Title 6. Property and Land – Chapter 613
PROBATE

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613.1. Purpose and Policy

613.1-1. *Purpose.* The determination of how property is disposed upon a person's passing is an exercise of self-governance crucial to the Nation's sovereignty. The purposes of this Law are accordingly:

(a) To ensure the property of Decedents passes to the rightful heirs or beneficiaries;
(b) To comply with the Decedent's wishes as much as possible;
(c) To comply with tribal custom and tradition;
(d) To provide a simple, efficient, and inexpensive method for probating the Decedent's property;
(e) To prevent the transfer of land out of tribal ownership and control; and
(f) To ensure the rights of creditors of Decedents are protected to the extent possible and fair.

613.1-2. *Policy.* It is the policy of the Nation to set out a probate process that is easy for Tribal members to engage with to the extent terminology and process can be simplified and which ensures that lands owned by Tribal members at the time of their death remain in the control of a Tribal member or the Nation to the extent permitted by law.

613.2. Adoption, Amendment, Repeal

613.2-1. This law was adopted by the Oneida Business Committee by resolution BC-04-22-26-E.
613.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.
613.2-3. 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.
613.2-4. 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.

(a) To the extent that this law conflicts with any applicable federal statutes or regulations, the federal statute or regulation controls.
(b) To the extent that any probate document, agreement or order to which this law applies conflicts with this law, this law controls.

613.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

613.3. Definitions

613.3-1. 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.

(a) "Nation" means the Oneida Nation.
(b) "Tribal member" means an enrolled member of the Oneida Nation.
(c) "Beneficiary" means any person for whose benefit property is held.
(d) "Child" includes any natural child and any child formally adopted in accordance with 25 U.S.C. § 372a. An individual is the "child" of his or her natural parents regardless of their marital status. An adopted individual is the "child" of *both* his or her adopting parent or parents *and* of his or her natural parents.

(e) "Covered permanent improvements" means buildings, other structures, and associated infrastructure attached to trust or restricted land, as well as any interests in such improvements.
(f) "Decedent" means a person who has died; a Decedent may have died with or without a valid will. The term 'testator' is often used to refer to a Decedent who has died with a valid will. In this law, the term 'Decedent' includes 'testator'.
(g) "Devise" means a gift of property by will or to give a gift of property by will.
(h) "Devisee" means a person or entity designated in a will to receive a devise.
(i) "Escheat" means reversion of property to the Nation because no valid heir or person to inherit exists.
(j) "Estate" means the total property that is owned by a Decedent at the time of their death and prior to the distribution of that property in accordance with the terms of a will, or when there is no will or valid will, by the requirements of this law.
(k) "Heir" means any person who is entitled under the law governing intestate succession to an interest in the property of a Decedent.
(l) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will effectively disposing of all the estate.
(m) "Intestate succession" means succession to property of a Decedent who dies intestate or partially intestate.
(n) "Issue" means children, grandchildren, lineal descendants of more remote degree, except those who are the lineal descendants of living descendants. The term includes adopted children and non-marital children whose paternity has been established and their issue.
(o) "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.
(p) "Life estate" means an interest in property held for only the duration of a designated person's life.
(q) "Personal property" means all non-trust property other than real property.
(r) "Personal Representative" means the person or entity appointed to oversee the probate process in accordance with the Decedent's wishes. The personal representative is either appointed in the Decedent's will or if the Decedent dies without a will by the Judiciary. A personal representative appointed in the Decedent's will is often called the 'Executor'. A personal representative appointed by the Judiciary when the decedent dies without is often called the 'Administrator'. In this law the term personal representative refers to both Executor and Administrator.
(s) "Probate" means a general term for the entire process of administration of estates of deceased persons, including those without wills.
(t) "Property" means any interest, legal or equitable, in real or personal property, without distinction as to kind.
(u) "Real property" means all interest in land, including improvements that have been affixed to the land.
(v) "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.
(w) "Spouse" means a person who was married to the Decedent or in a registered domestic, partnership with the Decedent under the Marriage Law or under the laws of another jurisdiction.

(x) "Trust or restricted land" means land, or an interest therein, title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation.

(y) "Will" means a written document executed with the required formalities and intended to facilitate the passage of the Decedent's property. The required formalities may be provided by this Law, federal law, or both this Law and federal law.

613.4. Application

613.4-1. This law shall apply to enrolled tribal members, their spouses, and their children residing on the reservation, all enrolled members, or persons eligible for enrollment, or persons who at the time of their death owned real property on land owned by the Nation within the exterior boundary of the Oneida Nation reservation.

613.5. Jurisdiction

613.5-1. *Non-trust property*. The Nation shall have jurisdiction to administer in probate the estate of a Decedent who is an enrolled tribal member, or the spouse or child of an enrolled member at the time of their death, and the estate of a decedent who at the time of their death resided or had an interest in personal and real property located within the exterior boundary of the Reservation to the extent that such estate consists of non-trust property that is not subject to the exclusive jurisdiction of the United States.

613.5-2. *Trust property*. The Nation asserts inherent authority to probate and administer trust and restricted property of a Decedent who is an enrolled member of the Nation, or the spouse or child of an enrolled member, to the fullest extent permitted under federal law. The Nation shall exercise such jurisdiction concurrently with the United States where allowed, and independently where federal law does not expressly vest exclusive jurisdiction in the United States. Nothing in this section shall be construed as a waiver of the Nation's sovereign authority or as limiting the Nation's right to administer trust or restricted property except where exclusive federal jurisdiction is clearly established by federal law.

613.6. Disposition of Estates of Deceased Tribal Members.

613.6-1. The purpose of this section is to formalize laws to handle the disposition of deceased tribal members' trust property, with or without a will. The intent of this section is to provide procedures which make it possible for equitable and fair decisions to be made for the surviving family, as well as promoting ongoing peace and harmony within the community.

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

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

613.6-2. Non-members of The Oneida Tribe and non-citizens of the United States cannot acquire Trust land through inheritance. Where interests are specifically devised to individuals ineligible to inherit the following options are provided:

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

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

613.6-3. Interests of Heirs who cannot be found will be sold to the Oneida Tribe at fair market value, or to an eligible heir, and the money returned to the estate for distribution.

613.6-4. In the absence of any heir or devisee, interests will escheat to the Oneida Tribe of Indians of Wisconsin.

613.6-5. Personal property which does not come under the guidelines of this Law, and may be

distributed at the traditional ten day meal by family members, include:

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

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

613.6-6. The Land Commission, or its designated sub-committee, shall make a declaratory ruling by authority of the Administrative Procedures Act, Section 9, in any case brought before them by any person claiming to be an heir of the deceased and requesting any of the following determinations:

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

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

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

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

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

613.6-7. The Oneida Law Office attorney assigned to represent the Oneida Land Commission will assist the Commission Probate Hearing Body to prepare a file for each probate application received. A complete probate file shall contain:

(a) Application;

(b) Family history information;

(c) Death certificate;

(d) Personal and Real Property Inventory;

(e) BIA-IIM Account Report;

(f) Creditor Claims, if any;

(g) Original will, if any;

(h) Names, addresses and phone numbers of all parties-in-interest;

(i) Affidavits of publishing and/or mailing demonstrating compliance with all notice provisions; and

(j) Waiver and consent forms to appoint and be appointed personal representative.

613.6-8. Definitions As Used In This Section

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

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

(1) Heirs of the decedent

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

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

(4) Additional persons as the Land Commission may by order include who may be affected by the actions of the Land Commission, or its designated sub-committee, whether by receipt of or denial of any property which is a part of the action.

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

613.6-9. *Parties-in-interest*. The net estate of a decedent, not disposed of by will, passes to

his/her surviving heirs or Parties-in-interest as follows:

(a) To the spouse:

(1) All Real Property.

(2) All other than Real Property if there are no surviving children of the decedent.

(3) ½ of other than Real Property of the decedent's estate if there are surviving children of the decedent, or children of any deceased child of the decedent (grandchildren) who take by right of representation.

(b) To Surviving Children and children of any deceased child of the decedent by rights of representation;

(1) All of the estate if there is no surviving spouse, divided equally to all in the same degree of kinship to the decedent. Surviving children of a deceased child of the decedent will divide their parent's share.

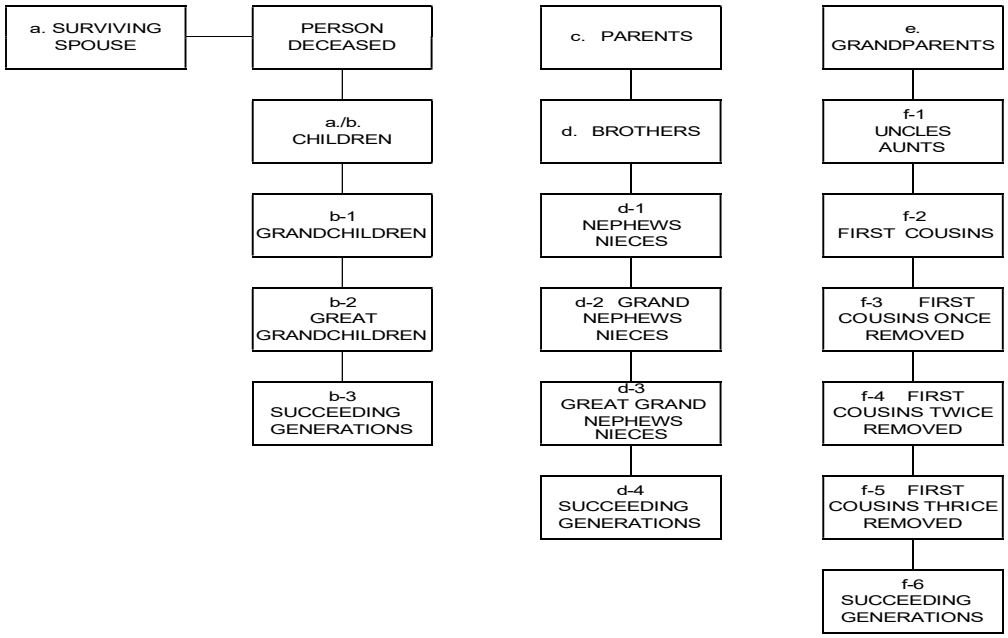
(c) All of the estate to the parents, equally divided, if no surviving spouse, children or children taking by right of representation.

(d) All of the estate to the brothers and sisters and children of deceased brothers or sisters by representation, divided equally, If no surviving spouse, children, or parents.

(e) All of the estate to the grandparents of the deceased divided equally, if no surviving spouse, children parents or brothers and sisters.

(f) All of the estate divided equally to lineal descendants of the grandparents of the deceased in the same order as (b) thru (e) if no surviving spouse, children, parents brothers/sisters, or grandparents of the decedent.

(f) Diagram of Intestate Succession as outlined in (a) thru (f) in Figure 1.



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

613.6-10. When the Probate File is complete, the Oneida Law Office shall work with the Government Administrative Office (GAO) to set a hearing date for the Land Commission Probate Hearing Body to convene.

(a) *Notice*: Unless the parties have consented to electronic service and delivery of documents, all parties-in-interest will be sent notice of the hearing to their current or last known address and shall also be posted in at least one issue of the Kalihwisaks and a newspaper of general circulation from the decedent's county of residence. The notice must include time and place for hearing, information for obtaining hearing materials and a contact

person. All notices must be complete at least ten (10) days before the hearing takes place.

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

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

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

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

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

(5) When all problems, disputes and legal issues of the case have been resolved to the satisfaction of all parties-in-interest, the hearing body will issue its Final or Declaratory Ruling to the Government Accountability Office (GAO), who will notify all parties involved in the hearing. This Final Ruling takes effect 60 days after mailings unless all parties-in-interest have waived their right to seek a rehearing before the Oneida Land Commission.

613.6-11. A party to a probate hearing may seek a rehearing of any of the above determinations listed in 8-3 upon provision of a written request to the Director of the Division of Land Management within 60 days after the Declaratory Ruling is issued. It is the responsibility of the aggrieved party to make certain that adequate documentation necessitating a rehearing is attached to the request.

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

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

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

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

613.6-12. The Government Accountability Office shall notice the Oneida Law Office of any petitions for rehearing and shall place any filed petitions on the first agenda of the Land Commission following the receipt of the petition.

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

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

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

613.6-13. Any Declaratory Ruling given under this Section may be appealed to the Judiciary

within 30 days from the date of the Ruling. The Ruling is sent to the Parties-in-interest with same documentation outlined in 8-6.

613.6-14. A party may petition the Judiciary to reopen the case within three years after the Declaratory Ruling has been mailed out if they can prove all of the following:

(a) They were not a participant in the first hearing;

(b) They were completely unaware that the first probate hearing occurred and they have proof that they were not duly noticed; and

(c) They have rights which were erroneously left out of the first probate hearing.

613.6-15. After looking at the record of the first hearing, the Judiciary may rule that the Petition To Reopen is not sufficient, or it may send an order to the Land Commission to provide a second hearing based on the evidence provided in the Petition.

613.6-16. All probate Declaratory Rulings of the Land Commission or Judgments of the Judiciary shall be recorded in the Division of Land Management.

(a) If fee land is part of the Ruling, it shall also be recorded at the County Register of Deeds.

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

End.

Emergency Adoption-BC-04-22-26-E
Emergency Extension – BC-10-14-26-D