

**ONEIDA INDIAN NATION  
GENERAL OBLIGATIONS CODE**

**Chapter 1**

**101 AGREEMENTS REQUIRED TO BE IN WRITING**

- a. Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:
1. By its terms is not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime;
  2. Is a special promise to answer for the debt, default or miscarriage of another person;
  3. Is made in consideration of marriage, except mutual promises to marry;
  5. Is a subsequent or new promise to pay a debt discharged in bankruptcy;
  6. Notwithstanding section 2-201 of the Oneida Indian Nation Uniform Commercial Code, if the goods be sold at public auction, and the auctioneer at the time of the sale, enters in a sale book, a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale was made, such memorandum is equivalent in effect to a note of the contract or sale, subscribed by the party to be charged therewith;
  7. Is a contract to assign or an assignment, with or without consideration to the promisor, of a life or health or accident insurance policy, or a promise, with or without consideration to the promisor, to name a beneficiary of any such policy. This provision shall not apply to a policy of industrial life or health or accident insurance.
  8. Is a contract to pay compensation for services rendered in negotiating a loan, or in negotiating the purchase, sale, exchange renting or leasing of any real estate or interest therein, or of a business opportunity, business, its good will, inventory, fixtures or an interest therein, including a majority of the voting stock interest in a corporation and including the creating of a partnership interest. "Negotiating" includes procuring an introduction to a party to the transaction or assisting in the negotiation of consummation of the transaction.

This provision shall apply to a contract implied in fact or in law to pay reasonable compensation but shall not apply to a contract to pay compensation to an auctioneer, an attorney at law, or a duly licensed real estate broker or real estate salesman.

b. Notwithstanding paragraph one of subdivision a of this section:

1. An agreement, promise, undertaking or contract, which is valid in other respects and is otherwise enforceable, is not void for lack of a note, memorandum or other writing and is enforceable by way of action or defense provided that such agreement, promise, undertaking or contract is a qualified financial contract as defined in paragraph two of this subdivision and (a) there is, as provided in paragraph three of this subdivision, sufficient evidence to indicate that a contract has been made, or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of such qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.
2. For purposes of this subdivision, a "qualified financial contract" means an agreement as to which each party thereto is other than a natural person and which is:
  - (a) for the purchase and sale of foreign exchange, foreign currency, bullion, coin or precious metals on a forward, spot, next-day value or other basis;
  - (b) a contract (other than a contract for the purchase and sale of a commodity for future deliver on, or subject to the rules of, a contract market on board or trade) for the purchase, sale or transfer of any commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or any product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into;
  - (c) for the purchase and sale of currency, or interbank deposits denominated in the United States dollars;
  - (d) for a currency option, currency swap or cross-currency rate swap;
  - (e) for a commodity swap or a commodity option (other than an option contract trade on, or subject to the rules of a contract market or board of trade);

- (f) for a rate swap, basis swap, forward rate transaction, or an interest rate option;
- (g) for a security-index swap or option or a security (or securities) price swap or option;
- (h) an agreement which involves any other similar transaction relating to a price or index (including, without limitation, any transaction or agreement involving any combination of the foregoing, any cap, floor, collar or similar transaction with respect to a rate, commodity price, commodity index, security (or securities) price, security-index or other price index); or
- (i) an option with respect to any other the foregoing.

3. There is sufficient evidence that a contract has been made if:

- (a) There is evidence of electronic communication (including, without limitation, the recording of a telephone call or the tangible written text produced by computer retrieval), admissible in evidence under the laws of the Nation, sufficient to indicate that in such communication a contract was made between the parties;
- (b) A confirmation in writing sufficient to indicate that a contract has been made between the parties and sufficient against the sender is received by the party against whom enforcement is sought no later than the fifth business day after such contract is made (or such other period of time as the parties may agree in writing) and the sender does not receive, on or before the third business day after such receipt (or such other period of time as the parties may agree in writing), written objection to a material term of the confirmation; for purposes of this subparagraph, a confirmation or an objection thereto is received at the time there has been actual receipt by an individual responsible for the transaction or, if earlier, at the time there has been constructive receipt which is the receiving party, as an organization, has exercised reasonable diligence; and a "business day" for the purposes of this subparagraph is a day on which both parties are open and transacting business of the kind involved in that qualified financial contract which is the subject of the confirmation;
- (c) The party against whom enforcement is sought admits in its pleading, testimony or otherwise in court that a contract was made; or
- (d) There is a note, memorandum or other writing sufficient to indicate

that a contract has been made, signed by the party against whom enforcement is sought or by its authorized agent or broker.

For purposes of this paragraph evidence of an electronic communication indicating the making therein of a contract or a confirmation, admission, note, memorandum or writing is not insufficient because it omits or incorrectly states one or more material terms agreed upon, so long as such evidence provides a reasonable basis for concluding that a contract was made.

4. For purposes of this subdivision, the tangible written text produced by telefax, telefacsimile, computer retrieval or other process by which electronic signals are transmitted by telephone or otherwise shall constitute a writing and any symbol executed or adopted by a party with the present intention to authenticate a writing shall constitute a signing. The confirmation and notice of objection referred to in subparagraph (b) of paragraph three of this subdivision may be communicated by means of telex, telefacsimile, computer or other similar process by which electronic signals are transmitted by telephone or otherwise, provided that a party claiming to have communicated in such a manner shall, unless the parties have otherwise agreed in writing, have the burden of establishing actual or constructive receipt by the other party as set forth in subparagraph (b) of paragraph three of this subdivision.

## 102 REQUIREMENTS FOR USE OF PLAIN LANGUAGE IN CONSUMER TRANSACTIONS

- a. Every written agreement entered into for the lease of space to be occupied for residential purposes, for the lease of personal property to use primarily for personal, family or household purposes or to which a consumer is a party and the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes must be:
  1. Written in a clear and coherent manner using words with common and every day meanings;
  2. Appropriately divided and captioned by its various sections.

Any creditor, seller or lessor who fails to comply with this subdivision shall be liable to a consumer who is a party to a written agreement governed by this subdivision in an amount equal to any actual damages sustained plus a penalty of fifty dollars. The total class action penalty against any such creditor, seller or lessor shall not exceed ten thousand dollars in any class action or series of class actions arising out of the use by a creditor, seller or lessor of an agreement which fails to comply with this subdivision. No action under this subdivision may be brought after both parties to the agreement

have fully performed their obligation under such agreement, nor shall any creditor, seller or lessor who attempts in good faith to comply with this subdivision be liable for such penalties. This subdivision shall not apply to a good faith attempt to describe the constant yield or other method of determining the lease charge and depreciation portions of each base rental payment under a lease of personal property. It also shall not apply to agreements involving amounts in excess of fifty thousand dollars nor prohibit the use of words or phrases or forms of agreement required by state or federal law, rule or regulation or by a governmental instrumentality.

- b. A violation of the provisions of subdivision a of this section shall not render any such agreement void or voidable nor shall it constitute:
  - 1. A defense to any action or proceeding to enforce such agreement; or
  - 2. A defense to any action or proceeding for breach of such agreement.

### **103 CONVEYANCES AND CONTRACTS CONCERNING REAL PROPERTY REQUIRED TO BE IN WRITING**

- 1. An estate or interest in real property, other than a lease for a term not exceeding one year, or any trust or power, over or concerning real property, or in any manner relating thereto, cannot be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing. This subdivision does not affect the power of a testator in the disposition of his real property by will; nor prevent any trust from arising or being extinguished by implication or operation of law, nor any declaration of trust from being proved by a writing subscribed by the person declaring the same.
- 2. A contract for the leasing for a longer period than one year, or for the sale, of any real property, or an interest therein, is void unless the contract or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the party to be charged, or by his lawful agent thereunto authorized by writing.
- 3. A contract to devise real property or establish a trust of real property, or any interest therein or right with reference thereto, is void unless the contract or some note or memorandum thereof is in writing and subscribed by the party to be charged therewith, or by his lawfully authorized agent.
- 4. Nothing contained in this section abridges the powers of the Nation court to compel the specific performance of agreements in cases of part performance.

#### **104 WRITTEN AGREEMENT FOR MODIFICATION OR DISCHARGE**

An agreement, promise or undertaking to change or modify, or to discharge in whole or in part, any contract, obligation or lease, or any mortgage or other security interest in personal or real property shall not be invalid because of the absence of consideration, provided that the agreement, promise or undertaking changing, modifying or discharging such contract, obligation, lease, mortgage or security interest, shall be in writing and signed by the party against whom it is sought to enforce the change, modification or discharge or by his agent.

#### **105 WRITTEN PROMISE EXPRESSING PAST CONSIDERATION**

A promise in writing and signed by the promisor or by his agent shall not be denied effect as a valid contractual obligation on the ground that consideration for the promise is past or executed, if the consideration is expressed in the writing and is proved to have been given or performed and would be a valid consideration but for the time when it was given or performed.

#### **106 WRITTEN ASSIGNMENT.**

An assignment shall not be denied the effect of irrevocably transferring the assignor's rights because of the absence of consideration, if such assignment is in writing and signed by the assignor, or by his agent.

#### **107 WRITTEN IRREVOCABLE OFFER**

Except as otherwise provided in section 2-205 of the Oneida Indian Nation Uniform Commercial Code with respect to an offer by a merchant to buy or sell goods, when an offer to enter into a contract is made in a writing signed by the offeror, or by his agent, which states that the offer is irrevocable during a period set forth or until a time fixed, the offer shall not be revocable during such period or until such time because of the absence of consideration for the assurance of irrevocability. When such a writing states that the offer is irrevocable but does not state any period or time of irrevocability, it shall be construed to state that the offer is irrevocable for a reasonable time.

#### **108 EXECUTION BY AGENT IN REAL PROPERTY TRANSACTIONS; WRITTEN AUTHORIZATION REQUIRED**

If executed by an agent, any agreement, promise, undertaking, assignment or offer which affects or relates to real property or an interest therein shall be void unless such agent was thereunto authorized in writing.

#### **109 WRITTEN OR PUBLISHED PROMISE OR REWARD**

A promise to pay a reward for return of lost or mislaid property is not unenforceable because

of absence of consideration if the promise was made in writing or the promisor caused it to be published.

## 110 PROMISES AND WARRANTIES IN CONVEYANCES MADE WITHOUT CONSIDERATION

A promise or warranty by the grantor in a deed or conveyance of an estate or interest in real property and acknowledged or proved in the manner prescribed by law to entitle it to be recorded shall not be denied effect because of the absence of consideration, if no consideration was intended.

## 111 CHOICE OF LAW

1. The parties to any contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate not less than two hundred fifty thousand dollars, including a transaction otherwise covered by subsection one of section 1-105 of the Oneida Indian Nation Uniform Commercial Code, may agree that the law of the Oneida Indian Nation shall govern their rights and duties in whole or in part, whether or not such contract, agreement or undertaking bears a reasonable relation to the Nation. This section shall not apply to any contract, agreement or undertaking (a) for labor or personal services, (b) relating to any transaction for personal, family or household services, or (c) to the extent provided to the contrary in subsection two of section 1-105 of the Uniform Commercial Code.
2. Nothing contained in this section shall be construed to limit or deny the enforcement of any provision respecting choice of law in any other contract, agreement or undertaking.