

WAGANAKISING ODAWA



TRIBAL CODE of LAW TITLE VIII. HOUSING AND LAND PARCELS

2023 – Version 10.2

WAGANAKISING ODAWA TRIBAL CODE of LAW

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TITLE VIII. HOUSING AND LAND PARCELS

Chapter 1. Housing Commission

8.101 SHORT TITLE, PURPOSE, AND REPEAL OF PRIOR STATUTE

- A. Short Title.** This Statute may be cited as the “Housing Commission Act.”
- B. Purpose.** The purpose of this Statute is to set up a Housing Commission that will act in an advisory capacity to the Tribal Council in the research, funding, development and monitoring of Tribal housing.
- C. Repeal of Prior Statute.** The Little Traverse Bay Bands of Odawa Indians Odawa Housing Council Ordinance (Waganakising Odawak Statute 1997003), and all amendments thereto, are hereby repealed as of the effective date of this Statute.

(Source: WOS 1998009, June 21, 1998, Section I)

8.102 CREATION OF THE HOUSING COMMISSION

- A. Creation of Commission.** The Tribal Council hereby creates the Housing Commission, which shall consist of seven (7) LTBB Tribal members at least eighteen years of age appointed by the Tribal Council. Members of the Tribal Council may be appointed to the Commission.
- B. Term and Compensation.** Members of the Housing Commission shall be appointed to serve for four (4) year terms. Members may be reappointed for additional terms without limitation. Provided, to stagger terms, when the Tribal Council makes initial appointments, three people shall be appointed to three (3) year terms, and four people shall be appointed to four (4) year terms. All appointments thereafter shall be for four (4) year terms. The Commission shall appoint separate individuals from within the Commission to serve as chairperson, vice-chairperson, and secretary for terms of (2) years. There shall be no limit on reappointment. The Tribal Council may determine and

authorize compensation to be paid to members of the Commission based upon the Tribal Council's determination of the time required to be expended upon Commission duties and the qualifications of the appointed Commissioners. The term of office shall extend until a person's replacement is sworn in or the person is reappointed.

C. Oath of Office. Upon appointment, the Tribal Court shall administer the oath of office to the members of the Housing Commission which oath of office shall include a commitment to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians and to perform faithfully and diligently the duties and responsibilities set forth in this Statute.

D. Vacancies. In the event a vacancy occurs in the Housing Commission, by virtue of death, resignation or removal, the Tribal Council shall appoint a qualified Tribal member to fill the remaining term of office.

E. Removal. Commission members may be removed for the reasons, and following the procedures set out in the Removal of Commissioners and Nepotism Statute (Waganakising Odawak Statute 1997005), or such successor statute as the Tribal Council may enact and make applicable to the Commission.

F. Continuation of Current Housing Council Appointees. The members of the Board of the Odawa Housing Council who are serving under Waganakising Odawak Statute 1997003 on the effective date of this Statute are deemed members of the Housing Commission to serve until the date that their terms would have expired under Waganakising Odawak Statute 1997003 or until a successor is sworn in to replace them.

(Source: WOS 1998009, June 21, 1998, Section II)

8.103 DUTIES OF THE HOUSING COMMISSION

The Housing Commission shall have the following duties:

A. Develop proposed plans and policies for the development of Tribal housing that

will provide for diverse, aesthetically pleasing, healthy, and environmentally sound residential communities for Tribal members of all income levels, and recommend such proposals and plans to the Tribal Council for approval.

B. The Commission will be responsible for preparation of all proposals and documents that must be submitted to the United States Department of Housing and Urban Development for the Tribe to receive funds under the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. § 4101 *et. seq.*, and shall present such proposals and documents to the Tribal Council for review and submission by the Tribal Council on behalf of the Tribe.

C. The Commission shall attempt to find additional sources of funding for Tribal housing, shall prepare all proposals and documents that must be submitted to apply for and receive such funding and shall present such proposals and documents to the Tribal Council for review and submission by the Tribal Council on behalf of the Tribe.

D. The Commission shall develop proposed rules and regulations for the administration and maintenance of Tribal housing including eligibility, rent, eviction, and repairs, and present such proposals to the Tribal Council.

E. The Housing Commission is authorized to enter into and hold leases of parcels of property leased from the Tribe to the Housing Commission. When authorized by Tribal Council resolution, the Housing Commission may grant leasehold mortgages to lending institutions and/or enter into such other security agreements as necessary to secure loans. When authorized by Tribal Council resolution, the Housing Commission may enter into sublease agreements. Any instruments requiring Bureau of Indian Affairs approval under applicable law or regulation shall only be effective upon such approval.

(Source: WOS 1998009, June 21, 1998, Section III; subsection E added by WOS 2001-01, February 4, 2001)

8.104 STAFFING

The Commission shall work in conjunction with the Tribal housing director and housing staff in carrying out its duties.

(Source: WOS 1998009, June 21, 1998, Section IV)

8.105 MEETINGS, VOTING

A. Meetings. The Housing Commission may meet as often as they deem necessary but must meet at least once each quarter.

B. Voting. Actions of the Housing Commission shall be decided by a majority vote of those present at the meeting. The Chairperson is entitled to vote on all matters before the Commission. A quorum shall consist of four (4) members including the Chairperson. Provided, an action may be ratified by non-attending members. If ratification is sought, all non-attending members shall be contacted personally, or by phone or fax, and all ratifications shall be reduced to writing and placed in the minutes and approved at the next regularly scheduled Commission meeting.

(Source: WOS 1998009, June 21, 1998, Section V)

8.106 EFFECTIVE DATE

This Statute shall take effect on July 1, 1998.

(Source: WOS 1998009, June 21, 1998, Section VI)

8.107 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, paragraph, subsection or section shall be considered to stand alone and to be deleted from this ordinance, the entirety of the balance of the ordinance to remain in full and binding

force and effect.

(Source: WOS 1998009, June 21, 1998, Section VII)

Chapter 2. Mortgage Lending Statute

8.201 SHORT STATUTE

This Statute may be cited as the “Mortgage Statute,” and it repeals and replaces any prior Statute or Regulation in conflict with this Statute including WOS 2000-03, Mortgage of Trust or Restricted Land.

(Source: WOS 2018-002, April 4, 2018, Section I)

8.202 PURPOSE

The purpose of this Statute is to set forth general provisions for mortgages that provide homeownership opportunities to Tribal Citizens wishing to live on Trust Land or lands owned by the Tribe. This Statute meets the needs of mortgage loan guarantee, insurance and direct loan programs sponsored by the United States Departments of Housing and Urban Development, Agriculture (Rural Housing) and Veterans Affairs, that offer various mortgage loan programs.

(Source: WOS 2018-002, April 4, 2018, Section II)

8.203 DEFINITIONS

- A.** "Lease" means a ground lease or other agreement for use of Trust Land or land owned by the Tribe on which a Mortgage has or will be given.

- B.** "Leasehold Estate" means a leasehold estate established pursuant to a Lease between the Tribe, as Lessor and a Citizen of the Tribe as Tenant.

- C.** "Lender/Mortgagee" means any mortgage lender or any successors or assigns of any such lender. This definition also includes any subsequent holder, whether by assignment, succession or otherwise, of the original Mortgagee's right, title or interest in and to the Mortgage and/or the Mortgaged property, together with the improvements.

- D.** "Lessor" means the Tribe or a Tribal Citizen who leases an interest in property.
- E.** "Mortgage" means the first-lien mortgage of a beneficial real property interest in Trust Land or land owned by the Tribe Land given to secure a mortgage loan made by a Mortgagee.
- F.** "Mortgagor" means the Tribe or any eligible tribal member or entity borrower who has executed a mortgage on its beneficial interest in Trust Land or Restricted Land, including any heir(s), successor(s), executor(s) or assign(s) of such borrower.
- G.** "LTBB" or "Tribe" means the Little Traverse Bay Bands of Odawa Indians.
- H.** "Reservation" means all lands within the boundaries of the reservations for Little Traverse as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse reservation by the Department of the Interior.
- I.** "Tenant" means any person who occupies Trust land or Restricted Land, as lessee, under a Leasehold Estate with the Lessor.
- J.** "Tribal Court" means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- K.** "Tribal Citizen" means any person enrolled with the Tribe.
- L.** "Trust Land" means land within the jurisdiction of the LTBB Tribe, title to which is held by the United States Secretary of Interior for the benefit of the Tribe or an individual member of the Tribe.

(Source: WOS 2018-002, April 4, 2018, Section III)

8.204 JURISDICTION

Tribal Court of The Little Traverse Bay Bands of Odawa Indians (LTBB or Tribe) shall have exclusive jurisdiction over all foreclosure actions arising on all lands located within the exterior boundaries of the LTBB Reservation on trust lands, lands owned in fee by the Tribe, and any other property within the Reservation containing housing owned or financed by LTBB.

(Source: WOS 2018-002, April 4, 2018, Section IV)

8.205 MORTGAGE OF LEASEHOLD ESTATE

Any Tribal member, who is a tenant, may mortgage the leasehold estate for the purpose of obtaining home or business financing on said land, with the approval of the Lessor.

A. Lien Priority. All mortgage loans recorded in accordance with the recording procedures set forth in this Statute, including Leasehold Mortgages, and including loans made, guaranteed, insured or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. In those cases where the government direct, guaranteed or insured mortgage is created as a second mortgage, the loan shall assume that position.

B. Recording of Mortgage Loan Documents

1. The Tribal Housing Department shall maintain a system for the recording of mortgage loans and such other documents as the Tribe may designate by laws or resolution.
2. The Housing Department staff person shall endorse upon any mortgage loan or other document received for recording:
 - a. The date and time of receipt of the mortgage or other document;

copying. Rules for copying shall be established and disseminated by the Housing Department.

6. All mortgages will be recorded with the Bureau of Indian Affairs in addition to any Tribal recording provisions, if applicable by law.

C. Foreclosure Procedures

1. A Borrower/Mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) or is in violation of any covenant under the mortgage for more than 30 days to the Lender/Mortgagee (i.e. the 31st day from the payment due date).

2. When a Borrower/Mortgagor is thirty (30) days past due on his or her mortgage and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:

3. Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.

4. Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor for the purpose of trying to arrange a face-to-face interview.

5. Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.

6. When the Borrower/Mortgagor is past due on three (3) installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender/Mortgagee shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Tribe, as follows:

- a. Advise the Borrower/Mortgagor that information regarding the loan and default/delinquency will be given to credit bureaus.
- b. Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender/Mortgagee or otherwise.
- c. Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.
- d. In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements:
 - i. notify the Borrower/Mortgagor that if the Leasehold Mortgage remains past due on three installment payments, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is an option of the governmental program;
 - ii. notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government; and
 - iii. provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

7. If a Borrower/Mortgagor is past due on three (3) or more installment payments and the Lender/Mortgagee has complied with the procedures set forth in the first part of this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in Section D.

D. Foreclosure Complaint and Summons. The verified complaint in a mortgage foreclosure proceeding shall contain the following:

- 1. The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage loan, including

each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;

2. A description of the property subject to the mortgage loan;
3. A concise statement of the facts concerning the execution of the mortgage loan and in the case of a Leasehold Mortgage the lease; the facts concerning the recording of the mortgage loan or the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrowers/Mortgagor; and such other facts as may be necessary to constitute a cause of action;
4. True and correct copies of each promissory note, mortgage, deed of trust or other recorded real property security instrument (each a “security instrument”) and any other documents relating to the property and if a Leasehold Mortgage, a copy of the lease and any assignment of any of these documents; and
5. Any applicable allegations concerning relevant requirements and conditions prescribed in federal statutes and regulations, tribal codes, ordinances and regulations; and/or provisions of the promissory note, security instrument and if a Leasehold Mortgage, the lease.
6. The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

E. Service of Process and Procedures. Any foreclosure complaint must be in writing, and must be delivered to the Borrower/Mortgagor in the following manner:

1. Delivery must be made by an adult person and is effective when it is:
 - a. Personal delivery to a Borrower/Mortgagor with a copy sent by mail, or
 - b. Personal delivery to an adult living in the property with a copy sent by mail, or
 - c. Personal delivery to an adult agent or employee of the Borrower/Mortgagor with a copy sent by mail.

2. If the notice cannot be given by means of personal delivery, or the Borrower/Mortgagor cannot be found, the notice may be delivered by means of:
 - a. Certified mail, return receipt requested, at the last known address of the Borrower/Mortgagor, or
 - b. Securely taping a copy of the notice to the main entry door of the property in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the Borrower/Mortgagor at the premises.
3. The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

F. Cure of Default. Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable legal and Court costs incurred in foreclosing on the property. Any subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any Leasehold Mortgage Foreclosure proceeding.

G. Judgment and Remedy. This matter shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Lender/Mortgagee, the Tribal Court shall enter judgment:

1. Foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lienholder, in the mortgaged property and

2. Granting title to the property to the Lender/Mortgagee or the Lender's Designated Assignee; in the case of a Leasehold Mortgage, the Lease and the Leasehold Estate will be assigned to the Lender/Mortgagee or the Lender's Designated Assignee, subject to the following provisions:

a. The Lender/Mortgagee or Lender Designated Assignee shall give the Tribe the right of first refusal on any acceptable offer to purchase the Lease and the Lessee's leasehold interest in the property described in the lease which is subsequently obtained by the Lender or Lender's Designated Assignee.

b. The Lender/Mortgagee or Lender's Designated Assignee may only transfer, sell or assign the Lease and Lessee's leasehold interest in the property described in the Lease to a Tribal Citizen, the Tribe, or the Tribal Housing Authority;

c. The Lender/Mortgagee or Lender Designated Assignee has the right to convey the leasehold interest to the United States, Secretary of Housing and Urban Development without providing the right of first refusal to the Tribe for Nation Housing Act Section 248.

d. Nation Housing Act Section 248. Insured Mortgages on Indian Land. Federal Housing Administration (FHA) insures loans made to Native Americans to buy, build, or rehabilitate houses on Indian land. These are only available to Native Americans on Indian land.

H. Foreclosure Evictions. Foreclosure evictions shall be handled according to the general eviction process set forth below.

1. **Jurisdiction.** The provisions of this section H. shall apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution, Tribal Code, or applicable federal law.

2. **Unlawful Detainer.** A Lessee, Sublessee, or other occupant of a Leasehold Estate subject to a Leasehold Mortgage shall be guilty of unlawful detainer if such person shall continue in occupancy of such Leasehold Estate without the requirement of any notice by

the Lessor, after such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage foreclosure proceeding in the Tribal Court;

3. Complaint and Summons. The Lender/Mortgagee or Federal Agency (which made, guaranteed or insured the mortgage loan) as appropriate, shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

- a.** A complaint, signed by the Lender/Mortgagee or Federal Agency, or an agent or attorney on their behalf:
 - i.** Citing facts alleging jurisdiction of the Tribal Court;
 - ii.** Naming as defendants the mortgagors and any other record owner (including Sublessees and subordinate lienholders), of which the complainant has record notice (except the Tribe with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage);
 - iii.** Describing the Leasehold Estate subject to the Leasehold Mortgage;
 - iv.** Stating the facts concerning (1) the execution of the lease and the Leasehold Mortgage; (2) the recording of the Leasehold Mortgage; and (3) the facts upon which he or she seeks to recover;
 - v.** Stating any claim for damages or compensation due from the persons to be evicted; and
 - vi.** Otherwise satisfying the requirements of the Tribal Court.

- b.** A copy of the summons, issued in accordance with established Tribal Court rules and procedures, requiring the defendants to file a response to the complaint by the date specified in the summons. The deadline specified in the summons for filing a response shall be no less than 6 nor more than 30 days from the date of service of the summons and complaint. The summons shall notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the court by the date specified in the summons.

4. Service of Summons and Complaint. A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the following two methods.

5. Procedures for Service of Notice. Notices required or authorized in the immediately preceding section shall be given in writing either by:

a. Delivering a copy personally to the Borrower/ Mortgagor or to any other occupant under color of law, or to any adult residing on the Leasehold Estate and, if applicable, to any Sublessee; or

b. Posting said notice in a conspicuous place near the entrance to said Leasehold Estate, and sending an additional copy to the Lessee or to any other occupant under color of law, and, if applicable, to the Sublessee, by certified mail, return receipt requested, properly addressed, postage paid. Proof of service may be made by affidavit of any adult person stating the he has complied with the requirements of one of the above methods of service.

6. Power of the Tribal Court.

a. The Tribal Court shall enter an Order of Repossession if:

i. Notice of suit is given by service of summons and complaint in accordance with the procedures provided herein; and

ii. The Tribal Court shall find during pre-trial proceedings or at trial that the Lessee, Sublessee, or other occupant under color of law of the Leasehold Estate subject to the Leasehold Mortgage is guilty of an act of unlawful detainer.

b. Upon issuance of an Order of Repossession, the Tribal Court shall have the authority to enter a judgment against the defendants for the following, as appropriate: (1) back rent, unpaid utilities, and any charges due the Tribe, Tribal

Housing Authority, other public Housing Authority, or Sublessor under any sublease or other written agreement (except for a Leasehold Mortgage); (2) any and all amounts secured by the Leasehold Mortgage that are due the Lender/Mortgagee (or Federal Agency); and (3) damages to the property caused by the defendants, other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorney's fees in bringing suit.

7. Enforcement. Upon issuance of an Order of Repossession by the Tribal Court, Tribal law enforcement officers shall help plaintiffs enforce same by evicting the defendants and their property from the unlawfully occupied Leasehold Estate. In all cases involving the Lender/Mortgagee or Federal Agency, the Order of Repossession shall be enforced no later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to Paragraph H7 below, and provided, that no party exercised the right to cure a default or right of first refusal as described in Paragraphs F and G above.

8. Continuances in Cases Involving the Lender/Mortgagee or Federal Agency. (which originally made, insured or guaranteed) the mortgage loan. Except by agreement of all parties, there shall be no continuances in cases involving the Lender/Mortgagee or Federal Agency that will interfere with the requirement that the Order of Repossession be enforced not later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to the sound discretion of the Court.

I. No Merger of Estates. There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

J. Certified Mailing to Tribe. In any foreclosure proceedings on a Leasehold Mortgage where the Tribe is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the lessor is not the tribe, this notice will also be mailed to the lessor

at the same time the notice is mailed to the tribe. If the location of the lessor cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor in care of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

K. Intervention. The Tribe or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Tribe, nor the granting of such petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

L. Appeals. Appeals under this Code shall be handled in accordance with the general tribal appellate provisions.

(Source: WOS 2018-002, April 4, 2018, Section V)

8.206 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2018-002, April 4, 2018, Section VI)

8.207 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2018-002, April 4, 2018, Section VII)

8.208 OTHER RELATED STATUTES

See Waganakising Odawak Statute 2000-07 Lease Inheritance Statute, Waganakising Odawak Statute 2014-017 Leasing of Trust Lands Statute, or as may be amended.

(Source: WOS 2018-002, April 4, 2018, Section VIII)

Chapter 3. *Reserved*

Chapter 4. Evictions

8.401 JURISDICTIONAL / LIMITED WAIVER OF SOVEREIGN IMMUNITY / LIMITATIONS

A. Jurisdiction.

The Tribal Court of The Little Traverse Bay Bands of Odawa Indians (LTBB or Tribe) shall have exclusive jurisdiction over all eviction actions arising on all lands located within the exterior boundaries of the LTBB Reservation on trust lands, lands owned in fee by the Tribe, and any other property within the Reservation containing housing owned or financed by LTBB.

B. Limited Waiver of Sovereign Immunity.

LTBB hereby authorizes a limited waiver of immunity from suit, with respect to specific controversies or claims described in this section that may arise out of or relate to LTBB's obligation under a mortgage or lease entered into by LTBB under a mortgage assumption pursuant to Sections II (F)(2) or Section II(L) [WOTC 8.202(F)(2); 8.202(L)] of the Foreclosure Code of the LTBB. In connection with such limited waiver, LTBB consents solely to the jurisdiction of LTBB Tribal Courts with respect to (a) actions in equity brought by any party to such mortgage or lease seeking specific performance of any of LTBB's express obligations thereunder and (b) actions at law for actual damages which shall consist exclusively for remaining sums secured by a mortgage. This waiver of immunity is not intended, or shall it be construed (a) to extend to any claim for punitive or compensatory damages, (b) to waive LTBB's immunity from suit for any other purpose or with respect to any controversy, claim, or other matter not specifically mentioned in this section, or (c) to extend to the benefit of any person other than the parties to the documents or their successors or assigns. This limited waiver of immunity from suit shall not be construed as an admission of liability of LTBB as to any claim for damages or as an agreement or willingness to pay any amount as damages or as an agreement or willingness to pay any amount as damages absent a judicial determination of liability, and LTBB shall have the right to defend any of such claim fully on the

merits.

(Source: WOS 2000-04, April 16, 2000, Section I)

8.402 EVICTION PROCEDURES

A. PURPOSE

The purpose of this Code is to prescribe procedures relating to evictions in connection with leases, subleases or other land assignments or interests made by LTBB, LTBB's Designated Housing Department or Entity or any owner of land or leasehold interest.

B. DEFINITIONS

- 1. "Lease"** shall mean a ground lease or other agreement for use of Land or other real property.
- 2. "Leasehold Estate"** shall mean a leasehold estate established pursuant to a Lease between an owner of land or land interest as Lessor, and a third party as Tenant.
- 3. "Lessor"** shall mean the owner of land or land interest, including the Tribe. The Tribe shall be the beneficial or equitable owner of certain Trust Land or Restricted Land underlying a Leasehold Estate on which a Mortgage has been given, The Lessor shall include the successor(s) or assign(s) of such Lessor.
- 4. "Mortgage"** shall mean the first-lien mortgage of a beneficial real property interest in Trust Land or Restricted Land given to secure a mortgage loan made by a Mortgagee.
- 5. "Mortgagee"** shall mean any mortgage lender or any successors or assigns of any such lender. This definition also includes any subsequent holder, whether by assignment, succession or otherwise, of the original Mortgagee's right, title or

interest in and to the Mortgage and/or the Mortgaged property, together with the improvements.

6. “Mortgagor” shall mean any eligible tribal member or entity borrower who has executed a Mortgage on its beneficial interest in Trust Land or Restricted land, including any heir(s), successor(s), executor(s), administrator(s) or assign(s) of such borrower.

7. “Nuisance” shall mean maintenance on the Mortgaged property of a condition which:

a. Unreasonably threatens the health or safety of the public or neighboring land users; or

b. Unreasonably and substantially interferes with the ability of neighboring real property users to enjoy the reasonable use and occupancy of their property.

8. “LTBB” or “Tribe” shall mean the Little Traverse Bay Bands of Odawa Indians, a Federally recognized Indian tribe as reaffirmed under Public Law 103-324, 25 U.S.C. § 1300k.

9. “Reservation” shall mean all lands within the boundaries of the reservations for Little Traverse as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse reservation by the Department of the Interior.

10. “Restricted Land” shall mean land within the jurisdiction of LTBB that is subject to restrictions against alienation imposed by Federal Treaty, Statute,

Executive Order, or LTBB.

11. “Subordinate Lienholder” shall mean the holder of any lien, including a mortgage, perfected subsequent to the recording of a mortgage under this Code; provided, however, such definition shall not include the Little Traverse Bay Bands of Odawa Indians with respect to a claim for a Tribal tax on the Mortgaged property, where applicable.

12. “Tenant” shall mean any person who occupies Trust land or Restricted Land, as Lessee, under a Leasehold Estate with the Lessor.

13. “Tribal Court” shall mean: (i) the LTBB Tribal Court; or (ii) such body as may now or hereafter be authorized by the laws of LTBB to exercise the powers and functions of a court of law.

14. “Trust Land” shall mean land within the jurisdiction of LTBB, title to which is held by the United States for the benefit of the Tribe or an individual member of LTBB.

15. “Unlawful Detainer Action” shall be a suit brought before the Tribal Court to terminate a Mortgagor’s or Tenant’s interest in Trust Land or Restricted Land and/or to evict any person from occupancy of such a property.

16. “Waste” shall mean spoil or destruction of land, buildings, gardens, trees or other improvements on the Mortgaged property which result in substantial injury to such property.

17. “Writ of Restitution” is an order of the Tribal Court Restoring an owner, Lessor, Mortgagee (or other successor in interest) to possession of Trust Land or Restricted Land subject to a Mortgage; and Evicting a Tenant or other occupant from such property.

C. UNLAWFUL DETAINER

A Tenant or other occupier of a beneficial interest in Trust Land or Restricted Land subject to a Mortgage or Lease shall be guilty of unlawful detainer if such person shall continue in occupancy of such property under any of the following situations:

- 1.** Without the requirement of any notice by LTBB or Lessor:
 - a.** After the expiration of the term of any Lease or Sublease;
 - b.** If such person has entered onto or remains on the real property or another without the permission of the owner and without having any substantial claim under a Lease or title to such property;
 - c.** After the Lessor has terminated such person's tenancy pursuant to the Lessor's procedures; or
 - d.** After a Mortgagor's interest in Trust land or Restricted land has been foreclosed in a Mortgage foreclosure Proceeding in the Tribal Court.

- 2.** After having received at least seven (7) days notice of termination and notice to vacate the premises, the Tenant or occupier remains in possession of such property contrary to the terms of the notice as follows:
 - a.** When such person has received notice: (i) that he or she is in default in the payment of ground or unit rent; and (ii) requiring him or her to either pay such rent or surrender possession of the occupied property and such person has not either surrendered possession of such property or paid the rent within the time period provided in such notice;
 - b.** When such person shall continue to fail to keep or perform any condition or covenant of any Lease or other use agreement under which the property is held after he or she has been given notice to

comply with such condition or covenant or else to surrender the property; or

- c. When such person continues to commit Waste upon or maintain a Nuisance upon the occupied property after having been given notice to either cease such Waste or maintenance of Nuisance or to surrender the property; or
- d. When such person violates a material covenant of any Lease designed to protect the health and safety of persons.

D. PROCEDURES FOR SERVICE OF NOTICE

Notices required or authorized in the immediately preceding section shall be given in accordance with established Tribal Court rules and procedures or policies of LTBB's Designated Housing Department or Entity. In the absence of such rules and procedures, notices shall be given in writing by either:

1. Delivering a copy personally to the Tenant or occupier or to any adult members of his or her family residing on the Leased or Mortgaged property; or
2. Posting said notice in a conspicuous place near the entrance to said property, and by sending an additional copy to the Tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.
3. Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of these two methods of service.

E. COMPLAINT AND SUMMONS

1. The Lessor of the Mortgagee (including its successors or assigns) shall commence an action for eviction by filing with the Tribal Court, in writing, the

following documents:

a. A complaint, signed by the Lessor, the Mortgagee (or its successors or assigns), or an agent or attorney on their behalf including the following:

- i. Citing authority for jurisdiction of the Tribal Court;
- ii. If the property is mortgaged, naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Mortgage, including each Subordinate Lien holder (except LTBB with respect to a claim for a Tribal tax on the property subject to the Mortgage), as a defendant;
- iii. Describing the property subject to the Mortgage or Lease;
- iv. Stating the facts concerning (1) the execution of any Lease and/or the Mortgage; (2) the recording of any Mortgage; and (3) the facts upon which he or she seeks to recover; and
- v. Stating any claim for damages or compensation due from the persons to be evicted.

b. A copy of the summons, issued in accordance with established Tribal Court rules and procedures. In the absence of such rules and procedures for the issuance of a summons, the summons shall require defendants to appear for trial upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall be no less than six (6) nor more than twenty (20) days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the court an answer and

appear for trial at the time, date and place specified in the summons.

F. SERVICE OF SUMMONS AND COMPLAINT

A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal court rules for service of process in civil matters. In the absence of such Tribal Court rules, the summons and complaint shall be served by one of the two methods provided in WOTCL 8.303(D) above.

G. POWER OF THE TRIBAL COURT

1. The only issue on an action for eviction shall be the right of actual possession. A lender who has foreclosed on a leasehold estate shall be deemed to have the right to actual possession. The merits of ownership of land interest shall be an issue to be determined by the laws and custom of LTBB. An action for eviction may not be brought in connection with any other action, nor may it be made the subject of any set off or counter claim.

2. The Tribal Court shall enter a Writ of Restitution if:

a. Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided herein; and

b. The Tribal Court:

- i. finds that the occupier of the property subject to the Mortgage or Lease is guilty of an act of unlawful detainer; or
- ii. determines that the Tenant failed to respond to the complaint.

3. Upon issuance of a Writ of Restitution the Tribal Court shall have the authority to enter against the defendants a judgement for the following: (1) back rent, unpaid utilities, and any charges due the Lessor under any lease or

occupancy agreement; (2) any and all amounts secured by the Mortgage that are due the Mortgagee (or its successors or assigns); (3) damages caused by the defendants to the property other than ordinary wear and tear; and (4) costs and reasonable attorney's fees incurred in bringing suit.

4. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he/she does not vacate the premises voluntarily by the effective date, he/she will be subject to forcible eviction, and his/her property will be subject to storage, sale and disposal as set forth in Section I below.

H. ENFORCEMENT

Upon issuance of a Writ of Restitution, Tribal law enforcement officers shall within five (5) days enforce the Writ of Restitution by removing the defendants and their personal property from the property which is unlawfully occupied, and levy damages and costs incurred by the Police Department in such removal. In cases involving a Mortgagee (or its successors or assigns), the Writ or Restitution shall be enforced no later than sixty (60) days after the date of service of the summons and complaint, subject to sub-section I. below.

I. CONTINUANCE IN CASES INVOLVING THE MORTGAGE

Except by agreement of all parties, there shall be no continuances in cases involving the Mortgagee (or its successors or assigns) which will interfere with the requirement that the Writ of Restitution be enforced not later than sixty (60) days from the date of service of the summons and complaint.

J. STORAGE OF PROPERTY

Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the Lessor or owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the Lessor or owner is

authorized to sell the property in order to recover these costs. The Lessor or owner shall provide the evicted occupants with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the Lessor or owner.

(Source: WOS 2000-04, April 16, 2000, Section II)

Chapter 5. *Reserved*

Chapter 6. Lease Inheritance

Codification Note: This repeals and replaces WOS 2000-07

8.601 SHORT STATUTE

This Statute may be cited as the “Lease Inheritance Statute,” and it repeals and replaces any prior Statute or Regulation in conflict with this Statute including WOS 2000-07, Lease Inheritance Statute.

(Source: WOS 2018-006, May 5, 2018, Section I)

8.602 PURPOSE

The purpose of this Statute is to set forth general provisions for Inheritance of Leases and Leasehold Estates. The Little Traverse Bay Bands of Odawa Indians, coordinated through its Housing Department, intends to enter into residential leases with Tribal Citizens under the provisions of 25 CFR part 162 or the Leasing of Trust Lands Statute, whichever is applicable.

(Source: WOS 2018-006, May 5, 2018, Section II)

8.603 DEFINITIONS

- A.** "Lease" means a ground lease or other agreement for use of Trust Land or land owned by the Tribe.
- B.** "Lessee" means any person who occupies Trust land or Restricted Land, as Tenant under a Leasehold Estate with the Lessor.
- C.** "Leasehold Estate" means a leasehold estate established pursuant to a Lease between the Tribe, as Lessor and a Citizen of the Tribe as Tenant.

- D.** "Lessor" means the Tribe or a Tribal Citizen who leases an interest in property.
- E.** "LTBB" or "Tribe" means the Little Traverse Bay Bands of Odawa Indians.
- F.** "Reservation" means all lands within the boundaries of the reservations for Little Traverse as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse reservation by the Department of the Interior.
- G.** "Tribal Court" means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- H.** "Tribal Citizen" means any person enrolled with the Tribe.
- I.** "Trust Land" means land within the jurisdiction of the LTBB Tribe, title to which is held by the United States Secretary of Interior for the benefit of the Tribe or an individual member of the Tribe.

(Source: WOS 2018-006, May 5, 2018, Section III)

8.604 JURISDICTION

Tribal Court of The Little Traverse Bay Bands of Odawa Indians (LTBB or Tribe) shall have exclusive jurisdiction over all actions arising on all lands located within the exterior boundaries of the LTBB Reservation on trust lands, lands owned in fee by the Tribe, and any other property leased by LTBB.

(Source: WOS 2018-006, May 5, 2018, Section IV)

8.605 INHERITANCE BY WRITTEN WILL or INTESTATE

- A. Written Will.** A Tribal Citizen/lessee may, by written will, leave the remaining term of

his/her residential lease to a spouse; or his or her children; or a Tribal Citizen.

1. The spouse who inherit the remaining term of the lease must actually have resided on the leased premises as a primary residence at the time of lessee's death and shall continue to reside on the leased premises as the primary residence or the lease will terminate.
2. The Tribal Citizen/lessee's children must resided on the leased premises as their primary residence and continue to reside, whether they did so or not at the time of lessee's death or the lease will terminate.
3. A Tribal Citizen/lessee may by written will leave the remaining term of his/her residential lease to a Tribal Citizen.

B. Intestate. If a Tribal Citizen/lessee dies without a will, the following shall apply to the remaining term of his/her residential lease:

1. The remainder of the lease shall go to the spouse, provided that the spouse must actually have resided on the leased premises as a primary residence at the time of lessee's death and shall continue to reside on the leased premises as the primary residence or the lease will terminate.
2. If there is not a surviving spouse, the Tribal Citizen/lessee's children may inherit the remainder of the lease, provided that the children resided on the leased premises as their primary residence at the time of lessee's death and continue to reside on the leased premises as their primary residence or the lease will terminate.

C. These provisions do not apply to month-to-month leases or leases that have a term of less than one (1) year.

(Source: WOS 2018-006, May 5, 2018, Section V)

8.606 EARLY TERMINATION OF LEASES

If a Tribal Citizen/lessee dies during the term of his/her lease, and the lease is not continued under Section V. of this Statute, the lease shall terminate upon such death and all interest in the leased tract shall revert to the Tribe.

(Source: WOS 2018-006, May 5, 2018, Section VI)

8.607 DUTIES OF HOUSING DEPARTMENT

The LTBB Housing Department shall develop forms consistent with this Statute which it shall provide to potential lessees.

(Source: WOS 2018-006, May 5, 2018, Section VII)

8.608 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2018-006, May 5, 2018, Section VIII)

8.609 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2018-006, May 5, 2018, Section IX)

8.610 OTHER RELATED STATUTES

See Mortgage Lending Statute, WOS 2014-017 Leasing of Trust Lands Statute, WOS

1998009 Housing Commission, WOS 2006-020 Probate Code, or as may be amended.
(Source: WOS 2000-07, June 4, 2000, Section VII)

(Source: WOS 2018-006, May 5, 2018, Section X)

Chapter 7. Traditional Tribal Burial Grounds

8.701 PURPOSE

The purpose of this Statute is to establish the law that governs lands set aside for Traditional Tribal Burials, the sale of burial plots, burial eligibility and the maintenance of the grounds.

(Source: WOS 2009-018, July 26, 2009, Section I)

8.702 POLICY INTENTION

A. The Traditional Tribal Burial Grounds are intended for natural burials. The intent of this Statute is to minimize the impact of burials on the planet. Thus, promoting traditional styles of burials where chemical preservatives are not used and only biodegradable materials are used for caskets and unobtrusive grave markers.

B. The Tribe encourages the use of markers that don't intrude on the landscape. These natural markers can include shrubs and trees, or an engraved flat stone native to the area. The planting of native trees, shrubs and flowers on or near the grave establishes a living memorial and helps form a wildlife area.

C. A Traditional Tribal Burial Grounds is a green place with trees, grasses, and wildflowers, which in turn bring birds and other wildlife to the area.

D. The Traditional Tribal Burial Grounds are a statement of personal values for many people who recognize the Circle of Life and that life is cyclical in nature.

(Source: WOS 2009-018, July 26, 2009, Section II)

8.703 DEFINITIONS

A. "*Burial Ground*" means the land set aside for the specific purpose of earth interments;

- B. *“Burial Right”* means a right of earth interment.
- C. *“Embalming”* means a process for using preservatives in order to prevent decay of a body.
- D. *“Interment”* means the permanent disposition of the remains of a deceased person by cremation, inurnment, entombment or burial.
- E. *“Plot”* means a space of sufficient size to accommodate an interment.
- F. *“Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians”* means “areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621.” Little Traverse Bay Bands Constitution, Article V(A)(1)(a).
- G. *“Tribe”* means the Little Traverse Bay Bands of Odawa Indians.
- H. *“Vault”* means a lined and sealed unit, generally made of cement, for placement of a casket to prevent the concave of earth after a period of time.

(Source: WOS 2009-018, July 26, 2009, Section III)

8.704 AUTHORIZATION OF BURIAL ARRANGEMENTS

Burial arrangements shall only be authorized by a person designated in a written instrument signed by the decedent, if none designated then by a sworn statement attesting to the authority. Neither the Tribe nor Burial Board shall be required to inquire into the truth of the statement in the sworn statement and shall not be held liable for any unauthorized activities.

(Source: WOS 2009-018, July 26, 2009, Section IV)

8.705 EMBALMING

- A. Embalming is not required for interment in the Tribal Burial Grounds, except when the burial or cremation does not take place within 48 hours of death or if the deceased had certain communicable diseases.
- B. The time period of 48 hours starts at the time of death of the deceased.
- C. Embalming may be required if the deceased needs to be transported out-side of the Tribal Territorial jurisdiction.

(Source: WOS 2009-018, July 26, 2009, Section V)

8.706 BURIALS

No burial may take place until a Death Certificate has been issued.

(Source: WOS 2009-018, July 26, 2009, Section VI)

8.707 CASKETS OR CONTAINERS

Neither a vault nor casket shall be allowed for a Traditional Tribal Burial. Containers may be required provided that wooden burial containers or cultural containers are acceptable.

(Source: WOS 2009-018, July 26, 2009, Section VII)

8.708 GRAVE MARKERS

- A. No permanent raised markers shall be allowed in the Traditional Tribal Burial grounds.
- B. Raised markers may be used if made of natural deteriorating items such as wood or other natural materials.
- C. Permanent non-raised items may be used such as stone or granite markers.

D. Markers may be represented by small plants or shrubs or non-evasive flora.

E. Deteriorating decorations such as crepe paper-wreaths and other cultural objects may be allowed in the Traditional Tribal Burial Grounds.

(Source: WOS 2009-018, July 26, 2009, Section VIII)

8.709 ACTIVITIES AND CEREMONIES

Tribal Ceremonies and activities that honor the deceased may be performed in the Tribal Burial Grounds.

(Source: WOS 2009-018, July 26, 2009, Section IX)

8.710 BURIAL RECORDS

A. A record shall be kept of all interments of which shall include:

1. Name of Deceased
2. Place of death
3. Name of Funeral Director, if any
4. Place of interment
5. Copy of Death Certificate

(Source: WOS 2009-018, July 26, 2009, Section X)

8.711 TRIBAL BURIAL BOARD

A. A Burial Board shall be established by Tribal Charter Corporation approved by Tribal Council and shall manage the Traditional Tribal Burial Ground through approved regulations for the following areas:

1. The use, care, control, management, restriction, and protection of the burial ground operated by the burial ground organization;
2. Restrict the use of burial ground property;
3. Regulate the placement, uniformity, class, and kind of markers, and other structures in any part of the burial ground;
4. Regulate the planting and care of plants in the burial ground;
5. Prevent the interment of remains not entitled to be interred in the burial ground;
6. Prevent the use of a plot for a purpose that violates the burial ground board's restrictions;
7. Regulate the conduct of persons on burial ground property and to prevent improper meetings at the burial ground; and
8. Other purposes for the protection of the premises and the principles, plans, and ideals on which the burial ground was organized.

B. The Board shall file with the map or plat a written certificate or declaration of dedication of the property delineated by the map or plat, dedicating the property exclusively to burial ground purposes.

C. The Tribal Burial Board is authorized to develop, own, lease, operate, manage, maintain, promote and finance economic opportunities that are inconjunction or ancillary to burials, including but not limited to mortuary services, funeral services, casket-manufacturing, and cremation services.

D. The Tribal Burial Board is authorized to manage any other burial grounds as designated by Tribal Council.

(Source: WOS 2020-004, January 29, 2020, Section XI, Repeal and Replace)

8.712 TRADITIONAL TRIBAL BURIAL GROUNDS

The Traditional Tribal Burial Ground shall contain and encompass all lands designated and approved by Tribal Council as a Traditional Tribal Burial Ground.

(Source: WOS 2009-018, July 26, 2009, Section XII)

8.713 SALE OF PLOTS

- A. Only the Burial Board may sell and convey the exclusive right of burial in a plot.
- B. Rights in burial plots may not be re-conveyed from an individual to another individual, unless there is prior approval by the Burial Board.
- C. An individual may convey or sell back the burial plot to the Burial Board.

(Source: WOS 2009-018, July 26, 2009, Section XIII)

8.714 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

(Source: WOS 2009-018, July 26, 2009, Section XIV)

8.715 EFFECTIVE DATE

Effective upon signature of the Executive or shall be deemed enacted if not expressly vetoed by

the Executive within thirty (30) days of submission. The Tribal Council may, by an affirmative vote of seven (7) members of the Tribal Council, override a veto by the Executive.

(Source: WOS 2009-018, July 26, 2009, Section XV)

Chapter 8. Leasing of Trust Lands

8.801 PURPOSE

The purpose of this Statute is to authorize the leasing of lands held in trust for the Little Traverse Bay Bands of Odawa Indians (LTBB or Tribe) by the United States of America, or otherwise denoted restricted Indian lands under federal law, by LTBB under the Tribe's own regulations

(Source: WOS 2014-017, November 25, 2014, Section I)

8.802 REGULATIONS

A. The Executive is authorized to develop regulations to govern the leasing of LTBB trust and restricted Indian lands meeting the minimum standards set forth in the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act), being Public Law 112-151 of July 20, 2012, codified into 25 U.S.C. §415, which regulations will be subject to Tribal Council approval.

B. In accordance with Article VII, Section D.12 of the LTBB Constitution, the regulations must provide for the approval by Tribal Council of all leases.

C. The Regulations will take effect upon approval of the Tribal Council and approval of the Secretary of the Interior pursuant to 25 U.S.C. §415(c)(3).

(Source: WOS 2014-017, November 25, 2014, Section II)

8.803 EFFECTIVE DATE

This Statute takes effect upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the Statute, then upon Tribal Council override of the veto.

(Source: WOS 2014-017, November 25, 2014, Section III)

Chapter 9. Donated Land Acceptance

8.901 SHORT TITLE

This Statute shall be cited as the ‘Land Acceptance Statute’ and shall repeal WOS 2015-011.

(Source: WOS 2022-002, March 21, 2022, Section I)

8.902 PURPOSE

The purpose of this Statute is to solicit and receive land or other interest in land as gifts that are beneficial to the Tribe and its Tribal Citizens.

(Source: WOS 2022-002, March 21, 2022, Section II)

8.903 DEFINITIONS

- A.** “Enjinaaknegeng” means the LTBB Legal Department.
- B.** “Interest in Land” means any and all, partial or total right to property or for the use of property.
- B.** “Tribal Lands” means property either owned or leased by the Tribe or property that is held in trust for the benefit of the Tribe.
- C.** The “Tribe or LTBB” shall mean the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2022-002, March 21, 2022, Section III)

8.904 CONSTITUTIONAL AUTHORITY

A. In accordance with the Constitution, Tribal Council has the power to receive by gift both land and interests in land, in which the Tribal Council may deem beneficial to the Tribe.

(Source: WOS 2022-002, March 21, 2022, Section IV)

8.905 LAND

A. All gifts of land or other interest in property shall be approved by Tribal Council by majority vote, upon receipt of a recommendation from the Land and Reservation Committee.

B. Prior to acceptance of any gift of land or other interest in property, the Land and Reservation Committee shall require a *Staff Reviews and Analysis* and a *Legal Assessment* and shall submit the required information along with its recommendation to Tribal Council.

C. *The Staff Review and Analysis* shall contain a review by the following: Planning Department, Natural Resources and Environmental Services, Geographic Information Systems (GIS), Tribal Historic Preservation Officer, (THPO) and Senior Financial Analyst and others as may be identified by the Committee.

1. *The Staff Review and Analysis Report* shall include, but not limited to the following:

- a. The location's suitability for the intended use;
- b. Zoning requirements impact the location;
- c. Identified land features such as topography, wetlands; endangered species habitat, natural features, aquifers, and potential for contamination;
- d. Location of the parcel in relation to the exterior boundary of the LTBB Reservation;
- e. History of the property, burial sites, sacred sites, traditional cultural attributes;
- f. A review of records related to the parcel past purchases, and State Equalized Value (SEV).

D. **Legal Assessment.** Enjinaaknegeng will provide a *Legal Assessment* that shall include but

not limited to: the presents of land covenants, conditions, restrictions, reservations, easements, encumbrances or other limitations associated with the property.

(Source: WOS 2022-002, March 21, 2022, Section V)

8.906 CRITERIA FOR ACCEPTANCE OF GIFTS OF LAND OR INTERESTS IN LAND

A. Through the approval of a land acquisition plan or as amended, Tribal Council shall prioritize and rank various land acquisition goals to determine the benefits of the land or interest in land to the Tribe and its Tribal Citizens.

B. Such items shall be considered in determining the benefit to the Tribe and its Tribal Citizens:

1. Cost, including insurance, property taxes, mortgages, notes, and maintenance expenses associated with the property
2. Land within the Reservation or proximity to the Reservation
3. Location suitable for intended use
4. Cultural importance
5. Tribal image with consideration toward culture, political, historical considerations
6. Housing
7. Jobs
8. Schools/Education
9. Health Care

10. Treaty Rights
11. Community inclusion
12. Natural Resources.

(Source: WOS 2022-002, March 21, 2022, Section VI)

8.907 ACCEPTANCE of LAND

Prior to the acceptance of land by majority vote of Tribal Council, a fiscal impact statement shall be developed and funds shall be allocated if necessary.

(Source: WOS 2022-002, March 21, 2022, Section VII)

8.908 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2022-002, March 21, 2022, Section VIII)

8.909 EFFECTIVE DATE

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval which ever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2022-002, March 21, 2022, Section IX)

8.910 OTHER RELATED STATUTES

See Waganakising Odawak Statute 2009-007“Land Use Statute”, or as may be amended.

(Source: WOS 2022-002, March 21, 2022, Section X)

Chapter 10. Odawa Historical and Cultural Site Registries Statute

8.1001 PURPOSE

The purpose of this Statute is to establish a public Odawa Historic and Cultural Site Registry where property sites are identified, designated and cataloged as historical and cultural sites while increasing and broadening the public's understanding and appreciation of cultural and historic places; and to establish a non-public Odawa Historic and Cultural Site Registry that helps preserve significant historic and cultural places for future generations.

(Source: WOS 2019-009, August 30, 2019, Section I)

8.1002 DEFINITIONS

- A.** “LTBB” or “Tribe” means the Little Traverse Bay Bands of Odawa Indians.
- B.** “Reservation” means all lands within the boundaries of the reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians reservation by the U.S. Department of the Interior.
- C.** “Tribal Citizen” means an enrolled member of the Little Traverse Bay Bands of Odawa Indians.
- D.** “Tribal Council” or “Council” means the elected body of the Little Traverse Bay Bands of Odawa Indians to carry out legislative powers under Article VII of the Constitution.
- E.** “Tribal Culturally Significant Sites” means sites that are currently or in the past used by the Tribe or its Tribal Citizens for gathering of medicines, conducting ceremonies or other tribal

activities; or the site is associated with the cultural practices or beliefs of a Tribal community; or the site is closely tied to the cultural identity of the community.

F. “Tribal Historic Properties” means any prehistoric or historic sites, districts, structures, or objects that are significant to the prehistory, history, architecture, archeology, culture, or spiritual nature of the Tribe,

G. “Tribal Sacred Site” means any specific, discrete, narrowly delineated location that is identified as sacred by virtue of its established religious significance or ceremonial use.

H. “THPO” or “Office” means the Tribal Historic Preservation Office composed of the Tribal Historic Preservation Officer and staff.

(Source: WOS 2019-009, August 30, 2019, Section II)

8.1003 NOMINATION PROCESS

The Tribal Historic Preservation Office may accept a nomination of historic or cultural sites directly from any person or agency, including nominations from the THPO for inclusion in the Odawa Historic and Cultural Site Registry.

(Source: WOS 2019-009, August 30, 2019, Section III)

8.1004 DUTIES and AUTHORITY

A. The Office shall have the following duties and authority:

1. To create and maintain a public Odawa Historic and Cultural Site Registry that can be published on the Tribal website and a and non-public Odawa Historic and Cultural Site Registry that preserve location sites for future generations.

2. To evaluate nominations of sites for inclusion into either of the Odawa Historic and Cultural Site Registries.

3. To consult with Elders, Tribal Citizens and other experts as part of the assessment process to determine suitability of a nominated site for inclusion into either of the Odawa Historic and Cultural Site Registries.
4. To acquire reference materials, such as books, and other resources to determine suitability of a nominated site for inclusion into either of the Odawa Historic and Cultural Site Registries.
5. To develop policy, procedures and standards that maintain uniformity of the sites that are included into either of the Odawa Historic and Cultural Site Registries.
6. To preserve Odawa Historic and Cultural sites that are under the Tribe's ownership or control and assure that a site is not inadvertently demolished, substantially altered, or allowed to deteriorate significantly, except in the case of restoration of a site which is permissible.
7. To evaluate any permit that allow for demolition, substantial alterations, or restoration to an Odawa Historic and Cultural site that is within the Tribe's ownership or control. Such permits shall require approval by the THPO, in accordance with approved regulations.
8. Regulations shall be developed that establishes how permits shall be approved by the THPO, that may include a historical, spiritual or cultural significance impact survey of the site.

(Source: WOS 2019-009, August 30, 2019, Section IV)

8.1005 CRITERIA FOR DESIGNATION

- A. The Office shall use the following criteria to determine the suitability of inclusion of a site into either of the Odawa Historic and Cultural Site Registry:

1. Significance in Odawa history, architecture, archeology, heritage, religion, engineering or culture.
2. Association with events that have made a significant contribution to the broad patterns of Odawa history.
3. Association with the lives of significant or historical Odawa persons.
4. Yielded or may be likely to yield, important information in Odawa history spirituality or culture.
5. Associated with the exercise of Treaty Rights under the 1836 Treaty of Washington, or the 1855 Treaty of Detroit.

B. Such sites may include:

1. “Tribal Culturally Significant Sites”.
2. “Tribal Historic Properties”.
3. “Tribal Sacred Site”.
4. Cemeteries, birthplaces, or graves of historical figures.
5. Ceremonial sites.
6. Cultural or quality natural resources sites.
7. Historical landmarks or buildings.
8. Natural resources.

(Source: WOS 2019-009, August 30, 2019, Section V)

8.1006 SITE REGISTRY

A. Upon receipt of a nomination of a site, the Office shall determine if site is suitable for inclusion into either of the Odawa Historic and Cultural Site Registries.

B. The Odawa Historic and Cultural Site Registries shall contain documentation for each site, a physical description of the place, and information about its historical, spiritual or cultural significance, that may be documented by oral histories or stories, a bibliography, photographs, or other means as appropriate.

(Source: WOS 2019-009, August 30, 2019, Section VI)

8.1007 NOTICE OF APPROVAL OR DECLINATION

The THPO shall notify the person who has submitted a nomination for inclusion of a site into either of the Odawa Historic and Cultural Site Registries of the approval or denial within a reasonable time period after the submission of the nomination.

(Source: WOS 2019-009, August 30, 2019, Section VII)

8.1008 RECONSIDERATION PROCESS

Any person who has submitted a nomination to the THPO for inclusion of a site into either of the Odawa Historic and Cultural Site Registries and was denied may ask for reconsideration based on additional or new evidence that support the nomination. The THPO shall have approved policy and procedures that include the appeals process and time-frames.

(Source: WOS 2019-009, August 30, 2019, Section VIII)

8.1009 NOTIFICATION TO OWNER OF PROPERTY

Upon approval of the THPO of inclusion into public Odawa Historic and Cultural Site Registry, the THPO shall notify the owner and/or the person in control of the site of the Registry designation.

(Source: WOS 2019-009, August 30, 2019, Section IX)

8.1010 PRIVATE PROPERTY

Private property listed in the Odawa Historic and Cultural Site Registry does not place any restrictions or requirements on a private property owner. The private landowner is not required to maintain the property in any specific way.

(Source: WOS 2019-009, August 30, 2019, Section X)

8.1011 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2019-009, August 30, 2019, Section XI)

8.1012 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2019-009, August 30, 2019, Section XII)

8.1013 OTHER RELATED STATUTES

See WOS 2014-013 Tribal Historic Preservation Office Protection and Management of

Archaeological, Historical, and Cultural Properties and Cultural Resources Statute, or as may be amended.

(Source: WOS 2019-009, August 30, 2019, Section XIII)

Chapter 11. Natural Burial Grounds

8.1101 PURPOSE

The purpose of this Statute is to establish the law that governs lands set aside for Natural Burials.

(Source: WOS 2020-009, May 1, 2020, Section I)

8.1102 POLICY INTENTION

A. The Natural Burial Grounds are intended for natural burials. The intent of this Statute is to minimize the impact of burials on the planet. Thus, promoting environmentally conscience styles of burials where chemical preservatives are not used and only biodegradable materials are used for caskets and unobtrusive grave markers.

B. The Tribe encourages the use of markers that don't intrude on the landscape. These natural markers can include shrubs and trees, or an engraved flat stone native to the area. The planting of native trees, shrubs and flowers on or near the grave establishes a living memorial and helps form a wildlife area.

C. A Natural Burial Grounds is a green place with trees, grasses, and wildflowers, which in turn bring birds and other wildlife to the area.

D. The Natural Burial Grounds are a statement of personal values for many people who recognize the Circle of Life and that life is cyclical in nature.

(Source: WOS 2020-009, May 1, 2020, Section II)

8.1103 DEFINITIONS

A. “*Burial Right*” means a right of earth interment.

B. “*Embalming*” means a process for using preservatives in order to prevent decay of a body.

- C. “*Natural Burial Ground*” means the land set aside for the specific purpose of natural burials.
- D. “*Interment*” means the permanent disposition of the remains of a deceased person by cremation, inurnment, entombment or burial.
- E. “*Plot*” means a space of sufficient size to accommodate an interment.
- F. “*Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians*” means “areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621.” Little Traverse Bay Bands Constitution, Article V(A)(1)(a).
- G. “*Tribal Burial Board*” means the only legal entity that may sell and/or convey the exclusive right of burial on land owned by the Tribe.
- H. “*Tribe*” means the Little Traverse Bay Bands of Odawa Indians.
- I. “*Vault*” means a lined and sealed unit, generally made of cement, for placement of a casket to prevent the concave of earth after a period of time.

(Source: WOS 2020-009, May 1, 2020, Section III)

8.1104 AUTHORIZATION OF BURIAL ARRANGEMENTS

Burial arrangements shall only be authorized by a person designated in a written instrument signed by the decedent, if none designated then by a sworn statement attesting to the authority. Neither the Tribe nor the Tribal Burial Board shall be required to inquire into the truth of the statement in the sworn statement and shall not be held liable for any unauthorized activities.

(Source: WOS 2020-009, May 1, 2020, Section IV)

8.1105 EMBALMING

- A. Embalming is not required for interment in the Natural Burial Grounds, except when the

burial or cremation does not take place within 48 hours of death or if the deceased had certain communicable diseases.

B. The time period of 48 hours starts at the time of death of the deceased.

C. Embalming may be required if the deceased needs to be transported out-side of the Tribal Territorial jurisdiction.

(Source: WOS 2020-009, May 1, 2020, Section V)

8.1106 BURIALS

No burial may take place until a Death Certificate has been issued.

(Source: WOS 2020-009, May 1, 2020, Section V)

8.1107 CASKETS OR CONTAINERS

Neither a vault nor casket shall be allowed for a Natural Burial. Containers may be required provided that wooden burial containers or cultural containers are acceptable.

(Source: WOS 2020-009, May 1, 2020, Section VII)

8.1108 GRAVE MARKERS

A. No permanent raised markers shall be allowed in the Natural Burial grounds.

B. Raised markers may be used if made of natural deteriorating items such as wood or other natural materials.

C. Permanent non-raised items may be used such as stone or granite markers.

D. Markers may be represented by small plants or shrubs or non-evasive flora.

E. Deteriorating decorations such as crepe paper-wreaths and other cultural objects may be allowed in the Natural Burial Grounds.

(Source: WOS 2020-009, May 1, 2020, Section VIII)

8.1109 ACTIVITIES AND CEREMONIES

Tribal Ceremonies and activities that honor the deceased may be performed in the Natural Burial Grounds.

(Source: WOS 2020-009, May 1, 2020, Section IX)

8.1110 BURIAL RECORDS

A. A record shall be kept of all interments of which shall include:

1. Name of Deceased
Place of death
Name of Funeral Director, if any
Place of interment
Copy of Death Certificate

(Source: WOS 2020-009, May 1, 2020, Section X)

8.1111 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

(Source: WOS 2020-009, May 1, 2020, Section XI)

8.1112 EFFECTIVE DATE

Effective upon signature of the Executive or shall be deemed enacted if not expressly

vetoed by the Executive within thirty (30) days of submission. The Tribal Council may, by an affirmative vote of seven (7) members of the Tribal Council, override a veto by the Executive.

(Source: WOS 2020-009, May 1, 2020, Section XII)