

An Ordinance Regulating Management, Investment, Administration, Oversight and Report Disclosure Regarding Trust Funds Controlled by the Bay Mills Indian Community

Section 1: Purpose.

This Ordinance is enacted to establish standards under which Tribal government departments and elected leaders must operate in order to ensure that trusts created under federal or tribal law are managed and administered for the sole benefit of the Bay Mills Indian Community and its members and are subject to the duties as a fiduciary in carrying out its obligations delineated in the Ordinance and in any implementing policies.

Section 2: Definitions.

In this Ordinance, except where otherwise specifically provided, or the context otherwise requires, the following terms and expressions shall have the following meanings.

- A. *“Land Claims Distribution Trust”* is the non-expendable trust established by the Executive Council at the direction of Congress in §107(b)(1) of the Michigan Indian Land Claims Settlement Act MILCSA), P.L. 105-143, 111 Stat. 2658 (Dec. 15, 1997).
- B. *“Tribal Land Trust”* is the non-expendable trust established by the Executive Council at the direction of Congress in §107(a)(1) of MILCSA.
- C. *“Asset”* is cash, cash equivalents, stocks, bonds, foreign currencies, collectibles, precious metals, real estate, commodities and other investment vehicles which provide reasonably estimable future economic benefit.
- D. *“Beneficiaries”* of the Land Claims Distribution Trust are all living and future members of the Bay Mills Indian Community, who meet the requisites for distribution from the Trust which are specified in §107(b)a(3) of MILCSA; *“beneficiaries”* of the Tribal Land Trust are all members of the Bay Mills Indian Community.
- E. *“Corpus”* of a trust is the property constituting the principal, as distinct from income or interest. The initial corpus of the Land Claims Distribution Trust and of the Tribal Land Trust, respectively, were established by the Executive Council in Resolution No. 98-1-26-C.

- F. *“Cost Basis”* is the actual cost to acquire any asset which is included in a Trust.
- G. *“Elders Distribution”* is the amount determined annually to be available for distribution to eligible Tribal members pursuant to §107(b)(3) and (4) of MILCSA, utilizing the prior year’s distributed payment amount.
- H. *“Ending Cost Basis”* is determined by adding net income received during the calendar year to the beginning cost basis, and subtracting from that amount any payments from the trust during that same period.
- I. *“Fair Market Value”* is the amount comprising all the assets in the Trust, and is based on the market value ascribed to each asset at a particular point in time, which may be higher or lower than the ending cost basis, if the asset was liquidated at the time the computation is made.
- J. *“Fiduciary”* and *“Trustee”* refer to the Executive Council, and all those acting under its direction, when managing a Trust on behalf of its beneficiaries, with the duty to act in good faith and with care, candor, and loyalty in fulfilling this obligation under the terms of the applicable trust document; the applicable document for the Land Claims Distribution Trust is §107(b) of MILCSA, and the applicable document for the Tribal Land Trust is §107(a) of MILCSA.
- K. *“Holding Gain or Loss”* is the net change in the fair market value of a security or other form of asset from one period to another, exclusive of dividend or interest revenue recognized under accounting principles but not realized or received by the Trust.
- L. *“Income”* is the amount generated from the Trust corpus, measured by financial value derived from the fiduciary’s actions to increase the value of the Trust assets, and includes, but is not limited to, types of income including earnings, gains, proceeds, profit, return on investment, revenue, and yield.
- M. *“Interest, Dividends, Gains/Losses”* reflect actual payments made to the Trust as income in the form of interest and dividends; gains and losses are recorded only when an asset is sold, and reflects whether the sale price was more or less than the cost of acquisition.
- N. *“Investment Fee”* or *“Service Charge”* is the amount paid to the professional Trust Manager for managing the Trust, selected for that purpose by the Executive Council and embodied in a services contract.

- O. *“Investment Policy or Policies”* are directives adopted by the Executive Council, from time to time, to the Trust Manager, which provide guidance as to investment objectives, asset type allocation, performance measurements, and prohibited investments.
- P. *“Net Income”* is measured by calendar year, and is derived from the total amount of income received by the Trust from whatever source, less any losses incurred and Investment Fees or Service Charges paid. This figure determines, among other purposes, the amount subject to Elder Distribution from the Land Claims Distribution Trust under §107(b)(3) of MILCSA.
- Q. *“Nonexpendable Trust”* is a perpetual trust, with a prohibition on spending the principal of the Trust for any purpose, other than to record investment losses.
- R. *“Rate of Return”* is a measurement of the income to the Trust in the form of interest and dividends on a monthly and an annual basis, and is established as an objective in the Investment Policy for that Trust.
- S. *“Trust Manager”* is the professional trust manager selected by the Executive Council to manage and administer a Trust under the Council’s direction and control.

Section 3: Role of the Executive Council as Fiduciary.

The Executive Council, when acting as Trustee, has a fiduciary responsibility to the beneficiaries of the Trust, and is required to do all of the following:

101. Responsibilities of the Fiduciary

- A. Administer the Trust solely in the interests of the Trust beneficiaries;
- B. Provide maximum income for the Trust while conforming to prudent fiduciary investment principles;
- C. Make investment decisions and manage the funds of a Trust as a prudent investor would, in light of the purposes, terms, distribution requirements, and other circumstances of the Trust;
- D. Exercise reasonable care, skill and caution in establishing and implementing a suitable investment strategy;
- E. Keep informed of rights and opportunities associated with the investments in the Trust;

- F. Be reasonably able to understand the basic duties of prudent trusteeship;
 - G. Invest with a view both to safety of the capital and to securing a reasonable return, which requires a flexible application;
 - H. Provide adequate systems for accounting for and reporting trust balances;
 - I. Provide adequate controls over receipts and disbursements;
 - J. Provide periodic, timely reconciliations to assure the accuracy of accounts;
 - K. Ensure an audit of the Trust at least once each fiscal year by an independent certified public accountant, with a report on the results of the audit which is available for inspection by any member of the Bay Mills Indian Community;
 - L. Establish and maintain consistent written policies and procedures for trust fund management, investment and accounting; and
 - M. Select and hire a professional trust manager to administer and manage the funds of a Trust subject to this Ordinance, under such terms and conditions as the Council determines to be appropriate; provided, such engagement shall subject the trust manager to the obligations and duties of this Ordinance as a fiduciary, with all attendant responsibilities and liabilities of this status.
102. Limitations on Fiduciary Powers – The Executive Council is not authorized to take any of the following action.
- A. Terminate the trust status of any Trust subject to this Ordinance;
 - B. Modify the Investment Policies for a Trust subject to this Ordinance to mandate or permit disbursement of the Trust income in any calendar year at an amount or percentage which would eliminate subsequent year’s Elder Distributions of more than a negligible amount.
 - C. Direct the Trust Manager, if any, or the Tribe’s Accounting Department to make available for Elder Distribution for any calendar year an amount or percentage of Trust income which would result in negligible Elder Distributions in future years.
 - D. Direct the Trust Manager, if any, or the Tribe’s Accounting Department to invest Trust funds in any economic venture in which the Tribe has a financial interest.

- E. Direct the Trust Manager, if any, or the Tribe's Accounting Department to utilize Trust funds to provide financing to a member of the Executive Council or to an individual or business entity with whom the Tribe is now, or has in the past, or is considering in the future, engaged in a joint economic venture or business relationship.
103. Remedies for Violations of Fiduciary Obligations or Restrictions - In the event that a member, or members, of the Executive Council is thought to have violated the requirements for conduct of the Council as the Trustee and fiduciary of a Trust subject to this Ordinance, the following procedure is established:
- A. *Detailed Complaint Required.* An adult member of the Bay Mills Indian Community must file a written statement with the Executive Council Secretary which details the actions or inactions taken by a member of the Executive Council which are claimed to violate a provision of Section 3.01 or 3.02 of this Ordinance.
 - B. *Time of Filing.* The written statement must be received not more than six (6) months after the action/ inaction of concern occurred.
 - C. *Response to Complaint.* The Executive Council Secretary shall immediately provide to all members of the Council a copy of the statement. The Council member(s) whose action/inaction generated the complaint shall be provided 20 days within which to file with the Secretary a written response. Based on the contents of the response, the Executive Council shall determine if a hearing to discuss the complaint with the Council member(s) and the complainant should be held.
 - D. *Hearing on Complaint and Response.* Both the complainant and Council member(s) shall be entitled to present written evidence supporting their position; additional witnesses may be permitted if they have relevant knowledge and expertise regarding trust investment and management practices which are challenged by the complainant.
 - E. *Results of Hearing.* In the event that the Executive Council finds that the provisions of this Ordinance were purposely violated by the Council member(s), the matter shall be referred to the General Tribal Council for consideration of removal of the Council member(s) from office pursuant to Article V, Section 2 of the Constitution of the Bay Mills Indian Community.
 - F. *Financial Remedies.* In the event that the Executive Council finds that the provisions of this Ordinance resulted in a loss of assets to a Trust, or acquisition of a prohibited asset, the Executive Council shall immediately direct the Trust Manager, if any, or the Accounting Department, to

investigate and report to the Council how best to remedy the financial consequences to the Trust. In no event shall an Elder Distribution be revoked so that Tribal members are required to immediately repay funds received; however, the Council may direct that overpayment be recovered through reduction in future Elder Distribution payments.

Certification

This is to certify that the above Ordinance Regulating Management, Investment, Administration, Oversight and Report Disclosure Regarding Trust Funds Controlled by the Bay Mills Indian Community was adopted at a meeting of the Bay Mills Indian Community Executive Council held at Bay Mills, Michigan on August 12, 2019 by acclamation.