

**ST. REGIS MOHAWK TRIBE
LAND DISPUTE RESOLUTION ORDINANCE**

I. TITLE

This Ordinance shall be known as the St. Regis Mohawk Tribe Land Dispute Resolution Ordinance.

II. AUTHORITY

The St. Regis Mohawk Tribal Council is the duly recognized governing body of the St. Regis Mohawk Tribe and is responsible for the health, safety, education and welfare of all members of the Tribe. The Tribal Council is vested with the authority to control the use of lands on behalf of the Tribe and has customarily been responsible for resolving land disputes on the Reservation. Pursuant to the referendum held June 6, 2009, this authority is hereby delegated to a Land Dispute Tribunal and the Tribal Court, which shall have the authority to render final decisions.

III. PURPOSE

The purpose of this Ordinance is to provide a fair and equitable procedure for resolving land disputes within the St. Regis Mohawk Tribe's jurisdiction.

IV. DEFINITIONS

- A. "Certified Copy" – 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. "Complainant" – the person who files a land dispute complaint.
- D. "Conflict of Interest" – is when a member of the Tribunal has a personal, financial, or familial connection to a disputing party.
- E. "Days" – in this Ordinance refers to calendar days unless specifically mentioned.
- F. "Interested Persons" – people having an interest or claim in property subject to dispute, or who might have information relevant to determining the facts of a particular case.
- G. "Intestacy/Intestate" – when a person dies without leaving a Will.
- H. "Legal Guardian" – a Legal Guardian is a parent or an individual legally appointed by a court of competent jurisdiction as the guardian of minor children.
- I. "Life estate" – 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.

- J. “Recorded” – refers to the filing of or registration of documents or transactions in the St. Regis Mohawk Tribal Clerk’s office so as to memorialize the transaction or document in accordance with established procedures.
- K. “Respondent” – the person against whom a land dispute complaint is filed.
- L. “Reservation” – for purposes of this Ordinance, Reservation means the St. Regis Mohawk Reservation currently held in restricted fee.
- M. “Spouse” – the St. Regis Mohawk Tribe does not recognize “common law” marriage and so for purposes of this Ordinance, spouse shall refer to the legally married husband or wife.
- N. “Traditional Law” – customs and traditions of the St. Regis Mohawk Tribe which may include past practices or precedents.
- O. “Tribal Council” – for purposes of this Ordinance, refers to the three duly elected Chiefs of the St. Regis Mohawk Tribe.
- P. “Tribal Council Final Decision” – a Tribal Council Final Decision is the most recent decision rendered on a land dispute that was approved by the majority of Tribal Council at the time it was rendered; this includes decisions rendered by prior Tribal Councils within ten (10) years prior to the Effective Date of this Ordinance.
- Q. “Will” - a legal declaration of a person’s wishes regarding the disposal of his or her property or estate after death.

V. GENERAL PROVISIONS

- A. The power to make land assignments and to issue Use and Occupancy Deeds is vested in the St. Regis Mohawk Tribal Council. All land assignments and deeds previously made or issued, and not presently in dispute, are presumptively valid, absent evidence to the contrary.
- B. Only Tribally enrolled members shall be permitted to possess a use and occupancy deed or to otherwise own land on the Reservation.
- C. Reservation land may not be sold to, held by or in any way relinquished to a non-Member of the St. Regis Mohawk Tribe.
- D. The party initiating a land dispute shall carry the burden of proof throughout the entire proceeding.
- E. Intestate Distribution – when a Tribal member dies without leaving a Will, their 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 the possessory interest.
 6. In the event that a deceased Tribal member has no Tribal member spouse, children, or grandchildren, or parents, the surviving brothers and sisters, then the surviving nieces or nephews shall receive equal possessory interests in tribal land formally held by the deceased tribal member.
 7. If there are no survivors of the deceased Tribal member, the property shall revert back to the Tribe.
- F. Use and Occupancy Deed - A Use and Occupancy Deed is an official Tribal document granting the holder the right to use and occupy land, signed by the Tribal Council and certified by the Tribal Clerk.
1. In the event that a land dispute should arise over the issuance of a deed, the deed that is recorded **first** with the Tribal Clerk of the St. Regis Mohawk Tribe will supersede all other deeds.
 2. The issuance of deeds is not challengeable unless the deeds are found to have been issued due to, but not limited to the following: fraud, deceit, coercion, or duress. The Tribal Council reserves the right to correct or amend deeds due to error. All recorded deeds must bear the signature of the Tribal Council along with the signature and seal of the Tribal Clerk.
- G. 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 property. These agreements may be informal and the Tribunal shall decide the evidentiary weight to be given to their terms.
1. The buyer will receive a deed to the property when all the conditions of the contract have been satisfied.
 2. Each contract will differ but many land contracts provide that the buyer may occupy and make improvements to the land; if the buyer defaults the terms of the agreement, the seller may evict the buyer and keep the installment payments and any improvements thereon.

H. Bill of Sale – A Bill of Sale is a record of a transaction between individuals for the exchange of their right to use and occupy a particular parcel of land.

1. The Bill of Sale must be signed, witnessed or notarized and then recorded with the Tribal Clerk in order to be valid.
2. In the event that a land dispute arises in a case where there are no recorded deeds with the Tribal Clerk, the Bill of Sale will be considered a binding document. In the instance that there are two Bills of Sale for one particular property, the valid Bill of Sale dated **first** will supersede any and all other Bills of Sale.

I. Survey of Tribal Lands

A survey by a licensed surveyor is strongly preferred for all parcels of land transferred on the Reservation. The use of GIS mapping shall be permitted in lieu of a survey, so long as the boundaries of a particular parcel are clearly delineated, measurable and not in dispute. At a minimum, property transferred on the Reservation must be properly described with boundaries that are clearly delineated, measurable and not in dispute.

J. Public Notice

The Tribal Clerk may provide notice to Tribal members of pending land sales.

K. Wills

1. Upon the adoption of this Ordinance, the general requirements for a valid Will shall be as follows:
 - (a) a Will must be written (meaning typed or printed);
 - (b) it must be signed by the person making the Will (usually called the “testator” or “testatrix”); and
 - (c) it 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 to a witness is void unless there are at least two other disinterested witnesses to the Will.

2. 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. 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. Wills made prior to the adoption of this Ordinance may be submitted as evidence, although not in conformity with these requirements, and the Tribunal or Tribal Court shall determine the validity and weight to be given to such Will.
5. 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. WHO MAY FILE A LAND DISPUTE CLAIM

- A. So long as the dispute concerns land on the Reservation, a land dispute claim 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.

VII. THE TRIBAL LAND DISPUTE TRIBUNAL

- A. The Tribal Land Dispute Tribunal, "the Tribunal," is hereby established by the Tribal Council and is vested with the authority to and for the sole purpose of settling land disputes which arise on the Reservation.
- B. The Tribunal possesses the authority to hear all aspects of a Land Dispute Case. This may include receiving written or oral testimony and receiving document submissions. The Tribunal is also authorized to grant extensions of time as may be requested by one of the parties.
- C. The Tribunal is hereby granted the authority to develop other rules and regulations as necessary to ensure the proper implementation of this Ordinance.
- D. Appointment of Tribunal

1. The Tribal Council shall appoint a Land Dispute Tribunal which shall consist of five (5) enrolled Tribal members and two (2) alternates who meet the requirements herein. Tribal Council shall endeavor to appoint at least one member fluent in the Mohawk language. The Tribunal shall be trained in the procedures and policies necessary to fairly and impartially decide land disputes.
2. If there is a conflict of interest with one of the Tribunal members, an alternate shall serve in that person's place for the duration of that particular dispute.
3. A quorum for rendering any Tribunal decision, both ancillary and final, shall be five (5) members and the affirmative vote of a majority of quorum is required to render a decision.
4. In order to be eligible for appointment to the Land Dispute Tribunal a person must:
 - a. Be an enrolled member of the St. Regis Mohawk Tribe;
 - b. Be 25 years of age or older;
 - c. Be of good moral character and reputation;
 - d. Have not been convicted of a felony, any serious crime or any other crime involving: i.e., fraud, moral turpitude or the like; and
 - e. Be an eligible voter; and
 - f. Be willing and able to attend all training to be provided.
5. Appointments to the Tribunal shall be for staggered 5 year terms with the initial terms as follows and thereafter, each member shall serve for five (5) years:
 - a. two (2) positions for five (5) years;
 - b. two (2) positions for three (3) years;
 - c. one (1) position for one (1) year.
 - d. two (2) alternates shall be appointed for five (5) year terms.
6. Tribal Council shall make all appointments to the Land Dispute Tribunal and shall fill any vacancies that may occur.
7. Land Dispute Tribunal members shall be compensated at a rate set by Tribal Council.
8. The Tribal Council shall provide training for Tribunal Members.

9. Tribal Council reserves the right to place these positions up for election directly by the people or to have their appointments ratified by an affirmative vote of quorum at a duly held Tribal Meeting.
10. A Tribunal Member may be removed for cause by submitting a written complaint in writing to the Tribal Council who shall have the sole discretion to rule on the removal, which decision shall not be subject to appeal.
11. Tribal Council shall appoint the first Tribunal within sixty (60) days of the Effective Date of this Ordinance; thereafter the terms as outlined herein shall apply.

VIII. PROCEDURE FOR INITIATING A LAND DISPUTE CLAIM

- A. A person filing a Land Dispute (hereinafter called “Complainant”) must complete a Complaint Form located at the Tribal Clerk’s Office and must pay a filing fee to be established by the Tribal Clerk and approved by Tribal Council.
- B. The Tribal Clerk will develop and provide the ‘Complaint Form’, which will require information on:
 1. The nature of the dispute;
 2. Name of Respondent;
 3. Names of all other Interested Persons, their connection to the dispute and the reason for their interest;
 4. Copies of any relevant documents which may be required, 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.
- C. The Complainant must file the Complaint Form with the Tribal Clerk who shall record a copy of the Complaint.
- D. The Complainant shall have thirty (30) days to serve a certified copy of the Complaint on the Respondent and to file proof of service with the Tribal Clerk.
- E. If any procedure required by these rules cannot be met for whatever reason, the Tribunal can issue an order permitting substantial compliance with these rules.

IX. CREATION AND MAINTENANCE OF LAND DISPUTE DOCKET

- A. The Tribal Clerk, or his or her designee, shall maintain a Land Dispute Docket that shall be an official Tribal record and may be available to the public, and which shows the status and disposition of all land disputes filed. The Land Dispute Docket shall contain the following information:

1. Names, addresses and phone numbers of the Complainant, Respondent and other Interested Persons
2. The physical address of lands in dispute and land parcel numbers if assigned
3. Nature of Dispute
4. Hearing Dates
5. Status Summary

X. PUBLIC NOTICE OF LAND DISPUTE COMPLAINT

- A. Within thirty (30) days following the filing of a Complaint and payment of the filing fee, the Tribal Clerk shall publish a Public Notice in at least one (1) Akwesasne community newspaper and on the Official Tribal Website at www.srmt-nsn.gov, which shall start a thirty (30) day Public Notice Period.
- B. This Public Notice shall be published for a minimum of ten (10) working days.
- C. The Public Notice issued by the Tribal Clerk shall provide the following information:
 1. Name and address of the Complainant;
 2. Name and address of Respondent;
 3. Address or other information regarding the location of the property in dispute;
 4. Claim file number;
 5. A brief description of the nature of the dispute; and
 6. The Public Notice shall state in open and conspicuous font the following:

PUBLIC NOTICE OF LAND DISPUTE

Any Interested Persons shall have thirty (30) business days from the first date of publication of this Notice to file opposing or related claims, or to provide relevant information to the Tribunal; therefore information and related claims should be filed no later than _____, 20_____.

XI. TRIBAL CLERK

The Tribal Clerk shall have the authority to adopt any further regulations or policies deemed necessary to implement this Ordinance.

XII. RESPONDING TO A LAND DISPUTE CLAIM

- A. A Respondent served with the Complaint must file a response within thirty (30) working days after the first day of publication of the Public Notice. The response must be filed with the Tribal Clerk and may include any defenses or denials, and shall also include all relevant documents. The response may also include any requests for determination to be made by the Tribunal.
- B. If Respondent fails to respond within the specified timeframe, the Tribunal may render its decision solely on the information before it and the Respondent may not seek to re-open a dispute based on their failure to respond.

XIII. TRANSFER OF CASE TO LAND DISPUTE TRIBUNAL

- A. Within thirty (30) days following the end of the Public Notice Period, the Tribal Clerk shall forward a certified copy of all documents filed with respect to the case and responses received from the Public Notice period, which shall include the documents and information referenced in B below, to the Land Dispute Tribunal. Original correspondence with respect to the case shall be maintained by the Tribal Clerk's Office.
- B. In addition, the Tribal Clerk, or any of the Clerk's designees, shall research and retrieve any and all known documents held and maintained by the Tribal Clerk's Office with respect to the land dispute, and add certified copies of these documents to the case file. This may include prior Council determinations, interpretation of discovered documents, completion of family trees, and whatever else competent, relevant, and necessary for the Tribunal to render its decision, all of which shall be added to case file. Any material obtained by the Tribunal during this process will be provided to the Complainant and the Respondent.
- C. Initial Appearance at the Tribunal – the purpose of the Initial Appearance is for the parties to submit their written and oral testimony. This should be a fact gathering meeting only.
 - 1. Within thirty (30) days of receipt of the case file from the Clerk's Office, the Tribunal shall mail a Notice to all parties confirming that the Tribunal has received all known papers involved with the case, and that the Tribunal has scheduled an Initial Appearance to be held within this same thirty (30) day period for all Interested Persons on the matter, and the date of the Initial Appearance will be provided.
 - 2. The Notice will also provide that all parties have a right to attend the proceedings of the Tribunal and to make presentations to the Tribunal if they choose to do so. Interested Persons will also be required to provide copies of all documents they have in their possession related to the case. Any new information acquired at the Initial Appearance shall be added to and shall form a part of the case file. The primary purpose of the Initial Appearance is to gather all relevant information.
- D. Final Meeting of the Tribunal – the purpose of the Final Meeting is for the parties to make their final arguments regarding their claims. No new evidence should be submitted at the Final Meeting.

1. Within thirty (30) days following an Initial Appearance, the Tribunal shall schedule and give notice to the parties of a Final Meeting. At this Final Meeting, which may be extended or carried over with the consent of the parties, the parties can present their position on the matter. The final meeting shall be recorded electronically and shall become part of the record associated with the case.
2. Within thirty (30) days of the Final meeting, the Tribunal shall render a decision and under no circumstances may this deadline be extended.
3. The decision made by the Tribunal will be based upon the record developed by the parties and the Tribunal. The decision and the reasons thereof, will be provided to the persons involved and the Interested Person whose name appears on the contact list. The Tribunal will be guided by this record, as well as prior decisions reached in similar cases, and by the historic customs and usages of the St. Regis Mohawk Tribe. The recommendation will be in writing and shall provide as much relevant detail as possible.
4. The decision of the Tribunal shall be a Final Decision for purposes of review by the Tribal Court.
5. Henceforth, no case may be presented directly to, nor may any case be taken directly by Tribal Council.
6. Failure of the Tribal Council to issue a deed pursuant to a valid Tribunal or Tribal Court decision and order shall be a per se violation of the Ethics Ordinance and shall result in appropriate sanctions.

XIV. EVIDENCE AND USE OF TRIBAL CUSTOMS AND TRADITIONS

- A. The Tribunal shall consider only relevant evidence which is evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Evidence which is not relevant shall not be considered.
- B. The customs and traditions (“traditional law”), of the St. Regis Mohawk Tribe will be applied in all situations where it is relevant to the issues raised before the Tribunal. The Tribunal will first look to the laws adopted by the Tribe. If no written Tribal law applies to the circumstance raised by the dispute, the Tribunal will look to the Tribe's traditional law and if it finds the traditional law to be applicable, the Tribunal will base its decision on traditional law.
- C. Where any doubt arises as to the traditional law, the Tribunal, with the agreement of both parties, may request the advice of other Tribal members familiar with traditional law.
- D. The following forms of evidence of land ownership shall be accepted by the Tribunal, who shall determine the weight to be given such evidence:

1. Official and valid original deed.
2. Certified copy of deed.
3. Valid Will.
4. Valid Bill of Sale.
5. Valid receipt.
6. Prior Tribal Council finding.
7. Prior Tribal Court finding.
8. Transcript of prior Tribal meetings or hearings.
9. Decisions from other Courts.
10. Sworn written testimony.
11. Sworn oral testimony.
12. Any other relevant evidence.
13. 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.

XV. APPEALS TO THE TRIBAL COURT

A. Filing

1. Only the Complainant or Respondent to a land dispute may file an appeal of a Final Decision.
2. The appeal must be filed within thirty (30) days after issuance of the Tribunal Final Decision.
3. The person submitting the appeal must file a Notice of Appeal on a form designated by the Tribal Court Administrator, which shall contain whatever information mandated by the Court Administrator pursuant to Tribal Court Rules.
4. The Tribal Court may suspend the Rules of Civil Procedure and shall adopt such rules as may be appropriate to review cases brought pursuant to this Ordinance.

B. Review of Tribunal Decisions

1. Decisions of the Tribunal may be appealed to the St. Regis Mohawk Tribal Court.
2. The Tribal Court will review the appeal based upon the record developed before the Tribunal. The Tribal Court may affirm the decision or may vacate the decision and substitute its own decision, which shall be final and not subject to appeal.

C. Review of Tribal Council Decisions

1. The Tribal Court may review any appeal from a Tribal Council Final Decision made no more than ten (10) years prior to the Effective Date of this Ordinance.
2. The Tribal Court shall take a fresh look at land dispute decisions rendered by Tribal Council and may request evidence or testimony as necessary to develop a full and complete record of information upon which to base its final decision, which shall not be subject to appeal.

- D. Decisions of the Tribal Court in any case will be final and there shall be no appeal to a Tribal Court of Appeals.

XVI. 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.

XVII. 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 under the standards set forth herein. Otherwise, nothing in this Ordinance is intended nor shall be construed as any other waiver of the sovereign immunity of the St. Regis Mohawk Tribe from suit in State, Federal or Tribal Court against the St. Regis Mohawk Tribe, any Tribal entity or any official acting in his or her official capacity.

XVIII. 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.

XIX. REPEALER

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

XX. EFFECTIVE DATE

This Ordinance shall become effective sixty (60) days from its enactment by Tribal Council.

ENACTED BY the St. Regis Mohawk Tribal Council on this 3rd day of December, 2009.

ST. REGIS MOHAWK TRIBAL COUNCIL:

Chief James W. Ransom

Chief Monica M. Jacobs

Chief Mark H. Garrow

CERTIFICATION: This is to certify that the above Ordinance was duly adopted by the St. Regis Mohawk Tribal Council pursuant to the authority vested therein.

Corleen Jacco, Tribal Clerk

Date