



## **LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**

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

December 6, 2017 9:00 a.m.

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

### **II. Minutes to be approved**

1. November 15, 2017 LOC Meeting Minutes (pg. 2)

### **III. Current Business**

1. GTC Meetings Law status update for January 2018 Annual GTC Meeting (pg. 4)
2. Landlord-Tenant Amendments (pg. 9)
3. Real Property Amendments (pg. 50)
4. Petition: Dodge-Law Firm for GTC (pg. 74)
5. Petition: Powless, Gina-Banishment Law Resolution (pg. 78)

### **IV. New Submissions**

1. Work Visas (pg. 83)
2. Uniform Commercial Code and Business Organizations (pg. 84)
3. Election Law Amendments (pg. 85)

### **V. Additions**

### **VI. Administrative Updates**

1. Membership Ordinance Rule #1 - Enrollment (pg. 88)

### **VII. Executive Session**

### **VIII. Recess/Adjourn**



## **LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**

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

November 15, 2017

9:00 a.m.

**Present:** David P. Jordan, Kirby Metoxen, Ernest Stevens III, Jennifer Webster, Daniel Guzman King

**Others Present:** Clorissa Santiago, Jen Falck, Lee Cornelius, Rae Skenandore, Cathy Bachhuber, Laura Laitinen-Warren

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

1. Motion by Daniel Guzman King to approve the agenda with the addition of Real Property Emergency Amendments under Current Business; seconded by Kirby Metoxen. Motion carried unanimously.

### **II. Minutes to be approved**

1. Motion by Kirby Metoxen to approve the November 1, 2017 LOC minutes and forward to the Oneida Business Committee for approval; seconded by Jennifer Webster. Motion carried unanimously.

### **III. Current Business**

#### **1. Landlord-Tenant Amendments (1:25 – 3:12)**

Motion by Jennifer Webster to defer to the next meeting; seconded by Kirby Metoxen. Motion carried unanimously.

#### **2. Real Property Emergency Amendments (3:12 – 3:52)**

Motion by Kirby Metoxen to remove the emergency status from the Real Property Amendments and assign as a high priority; seconded by Jennifer Webster. Motion carried unanimously.

*\*\*\*Ernest Stevens III entered the meeting at 9:04 a.m.*

### **IV. New Submissions**

#### **1. Budget Management & Control Act Emergency Amendments (3:54 – 8:33)**

Motion by Daniel Guzman King to deny the request and recommend that the requester bring the issue directly to a joint Oneida Business Committee/Land Commission meeting; seconded by Jennifer Webster. Motion carried unanimously.

### **V. Additions**

### **VI. Administrative Updates**

#### **1. GTC Annual Report (8:36 – 9:48)**

Motion by Ernest Stevens III to approve the LOC's FY17 GTC Annual Report with the noted changes; seconded by Jennifer Webster. Motion carried unanimously.

*Noted changes: Add fiscal year 2017 positive variance and forward to the Secretary's Office for submission.*

**VII. Executive Session**

**VIII. Adjourn**

Motion by Kirby Metoxen to adjourn the November 15, 2017 Legislative Operating Committee meeting at 9:10 a.m.; seconded by Daniel Guzman King. Motion carried unanimously.



Legislative Operating Committee  
December 6, 2017

# General Tribal Council Meetings Law

<b>Submission Date:</b> 9/17/14	<b>Public Meetings:</b> 12/6/12, 6/26/17 and 6/29/17
<b>LOC Sponsor:</b> Daniel Guzman King	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This item was carried over into the current term by the LOC. This proposal is for a new law to govern the scheduling and conducting of GTC meetings, including: a standard agenda format and a code of conduct for those in attendance; outlining the duties of those preparing and assisting with GTC meetings, and establishing how petitions would be processed.*

**9/6/17 LOC:** Motion by Jennifer Webster to add GTC Meetings Law to the active files with Daniel Guzman King as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

**9/6/17:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Tani Thurner, Cathy Bachhuber. Drafting attorney provided an update on the status of the GTC meetings law. Next steps will be: 1) pull the current draft back, 2) conduct work meetings with the LOC for policy determinations, 3) collaborate with the Oneida Nation Secretary, and 4) conduct community outreach to garner input.

**9/21/17:** *Work Meeting.* Present: Daniel Guzman King, Clorissa Santiago, Jennifer Falck, Maureen Perkins, Chantre' Smith. The purpose of this work meeting was to develop a plan for outreach to the community regarding the GTC Meetings law.

**9/22/17:** *Work Meeting.* Present: Clorissa Santiago, Melissa Nuthals, Jennifer Falck. The purpose of this meeting was to discuss the development of survey questions for GTC Meetings law.

**9/28/17:** *Work Meeting.* Present: Clorissa Santiago, Jennifer Falck, Maureen Perkins, Jennifer Webster, David P. Jordan, Kirby Metoxen, Ernest Stevens, Daniel Guzman King, Lisa Liggins, Melinda Danforth. Discussed the survey, and made revisions. Discussed the upcoming community meeting and how the LOC envisioned it would be run. The survey and community meeting notice will be updated based on today's conversation.

**10/16/17:** *Work Meeting.* Present: Clorissa Santiago, Jennifer Falck, Maureen Perkins. The purpose of this work meeting was to review potential questions for discussion during the community meeting, and formulate a plan for how the community meeting will be run. A memorandum containing a schedule and discussion questions will be sent to the LOC for review.

**10/23/17:** *Work Meeting.* Present: Clorissa Santiago, Jennifer Falck, Candice Skenandore, Maureen Perkins, David P. Jordan, Kirby Metoxen, Ernest Stevens II, Daniel Guzman King, Jennifer Webster. The purpose of this meeting is to prep for the GTC Meetings law community meeting that will occur that evening from 5:00-7:00p.m. During this meeting we will review the topics of conversation for the community meeting.

*Community Meeting.* Present: Clorissa Santiago, Jennifer Falck, Candice Skenandore, Maureen Perkins, David P. Jordan, Kirby Metoxen, Ernest Stevens II, Daniel Guzman King, Jennifer Webster and various members of the community. The purpose of the community meeting was to collect comments and ideas from the community regarding GTC Meetings and a potential law.

**11/1/17 LOC:** Motion by Kirby Metoxen approve the 60 day active files list update and continue development of all the items on the active files list; seconded by Ernie Stevens III. Motion carried unanimously.

**11/15/17:** *Work Meeting.* Present: Clorissa Santiago, Jennifer Falck, Maureen Perkins, David P. Jordan, Kirby Metoxen, Ernest Stevens II, Daniel Guzman King, Jennifer Webster. The LOC reviewed all comments collected from the survey and 10/23/17 community meeting and began making policy determinations regarding what issues should be addressed in a GTC Meetings law. The drafter will begin working on a draft that reflects decisions made during the meeting.

**Next Steps:**

- Accept the General Tribal Council Meetings law update for the January 28, 2018, General Tribal Council meeting and forward to the Oneida Nation's Secretary's Office.



**TO: Oneida Business Committee**  
**FROM: David P. Jordan, Legislative Operating Committee Chairman**  
**RE: Proposed General Tribal Council Meetings Law Update**  
**DATE: January 28, 2017**

---

### **Background**

The Legislative Operating Committee (LOC) placed the proposed General Tribal Council (GTC) Meetings Law on its Active Files List on September 6, 2017. Daniel Guzman King is the sponsor. This item was carried over from the 2014-2017 term into the current 2017-2020 term.

### **Community Outreach**

The Legislative Reference Office (LRO) worked with the LOC to develop a plan for this proposed legislation. The LOC's primary goal in developing this law, has been to collect comments from the community and use the information to guide in the development of the law. Comments were collected in two ways:

#### **1. Surveys**

**Design:** The LRO worked with the Intergovernmental Affairs Office to develop a survey that would help to identify how community members feel about the current GTC meetings, and how people feel about a potential GTC Meetings Law. Objective questions that could guide the LOC in policy discussions were developed. The survey was not designed nor distributed to meet statistics standards. The goal was to collect enough information to guide legislative drafting and policy decisions.

**Methodology:** Surveys were collected from September 11- October 10, 2017. The survey was posted onto the Oneida Nation's Facebook page, daily Update Oneida e-mails, and paper copies were collected at three budget community meetings. Lastly, the LRO staff collected paper copies at the October 8, 2017 General Tribal Council meeting. Paper survey responses were entered manually. A total of 291 surveys were completed. The margin of error is +/- 5.8%. This number is not statistically representative of the entire population, but it can be used to formulate policy questions and discussion.

#### **Survey Summary Results:**

- 291 surveys were completed
- 73% have attended four or more GTC Meetings in the past year.
- 52% are very dissatisfied or dissatisfied with GTC Meetings.
- 85% strongly agree or agree that change at GTC meetings is needed.

- 74% strongly agree or agree that a GTC Meetings Law is necessary.
- “GTC behavior” is the most commonly identified item that should be in the law. “Speaking at the microphone” and “Safety” were listed as second and third respectively.
- Most of the people that completed a survey were between the ages of 55-64.
- 70% of the people who completed the survey were women.
- 53% of the people who completed the survey were Oneida Nation employees.

## 2. Community Meeting

**Design:** The LOC held a community pot luck meeting on October 23, 2017. The meeting was publicized in the Kaliwisaks twice leading up to that date. The discussion was facilitated by the LOC, and notes were taken by the LRO staff. Discussion questions were developed ahead of time, in an effort to keep the conversation focused;

1. What GTC Meeting issues need to be addressed?
2. How would we enforce guidelines or requirements?
3. How is participation at GTC Meetings?
4. Do we need a GTC Meetings Law?

**Meeting Summary Results:** The meeting was well received by the participants. A total of 20 people attended. Each participant’s comments were collected and became part of the information the LOC is using to guide the drafting of the law.

## Samples of Comments Collected

Throughout this outreach effort, many comments were collected from the community. Below is a sample of the comments collected.

- *“People did not vote in the OBC members to create rules to conduct GTC Meetings. We expect a proper meeting, but not a law controlling us. There is opposition because the idea of a GTC Meetings law has not been talked about enough, but this community meeting is a good start.”*
- *“We need Rules of Decorum, but they need to be respectful and obey the Constitution and Robert’s Rules of Order. We should be using unmodified Robert’s Rules of Order. Robert’s Rules of Order already address when a person is disrespectful.”*
- *“A lot of the same people getting up, even if there is a time limit. People are getting frustrated with the same people talking.”*
- *“Hold smaller meetings so more people are able to participate and share their thoughts and opinions.”*
- *“My biggest issue is safety. I don’t have the answer to make it better? Maybe it is addressed by row by row exiting, or more security.”*
- *“Robert’s Rules of Order govern what happens when a meeting is disruptive. There is nothing that says you have to be respectful, you just can’t interfere with the rights of others.”*

- *"I have a problem with the lines. I remember when we handed out mics to individuals. We should go back to that. We can no longer call on individuals because we are too big. You can't monitor a line."*
- *"GTC looked at Rules of Decorum twice and now OBC is trying to improve. Rules of Decorum didn't involve the public in the creation, and now it does. It's a good start."*
- *"Have a designated Elders seating area. We've tried that but they want to sit with their families."*
- *"Scheduling concerns. Sometimes meetings are canceled and items on the agenda have to be brought back in 60 days. We're limited on when we can meet. Scheduling depends on Radisson availability, weddings, Packer games. Budget meeting was scheduled a while."*
- *"When people check in they should receive a clicker. Everyone accountable for a vote. It would be a way to get their attention and see how they vote or if they didn't vote. If you don't vote, you don't get a stipend."*
- *How expensive is it to vote online, I've attended meetings online. Can I sign in and be monitored?"*
- *"If we carry business to another meeting, we shouldn't get paid. Need meetings to be good and productive and we spend too much on meetings, do we need that many meetings. Where were those people when we weren't getting paid, where are they tonight."*
- *"People do not want to pressure the budget by holding multiple meetings for one agenda. There might be others that do run their own agendas and do not care about extended timelines that result in multiple meetings for the same agenda, but the heart of the people is not to pressure the budget."*

### Next Steps

The LOC reviewed every comment collected from the survey and from the community meeting, and has made general policy decisions about what issues should be addressed in a GTC Meetings Law. The LRO is currently drafting a law that will reflect the decisions made in this work meeting. Once the LOC is comfortable with a draft, and a legislative analysis and fiscal analysis are complete- a public meeting will be held and anyone can either attend that meeting or submit written comments regarding the proposed GTC Meetings Law during the public comment period. Public Meeting and public comment periods are noticed in the Kaliwisaks and at the Oneida Register at [www.oneida-nsn.gov/government/register](http://www.oneida-nsn.gov/government/register). The proposed law will come to the GTC for a vote after all the legislative requirements are met.

### Requested Action

Accept the status report as information and direct the Legislative Operating Committee to continue work on the proposed General Tribal Council Meetings Law.



Legislative Operating Committee  
December 6, 2017

## Landlord-Tenant Amendments

<b>Submission Date:</b> 12/21/16	<b>Public Meeting:</b> 6/5/17 and 10/19/17
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> 01/25/17 <b>Emergency Extended:</b> 07/26/17 <b>Expires:</b> 01/26/18

**Summary:** *Emergency amendments are requested to allow Oneida Housing Authority's Rent-to-Own program to fit within the confines of the Law. Currently, the Law applies to rental agreements which are contracts where the tenant is granted the right to use or occupy the premises for a residential purpose for one year or less. Amendments will revise the definition of "rental agreement" to allow for longer than one year when the contract is on a rent-to-own basis.*

**12/21/16 LOC:** Motion by David P. Jordan to add the Landlord-Tenant Law Emergency Amendments to the Active Files list with David Jordan as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

**1/18/17 LOC:** Motion by Jennifer Webster to approve the emergency amendments adoption packet and forward the Landlord-Tenant Emergency Amendments to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

**1/25/17 OBC:** OBC adopts Landlord-Tenant Law Emergency Amendments through BC-01-25-17-C.

**2/1/17 LOC:** Motion by Jennifer Webster to direct the Finance Department to complete a fiscal impact statement by February 15, 2017 and to approve the public meeting packet, including the fiscal impact statement when completed, and forward the Landlord-Tenant law amendments to a public meeting to be held on March 2, 2017; seconded by Tehassi Hill. Motion carried unanimously.

**3/1/17 LOC:** Motion by Tehassi Hill to accept the February 22, 2017 e-poll which cancelled the March 2, 2017 Landlord-Tenant Public Meeting into the record; seconded by Fawn Billie. Motion carried unanimously.

**4/19/17 LOC:** Motion by Jennifer Webster to accept the Landlord-Tenant permanent amendments draft and request a legislative analysis due back May 3, 2017; seconded by Fawn Billie. Motion carried unanimously.

**5/3/17 LOC:** Motion by Tehassi Hill to approve the public meeting packet and forward the Landlord-Tenant permanent amendments to a public meeting to be held on June 5, 2017 and to forward to the Finance Department for a fiscal analysis due back to the Legislative Reference Office on June 2, 2017; seconded by Fawn Billie. Motion carried unanimously.

**6/5/17:** Public Meeting held.

**6/21/17 LOC:** Motion by David P. Jordan to accept the public meeting comments and memorandum and forward the Landlord-Tenant amendments adoption packet to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

**6/28/17 OBC:** Motion by Brandon Stevens to adopt resolution Landlord-Tenant (Law) Amendments, seconded by Fawn Billie. Motion withdrawn.  
Motion by Lisa Summers to defer the resolution entitled Landlord-Tenant (Law) Amendments to the next Business Committee work meeting, seconded by Jennifer Webster. Motion carried unanimously.

**7/19/17 LOC:** Motion by David P. Jordan to approve the emergency amendments extension adoption packet and forward the Landlord-Tenant Emergency Amendments Extension Resolution to the Oneida Business Committee for their consideration; seconded by Jennifer Webster. Motion carried unanimously.

*Noted for the record: This item extends the existing adoption of emergency amendments for an additional six months.*

**7/26/17 OBC:** Motion by Brandon Stevens to adopt resolution # 07-26-17-I Landlord-Tenant Emergency Amendments, seconded by David Jordan. Motion carried unanimously.

**8/04/17:** OBC Work Meeting Held. Present: Treasurer Trish King, Councilmembers Fawn Billie, Tehassi Hill, David Jordan, and Brandon Stevens. Others Present: Danelle Wilson, Ernie Stevens, Krystal John, Jennifer Falck, Daniel Guzman, Cathy Bachhuber

**Adopt resolution entitled Landlord-Tenant (Law) Amendments.** The BC supported two policy amendments regarding surviving non-members: (1) A surviving non-member can stay in the rent to own program and convey to an Oneida child(ren) or convert the agreement to a rental unit as long as there is an Oneida child in the home; and (2) A surviving non-member may have up to six months from the date of a death or the remainder of the existing lease (maximum of 12 months), whichever is longer before being required to vacate.

**9/6/17 LOC:** Motion by Ernie Stevens III to add Landlord-Tenant Law Amendment to the active files list with David P. Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

**9/6/17:** *Work Meeting.* Present: Jenny Webster, Clorissa Santiago, Candice Skenandore, David P. Jordan, Maureen Perkins, Ernest Stevens III, and Tani Turner. The group agreed to 1) to update the draft based on decisions made in August in a BC work meeting, 2) update the legislative analysis, and 3) bring a public meeting packet for approval to the 9/20/217 LOC meeting.

**9/20/17 LOC:** Motion by Jennifer Webster to approve the Landlord Tenant Amendments public meeting packet and direct the LRO to hold a public meeting on October 19, 2017 and request the Finance Department to submit a fiscal

analysis to the LRO by October 18, 2017; seconded by Daniel Guzman King. Motioned carried unanimously.

**10/19/17:** Public Meeting held.

**11/01/17:** Motion by Ernie Stevens III to approve the public meeting comment review memo and direct that the Landlord-Tenant Amendments adoption packet along with the fiscal impact statement be submitted for the November 15, 2017 LOC meeting; seconded by Kirby Metoxen. Motion carried unanimously.

**11/15/17:** Motion by Jennifer Webster to defer to the next meeting; seconded by Kirby Metoxen. Motion carried unanimously.

**Next Steps:**

-Approve the adoption packet and forward to the OBC for consideration.

**Title 6. Property and Land- Chapter 611**

**LANDLORD-TENANT**

**Tsi> Yuhw<tsyaw@ku Aolihw@ke**

*where it bound to the earth - issues*

611.1.	Purpose and Policy	611.6.	Rights and Duties of Landlords and Tenants
611.2.	Adoption, Amendment, Repeal	611.7.	Domestic Abuse Protections
611.3.	Definitions	611.8.	Sex Offender Registry
611.4.	Rental Programs	611.9.	Termination of Tenancy at Death of Tenant
611.5.	Rental Agreement Documents	611.10.	Landlord or Tenant Actions

**611.1. Purpose and Policy**

611.1-1. *Purpose.* The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants of the Nation's rental programs.

611.1-2. *Policy.* It is the Nation's policy to provide a fair process to all landlords and tenants of the Nation's rental programs that preserves the peace, harmony, safety, health, general welfare and the Nation's resources.

**611.2. Adoption, Amendment, Repeal**

611.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-C and thereafter amended by resolution \_\_\_\_\_.

611.2-2. 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.

611.2-3. 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.

611.2-4. 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.

611.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

**611.3. Definitions**

611.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" ~~means~~<sup>as</sup> the division within the Oneida Nation under the direction of the Comprehensive Housing Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential sales and mortgages programs.

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

(c) "Nation" means the Oneida Nation.

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

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

purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent-to-own basis.

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

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

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

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

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

#### **611.4. Rental Programs**

611.4-1. *Available Rental Programs.* Consistent with available funds, the Comprehensive Housing Division shall provide residential rental programs for providing housing to the following types of tenants and the Oneida Land Commission and the Comprehensive Housing Division shall jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program:

(a) Elder tribal members;

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

(c) Tribal members in general.

611.4-2. *Minimum Rental Eligibility Requirements.* In order to be eligible for a rental agreement, applicants shall meet the following conditions:

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

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

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

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

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

(f) Meet any other eligibility requirements set by the rental program’s rules, which may not be less strict than this law, but may be stricter than this law, provided that rules developed for low-income Tribal members and families:

(1) May not contain eligibility requirements that consider debt owed or evictions from entities other than the Comprehensive Housing Division; but

(2) May contain eligibility requirements that consider debt owed to utility providers, provided that eligibility may not be denied for any debt owed to a utility provider with a past due balance of less than two hundred dollars (\$200).

611.4-3. *Tenant Selection.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

#### **611.5. Rental Agreement Documents**

611.5-1. *Severability of Rental Agreement Provisions.* The provisions of a rental agreement are severable. If any provision of a rental agreement is void or unenforceable by reason of any law, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not affect other provisions of the rental agreement that can be given effect without the invalid or unenforceable provision.

611.5-2. *Requirements of Rental Agreements and Terminations.* A rental agreement or termination of a rental agreement is not enforceable unless it meets the requirements of this law and is in writing.

(a) All rental agreements shall:

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

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

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

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

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

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

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

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

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

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

(A) Increase rent;

(B) Decrease services;

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

(D) Refuse to renew a rental agreement.

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

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

(4) States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This subsection does not affect ordinary maintenance obligations of a tenant under 611.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

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

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

(B) Property damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees. This subsection does not affect ordinary maintenance obligations of a tenant under 611.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

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

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

611.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

## **611.6. Rights and Duties of Landlords and Tenants**

611.6-1. This section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision found in a valid rental agreement.

611.6-2. *Disposition of Personal Property Left by the Tenant.* If the tenant moves from or is evicted from the premises and leaves personal property, the landlord may presume that the tenant has abandoned the personal property and may dispose of said property in any manner that the landlord, in his or her sole discretion, determines is appropriate, provided that:

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

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

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

611.6-3. *Repairs; Untenability.* This section applies to all leases if there is no contrary provision in writing signed by both parties.

(a) *Duties of the Landlord.*

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

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

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

(C) Make all necessary structural repairs.

(D) Except as provided in section 611.6-3(b)(2), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

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

(2) If the premises are part of a building where other parts are occupied by one (1) or more other tenants, negligence or improper use by one (1) tenant does not relieve the landlord from the landlord's duty to make repairs as provided in 611.6-3(a)(1), provided that the landlord may require the responsible tenant to pay for such repairs.

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

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

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

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

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

(4) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either section 611.6-3(b) or (c) governs.

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

*(b) Duties of the Tenant.*

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

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

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

*(c) Untenability.* If the premises become untenable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of section 611.6-3(a) materially affecting the health or safety of the tenant, the

tenant may move from the premises unless the landlord promptly repairs, rebuilds or eliminates the health hazard or the substantial violation of 611.6-3(a) materially affecting the health or safety of the tenant.

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

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

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

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

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

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

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

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

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

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

## **611.7. Domestic Abuse Protections**

611.7-1. If a tenant notices the landlord of domestic abuse with of any of the following documentation, regardless of marital status, the landlord shall change the locks to the premises and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the domestic abuser:

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

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

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

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

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

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

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

611.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a co-tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to remain on the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date the rental agreement is modified. If the latter applies, in addition to removing the co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to extend its duration.

611.7-3. The Eviction and Termination law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

#### **611.8. Sex Offender Registry**

611.8-1. Should a tenant request information about whether any other tenants are required to register as a sex offender, the landlord shall provide the tenant with written notice that he or she may obtain information about the sex offender registry and persons registered within the registry by contacting the department of corrections. The landlord shall include in such notice the appropriate telephone number and internet site of the department of corrections.

#### **611.9. Termination of Tenancy at Death of Tenant**

611.9-1. If a tenant dies, his or her tenancy is terminated as follows:

(a) If the deceased tenant was the only household member listed in the rental agreement, immediately upon the death of the tenant;

(b) If there were additional adult household members aside from the deceased tenant listed in the household within the rental agreement, then the later of the following, provided that an adult household member remaining in the unit shall assume the tenancy responsibilities under the rental agreement:

(1) Six (6) months after the landlord receives notice, is advised, or otherwise becomes aware of the tenant's death, provided that any extension beyond the original term of the agreement requires an amendment or limited term rental agreement which covers the term of the extension; or

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

611.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination of his or her tenancy. A landlord may not contact or communicate with a member of the deceased tenant's family for the purpose of obtaining from the family member rent for which the

family member has no liability except that if adult household members remain in the rental unit following the deceased tenant's death in accordance with section 611.9-1 or 611.9-4, an adult household member shall assume the tenancy responsibilities pursuant to the rental agreement.

611.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises from any obligation under a rental agreement or any other liability to the landlord.

611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement based on Tribal member status, the non-Tribal member tenant may remain in the premises as follows:

(a) If subject to a standard rental agreement (i.e. not on a rent-to-own basis), see section 611.9-1(b) above.

(b) If the rental agreement was on a rent-to-own basis, the remaining non-Tribal member tenant may remain in the premises for a maximum of six (6) months from the date of the Tribal member tenant's death unless the non-Tribal member tenant has a child that is a Tribal member. In the event the ~~non-Tribal member tenant has~~ original tenants have a Tribal member child, the non-Tribal member tenant may remain in the premises under the rent-to-own agreement so long as the non-Tribal member tenant either ~~transfer~~:

(1) ~~Transfers~~ the premises and the rent-to-own agreement to ~~an adult~~ a child of one (1) or both of the original tenants who is a Tribal member ~~child who~~, eighteen years or older, and agrees to live in the premises; or signs

(2) Signs an agreement indicating that the premises and the rent-to-own agreement shall be transferred to a minor Tribal member child when the child is eighteen (18) years old.

~~(b)(c)~~ (c) Should the non-Tribal member tenant ~~be eligible for conveyance~~ satisfy the payment requirements of the ~~premises rent-to-own agreement~~ prior to the Tribal member child's eighteenth (18<sup>th</sup>) birthday, the rent-to-own agreement shall be extended at no additional cost to the tenant and conveyance postponed until the Tribal member child reaches eighteen (18) years of age and the rent-to-own agreement is transferred to the child.

~~(c)(d)~~ (d) In the event the non-Tribal member tenant either has no children living in the premises that are Tribal members or declines to enter the agreement transferring the rent-to-own agreement to a Tribal member child, the rent-to-own agreement shall be terminated upon the tenant's ineligibility to remain in the rent-to-own program and a limited term rental agreement shall be executed.

611.9-5. Where a landlord is ~~so~~ terminating a rental agreement entered on a rent-to-own basis based on death of a Tribal member tenant, the landlord shall pay the remaining co-tenant all equity the tenants may have accrued in accordance with the rental agreement.

#### 611.10. Landlord or Tenant Actions

611.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement.

611.10-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental agreement.

611.10-3. The landlord is the Comprehensive Housing Division in regards to taking actions authorized under this law and complaints filed with the Oneida Judiciary shall name the Comprehensive Housing Division and the specific program.

378 *End.*

379

380 Adopted – BC-10-12-16-C

381 Emergency Amended – BC-01-25-17-C

382 Emergency Extension – BC-07-26-17-I

---



TO: Oneida Business Committee  
FROM: David P. Jordan, LOC Chairperson  
DATE: December 13, 2017  
RE: Landlord-Tenant Law Amendments

---

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

1. Resolution: Landlord-Tenant (Law) Amendments
2. Statement of Effect: Landlord-Tenant (Law) Amendments
3. Landlord-Tenant (Law) Amendments Fiscal Impact Statement
4. Landlord-Tenant (Law) Amendments Legislative Analysis
5. Landlord-Tenant (Law) Amendments Redline to Current Draft
6. Landlord-Tenant (Law) Amendments Clean Draft

### *Overview*

This resolution adopts amendments to the Landlord-Tenant law which:

- Include rent-to-own agreements in the definition of rental agreements by allowing them to extend beyond 1 year terms when entered on a rent-to-own basis [see 611.3-1(e)];
- Include additional limitations on minimum rental eligibility requirements for the income-based rental program which do not allow consideration of prior evictions from landlords outside the Nation or debt owed except for past due utility debts in excess of \$200; and
- Amend the provisions related to what process should be followed when a tenant passes away, both when there are no other household members and when the tenant leaves behind household members that have a continuing housing need.
- Amend the definition of Comprehensive Housing Division in accordance with resolution BC-09-27-17-H.

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on June 5, 2017 with a comment period closing on June 12, 2017. Those comments were considered by the Legislative Operating Committee (LOC) at a June 15, 2017 LOC work meeting and were thereafter formally accepted on the record at the June 21, 2017 LOC meeting. An additional public meeting was held on October 19, 2017 with a comment period closing on October 26, 2017. There were no comments, oral or written, submitted for the second public meeting. This Law will become effective ten business days after the date of adoption of the resolution as identified in section 109.9-3 of the Legislative Procedures Act. The anticipated effective date will be Monday, December 23, 2017.

### **Requested Action**

Approve the Resolution: Landlord-Tenant (Law) Amendments

**BC Resolution \_\_\_\_\_**  
*Landlord-Tenant (Law) Amendments*

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

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

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

**WHEREAS,** the Oneida Business Committee originally adopted the Landlord-Tenant law through resolution BC-10-12-16-C; and

**WHEREAS,** following adoption, the Oneida Business Committee adopted emergency amendments to the Landlord-Tenant law through resolution BC-01-25-17-C and extended those emergency amendments through resolution BC-07-26-17-I which revised the definition of rental agreement to include the rent-to-own agreements currently offered through the Oneida Housing Authority which may last longer than one (1) year; and

**WHEREAS,** as part of the process required by the Legislative Procedures Act to make such emergency amendments effective on a permanent basis, it was determined that additional amendments were necessary to:

- Include additional limitations on minimum rental eligibility requirements for the income-based rental program which do not allow consideration of prior evictions from landlords outside the Nation or debt owed except for past due utility debts in excess of \$200; and
- Amend the provisions related what process should be followed when a tenant passes away, both when there are no other household members and when the tenant leaves behind household members that have a continuing housing need.
- Amend the definition of Comprehensive Housing Division in accordance with resolution BC-09-27-17-H.

**WHEREAS,** a public meeting on the proposed Amendments was held on October 19, 2017 in accordance with the Legislative Procedures Act; and

**NOW THEREFORE BE IT RESOLVED,** that the amendments to the Landlord-Tenant law are hereby adopted and shall become effective on December 23, 2017 in accordance with the Legislative Procedures Act.



## **Statement of Effect**

### *Landlord-Tenant (Law) Amendments*

#### ***Summary***

This Resolution adopts Amendments to the Landlord-Tenant Law (the “Law”) which permanently adopt prior emergency amendments which included the Oneida Housing Authority’s (OHA’s) rent-to-own program in the definition of rental agreement and also include the following two other revisions to:

- 1) Include additional limitations on minimum rental eligibility requirements for the income-based rental program which do not allow consideration of prior evictions from landlords outside the Nation or debt owed except for past due utility debts in excess of \$200; and
- 2) Amend the provisions related what process should be followed when a tenant passes away, both when there are no other household members and when the tenant leaves behind household members that have a continuing housing need.

*Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office*

#### ***Analysis by the Legislative Reference Office***

This Law was originally adopted by Resolution BC-10-12-16-C. Thereafter, emergency amendments were adopted to include the income based rental program’s rent-to-own program within the Law’s definition of rental agreement. The emergency amendments were necessary because as written the Law applied to rental agreements that are defined as, “a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less.” The rental agreements in the Law were limited to one (1) year terms to fortify the policy requiring annual renewals of rental agreements and to avoid month-to-month tenancies.

After the adoption of the Law it was discovered that income-based rental program’s rent-to-own program does not fall into the definition of rental agreements provided in the Law because the rental agreement for the rent-to-own program generally has a longer term, usually fifteen (15) years, with conveyance of the home at the satisfaction of the rental agreement.

The emergency amendment to the Law maintains the policies the Law sets forth while including the income-based rental program’s rent-to-own program by revising the definition of “rental agreement” to state, “a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on

a rent to own basis.” These amendments adopt the emergency amendments on a permanent basis as required by the Legislative Procedures Act.

In addition to adopting the emergency amendments on a permanent basis, these Amendments also:

- 1) Include additional limitations on minimum rental eligibility requirements for the income-based rental program which do not allow consideration of prior evictions from landlords outside the Nation or debt owed except for past due utility debts in excess of \$200; and
- 2) Amend the provisions related what process should be followed when a tenant passes away, both when there are no other household members and when the tenant leaves behind household members that have a continuing housing need.

The limitation as to what may be considered as part of applicant eligibility was added at the direction of resolution BC-03-27-17-C entitled *Repeal of Resolution BC-12-23-09-A, Oneida Housing Authority Admissions and Occupancy Policy*. In that resolution, the Oneida Business Committee repealed an existing resolution which prohibited any prior evictions or rent and utility related debts from being considered as part of eligibility for applicants to the low-income rental program and required that minimum limitation be included in the law to safeguard future tenants from any revisions that may be proposed in future rules. Specifically, the resolution stated:

**NOW THEREFORE BE IT FURTHER RESOLVED**, that the Legislative Operating Committee is hereby directed to amend the Landlord-Tenant law to include the following restrictions on the rules governing the income-based rental program:

1. The rules may not contain eligibility requirements that consider debt owed or evictions from entities other than the Comprehensive Housing Division; and
2. The rules may contain eligibility requirements that consider debt owed to utility providers, but may not deny eligibility for any past due debt owed to a utility provider with a balance of less than two hundred dollars (\$200).

Accordingly, the limitation as to eligibility requirements included in these Amendments is required action and satisfies the LOC’s responsibility pursuant to resolution BC-03-27-17-C.

Lastly, the revision to amend the provisions related what process should be followed when a tenant passes away, both when there are no other household members and when the tenant leaves behind household members that have a continuing housing need provide the community with additional needed clarity and extend the permissible continuation of tenancy following death from sixty (60) days to six (6) months. The amendments also add to the Law the income-based rent-to-own program’s current practice of paying out any accrued equity in the event of the termination of a rent-to-own agreement.

A public meeting was held for these amendments on October 19, 2017 for which the comment period expired on October 26, 2017 in accordance with the Legislative Procedures Act.

### ***Conclusion***

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

# FINANCE ADMINISTRATION

## Fiscal Impact Statement



# MEMORANDUM

DATE: June 20, 2017

FROM: Rae Skenandore, Financial Management Analyst

TO: Larry Barton, Chief Financial Officer  
RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Financial Impact of the Landlord Tenant Amendments**

## I. Estimated Fiscal Impact Summary

Law: Landlord Tenant Amendments		Draft 1
<b>Implementing Agency</b>	Oneida Housing Authority Division of Land Management Elder Services Land Commission	
<b>Estimated time to comply</b>	10 days from adoption	
<b>Estimated Impact</b>	<b>Current Fiscal Year</b>	<b>10 Year Estimate</b>
<b>Total Estimated Fiscal Impact</b>	<b>\$0</b>	<b>\$0</b>

## II. Background

### A. Legislative History

This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-C. Emergency Amendments to the Law were approved by BC-1-25-17-C.

### B. Summary of Content

1. Permanently adopt an emergency amendment to the Landlord-Tenant Law. The emergency amendment resolution included the following:
  - a) the Law applied to rental agreements defined as, “a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less;”

b) the Oneida Housing Authority's rent-to-own program did not fall into the Law's definition of rental agreements because the rental agreement for the rent-to-own program generally has a fifteen (15) year term with conveyance of the home at the satisfaction of the rental agreement;

c) the rental agreements in the Law were limited to one (1) year terms to fortify the policy requiring annual renewals of rental agreements and to avoid month-to-month tenancies;

d) the emergency amendment to the Law maintained the Law's policies while including the Oneida Housing Authority's rent-to-own program by revising the definition of "rental agreement" to state, "a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent to own basis;"

2. Include additional eligibility requirements set by the rental program's rules, which may not be less strict than this law, but may be stricter than this Law, provided that rules developed for low-income Tribal members and families:

a) May not contain eligibility requirements that consider debt owed or evictions from entities other than the Comprehensive Housing Division;

b) May contain eligibility requirements that consider debt owed to utility providers, provided that eligibility may not be denied for any debt owed to a utility provider with a past due balance of less than two hundred dollars (\$200).

### **C. Methodology and Assumptions**

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

2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

3. The analysis was completed based on the information provided as of the date of this memo.

**II. Agency**

There are no startup, personnel, office, or documentation costs associated with this legislation. The amendments will become effective 10 days from adoption.

**III. Financial Impact**

No impact.

**IV. Recommendation**

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



## Landlord-Tenant Permanent Amendments Legislative Analysis

### SECTION 1. BACKGROUND

REQUESTER: Krystal L. John	SPONSOR: David P. Jordan	DRAFTER: Krystal L. John	ANALYST: Maureen Perkins
<b>Intent of Proposed Amendments</b>	The current amendments are proposed by the Oneida Law Office in consultation with the Oneida Housing Authority in order to ensure the rent-to-own rental agreements are covered by the law. A provision was added regarding non-Tribal tenants in rent-to-own agreements when the qualified Oneida tenant becomes deceased. Additionally minimum eligibility requirements were added under the proposed amendments as directed by Oneida Business Committee Resolution 3-22-17-C.		
<b>Purpose of the Law</b>	To provide mechanisms for protecting the rights of the landlords and tenants within the reservation <i>[see 611.1-1]</i> .		
<b>Affected Entities</b>	Comprehensive Housing Division, Land Commission, Oneida Tribal members, their spouses and occupants who rent and occupy premises under this law.		
<b>Affected Legislation</b>	Eviction and Termination, Administrative Rulemaking, Building Code, Zoning and Shoreline Protection Ordinance, Pardon and Forgiveness, and Real Property		
<b>Enforcement/Due Process</b>	The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement <i>[see 611.10-1]</i> .		
<b>Public Meeting</b>	Public meetings were held 06/05/17 and 10/19/17.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The current amendments permanently adopt the emergency amendments adopted by resolution 1-25-17-C and BC-07-26-17-I to clarify the current law to specifically allow rent-to-own rental agreements to last longer than one year *[see 611.3-1(e)]*.
- B. Additional amendments were included as detailed below.

### SECTION 3. CONSULTATION

- A. The Oneida Housing Authority and the Oneida Law Office recognized that the current law does not cover the rent-to-own programs because these are rental agreements that last longer than one year.
- B. The OBC has decided that it is in the best interest of Oneida families to ensure that any current or future rules developed to govern the income based rental program do not consider debt owed or evictions from entities other than the Comprehensive Housing Division or past due utility accounts of less than \$200 as part of the selection criteria. This is a policy decision of the OBC.
- C. The OBC also decided that non-Tribal members in rent-to-own agreements have the option to stay in the agreement if they sign an agreement indicating the premises and the rent-to-own agreement will be transferred to their child who is an enrolled Tribal member upon turning 18 or immediately to an adult child if the qualified Tribal member tenant becomes deceased.
- D. These changes do not require additional research.

### SECTION 4. PROCESS

- 21 A. This amendment to the law permanently adopts the emergency amendment adopted by resolutions  
22 BC-1-25-17-C and BC-07-26-17-I and includes additional provisions directed by the OBC. This is  
23 the correct legislative process.
- 24 C. The emergency amendments were added to the Active Files List on December 21, 2016, and were  
25 adopted by resolution BC-1-25-17-C and adopted by emergency extension by resolution BC-07-26-  
26 17-I and expire 01-26-18.
- 27 D. The current amendments permanently adopt the emergency amendments and include the additional  
28 provision related to the minimum eligibility requirements *[see 611.4-2(f)(1) and (2)]*, prior evictions  
29 and debt owed from outside the Nation are not considered other than past due utility bills in excess of  
30 \$200 *[see 611.4-2 (f) (1) and (2)]* and provisions related to non-Tribal member tenants that have the  
31 option to remain in the rent-to-own agreement if they have a child who is a Tribal member and agree  
32 to convey the property to the child upon turning 18 or immediately transfer the premises and the rent-  
33 to-own agreement to an adult child who is a Tribal member if the qualifying Tribal member becomes  
34 deceased prior to completing the rent-to-own agreement *[see 611.9-4(b)]*. A public meeting was held  
35 6/5/17 and an additional public meeting is proposed for 10/19/2017.
- 36

## 37 SECTION 5. CONTENTS OF THE PROPOSED AMENDMENTS

- 38 A. The term for Comprehensive Housing Division was updated to reflect the new term for the entity  
39 responsible under this law. The Comprehensive Housing Division was adopted by resolution BC-09-  
40 27-17-H and means the division within the Nation under the direction of the Comprehensive Housing  
41 Division Director which consists of all residential services offered by the Nation, including but not  
42 limited to, all rental programs, the rent-to-own program, and the residential sales and mortgages  
43 programs *[see 611.3-1]*.
- 44 B. The term for “rental agreements” is restricted to one year or less in the adopted Landlord-Tenant law.  
45 This definition excludes rent-to-own contracts which are longer than one (1) year. The amendment  
46 ensures rent to own contracts are covered by the definition of rental agreements by expanding the  
47 definition to include rent to own contracts which are for terms longer than one year *[see 611.3-1(e)]*.
- 48 C. A definition for Tribal member was added to the law *[see 611.3-1(i)]*.
- 49 D. Minimum rental eligibility requirements were added relating to rules developed for the income-based  
50 rental program which prohibits considering debt owed to or evictions from entities other than the  
51 Comprehensive Housing Division but allows consideration of past due debt owed to utility providers  
52 over two hundred dollars (\$200) *[see 611.4-2 (f) (1) and (2)]*.
- 53 E. If a deceased tenant was the only household member listed on the rental agreement, the tenancy is  
54 terminated immediately upon the death *[see 611.9-1(a)]*.
- 55 F. If there were additional adults household members aside from the deceased tenant listed on the rental  
56 agreement, the adult household members will assume tenancy responsibilities under the rental  
57 agreement and can stay for six (6) months after the landlord receives notice of the tenant’s death and  
58 this requires an amendment or limited term rental agreement to cover the term of the extension *[see*  
59 *611.9-1(b)(1)]*.
- 60 G. If adult household members remain in a rental unit following a deceased tenant’s death, the  
61 household member will assume the tenancy responsibilities according to the rental agreement *[see*  
62 *611.9-2]*.
- 63 H. If a deceased tenant was a Tribal member whose death results in a non-Tribal member tenant’s  
64 ineligibility for the rental agreement, the non-Tribal member tenant may remain in the premises:

- If a standard rental agreement (not a rent-to-own agreement), any extension beyond the original term of agreement requires an amendment or limited term rental agreement which covers the term of the extension may be for a maximum of 6 months *[see 611.9-4(a)]*.
- If the rental agreement was on a rent-to-own basis and the non-Tribal member tenant has no Tribal member children, the non-Tribal member tenant may remain in the premises for a maximum of 6 months from the date of the Tribal member's death. In this case, the rent-to-own agreement will be terminated upon the tenant's ineligibility to remain in the rent-to-own agreement and a new rental agreement, which may be a limited term rental agreement, will be executed. The landlord will pay the remaining co-tenant all equity the tenants have accrued according to the rental agreement *[see 611.9-4(b)]*.
- If the non-Tribal member tenant has a child who is a Tribal member living in the premises, the non-Tribal member tenant may remain in the rent-to-own agreement as long as they sign an agreement indicating that the premises and the rent-to-own agreement will be transferred to the Tribal member child upon turning 18. If the non-Tribal member tenant has an adult Tribal member child, the rent-to-own agreement may be immediately transferred to that child upon the qualifying Tribal member's death and upon the adult Tribal member agreeing to live in the premises *[see 611.9-4(b)]*.
- If the non-Tribal member tenant either has no Tribal member children or declines to enter into the agreement transferring the rent-to-own agreement to the Tribal member child, the rent-to-own agreement will be terminated upon the tenant's ineligibility to remain in the rent-to-own program and a limited term rental agreement will be executed *[see 611.9-4(b)(1)]*.
- Where a landlord is terminating a rent-to-own agreement, the landlord shall pay the remaining co-tenant all equity the tenants have accrued in accordance with the rental agreement *[see 611.9-4(b)(2)]*.

## **SECTION 6. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

- A.** The proposed amendments will permanently ensure the Landlord-Tenant law covers existing rent-to-own rental agreements and future rent-to-own rental agreements and ensures Tribal members who enter into these rental agreements have the same due process and other rights as all other rental agreements under the Landlord-Tenant law.
- B.** The amendments ensure that prior evictions and debt from outside the Nation are not considered other than past due debt owed to a utility provider over two hundred dollars (\$200).
- C.** The amendments ensure that non-Tribal member co-tenants in rent-to-own rental agreements are paid the equity that has accumulated in the property due to the fact that they are no longer eligible to remain in the rental agreement. Additionally, the amendments allow non-Tribal member tenants to remain in a rent-to-own agreement when the qualifying Tribal member tenant dies if they agree to transfer the premises and the rent-to-own agreement to an adult Tribal member child or a minor Tribal member child upon turning 18 years of age.

## **SECTION 7. OTHER CONSIDERATIONS**

- A.** The Landlord-Tenant law was adopted on October 12, 2016 by resolution BC-10-12-16-C and became effective on February 9, 2017. The emergency amendments to the Landlord-Tenant law were

adopted on January 25, 2017 by resolution BC-01-25-17-C, became effective February 9, 2017 and were extended through January 26, 2018 by resolution BC-07-26-17-I. The current proposed amendments permanently adopt these emergency amendments, update the definition for Comprehensive Housing Division and add the provisions related to debt owed, prior evictions and rental agreements related to non-Tribal member co-tenants who are no longer eligible for the rental agreement when the eligible Tribal member tenant dies. The current amendments will become effective December 8, 2017 in accordance with the Legislative Procedures Act *[see 109.9-3]*.

**Title 6. Property and Land-- Chapter 611**

**LANDLORD-TENANT**

**Tsi> Yuhw<tsyaw@ku Aolihw@ke**

*where it bound to the earth - issues*

611.1.	Purpose and Policy	611.6.	Rights and Duties of Landlords and Tenants
611.2.	Adoption, Amendment, Repeal	611.7.	Domestic Abuse Protections
611.3.	Definitions	611.8.	Sex Offender Registry
611.4.	Rental Programs	611.9.	Termination of Tenancy at Death of Tenant
611.5.	Rental Agreement Documents	611.10.	Landlord or Tenant Actions

**611.1. Purpose and Policy**

611.1-1. *Purpose.* The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants of the Nation's rental programs.

611.1-2. *Policy.* It is the Nation's policy to provide a fair process to all landlords and tenants of the Nation's rental programs that preserves the peace, harmony, safety, health, general welfare and the Nation's resources.

**611.2. Adoption, Amendment, Repeal**

611.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-  
~~C~~; and thereafter amended by resolution.

611.2-2. 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.

611.2-3. 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.

611.2-4. 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.

611.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

**611.3. Definitions**

611.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" ~~means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.~~<sup>+</sup>

as the division within the Oneida Nation under the direction of the Comprehensive Housing Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential sales and mortgages programs.

<sup>+</sup> See BC Resolution 09-27-17-H providing that the Comprehensive Housing Division means the division within the Oneida Nation under the direction of the Comprehensive Housing Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent to own program, and the residential sales and mortgages programs.

residential sales and mortgages programs. (b) “Landlord” means the Nation in its capacity to rent real property subject to a rental agreement.

(c) “Nation” means the Oneida Nation.

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

(e) “Rental Agreement” means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent-to-own basis.

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

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

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

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

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

#### **611.4. Rental Programs**

611.4-1. *Available Rental Programs.* Consistent with available funds, the Comprehensive Housing Division shall provide residential rental programs for providing housing to the following types of tenants and the Oneida Land Commission and the Comprehensive Housing Division shall jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program:

(a) Elder tribal members;

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

(c) Tribal members in general.

611.4-2. *Minimum Rental Eligibility Requirements.* In order to be eligible for a rental agreement, applicants shall meet the following conditions:

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

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

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

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

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

(f) Meet any other eligibility requirements set by the rental program's rules, which may not be less strict than this law, but may be stricter than this law-, provided that rules developed for low-income Tribal members and families:

(1) May not contain eligibility requirements that consider debt owed or evictions from entities other than the Comprehensive Housing Division; but

(2) May contain eligibility requirements that consider debt owed to utility providers, provided that eligibility may not be denied for any debt owed to a utility provider with a past due balance of less than two hundred dollars (\$200).

611.4-3. *Tenant Selection.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

### **611.5. Rental Agreement Documents**

611.5-1. *Severability of Rental Agreement Provisions.* The provisions of a rental agreement are severable. If any provision of a rental agreement is void or unenforceable by reason of any law, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not affect other provisions of the rental agreement that can be given effect without the invalid or unenforceable provision.

611.5-2. *Requirements of Rental Agreements and Terminations.* A rental agreement or termination of a rental agreement is not enforceable unless it meets the requirements of this law and is in writing.

(a) All rental agreements shall:

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

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

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

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

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

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

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

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

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

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

(A) Increase rent;

(B) Decrease services;

- (C) Bring an action for eviction pursuant to the Eviction and Termination law; and/or
- (D) Refuse to renew a rental agreement.
- (2) Except as otherwise provided in this law in regards to domestic abuse, authorizes the eviction or exclusion of a tenant from the premises other than through the process described in the Eviction and Termination law.
- (3) Requires the tenant to pay attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement except as supported by a court order.
- (4) States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This subsection does not affect ordinary maintenance obligations of a tenant under 611.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.
- (5) Imposes liability on the tenant for any of the following:
- (A) Personal injury arising from causes clearly beyond the tenant's control.
- (B) Property damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees. This subsection does not affect ordinary maintenance obligations of a tenant under 611.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.
- (6) Waives any obligation on the part of the landlord to deliver the premises in a fit and habitable condition or to maintain the premises during the tenant's tenancy.
- (7) Allows for periodic tenancy, which for the purposes of this section means when a tenant uses/occupies a premises without an effective and valid rental agreement by paying rent on a periodic basis including, but not limited to, day-to-day, week-to-week and month-to-month.

611.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

#### **611.6. Rights and Duties of Landlords and Tenants**

611.6-1. This section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision found in a valid rental agreement.

611.6-2. *Disposition of Personal Property Left by the Tenant.* If the tenant moves from or is evicted from the premises and leaves personal property, the landlord may presume that the tenant has abandoned the personal property and may dispose of said property in any manner that the landlord, in his or her sole discretion, determines is appropriate, provided that:

- (a) The landlord shall hold personal property for a minimum of five (5) business days and the tenant may retrieve said personal property by contacting the landlord.
- (b) The landlord shall keep a written log of the date and the work time that the Nation's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the property after the expiration of the timeframe provided in the order to vacate.
- (c) The Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property.

611.6-3. *Repairs; Untenability.* This section applies to all leases if there is no contrary provision in writing signed by both parties.

(a) *Duties of the Landlord.*

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

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

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

(C) Make all necessary structural repairs.

(D) Except as provided in section 611.6-3(b)(2), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

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

(2) If the premises are part of a building where other parts are occupied by one (1) or more other tenants, negligence or improper use by one (1) tenant does not relieve the landlord from the landlord's duty to make repairs as provided in 611.6-3(a)(1), provided that the landlord may require the responsible tenant to pay for such repairs.

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

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

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

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

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

(4) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either section 611.6-3(b) or (c) governs.

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

(b) *Duties of the Tenant.*

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

the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proven otherwise by the tenant.

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

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

(c) *Untenability.* If the premises become untenable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of section 611.6-3(a) materially affecting the health or safety of the tenant, the tenant may move from the premises unless the landlord promptly repairs, rebuilds or eliminates the health hazard or the substantial violation of 611.6-3(a) materially affecting the health or safety of the tenant.

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

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

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

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

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

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

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

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

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

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

**611.7. Domestic Abuse Protections**

611.7-1. If a tenant notices the landlord of domestic abuse with of any of the following documentation, regardless of marital status, the landlord shall change the locks to the premises and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the domestic abuser:

- (a) An injunction order under Wis. Stat. 813.12(4) protecting the tenant from a co-tenant;
- (b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a co-tenant;
- (c) An injunction order under Wis. Stat. 813.125(4) protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;
- (d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the tenant;
- (e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;
- (f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the tenant under Wis. Stat. 940.32; or
- (g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant being arrested for committing a domestic abuse offense against the tenant under Wis. Stat. 968.075.

611.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a co-tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to remain on the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date the rental agreement is modified. If the latter applies, in addition to removing the co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to extend its duration.

611.7-3. The Eviction and Termination law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

**611.8. Sex Offender Registry**

611.8-1. Should a tenant request information about whether any other tenants are required to register as a sex offender, the landlord shall provide the tenant with written notice that he or she may obtain information about the sex offender registry and persons registered within the registry by contacting the department of corrections. The landlord shall include in such notice the appropriate telephone number and internet site of the department of corrections.

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

611.9-1. If a tenant dies, his or her tenancy is terminated ~~on the earlier of the following~~as follows:

- (a) ~~Sixty (60) days~~If the deceased tenant was the only household member listed in the rental agreement, immediately upon the death of the tenant;
- (b) If there were additional adult household members aside from the deceased tenant listed in the household within the rental agreement, then the later of the following, provided that an adult household member remaining in the unit shall assume the tenancy responsibilities under the rental agreement:

(1) Six (6) months after the landlord receives notice, is advised, or otherwise becomes aware of the tenant's death; provided that any extension beyond the original term of the agreement requires an amendment or limited term rental agreement which covers the term of the extension; or

(b2) The expiration of the term of the rental agreement.

611.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination of his or her tenancy. A landlord may not contact or communicate with a member of the deceased tenant's family for the purpose of obtaining from the family member rent for which the family member has no liability except that if adult household members remain in the rental unit following the deceased tenant's death in accordance with section 611.9-1 or 611.9-4, an adult household member shall assume the tenancy responsibilities pursuant to the rental agreement.

611.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises from any obligation under a rental agreement or any other liability to the landlord.

611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement based on Tribal member status, the non-Tribal member tenant may remain in the premises ~~for the longer of either the duration of the rental agreement or ninety (90) days from the date of the Tribal member tenant's death. If the latter applies, the landlord shall revise the rental agreement to extend its duration as follows:~~

(a) If subject to a standard rental agreement (i.e. not on a rent-to-own basis), see section 611.9-1(b) above.

(b) If the rental agreement was on a rent-to-own basis, the remaining non-Tribal member tenant may remain in the premises for a maximum of six (6) months from the date of the Tribal member tenant's death unless the non-Tribal member tenant has a child that is a Tribal member. In the event the original tenants have a Tribal member child, the non-Tribal member tenant may remain in the premises under the rent-to-own agreement so long as the non-Tribal member tenant either:

(1) Transfers the premises and the rent-to-own agreement to a child of one (1) or both of the original tenants who is a Tribal member, eighteen years or older, and agrees to live in the premises; or

(2) Signs an agreement indicating that the premises and the rent-to-own agreement shall be transferred to a minor Tribal member child when the child is eighteen (18) years old.

(c) Should the non-Tribal member tenant satisfy the payment requirements of the rent-to-own agreement prior to the Tribal member child's eighteenth (18<sup>th</sup>) birthday, the rent-to-own agreement shall be extended at no additional cost to the tenant and conveyance postponed until the Tribal member child reaches eighteen (18) years of age and the rent-to-own agreement is transferred to the child.

(d) In the event the non-Tribal member tenant either has no children living in the premises that are Tribal members or declines to enter the agreement transferring the rent-to-own agreement to a Tribal member child, the rent-to-own agreement shall be terminated upon the tenant's ineligibility to remain in the rent-to-own program and a limited term rental agreement shall be executed.

611.9-5. Where a landlord is terminating a rental agreement entered on a rent-to-own basis based on death of a Tribal member tenant, the landlord shall pay the remaining co-tenant all equity the tenants may have accrued in accordance with the rental agreement.

**611.10. Landlord or Tenant Actions**

611.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement.

611.10-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental agreement.

611.10-3. The landlord is the Comprehensive Housing Division in regards to taking actions authorized under this law and complaints filed with the Oneida Judiciary shall name the Comprehensive Housing Division and the specific program.

*End.*

---

Adopted – BC-10-12-16-C

Emergency Amended – BC-01-25-17-C

Emergency Extension – BC-07-26-17-I

**Title 6. Property and Land- Chapter 611**

**LANDLORD-TENANT**

**Tsi' Yuhwatsyawá'ku Aolihwá'ke**

*where it bound to the earth - issues*

6	611.1.	Purpose and Policy	11	611.6.	Rights and Duties of Landlords and Tenants
7	611.2.	Adoption, Amendment, Repeal	12	611.7.	Domestic Abuse Protections
8	611.3.	Definitions	13	611.8.	Sex Offender Registry
9	611.4.	Rental Programs	14	611.9.	Termination of Tenancy at Death of Tenant
10	611.5.	Rental Agreement Documents	15	611.10.	Landlord or Tenant Actions

**611.1. Purpose and Policy**

611.1-1. *Purpose.* The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants of the Nation's rental programs.

611.1-2. *Policy.* It is the Nation's policy to provide a fair process to all landlords and tenants of the Nation's rental programs that preserves the peace, harmony, safety, health, general welfare and the Nation's resources.

**611.2. Adoption, Amendment, Repeal**

611.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-C and thereafter amended by resolution \_\_\_\_\_.

611.2-2. 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.

611.2-3. 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.

611.2-4. 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.

611.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

**611.3. Definitions**

611.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" as the division within the Oneida Nation under the direction of the Comprehensive Housing Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential sales and mortgages programs. (b)

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

(c) "Nation" means the Oneida Nation.

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

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

purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent-to-own basis.

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

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

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

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

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

#### **611.4. Rental Programs**

611.4-1. *Available Rental Programs.* Consistent with available funds, the Comprehensive Housing Division shall provide residential rental programs for providing housing to the following types of tenants and the Oneida Land Commission and the Comprehensive Housing Division shall jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program:

(a) Elder tribal members;

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

(c) Tribal members in general.

611.4-2. *Minimum Rental Eligibility Requirements.* In order to be eligible for a rental agreement, applicants shall meet the following conditions:

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

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

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

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

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

(f) Meet any other eligibility requirements set by the rental program’s rules, which may not be less strict than this law, but may be stricter than this law, provided that rules developed for low-income Tribal members and families:

(1) May not contain eligibility requirements that consider debt owed or evictions from entities other than the Comprehensive Housing Division; but

(2) May contain eligibility requirements that consider debt owed to utility providers, provided that eligibility may not be denied for any debt owed to a utility provider with a past due balance of less than two hundred dollars (\$200).

611.4-3. *Tenant Selection.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

**611.5. Rental Agreement Documents**

611.5-1. *Severability of Rental Agreement Provisions.* The provisions of a rental agreement are severable. If any provision of a rental agreement is void or unenforceable by reason of any law, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not affect other provisions of the rental agreement that can be given effect without the invalid or unenforceable provision.

611.5-2. *Requirements of Rental Agreements and Terminations.* A rental agreement or termination of a rental agreement is not enforceable unless it meets the requirements of this law and is in writing.

(a) All rental agreements shall:

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

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

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

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

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

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

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

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

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

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

(A) Increase rent;

(B) Decrease services;

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

(D) Refuse to renew a rental agreement.

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

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

(4) States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This subsection does not affect ordinary maintenance obligations of a tenant under 611.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

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

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

(B) Property damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees. This subsection does not affect ordinary maintenance obligations of a tenant under 611.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

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

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

611.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

## **611.6. Rights and Duties of Landlords and Tenants**

611.6-1. This section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision found in a valid rental agreement.

611.6-2. *Disposition of Personal Property Left by the Tenant.* If the tenant moves from or is evicted from the premises and leaves personal property, the landlord may presume that the tenant has abandoned the personal property and may dispose of said property in any manner that the landlord, in his or her sole discretion, determines is appropriate, provided that:

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

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

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

611.6-3. *Repairs; Untenability.* This section applies to all leases if there is no contrary provision in writing signed by both parties.

(a) *Duties of the Landlord.*

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

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

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

(C) Make all necessary structural repairs.

(D) Except as provided in section 611.6-3(b)(2), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

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

(2) If the premises are part of a building where other parts are occupied by one (1) or more other tenants, negligence or improper use by one (1) tenant does not relieve the landlord from the landlord's duty to make repairs as provided in 611.6-3(a)(1), provided that the landlord may require the responsible tenant to pay for such repairs.

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

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

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

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

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

(4) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either section 611.6-3(b) or (c) governs.

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

*(b) Duties of the Tenant.*

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

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

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

*(c) Untenability.* If the premises become untenable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of section 611.6-3(a) materially affecting the health or safety of the tenant, the

tenant may move from the premises unless the landlord promptly repairs, rebuilds or eliminates the health hazard or the substantial violation of 611.6-3(a) materially affecting the health or safety of the tenant.

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

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

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

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

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

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

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

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

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

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

## **611.7. Domestic Abuse Protections**

611.7-1. If a tenant notices the landlord of domestic abuse with of any of the following documentation, regardless of marital status, the landlord shall change the locks to the premises and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the domestic abuser:

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

- (b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a co-tenant;
- (c) An injunction order under Wis. Stat. 813.125(4) protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;
- (d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the tenant;
- (e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;
- (f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the tenant under Wis. Stat. 940.32; or
- (g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant being arrested for committing a domestic abuse offense against the tenant under Wis. Stat. 968.075.

611.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a co-tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to remain on the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date the rental agreement is modified. If the latter applies, in addition to removing the co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to extend its duration.

611.7-3. The Eviction and Termination law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

#### **611.8. Sex Offender Registry**

611.8-1. Should a tenant request information about whether any other tenants are required to register as a sex offender, the landlord shall provide the tenant with written notice that he or she may obtain information about the sex offender registry and persons registered within the registry by contacting the department of corrections. The landlord shall include in such notice the appropriate telephone number and internet site of the department of corrections.

#### **611.9. Termination of Tenancy at Death of Tenant**

611.9-1. If a tenant dies, his or her tenancy is terminated as follows:

- (a) If the deceased tenant was the only household member listed in the rental agreement, immediately upon the death of the tenant;
- (b) If there were additional adult household members aside from the deceased tenant listed in the household within the rental agreement, then the later of the following, provided that an adult household member remaining in the unit shall assume the tenancy responsibilities under the rental agreement:

- (1) Six (6) months after the landlord receives notice, is advised, or otherwise becomes aware of the tenant's death, provided that any extension beyond the original term of the agreement requires an amendment or limited term rental agreement which covers the term of the extension; or
- (2) The expiration of the term of the rental agreement.

611.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination of his or her tenancy. A landlord may not contact or communicate with a member of the deceased tenant's family for the purpose of obtaining from the family member rent for which the

family member has no liability except that if adult household members remain in the rental unit following the deceased tenant's death in accordance with section 611.9-1 or 611.9-4, an adult household member shall assume the tenancy responsibilities pursuant to the rental agreement.

611.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises from any obligation under a rental agreement or any other liability to the landlord.

611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement based on Tribal member status, the non-Tribal member tenant may remain in the premises as follows:

(a) If subject to a standard rental agreement (i.e. not on a rent-to-own basis), see section 611.9-1(b) above.

(b) If the rental agreement was on a rent-to-own basis, the remaining non-Tribal member tenant may remain in the premises for a maximum of six (6) months from the date of the Tribal member tenant's death unless the non-Tribal member tenant has a child that is a Tribal member. In the event the original tenants have a Tribal member child, the non-Tribal member tenant may remain in the premises under the rent-to-own agreement so long as the non-Tribal member tenant either:

(1) Transfers the premises and the rent-to-own agreement to a child of one (1) or both of the original tenants who is a Tribal member, eighteen years or older, and agrees to live in the premises; or

(2) Signs an agreement indicating that the premises and the rent-to-own agreement shall be transferred to a minor Tribal member child when the child is eighteen (18) years old.

(c) Should the non-Tribal member tenant satisfy the payment requirements of the rent-to-own agreement prior to the Tribal member child's eighteenth (18<sup>th</sup>) birthday, the rent-to-own agreement shall be extended at no additional cost to the tenant and conveyance postponed until the Tribal member child reaches eighteen (18) years of age and the rent-to-own agreement is transferred to the child.

(d) In the event the non-Tribal member tenant either has no children living in the premises that are Tribal members or declines to enter the agreement transferring the rent-to-own agreement to a Tribal member child, the rent-to-own agreement shall be terminated upon the tenant's ineligibility to remain in the rent-to-own program and a limited term rental agreement shall be executed.

611.9-5. Where a landlord is terminating a rental agreement entered on a rent-to-own basis based on death of a Tribal member tenant, the landlord shall pay the remaining co-tenant all equity the tenants may have accrued in accordance with the rental agreement.

#### **611.10. Landlord or Tenant Actions**

611.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement.

611.10-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental agreement.

611.10-3. The landlord is the Comprehensive Housing Division in regards to taking actions authorized under this law and complaints filed with the Oneida Judiciary shall name the Comprehensive Housing Division and the specific program.

*End.*

378  
379  
380  
381

---

Adopted – BC-10-12-16-C  
Emergency Amended – BC-01-25-17-C  
Emergency Extension – BC-07-26-17-I



Legislative Operating Committee  
December 6, 2017

## Real Property Law Amendments

<b>Submission Date:</b> 11/01/17	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Ernest Stevens III	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *Revisions required to remove residential leasing responsibilities from the Division of Land Management and transfer them to the Comprehensive Housing Division and to clarify jurisdiction under the law applies to all Tribal fee land- not only fee land within the Reservation- which will clarify and affirm the Land Commission's authority.*

**11/01/17 LOC:** Motion made by Ernest Stevens III to add Real Property Law Emergency Amendments to the active files list with himself as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

**11/15/17 LOC:** Motion by Kirby Metoxen to remove the emergency status from Real Property Amendments and assign as a high priority; seconded by Jennifer Webster. Motion carried unanimously.

**Next Steps:**

- Forward to the Finance Office for a fiscal analysis, due to the Legislative Reference Office January 10, 2018.
- Approve the public meeting packet and forward the Real Property Law Amendments to a public meeting to be held on January 11, 2018.

NOTICE OF  
**PUBLIC MEETING**  
TO BE HELD  
**THURSDAY, JANUARY 11 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: REAL PROPERTY LAW  
AMENDMENTS**

**This is a proposal to amend an existing Tribal Law which would:**

- ♦ Transfer the responsibility of processing residential leases from the Division of Land Management to the Comprehensive Housing Division.
- ♦ Clarify that this law applies to all Tribal fee land, not just fee land within the Reservation; affirming the Oneida Land Commission's authority over Tribal fee land regardless of where it is located.
- ♦ Make minor revisions to reflect formatting and style requirements.

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 JANUARY 18, 2018**

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

**Legislative Reference Office**  
**PO Box 365 Oneida, WI 54155**  
**LOC@oneidanation.org**  
**Phone: (920) 869-4376 or (800) 236-2214**  
**Fax: (920) 869-4040**



## Real Property Amendments Legislative Analysis

### SECTION 1. BACKGROUND

REQUESTER: Krystal L. John and Rae Skenandore	SPONSOR: Ernest Stevens III	DRAFTER: Taniquelle Thurner	ANALYST: Maureen Perkins
<b>Intent of the Amendments</b>	Transfer residential leasing responsibilities from Land Management to the Comprehensive Housing Division and clarify that jurisdiction under the law applies to all Tribal fee land and not just fee land within the Reservation – which will clarify and affirm the Oneida Land Commission’s authority over such land.		
<b>Purpose of the Law</b>	To provide regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and certification requirements for the Nation’s employees dealing with real property transactions.		
<b>Entities Affected by the Amendments</b>	Comprehensive Housing Division, Oneida Land Commission, Land Management		
<b>Affected Legislation</b>	Mortgage and Foreclosure law, Land Ordinance, Leasing law, Landlord-Tenant law, Eviction and Termination law, Public Use of Tribal Land law, Oneida Land Commission bylaws		
<b>Enforcement/Due Process</b>	All involuntary transfers of title require a Judiciary hearing <i>[see 601.7-3]</i> . Land Management shall process and administer probate estates and, where necessary, shall refer probate estates to the Oneida Judiciary for formal administration <i>[see 601.8-1]</i> . 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 Land Management in such cases <i>[see 601.8-2]</i> .		
<b>Public Meeting</b>	A public meeting has not been held.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The current amendments are proposed to transfer residential leasing responsibilities from Land Management to the newly established Comprehensive Housing Division and to clarify jurisdiction under the law applies to all Tribal fee land and not just fee land within the Reservation; which will clarify and affirm the Oneida Land Commission’s authority over all fee land outside of the Reservation.

### SECTION 3. CONSULTATION

- A. The Oneida Law Office, the Comprehensive Housing Division, Land Management and the Oneida Land Commission were consulted in the development of these amendments.

### SECTION 4. PROCESS

- A. The amendments clarify the jurisdiction of the Oneida Land Commission as the decision making authority with respect to all fee land, including fee land outside of the Reservation. The law also transfers the responsibility of residential leasing from Land Management and places it with the newly created Comprehensive Housing Division.

- B. The emergency amendments were added to the Active Files List on November 1, 2017 with Ernest Stevens III as the sponsor. On November 15, 2017 the emergency status was removed but the amendments remain classified as a high priority.

## SECTION 5. CONTENTS OF THE LEGISLATION

A. (1) The definition for the Comprehensive Housing Division was amended to:

- the division within the Nation under the direction of the Comprehensive Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own programs, and the residential sales and mortgages programs in accordance with resolution BC-09-27-17-H *[see 601.3-1(c)]*.

(2) The footnote for the OBC resolution defining the Comprehensive Housing Division was deleted *[see footnote on page 2]*.

(3) A definition for Land Management was added:

- the division within the Nation responsible for maintaining the Oneida Nation Register of Deeds, entering into and administering agricultural and commercial leases on behalf of the Nation, processing trust transactions and land acquisition transactions, and for fulfilling other responsibilities as identified within this law *[see 601.3-1(k)]*.

(4) The Division of Land Management was updated to Land Management to reflect current business practices.

(5) The definition for Tribal fee land was updated to remove “within the Reservation” to clarify that the law applies to lands held in fee status both inside and outside of the Reservation *[see 601.3-1(v)]*.

(6) Other minor revisions were made to reflect current drafting and formatting standards.

## SECTION 6. INTENT OF AMENDMENTS

A. The purpose of the amendments is to clarify the decision making authority of responsible entities of the Nation:

- The Oneida Land Commission with respect to all fee land; including fee land outside the Reservation; and
- The Comprehensive Housing Division with respect to residential leasing.

## SECTION 7. EFFECT OF AMENDMENTS ON EXISTING LEGISLATION

A. The amendments require the Comprehensive Housing Division to follow the Leasing law with respect to the administration and processing of residential leases *[see 601.12-1]*.

## SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

A. The current proposed amendments do not impact existing rights, privileges, benefits or obligations.

B. The proposed amendments will affect the current application process with respect to residential leases. The Comprehensive Housing Division will be the entity responsible for processing residential leases.

## SECTION 9. ENFORCEMENT

A. The proposed amendments do not change enforcement of this law.

## SECTION 10. ACCOUNTABILITY

A. The Comprehensive Housing Division and the Oneida Land Commission will be accountable for implementation and operation of the current amendments of this law.



**Title 6. Property and Land – Chapter 601**  
**REAL PROPERTY**  
**Tokáske Kayanlǎhsła Tsi? Ni?yohuntsya'té**  
*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

**601.1. Purpose and Policy**

601.1-1. *Purpose.* The purpose of this law is to provide regulations and procedures for the transfer, control and management of the territory within the Reservation and all ~~tribal~~-Tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions.

601.1-2. *Policy.* It is the policy of the Nation to set out the responsibilities and expectations for persons purchasing and/or managing real property on behalf of the Nation and/or within the Reservation and to provide real property holder's rights and responsibilities. In addition, it is the Nation's policy that probated estates shall be settled expeditiously and without undue delay.

**601.2. Adoption, Amendment, Repeal**

601.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-29-96-A and amended by resolutions BC-3-01-06-D, BC-04-28-10-E, BC-02-25-15-C, BC-05-13-15-B and BC-02-08-17-A and.

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~~ ~~survey~~ ~~Map~~ ~~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 division within the Nation under the direction of the Comprehensive Housing Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential sales and mortgages programs. the entity responsible for housing matters as defined by Oneida Business Committee Resolution.<sup>+</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 ad Litem~~ litem” means a guardian appointed by the Judiciary on behalf of an incompetent or minor party.

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

(i) “Individual ~~Trust trust Landland~~ 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 Management” means the division within the Nation responsible for maintaining the Oneida Nation Register of Deeds, entering into and administering agricultural and commercial leases on behalf of the Nation, processing trust transactions and land acquisition transactions, and for fulfilling other responsibilities as identified within this law.

(~~kl~~) “Land ~~Use use License~~ 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.

(~~lm~~) “Leasehold ~~Mortgage mortgage~~ 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.

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

(~~no~~) “Personal ~~Representative representative~~ 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.

(~~op~~) “Probate” or “Administration” means any proceeding relating to a decedent’s estate, whether there is or is not a will.

(~~pq~~) “Real ~~Property property~~ 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.

<sup>+</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.

(~~qr~~) “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.

(~~rs~~) “Restricted ~~Fee-fee Status~~~~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~~ shall be limited, enlarged, changed or terminated.

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

(~~tu~~) “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.

(~~uv~~) “Title ~~Status-status~~ Reportreport” 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.

(~~w~~) “Tribal ~~Fee-fee Land~~~~land~~” means ~~Tribal~~ land held in fee status by the Nation ~~within the Reservation~~.

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

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

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

#### 601.4. General Provisions

601.4-1. ~~Applicable Real Property.~~ -The provisions of this law extend to all Tribal member’s individual fee land and Tribal member’s individual trust land within the Reservation boundaries and all Tribal land.

601.4-2. ~~Tribal Land Base.~~ ~~The Division of~~ Land Management shall administer all transactions which add real property to the Tribal land base under the provisions of this law.

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

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

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

601.4-6. ~~Wisconsin Real Property Law.~~ -The Nation shall follow all applicable portions of the Wisconsin Real Property ~~Law~~ 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 Deeds' records for Tribal ~~Trust-trust Lands-lands~~ and ~~Individual-individual Trust-trust Landslands~~. 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~~ ensure 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 (1) 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-~~32~~(a), a deed prepared for trust acquisition shall include:

(1) The federal authority for trust acquisition;

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

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

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

(c) A deed transferring fee simple title shall be recorded in the appropriate register of deeds office, provided that, once the real property is in trust, the title shall be recorded

with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs Land Titles and Records Office.

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

(a) *Eminent Domain.* Eminent domain is the right of the Nation's government to acquire Tribal member individual fee land within the Reservation for public uses without the consent of private owners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **601.8. Probate**

601.8-1. ~~The Division of~~ Land Management shall process and administer probate estates and, where necessary, shall refer probate estates to the Oneida Judiciary for formal administration. ~~The Division of~~ Land Management and the Oneida Land Commission shall jointly create any rules necessary to administer probate estates. ~~The Division of~~ Land Management shall:

- (a) Process applications for probate administration;
- (b) Receive proof of heirship demonstrating a party is entitled to receive an intestate decedent's property pursuant to applicable laws and rules;
- (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 In accordance with the Leasing law, the Division of~~ Land Management shall administer and process all leasing of Tribal land for ~~residential~~, agricultural and commercial purposes ~~and the Comprehensive Housing Division shall administer and process all leasing of Tribal land for residential purposes in accordance with the Leasing law.~~ The Leasing law definition of Tribal land does not include Tribal fee land; ~~however,~~ pursuant to this law, ~~the~~

~~Division of Land Management~~ the responsible parties designated herein shall administer and process ~~all~~ leases of both Tribal fee land and Tribal trust land in accordance with the Leasing law, 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, as well as documents related to and all Tribal fee land, regardless of where it is located.

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~~ such 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~~ 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~~ shall 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~~ director shall select which continuing education courses are required and the Oneida Law Office shall provide the ~~Director~~ 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 such~~ transactions using the applicable of the Landlord-Tenant law, the Mortgage and Foreclosure law, the Leasing law and/or the Eviction and Termination law; including any corresponding rules. —In addition, the Oneida Land Commission and the Comprehensive Housing Division shall exercise joint rulemaking authority to provide process requirements, including but not limited to advertising, notice, prequalification, and selection, that apply in all circumstances when the Nation is selling a residential property.

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

(a) Interpret the provisions of this law and create policy to guide ~~the Division of~~ Land Management in implementing the same;

(b) Approve or deny all easements and land use licenses;

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

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

(e) Allocate and assign land uses to all Tribal land, except those uses governed by the Public Use of Tribal Land law, based on the Land Use Technical Unit rules which the Oneida Planning Department shall develop in collaboration with affected Oneida divisions and departments and the Oneida Land Commission; and

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

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

- (a) Forward requests for easements and land use licenses to the Oneida Land Commission based on the easement and land use license rules jointly developed by ~~the Division of~~ Land Management and the Oneida Land Commission;
- (b) Administer and oversee the Oneida Nation Register of Deeds;
- (c) Enter into and administer ~~residential~~, agricultural and commercial leases pursuant to the Leasing law and the Eviction and Termination law and any corresponding rules;
- (d) Prepare title reports and process trust transactions; and
- (e) Process land acquisition transactions as approved by the Oneida Land Commission.

*End.*

---

Adopted - BC-5-29-96-A  
Amended-BC-3-01-06-D  
Amended-BC-04-28-10-E  
Amended – BC-02-25-15-C  
Amended-BC-05-13-15-B  
Amended-BC-02-08-17-A

**Title 6. Property and Land – Chapter 601**  
**REAL PROPERTY**  
**Tokáske Kayanl'ahsla Tsi' Ni'yohuntsya'té**  
*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

---

**601.1. Purpose and Policy**

601.1-1. *Purpose.* The purpose of this law is to provide regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions.

601.1-2. *Policy.* It is the policy of the Nation to set out the responsibilities and expectations for persons purchasing and/or managing real property on behalf of the Nation and/or within the Reservation and to provide real property holder's rights and responsibilities. In addition, it is the Nation's policy that probated estates shall be settled expeditiously and without undue delay.

**601.2. Adoption, Amendment, Repeal**

601.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-29-96-A and amended by resolutions BC-3-01-06-D, BC-04-28-10-E, BC-02-25-15-C, BC-05-13-15-B and BC-02-08-17-A and \_\_\_\_\_.

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 division within the Nation under the direction of the Comprehensive Housing Division Director which consists of all

residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential sales and mortgages programs.

(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 Management" means the division within the Nation responsible for maintaining the Oneida Nation Register of Deeds, entering into and administering agricultural and commercial leases on behalf of the Nation, processing trust transactions and land acquisition transactions, and for fulfilling other responsibilities as identified within this law.

(l) "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.

(m) "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.

(n) "Nation" means the Oneida Nation.

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

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

(q) "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.

(r) "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.

(s) "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 shall be limited, enlarged, changed or terminated.

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

(u) “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.

(v) “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.

(w) “Tribal fee land” means land held in fee status by the Nation.

(x) “Tribal land” means Tribal fee land and Tribal trust land.

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

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

#### **601.4. General Provisions**

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

601.4-2. *Tribal Land Base.* 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 Deeds' 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*. Land Management shall use title companies duly registered with the Department of Interior and approved by the 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, Land Management shall request the title company to search the title back to the original allottee, in order to ensure 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 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 Land Management based on a standard operating procedure that is effective upon approval by the Oneida Land Commission.

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

601.7-2. *Deeds.* A deed is the formal document used by the Land Management to transfer title from one (1) 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 601.7-2(a), a deed prepared for trust acquisition shall include:

(1) The federal authority for trust acquisition;

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

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

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

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

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

(a) *Eminent Domain.* Eminent domain is the right of the Nation's government to acquire Tribal member individual fee land within the Reservation for public uses without the consent of private owners.

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

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

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

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

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

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

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

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

(C) The interest is incapable of earning one hundred dollars (\$100) 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 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.* Land Management and the Oneida Land Commission shall jointly develop rules regarding requests for easements for landlocked properties.

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

## **601.8. Probate**

601.8-1. Land Management shall process and administer probate estates and, where necessary, shall refer probate estates to the Oneida Judiciary for formal administration. Land Management and the Oneida Land Commission shall jointly create any rules necessary to administer probate estates. 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 Land Management in such cases. In addition, the Judiciary shall hear and administer probate estates in which Land Management seeks appointment as a personal representative.

#### **601.9. Leasing of Real Property**

601.9-1. In accordance with the Leasing law, Land Management shall administer and process all leasing of Tribal land for agricultural and commercial purposes and the Comprehensive Housing Division shall administer and process all leasing of Tribal land for residential purposes. The Leasing law definition of Tribal land does not include Tribal fee land; however, pursuant to this law, the responsible parties designated herein shall administer and process leases of both Tribal fee land and Tribal trust land in accordance with the Leasing law.

#### **601.10. Records**

601.10-1. *Purpose.* 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, as well as documents related to all Tribal fee land, regardless of where it is located.

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, such 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 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 shall 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 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, 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, 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 within the Reservation and shall process and administer such

transactions using the applicable of the Landlord-Tenant law, the Mortgage and Foreclosure law, the Leasing law and/or the Eviction and Termination law; including any corresponding rules. 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 Land Management in implementing the same;
- (b) Approve or deny all easements and land use licenses;
- (c) Review and adopt Land Management's standard operating procedures for entering into agriculture and commercial leases pursuant to the Leasing law;
- (d) Approve or deny all acquisition of Tribal land;
- (e) Allocate and assign land uses to all Tribal land, except those uses governed by the Public Use of Tribal Land law, based on the Land Use Technical Unit rules which the Oneida Planning Department shall develop in collaboration with affected Oneida divisions and departments and the Oneida Land Commission; and
- (f) Name all buildings, roads, parks and the like on Tribal land.

601.12-3. *Division of Land Management.* Land Management shall implement this law in accordance with the policy directives provided by the Oneida Land Commission. 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 Land Management and the Oneida Land Commission;
- (b) Administer and oversee the Oneida Nation Register of Deeds;
- (c) Enter into and administer agricultural and commercial leases pursuant to the Leasing law and the Eviction and Termination law and any corresponding rules;
- (d) Prepare title reports and process trust transactions; and
- (e) Process land acquisition transactions as approved by the Oneida Land Commission.

*End.*

---

Adopted - BC-5-29-96-A  
Amended-BC-3-01-06-D  
Amended-BC-04-28-10-E  
Amended – BC-02-25-15-C  
Amended-BC-05-13-15-B  
Amended-BC-02-08-17-A



Legislative Operating Committee  
December 6, 2017

## Petition: Dodge – Law Firm for GTC

<b>Submission Date:</b> 9/27/17	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Kirby Metoxen	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This petition calls for the GTC to hear a presentation from the law firm of Gross & Klein LLP about GTC's options to recover millions of dollars in losses and damages in accordance with the ONWI Constitution, Article IV, Powers of the General Tribal Council, Section 1.(b): "To employ legal counsel, the choice of counsel and fixing of fees," and for GTC to discuss and vote on retaining Gross & Klein LLP, which has agreed to represent GTC at a 20% discount.*

**9/27/17 OBC:** Motion by Lisa Summers to acknowledge receipt of the petition submitted by Leah Sue Dodge regarding a Law Firm for GTC, seconded by David P. Jordan. Motion carried unanimously

Motion by Lisa Summers to send the verified petition to the Law, Finance, Legislative Reference, and Direct Report Offices' for legal financial, legislative, and administrative analyses, seconded by David P. Jordan. Motion carried unanimously

Motion by Lisa Summers to direct the Law, Finance, and Legislative Reference Office to submit their analyses to the Tribal Secretary within sixty (60) days with a progress report to be submitted within forty-five (45) days; and to direct the Direct Report Offices to submit administrative analyses to Tribal Secretary within thirty (30) days, seconded by David P. Jordan. Motion carried unanimously.

**10/4/17 LOC:** Motion by Daniel Guzman King to add Petition: Dodge – Law Firm for GTC to the Active Files List and assign Kirby Metoxen as the sponsor and direct the LRO to provide a 45 day update by November 11, 2017; seconded by Kirby Metoxen. Motion carried unanimously.

**11/1/17 LOC:** Motion by Kirby Metoxen to approve the Petition: Dodge- Law Firm for GTC 45 day update and forward to the Business Committee for consideration; Seconded by Ernie Stevens III. Motion carried unanimously.

**11/08/17 OBC:** Motion by Lisa Summers to accept the legislative analysis progress report, seconded by Brandon Stevens. Motion carried unanimously.

### Next Steps:

- Approve the Petition: Dodge – Law Firm for GTC legislative analysis and forward to the Oneida Business Committee for consideration.



## **Legislative Analysis**

*Petition: Dodge – Law Firm for GTC*

### **Summary**

This petition requests the General Tribal Council (GTC) to hear a presentation from the law firm of Gross & Klein LLP about GTC's options to recover millions of dollars in losses and damages in accordance with the ONWI Constitution, Article IV, Powers of the General Tribal Council, Section 1.(b): "To employ legal counsel, the choice of counsel and fixing of fees," and for GTC to discuss and vote on retaining Gross & Klein LLP, which has agreed to represent GTC at a 20% discount.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*

*Date: December 6, 2017*

### ***Analysis by the Legislative Reference Office***

On September 18, 2017, the Petition: Dodge – Law Firm for GTC was submitted to the Business Committee Support Office by Leah Sue Dodge and has since been verified by the Oneida Trust Enrollment Department. On September 27, 2017, the Oneida Business Committee accepted the verified petition and requested that the Legislative Reference Office complete a legislative analysis within sixty (60) days and that a progress report be submitted within forty-five (45) days.

The purpose of this petition is for the General Tribal Council (GTC) to "hear a presentation from the law firm of Gross & Klein LLP about GTC's options to recover millions of dollars in losses and damages in accordance with the ONWI Constitution, Article IV, Powers of the General Tribal Council, Section 1.(b): 'To employ legal counsel, the choice of counsel and fixing of fees,' and for GTC to discuss and vote on retaining Gross & Klein LLP, which has agreed to represent GTC at a 20% discount."

The Oneida Nation Constitution grants the Oneida Nation GTC the power to employ legal counsel, the choice of counsel and fixing of fees. *[see Oneida Nation Constitution Article IV Section 1(b)]*.

On November 14, 2016, GTC directed the Oneida Business Committee to establish a legal office consisting of advocates and an advising attorney to be elected at the 2017 General Election, which would represent employees employed by Oneida Nation, and Tribal enrolled members that have any type of litigation at the Oneida Judiciary, and retain legal counsel specifically for GTC to advise during duly called GTC meetings. The Legal Resource Center law ("the Law") was adopted by the Oneida Business Committee pursuant to resolution BC-09-13-17-L and satisfies this direction from the GTC by establishing a Legal Resource Center to provide legal advice and representation in cases before the Judiciary and to represent the GTC at GTC meetings. *[see Legal Resource Center section 811.1-1 and 811.4-1]*. The Legal Resource Center

has one (1) attorney whose many responsibilities will include advising the GTC during the GTC meetings. *[see Legal Resource Center section 811.5-3(m)]*. The Legal Resource Center attorney must be an enrolled tribal member that is elected by the Nation's membership. *[see Legal Resource Center section 811.5-1(a) and 811.5-2]*. The Nation utilizes an Election law to govern the procedures and conduct of orderly elections of the Nation, and provide requirements for candidate eligibility. *[see Election law section 102.1-1 and 102.5]*.

Additionally, the Nation utilizes an Attorney Contract Policy ("the Policy") that was most recently amended by the Oneida Business Committee pursuant to resolution BC-02-25-15-C. The Policy was developed to regulate the utilization of attorneys within the Oneida Tribal organization and attorneys and firms hired on retainer outside the Oneida Tribal organization to maximize the professional services and reduce conflict among professionals. *[see Attorney Contract Policy section 216.1-1]*. It is the policy of the Nation to utilize a centralized legal office to ensure efficiency and cost effectiveness. *[see Attorney Contract Policy section 216.1-2]*.

The Policy requires the Oneida Law Office to be the contracting party for all law firms or attorneys contracted on a retainer bases or for a single purpose services or deliverables. *[see Attorney Contract Policy section 216.7-4]*. Furthermore, the Policy requires that all attorney contracts shall be approved by the Oneida Business Committee, and signed by the Chairperson and one officer of the Oneida Business Committee on behalf of the Oneida Nation. *[see Attorney Contract Policy section 216.4-1 and 216.4-2]*. All attorney contracts are required to not only be contracted through the Chief Counsel's office, but also supervised by the Chief Counsel's office. *[see Attorney Contract Policy section 216.4-2]*.

### **Conclusion**

After a review of all applicable laws and policies of the Nation, it has been determined that the adoption of the Petition: Dodge – Law Firm for GTC may result in a legislative impact.

The Legal Resource Center law was implemented and includes an elected attorney position based on the directive from the GTC that legal counsel should be retained specifically for the purpose of advising the GTC during duly called GTC meetings. This petition is requesting that the GTC consider retaining Gross and Klein LLP to represent the GTC. The petition is unclear on the scope of representation Gross and Klein LLP would be providing the GTC, and therefore is unclear on whether this representation by Gross and Klein LLP would be a duplication of the services intended to be provided to the GTC by the Legal Resource Center attorney. The Legal Resource Center attorney position currently remains vacant as there were no candidates on the ballot for the 2017 General Election or the 2017 Special Election.

Although the Legal Resource Center law does not prohibit the GTC from retaining additional counsel, the Law was created in part to provide the GTC with legal representation, and specifically requires that the attorney that is retained to represent the interests of the GTC be an enrolled member of the Nation that is elected by the membership of the Nation. The firm of Gross and Klein LLP has not been elected by the membership of the Nation, and it is unclear whether the attorneys comprising Gross and Klein LLP can meet the enrollment eligibility requirements contained in the Legal Resource Center law or Election law.

Since the Legal Resource Center law, and it's requirement that the advising attorney be elected, was developed in accordance with the GTC's direction to retain legal counsel specifically for the advisement of the GTC during duly called GTC meetings, the GTC will have to determine if retaining Gross and Klein LLP conflicts with their prior directive for retaining an attorney for the GTC and therefore precludes the GTC from retaining additional representation, in this situation Gross and Klein LLP, to represent their interests.

Additionally, if the GTC makes the decision to retain Gross and Klein LLP, then a legislative impact may result if the Nation's Attorney Contract Policy is not followed.

#### **Requested Action**

Accept the legislative analysis of the Petition: Dodge – Law Firm for GTC



Legislative Operating Committee  
December 6, 2017

# Petition: G. Powless – Banishment Law Resolution

<b>Submission Date:</b> 9/27/17	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Jennifer Webster	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This petition calls for a special General Tribal Council (GTC) meeting to be held to consider adopting a resolution entitled Banishment Law pertaining to Drug Dealers.*

**9/27/17 OBC:** Motion by Lisa Summers to acknowledge receipt of the petition submitted by Gina Powless regarding a Banishment Law resolution, seconded by Jennifer Webster. Motion carried unanimously.

Motion by Lisa Summers to send the verified petition to the Law, Finance, Legislative Reference, and Direct Report Offices' for legal financial, legislative, and administrative analyses, seconded by Jennifer Webster. Motion carried unanimously.

Motion by Lisa Summers to direct the Law, Finance, and Legislative Reference Office to submit their analyses to the Tribal Secretary within sixty (60) days with a progress report to be submitted within forty five (45) days; and to direct the Direct Report Offices to submit administrative analyses to Tribal Secretary within thirty (30) days, seconded by Jennifer Webster. Motion carried unanimously.

**10/4/17 LOC:** Motion by Jennifer Webster to add Petition: G. Powless regarding Banishment Law to the Active Files List with herself as the sponsor, and direct the LRO to provide a 45 day update by November 11, 2017; seconded by Kirby Metoxen. Motion carried unanimously.

**11/1/17 LOC:** Motion by Kirby Metoxen to approve the Petition: G. Powless-Banishment Law Resolution 45 day update and forward to the Business Committee for consideration; seconded by Ernie Stevens III. Motion carried unanimously.

**11/08/17 OBC:** Motion by Lisa Summers to accept the legislative analysis progress report, seconded by Kirby Metoxen. Motion carried unanimously.

**Next Steps:**

- Approve the Petition: G. Powless – Banishment Law Resolution legislative analysis and forward to the Oneida Business Committee for consideration.



## **Legislative Analysis**

*Petition: G. Powless – Banishment Law Resolution*

### **Summary**

This petition requests the General Tribal Council to consider adopting a resolution titled *Banishment Law pertaining to Drug Dealers*.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*  
*Date: December 6, 2017*

### ***Analysis by the Legislative Reference Office***

On September 18, 2017, the Petition: G. Powless – Banishment Law Resolution was submitted to the Business Committee Support Office by Gina Powless and has since been verified by the Trust Enrollment Department. On September 27, 2017, the Oneida Business Committee accepted the verified petition and requested that the Legislative Reference Office complete a legislative analysis within sixty (60) days and that a progress report be submitted within forty-five (45) days.

The purpose of this petition is for the General Tribal Council (GTC) to consider adopting a resolution titled *Banishment Law pertaining to Drug Dealers* (“the Resolution”). The Resolution alleges that “methamphetamine has caused an increase in murder, suicides, assaults, burglary, vandalism, child abuse, child neglect among many other injustices, that the Oneida Nation recognizes this epidemic and on the reservation which will not be tolerated to affect our families.” The Resolution then goes on to require “any individuals 18 years of age or older who is convicted (in Tribal, State or Federal Courts) after the date of the enactment of this resolution for dealing, distributing, manufacturing or trafficking methamphetamine and/or any narcotic drug. Including any substance containing opium, heroine, isonipecaine, amidone, isoamidone, ketobemidone, lysergic acid diethylamide, coca leaves, any opiate or any substance, compound, or derivative of a controlled substance will be immediately excluded, dis-enrolled and/or banished for life from the Oneida Nation reservation and all lands that the Nation owns.” The petition then clarifies that the Resolution “cannot be modified or rescinded unless by two-thirds (2/3) vote of the Oneida Nation General Tribal Council” and that “nothing in this resolution diminishes, divests, alters, or otherwise affects any inherent, treaty, statutory, or other rights of the Oneida Nation over the property or activities described herein. The Oneida Nation expressly retains all rights and authority over the property and activities described herein, including but not limited to legislative, regulatory, and adjudicatory powers.”

At the time of this analysis, no laws, policies, or rules of the Nation directly address exclusion, disenrollment, or banishment of an individual. Matters such as membership and enrollment in the Nation, and the conduct of members of the Nation are addressed in the Constitution and By-Laws of the Oneida Nation and the Membership Ordinance; yet these legislative items still remain silent on exclusion, disenrollment and banishment.

Article II of the Constitution and By-Laws of the Oneida Nation (“the Constitution”) governs membership within the Nation. Article II Section 1 of the Constitution describes what the membership of the Nation shall consist of, which includes:

- (a) All persons of Indian blood whose names appear on the membership roll of the Oneida Nation in accordance with the Act of September 27, 1967 (81 Stat. 229), Public Law 90-93.
- (b) Any child of a member of the Nation born between September 28, 1967, and the effective date of this amendment, who is of at least one-fourth degree Indian blood, provided, that, such member is a resident of the Reservation at the time of the birth of said child.
- (c) All children who possess at least one-fourth degree Oneida blood are born after the effective date of this amendment to members of the Nation who are residents of the reservation at the time of said children's birth.”

Article II Section 2 then delegates the power to promulgate ordinances covering future membership and the adoption of new members to the General Tribal Council. Powers of the General Tribal Council are governed by Article IV of the Constitution. Article IV Section 1(f) allows the General Tribal Council to promulgate and enforce ordinances governing the conduct of members of the Oneida Nation. The General Tribal Council is also allowed, through Article IV Section 1(f), to provide for the licensing of non-members coming upon the reservation for purposes of hunting, fishing, trading, or other business, and for the exclusion from the territory of the Nation of persons not so licensed.

In addition to the membership qualifications stated in the Constitution, the Nation utilizes a Membership Ordinance (“the Ordinance”), which was adopted by the General Tribal Council through resolution GTC-07-02-84-A. The Ordinance was adopted with the purpose of implementing membership enrollment procedures pursuant to the Constitution. *[see Membership Ordinance section 124.1-2]*. It is the policy of the Nation that all Oneida persons who are qualified for enrollment pursuant to the Constitution be duly enrolled, and the Ordinance sets forth procedures for verification of qualification for membership. *[see Membership Ordinance section 124.2-1 and 124.2-2]*. The Ordinance discusses qualifications for enrollment, and reiterates that the original membership roll of the Oneida Tribe of Indians of Wisconsin shall consist of all persons eligible under Section 1 (a) (b) and (c), Article II of the Constitution and By-Laws of the Oneida Tribe of Indians of Wisconsin, as amended. *[see Membership Ordinance section 124.4-1]*. The Ordinance then sets forth further information on qualifications for enrollment including:

- (a) Descendants of members of the Oneida Tribe who are of at least one-quarter (1/4) degree Oneida Indian blood and whose parents are not residents of the reservation at the time of birth of said applicants may be enrolled as members of the Tribe upon the approval of the Oneida Trust Committee and the Oneida Business Committee, by submitting to the Tribal Enrollment Officers a certified birth certificate and/or other authenticating documents.
- (b) Children whose eligibility requirements for enrollment is made pursuant to a paternity action or by acknowledgment of paternity may be enrolled provided that

they meet all other qualifications for enrollment and upon specific approval of the Oneida Trust Committee and the Oneida Business Committee.

(c) Descendants of members of the Oneida Tribe of Indians of Wisconsin not born in hospitals may be enrolled, providing that certification according to procedures adopted and approved by the Oneida Trust Committee and Oneida Business Committee of the birth are followed.

(d) Under no circumstances are the one-quarter (1/4) blood quantum requirements of the Oneida Tribal Constitution to be diminished.

*[see Membership Ordinance section 124.4-2].*

In addition to the qualification requirements stated above, the Ordinance prohibits dual enrollments, provides a process for the voluntary relinquishment of enrollment, and discusses re-enrollment. *[see Membership Ordinance section 124.4-3 through 124.4-5].* The Ordinance also sets forth the procedures for enrollment and maintaining the official rolls of the Nation, and an appeal process for a denial of enrollment. *[see Membership Ordinance section 124.5].*

Although there are no laws, policies, or rules of the Nation that address disenrollment, a review of applicable resolutions of the Nation has demonstrated that there is at least one circumstance in which the Oneida Trust Enrollment Committee has dis-enrolled an individual from the official rolls of the Oneida Nation. Resolution #02-12-88-C adopted by the Oneida Business Committee approves the Trust/Enrollment Committee's disenrollment of an individual and the removal of the individual's name from the Official 1967 Tribal Roll. This disenrollment was not based on the actions of the individual, but instead based on research conducted by the Oneida Enrollment Office that showed the individual was not a descendant of Oneida ancestry, but that the individual was the adopted child of a member of the Nation.

In terms of land use, the Nation utilizes a Public Use of Tribal Land law ("the Law") which limits access to Tribal lands to protect and preserve the environment and natural resources including, forests, wildlife, air and waters, through appropriate uses of the land. *[see Public Use of Tribal Land section 609.1-2].* Unless otherwise designated, land of the Nation is generally designated as limited access, meaning that the land is open to all persons who are granted land access permission by the Nation through a permit or lease for specified purposes. *[see Public Use of Tribal Land section 609.5-4 and 609.5-1(a)].* The Law also allows the Nation's Environmental Resource Board to prescribe permissible and/or prohibited uses for land of the Nation that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access. *[see Public Use of Tribal Land section 609.4-1(e) and 609.5-1(b)-(d)].* This allows the Nation in certain circumstances, to exclude non-members of the Nation from certain areas within the Oneida Nation Reservation.

### Conclusion

Adoption of the Petition: G. Powless – Banishment Law Resolution would result in a legislative impact.

The *Banishment Law pertaining to Drug Dealers* resolution states that any individual convicted of manufacturing methamphetamine or any other narcotic drug will be immediately excluded,

dis-enrolled and/or banished for life from the Oneida Nation reservation and all lands that the Nation owns.

In regards to disenrollment, the current Constitution and Membership Ordinance base eligibility for membership in the Nation solely on the possession of a specified degree of Oneida blood. Since neither the Constitution nor the Membership Ordinance discuss disenrollment, and only qualify membership in the Nation based on a degree of Oneida blood, neither would allow for the disenrollment of an individual based on their conviction of manufacturing or distributing narcotic drugs since the conviction of manufacturing or distributing narcotic drugs does not alter one's degree of Oneida blood. If the Nation wishes to allow for disenrollment based on conviction of manufacturing or distributing narcotic drugs then clarification would be needed in the Constitution and the Membership Ordinance through amendments which would qualify membership in the Nation on behavior requirements in addition to the degree of one's Oneida blood and/or set forth a disenrollment process.

In regards to the banishment of a member of the Nation, although there are no laws or policies of the Nation that directly address exclusion or banishment, the Constitution does allow the General Tribal Council to promulgate and enforce ordinances governing the conduct of members of the Oneida Nation. *[see Article IV Section 1(f) of the Oneida Nation Constitution]*. It may be interpreted that exclusion or banishment can be measures which govern the conduct of members of the Nation, or more specifically consequences assigned to specific conduct of members that the Nation wishes to prohibit and curtail. The General Tribal Council may determine if ordinances or laws governing the conduct of members of the Nation resulting in consequences such as exclusion or banishment should be promulgated. Any such law or ordinance shall have to be promulgated in accordance with the Legislative Procedures Act adopted by the General Tribal Council through resolution GTC 01-07-13-A with the purpose of providing a standard process for developing legislation which takes into account public input. *[see Legislative Procedures Act section 109.1-2]*.

In regards to the exclusion of a non-member of the Nation, the Constitution clearly allows for non-members to be excluded when they do not possess a proper license for hunting, fishing, trading, or other business. *[see Article IV Section (f) of the Oneida Nation Constitution]*. Additionally, the Public Use of Tribal Land law allows for a non-member of the Nation to be excluded from certain portions of the Reservation that have been deemed "Oneida Tribal Member Access" to protect the land for Tribal member use due to the historical, spiritual, cultural and/or environmental significance of the land. *[see Public Use of Tribal Land section 609.5-1(c)]*. The General Tribal Council may determine if more clarification would be needed in the Constitution and other laws and policies of the Nation through amendments, or through the development of new laws or policies, which would allow for the exclusion of non-members for a conviction based on manufacturing methamphetamine or any other narcotic drug. Any such law or ordinance shall have to be promulgated in accordance with the Legislative Procedures Act. *[see Legislative Procedures Act section 109.1-2]*.

### **Requested Action**

Accept the legislative analysis of the Petition: G. Powless – Banishment Law Resolution



**Oneida Nation**  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
[Oneida-nsn.gov](http://Oneida-nsn.gov)



## AGENDA REQUEST FORM

- 1) Request Date: 11-17-17
- 2) Contact Person(s): Daniel Guzman  
 Dept: BC  
 Phone Number: 869-4366 Email: dguzman@oneidanation.org
- 3) Agenda Title: Employment Law Amendment: Work Visas
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
The Oneida Nation, along with Northeast Wisconsin, is facing a strain on the labor market.  
Understanding that the Nation has always prioritized employing Oneida and native people,  
we also know that in the future we will not have enough tribal members for the number of jobs  
needed. I would like the Nation to consider issuing our own work visas and the organization accepting work visas.

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

- |          |          |
|----------|----------|
| 1) _____ | 3) _____ |
| 2) _____ | 4) _____ |

- 5) Please list any laws, policies or resolutions that might be affected:  
Employment Law
- 6) Please list all other departments or person(s) you have brought your concern to:  
Consulted with HRD
- 7) Do you consider this request urgent? ☒ Yes ☐ No  
 If yes, please indicate why:  
Strained labor market

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

Signature of Requester:

\_\_\_\_\_

*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



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



## AGENDA REQUEST FORM

- 1) Request Date: 12/6/17
- 2) Contact Person(s): Jen Falck  
 Dept: Legislative Reference Office  
 Phone Number: (920) 869-4376 Email: LOC@Oneidanation.org
- 3) Agenda Title: Uniform Commercial Code and Business Organizations
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
At a work meeting held on November 27, 2017, it was determined that the  
LOC should process a request to add two new items to the Active Files List -  
a Uniform Commercial Code and a Business Organizations code.

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:  
3 current AFL items - Corporate Law, Nonprofit Incorporation Law, and Secured Transactions.
- 6) Please list all other departments or person(s) you have brought your concern to:  
Discussion at the work meeting included Troy Parr and Jim Bittorf
- 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:

Jen 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



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



## AGENDA REQUEST FORM

- 1) Request Date: 12/6/17
- 2) Contact Person(s): Jen Falck  
 Dept: Legislative Reference Office  
 Phone Number: (920) 869-4376 Email: LOC@Oneidanation.org
- 3) Agenda Title: Election Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
At the November 12, 2017 GTC Meeting, the GTC passed a motion directing OBC  
to take the information presented at the meeting and the discussion to identify amendments  
to the Election law for presentation to and action by GTC during calendar year 2018.

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

- |          |          |
|----------|----------|
| 1) _____ | 3) _____ |
| 2) _____ | 4) _____ |

- 5) Please list any laws, policies or resolutions that might be affected:  
Election Law.
- 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:  
GTC Directive

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

Signature of Requester:

*Jen 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



TO: Legislative Operating Committee (LOC)  
FROM: Taniquelle Thurner, Legislative Reference Office Staff Attorney  
DATE: December 6, 2017  
RE: Certification of Membership Ordinance Rule #1 - Enrollment

---

The Legislative Reference Office has reviewed the certification packet provided by the Oneida Law Office for the Membership Ordinance Rule #1 - Enrollment (“the Rule”). The Rule creates enrollment procedures for carrying out the responsibility delegated to the Oneida Trust Enrollment Committee in the Membership Ordinance.

### **Administrative Record**

The certification packet contains all documentation required by the Administrative Rulemaking law for a complete administrative record. The certification packet contains:

- A memorandum from Susan White, Trust Enrollment Director, containing the Rule’s procedural timeline;
- The final draft of the Rule (which is the same as the draft considered at the public meeting)
- A Statement of Effect
- A Financial Analysis
- A Summary Report
- A memorandum stating that no public comments were received.
- A Copy of Public Meeting Notice as it appeared in the Kalihwisaks;
- The Public Meeting Sign-In Sheet; and
- Minutes from Trust Enrollment Committee Meetings where this rule was discussed and approved.

### **Procedural Requirements**

The certification packet illustrates that the promulgation of the rule complies with the procedural requirements contained in the Administrative Rulemaking law.

In accordance with the Administrative Rulemaking law:

- A public meeting notice for the Rule was published in the Kalihwisaks on November 2, 2017;
- A public meeting for the Rule was held on November 17, 2017;
- The public comment period was held open until November 28, 2017;

- There was no one in attendance at the public meeting, and no written comments received during the public meeting or the public meeting comment period;
- The Trust Enrollment Committee approved the Rule on September 28, 2017.

### **Rulemaking Authority**

The Rule did not exceed the rulemaking authority granted under the law for which the Rule is being promulgated.

The Rule does not identify an effective date. The Administrative Rulemaking law states that the authorized agency determines a rule's effective date, provided that a rule may not become effective until the Oneida Business Committee (OBC) adopts the proposed rule. The memorandum from Trust Enrollment Director Susan White states that she is requesting that the effective date of the rule be the date the OBC adopts the rule.

### **Conclusion**

**Promulgation of the Membership Ordinance Rule #1 – Enrollment complies with all requirements of the Administrative Rulemaking law.**



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



## AGENDA REQUEST FORM

- 1) Request Date: November 29, 2017
- 2) Contact Person(s): Rob Collins  
 Dept: Law Office  
 Phone Number: 920-869-4327 Email: rcollins@oneidanation.org
- 3) Agenda Title: LOC Certification of Enrollment Rule
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
The Membership Ordinance delegates administrative rulemaking authority to the Oneida  
Trust Enrollment Committee as authorized by the Administrative Rulemaking law.  
Pursuant to section 106.7-1 of the Administrative Rulemaking law, the Committee is  
submitting the Enrollment Rule to be certified by the LOC.

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

- 1) Proposed Rule
- 2) \_\_\_\_\_
- 3) Complete Record of Rule
- 4) \_\_\_\_\_
- 5) Please list any laws, policies or resolutions that might be affected:  
Membership Ordinance
- 6) Please list all other departments or person(s) you have brought your concern to:  
N/A
- 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: \_\_\_\_\_

*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

**Trust Enrollment Department**

PO Box 365, Oneida WI 54155  
(920) 869-6200 \* 1-800-571-9902  
Fax: (920) 869-2995  
[TrustEnrollments@oneidanation.org](mailto:TrustEnrollments@oneidanation.org)  
<https://oneida-nsn.gov/resources/enrollments/>

**MEMORANDUM**

**To:** Legislative Operating Committee (LOC)  
**From:** Susan White, Trust Enrollment Director *[Signature]*  
**Date:** November 29, 2017  
**Subject:** Enrollment Rule – Request for LOC Certification

This memorandum is being provided by the Trust Enrollment Department to outline the dates in accordance with the Administrative Rulemaking law. The dates are as follows:

- Notice published in Kaliwisaks and on the Oneida Register: November 2, 2017.
- Public meeting: November 17, 2017.
- Close of public comment period: November 28, 2017.
- Oneida Trust Enrollment Committee considered public comments: November 28, 2017.

The supporting documents included with this memorandum include:

- Draft of the rule.
- Summary Report.
- Statement of Effect.
- Financial Analysis.
- Memorandum addressing public comments.
- Public meeting sign-in sheets.
- Public meeting notice.
- Minutes from the Oneida Trust Enrollment Committee's meeting during which the proposed rule was addressed as an agenda item.

I request the effective date of the rule be the date the Legislative Operating Committee certifies the rule pursuant to section 106.7-3(a) of the Administrative Rulemaking law.



## Title 1. Government and Finances – Chapter 124

### MEMBERSHIP ORDINANCE

#### Rule # 1 – Enrollment Rule

- 1.1 Purpose and Delegation
- 1.2 Adoption and Authority
- 1.3 Definitions
- 1.4 Maintenance of Confidentiality
- 1.5 Maintaining Records
- 1.6 Verification of Authenticating Documents
- 1.7 Removal of Tribal Roll

#### 1.1. Purpose and Delegation

1.1-1. *Purpose.* The purpose of this rule is to create enrollment procedures for carrying out the responsibility delegated to the Oneida Trust Enrollment Committee in the Membership Ordinance.

1.1-2. *Delegation.* The Membership Ordinance delegated the Oneida Trust Enrollment Committee rulemaking authority pursuant to the Administrative Rulemaking law.

#### 1.2. Adoption and Authority

1.2-1. This rule was adopted by the Oneida Trust Enrollment Committee in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Membership Ordinance.

#### 1.3. Definitions

1.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

- (a) "Committee" means the Oneida Trust Enrollment Committee.
- (b) "Department" means the Trust Enrollment Department.
- (c) "Judiciary" means the judicial system responsible for applying the laws of the Oneida Nation. The three branches, as identified in resolutions BC-05-08-13-A and GTC 01-07-13-B are the Family Court, Trial Court and Court of Appeals.
- (d) "Minor" means anyone who has not yet attained the age of eighteen (18).
- (e) "Nation" means the Oneida Nation.

#### 1.4. Maintenance of Confidentiality

1.4-1. The Department and Committee shall not make available for inspection or disclose the contents of any record kept or information received regarding enrollment except to designated

enrollment employees, as provided in this section, or by order of the Judiciary or another court of competent jurisdiction.

(a) The Department and Committee are not prohibited from making available for inspection or disclosing the contents of a record upon the request of the person or the guardian of the person who is the subject of the record or, if the subject of the record is a minor, upon the request of the parent, guardian, or legal custodian of the minor.

(b) The Department and Committee are not prohibited from making available for inspection or disclosing the contents of a record upon the written permission of the person or the guardian of the person who is the subject of the record or, if the subject of the record is a minor, upon the written permission of the parent, guardian, or legal custodian of the minor, unless the Department or Committee determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(c) The Department and Committee are not prohibited from making available for inspection or disclosing the contents of a record to a Tribal enrollment department, a social welfare agency, a law enforcement agency, a health care provider, a public or private school, or other business unit of the Nation if the Department or Committee determines that the exchange of information is necessary to satisfy a particular purpose or carry out a function. The exchange shall be limited to the minimum necessary to accomplish the intended purpose.

### **1.5. Maintaining Records**

1.5-1. The Department and Committee shall store records in a safe place located within the Oneida Tribal Enrollment Office. Records shall be update and organized in a manner that allows for thoroughness and accuracy of records, as well as efficient retrieval.

1.5-2. The Department and Committee shall ensure that all duplicate records in their possession shall be stored in a safe place.

### **1.6. Verification of Authenticating Documents**

1.6-1. The Department and Committee shall confirm through the evaluation of original signatures, stamp prints, and seals, that all documents submitted are authentic.

### **1.7. Removal of Tribal Roll**

1.7-1. Removal of the official Tribal roll from its designated Tribal office must be approved by the Committee prior to such removal. An appropriate instance for removal shall include, but not be limited to voter registration.

*End.*

---

Original effective date:



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



## **Statement of Effect**

### *Membership Ordinance Law Rule No.1 – Enrollment Rule*

#### **Summary**

Membership Ordinance Law Rule No.1 – Enrollment Rule creates enrollment procedures for carrying out the responsibility delegated to the Oneida Trust Enrollment Committee in the Membership Ordinance.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*  
*Date: October 19, 2017*

#### **Analysis by the Legislative Reference Office**

The Administrative Rulemaking law states that authorized agencies must be granted rulemaking authority by a law of a Nation, and that once granted rulemaking authority the authorized agency can then create rules which interpret provisions of any law enforced or administered by it as long as the rule does not exceed the rulemaking authority granted under the law for which the rule is being created for. [see Administrative Rulemaking law section 106.4-1].

The Membership Ordinance was adopted by the General Tribal Council pursuant to GTC Resolution 07-02-84-A. The Membership Ordinance states that the Oneida Trust Committee, now known as the Oneida Trust Enrollment Committee, is delegated the responsibility for maintaining the official rolls of the Oneida Nation, and is tasked with developing and drafting rules and procedures for carrying out that responsibility. [see Membership Ordinance section 124.5-1]. Minimum requirements for what should be included in the rules are then described in the Ordinance, and include maintenance of confidentiality, maintaining records in a safe place, insurance that duplicate records are stored in a safe place, limitation of access to records, verification of authenticating documents, and removal of the official tribal roll from its designated tribal office. [see Membership Ordinance section 124.5-1(a)-(f)]. The Ordinance then states that enrollment procedures developed by the Oneida Trust Enrollment Committee shall be strictly followed, and that Tribal Enrollment Officers shall implement such rules after they have been approved by the Oneida Business Committee. [see Membership Ordinance section 124.5-2].

Although the Membership Ordinance was adopted thirty-two (32) years prior to the Administrative Rulemaking law, it may be interpreted that that the Membership Ordinance delegates administrative rulemaking authority to the Trust Enrollment Committee as authorized by the Administrative Rulemaking law since the Membership Ordinance delegates authority to the Trust Enrollment Committee to develop rules which must be adopted by the Oneida Business Committee, which is a similar process to that contained in the Administrative Rulemaking law.

The purpose of the Membership Ordinance Law Rule No.1 – Enrollment Rule (“the Rule”) is to provide procedures for the Oneida Trust Enrollment Committee to follow so that an accurate official roll for the Oneida Nation may be maintained. The Rule meets the minimum requirements for what should be included in the rules promulgated by the Trust Enrollment Committee and sets procedures regarding the maintenance of confidentiality; maintaining records; verification of authenticating documents; and removal of the tribal roll.

In regards to the minimum requirements for the rules developed and drafted by the Trust Enrollment Committee, the Membership Ordinance states that the rules for carrying out the responsibility for maintaining the official roles of the Oneida Nation shall include a limitation of access to records of designated enrollment officers. *[see Membership Ordinance section 124.5-1(d)]*. The Membership Ordinance was adopted by the General Tribal Council long before use of electronic databases to access enrollment information and records were conceived. The Trust Enrollment Committee currently has memorandums of agreement and/or understanding with various tribal business units within the Nation which describes how access to Trust Enrollment Committee information and records are obtained. The Rule reflects the Trust Enrollment Department and Trust Enrollment Committee’s current, modern day limitations on the access to Trust Enrollment Committee records.

#### ***Conclusion***

There are no legal bars to adopting Membership Ordinance Law Rule No.1 – Enrollment Rule.

### Financial Analysis for Enrollment Rule (Trust Enrollment Department)

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	Would be absorbed within the current budget.	\$0
Personnel	Existing staff would incur additional duties.	\$0
Office	N/A	\$0
Documentation Costs	N/A	\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation	One week.	\$0
Other, please explain	N/A	\$0
Total Cost (Annual)		\$0

## Summary Report for Enrollment Rule

Original effective date: N/A

Amendment effective date: N/A

**Name of Rule:** Enrollment Rule

**Name of law being interpreted:** Membership Ordinance

**Rule Number:** 1

**Other Laws or Rules that may be affected:** N/A

**Brief Summary of the proposed rule:** The purpose of this rule is to create enrollment procedures for carrying out the responsibility delegated to the Oneida Trust Enrollment Department in section 124.5-1 of the Membership Ordinance.

**Statement of Effect:** Obtained after requesting from the Legislative Reference Office.

**Financial Analysis:** See Attached.

---

**Note:** In addition- the agency must send a written request to each entity which may be affected by the rule- asking that they provide information about how the rule would financially affect them. The agency must include each entity's response in the financial analysis. If the agency does not receive a response within 10 business days after the request is made, the financial analysis can note which entities did not provide a response.

Jo Anne House, PhD | Chief Counsel  
James R. Biltorf | Deputy Chief Counsel

Patricia M. Stevens Garvey  
Kelly M. McAndrews  
Michelle L. Gordon  
Krystal L. John  
Robert J. Collins, II

Law Office



TO: Legislative Operating Committee (LOC) *RJC*  
FROM: Robert J. Collins II, Oneida Law Office  
DATE: November 29, 2017  
RE: Enrollment Rule: Public Meeting Comment Review

---

On November 17, 2017, a public meeting was held regarding the proposed Enrollment Rule as it pertains to the Membership Ordinance. There were no oral or written comments provided.

Jo Anne  
James

Patricia  
Kelly M  
Michelle  
Krystal  
Robert

Jo Anne  
James

Patricia  
Kelly  
Michelle  
Krystal  
Robert

## Public Meeting Sign In Sheet

ENROLLMENT RULE - NOVEMBER 17, 2017

	Name	Phone or Email
1	Susan White	swhite@onedonation.org
2	Bonnie Rgman	bprgman@onedonation.org
3	(Barbara) Bobbi Webster	bwebster@onedonation.org
4	RWBaurel	rbaurel@netnet.net
5	K. S. Metox	KMETOX@ONEDONATION.ORG
6		
7		
8		
9		

www.kalihwisaks.com

## Local

November 2, 2017 • A'hsá Niwása Wá'tillu 39

### Letters

#### More discussion at GTC

Conducting our affairs using Robert's Rules of Order is not the true Oneida Way nor the way of any indigenous people of this land. Robert's Rules of Order is an expedient, often dismissive, way of conducting a proceeding. Whereas, the traditional Oneida Way allows for free exchange of ideas, deliberation, and, ultimately, consensus decision making. Our use of Robert's Rules of Order disrespects and dishonors the traditions of our people. If we are to thrive as Oneida we must reestablish the traditional social structure and way of our ancestors, especially for exchanging ideas and decision making.

Glen Golden

## Community Announcement

The Community Fund that is administered by the Finance Committee is now taking applications for FY18. The purpose of the Community Fund is to serve the Oneida community members by offering funds and/or Coca-Cola products. The Community Fund is available to all enrolled Oneida member and is designated specifically for:

1. Self-Development initiatives for youth and adults,
2. Oneida Community Events and
3. Fundraisers that benefit Oneida members or the Community

#### Letters Policy

Letters must be limited to 250 words. All letters are subject to editing and must have your signature, address and phone number for confirmation. Confirmation of letters will be needed before publication. Kalihwisaks has the right to refuse publication of submitted letters.

Effective January 1, 2001 per Kalihwisaks Policies & Procedures, Section I (c)(4), "Individuals will not be allowed to submit more than eight (8) letters per year regardless of top-

ics." For more information on Kalihwisaks Policies & Procedures, please contact (920) 496-5636

Guest articles and editorials that appear in the Kalihwisaks are not necessarily the views or opinions of the Kalihwisaks staff or the Oneida Nation of Wisconsin.

Although we require a signed submission for letters, you can e-mail us now – and send the hard copy through the mail – to ensure we get your submission by the deadline.

**E-mail your letters to:**  
**dwalschi@oneidanation.org**

All funding requests obligate the requestor to provide a 10% match. Individual requests are limited to a maximum of \$300 once per year and group requests to \$750 once per year.

Excluded requests include any travel/travel related requests, personal requests or funds that can be obtained from another tribal program. Tribal programs are also excluded from funding requests, but may be eligible for product requests; provided the event is open to and benefits the community/public.

The Finance Committee reviews all requests

once each month. There is one application for funding requests and one application for Coca-Cola product requests. The FY 2018 forms are available on the Intranet under Frequently Used forms/ Finance, and on the Oneida Tribal website page.

You can also call the Finance Administration Office at 920-869-4325 to obtain forms or to find out more information. All requestors are asked to submit requests at least six weeks before actual need or event date. Completed forms and back up information are to be sent in a PDF format to: CF@oneidanation.org

#### NOTICE OF

## PUBLIC MEETING

TO BE HELD

**November 17, 2017 at 1:30 p.m.**

IN THE

**Business Committee Conference Room**

In accordance with the Administrative Rulemaking Law, the Oneida Trust Enrollment Committee is hosting this Public Meeting to gather feedback from the community regarding the following rule(s).

### TOPIC: Enrollment Rule

This is a proposal to adopt a rule which would create enrollment procedures for carrying out the responsibility delegated to the Oneida Trust Enrollment Committee in the Membership Ordinance including:

- ♦ Maintenance of Confidentiality.
- ♦ Maintaining Records.
- ♦ Verification of Authenticating Documents.
- ♦ Removal of Tribal Roll.

To obtain copies of the Public Meeting documents for this proposal, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings).

## PUBLIC COMMENT PERIOD OPEN UNTIL November 28, 2017.

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 Oneida Trust Enrollment Committee by U.S. mail, interoffice mail, e-mail or fax.

**Oneida Trust Enrollment Committee**  
PO Box 365  
Oneida, WI 54155  
[Enrollments@oneidanation.org](mailto:Enrollments@oneidanation.org)  
Telephone: (920) 869-6200  
Fax: (920) 869-2995



## Title 1. Government and Finances – Chapter 124

### MEMBERSHIP ORDINANCE

#### Rule #1 – Enrollment Rule

- 1.1 Purpose and Delegation
- 1.2 Adoption and Authority
- 1.3 Definitions
- 1.4 Maintenance of Confidentiality
- 1.5 Maintaining Records
- 1.6 Verification of Authenticating Documents
- 1.7 Removal of Tribal Roll

#### 1.1. Purpose and Delegation

1.1-1. *Purpose.* The purpose of this rule is to create enrollment procedures for carrying out the responsibility delegated to the Oneida Trust Enrollment Committee in the Membership Ordinance.

1.1-2. *Delegation.* The Membership Ordinance delegated the Oneida Trust Enrollment Committee rulemaking authority pursuant to the Administrative Rulemaking law.

#### 1.2. Adoption and Authority

1.2-1. This rule was adopted by the Oneida Trust Enrollment Committee in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Membership Ordinance.

#### 1.3. Definitions

1.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

- (a) "Committee" means the Oneida Trust Enrollment Committee.
- (b) "Department" means the Trust Enrollment Department.
- (c) "Judiciary" means the judicial system responsible for applying the laws of the Oneida Nation. The three branches, as identified in resolutions BC-05-08-13-A and GTC 01-07-13-B are the Family Court, Trial Court and Court of Appeals.
- (d) "Minor" means anyone who has not yet attained the age of eighteen (18).
- (e) "Nation" means the Oneida Nation.

#### 1.4. Maintenance of Confidentiality

1.4-1. The Department and Committee shall not make available for inspection or disclose the contents of any record kept or information received regarding enrollment except to designated

enrollment employees, as provided in this section, or by order of the Judiciary or another court of competent jurisdiction.

(a) The Department and Committee are not prohibited from making available for inspection or disclosing the contents of a record upon the request of the person or the guardian of the person who is the subject of the record or, if the subject of the record is a minor, upon the request of the parent, guardian, or legal custodian of the minor.

(b) The Department and Committee are not prohibited from making available for inspection or disclosing the contents of a record upon the written permission of the person or the guardian of the person who is the subject of the record or, if the subject of the record is a minor, upon the written permission of the parent, guardian, or legal custodian of the minor, unless the Department or Committee determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(c) The Department and Committee are not prohibited from making available for inspection or disclosing the contents of a record to a Tribal enrollment department, a social welfare agency, a law enforcement agency, a health care provider, a public or private school, or other business unit of the Oneida Nation if the Department or Committee determines that the exchange of information is necessary to satisfy a particular purpose or carry out a function. The exchange shall be limited to the minimum necessary to accomplish the intended purpose.

### **1.5. Maintaining Records**

1.5-1. The Department and Committee shall store records in a safe place located within the Oneida Tribal Enrollment Office. Records shall be update and organized in a manner that allows for thoroughness and accuracy of records, as well as efficient retrieval.

1.5-2. The Department and Committee shall ensure that all duplicate records in their possession shall be stored in a safe place.

### **1.6. Verification of Authenticating Documents**

1.6-1. The Department and Committee shall confirm through the evaluation of original signatures, stamp prints, and seals, that all documents submitted are authentic.

### **1.7. Removal of Tribal Roll**

1.7-1. Removal of the official Tribal roll from its designated Tribal office must be approved by the Committee prior to such removal. An appropriate instance for removal shall include, but not be limited to voter registration.

*End.*

---

Original effective date:

Regular Trust Enrollment Committee Minutes  
 22 August 2017  
 Page 3 of 5

**B. Voiding Unlawful Memberships – Rob Collins**

7-10-17 Motioned to pursue Option 3.a.i & ii as stated in the memo from Trust Enrollment Staff Attorney Robert Collins II, dated June 14, 2017, and for the draft rule be presented to the Trust Enrollment Committee at their regular monthly meeting in September.

**8-22-17 Status Update – Needs Direction**

Elaine Skenandore-Cornelius was not in favor of voiding unlawful memberships due to community feedback from the January 19, 2017 Public Meeting. Kirby Metoxen noted that Trust Enrollment Committee cannot turn a blind eye to their responsibility, and that clear communication is key to dispelling negative reactions from the community. Carole Liggins suggested moving the hearing body of unlawful membership cases to the Judiciary.

Norbert Hill Jr. motioned to pursue Option 3 in Attorney Collins memo dated August 16, 2017, "To pursue the Voiding Unlawful Membership rule and Enrollment Rule (without avoidance included) as two separate rules; for Attorney Collins to provide information on potential cases for voiding unlawful memberships; and to revise the Voiding Unlawful Membership rule to include Judiciary as the hearing body of unlawful membership cases. Seconded Kirby Metoxen. Elaine Skenandore-Cornelius abstained. Motion carried.

Discussion: Dylan Benton asked the committee to consider which of the two rules to put forward for a public meeting first. The final draft of both rules will be an item on September's Regular Trust Enrollment Committee Meeting agenda.

**V. Old Business**

**A.**

[REDACTED]

**B.**

[REDACTED]

Regular Trust Enrollment Committee Minutes  
 28 September 2017  
 Page 3 of 5

B. Enrollment Rule – Rob Collins

8-22-17 motioned to pursue the Voiding Unlawful Membership rule and Enrollment Rule (without voidance included) as two separate rules; for Attorney Collins to provide information on potential cases for voiding unlawful memberships; and to revise the Voiding Unlawful Membership rule to include Judiciary as the hearing body of unlawful membership cases.

9-28-17 Status Update

Loretta Metoxen motioned to approve the Enrollment Rule, and for Attorney Robert Collins continue with the Administrative Rule Making Process for adoption. Seconded Kirby Metoxen, Motion carried unanimously.

C. [REDACTED]

VII.

Old Business

A. Strategic Asset Planning Susan White  
 [REDACTED]

B. [REDACTED]

C. [REDACTED]

D. [REDACTED]

E. [REDACTED]

# December 2017

December 2017

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

January 2018

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	<b>Nov 26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>	<b>Dec 1</b>	<b>2</b>
Nov 26 - Dec 2							
	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>
Dec 3 - 9			3:00pm 4:30pm Canceled: LOC Prep (BC_Exec_Conf_Room) - Jennifer A. Falck	9:00am 3:00pm LOC (BC_Conf_Room) - LOC			
	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>
Dec 10 - 16				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert			
	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>
Dec 17 - 23			3:00pm 4:30pm LOC Prep (BC_Conf_Room) - LOC  3:00pm 4:30pm LOC Prep (BC_Exec_Conf_Room) - LOC	9:00am 3:00pm LOC (BC_Conf_Room) - LOC			
	<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>
Dec 24 - 30				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert			
	<b>31</b>	<b>Jan 1, 18</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
Dec 31 - Jan 6							

# January 2018

January 2018						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February 2018						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	Dec 31	Jan 1, 18	2	3	4	5	6
Dec 31 - Jan 6				9:00am 3:00pm LOC (BC_Conf_Room) - LOC			
	7	8	9	10	11	12	13
Jan 7 - 13				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
	14	15	16	17	18	19	20
Jan 14 - 20			3:00pm 4:30pm LOC Prep (BC_Conf_Room) 3:00pm 4:30pm LOC Prep (BC_Exec_Conf) 6:00pm 12:00am GTC (Radisson)	9:00am 3:00pm LOC (BC_Conf_Room) - LOC			
	21	22	23	24	25	26	27
Jan 21 - 27				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
	28	29	30	31	Feb 1	2	3
Jan 28 - Feb 3	10:00am 6:00pm GTC (Radisson)						