

WINNEBAGO TRIBAL CODE  
TITLE 16

TITLE 16  
CIVIL TRESPASS

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**16-100 Citation.** This Act shall be known as The Civil Trespass Statute. [TCR 93-55]

**16-101 Purpose.** It is the policy of the Winnebago Tribe of Nebraska (hereinafter “Tribe”) to reserve consent for use of its land and to impose civil penalties for trespass on Tribal lands. The purpose of this Act is to effect that policy. [TCR 93-55]

**16-102 Definitions.** As used in this title:

1. “Trespass” means the unconsented or unauthorized use or entry on Winnebago Tribal lands, including unauthorized uses under existing permits and failure to remove improvements or materials from the Tribal land at the expiration of valid permits.
2. “Easement” or “Right-of-Way” or “Land Use Permit” means the right granted by the Winnebago Tribe to use or enter upon for permitted purposes Winnebago Tribal trust or fee lands. It also means a duly approved grant of easement, right-of-way or permit of temporary, fixed or perpetual term, approved by the secretary of the Interior or his/her authorized representative, for trust lands, under applicable federal law and regulations. “Land use permit” includes sand and gravel and barrow material permits.
3. “Lease” means any lease or agreement to allow the use of Winnebago Tribal lands, including business site leases, to any person, company or entity by the Winnebago Tribal Council or its designated committee(s). If trust lands are leased the lease must be a duly approved by the secretary of the Interior or his/her authorized representative, under applicable federal law and regulations.
4. “Permit” means any duly authorized usufruct or permissive use of Winnebago Tribal lands for a limited time.
5. “Winnebago Tribal Council” means the governing body of the Winnebago Tribe of Nebraska.
6. “Winnebago Tribal land” means any land or interest in land held in trust by the United States of America for the Winnebago Tribe or its members, and any land or interest in land held by the Winnebago Tribe in fee or in any other form.
7. “Person” means any individual, group of individuals, corporation, partnership or other entity.
8. “Executive Director” means the executive director of the Winnebago Tribe of Nebraska, or his/her successor or designee. Such designation may be made entirely within the discretion of the Chief Administrative Officer.
9. “Area Director” means the Bureau of Indian Affairs Area Director or her/his successor or designee.

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10. “Secretary” means the Secretary of the United States Department of the Interior.
11. “Chairman” means the Chairman of the Winnebago Tribal Council.
12. “BIA” means the Bureau of Indian Affairs of the United States Department of the Interior. [TCR 93-55, 93-60, 10-43]

**16-103 Applicability.** Any person who trespasses on or makes unconsented use of Winnebago Tribal land shall be subject to the penalties and other enforcement actions set forth in this Act. [TCR 93-55]

**16-104 Notice of trespass.**

1. Notice to Trespasser. The executive director, on behalf of the Winnebago Tribe, shall serve, or cause to be served, a written notice of trespass on any person trespassing on or making unconsented use of Winnebago Tribal land. The notice shall be served in person or by certified U.S. mail to the last known address of the trespasser. The notice shall identify the person who is trespassing, the location and date(s) of the trespass, the action(s) to be taken by the trespasser, and the time limits within which the trespasser must take action to cure the trespass. The action(s) to be taken by the trespasser shall be determined in each case by reference to the regulations adopted by the Winnebago Tribal Council.
2. Notice to Departments. The executive director shall deliver, or cause to be delivered, a copy of the notice of trespass to the office of the chairman of the Winnebago Tribe (and any relevant committee of the Tribal Council). The executive director shall deliver, or cause to be delivered a copy of the notice of trespass to (any relevant committee and department of the Tribe). [TCR 93-55, 10-43]

**16-105 Enforcement.** If the trespass is not cured by the actions required in the notice of trespass pursuant to Section 16-104 of this Act within the time limits provided in the notice, in addition to assessing penalties, the executive director may:

1. Order the person trespassing on Winnebago Tribal land to cease activities or restrict the trespasser’s access to Winnebago Tribal land; or
2. Request BIA law enforcement officers to enforce an order previously issued or seize and impound the trespasser’s property which is on Winnebago Tribal land; or
3. Recommend to the chairman that he initiate exclusion proceedings against the trespasser pursuant to, (relevant Tribal laws or constitutional provisions); or
4. Recommend that legal counsel for the Tribe file suit as provided for in 16-112, or
5. Take such other action as is appropriate under applicable Tribal or federal law. [TCR 93-55, 10-43]

**16-106 Enforcement by United States.** The chairman of the Winnebago Tribe, or his designee, may request the area director of the BIA to enforce applicable federal law or regulations governing trespass on Winnebago Tribal trust lands and the provisions of this statute at any time that it appears appropriate, including any time subsequent to an enforcement action having been taken pursuant to Section 16-105 of this Act. [TCR 93-55]

**16-107 Civil penalties.**

1. In addition to any enforcement authorized by this statute, the executive director shall impose civil penalties on any person trespassing on Winnebago Tribal lands, commencing on the first day of trespass as documented in the notice of trespass, and for each day the trespass continues calculated as follows:

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- a. For electrical transmission lines which pass over, under and/or upon Winnebago Tribal lands the fine shall be calculated based upon the capacity-of the line(s);
  - b. For gas (including all gaseous material) pipelines which pass over, under or upon Winnebago Tribal lands the fine shall be calculated based on the throughput, or if the throughput is not determinable based on the capacity of the line(s);
  - c. For oil, liquid gases, and any other liquid and/or solid products transported through pipelines passing over, under or upon Winnebago Tribal lands the fine shall be calculated based upon the throughput of the material, or if the throughput is not determinable based upon the capacity of the line(s);
  - d. For all other unconsented uses of Winnebago Tribal land the executive director may assess a fine per day of violation.
2. The specific measures for calculating fines and penalties shall be contained in the rules and regulations adopted by the Winnebago Tribal Council.
  3. Penalties assessed pursuant to this section shall be due and payable to the Winnebago Tribe within ten (10) calendar days of service of notice of assessment. Failure to timely pay a fine imposed as required shall be considered an additional violation of this Act and shall constitute grounds for exclusion from Winnebago Tribal lands. Monies collected through fines and penalties shall be used by the Winnebago Tribal Council to administer and enforce this Act. [TCR 93-55]

**16-108 Interest on penalties.** Interest on any delinquent payment of penalties shall accrue at the current prim rate plus five (5) % compounded monthly until paid. The interest shall be prorated daily from the due date until the date of receipt. Interest monies shall be deposited in the account established by the Winnebago Tribal Council set up to fund this program. [TCR 93-55]

**16-109 Review by the Chief Administrative Officer.** Any person who receives a notice of trespass or notice of assessment pursuant to this Act may, within fifteen (15) calendar days of the date the notice of trespass or notice of assessment is served upon him/her by the chief administrative officer, demand that the chief administrative officer conduct a review of the notice of trespass or notice of assessment.. The demand for review shall state the basis for review and supporting facts. Issues on review to the chief administrative officer shall be limited to: (1) the person subject to the notice of trespass or notice of assessment is not trespassing on tribal land; (2) proper notice and opportunity to cure was not provided; and/or (3) the assessed fines do not conform to regulations. Filing of a timely demand for review shall stay any court action on that notice brought by the chief administrative officer or the person subject to the notice. Upon receiving a demand for review, the chief administrative officer shall conduct an internal review of the matter as set forth in his/her file and presented by the demanding person's submissions. The chief administrative officer shall give due consideration to the materials submitted by the person demanding the review. The chief administrative officer shall not be required to consider materials submitted by the person demanding the review that are clearly not relevant to the issues presented. If after conducting the review the chief administrative officer is satisfied that the notice of trespass or notice of assessment is proper, he/she shall so notify in writing the person demanding the review. Service of this notice shall end any stay that is in place. Demand for a review under this Section shall not be a prerequisite for a court action as provided for in 16-112. [TCR 93-55, 10-43]

**16-110 Actions by hearing officer.** Upon appointment by the Tribal Council and receipt of the notice of appeal, the hearing officer shall set the date for an evidentiary hearing to be held within thirty (30) days. The hearing officer may take any of the following actions after hearing an appeal filed pursuant to this Act:

1. Affirm or reverse the decision or order of the executive director.

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2. Order the rebate of any penalties paid by a person found to have been cited without just cause under this Act.
3. Order additional penalties and fines, and adjust the fines if they have been miscalculated or the trespasser is found to have underpaid the ordered fines. [TCR 93-55]

**16-111 Enforcement after appeal.** The executive director and law enforcement of officers of the BIA are authorized to enforce all orders issued pursuant to this Act. [TCR 93-55]

**16-112 Actions in the Tribal Court.** The Winnebago Tribal Court shall have jurisdiction to hear actions brought pursuant to this Article by either the Tribe or the person subject to a notice of trespass or notice of assessment. If the Court finds that a trespass has been committed or is ongoing, the Court shall have the power to enjoin trespasses on tribal land, enforce penalties assessed by the chief administrative officer pursuant to regulation, order removal of persons and property from tribal land and provide any other appropriate relief. Orders for payment of civil penalties shall be enforceable against the trespasser in the same manner as would any other money judgment. [TCR 10-43]

**16-113 Severability.** If any part or application of this law is held to be invalid by any court of competent jurisdiction, the remainder of this law or its application shall not be affected. [TCR 93-55, 10-43]

**16-114 Effective date.** This law shall be EFFECTIVE May 4, 1993. [TCR 93-55, 10-43]

**16-115 Amendment.** This Act and its implementing regulations may be amended by a majority vote of the Winnebago Court Council. [TCR 93-55, 10-43]