

**SAINT REGIS MOHAWK TRIBE  
LAND ORDINANCE**

**I. TITLE**

This Ordinance shall be known as the Saint Regis Mohawk Tribe Land Ordinance.

**II. AUTHORITY AND PURPOSE**

1. The Saint Regis Mohawk Tribal Council is the duly recognized governing body of the Saint Regis Mohawk Tribe and is responsible for the health, safety, education and welfare of all members of the Tribe. The Tribe has the inherent authority to control the ownership of property and the issuance of deeds for property within the Tribe's reservation. The Tribal Clerk has the authority to record title and land transactions between members that occur on the reservation.

2. This Ordinance is intended to set forth general rules for the issuance of deeds and the transfer of title and land interests on the reservation. In addition, this Ordinance is intended to delegate to the Saint Regis Mohawk Tribal Court the authority to resolve disputes concerning land interests.

3. This Ordinance shall apply to all lands within the boundaries of the 1796 Saint Regis Mohawk Tribe Reservation.

**III. DEFINITIONS**

A. "Certified Copy" is a copy of a document that has been certified by the Tribal Clerk as a true and accurate copy of the original document.

B. "Child(ren)" / "grandchild(ren)" refers to a natural born, legally adopted, step or grand child, as long as the child is a Tribal member.

C. "Claimant" is the person who files a land dispute claim in Tribal Court.

D. "Interested Party" is any Tribal Member who claims to have a legal interest in disputed property and who seeks to participate in a land dispute proceeding. "Interested party" does not include a tribal member without a recognizable interest in resolution of the case.

E. "Land Dispute" is a disagreement between tribal members over claims to title, boundary lines, issuance or validity of deeds, transactions, and any other matter regarding property interests on the Reservation. The issuance of a Use and Occupancy Deed by the Tribe and the Tribal Clerk, even if in error, does not create a land dispute involving the Tribe. Any claim that a deed has been issued in error is to be resolved as a land dispute between the parties claiming an interest in the property and, when resolved, could result in a court order to the Tribe to issue a new deed or to revise or revoke an existing deed.

F. “Legal Guardian” is a parent or an individual legally appointed by a court of competent jurisdiction as the guardian of minor children.

G. “Life estate” is a way of holding real property that is limited to the life of the party holding it and, upon whose death, the property reverts to another Tribal member.

H. “Recorded” refers to the filing of or registration of documents or transactions with the Saint Regis Mohawk Tribal Clerk’s Office so as to memorialize the transaction or document in accordance with established procedures.

I. “Respondent” is the person against whom a land dispute complaint is filed. The Saint Regis Mohawk Tribe, the Tribal Council, the Tribal Clerk, or any tribal official may not be named as a Respondent in a land dispute for the official act of issuing a deed, provided however, subject to the limited waiver of immunity in this Ordinance, the Tribe may be named as a Respondent if a deed is issued to the Tribe or if the Tribe is claiming an interest in land subject to a claim.

J. “Spouse” refers only to a legally married husband or wife since the Saint Regis Mohawk Tribe does not recognize “common law” marriage.

L. “Tribal Council” refers to the three duly elected Chiefs of the Saint Regis Mohawk Tribe as defined in the Saint Regis Mohawk Tribal Procedures Act.

#### **IV. TRIBAL LAW, CUSTOMS AND PRACTICES**

##### **A. Application of Custom and Practice.**

The customs and practices of the Saint Regis Mohawk Tribe will be applied in all situations where it is relevant to resolve a land dispute.

##### **B. Order of Consideration.**

Written tribal laws will be considered first. If no written Tribal law applies to the circumstance raised in a dispute, the Tribe's customs and practices may be considered.

##### **C. Resolution of Ambiguity.**

Where any doubt arises as to past practices and customs, the Court, with the agreement of both parties, may request the advice of Tribal members who may be familiar with the Tribe’s customs and practices, or the Court may pose a certified question to the Saint Regis Mohawk Tribal Council or the Saint Regis Mohawk Tribal Clerk. If issues of doubt regarding past practices and customs are presented in Tribal Court, the matter must be resolved through normal tribal court procedure for witness and evidence collection.

#### **D. Acknowledgment.**

The Tribe acknowledges that Mohawk Nation Council of Chiefs uses its own process to record property ownership of its members, which may be recognized by the Tribe as some evidence of property ownership to properly record information for the Tribe or to resolve land disputes brought to the Tribe.

#### **E. Guiding Legal Principles.**

In order to resolve land disputes according to tribal customs and practices, this Ordinance will set forth the general legal principles that have governed land use and occupancy on the reservation for generations.

1. Power to Issue Deeds is Reserved. The power to make land assignments and to issue Use and Occupancy Deeds is vested in the Saint Regis Mohawk Tribal Council as the sovereign government with jurisdiction and authority over the Reservation. The Tribal Council and the Tribal Clerk issue deeds in their official capacity as requested by Tribal Members based on deeds, contracts and other agreements or documents such as wills.

2. Resolution of Disputes. The Tribal Council shall exercise its discretion and judgment in issuing deeds and it may do so upon request of a tribal member with the presentation of proper documentation. It is recognized that a request to the Council to issue a deed may change the ownership of land in a way that may negatively affect a member. The issuance of a deed by the Tribal Council and the Tribal Clerk does not constitute the resolution of a land dispute. If a Tribal Member disagrees with the recordation or issuance of a deed, the remedy is to file a land dispute claim in Tribal Court.

3. Forms of Evidence of Land Ownership. The following documentation may be considered valid evidence of land ownership for all or a portion of land identified in a Use and Occupancy Deed:

- (a) Official and Original or Certified Copy of a Use and Occupancy Deed issued and signed by the Tribal Council and Recorded in the Tribal Clerk's records.
- (b) Valid Land Contract.
- (c) Valid Will.
- (d) Valid Bill of Sale.
- (e) Valid Receipt for the Purchase of Property if Accompanied by Other Evidence to Substantiate a Sale of Property.
- (f) Prior Tribal Council finding.
- (g) Prior Tribal Court finding.
- (h) Decisions from other Courts.
- (i) Sworn written testimony.
- (j) Sworn oral testimony.

(k) Any other relevant evidence.

4. Limitation on Who May Use and Occupy Land. Only Tribal Members shall be permitted to possess a Use and Occupancy Deed on the Reservation.

5. Limitation on the Right to Transfer. Reservation land may not be sold to, held by or in any way relinquished to a non-member of the Saint Regis Mohawk Tribe.

6. Use and Occupancy Deed. A Use and Occupancy Deed is an official Tribal document granting the holder the right to use and occupy land at the will of the Tribe, signed by the Tribal Council and certified by the Tribal Clerk.

- (a) All land assignments and deeds made or issued by the Council are presumptively valid. The deed recorded **first** with the Tribal Clerk of the Saint Regis Mohawk Tribe will supersede all other deeds, unless it can be shown that the deed recorded first is subject to challenge under subparagraph (b).
- (b) A deed issued and/or recorded by the Tribal Clerk may only be challenged if (i) there has been a substantial error committed by the Tribal Council or Clerk in issuing the deed; (ii) there is evidence of fraud in the documents used to substantiate the issuance of the deed; or (iii) evidence of fraud, deceit, coercion or duress in the signing of documents or in the transfer made in the deed. The party challenging the deed has the burden of proof to show with clear and convincing evidence that a deed was not properly issued or recorded.
- (c) The Tribal Council has the right to correct or amend deeds to correct language or typographical errors and these corrections may not be reviewed. The Tribal Council also has the right to correct clerical errors including errors that may have resulted in a deed being issued in violation of a previously recorded valid deed, provided however, that the Council shall provide notice to all affected parties of the error and the intention to make a correction.
- (d) Correction of clerical errors may be challenged and shall be reviewed under the arbitrary and capricious standard, and a party may seek declaratory or injunctive relief.
- (e) If a claim is filed, all actions by all parties in relation to the deed in dispute shall be stayed pending review.
- (f) All recorded deeds must bear the signature of the Tribal Council along with the signature and seal of the Tribal Clerk.
- (g) Use and Occupancy deeds may be transferred between tribal members either through a land contract, a bill of sale, by simple purchase, or as a gift between family members. In order to ensure the Tribe's Land Records are current and accurate and reflect the current ownership, upon the effective date of this Ordinance, all transfers

of Use and Occupancy Deeds shall be recorded with the Tribal Clerk. The failure to record a transfer which took place prior to the effective date of this Ordinance is not a basis to declare a transfer invalid.

- (h) Use and occupancy deeds may not be transferred to a non-member or non-Indian in any manner, and the Tribe reserves the right to declare invalid such a transfer.

7. Land Contracts. A land contract is an agreement between a buyer and seller for the purchase of a right to use and occupy a parcel of land where the buyer makes installment payments to the seller for the eventual conveyance of the Tribal Use and Occupancy Deed or right to occupy the property. The following shall be considered in assessing Land Contracts:

- (a) The agreement may be informal.
- (b) The agreements shall provide that a buyer will receive a deed to the property when all the conditions of the contract have been satisfied.
- (c) Each contract will differ, but many land contracts provide that the buyer may occupy and make improvements to the land, even though the complete right to use and occupy is not transferred until the land contract is fulfilled.
- (d) Upon the effective date of this Ordinance, to validate the final conveyance of the right to use and occupy property and to ensure the Tribe's Land Records are accurate and current, once a land contract is fulfilled, it shall be recorded with the Tribal Clerk. But failure to record a contract which was fulfilled prior to the effective date of this Ordinance is not a basis to declare the contract invalid.
- (e) If the buyer defaults under the terms of the contract, the seller may seek to evict the buyer through a claim in Tribal Court, if necessary, and may keep the installment payments and any improvements thereon, unless the buyer can demonstrate to the Court's satisfaction that to return the land with the improvement along with keeping monies paid would result in the seller's unjust enrichment. The Tribal Court must have a hearing to determine if buyer is entitled to any compensation. The Tribal Court must state its findings in a written order

8. Bill of Sale. A Bill of Sale is a record of a purchase transaction between individuals for the exchange of their right to use and occupy a particular parcel of land and may stand as a deed conveying the right to use and occupy the property under tribal law. The following shall be considered in assessing a Bill of Sale:

- (a) As of the effective date of this Ordinance, the Bill of Sale must be signed, witnessed or notarized and then recorded with the Tribal Clerk in order to be a valid transfer of the right to use and occupy property.
- (b) In the past, Bills of Sale were not always recorded with the Tribal Clerk. In the event the Bill of sale was not recorded, the Bill of Sale will be considered a binding

document evincing an intent to transfer the right to use and occupy a property in the same manner as a deed unless there is evidence expressly contrary to that intent.

- (c) In the instance that there are two Bills of Sale for one particular property, the Bill of Sale dated **first** will supersede any and all other Bills of Sale unless it can be shown to be invalid. A Bill of Sale may only be deemed invalid by the Tribal Court if there is evidence of fraud, deceit, coercion or duress in the transfer made in the Bill of Sale or in the signing of the document. The party challenging the Bill of Sale has the burden of proof to show with clear and convincing evidence that a document is invalid.

#### 8. Survey of Tribal Lands.

- (a) Property transferred on the Reservation must be properly described with boundaries that are clearly delineated, measurable and not in dispute. As of the effective date of this Ordinance, a survey by a licensed surveyor is required for all parcels of land transferred on the Reservation. The Tribal Clerk shall set a fee schedule for the cost of a survey, to be approved by the Tribal Council.
- (b) If a parcel is not surveyed prior to a transfer and if there is a dispute as to boundaries within the transferring document, the parties to the transaction agree to be bound by an impartial survey by a third party, unless the document is so ambiguous that the surveyor cannot complete the survey. In that instance, the Tribal Court shall be empowered to decide how the boundaries shall be surveyed, based on evidence presented in a Tribal Court proceeding.
- (c) In resolving boundary disputes, the Tribal Court may not rely on GIS or other data to determine property boundaries. The parties are required to provide to the Court surveys performed by licensed surveyors to support any claims regarding boundary lines provided that, in the case of ambiguity in a deed and relying on common law principles in drawing property boundaries, the Court may issue instructions to resolve an ambiguity so that a proper survey may be performed. If neither party presents a survey to the Court in a boundary dispute or in a case involving property lines, the Court may order a survey and assess the cost to the party or parties in its discretion.

### **V. Principles of Inheritance**

Pending the adoption of a probate law, the Tribe shall use the following rules of inheritance:

A. Intestate Distribution. When a Tribal member dies without leaving a Will, his/her real property located on the Reservation shall pass to Tribal members as follows:

1. The surviving Tribal member spouse shall inherit the possessory interest formally held by the deceased spouse.

2. If there is no surviving Tribal member spouse, the surviving Tribal member children shall receive equal possessory interests in tribal lands formally held by a deceased tribal member parent.
3. In any case where minor children may be entitled to a possessory interest, the land shall be held in trust by a Legal Guardian until they reach the age of maturity, which is 18 years old.
4. If there is no surviving Tribal member spouse or Tribal member children of the deceased, Tribal member grandchildren shall receive equal possessory interests.
5. If there is no surviving spouse or descendants, the parents of the deceased shall receive equal possessory interests.
6. If there is no Tribal member spouse, children, grandchildren, or parents, the surviving brothers and sisters, shall receive equal possessory interests.
7. If there are no surviving brothers or sisters, then the surviving nieces or nephews shall receive equal possessory interests.
8. If there are no survivors of the deceased Tribal member, the property shall revert back to the Tribe.

B. Wills. If a Tribal member dies with a Will, his/her real property located on the Reservation shall pass according to the will so long as it meets these rules:

1. Will Requirements. The general requirements for a valid Will shall be as follows:
  - (a) A Will must be written (meaning typed or printed);
  - (b) A Will must be signed by the person making the Will (usually called the “testator” or “testatrix”); and
  - (c) A Will must be signed by two witnesses who were present to witness the execution of the document by the maker and who also witnessed each other sign the document.
  - (d) Each witness must sign the Will in the testator’s presence within thirty (30) days of the testator’s signing and should place their address of residence with their signatures.
  - (e) Witnesses to the Will should be “disinterested,” which means they must not be a beneficiary of the Will.
  - (f) Any gift by Will to a witness is void unless there are at least two other disinterested witnesses to the Will.

2. Who may make a will? Any person eighteen (18) years of age or a minor lawfully married and of sound mind may make a Will. “Sound mind” generally means someone who has not been deemed incompetent in a prior legal proceeding.

3. Signature. If the testator cannot physically sign his name, he may direct another Tribal member to do so. The person who signs the testator’s name must state on the Will

they did so, must sign their own name and state their address of residence. This person may not be one of the two required witnesses.

4. Non-conforming Wills. Wills made prior to the adoption of this Ordinance and not in conformity with these requirements may be considered valid unless the Tribal Court determines, based on information provided by witnesses, that the Will is not entitled to be recognized due to fraud or some other infirmity that makes it suspect.

5. Conveyances to Non-members are void. Will provisions which bequeath real property to a non-member are void as to those provisions, and the subject property shall pass in accordance with the intestate provisions of this Ordinance.

## **VI. Land Dispute Claim Procedures**

### **A. Tribal Court Jurisdiction.**

1. The Saint Regis Mohawk Tribal Court shall have jurisdiction over land disputes. The Tribal Court shall have the authority to award monetary damages and equitable relief, provided however, that the Tribal Council retains the sole authority to issue, revise, or rescind a Use and Occupancy Deed. The Tribal Council is bound by any Tribal Court Order regarding land disputes, and failure to obey such orders shall subject the Tribe, but not the individual council members acting in their official capacity, to equitable or injunctive relief, as necessary to enforce the Order.

2. Tribal Court shall have jurisdiction over any land dispute that is commenced within six years of accrual of the injury or the date the party knew or should have known of the injury that serves as the basis of the claim. The Tribal Court has the discretion to waive the statute of limitations for good cause, such as where the party could not have known or was prevented from knowing of his or her injury.

### **B. Who May File a Dispute.**

A land dispute may be filed by:

1. Any enrolled Tribal Member;
2. a non-member on behalf of his or her minor, mentally or physically handicapped and dependent child(ren) or family member, as long as the child(ren) or family member is/are Tribally-enrolled; or
3. a non-member spouse who may seek a life estate after the death of his or her Member spouse.

### **C. What Information is Needed.**

A Land Dispute Complaint shall contain the following information:

1. A Statement of the nature of the dispute, e.g. boundary line, title, ownership;
2. Names of all other Interested Parties, including Claimant and Respondent and their connection to the dispute and the reason for each party's interest;
3. Copies of any relevant documents which may be required to address the dispute and which will inform the Court and the parties about the facts, including but not limited to Wills, Deeds, Use and Occupancy Deeds, Tribal Council Decisions, Surveys, Bills of Sale or any other relevant correspondences, or receipts.

**D. Public Notice.**

1. Within ten (10) days following the filing of the Complaint, the Tribal Court Clerk shall publish a Notice which shall start the thirty-day (30) Public Notice Period. The Notice shall state:

**PUBLIC NOTICE OF LAND DISPUTE**

**Any Person having any interest whatsoever or information pertaining to this matter shall have thirty (30) business days from the date of publication of this Notice to file opposing or related claims or to provide relevant information to the Court. Information and related claims should be filed no later than \_\_\_\_\_, 20\_\_\_\_\_.**

2. The Notice shall also contain the following information:
  - (a) Name and address of the Claimant;
  - (b) Name and address of Respondent;
  - (c) Address or other information regarding the location of the property in dispute;
  - (d) Claim file number;
  - (e) A brief description of the nature of the dispute.
3. The Notice shall appear in at least one weekly Akwesasne community newspaper and on the Official Tribal Website at [www.srmt-nsn.gov](http://www.srmt-nsn.gov). The Public Notice shall be published for two consecutive weeks and shall also be displayed at the Tribal Community Building.

**E. Confidentiality.**

Any material provided to the Court during this process will also be provided to all Interested Parties. However, any documentation that could be considered private or confidential, including but not limited to social security number, date of birth or other information used as

identity, shall be segregated from the case file and may be viewed by only the Court, the Claimant, and the Respondent unless a release is signed by the impacted party.

#### **F. Applicable laws and Rules.**

All Tribal Laws, including those pertaining to procedures before the Saint Regis Mohawk Tribal Court shall govern the land dispute claims filed in Tribal Court. If there is an apparent conflict of Laws, the Tribal Court shall seek to read the Laws in a way that they will work together. But, to the extent there is a conflict, this Ordinance shall take precedence in relation to land and land disputes.

#### **G. Review of Prior Tribal Council Land Dispute Decisions.**

1. As a matter of equity, the statute of limitations will be waived and the Tribal Court shall have the authority to review any land dispute decisions made by Tribal Council between December 1, 1998 and December 3, 2009 (the original Effective Date of the prior Land Dispute Ordinance). Such review shall be de novo. This authority shall expire on June 30, 2018.

2. As of December 3, 2009, the Tribal Council no longer has authority to resolve land disputes. If, between December 4, 2009 and the date of the adoption of this Ordinance, the Council took action on a land dispute despite this bar, the party seeking to file a claim regarding such action must first establish that Tribal Council actually resolved a land dispute as defined herein before a claim may be brought. The Tribal Court shall have the discretion to waive the statute of limitations regarding a land dispute in such case, but in no instance may the Tribal Council be named as a party except as permitted under this Ordinance. Tribal Court shall not entertain cases where the Tribal Council simply executed a Use and Occupancy Deed.

#### **H. Appeals.**

All final decisions of the Tribal Court regarding land or land disputes shall be appealable to the Saint Regis Mohawk Tribe Appellate Court.

### **VII. SOVEREIGN IMMUNITY NOT WAIVED**

The Tribal Council agrees to a limited waiver of its immunity solely for the Tribal Court to review any decisions the Tribal Council rendered on land disputes as defined in Sec. III E. to hear any claim in which the Tribe claims title or an ownership interest in property which is in dispute, or to hear a claim regarding the correction of a deed. The waiver shall apply to equitable remedies only. Otherwise, nothing in this Ordinance is intended nor shall be construed as any other waiver of the sovereign immunity of the Saint Regis Mohawk Tribe from suit in State, Federal or Tribal Court against the Saint Regis Mohawk Tribe, any Tribal entity or any official acting in his or her official capacity.

**VIII. AMENDMENT**

This Ordinance may be amended upon the approval of such amendments by the majority of Tribal Council and upon notice to the Tribal membership.

**IX. REPEALER**

This Ordinance shall supersede and replace all prior Ordinances, or portions thereof, adopted by the Saint Regis Mohawk Tribe, as they pertain to the matters contained herein.

**X. SEVERABILITY**

The provisions of this Ordinance are severable and if any part or provision shall be held void by any Court of competent jurisdiction, the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this Ordinance.

**XI. EFFECTIVE DATE**

This Ordinance shall become effective upon enactment.

**ENACTED BY** the Saint Regis Mohawk Tribal Council on this \_\_\_\_ day of \_\_\_\_\_, 2016.

**THE SAINT REGIS MOHAWK TRIBAL COUNCIL**

\_\_\_\_\_  
Beverly Cook  
Tribal Chief

\_\_\_\_\_  
Ron LaFrance, Jr.  
Tribal Chief

\_\_\_\_\_  
Eric Thompson  
Tribal Chief

**CERTIFICATION:** This is to certify that the Saint Regis Mohawk Tribal Council, pursuant to the authority vested therein, duly passed the above resolution.

\_\_\_\_\_  
Betty Roundpoint, Tribal Clerk

\_\_\_\_\_  
Date