

Title 6. Property and Land – Chapter 601
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The real/certain laws of the territory of the nation
REAL PROPERTY

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601.1. Purpose and Policy

601.1-1. *Purpose.* The purpose of this law is to provide regulations and procedures for the transfer, control and management of all Tribal land; and to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold concurrent jurisdiction.

601.1-2. *Policy.* It is the policy of the Nation to set out the responsibilities and expectations for purchasing and managing real property on behalf of the Nation and to provide real property holder's rights and responsibilities.

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, BC-05-09-18-A and BC-04-22-26-B.

601.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

601.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

601.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, the Land Ordinance is applicable only to valid land assignments existing as of January 1, 2016 and is hereby repealed upon the expiration of the last existing land assignment.

601.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

601.3. Definitions

601.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense, subject to 601.4-5.

(a) "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.

(b) "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, residential leasing, the rent-to-own program, and the residential sales and mortgages programs.

(c) "Deed" means the formal document used to transfer title from one (1) party to another.

- (d) “Easement” means a real property right to cross or otherwise utilize the land of another for a specified purpose and duration with just compensation.
- (e) “Individual fee land” means real property held in fee status by an individual or group of individuals.
- (f) “Individual trust land” means real property held in trust status by the United States of America for the benefit of a member of a federally recognized Indian tribe.
- (g) “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.
- (h) “Land Management” means the entity within the Nation that is the caretaker and manager of the Nation’s agricultural, commercial and leasing portfolios and performs all acquisitions on behalf of the Nation. Land Management reports to the Division Director of the Environmental, Land and Agricultural Division.
- (i) “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 land for a specific purpose and a temporary duration, which may require the Nation to be compensated for such use.
- (j) “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.
- (k) “Nation” means the Oneida Nation.
- (l) “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.
- (m) “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.
- (n) “Restricted fee status” or “Restricted fee” means title to the land is held by an individual Indian person or a tribe and can only be alienated or encumbered by the owner with the approval of the Secretary of the Interior because of limitations imposed under federal law.
- (o) “Rule” means a set of requirements, including fee schedules, enacted by the Tribal entities in accordance with this law and the Administrative Rulemaking law, based on authority delegated in this law in order to implement, interpret and/or enforce this law.
- (p) “Senior management” means the highest level positions employed by the Nation in the non-enterprise chain of command under the Oneida Business Committee.
- (q) “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.
- (r) “Title status report” means a report issued after a title examination of trust land 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 generated in TAAMS.
- (s) “Title report” means a report issued after a title examination of the Nation’s and applicable counties land records which shows the proper legal description and includes any applicable conditions, exceptions, restrictions or encumbrances.
- (t) “Tribal fee land” means land held in fee status by the Nation.
- (u) “Tribal land” means Tribal fee land and/or Tribal trust land.
- (v) “Tribal member” means an individual who is an enrolled member of the Nation.
- (w) “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 members' individual fee land and individual trust land within the Reservation boundaries and all Tribal land.

601.4-2. *Sale of Tribal Land Prohibited.* The sale of Tribal land is expressly prohibited, except under the following circumstances:

(a) The transaction is for the sole purpose of consolidating or partitioning Tribal trust land and/or individual trust land within the Reservation.

(b) The land is located off the Reservation, and the sale is approved by formal resolution of the Oneida Business Committee.

601.4-3. *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.

601.4-4. *No Waiver of Sovereign Immunity.* Nothing in this law may be construed as a waiver of the Nation's sovereign immunity.

601.5. Organization

601.5-1. *Comprehensive Housing Division.* The Comprehensive Housing Division shall oversee all residential transactions on Tribal Land within the Reservation and shall process and administer such transactions using the applicable sections 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 Comprehensive Housing Division shall exercise 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 improvement.

601.5-2. *Oneida Land Commission.* The Oneida Land Commission is comprised of seven (7) elected Tribal members and shall:

(a) Interpret the provisions of this law to guide Land Management in implementing the same;

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

(c) Approve or deny all acquisition of Tribal land provided that the Land Commission may delegate acquisition sign-off authority to the Environmental, Land and Agricultural Division Director pursuant to Land Commission resolution; and

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

(e) *Joint Rulemaking Authority.* Exercise joint rulemaking authority with the Land Commission to develop rules in accordance with the Administrative Rulemaking law which address:

(1) The issuance of easements; and

(2) Issuance of land use licenses.

601.5-3. *Land Management.* Land Management shall implement its duties in accordance with this law. Land Management shall:

(a) *Rulemaking Authority.* Exercise rulemaking authority pursuant to the Administrative Rulemaking Law to:

(1) Create a fine and penalty schedule for violations of this law and its corresponding rules; and

- (2) Any other rule needed to implement or interpret the provisions of this law.
- (3) Provided that, such rules shall be approved by senior management prior to their submission to the Legislative Operating Committee pursuant to the Administrative Rulemaking Law.
- (b) *Joint Rulemaking Authority.* Exercise joint rulemaking authority with the Land Commission to develop rules in accordance with the Administrative Rulemaking law which address:
 - (1) The issuance of Easements; and
 - (2) Issuance of Land Use Licenses.
- (c) Administer and oversee the Oneida Nation Register of Deeds and any other trust title responsibilities;
- (d) Enter into and administer agricultural and commercial leases pursuant to the Leasing law and the Eviction and Termination law and any corresponding rules;
- (e) Prepare title reports and process trust transactions; and
- (f) Process land acquisition transactions as approved by the Oneida Land Commission.
- (g) Manage the Tribal land portfolio and act as the caretaker of all unassigned lands.
- (h) Process requests for easements and land use licenses.
- (i) Administer all internal building and land assignments to internal entities of the Nation as approved by senior management.
- (j) Administer all transactions which add real property to the Tribal land base under the provisions of this law.
- (k) Prepare and maintain title reports and accurate land records.
- (l) Perform real estate services for individual trust landowners in accordance with the self-governance compact to include collection and submittal of required documents for the Bureau of Indian Affairs to review and approve easements, conveyances and other real estate transactions.
- (m) Process compile and submit the Nation's fee to trust applications in accordance with the priorities approved by senior management.
- (n) Determine which Tribal land will be posted and ensure the appropriate signs are posted.

601.6. Holding of Ownership

- 601.6-1. 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, their 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, their interest is divided among their 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.

601.7. Legal Descriptions

601.7-1. Legal descriptions defining land boundaries shall be complete, providing unequivocal identification of line or boundaries.

601.7-2 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.

601.7-3. Every land survey shall be made in accordance with the Oneida Nation Register of Deeds' recording standards for Tribal trust or restricted fee lands and individual trust lands , the county register of deeds' records for fee land, and the Bureau of Indian Affairs Land Titles and Records Office recording standards.

601.7-4. 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.

601.7-5. Legal descriptions shall be used on transfer documents formalizing all acquisitions of land, trust or restricted fee acquisitions.

601.8. Title Transfer

601.8-1. *Trust Acquisition.* Land Management shall use title companies duly registered with the Department of Interior to update abstracts or provide title insurance on real property scheduled for trust or restricted fee acquisition.

(a) Land Management applications to convert Tribal fee land into trust land or restricted fee land shall comply with all applicable federal requirements.

() After land is in trust or restricted fee status Land Management shall request a a title status report and title report. For the purposes of this section, a valid encumbrance is one that has been preapproved, in writing, by the Nation in accordance with applicable requirements.

601.8-2. *Deeds.* Valid deeds shall:

(a) *Fee Deeds:*

(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) *Trust Deeds and/or Restricted fee Deeds.* In addition to the requirements listed in section 601.7-2(a), a deed prepared for trust or restricted fee acquisition shall comply with all applicable federal laws and guidelines.

(c) *Requirement to record.* A deed transferring title shall be recorded with the Oneida Nation Register of Deeds provided that any trust or restricted fee deeds shall comply with any additional federal recording requirements.

601.8-3. *Involuntary Transfer of Title.* All involuntary transfers of title 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 shall be limited to a right of last resort. Parties contesting authority or consideration as related to the Nation's exercise of eminent domain may contest the acquisition by filing a complaint with the Oneida Judiciary.

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

(c) *Tribal Land Consolidation.* The Nation may acquire land in compliance with the Indian Land Consolidation Act

(d) *Easement by Necessity.* An owner of a landlocked parcel may seek nondiscretionary easement by filing a complaint with the Oneida Judiciary alleging a nondiscretionary easement is needed as against the named property owner by the filing party because the filing party has no other reasonable means to access their real estate but for the issuance of an easement by necessity granted by the Court. An easement by necessity is created when a grantor conveys lands that have no outlet to a public road except over the grantor's remaining lands. The easement by necessity arises in favor of a property owner if the owner can prove common ownership of the proposed servient and dominant estates at the time of the severance that created the landlocked condition that the landlocked parcel had no access to a public roadway after it was severed, and such lack of access continues. In such a case, an easement by necessity is created over the grantor's remaining lands to allow the grantee access to the public road. Common ownership of the benefited and burdened parcels before the conveyance occurred is a necessary precondition for establishing a way of necessity. Easements by necessity may be created even if separation of two parcels under common ownership results from an involuntary transfer, such as a tax sale.

(e) *Prescriptive Easement.* A prescriptive easement is an easement acquired through open and notorious use of an owner's land which is adverse to the owner's rights for a continuous and uninterrupted period of twenty (20) years. An action to establish a prescriptive easement granting the right to continue to use the property in that manner may be commenced by filing a complaint with the Oneida Judiciary.

(f) *Easement by Written Instrument.* An action for the recovery or possession of real estate and a defense or counterclaim based upon title to real estate are barred by uninterrupted adverse possession of seven (7) years.

(g) *Adverse Possession Prohibited.* Adverse possession can never be used against the Nation.

601.8-4. Land Management shall work with the Oneida Law Office to pursue an involuntary transfer of title on behalf of the Nation.

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 all Tribal land in accordance with the Leasing law, and the Eviction and Termination law.

601.10. Trespass

601.10-1. A person commits trespass if they enter or occupy Tribal land, or land owned by a Tribal member located within the boundaries of the Reservation, without proper authorization and:

(a) Refuse to leave land to which they have no reasonable claim or right of possession when requested to do so.

(b) After being notified by the landowner or lawful occupant that permission to enter has been denied, revoked, or does not exist. Notification may be provided in the following ways:

(1) Public notice through publication of the Land Access Map on the Nation's website and/or in the Nation's newspaper.

(2) Physical posting of the land, which shall be deemed sufficient if one (1) of the following conditions is met:

(i) A sign at least eleven inches (11") square is placed in at least two (2) conspicuous locations for every forty (40) acres of land. The sign must include appropriate notice and the name of the person giving notice, followed by "owner" if the person holds legal title, or "occupant" if the person is a lawful occupant without legal title.

(ii) Markings at least one foot (1') long, in a contrasting color, bearing the phrase "Private Land" and the name of the owner, are placed in at least two (2) conspicuous locations for every forty (40) acres.

(c) Engage in any of the following activities without proper authorization through a lease, permit, or as otherwise required under applicable law:

(1) Destroy or damage land, waters, livestock, poultry, buildings, equipment, or other property.

(2) Cut, destroy, or remove any wood, timber, plant, vegetation, or crop.

(3) Hunt, trap or fish, or attempt to do so.

(4) Dig, extract, or remove earth, soil, minerals, cultural resources, or other property.

(5) Post, paint, or affix notices, advertisements, signs, or other public communications on another's property.

(6) Parks or operate a vehicle on the land.

(7) Permit or allow livestock or any domestic animal to enter or remain on the land.

(8) Uses or occupies leased or subleased lands in a manner that exceeds the possessory rights granted under the terms of the lease or sublease.

(9) Dumps, deposits, places, throws, burns, emits or leaves any rubbish, refuse, debris, substances, or object on any highway, road, air, waterway or land without lawful authority or permission.

601.11. Records

601.11-1. *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.

601.11-2. *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 Oneida Nation Register of Deeds may accept documents, including but not limited to:

- (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;
- (j) Home ownership agreements made pursuant to the Landlord-Tenant law;
- (k) Marriage agreements; and
- (l) Correction of title defects.

601.11-3. *Accessibility.* The Oneida Nation Register of Deeds shall provide access to land records and title documents subject to fees detailed in the fee schedule created by Land Management and approved by the Land Commission.

601.11-4. *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.

601.11-5. *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.

601.12. Real Estate Education Requirements and Certifications

601.12-1. *Wisconsin Real Estate Education and Exam Required.* Land Management employees 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 Oneida Law Office shall select which continuing education courses are required. 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 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, subject to budgetary constraints, employ at least two (2) employees whose primary responsibility is real estate acquisitions and shall ensure that a minimum of one (1) employee is adequately educated and trained to serve as a backup to the primary personnel.

601.12-2. TAAMS Certification Required. All persons responsible for encoding Tribal Trust land information shall obtain a TAAMS certification.

601.12-3. *Fiduciary Responsibility*. All employees of the Nation engaged in the buying 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.

601.13. Enforcement

601.13-1. *Proof of Eligibility*. An officer of the Oneida Police Department or a designated warden may require any person to provide proof of eligibility to access or use any designated Tribal lands.

601.13-2. *Issuance of Citation*. An individual who violates a provision of this law may be issued a citation by an officer of the Oneida Police Department or a designated warden. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(a) A citation issued under this law, or pursuant to any order authorized by this law, may include fines, other penalties, and conditional orders as determined by the Trial Court.

(b) All citations shall be processed in accordance with the Nation's laws, rules, and policies governing citation procedures.

(c) Any order that is not complied with may be enforced by an officer of the Oneida Police Department or a designated warden. Enforcement actions may be taken at the expense of the owner.

(d) The Oneida Police Department is authorized to take any lawful and necessary action to prevent, mitigate, or remove violations of this Law.

End.

Adopted-BC-05-29-96-A

Amended-BC-03-01-06-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

Emergency Amendment-BC-06-14-17-A

Amended-BC-05-09-18-A

Emergency Amended – BC-01-22-20-B

Extension of Emergency – BC-07-22-20-A (Expired)

Amended-BC-04-22-26-B