

CHAPTER 9 INHERITANCE

901. INHERITANCE OF HOME

Pursuant to this Chapter, a Nation member may by Will transfer the rights to use and occupy a Home or an interest therein to a spouse, child or an enrolled member of the Nation.

902. DEFINITIONS

A. Homeowner or Decedent.

A deceased Nation member who prior to such member's death resided in a Home in accordance with the terms of a valid Use Rights and Homeowner Agreement with the Nation.

B. Inheritance.

The interest in a Home that a Nation member may, by Will and in accordance with Nation law, grant to a spouse, child(ren), other member(s) of the Oneida Nation, or non-member(s) of the Oneida Nation upon such member's death. Such interest may be: (i) a Life Estate or Limited Estate; and/or (ii) the right to receive all or a part of the Net Value of the Home. In the event that a Nation member gifts a Life Estate or Limited Estate, such estate must expire or terminate before anyone may receive the Net Value of the Home.

C. Non-member. A person who is not an enrolled member of the Oneida Indian Nation.

D. Life Estate.

The right of a person to live in a Home until such person dies, vacates the Home (and such absence is not approved by the Nation), or until the Use Rights and Homeowner Agreement expires and is not renewed, provided that:

1. A Life Estate gifted to a Non-member may only be granted to the spouse or long-term partner of the opposite sex ("Spouse") of the decedent and that Spouse must be residing in the Home at the time of the Homeowner's death.
2. A Life Estate gifted to a Non-member Spouse terminates automatically upon remarriage or establishment of a new partnership by the Non-member Spouse to another Non-member of the Nation.
3. A Life Estate gifted to a Nation member or to a non-member Spouse shall terminate in the event that the beneficiary of the Life Estate is absent from the Home for more than thirty (30) consecutive days, provided that the Life Estate shall not be terminated if such absence is approved by the Nation.

4. A person who is bequeathed a Life Estate, who is eligible for a Life Estate, and who accepts a Life Estate in a Home shall execute a Use Rights and Homeowner Agreement with the Nation in order to receive the Life Estate.

E. Limited Estate.

The right of a non-member minor child of a Homeowner, who is residing at the Home at the time of the Nation member's death, to live in the Home until the child has reached the age of twenty-one (21). This right may be extended by the Nation until the age of twenty-five (25), provided the child is a full-time student in good academic standing. A Limited Estate shall not terminate in the event that the beneficiary is absent from the Home for more than thirty (30) consecutive days provided that the absence is approved by the Nation.

A minor child who receives a Limited Estate shall have an adult guardian reside at the Home until the child reaches the age of eighteen (18). The adult guardian shall act as trustee for the child and execute a Use Rights and Homeowner Agreement with the Nation for the period from the date of inheritance until the child reaches the age of eighteen (18). At the age of eighteen (18), the beneficiary shall execute a Use Rights and Homeowner Agreement with the Nation for the remaining term of the Limited Estate.

F. Net Value.

The economic value of the Homeowner's interest in the Home. The Homeowner's economic interest in the Home shall be equal to the proceeds from the sale of the rights to use and occupy the Home after satisfying (i) all debts and liabilities against the property and (ii) the unvested portion of the Contribution.

G. Will.

A duly executed and acknowledged written instrument, recognized by the Nation Court as a valid will instrument, providing for the distribution of a person's property upon that person's death. Each Homeowner should execute a will that sets forth the Homeowner's intention with regard to the Home.

903. INHERITANCE RIGHTS AND DUTIES

The following rules apply to inheritance of a Home unless there is a surviving Nation member who shared the Home and the Use Rights and Homeowner Agreement with the decedent at the time of the decedent's death. A party to the Use Rights and Homeowner Agreement, who is in compliance with the Agreement, has a right of survivorship with the other Nation member party to the Agreement.

A. Nation Members as Beneficiaries.

A Nation member Homeowner may gift a Life Estate for the remaining term of the Use Rights and Homeowner Agreement, or all or portion of any Net Value of the Home to any enrolled member of the Nation.

B. Surviving Non-member Spouse as a Beneficiary.

A Nation member Homeowner may gift a Life Estate for the remaining term of the Use Rights and Homeowner Agreement, or all or a portion of the Net Value of the Home, to such member's Spouse.

C. Non-member Child as a Beneficiary

A Nation member Homeowner may gift a Limited Estate for the remaining term of the Use Rights and Homeowner Agreement, or all or a portion of the Net Value of a Home, to any child of the member who is not an enrolled member of the Nation.

D. Non-Nation Member as a Beneficiary.

A Nation member Homeowner may gift only the Net Value (or a portion thereof) to a person who is not an enrolled member of the Nation.

Any conveyance by will other than pursuant to this Chapter is void.

904. INTESTATE DEATH

If a Nation Member dies without a locatable valid Will, the following rules of distribution shall apply:

A. Decedent's Surviving Spouse Is A Nation Member.

A surviving Spouse who is a Nation Member shall be the sole beneficiary of the Home and shall receive the Homeowner's entire interest in the Home, including the right to dispose of such interest in accordance with Nation law.

B. Decedent Has One Or More Surviving Children And Decedent's Surviving Spouse Is Not A Nation Member.

The surviving Spouse shall be entitled to elect between a Life Estate or one-half (1/2) of the Net Value of the Home. If the surviving Spouse elects the Life Estate, then the Decedent's children shall divide the Net Value of the Home upon the surviving Spouse's death. If the surviving Spouse elects to take one-half (1/2) of the Net Value, then the remaining one-half (1/2) shall be divided equally between the Decedent's children.

C. Decedent Has No Surviving Children And Decedent's Surviving Spouse Is Not A Nation Member.

The surviving Spouse shall be entitled to elect between a Life Estate and the Net Value of the Home.

D. Decedent Has One or More Surviving Children, but No Surviving Spouse.

The Decedent's children shall divide the Net Value equally among themselves.

E. Decedent Has No Surviving Spouse or Children.

The Nation receives the Net Value in the Home.

905. TRANSFER OF JOINTLY OWNED HOMES

Where the Home is held in a form of Homeownership containing a right of survivorship, all interest of the decedent in the Home shall pass to the surviving interest holder notwithstanding a Will of the decedent to the contrary. Where the Home is held by a decedent and others in common, Sections 903 and 904 of this Chapter shall apply as to the decedent's interest.

906. DEATH OF THE HOMEOWNER AUTOMATICALLY TERMINATES THE USE RIGHTS AND HOMEOWNER AGREEMENT.

A Use Rights and Homeowner Agreement entered into solely by a Decedent shall terminate, regardless of its term of years, upon the death of the Homeowner. An inheritance of a Home is not effective without the execution of a new Use Rights and Homeowner Agreement between the Nation and the beneficiary. Beneficiaries granted a Limited Estate or Life Estate shall execute a Use Rights and Homeowner Agreement for the applicable term, not to exceed fifty (50) years. A beneficiary devised a Limited Estate who is a minor may not be a party to a Use Rights and Homeowner Agreement until such child reaches the age of eighteen (18). Until such date, the child's guardian shall act as trustee and execute the Use Rights and Homeowner Agreement for such child. The Use Rights and Homeowner Agreement and the Limited Estate shall terminate simultaneously. A beneficiary inheriting Net Proceeds from the Home shall execute a new Use Rights and Homeowner Agreement pending the sale of the Home and the distribution of the Net Proceeds.