*.
- **Impact.** No legislative impact or conflict.

- **Tribal Treasurer.** Duties removed:

- Make a payment to those Tribal members responding to the membership payment form deadline who are not minors or incompetent adults *[see 9.7-5(a) of current law]*.
- Cover unverified member payments for those members who are unresponsive to the membership payment form deadline *[see 9.7-5(b) of current law]*.
- **Impact.** No legislative impact or conflict.

- **Deadlines.** Deadlines regarding attachments were removed throughout the law to eliminate the need to amend the law due to updated deadlines in the future *[see 9.4-6(d)(4) and 9.4-6(d)(4)(B) and 9.4-6(d)(4)(C) and 9.4-6(d)(5) and 9.4-6(d)(6)(A) and 9.4-6(d)(6)(B) and 9.4-6(e)(1) and 9.4-6(e)(2) and 9.4-6(e)(3)(A) and 9.4-6(e)(3)(B) of current law]*.

- **Impact.** No legislative impact or conflict.

- **Distinction of Majority Age and Minor Beneficiaries.** Two terms have been added to create clarity in the law: majority age beneficiaries and minor beneficiaries.

- **Proposed Amendments to the Law.** The proposed amendments to the law define the new terms as follows:

- Majority age beneficiaries: a Tribal member who has reached eighteen (18) years of age by September 1 and is eligible to claim a trust account for the first time in the distribution year *[see 123.3-1(k)]*.
- Minor beneficiaries are defined as Tribal members who are less than eighteen (18) years of age *[see 123.3-1(l)]*.

- **Per Capita Trust Agreement.** The Per Capita Trust Agreement refers only to "beneficiaries" defined as:

- The beneficiaries of the trust shall be all duly enrolled members of the

Oneida Tribe of Indians of Wisconsin who are eligible to receive a per capita distribution in any year in which any such distribution is made, and who have not yet attained the age of eighteen years by September 1<sup>st</sup> of the year in which such distribution is made [see Article I. Beneficiaries of the Per Capita Trust Agreement].

- **Impact.** No legislative impact or conflict.
- **Oneida Entity Debt Attachment.** Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested [see 123.4-9(d)]. The entity owed the debt must provide two written notices via first class mail to the debtor's last known address prior to issuing final notice of indebtedness with intent to attach. The notice to attach must also appear in the Nation's newspaper. Once this has been satisfied, the Trust Enrollment Department will calculate the attachment amount. The Trust Enrollment Department may attach per capita payments of Tribal members who do not return a notarized membership payment form or who refuse a distribution [see 123.4-9(f)]. Any remaining amount after all attachments have been satisfied will be distributed to the Tribal member if the Tribal member follows the process for requesting a prior per capita payment [see 123.5-2(e)] or otherwise deposited into the pooled account [see 123.4-9(f)].
- **Administrative Hearings.** The role of the Trust Enrollment Committee to hold administrative hearings regarding challenges to payment or non-payment of per capita payments has been removed from this law [see 9.4-4(c) of current law]. Disputes are settled by the Judiciary in the proposed amendments.
  - **Proposed Amendments to the Law.** The proposed amendments to the law state, "The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or rules." [see 123.7-1].
  - **Per Capita Trust Agreement.** The Per Capita Trust Agreement states, "If any dispute arises out of the distribution of a beneficiary's interest under the trust, all such matters shall be resolved according to the procedures set forth in the Oneida Administrative Procedures Act, except as otherwise provided in the Oneida Tribe of Indians of Wisconsin Revenue Allocation Plan [see Article XV of the Per Capita Trust Agreement]."
  - **Impact.** Article XV of the Per Capita Trust Agreement would need to be updated to refer disputes to the Judiciary.
- **Bank Fees.** The current law is silent with respect to bank fees.
  - **Proposed Amendments to the Law.** All fees associated with reissuing a distribution (due to stop payment or incorrect direct deposit information) must be applied to the distribution [see 123.5-2(d)(1)] unless it is an error on the Nation's behalf [see 123.5-2(d)(2)].
  - **Impact.** No legislative impact or conflict.
- **Elders Payments.** The separate process for elder's distributions was removed from this law. Elder's distributions now follow the same process and adhere to the same deadlines as the adult distributions [see 123.5], except for those elders who reach the age category established by the GTC resolution between October 1 and December 31 of the distribution year, who will receive their elders' payments early on September 30 (implied intent). This change conflicts with BC Resolution 11-06-02-A which sets the distribution timeline for elders reaching 62 and 65 by December 31<sup>st</sup> of the distribution year.

- **Impact.** BC Resolution 11-06-02-A is repealed in this law as noted in the analysis of the resolution above.
- **Per Capita Actions.** A process to file a complaint to the Judiciary was added to this law [See 123.7].
  - **Impact.** The complaint process would need to be updated in the Per Capita Trust Agreement as it currently refers to the Administrative Procedures Act and the Revenue Allocation Plan to settle disputes [See Article XV of the Per Capita Trust Agreement].
- **Complaint with Regard to Oneida Entity Debt and Federal Tax Levy Attachments**
  - Tribal members subject to attachment to collect a debt owed to the Judiciary who wish to file a complaint regarding the attachment may file a request for a show cause hearing with the Judiciary within 30 days of the final notice of indebtedness with intent to attach. The Judiciary shall honor all requests for show cause hearings [see 123.4-9(d)(5)]. .
    - **Impact.** Provides an opportunity for Tribal members to file a complaint regarding an attachment to collect debt issued by the Judiciary.

#### Other

Oneida Tribe of Indians of Wisconsin has been changed to Oneida Nation to reflect approved constitutional amendments. Please refer to the fiscal impact statement for any financial impacts.

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



## AGENDA REQUEST FORM

- 1) Request Date: October 26, 2016
- 2) Contact Person(s): Jennifer Falck  
 Dept: Legislative Reference Office  
 Phone Number: (920)869-4312 Email: JFalck@Oneidanation.org
- 3) Agenda Title: LRO Director
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
At the 10/26/16 OBC meeting, after adopting emergency amendments to the Drug and Alcohol-Free workplace policy, the OBC passed a motion to "request that a similar policy for elected and appointed officials also be developed and provided by the Legislative Operating Committee."

List any supporting materials included and submitted with the Agenda Request Form

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_

- 5) Please list any laws, policies or resolutions that might be affected:  
Drug and Alcohol-Free Workplace Policy; Comprehensive Policy Governing BCCs
- 6) Please list all other departments or person(s) you have brought your concern to:  
 \_\_\_\_\_
- 7) Do you consider this request urgent? ☐ Yes ☒ No  
 If yes, please indicate why:  
 \_\_\_\_\_

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:

J. A. Falck

*Please send this form and all supporting materials to:*

**LOC@oneidanation.org**

or

**Legislative Operating Committee (LOC)**

P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376



## LEGISLATIVE REFERENCE OFFICE STANDARD OPERATING PROCEDURE

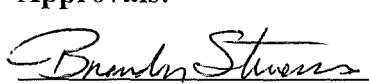

**Title:** Post Law Adoption SOP

**Origination Date:** November 2, 2016

**Revision Date:** N/A

**Author:** LRO

**Approvals:**

 Brandon Stevens, LOC Chair	 Jennifer Falck, LRO Director
10/27/16	10/28/16
Date	Date

**1.0 PURPOSE.** To formalize the process after a law is adopted by the Oneida Business Committee or the General Tribal Council.

### **2.0 DEFINITIONS**

**1.1 “LOC” means the Legislative Operating Committee.**

**1.2 “LRO” means the Oneida Legislative Reference Office.**

**1.3 “OBC” means the Oneida Business Committee.**

### **3.0 RESOLUTION**

**3.1** LRO staff, as assigned by the LRO Director, shall timely submit a Word version of the adopting resolution approved by the OBC to the appropriate staff member within the Business Committee Support Office.

**3.2** LRO office will receive a signed PDF version of the finalized adopting resolution from the Business Committee Support Office staff or this document will be available in the group drive at G:\Minutes and Resolutions\Resolutions.

### **4.0 UPDATE LAW**

**4.1** The appropriate LRO staff attorney will update the new or amended law to create the “official” document.

**4.1.1** Update footnote history at the end of the law with the adopting resolution citation.

**4.1.2** Update section 2-1 with the adopting resolution citation.

**4.1.2.1** Upon permanent adoption; emergency legislation adopting resolution citation is removed from section 2-1 and replaced with permanent adopting resolution citation.

**4.1.3** Remove line numbering.

**4.1.4** Remove “draft” from right hand corner of law document.

**4.1.5** Make any changes to the law as directed from the OBC floor.

### **5.0 CODE OF LAWS**

**5.1** The appropriate LRO staff attorney shall save the finalized Word version and PDF version of the adopted law to the Group drive at G:\LOC\WP\Code of Laws.

**5.2** The appropriate LRO staff attorney shall move the old version of the law, if amended, to G:\LOC\WP\Code of Laws\Old Versions.

**6.0 ACTIVE FILES LIST**

- 6.1 The LOC Director shall move the item within the active files list to the completed items section.

**7.0 NOTIFICATION**

- 7.1 LRO staff, as assigned by the LRO Director, shall send out notification from the LOC email address to the LOC packet and contact list located at G:\LOC\WP\LOC Packet List to include the finalized PDF version of the adopted law and accompanying adopting resolution to:

7.1.1 LOC.

7.1.2 BC.

7.1.3 Division Directors.

7.1.4 Supervisors.

7.1.5 LOC and BC Assistants.

7.1.6 Interested parties identified in the active files list.

7.1.6.1 Interested parties contact information is located at  
G:\LOC\WP\2014-2017 Active Files List\Contacts.

**8.0 LOC WEBSITE**

- 8.1 LRO staff, as identified by the LRO Director, shall update the Oneida Register on the LOC website.
- 8.1.1 Post finalized PDF version of the law to the Oneida Register on the Oneida website.
- 8.1.2 Update the Legislative Actions section under the Oneida Register on the Oneida website at <https://oneida-nsn.gov/government/register/>.
-

## Jennifer A. Falck

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**From:** Jennifer A. Falck  
**Sent:** Thursday, October 20, 2016 10:09 AM  
**To:** Brandon L. Yellowbird-Stevens; Rhiannon R. Metoxen; Ronald W. Hill; Danelle A. Wilson; Fawn J. Billie; Cathy L. Bachhuber; David P. Jordan; Leyne C. Orosco; Jennifer A. Webster  
**Subject:** E-Poll  
**Attachments:** III.2.4 2016 10 26 Election Law Analysis 2.pdf

### Good Morning Everyone-

As I am putting together BC agenda requests, I am realizing the Election Law Amendments legislative analysis was not in your packets this morning.

Please review the analysis and reply to me with a SUPPORT or NOT SUPPORT and we will move forward from there.

Thank You-  
-jen

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**From:** Fawn J. Billie  
**Sent:** Thursday, October 20, 2016 8:13 PM  
**To:** Jennifer A. Falck  
**Subject:** RE: E-Poll

### Support

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**From:** Ronald W. Hill  
**Sent:** Thursday, October 20, 2016 7:49 PM  
**To:** Fawn J. Billie  
**Cc:** Brandon L. Yellowbird-Stevens; Jennifer A. Falck; Rhiannon R. Metoxen; Danelle A. Wilson; Cathy L. Bachhuber; David P. Jordan; Leyne C. Orosco; Jennifer A. Webster  
**Subject:** Re: E-Poll

### Support

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**From:** Fawn J. Billie  
**Sent:** Thursday, October 20, 2016 12:32 PM  
**To:** Brandon L. Yellowbird-Stevens; Jennifer A. Falck; Rhiannon R. Metoxen; Ronald W. Hill; Danelle A. Wilson; Cathy L. Bachhuber; David P. Jordan; Leyne C. Orosco; Jennifer A. Webster  
**Subject:** RE: E-Poll

### Support

**From:** David P. Jordan  
**Sent:** Thursday, October 20, 2016 11:06 AM  
**To:** Jennifer A. Falck  
**Subject:** RE: E-Poll

### Support

**From:** Brandon L. Yellowbird-Stevens  
**Sent:** Thursday, October 20, 2016 10:53 AM  
**To:** Jennifer A. Falck; Rhiannon R. Metoxen; Ronald W. Hill; Danelle A. Wilson; Fawn J. Billie; Cathy L. Bachhuber; David P. Jordan; Leyne C. Orosco; Jennifer A. Webster  
**Subject:** RE: E-Poll

Support

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**From:** Jennifer A. Webster  
**Sent:** Thursday, October 20, 2016 10:55 AM  
**To:** Jennifer A. Falck; Brandon L. Yellowbird-Stevens; Rhiannon R. Metoxen; Ronald W. Hill; Danelle A. Wilson; Fawn J. Billie; Cathy L. Bachhuber; David P. Jordan; Leyne C. Orosco  
**Subject:** RE: E-Poll

Support,  
Jenny

# October 2016

October 2016						
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November 2016						
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	Monday		Tuesday		Wednesday		Thursday		Friday	
	Oct 3		4		5		6		7	
Oct 3 - 7					9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar					
	10		11		12		13		14	
Oct 10 - 14					BC Meeting (BCCR)					
	17		18		19		20		21	
Oct 17 - 21							9:00am 12:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar 12:00pm 1:00pm FW: Real Property Amendments- Public Meeting (BC_Conf_Room) - Jen			
	24		25		26		27		28	
Oct 24 - 28					BC Meeting (BCCR)					
	31		Nov 1		2		3		4	
Oct 31 - Nov 4										

# November 2016

November 2016						
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	Monday	Tuesday	Wednesday	Thursday	Friday
Oct 31 - Nov 4	<b>Oct 31</b>	<b>Nov 1</b>	<b>2</b>	<b>3</b>	<b>4</b>
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar	12:00pm 2:30pm Community Support Fund Public Meeting (BCCR)	
Nov 7 - 11	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>
			BC Meeting (BCCR)		Veterans Day Holiday
Nov 14 - 18	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar		
Nov 21 - 25	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>
			BC Meeting (BCCR)	Thanksgiving Holiday	Indian Day Holiday
Nov 28 - Dec 2	<b>28</b>	<b>29</b>	<b>30</b>	<b>Dec 1</b>	<b>2</b>