

WINNEBAGO TRIBAL CODE  
TITLE 16

TITLE 16  
CIVIL TRESPASS

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ARTICLE 1  
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**16-100 Citation.** This Article shall be known as The Civil Trespass Statute (“Act”). [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. “Area Director” means the Bureau of Indian Affairs Area Director or her/his successor or designee.
2. “BIA” means the Bureau of Indian Affairs of the United States Department of the Interior.
3. “Chairperson” means the Chairman/Chairwoman of the Winnebago Tribal Council or his or her successor or designee.
4. “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.
5. “Chief Executive Officer” means the Chief Executive Officer of the Winnebago Tribe of Nebraska or his/her successor or designee. Such designation may be made entirely within the discretion of the Chief Executive Officer.
6. “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 duly approved by the Secretary of the Interior or his/her authorized representative, under applicable federal law and regulations.
7. “Permit” means any duly authorized usufruct or permissive use of Winnebago Tribal lands for a limited time.
8. “Person” means any individual, group of individuals, corporation, partnership, or other entity.
9. “Secretary” means the Secretary of the United States Department of the Interior.
10. “Trespass” means the unconsented or unauthorized use of, entry onto, or encroachment upon 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.
11. “Winnebago Tribal Council” means the governing body of the Winnebago Tribe of Nebraska.
12. “Winnebago Tribal land” means any land or interest in land held in trust by the United States of

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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. [TCR 93-55, 93-60, 10-43, 23-154]

**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 Chief Executive Officer, on behalf of the Winnebago Tribe, shall serve, or cause to be served, a written notice of trespass on any person trespassing on 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, the time limits within which the trespasser must take action to cure the trespass, and the civil penalties that shall be assessed against the trespasser. 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 Chief Executive Officer, shall deliver, or cause to be delivered, a copy of the notice of trespass to the office of the Chairperson and any relevant committee of the Tribal Council. The Chief Executive Officer 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, 23-154]

**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 Chief Executive Officer, 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 Chairperson that he/she 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 16-110; or
5. Take such other action as is appropriate under applicable Tribal or federal law. [TCR 93-55, 10-43, 23-154]

**16-106 Enforcement by United States.** The Chairperson may request the Area Director 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, 23-154]

**16-107 Civil penalties.**

1. In addition to any enforcement authorized by this Act, the Chief Executive Officer 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:
  - a. For electrical transmission lines which pass over, under, 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 upon the throughput or, if the throughput is not determinable, based on the capacity of the line(s);

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- 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 Chief Executive Officer 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 trespass. 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, 23-154]

**16-108 Interest on Penalties.** Interest on any delinquent payment of penalties shall accrue at the current prime rate plus five percent (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 administer and enforce this Act. [TCR 93-55, 23-154]

**16-109 Review by the Chief Executive Officer.** Any person who receives a notice of trespass pursuant to this Act may, within fifteen (15) calendar days of the date the notice of trespass is served upon him/her by the Chief Executive Officer, demand that the Chief Executive Officer conduct a review of the notice of trespass. The demand for review shall state the basis for review and supporting facts. Issues on review to the Chief Executive Officer shall be limited to: (1) the person subject to the notice of trespass 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 Executive Officer or the person subject to the notice. Upon receiving a demand for review, the Chief Executive 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 Executive Officer shall give due consideration to the materials submitted by the person demanding the review. The Chief Executive 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 Executive Officer is satisfied that the notice of trespass 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, 23-154]

**16-110 Request for Tribal Council Review.** Any person who reasonably believes the Chief Executive Officer's decision upon a demand for review is inconsistent with the provisions of this Act may, within no more than two (2) business days of the date of such decision, make a request in writing to the Tribal Council to review the decision. The request for review shall state the basis for the request, provide supporting facts, and cite the provisions of this Act that the person believes the Chief Executive Officer did not comply with in issuing the notice of trespass or his/her decision following a demand for review. It is within the sole discretion of the Tribal Council whether to respond to a request for review. A written decision by the Tribal Council shall be issued within five (5) business days of accepting the request for review. The decision of the Tribal Council shall be the final position of the Tribe. A request for Tribal Council review under this Section shall not be a prerequisite for a court action as provided for in 16-112. [TCR 23-154]

**16-111 Appeal.** Any notice of trespass issued by the Chief Executive Officer pursuant to this Act may be appealed by the recipient thereof to the Winnebago Tribal Court. Said appeal must be taken within thirty (30) calendar days of the date the notice of trespass was served upon the recipient. [TCR 23-154]

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**16-112 Actions in the Tribal Court.** The Winnebago Tribal Court shall have jurisdiction to hear actions brought pursuant to this Act by either the Tribe or the person subject to a notice of trespass. If the Court finds that a trespass has been committed or is ongoing, the Court shall have the power to enjoin trespasses on Winnebago Tribal land, enforce penalties assessed by the Chief Executive Officer pursuant to regulation, order removal of persons and property from Winnebago 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, 23-154]

**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, 23-154]

**16-114 Effective date.** This law shall be EFFECTIVE May 4, 1993. [TCR 93-55, 10-43, 23-154]

**16-115 Amendment.** This Act and its implementing regulations may be amended by a majority vote of the Winnebago Tribal Council. [TCR 93-55, 10-43, 23-154]