



HO-CHUNK NATION CODE (HCC)
TITLE 8 – HOUSING, REAL ESTATE AND PROPERTY CODE
SECTION 14 – TITLE RECORDING & TRANSFER ORDINANCE

ENACTED BY LEGISLATURE: FEBRUARY 7, 2017

CITE AS: 8 HCC § 14

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1. Authority.

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

c. Article V, Section 2(c) of the Constitution grants the Legislature the power to constitute a Board of Directors for each Department, except the President shall name the Executive Director, subject to confirmation by the Legislature.

d. Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget.

e. Article V, Section 2(o) of the Constitution Grants the Legislature the power to enact laws to regulate and zone any land within the jurisdiction of the Ho-Chunk Nation.

f. Article V, Section 2(p) of the Constitution Grants the Legislature the power to enact laws to create and regulate a system of property including but not limited to use, title, deed, estate, inheritance, transfer, conveyance, and devise.

g. Article VI, Section 2(b) of the Constitution grants the President the power to administer all Departments, boards, and committees created by the Legislature.

2. Purpose. This Ordinance shall establish and formalize the authority of the Register of Deeds to record land title records and other documents, and shall additionally authorize and regulate the transfer of property within and on the land of the Ho-Chunk Nation by means of deed, conveyance, and transfer by the Register of Deeds.

3. Mission. The Register of Deeds was created to aid the Ho-Chunk Nation and its members in locating, retrieving, storing, and maintaining all records of the Ho-Chunk Nation land. The records will be kept in a single centralized location, easily assessable to the Nation as well as its members.

4. Definitions. As used in this Ordinance the following words are hereby defined:

a. “Conveyance” means the legal process of transferring ownership of property, including improvements to real property.

b. “Deed” means a legal document which confirms, transfers, or records an interest in property.

c. “Designation of Beneficiary” means the nomination, in writing, of another individual to assume ownership of property following death, which vests no rights in the individual so named until death.

d. “Joint Tenancy” means holding or owning a piece of property by multiple individuals where the share or shares of any member shall pass to the other members equal upon death, so that the final surviving owner is the owner of the entirety. References to property held jointly with right of survivorship should also be understood to fall under this definition.

e. “Life Estate” means an interest in real property that is limited in duration to the lifetime to its owner or some other designated person or person or measurable period to time.

f. “Nation’s Trust Land” means land held in trust by the United State of America for the benefit of the Ho-Chunk Nation or its members.

g. “Permanent Improvements” means buildings, other structures, and associated infrastructure attached to the land.

h. “Transfer” means the legal act of changing ownership of property from one person to another.

i. “Transfer by Affidavit” means a transfer of property after the death of the property owner to one or more heirs, who agree to be personally liable for the upkeep, care, and proper distribution of the property in the absence of a probate.

j. “Transfer upon Death” means a conveyance of property which is expressly conditioned upon the death of the transferor and has no effect until that event takes place.

k. “Tenancy for Years” means a right of ownership or occupancy to property for a period less than the lifetime of an individual. These can include short-term monthly or annual leases, or multiple year rentals of property.

5. **Controlling Law.** To the extent that this Ordinance conflicts with any applicable Ho-Chunk Nation law or federal statutes or regulations, the Ho-Chunk Nation law or federal statute or regulation shall control.

6. **Amendment.** This Ordinance may be amended by majority vote of the Ho-Chunk Nation Legislature.

7. **Effective Date.** This Ordinance shall become effective as the Nation’s law, for all purposes, on the date of enactment by the Legislature.

8. **Severability.** If any provision or provisions of this Ordinance shall in the future be declared invalid by the Ho-Chunk Nation Judiciary, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

9. **Functions.** The Register of Deeds shall:

a. Create and maintain a system of recording ownership, occupancy rights of property, and Permanent Improvements on the Nation’s Trust Land.

b. Accept and authenticate valid documents for transferring ownership, occupancy rights of property, and Permanent Improvements on the Nation’s Trust Land.

c. Establish fees, costs, or surcharges for the filing, reproduction, or certification of documents.

d. Coordinate all necessary and available professional resources required to carry out the Register of Deeds mission.

e. Provide for effective dissemination of information to the Nation and the Nation’s members.

f. Provide templates and standardized forms for transfers to the Nation's members, but shall not draft legal documents or provide legal advice to the Nation's members.

10. **Acceptable Documents.**

a. The Register of Deeds shall accept and record all documents which meet the criteria of this Section.

(1) If a document does not meet the criteria of this Section, the Register of Deeds shall return it to the party who submitted it with a written explanation of any deficiencies or errors. A deadline will be established by the Register of Deeds for the party to return with the corrected document. If the deadline has passed without submission of a corrected document, the Register of Deeds may require resubmission of any application previously filed or fee.

(2) If there is a question as to the veracity, accuracy, or applicability of a document the Register of Deeds shall use its discretion in determining whether to accept it or not, and shall permit parties to submit additional documentation supporting its claim to demonstrate with substantial certainty that the proffered document is true, accurate, and applicable. All such supporting documentation shall be recorded as attachments to the original document.

b. The Register of Deeds shall accept such documents which record, transfer, encumber, or otherwise affect interests in Permanent Improvements on the Nation's Trust Land.

c. Documents transferring ownership of Permanent Improvements may only transfer ownership to an enrolled member of the Ho-Chunk Nation or an enrolled member and their non-enrolled spouse.

(1) A descendant of the Ho-Chunk Nation may be given a Life Estate or Tenancy for Years if they are a child or grandchild of the person making the transfer, if and only if, an enrolled member of the Ho-Chunk Nation or the Nation itself is named to receive the remainder.

(2) For a Transfer upon Death, Termination of a Joint Tenancy Based upon Death of a Party, or Transfer by Affidavit, the spouse or child of a deceased member of the Ho-Chunk Nation may receive a Life Estate in Permanent Improvements.

(a) If the document does not proscribe an eligible individual to succeed the remainder, then the non-enrolled spouse or non-enrolled child must complete a Beneficiary Designation form giving the remainder to an enrolled member of the Ho-Chunk Nation or the Nation itself.

(b) If the non-enrolled spouse or non-enrolled child is a minor or is legally incompetent, then the legal custodian of the non-enrolled spouse or non-enrolled

child must complete a Beneficiary Designation form giving the remainder to an enrolled member of the Ho-Chunk Nation or the Nation itself.

d. Standards for legal descriptions. The legal description shall include, at a minimum, the section, township, and range. If a metes and bounds description is necessary it shall be provided by a licensed surveyor. A certified survey map is preferable.

e. A title shall be created for Permanent Improvements on the Nation's Trust Land for the following:

(1) The first occupant of any home or home site created after the effective date of this Ordinance shall submit a Request for Title.

(2) For any home or home site prior to the effective date of this Ordinance, the current occupant may submit a Request for Title.

(a) The Request for Title shall be accompanied by two affidavits from disinterested witnesses that describe when the Permanent Improvements were constructed, under whose direction the Permanent Improvements were made, and the chain of ownership since construction of the Permanent Improvements including how the current occupant came to own the property.

(b) The Ho-Chunk Nation Register of Deeds shall:

i. Post a copy of the Request for New Title at the property in question within thirty (30) days along with a "Right to Object" Notice if the property is located in Wisconsin. For non-Wisconsin property, the Register of Deeds may send the notice by certified mail to the physical address of the property.

ii. Notice shall also be posted in the Hocak Worak at least twice, with the second notice being posted no later than forty-five (45) days after the filing of the request.

(3) Any objections may be filed with the Register of Deeds within forty-five (45) days from the date the Request for New Title is filed.

(4) Absent any objections, the Register of Deeds shall issue a Title for Permanent Improvements within ten (10) days of the close of the objection period.

(5) If an Objection is filed which reasonably calls into question the veracity, accuracy, or applicability of the Request, Affidavits, or other documents filed by the current occupant, the Register of Deeds shall then return the documents and refuse to issue Title until defects are corrected. If possible, notice of this decision will be sent to objecting parties.

(6) If an Objection is filed which does not reasonably call into question the veracity, accuracy, or applicability of the Request, Affidavits, or other documents filed by the current occupant, then the Register of Deeds shall issue a Title for Improvements to Real Property within ten (10) days of the close of the objection period. If possible, notice of this decision shall be sent to objecting parties.

(7) The reasonableness of the above-described Objections shall be a discretionary decision made by the Register of Deeds based on all available information.

f. Permanent Improvements may be titled in the name of an enrolled member of the Ho-Chunk Nation, or jointly in the names of an enrolled member of the Ho-Chunk Nation and their non-enrolled spouse. Absent additional language in the Title document, it shall be deemed that all such property is held jointly with right of survivorship subject to the condition that non-enrolled spouses must have a valid Beneficiary Designation form on record.

g. A current owner of the Permanent Improvement shall file a Beneficiary Designation Addendum to their Title to provide for an automatic conveyance of that Title to the named individual or individuals upon the death of the current owner. Any sale or transfer of that property prior to the owner's death shall void the Beneficiary Designation Addendum. If the owner makes a legally valid Last Will and Testament which conflicts with the beneficiary designation the most recent document shall control. All other elements of the Last Will and Testament shall control.

(1) Upon the death of property owner, the Beneficiary must file a Death Certificate and a Termination of Decedent's Property Interest form with the Register of Deeds, at which time the Register of Deeds shall issue title to the Beneficiary.

h. Upon the death of an owner who has not completed a Beneficiary Designation Addendum or a valid Last Will and Testament for any Permanent Improvements, the heirs have 180 days to file a Transfer by Affidavit or commence Probate in a forum that has jurisdiction. If no heir comes forward, the Nation shall take possession of the Permanent Improvement. Any conflict between this Section and any relevant provisions in laws or ordinances relating to intestate probate duly enacted by the Ho-Chunk Nation shall be resolved in favor of the latter.

i. Effect of Lack of Recording. A sale, gift, or other conveyance that is not recorded as provided by law shall be void as against any subsequent purchaser, in good faith and for valuable consideration, of the same Permanent Improvement or any portion thereof whose conveyance is recorded first.

j. All conveyances, transfers, or designations under this Ordinance shall be considered to be Quit Claim, and transfer only such rights as the transferor possesses and the recipient shall be subject to all encumbrances, liens, or defects as may exist at the time of transfer.

k. Any conveyance, beneficiary designation, or transfer by affidavit filed with the Register of Deeds must have the current mailing addresses of all individuals named in the document.

11. Storage of Wills.

a. Deposit of a Will. Any member or resident on the Nation's Trust Land may deposit his or her Last Will and Testament with the Register of Deeds. The Last Will and Testament shall be sealed in an envelope with the name and address of the testator, the name of the personal representative or representatives, and the date of deposit noted thereon. If the Last Will and Testament is deposited by a person other than the testator, that fact also shall be noted on the envelope. The size of the envelope may be regulated by the Register of Deeds to provide uniformity and ease of filing.

b. Duty of Register of Deeds. The Register of Deeds shall issue a receipt for the deposit of the Last Will and Testament and shall maintain a registry of all deposited Last Will and Testament's.

c. Withdrawal. A testator may withdraw the testator's Last Will and Testament during the testator's lifetime. After the testator's death the personal representative may withdraw the Last Will and Testament. If no personal representative comes forward or one is not named the Register of Deeds shall only provide the original pursuant to an order from a court of competent jurisdiction. The Register of Deeds may also supply a certified copy to the Bureau of Indian Affairs upon request.

Legislative History:

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| 09.07.16 | Legislature adopts Resolution 09.07.16A placing the proposed Title Recording & Transfer Ordinance out for forty-five (45) day public comment. |
| 02.07.17 | Legislature adopts Resolution 02.07.17V adopting the Title Recording & Transfer Ordinance as 8 HCC § 14. |