

PONCA TRIBE OF NEBRASKA
TRIBAL COUNCIL
AGENDA

SEPTEMBER 6, 2022

9:00 AM

TRIBAL OFFICE
119 6TH STREET
SIOUX CITY, IOWA

- I. CALL TO ORDER
 - a. Roll Call
- II. APPROVAL OF AGENDA
- III. INTRODUCTION – BRIAN MCDONALD, CHIEF INFORMATION OFFICER
- IV. CONSENT CALENDAR - MOTION
 - a. August 30, 2022 Minutes
 - b. Ratifications
- V. VICE CHAIRWOMAN’S REPORT
- VI. JESSICA GADEKEN, INTERIM CFO
 - a. JJ Bartlett, Wells Fargo
 - i. Investment Options – DISCUSSION/MOTION
- VII. LAW & ORDER CODE PROPOSED REVISIONS – PUBLIC COMMENT PERIOD
(Ruthanne Gallup L&O Committee/Attorney Brad Jolly)
 - a. Title 21 – Partnerships
 - b. Title 22 – Cooperatives
- VIII. RUTHANNE GALLUP, TRIBAL COURT CLERK
 - a. Selection of Judge Pro Tempore – RESOLUTION
- IX. OTHER BUSINESS
- X. EXECUTIVE SESSION
 - a. DV Update (Attorney Jolly)
 - b. Personnel Matter (Shannon Rowen, HR Director) DISCUSSION/MOTION
 - c. Employee 1111 Annual Evaluation – DISCUSSION/MOTION
- XI. ADJOURN

****** NOTICE: All Tribal Members ********LAW AND ORDER CODE REVISION**

**Discussion on September 6, 2022 beginning at 9:00 a.m.
During Tribal Council Meeting**

****** NOTICE: All Tribal Members******

The Ponca Tribal Council will be reviewing proposed additions to the Law and Order Code. The revisions are being considered because the Tribal Council wants to provide the legal framework for organizing Partnerships and Cooperatives in order to expand the business sector in the territory of the Tribe.

There are changes being proposed are adding Titles 21 and 22. The revisions being considered include but are not limited to the following:

- Title 21 is a new Code that will govern Partnerships
- Title 22 is a new Code that will govern Cooperatives

A complete copy of the proposed amendments is available at the tribal offices, or one may be obtained by contacting Jan Colwell, Tribal Council Secretary at 402-857-3391.

There will be a discussion by Tribal Council that is open for public comment on September 6, 2022 at 9:00 a.m. or as soon thereafter as it may be heard.

Written comments will be accepted until August 26, 2022. The written comments may be emailed to janc@poncatrbe-ne.org or mailed to

Jan Colwell,
P.O. Box 288
Niobrara, NE 68760

**PONCA TRIBE OF NEBRASKA
TITLE XXI
PARTNERSHIPS**

**CHAPTER 1
GENERAL PROVISIONS**

Section 21-1-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Contribution" means property or a benefit that is provided by a person to a partnership to become a partner or in the person's capacity as a partner.

2. "Distribution" means a direct or indirect transfer of money or other property from a partnership to or for the benefit of its partners or in the person's capacity as a partner, but does not include:

a. Amounts constituting reasonable compensation for present or past service; or

b. Payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

3. "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the debts, obligations, or other liabilities of the foreign partnership under provisions similar to this Chapter.

4. "Foreign limited partnership" means an unincorporated entity formed under the law of a jurisdiction other than the Tribe which would be a limited partnership if formed under the laws of the Tribe and includes a foreign limited liability limited partnership.

5. "Foreign partnership" means an unincorporated entity that is formed under the law of a jurisdiction other than the Tribe and that would be a partnership if the unincorporated entity were formed under the laws of the Tribe.

6. "General partner" means a person that:

a. Has become a general partner as provided in this Chapter or was a general partner in a partnership when the partnership became subject to this Chapter; and

b. Has not dissociated as a general partner.

7. "Limited liability limited partnership", except when used in the phrase foreign limited liability limited partnership, means a limited partnership whose certificate of limited partnership filed under this Title states that the partnership is a limited liability limited partnership.

8. "Limited liability partnership" means, except when used in the phrase foreign limited liability partnership, means a partnership that has filed a statement of qualification under this Title and does not have a similar statement in effect in any other jurisdiction and, unless the context requires otherwise, includes a limited liability limited partnership.

9. "Limited partner" means a person that:

a. Has become a limited partner in a limited partnership as provided in this Chapter or was a limited partner in a limited partnership when the partnership became subject to this Chapter; and

b. Has not dissociated.

10. "Limited partnership" means, except in when used in the phrase foreign limited partnership, an entity that has filed a certificate of limited partnership under this Title or such an entity which becomes subject to this Title and includes a limited liability limited partnership.

11. "Partner" means a person that both:

a. Has become a partner, including a general partner or limited partner, in a partnership or was a partner when the partnership became subject to this Title; and

b. Has not dissociated under this Title.

12. "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under this Title or that becomes subject to this Title and, unless the context requires otherwise, includes a limited

partnership, limited liability partnership, and limited liability limited partnership.

13. "Partnership agreement" means the agreement, whether or not referred to as a partnership agreement and whether oral, implied, in writing, or in any combination thereof, of all the partners of a partnership concerning the conduct of the business of the partnership and its relationships with its partners and includes the agreement as amended or restated.

14. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

15. Terms used in this Title and not defined herein, but defined in Title XIV of this Code have the meanings defined in Title XIV of this Code.

Section 21-1-2. Governing Laws.

1. Unless displaced by particular provisions of this Title, the relevant provisions of Title XIV of this Code supplement this Title and shall apply to all partnerships.

2. This Title shall apply to all partnerships to which Title XIV of this Code applies.

Section 21-1-3. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 21-1-4. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

**CHAPTER 2
FORMATION**

Section 21-2-1. Formation.

1. Except as otherwise provided in this Section, the association of two or more persons at least the age of majority to carry on as co-owners a business forms a partnership, whether or not the persons intend to form a partnership.

2. An entity formed under a law of the Tribe other than this Title or a comparable statute of another jurisdiction is not a partnership under this Title.

3. In determining whether a partnership is formed, the following rules apply:

a. Joint tenancy, tenancy in common, tenancy by the entirety, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property;

b. The sharing of gross revenues does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the revenues are derived;

c. A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

i. Of a debt or loan, even if the amount of payment varies with the profits of the business or the debt or loan includes a present or future ownership of collateral or rights to income, proceeds, or increase in value derived from the collateral;

ii. For services as an independent contractor or an employee;

iii. Of rent;

iv. Of a retirement or health benefit to a deceased or retired partner or a beneficiary, representative, or designee of a deceased or retired partner; or

v. For the sale of the goodwill of a business or other property.

4. A partnership may file its partnership agreement with the Office of the Secretary and, if so filed, the Office of the Secretary's filing of the partnership agreement of a partnership is conclusive proof that the partnership is organized and formed under this Title.

Section 21-2-2. Partnership for a Definite Term.

1. Partnership for a definite term or particular undertaking is a partnership in which the partners have agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

2. If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

3. If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

Section 21-2-3. Partnership Agreement.

1. Except as otherwise provided in this Section, the partnership agreement governs:

a. Relations among the partners as partners and between the partners and the partnership;

b. The activities and affairs of the partnership and the conduct of those activities and affairs; and

c. The means and conditions for amending the partnership agreement.

2. To the extent the partnership agreement does not provide for a matter described in this Section, this Title and any other law of the Tribe applicable to the partnership governs the matter.

3. In addition to any other limitations on organizational documents of a business entity under the laws of the Tribe, a partnership agreement may not:

- a. Vary the law applicable to the partnership;
- b. Vary a partnership's capacity to sue and be sued in its own name;
- c. Vary any requirement, procedure, or other provision of the laws of the Tribe pertaining to registered agents or the Office of the Secretary, including provisions pertaining to records authorized or required to be filed with the Office of the Secretary under the laws of the Tribe;
- d. In the case of limited partnership, vary the right of a general partner to vote on or consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership;
- e. Alter or eliminate the duties of partners under the laws of the Tribe, including the duties of loyalty and care and obligations of good faith and fair dealing, except as otherwise expressly permitted in the laws of the Tribe;
- f. Vary the power of a person to voluntarily withdraw as a partner under this Title, except to require that notice of withdrawal be in writing;
- g. Relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of law;
- h. Vary the information required under this Title to be maintained by the partnership or unreasonably restrict the duties and rights of partners to information under this Title;
- i. Vary the grounds for expulsion specified in this Title;
- j. In the case of limited partnership, vary the power of a person to dissociate as a general partner, except to require that notice of dissociation be in writing;

k. Unreasonably restrict the right of a partner to maintain an action under this Title;

l. Vary the right of a partner to approve a merger, interest exchange, conversion, or domestication;

m. Vary the right of a partner to vote on or consent to a cancellation of a statement of qualification under this Chapter; or

n. Except as otherwise expressly provided in this Title, restrict the rights under this Title of a person other than a partner.

4. If a document delivered by a partnership to the Office of the Secretary for filing becomes effective and contains a provision that would be ineffective under this Section if contained in the partnership agreement, the provision is ineffective.

5. If a document delivered by a partnership to the Office of the Secretary for filing becomes effective and conflicts with a provision of the partnership agreement:

a. The partnership agreement prevails as to partners, persons dissociated as partners, and transferees; and

b. The document prevails as to other persons to the extent they reasonably rely on the document.

6. A partnership is bound by and may enforce the partnership agreement, whether or not the partnership has itself manifested assent to the partnership agreement.

7. A person that becomes a partner in a partnership is deemed to assent to the partnership agreement.

8. Two or more persons intending to become the initial partners of a partnership may make an agreement providing that, upon the formation of the partnership, the agreement will become the partnership agreement.

9. A partnership agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is

ineffective if its adoption does not include the required approval or satisfy the specified condition.

Section 21-2-4. Statement of Qualification.

1. A partnership may become a limited liability partnership pursuant to this Section.

2. The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the affirmative vote or consent necessary to amend the partnership agreement.

3. After the required approval, a partnership may become a limited liability partnership by delivering to the Office of the Secretary for filing a statement of qualification. The statement must contain:

a. The name of the partnership that complies with the laws of the Tribe;

b. The principal address, which may be the same as the mailing address of the partnership's registered agent;

c. The name and street and mailing addresses in the territory of the Tribe of the partnership's registered agent; and

d. A statement that the partnership elects to become a limited liability partnership.

4. A partnership's status as a limited liability partnership remains effective, regardless of changes in the partnership, until it is canceled or administratively revoked pursuant to this Section.

5. The Office of the Secretary's filing of a statement of qualification of a limited liability partnership is conclusive proof that the limited liability partnership is organized and formed under this Title.

6. The status of a partnership as a limited liability partnership and the protection against liability of its partners for the debts, obligations, or other liabilities of the partnership while it is a limited liability partnership is not affected by errors or later changes in the information required to be contained in the statement of qualification.

7. A limited liability partnership may amend or cancel its statement of qualification by delivering to the Office of the Secretary for filing a statement of amendment or cancellation. The statement must be approved by the affirmative vote or consent of all the partners and state the name of the limited liability partnership and in the case of:

a. An amendment, state the text of the amendment;
and

b. A cancellation, state that the statement of qualification is canceled.

8. The Office of the Secretary may commence a proceeding to revoke the statement of qualification of a limited liability partnership administratively for any of the reasons and under the process for administratively dissolving a business entity under Title XIV of the Code, provided that an administrative revocation affects only a partnership's status as a limited liability partnership and is not an event causing dissolution of the partnership and does not terminate the authority of its registered agent.

CHAPTER 3 PARTNERS

Section 21-3-1. Admission of Partners.

1. Upon formation of a partnership, a person becomes a partner by being one of the persons associated to carry on as a co-owner of the business upon formation.

2. After formation of a partnership, a person becomes a partner:

a. As provided in the partnership agreement;

b. As the result of a merger, interest exchange, conversion, or domestication; or

c. With the affirmative vote or consent of all the partners.

3. A person may become a partner without:

- a. Acquiring a transferable interest; or
- b. Making or being obligated to make a contribution to the partnership.

Section 21-3-2. Dissociation.

1. A person ceases to be a partner in a partnership and is dissociated as a partner when:

- a. The person voluntarily withdraws as a partner and the partnership knows or has notice of the person's express will to withdraw as a partner, provided the person may designate a date of withdrawal as partner;

- b. An event stated in the partnership agreement as causing the person's dissociation occurs;

- c. The person is expelled as a partner pursuant to the partnership agreement or this Title or other law of the Tribe applicable to the partnership;

- d. The person is expelled as a partner by the affirmative vote or consent of all the other partners if:

- i. It is unlawful to carry on the partnership business with the person as a partner;

- ii. There has been a transfer of all of the person's transferable interest in the partnership, other than a transfer for security purposes;

- e. The person:

- i. Becomes a debtor in bankruptcy;

- ii. Signs an assignment for the benefit of creditors; or

- iii. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all the person's property;

- f. The person is an entity and:

i. Has filed a statement of dissolution or the equivalent;

ii. Has been administratively dissolved or the equivalent;

iii. Had its charter or the equivalent revoked;

iv. Had its right to conduct business suspended in its jurisdiction of formation; or

v. Has been liquidated;

g. If the person is a trust or estate or is acting as a partner by virtue of being a trustee of a trust or personal representative of an estate, the trust's or estate's entire transferable interest in the partnership is distributed;

h. On application by the partnership or a partner in an action brought in Tribal Court, the person is expelled as a partner by order of the Tribal Court because the person:

i. Has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the partnership's activities and affairs;

ii. Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement, this Title, other law of the Tribe applicable to the partnership, or a duty or obligation to the partnership; or

iii. Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement, this Title, other law of the Tribe applicable to the partnership, or a duty or obligation to the partnership; or

iv. Has engaged or is engaging in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a partner;

- i. In the case of an individual:
 - i. The individual dies;
 - ii. A guardian or general conservator for the individual is appointed; or
 - iii. A court orders that the individual has otherwise become incapable of performing the individual's duties as a partner under this Title or the partnership agreement;
- j. In the case of a person that is not an individual, the existence of the person terminates;
- k. The partnership participates in a merger, interest exchange, conversion, or domestication under Title XIV of this Code and:
 - i. The partnership does not survive the transaction; or
 - ii. Otherwise as a result of the transaction, the person ceases to be a partner; or
- l. The partnership dissolves and completes winding up.
 2. A person has the power to dissociate as a partner at any time, rightfully or wrongfully, by withdrawing as a partner voluntarily.
 3. A person's dissociation as a partner is wrongful only if the dissociation:
 - a. Is in breach of an express provision of the partnership agreement, this Title, or other law of the Tribe applicable to the partnership; or
 - b. In the case of a partnership for a definite term or particular undertaking, occurs before the expiration of the term or the completion of the undertaking and:
 - i. The person withdraws as a partner voluntarily, unless the withdrawal follows another person's dissociation by death or wrongful

dissociation under this subsection not later than ninety (90) days after such dissociation;

ii. The person is expelled as a partner by order of the Tribal Court under this Section;

iii. The person is dissociated as a result of bankruptcy, an assignment for the benefit of creditors, or the appointment of a trustee, receiver, or liquidator under this Section; or

iv. In the case of a person that is not a trust, estate, or individual, the person is expelled or otherwise dissociated because it willfully dissolved or terminated.

4. A person that wrongfully dissociates as a partner is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the partner to the partnership or the other partners. In addition to pursuing any remedies otherwise available under the partnership agreement or applicable law, if a person wrongfully dissociates as a partner, the partnership may offset the damages against the amount otherwise distributable to the partner.

5. If a person is dissociated as a partner:

a. The person's right to participate as a partner in the management and conduct of the partnership's activities and affairs terminates, except to the extent the partner participates in winding up the partnership's business pursuant to a dissolution; and

b. The person's duties and obligations as a partner end with regard to matters arising and events occurring after the person's dissociation, except to the extent the partner participates in winding up the partnership's business pursuant to a dissolution.

6. A person's dissociation does not of itself discharge the person from any debt, obligation, or other liability to the partnership or the other partners which the person incurred while a partner.

7. If a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the

partnership, the partnership shall cause the person's interest in the partnership to be purchased for a buyout price in the amount that would have been distributable to the person if, on the date of dissociation, the assets of the partnership were sold and the partnership were wound up, with the sale price equal to the greater of:

- a. The liquidation value; or
- b. The value based on a sale of the entire business as a going concern without the person.

8. A person that wrongfully dissociates as a partner before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any part of the buyout price until the expiration of the term or completion of the undertaking.

9. A person dissociated as a partner may maintain an action against the partnership to determine the buyout price of that person's interest, any offsets under this Section for wrongful dissociation, or other terms of the obligation to purchase. The action must be commenced not later than one (1) year after written demand for payment by the person or offer to pay by the partnership is tendered, whichever is earlier. The court may assess reasonable attorney's fees and costs against a party that the court finds acted arbitrarily, vexatiously, or not in good faith, unless the party is the Tribe or a Tribal business entity.

10. After a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership business and before the partnership is merged out of existence, converted, domesticated, or dissolved under Title XIV of this Code, the partnership is bound by an act of the person only if:

- a. The act would have bound the partnership before dissociation; and
- b. At the time the other party enters into the transaction:
 - i. Less than two (2) years has passed since the dissociation; and

ii. The other party does not know or have notice of the dissociation and reasonably believes that the person is a partner.

11. If a partnership is bound under subsection 10, the person dissociated as a partner which caused the partnership to be bound is liable:

a. To the partnership for any damage caused to the partnership arising from the obligation incurred; and

b. If a partner or another person dissociated as a partner is liable for the obligation, to the partner or other person for any damage caused to the partner or other person arising from the liability.

12. By agreement with a creditor of a partnership and the partnership, a person dissociated as a partner may be released from liability for a debt, obligation, or other liability of the partnership. A person dissociated as a partner is released from liability for a debt, obligation, or other liability of the partnership if the partnership's creditor, with knowledge or notice of the person's dissociation but without the person's consent, agrees to a material alteration in the nature or time of payment of the debt, obligation, or other liability.

13. Except as otherwise provided in this Section, a person dissociated as a partner is not liable for a partnership obligation incurred after dissociation. Continued use of a partnership name, or the name of a person dissociated as a partner as part of the partnership name, by partners continuing the business does not of itself make the person dissociated as a partner liable for an obligation of the partners or the partnership continuing the business.

14. A partnership shall defend, indemnify, and hold harmless a person dissociated as a partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the person for which the person is otherwise liable under this Section.

15. A person dissociated as a partner or the partnership may deliver to the Office of the Secretary for filing a statement of dissociation stating the name of the partnership and that the person has dissociated from the partnership. A

statement of dissociation is a limitation on the authority of a person dissociated as a partner.

16. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as partner or as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

Section 21-3-3. Management.

1. Except as otherwise provided in this Title, each partner has equal rights in the management and conduct of the partnership's business.

2. A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

Section 21-3-4. Voting of Partners.

1. A difference arising as to a matter in the ordinary course of the partnerships's activities and affairs may be decided by a majority of the partners.

2. The affirmative vote, approval, or consent of all partners shall be required to do any of the following:

a. Amend the partnership agreement;

b. In the case of a limited partnership, amend the certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability limited partnership;

c. Undertake an act outside the ordinary course of the partnerships's activities and affairs, including the sale, lease, exchange, or other disposal of all, or substantially all, of the partnership's property; or

d. Authorize a partner or other person to do any act on behalf of the partnership that contravenes the partnership agreement.

Section 21-3-5. Action by Written Consent.

1. Unless the partnership agreement requires that action be taken only by affirmative vote of the partners, any action that may be taken by the partners may be taken if each partner entitled to vote on the action consents in writing to the action.

2. Consent under this Section may be withdrawn by a partner in writing at any time before the partnership receives a consent from each partner entitled to vote.

3. Consent to any action may specify the effective date or time of the action.

Section 21-3-6. Duties of Partners.

1. All partners, except limited partners in a limited partnership, owe to the partnership and the other partners fiduciary duties.

2. The fiduciary duties of a partner include:

a. To act in a manner the partner reasonably believes to be in the best interests of the partnership;

b. To discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances;

c. To disclose, or cause to be disclosed, to the other partners information not already known by them but known by the partner to be material to the discharge of the decision-making or oversight functions of the partners, unless disclosure would violate another duty imposed under applicable law, a legally enforceable obligation of confidentiality, or a professional ethics rule;

d. To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner:

i. In the conduct or winding up of the partnership's activities and affairs;

ii. From a use by the partner of the partnership's property; or

iii. From the appropriation of a partnership opportunity;

e. To refrain from dealing with the partnership in the conduct or winding up of the partnership's activities and affairs as or on behalf of a person having an interest adverse to the partnership;

f. To refrain from competing with the partnership in the conduct of the partnership's activities and affairs before the dissolution of the partnership;

g. To refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, a violation of any law involving moral turpitude, or knowing violation of other applicable law;

h. To refrain from a willful failure to deal fairly with the partnership or its other partners in connection with a matter in which the partner has a material conflict of interest; and

i. To refrain from a transaction from which the partner may derive an improper personal profit.

3. All partners shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the partnership, or the partnership agreement consistently with the contractual obligation of good faith and fair dealing.

4. All the partners of a partnership may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the fiduciary duties in this Section.

5. Every partner shall account to the partnership and hold as trustee for it any improper personal profit derived by that partner without the consent of a majority of the disinterested partners from:

a. A transaction connected with the organization, conduct, or dissolution and winding up of the partnership; and

b. A use by a partner of the property of the partnership, including confidential or proprietary

information or other matters entrusted to the person as a result of the person's status as a partner.

6. A partnership agreement or other private organizational documents may impose duties on partners that are in addition to, but not in abrogation of, those provided in this Section.

Section 21-3-7. Partner as Agent. Except for limited partners in a limited partnership, subject to the effect of a statement of authority filed with the Office of the Secretary under the laws of the Tribe, the following rules apply:

1. Each partner is an agent of the partnership for the purpose of its business, but not of any of the other partners.

2. The act of any partner, including the execution in the name of the partnership of an instrument for apparently carrying on the ordinary course of business of the partnership, binds the partnership in the particular matter unless the person with whom the partner is dealing knows or should know that the partner has no authority to act in the matter.

3. If the Tribe is a partner in a partnership, the Tribe's authority shall be exercised pursuant to Chapter 4 of Title XIV.

4. No act of a partner that is not apparently authorized for carrying on the ordinary course of business of the partnership shall bind the partnership unless the act is in fact authorized at the time of the transaction or ratified thereafter by all the other partners.

Section 21-3-8. Representations of Partner. An admission or representation made by a partner concerning the business of a partnership within the scope of the partner's actual authority may be used as evidence against the partnership in any legal proceeding.

Section 21-3-9. Knowledge of Partner. Except as otherwise provided in this Title, the following operates as notice to or knowledge of the partnership:

1. Notice to any partner of any matter relating to the business of the partnership;

2. Knowledge of any partner acting in the particular matter acquired while a partner or known by the person at the time of becoming a partner; and

3. Knowledge of any partner who reasonably could and should have communicated it to the acting partner.

Section 21-3-10. Rights to Information and Records.

1. On reasonable request, a partner may inspect and during regular business hours copy, at the partner's expense, any record maintained by the partnership regarding the partnership's activities, affairs, financial condition, and other circumstances, unless otherwise provided in the partnership agreement or this Title.

2. The partnership shall furnish to each partner or the partner's legal representative:

a. Without demand, any true and full information concerning the partnership's activities, affairs, financial condition, and other circumstances which the partnership knows and is material to the proper exercise of the partner's rights and duties under the partnership agreement or this Title; and

b. On demand, any other true and full information concerning the partnership's activities, affairs, financial condition, and other circumstances.

3. The duty to furnish information under this Section also applies to each partner to the extent the partner knows any of the information described in this Section.

4. On ten (10) days' demand made in writing received by a partnership, a person dissociated as a partner may have access to information to which the person was entitled while a partner if:

a. The information pertains to the period during which the person was a partner;

b. The person seeks the information in good faith; and

c. The person satisfies other requirements imposed on a partner by this Section.

5. In addition to any restriction or condition stated in its partnership agreement, a partnership, as a matter within the ordinary course of its business, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this Section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the partnership has the burden of proving reasonableness.

Section 21-3-11. Direct Action by Partner.

1. A partner may maintain a direct action against another partner or the partnership to enforce the partner's rights and protect the partner's interests, including rights and interests under the partnership agreement or this Title or arising independently of the partnership relationship.

2. A partner maintaining an action under this Section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the partnership.

3. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as partner or as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

Section 21-3-12. Derivative Actions.

1. A partner may maintain a derivative action to enforce a right of a partnership if:

a. Unless such a demand would be futile, the partner first makes a demand on the other partners, excluding limited partners in a limited partnership, requesting that they cause the partnership to bring an action to enforce the right; and

b. The partners do not bring the action within a reasonable time.

2. In a derivative action, the complaint must state with particularity:

a. The date and content of plaintiff's demand and the response to the demand by the partners; or

b. Why demand should be excused as futile.

3. A derivative action to enforce a right of a partnership may be maintained only by a person that is a partner at the time the action is commenced and:

a. Was a partner when the conduct giving rise to the action occurred; or

b. Whose status as a partner devolved on the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

4. If a partnership is named as or made a party in a derivative proceeding, the partnership may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the partnership. If the partnership appoints a special litigation committee, on motion by the committee made in the name of the partnership, the court shall, except for good cause shown, stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

a. Enforcing a person's right to information under this Title; or

b. Granting a temporary restraining order or preliminary injunction.

5. A special litigation committee must be composed of one or more disinterested and independent individuals, who may be partners. A special litigation committee may be appointed by the affirmative vote or consent of a majority of the partners, other than limited partners in a limited partnership, not named as parties in the proceeding or, if all partners are named as parties, a majority of all the partners, other than limited partners in a limited partnership.

6. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the partnership that the proceeding:

- a. Continue under the control of the plaintiff;
- b. Continue under the control of the committee;
- c. Be settled on terms approved by the committee; or
- d. Be dismissed.

7. After making a determination how to proceed, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination. The special litigation committee shall serve each party with a copy of the determination and report. If the court finds the committee has proven that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve any stay entered pursuant to this Section and allow the action to continue under the control of the plaintiff.

8. A derivative action on behalf of a partnership may not be voluntarily dismissed or settled without the court's approval.

9. Subject to the award of expenses provided in this Section:

- a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the partnership and not to the plaintiff; and
- b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the partnership.

10. Unless the partnership is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable legal counsel's fees and costs, from the recovery of the partnership.

11. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe or waiving the sovereign immunity of any Tribal business entity.

CHAPTER 4
DEALING WITH PARTNERSHIP

Section 21-4-1. Nature of Partnership.

1. A partnership is an entity distinct from its partners.
2. A partnership is the same entity regardless of whether the partnership has a statement of qualification in effect under this Chapter.
3. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

Section 21-4-2. Interest in Partnership.

1. An interest in a partnership is personal property.
2. The right of a person, in his or her capacity as a partner, to receive distributions from a partnership, whether or not the person remains a partner or continues to own any part of the right to receive distributions, is assignable.
3. Unless otherwise provided in its partnership agreement:
 - a. An interest in a partnership is assignable in whole or in part;
 - b. An assignment of an interest in a partnership entitles the assignee to receive only the distributions and share in the allocations of profits and losses to which the assignor would be entitled with respect to the assigned interest;
 - c. An assignment of an interest in a partnership does not dissolve the partnership;
 - d. Unless and until the assignee becomes a partner, the assignment of an interest in a partnership does not entitle the assignee to participate in the management or exercise the rights of a partner;
 - e. Unless and until the assignee of an interest in a partnership becomes a partner, the assignor continues to be a partner; and

f. The assignor of an interest in a partnership is not released from any personal liability as a partner solely as a result of the assignment.

4. Unless otherwise provided in the partnership agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of a partner's interest in a partnership is only an assignment and shall not cause the partner to cease to have the power to exercise any rights or powers of a partner.

5. A partner's personal representative, administrator, guardian, conservator, trustee, successor, or other legal representative shall have all the rights of an assignee of the partner's interest if:

a. In the case of an individual:

i. The individual dies;

ii. A guardian or general conservator for the individual is appointed; or

iii. A court orders that the individual has otherwise become incapable of performing the individual's duties as a partner under this Title or the partnership agreement; or

b. In the case of a trust, estate, or entity, the trust, estate, or entity is dissolved or terminated.

6. Unless otherwise provided in the partnership agreement or this Title, an assignee of an interest in a partnership may become a partner only if the other partners unanimously consent.

7. An assignee of an interest in a partnership who becomes a partner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the partnership agreement, this Title, and other laws of the Tribe applicable to the partnership.

8. Unless otherwise provided in the partnership agreement, an assignor of an interest in a partnership is not released from any liability to the partnership without the written consent of all the partners, whether or not the assignee becomes a partner.

Section 21-4-3. Charging Partnership Interest.

1. On application to a court having valid jurisdiction over a partner and the subject matter by a judgment creditor of the partner, such court may enter a charging order against the transferable interest in the partnership of the partner, other than a partner which is the Tribe, for the unsatisfied amount of the judgment.

2. Except as otherwise provided in this Section, a charging order constitutes a lien on the partner's transferable interest and requires the partnership to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the partner. The judgment creditor has only the rights of an assignee of the partner's interest.

3. At any time before foreclosure under this Section, the partner whose transferable interest is subject to a charging order under this Section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

4. At any time before foreclosure under this Section, a partnership or one or more partners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

5. Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest of the partner. Except as otherwise provided in this Section, the purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a partner, and has only the rights of an assignee of the partner's interest.

6. This Section shall not be construed to deprive any partner of the benefit of any exemption of an interest in a partnership that may exist under applicable law.

7. This Section provides the exclusive remedy by which a person seeking in the capacity of judgment creditor to enforce a judgment against a partner may satisfy the judgment from the partner's transferable interest.

8. In no event shall the Tribe's interest in a partnership be attachable, chargeable, or subject to lien or encumbrance without the Tribe's express written consent or express waiver of its sovereign immunity.

Section 21-4-4. Property of Partnership.

1. All property originally transferred to or acquired by a partnership is property of the partnership and not the partners individually.

2. A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

3. A partner may use or possess partnership property only on behalf of the partnership.

4. Property may be acquired, held, and conveyed in the name of a partnership.

5. Property is partnership property if acquired in the name of:

a. The partnership; or

b. One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

6. Property is acquired in the name of the partnership by a transfer to:

a. The partnership in its name; or

b. One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

7. Property acquired with funds of a partnership is presumed to be property of the partnership.

8. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

9. Subject to any limitations in its partnership agreement or this Title, partnership property may be transferred as follows:

a. Subject to the effect of a statement of authority filed with the Office of the Secretary under the laws of the Tribe, if the property is held in the name of the partnership, by an instrument executed by any partner in the partnership name;

b. If held in the name of one or more partners without an indication of the name of the partnership, by an instrument executed by the persons in whose name the property is held; or

c. If held in the name of one or more persons, other than the partnership, without an indication the property is owned by them in their capacity as partners or the partnership, by an instrument executed by the persons in whose name the property is held.

Section 21-4-5. Liability to Third Parties.

1. A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with the actual or apparent authority of the partnership.

2. If, in the course of the partnership's business or while acting with actual or apparent authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

3. Except as otherwise provided in this Title, all partners are liable jointly and severally for all debts, obligations, and other liabilities of the partnership, whether

arising in contract, tort, or otherwise, unless otherwise agreed by the claimant or provided by law.

4. A person that becomes a partner is not personally liable for a debt, obligation, or other liability of the partnership, whether arising in contract, tort, or otherwise, incurred before the person became a partner.

5. A debt, obligation, or other liability of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or other liability of the limited liability partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an act, debt, obligation, or other liability of the limited liability partnership solely by reason of being or acting as a partner. This subsection applies:

a. Despite anything inconsistent in the partnership agreement that existed immediately before the vote or consent required to become a limited liability partnership under this Chapter; and

b. Regardless of the dissolution of the limited liability partnership.

6. The failure of a limited liability partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a partner for an act, debt, obligation, or other liability of the limited liability partnership.

7. The cancellation or administrative revocation of a limited liability partnership's statement of qualification does not affect the limitation in this Section on the liability of a partner for an act, debt, obligation, or other liability of the partnership incurred while the statement was in effect.

8. Nothing in this Section shall be construed as imposing any liability on the Tribe as a partner or as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

Section 21-4-6. Parties to Actions.

1. A partnership may sue and be sued in the name of the partnership.

2. To the extent not inconsistent with this Title governing liability of partners to third parties, a partner may be joined in an action against the partnership or named in a separate action.

3. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

4. A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under this Title and:

a. A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment against the partnership has been returned unsatisfied in whole or in part;

b. The partnership is a debtor in bankruptcy;

c. The partner has agreed that the creditor need not exhaust partnership assets;

d. A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is otherwise equitable under the circumstances; or

e. Liability is imposed on the partner by law or contract independent of the existence of the partnership.

Section 21-4-7. Authority to Sue.

1. Unless otherwise provided in its partnership agreement, an action on behalf of a partnership may be brought in the name of the partnership by one or more partners, if authorized by a majority vote of the partners excluding the vote of any partner who has an interest in the outcome of the action that is adverse to the interests of the partnership.

2. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as partner.

Section 21-4-8. Actions Between Partners and Partnership.

1. A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

2. A partner may maintain an action against the partnership or another partner, with or without an accounting as to partnership business, to enforce the partner's rights and protect the partner's interests, including rights and interests under the partnership agreement, this Title, other law of the Tribe governing the partnership or arising independently of the partnership relationship. A partner maintaining a direct action under this subsection must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the partnership.

3. A right to an accounting on dissolution and winding up does not revive a claim barred by law.

4. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as partner.

Section 21-4-9. Records. A partnership shall maintain at its principal office the following information:

1. A current list showing the full name and last known street and mailing address of each partner and, in the case of a limited partnership, separately identifying the general partners in alphabetical order and the limited partners in alphabetical order;

2. In the case of a limited liability partnership, a copy of the initial statement of qualification and all amendments to and restatements of the same, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

3. In the case of a limited partnership, a copy of the initial certificate of limited partnership and all amendments to and restatements of the same, together with signed copies of any

powers of attorney under which any certificate, amendment, or restatement has been signed;

4. A copy of any filed articles of merger, interest exchange, conversion, or domestication;

5. A copy of the partnership's Tribal, federal, state, and local income tax returns and reports, if any, for the three (3) most recent years;

6. A copy of any written partnership agreement and any written amendment to any partnership agreement;

7. A copy of any financial statement of the partnership for the three most recent years;

8. A copy of the three (3) most recent annual reports delivered by the partnership to the Office of the Secretary pursuant to the laws of the Tribe;

9. A copy of any record made by the partnership during the past three (3) years of any consent given by or vote taken of any partner pursuant to this Title or the partnership agreement; and

10. Unless contained in a written partnership agreement, a record stating:

a. A description and statement of the agreed value of contributions other than money made and agreed to be made by each partner;

b. The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

c. In the case of a limited partnership, for any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

d. Any events upon the happening of which the partnership is to be dissolved and its activities and affairs wound up.

CHAPTER 5

LIMITED PARTNERSHIPS**Section 21-5-1. Formation.**

1. To form a limited partnership, a person must deliver a certificate of limited partnership to the Office of the Secretary for filing.

2. A partnership may become a limited partnership by complying with this Section and without accomplishing a conversion under the laws of the Tribe.

3. A limited partnership is formed when:

a. The certificate of limited partnership becomes effective;

b. At least two persons have become partners;

c. At least one person has become a general partner;
and

d. At least one person has become a limited partner.

4. The Office of the Secretary's filing of the certificate of limited partnership of a limited partnership is conclusive proof that the limited partnership is organized and formed under this Title.

Section 21-5-2. Certificate of Limited Partnership.

1. A certificate of limited partnership must state all of the following:

a. A statement that the limited partnership is organized under this Title;

b. The name of the limited partnership that complies with the laws of the Tribe;

c. The principal address, which may be the same as the mailing address of the limited partnership's registered agent;

d. The name and street and mailing addresses in the territory of the Tribe of the limited partnership's registered agent;

e. The name and street and mailing addresses of each general partner;

f. Whether the limited partnership is a limited liability limited partnership;

g. Whether the limited partnership is a Tribal business entity; and

h. If the limited partnership is a Tribal business entity, whether the limited partnership enjoys the Tribe's sovereign immunity and the scope of any waiver of that immunity.

2. An initial certificate of limited partnership shall be signed by all general partners listed in the certificate.

3. A certificate of limited partnership may contain statements as to matters other than those required in this Section which are not inconsistent with the laws of the Tribe or not prohibited by the laws of the Tribe.

Section 21-5-3. Amendment or Restatement of Certificate.

1. A certificate of limited partnership may be amended or restated at any time.

2. To amend its certificate of limited partnership, a limited partnership must deliver to the Office of the Secretary for filing an amendment stating:

a. The name of the limited partnership;

b. The date of filing of its initial certificate;
and

c. The text of the amendment.

3. An amendment to the certificate of limited partnership adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate. Any other amendment to the certificate of limited partnership must be signed by:

a. At least one general partner listed in the certificate;

b. Each person designated in the amendment as a new general partner; and

c. Each person that the amendment indicates has dissociated as a general partner, unless the person is deceased or the person has previously delivered to the Office of the Secretary for filing a statement of dissociation.

4. To restate its certificate of limited partnership, a limited partnership must deliver to the Office of the Secretary for filing a restatement of the certificate, designated as such in its heading. A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other subsection of this Section, the certificate must be signed in a manner that satisfies that subsection.

5. A limited partnership shall promptly deliver to the Office of the Secretary for filing an amendment to a certificate of limited partnership to reflect:

a. The admission of a new general partner;

b. The dissociation of a person as a general partner; or

c. The appointment of a person to wind up the limited partnership's activities and affairs under Title XIV of this Code.

6. A certificate of limited partnership shall be amended if there is a statement in the certificate that was false or erroneous when it was made.

7. If a general partner of a limited partnership knows that any information in a filed certificate of limited partnership was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the general partner shall promptly:

a. Cause the certificate to be amended; or

b. If appropriate, deliver to the Office of the Secretary for filing a statement of change or a statement of correction.

Section 21-5-4. Dual Capacity.

1. A person may be both a general partner and a limited partner.

2. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this Title, other laws of the Tribe applicable to the limited partnership, and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the limited partnership, and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the limited partnership, and the partnership agreement for limited partners.

Section 21-5-5. Admission of Limited Partners.

1. Upon formation of a limited partnership, a person becomes a limited partner as agreed among the persons that are to be the initial partners.

2. After formation, a person becomes a limited partner:

a. As provided in the partnership agreement;

b. As the result of a merger, interest exchange, conversion, or domestication; or

c. With the affirmative vote or consent of all the partners.

3. A person may become a limited partner without:

a. Acquiring a transferable interest; or

b. Making or being obligated to make a contribution to the limited partnership.

Section 21-5-6. Person Erroneously Believing Limited Partner.

1. Except as otherwise provided in this Section, a person that makes an investment in a business entity and erroneously but in good faith believes that the person has become a limited partner in the business entity is not liable for the business entity's obligations by reason of making the investment, receiving distributions from the business entity, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

a. Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the Office of the Secretary for filing; or

b. Withdraws from future participation as an owner in the business entity by signing and delivering to the Office of the Secretary for filing a statement of negation.

2. A person that makes an investment described in this Section is liable to the same extent as a general partner to any third party that enters into a transaction with the business entity, believing in good faith that the person is a general partner, before the Office of the Secretary files a statement of negation, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

3. If a person makes a diligent effort in good faith to file an appropriate certificate under this Section and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the Office of the Secretary for filing, the person has the right to withdraw from the business entity by filing a statement of negation even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the business entity.

Section 21-5-7. Dissociation of Limited Partners.

1. A person does not have a right to dissociate as a limited partner in a limited partnership before the completion of the winding up of the limited partnership.

2. A person is dissociated as a limited partner when:

a. The person voluntarily withdraws as a limited partner and the limited partnership knows or has notice of

the person's express will to withdraw as a limited partner, provided the person may designate a date of withdrawal as limited partner;

b. An event stated in the partnership agreement as causing the person's dissociation as a limited partner occurs;

c. The person is expelled as a limited partner pursuant to the partnership agreement or this Title or other law of the Tribe applicable to the limited partnership;

d. The person is expelled as a limited partner by the affirmative vote or consent of all the other partners if:

i. It is unlawful to carry on the limited partnership business with the person as a limited partner;

ii. There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes;

e. The person is an entity and:

i. Has filed a statement of dissolution or the equivalent;

ii. Has been administratively dissolved or the equivalent;

iii. Had its charter or the equivalent revoked;
or

iv. Had its right to conduct business suspended in its jurisdiction of formation;

f. If the person is a trust or estate or is acting as a limited partner by virtue of being a trustee of a trust or personal representative of an estate, the trust's or estate's entire transferable interest in the limited partnership is distributed;

g. On application by the limited partnership or a partner in an action brought in Tribal Court, the person is expelled as a limited partner by order of the Tribal Court because the person:

i. Has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited partnership's activities and affairs;

ii. Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement, this Title, other law of the Tribe applicable to the limited partnership, or a duty or obligation to the limited partnership; or

iii. Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement, this Title, other law of the Tribe applicable to the limited partnership, or a duty or obligation to the limited partnership; or

iv. Has engaged or is engaging in conduct relating to the limited partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a limited partner;

h. In the case of an individual, the individual dies;

i. In the case of a person that is not an individual, the existence of the person terminates;

j. The limited partnership participates in a merger, interest exchange, conversion, or domestication under Title XIV of this Code and:

i. The limited partnership does not survive the transaction; or

ii. Otherwise as a result of the transaction, the person ceases to be a limited partner; or

k. The limited partnership dissolves and completes winding up.

3. In addition to all other consequences of dissociation as a partner, if a person is dissociated as a limited partner, the person does not have further rights as a limited partner.

Section 21-5-8. Management by Limited Partner. Unless the partnership agreement provides otherwise, a limited partner has no rights in the management and conduct of the limited partnership's business.

Section 21-5-9. Voting of Limited Partners. Except for matters requiring the vote of all partners under this Title or another law of the Tribe applicable to the limited partnership, limited partners have the right to vote on a matter of the partnership's activities only to the extent provided in the partnership agreement.

Section 21-5-10. Duties of Limited Partners.

1. Limited partners shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the limited partnership, or the partnership agreement consistently with the contractual obligation of good faith and fair dealing.

2. Except as otherwise provided in this Section, a limited partner does not have any duty to the limited partnership or to any other partner solely by reason of acting as a limited partner.

3. Unless the partnership agreement provides otherwise, if a limited partner enters into a transaction with a limited partnership, the limited partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

4. A partnership agreement or other private organizational documents may impose duties on limited partners that are in addition to, but not in abrogation of, those provided in this Section.

Section 21-5-11. Limited Partner as Agent. In the case of a limited partner in a limited partnership, the following rules apply:

1. A limited partner is not an agent of a limited partnership solely by reason of being a limited partner; and

2. A person's status as a limited partner does not prevent or restrict a law of the Tribe other than this Title from imposing liability on a limited partnership because of the person's conduct.

Section 21-5-12. Knowledge of Limited Partner. A limited partner's knowledge or notice of a fact relating to the limited partnership is not effective as knowledge of or notice to the limited partnership.

Section 21-5-13. Rights to Information and Records.

1. Whenever this Title or a partnership agreement provides for a limited partner to vote on or give or withhold consent to a matter, before the vote is cast or consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information that is known to the partnership and is material to the limited partner's decision.

2. In addition to any restriction or condition stated in its partnership agreement, a limited partnership, as a matter within the ordinary course of its business, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this Section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

Section 21-5-14. Liability to Third Parties.

1. A debt, obligation, or other liability of a limited partnership is not the debt, obligation, or other liability of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited partnership solely by reason of being or acting as a limited partner, even if the limited partner participates in the management and control of the limited partnership. This subsection applies regardless of the dissolution of the limited partnership.

2. The failure of a limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a limited partner for a debt, obligation, or other liability of the limited partnership.

3. Nothing in this Section shall be construed as imposing any liability on the Tribe as a partner or as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

CHAPTER 6 CONTRIBUTIONS AND DISTRIBUTIONS

Section 21-6-1. Contributions.

1. A contribution may consist of money or property transferred to, services performed for, or another benefit provided to the partnership or an agreement to transfer money or property to, perform services for, or provide another benefit to the partnership.

2. The value of a partner's contribution shall be determined in the manner provided in the partnership agreement. If the partnership agreement does not fix a value to a contribution, the value of a contribution shall be approved by a majority of the partners and be properly reflected in the records and information kept by the partnership under this Title. The value of contributions so determined shall be binding and conclusive on the partnership and its partners.

3. An obligation of a person to make a contribution to a partnership is not enforceable unless specified in a writing signed by the person. A person's obligation to make a contribution to a partnership is not excused by the person's death, disability, termination, or other inability to perform personally.

4. If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the partnership to contribute money equal to the value of the part of the contribution which has not been made.

5. The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the partners. If a creditor of a partnership extends credit or otherwise acts in reliance on an obligation to make a

contribution without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

Section 21-6-2. Allocation of Profits and Losses.

1. The profits and losses of a partnership shall be allocated among the partners in the manner provided in its partnership agreement.

2. If the partners do not enter into a partnership agreement or the partnership agreement does not provide for allocation of profits and losses, profits and losses shall be allocated on the basis of value of the contributions made by each partner.

Section 21-6-3. Distributions Generally.

1. Any distribution made by a partnership before its dissolution and winding up must be:

a. In the case of a limited partnership, shared among the partners on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner; and

b. In the case of all other partnerships, in equal shares among partners, except to the extent necessary to comply with an effective transfer of a transferable interest in the partnership under this Chapter or a charging order in effect under this Chapter.

2. Subject to the requirements to buyout a person's interest upon dissociation that does not result in the dissolution and winding up of the partnership, a person has a right to a distribution before the dissolution and winding up of a partnership only if the partnership decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

3. A person does not have a right to demand or receive a distribution from a partnership in any form other than money. Except as otherwise provided in the laws of the Tribe, a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

4. If a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the partnership with respect to the distribution. However, the partnership's obligation to make a distribution is subject to offset for any amount owed to the partnership by the partner or a person dissociated as partner on whose account the distribution is made.

Section 21-6-4. Limitations on Distributions.

1. A limited liability partnership or limited partnership may not declare or make a distribution if, after the distribution:

a. The partnership would not be able to pay its debts as they become due in the ordinary course of the partnership's activities and affairs; or

b. The partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed to satisfy the preferential rights, if any, of partners upon dissolution and winding up.

2. A limited liability partnership or limited partnership may base a determination that a distribution is not prohibited under subsection 1 on:

a. Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

b. A fair valuation or other method that is reasonable under the circumstances.

3. A limited liability partnership's or limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this Section is equivalent to the partnership's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This subsection does not affect the validity or priority of a security interest in a limited liability partnership's or limited partnership's property that is created to secure the indebtedness to the partner.

Section 21-6-5. Liability for Improper Distributions.

1. A partner that is not the Tribe who votes or assents to a distribution in violation of this Chapter is personally liable to the partnership for the amount of the excess distribution, subject to contribution from all other partners participating in such action.

2. To the extent the partnership agreement expressly relieves a partner of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other partners, the liability stated in this Section applies to the other partners and not the partner relieved of the authority and responsibility.

3. A person that receives a distribution knowing that the distribution violated this Chapter is personally liable to the partnership but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under this Chapter.

4. A partner who is held liable under this Section for an unlawful distribution is entitled to contribution from:

a. Every other partner who could be held liable under this Section for the unlawful distribution; and

b. Each partner for the amount the partner accepted knowing the distribution was made in violation of this Chapter.

5. An action to recover under this Section may be brought in the Tribal Court. An action under this Section is barred unless commenced no later than two (2) years after the date of the distribution.

6. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

**PONCA TRIBE OF NEBRASKA
TITLE XXII
COOPERATIVES**

**CHAPTER 1
GENERAL PROVISIONS**

Section 22-1-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Articles of organization" means the articles filed under this Title to organize and establish a cooperative and includes the articles as amended or restated.

2. "Board of directors" means the group of persons vested with the management of the affairs of a domestic or foreign cooperative irrespective of the name by which the group is designated.

3. "Bylaws" means the code of rules adopted for the regulation or management of the affairs of a domestic or foreign cooperative irrespective of the name by which those rules are designated.

4. "Contribution" means property or a benefit that is provided by a person to a cooperative to become a member or in the person's capacity as a member.

5. "Cooperative" means, except when used in the phrase foreign cooperative, an entity that is formed under this Title or that becomes subject to this Title and, unless the context requires otherwise, includes a limited cooperative, a worker cooperative, and a limited worker cooperative.

6. "Distribution" means a direct or indirect transfer of money or other property from a cooperative to or for the benefit of its members or in the person's capacity as a member because of the member's financial rights, but does not include:

- a. Patronage refunds;
- b. Amounts constituting reasonable compensation for present or past service; or

c. Payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

7. "Financial rights" means the right to participate in allocations and distributions of a cooperative, including patronage refunds, but does not include rights or obligations under a marketing contract.

8. "Foreign cooperative" means an entity that is formed under the law of a jurisdiction other than the Tribe and that would be a cooperative if the entity were formed under the laws of the Tribe.

9. "Governance rights" means the right to participate in governance of a cooperative.

10. "Investor member" means a member that has made a contribution to a limited cooperative and is not required or not permitted by the organizational documents to conduct patronage with the cooperative in the member's capacity as an investor member in order to receive the member's interest.

11. "Limited cooperative" means, except in when used in the phrase foreign limited cooperative, a cooperative formed under this Title or that becomes subject to this Title and has or is authorized to have investor members and, unless the context requires otherwise, includes a limited worker cooperative.

12. "Limited worker cooperative" means, except in when used in the phrase foreign limited worker cooperative, a worker cooperative formed under this Title or that becomes subject to this Title and has or is authorized to have investor members.

13. "Marketing contract" means a contract between a cooperative and another person, that need not be a member:

a. Requiring the other person to sell, or deliver for sale or marketing on the person's behalf, a specified part of the person's products, commodities, or goods exclusively to or through the cooperative or any facilities furnished by the cooperative; or

b. Authorizing the cooperative to act for the person in any manner with respect to the products, commodities, or goods.

14. "Member" means a person that both:
- a. Has become a member, including a patron member or investor member, of a cooperative or was a member when the cooperative became subject to this Title; and
 - b. Has not dissociated under this Title.
15. "Member's interest" means the interest of a member.
16. "Patron" means a person who may, but need not, be a member of a cooperative who utilizes the business of the cooperative through the purchase, sale, or other provision of property or services to or from the cooperative.
17. "Patronage" means business transactions between a cooperative and a patron which entitle the patron to receive financial rights based on the value or quantity of business done between the cooperative and the patron.
18. "Patron member" means a member that has made a contribution to a cooperative and is required or permitted by the organizational documents to conduct patronage with the cooperative in the member's capacity as a patron member in order to receive the member's interest.
19. "Patronage refund" means a portion of a cooperative's receipts from operations less expenses therefor paid or allocated to a patron based on the patron's patronage.
20. "Voting group" means any combination of one or more voting members in one or more districts or classes that under the organizational documents or this Title are entitled to vote and be counted together collectively on a matter at a members meeting.
21. "Voting member" means a member that, under the organizational documents, has a right to vote on matters subject to vote by members under the organizational documents.
22. "Voting power" means the total current power of members to vote on a particular matter for which a vote may or is to be taken.
23. "Worker" means a natural person contributing labor, services, or other work to a worker cooperative.

24. "Worker cooperative" means a cooperative formed under this Title where the patron members are workers and includes a limited worker cooperative.

25. Terms used in this Title and not defined herein, but defined in Title XIV of this Code have the meanings defined in Title XIV of this Code.

Section 22-1-2. Governing Laws.

1. Unless displaced by particular provisions of this Title, the relevant provisions of Title XIV of this Code supplement this Title and shall apply to all cooperatives.

2. This Title shall apply to all cooperatives to which Title XIV of this Code applies.

Section 22-1-3. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 22-1-4. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

**CHAPTER 2
FORMATION**

Section 22-2-1. Formation.

1. One or more persons may act as organizers to form a cooperative by delivering to the Office of the Secretary for filing the articles of organization.

2. A cooperative is formed when the articles of organization become effective. However, to begin business, a cooperative must have at least two (2) patron members unless the sole member is another cooperative. The organizers of a cooperative need not be members at the time of organization or thereafter.

3. The Office of the Secretary's filing of the articles of organization of a cooperative is conclusive proof that the cooperative is organized and formed under this Title.

Section 22-2-2. Articles of Organization.

1. The articles of organization must state all of the following:

a. A statement that the cooperative is organized under this Title;

b. The name of the cooperative that complies with the laws of the Tribe;

c. The purposes for which the cooperative is formed;

d. A statement that the cooperative's business shall be conducted on a cooperative basis for the mutual benefit of the cooperative's members;

e. The principal address, which may be the same as the mailing address of the cooperative's registered agent;

f. The name and street and mailing addresses in the territory of the Tribe of the cooperative's registered agent;

g. The name and address of each person organizing the cooperative;

h. Whether the cooperative is a Tribal business entity; and

i. If the cooperative is a Tribal business entity, whether the cooperative enjoys the Tribe's sovereign immunity and the scope of any waiver of that immunity.

2. The articles of organization shall be signed by all organizers.

3. The articles of organization may contain statements as to matters other than those required in this Section which are not inconsistent with the laws of the Tribe or not prohibited by the laws of the Tribe.

4. A cooperative, by the affirmative vote of a majority of the board of directors taken at a meeting for which the purpose is stated in the notice of the meeting, may adopt restated articles of organization that contain the original articles as previously amended. Restated articles may contain amendments if the restated articles are adopted in the same manner and with the same vote as required for amendments to the articles under this Title. To restate its articles of organization, a cooperative must deliver to the Office of the Secretary for filing a restatement of the articles, designated as such in its heading. Upon filing, restated articles supersede the existing articles and all amendments.

Section 22-2-3. Bylaws.

1. The initial board of directors of a cooperative shall adopt initial bylaws for the cooperative.

2. Bylaws must be in writing and, if not stated in the articles of organization, must include:

a. A statement of the capital structure of the cooperative, including:

i. The classes or other types of members' interests and relative rights, preferences, and restrictions granted to or imposed upon each class or other type of member's interest; and

ii. The rights to share in profits or distributions of the cooperative;

b. A statement of the qualifications for membership, method for admission of members, and conditions for suspension, withdrawal, or expulsion;

c. A statement designating voting and other governance rights, including which members have voting power and any restriction on voting power;

d. A statement that a member's interest is transferable if it is to be transferable and a statement of the conditions upon which it may be transferred;

e. A statement concerning the manner in which profits and losses are allocated and distributions are made among members;

f. A statement concerning:

i. Whether persons that are not members but conduct business with the cooperative may be permitted to share in allocations of profits and losses and receive patronage refunds and distributions; and

ii. The manner in which profits and losses are allocated and patronage refunds and distributions are made with respect to those persons; and

g. A statement of the number and terms of directors or the method by which the number and terms are determined.

3. The bylaws of a cooperative may contain any provision for managing the activities and regulating the affairs of the cooperative that is not inconsistent with applicable law or the articles of organization.

4. The initial board of directors may amend the bylaws by a majority vote of the directors at any time before the admission of members.

Section 22-2-4. Amendment of Articles and Bylaws.

1. Once a cooperative has admitted members, the organizational documents of a cooperative may only be amended at a members meeting. An amendment may be proposed by either:

a. A majority of the board of directors, or a greater percentage if required by the organizational documents; or

b. One (1) or more petitions signed by at least ten percent (10%) of the patron members.

2. The board of directors shall call a members meeting to consider an amendment proposed pursuant to this Section. The meeting must be held not later than ninety (90) days following the proposal of the amendment by the board or receipt of a petition. The board must mail or otherwise transmit or deliver in writing to each member:

a. The proposed amendment or a summary of the proposed amendment and a statement of the manner in which a

copy of the amendment in writing may be reasonably obtained by a member;

b. A recommendation that the members approve the amendment or, if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;

c. A statement of any condition of the board's submission of the amendment to the members; and

d. Notice of the meeting at which the proposed amendment will be considered, which must be given in the same manner as notice for a special meeting of members.

3. A change to a proposed amendment of the organizational documents may not be made at the members meeting at which a vote on the amendment occurs and need not be separately voted upon by the board of directors. A vote to adopt a change to a proposed amendment to the organizational documents must be by the same percentage of votes required to pass a proposed amendment.

4. If the organizational documents provide for voting by district or class, or if there is one or more identifiable voting groups that a proposed amendment to the organizational documents would affect differently from other members, approval of the amendment requires the same percentage of votes of the members of that district, class, or voting group required of all members to pass the proposed amendment.

5. Subject to subsection 4 of this Section:

a. An amendment to the articles of organization must be approved by at least two-thirds (2/3) of the voting power of members present at the members meeting called to consider the amendment; and

b. Unless otherwise provided in this Title or the organizational documents require a greater percentage, an amendment to the bylaws must be approved by at least a majority vote of the voting power of all members present at the members meeting called to consider the amendment.

6. The vote required to amend bylaws must satisfy the requirements of an amendment to the articles of organization if the proposed amendment modifies:

a. The equity capital structure of the cooperative, including the rights of the cooperative's members to share in profits or distributions or receive patronage refunds;

b. The relative rights, preferences, and restrictions granted to or imposed upon one or more districts, classes, or voting groups of similarly situated members;

c. The transferability of a member's interest;

d. The manner or method of allocation of profits or losses among members;

e. The quorum for a meeting and the rights of voting and governance; or

f. Unless otherwise provided in the organizational documents, the terms for admission of new members.

7. The organizational documents may require that the percentage of votes to amend the organizational documents be:

a. A different percentage that is not less than a majority of members voting at the meeting;

b. Measured against the voting power of all members;
or

c. A combination of the foregoing.

8. Consent in writing by a member must be delivered to a cooperative before delivery of an amendment or restatement of the articles of organization for filing, if as a result of the amendment the member will have:

a. Personal liability for an obligation of the cooperative; or

b. An obligation or liability for an additional contribution.

9. Except for the matters described in subsection 6, the articles of organization may delegate amendment of all or a part of the bylaws to the board of directors without requiring member approval. If the articles of organization delegate amendment of

the bylaws to the board of directors, the board shall provide a description of any amendment of the bylaws made by the board of directors to the members in writing not later than thirty (30) days after the amendment, but the description may be provided at the next annual members meeting if the meeting is held within the thirty (30) day period.

10. To amend its articles of organization, a cooperative must deliver to the Office of the Secretary for filing an amendment stating:

- a. The name of the cooperative;
- b. The date of filing of its initial articles of organization; and
- c. The text of the amendment.

11. The articles of organization shall be amended if there is a statement in the articles that was false or erroneous when it was made.

12. If a director or, before the initial meeting of the board, an organizer of a cooperative knows that any information in filed articles of organization was inaccurate when the articles were filed or has become inaccurate due to changed circumstances, the director or organizer shall promptly:

- a. Cause the articles to be amended; or
- b. If appropriate, deliver to the Office of the Secretary for filing a statement of change or a statement of correction.

CHAPTER 3 MEMBERS

Section 22-3-1. Admission of Members.

1. A cooperative must have at least two (2) patron members, provided that a cooperative may have a sole member that is another cooperative.

2. Subject to the provisions its organizational documents, a cooperative:

a. May limit admission of members only to persons engaged in the particular business, utilizing the goods or services provided by or through the cooperative, or providing the goods or services utilized by the cooperative; or

b. May admit as members any person meeting uniform terms and conditions stated in its organizational documents.

3. If a cooperative is to have only one other cooperative member upon formation, the other cooperative becomes a member as agreed by the other cooperative and the organizer of the cooperative. The other cooperative and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the other cooperative member.

4. If a cooperative is to have more than one (1) member upon formation, those persons become members as agreed by the persons before the formation of the cooperative. The organizer acts on behalf of the persons in forming the cooperative and may be, but need not be, one of the persons.

5. After formation of a cooperative, a person becomes a member:

a. As provided in the organizational documents;

b. As the result of a merger, interest exchange, conversion, or domestication; or

c. With the affirmative vote or consent of all the members.

Section 22-3-2. Districts and Classes.

1. The organizational documents may provide for the formation of geographic districts of members and:

a. For the conduct of member meetings by districts and the election of directors at the meetings; or

b. That districts may elect district delegates to represent and vote for the district at members meetings.

2. The organizational documents may provide for the establishment of classes of members, for the preferences, rights, and limitations of the classes, and:

a. For the conduct of members meetings by classes and the election of directors at the meetings; or

b. That classes may elect class delegates to represent and vote for the class in members meetings.

3. A delegate elected under this Section has one (1) vote unless voting power is otherwise allocated by the organizational documents.

Section 22-3-3. Dissociation.

1. A member is dissociated as a member when:

a. The person voluntarily withdraws as a member and the cooperative knows or has notice of the person's express will to withdraw as a member, provided the person may designate a date of withdrawal as a member;

b. An event stated in the organizational documents as causing the person's dissociation occurs;

c. The person is expelled as a member pursuant to the organizational documents or this Title or other law of the Tribe applicable to the cooperative;

d. The person's entire interest is transferred in a foreclosure sale under this Title;

e. The person is expelled as a member by the board of directors because:

i. It is unlawful to carry on the cooperative's business and affairs with the person as a member; or

ii. There has been a transfer of all the member's financial rights in the cooperative, other than a transfer for security purposes or a charging order in effect under this Title which has not been foreclosed;

f. The person is an entity and:

- i. Has filed a statement of dissolution or the equivalent and fails to revoke the statement of dissolution within ninety (90) days written notice from the cooperative;
- ii. Has been dissolved and its activities and affairs are being wound up;
- iii. Has been administratively dissolved or the equivalent;
- iv. Had its charter or the equivalent revoked;
- v. Had its right to conduct business suspended in its jurisdiction of formation; or
- vi. Has been liquidated;
- g. In the case of a trust or estate or a person acting as a member by virtue of being a trustee of a trust or personal representative of an estate, the trust's or estate's entire financial interest in the cooperative is distributed;
- h. In the case of an individual:
 - i. The individual dies;
 - ii. The individual is adjudged incapacitated; or
 - iii. A court orders that the individual has otherwise become incapable of performing the individual's duties as a member under this Title or the organizational documents;
- i. In the case of a person that is not an individual, the existence of the person terminates;
- j. The cooperative participates in a merger, interest exchange, conversion, or domestication under Title XIV of this Code and:
 - i. The cooperative does not survive the transaction; or
 - ii. Otherwise as a result of the transaction, the person ceases to be a member; or

k. The cooperative dissolves and completes winding up.

2. A person has the power to dissociate as a member of a cooperative at any time, rightfully or wrongfully.

3. Unless the organizational documents provide otherwise, a member's dissociation from a cooperative is wrongful only if:

a. It is in breach of an express provision of the organizational documents, this Title, or other law of the Tribe applicable to the cooperative;

b. It occurs before the termination of the cooperative and:

i. The person is expelled as a member under this Section; or

ii. In the case of a person that is not a trust, estate, or individual, the person is expelled or otherwise dissociated because it willfully dissolved or terminated.

4. Unless the organizational documents provide otherwise, a person that wrongfully dissociates as a member is liable to the cooperative and to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the person to the cooperative. In addition to pursuing any remedies otherwise available under the organizational documents or applicable law, if a person wrongfully dissociates as a member, the cooperative may offset the damages against the amount otherwise distributable to the member.

5. When a person is dissociated as a member:

a. The person's right to participate as a member in the management and conduct of the cooperative's business and affairs terminates, except to the extent the member participates in winding up the cooperative's business and affairs pursuant to a dissolution; and

b. Subject to any provision in this Title or other law of the Tribe applicable to the cooperative, any financial rights owned by the person in the person's

capacity as a member immediately before dissociation are owned by the person as a transferee.

6. A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or other liability to the cooperative or the other members which the person incurred while a member.

Section 22-3-4. Meetings of Members.

1. Members shall meet annually at a time provided in the organizational documents or set by the board of directors not inconsistent with the organizational documents. The board of directors shall report, or cause to be reported, at the cooperative's annual members meeting the cooperative's business and financial condition as of the close of the most recent fiscal year. Failure to hold an annual members meeting does not affect the validity of any action of the cooperative.

2. A special meeting of members may be called only:

a. As provided in the organizational documents;

b. By a majority vote of the board of directors on a proposal stating the purpose of the meeting;

c. By demand in writing signed by members holding at least twenty percent (20%) of the voting power of the persons in any district or class entitled to vote on the matter that is the purpose of the meeting stated in the demand; or

d. By demand in writing signed by members holding at least ten percent (10%) of the total voting power of all the persons entitled to vote on the matter that is the purpose of the meeting stated in the demand.

3. A demand for a special meeting must be submitted to the officer of the cooperative charged with keeping its records. Any voting member may withdraw its demand for a special meeting before receipt by the cooperative of demands sufficient to require a special meeting of members.

4. Only business within the purpose or purposes stated in the notice of a special meeting may be conducted at the meeting.

5. A meeting of members may be held inside or outside the territory of the Tribe at the place stated in the organizational documents or selected by the board of directors not inconsistent with the organizational documents.

6. Unless the organizational documents provide otherwise, members may attend or conduct a members meeting through any means of communication if all members attending the meeting can communicate with each other during the meeting.

7. Unless the organizational documents provide otherwise, the board of directors shall designate the presiding officer of a members meeting.

8. Unless the organizational documents otherwise require a greater number of members or percentage of the voting power, five percent (5%) of the total number of members or thirty (30) members present at a members meeting, whichever is less, constitutes a quorum.

9. A cooperative shall notify each member of the time, date, and place of a members meeting at least fifteen (15) and not more than sixty (60) days before the meeting. Notice may be given by mail, personal delivery, or electronic transmission. Unless the organizational documents provide otherwise, notice of an annual members meeting need not include any purpose of the meeting. Notice of a special meeting of members must include each purpose of the meeting as contained in the demand for the special meeting or as voted upon by the board of directors calling for the special meeting.

10. A member may waive notice of a members meeting before, during, or after the meeting. A member's participation in a members meeting is a waiver of notice of that meeting unless the member objects to the meeting at the beginning of the meeting or promptly upon the member's arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 22-3-5. Member Action Without a Meeting.

1. Unless the organizational documents require that action be taken only at a members meeting, any action that may be taken by the members may be taken without a meeting if each member entitled to vote on the action consents in writing to the action.

2. Consent under this Section may be withdrawn by a member in writing at any time before the cooperative receives a consent from each member entitled to vote.

3. Consent to any action may specify the effective date or time of the action.

Section 22-3-6. Voting of Members.

1. Except as otherwise provided in this Section, each member has one vote.

2. The organizational documents may allocate voting power among members on the basis of one or a combination of the following:

- a. One member, one vote;
- b. Use or patronage;
- c. Equity; or
- d. If a member is a cooperative, the number of its members.

3. The organizational documents may provide for the allocation of member voting power by districts or class, or any combination thereof.

4. Unless the organizational documents provide otherwise, voting by a proxy at a members meeting is prohibited. This subsection does not prohibit delegate voting based on district or class. If voting by a proxy is permitted, a patron member may appoint only another patron member as a proxy. The organizational documents may provide for the manner of and provisions governing the appointment of a proxy.

5. The organizational documents, or a resolution of the board with respect to a particular issue, may provide for voting on any question by ballot delivered by mail or voting by other means on questions that are subject to vote by members.

Section 22-3-7. Member Transactions with Cooperative. Except as otherwise provided in the organizational documents or a specific contract relating to a transaction, a member may lend money to and transact other business with a cooperative in the same manner as a person that is not a member.

Section 22-3-8. Member as Agent.

1. A member is not an agent of a cooperative solely by reason of being a member.

2. A person's status as a member does not prevent or restrict law other than this Title from imposing liability on a cooperative because of the person's conduct.

Section 22-3-9. Direct Action by Member.

1. A member may maintain a direct action against another member, director, or the cooperative to enforce the member's rights and protect the member's interests, including rights and interests under the organizational documents or this Title or arising independently of the membership relationship.

2. A member maintaining a direct action under this Section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the cooperative.

Section 22-3-10. Member Dissent.

1. A member is entitled to dissent from and obtain payment of the fair value of the member's membership in the event of any of the following cooperative actions:

a. Consummation of plan of merger, conversion, domestication, division, or interest exchange where, following the merger, conversion, domestication, division, or interest exchange, there will be members of any cooperative involved in the proposed transaction who would no longer be eligible for membership or other voting interest in the surviving or resulting entity;

b. A proposed disposition of assets which requires approval of the members under this Title or the organizational documents;

c. An amendment of the articles of organization that materially and adversely affects the member's governance rights or financial rights; or

d. Any other cooperative action taken pursuant to a member vote to the extent the organizational documents or a

resolution of the board of directors provides that members are entitled to dissent and obtain payment for their membership.

2. A member entitled to dissent and obtain payment for the member's membership under this Section may not challenge the cooperative action creating the member's entitlement unless the action is fraudulent or fails to comply with this Title or the organizational documents with respect to the member or the cooperative.

3. The right of a dissenting member to obtain payment of the fair value of the member's membership shall terminate upon the occurrence of any of the following events:

a. The proposed cooperative action is abandoned or rescinded; or

b. The member's demand for payment is withdrawn with the written consent of the cooperative.

4. If proposed cooperative action creating dissenters' rights is submitted to a vote at a members meeting, the meeting notice must state that members are or may be entitled to assert dissenters' rights under this Section. If cooperative action creating dissenters' rights is taken without a vote of members, the cooperative, within ten (10) days after the effective date of such cooperative action, shall notify in writing all members entitled to assert dissenters' rights that the action was taken and send them written dissenters' notice as provided in this Section.

5. If proposed cooperative action creating dissenters' rights under this Section is submitted to a vote at a members meeting, a member who wishes to assert dissenters' rights shall both deliver written notice to the cooperative before the vote is taken of the member's intent to demand payment for the member's membership if the proposed action is effectuated and not vote in favor of the proposed action. A member who does not satisfy the requirements of this subsection is not entitled to payment for the membership under this Section. The cooperative shall deliver a written dissenters' notice to all members who satisfied the requirements of this subsection.

6. Dissenters' notice required in this Section must be sent within ten (10) days after the effective date of the cooperative action and shall:

a. State where the payment demand must be sent and where and when any certificates for membership must be deposited; and

b. Set a date by which the cooperative must receive the payment demand, which date may not be fewer than thirty (30) nor more than sixty (60) days after the date the dissenters' notice is delivered.

7. A member sent a dissenters' notice must demand payment and deposit any membership certificate in accordance with the terms of the notice. A member who demands payment and deposits the member's membership certificate retains all other rights of a member until the proposed cooperative action is affected. A member who does not demand payment or deposit the member's membership certificate where required by the date set in the dissenters' notice is not entitled to payment for the member's membership under this Section.

8. Within thirty (30) days of the later of the effective date of the proposed cooperative action or the date the payment demand is received, the cooperative shall pay each dissenter who demanded payment and deposited the member's membership certificate in accordance with the notice the amount the cooperative estimates to be the fair value of the membership plus accrued interest. The payment must be accompanied by:

a. The cooperative's balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in members' equity for that year, and the latest available interim financial statements, if any;

b. An explanation of how the cooperative estimated the fair value of the membership;

c. An explanation of how the interest was calculated; and

d. A statement of the dissenter's right to dispute the payment amount under this Section.

9. Provided a demand for payment under this subsection is made in writing within thirty (30) days after the cooperative made or offered payment for the dissenter's membership, a

dissenter may notify the cooperative in writing of the dissenter's own estimate of the fair value of the dissenter's membership and amount of interest due and demand payment of the dissenter's estimate, less any payment made under this Section, and demand payment of the dissenter's estimate of the fair value of the dissenter's membership and interest due, if:

a. The dissenter believes that the amount paid under this Section is less than the fair value of the dissenter's membership or that the interest due is incorrectly calculated;

b. The cooperative fails to make payment under this Section within sixty (60) days after the date set for demanding payment; or

c. The cooperative does not affect the proposed action and does not return any deposited membership certificates within sixty (60) days after the date set for demanding payment.

10. If a dissenter's demand for payment under subsection 9 of this Section remains unsettled:

a. The cooperative shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the Tribal Court to determine the fair value of the membership and accrued interest;

b. If the cooperative does not commence the proceeding within such sixty (60) day period, it shall pay each dissenter whose demand remains unsettled the amount demanded;

c. The Tribal Court may appoint one (1) or more persons as appraisers to receive evidence and recommend a fair valuation to the Tribal Court;

d. Appraisers appointed by the Tribal Court shall have the powers described in the order appointing them or in any amendment to it;

e. The dissenters shall be entitled to the same discovery rights as parties in other civil proceedings;

f. Each dissenter made a party to the proceeding shall be entitled to judgment for the amount, if any, by

which the Tribal Court finds the fair value of the dissenter's membership plus interest exceeds the amount paid by the cooperative;

g. The Tribal Court shall determine all costs of the proceeding, including the reasonable compensation and expenses of the appraisers appointed by the Tribal Court and assess the costs against the cooperative, except that the Tribal Court may assess the costs against all or some of the dissenters, other than dissenters who are the Tribe or a Tribal business entity, in amounts the Tribal Court finds equitable, to the extent the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment;

h. Except for a party that is the Tribe or a Tribal business entity, the Tribal Court may assess fees and expenses of legal counsel and experts for the respective parties in amounts the Tribal Court finds equitable:

i. Against the cooperative and in favor of any or all dissenters if the cooperative did not substantially comply with the requirements of this Section; or

ii. Against the cooperative or a dissenter if the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided in this Section.

11. Under this Section, fair value with respect to a dissenter's membership shall be determined as the value of the membership immediately before the effective date of the cooperative action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the cooperative action unless exclusion would be inequitable.

12. If the Tribe is a member in a cooperative, any right to dissent as a member may only be exercised by the Tribe and no individual member of the Tribe or the Tribal Council shall have any right of member dissent under this Section even if the membership of the Tribe is voted by individual members of the Tribal Council.

13. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as

a member or otherwise or waiving the sovereign immunity of any Tribal business entity.

Section 22-3-11. Derivative Actions.

1. A member may maintain a derivative action to enforce a right of a cooperative if:

a. Unless such a demand would be futile, the member first makes a demand on the board of directors requesting that they cause the cooperative to bring an action to enforce the right; and

b. The board of directors do not bring the action within a reasonable time.

2. In a derivative action, the complaint must state with particularity:

a. The date and content of plaintiff's demand and the response to the demand by the board of directors; or

b. Why demand should be excused as futile.

3. A derivative action to enforce a right of a cooperative may be maintained only by a person that is a member at the time the action is commenced and:

a. Was a member when the conduct giving rise to the action occurred; or

b. Whose status as a member devolved on the person by operation of law or pursuant to the terms of the organizational documents from a person that was a member at the time of the conduct.

4. If a cooperative is named as or made a party in a derivative proceeding, the cooperative may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the cooperative. If the cooperative appoints a special litigation committee, on motion by the committee made in the name of the cooperative, the court shall, except for good cause shown, stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

a. Enforcing a person's right to information under this Title; or

b. Granting a temporary restraining order or preliminary injunction.

5. A special litigation committee must be composed of one or more disinterested and independent individuals, who may be members. A special litigation committee may be appointed by the affirmative vote or consent of a majority of the directors not named as parties in the proceeding or, if all directors are named as parties, a majority of all the directors.

6. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the cooperative that the proceeding:

- a. Continue under the control of the plaintiff;
- b. Continue under the control of the committee;
- c. Be settled on terms approved by the committee; or
- d. Be dismissed.

7. After making a determination how to proceed, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination. The special litigation committee shall serve each party with a copy of the determination and report. If the court finds the committee has proven that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve any stay entered pursuant to this Section and allow the action to continue under the control of the plaintiff.

8. A derivative action on behalf of a cooperative may not be voluntarily dismissed or settled without the court's approval.

9. Subject to the award of expenses provided in this Section:

a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the cooperative and not to the plaintiff; and

b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the cooperative.

10. Unless the cooperative is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable legal counsel's fees and costs, from the recovery of the cooperative.

11. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe or waiving the sovereign immunity of any Tribal business entity.

Section 22-3-12. Financial Statements.

1. On written demand from a member, a cooperative shall furnish that member with financial statements for its latest completed fiscal year within a reasonable time after receipt of the demand. The financial statements may be consolidated or combined statements of the cooperative and one or more of its subsidiaries, as appropriate, and that include a balance sheet as of the end of the fiscal year and a statement of operations for the year. If financial statements are prepared for the cooperative on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

2. If the annual financial statements are reported on by a certified public accountant, that report shall accompany them. If not, the statements shall be accompanied by a statement of the person responsible for the cooperative's accounting records both:

a. Stating that person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

b. Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

3. If a cooperative indemnifies or advances expenses to a director or officer with respect to a proceeding where the director or officer was a party, the cooperative shall report the indemnification or advance in writing to the members. Failure to report under this subsection does not invalidate otherwise valid indemnification.

Section 22-3-13. Rights to Information and Records.

1. On reasonable request, a member is entitled to inspect and copy, during regular business hours at the cooperative's principal place of business, any of the records of the cooperative required to be maintained at such principal place of business under this Title or other law of the Tribe applicable to the cooperative. A member need not have any particular purpose for seeking the information. The cooperative is not required to provide the same information to the same member more than once during a six (6) month period.

2. The cooperative shall furnish to each member, on reasonable and good faith demand, any other true and full information concerning the cooperative's activities, affairs, financial condition, and other circumstances.

3. A former member is entitled to information to which the member was entitled while a member if:

a. The information pertains to the period during which the person was a member;

b. The former member seeks the information in good faith; and

c. The former member satisfies the requirements of this Section.

4. The cooperative may impose reasonable restrictions on the confidentiality, use, or distribution of records subject to inspection and copying by members under this Section.

5. The right of inspection granted by this Section may not be abolished or limited by a cooperative's organizational documents.

6. A member's agent or legal representative has the same inspection and copying rights as the member it represents.

7. The rights stated in this Section do not extend to a person as transferee.

8. The organizational documents may require a cooperative to provide more information than required by this Section and may establish conditions and procedures for providing the information.

9. If a cooperative does not allow within a reasonable time a member to inspect and copy any record subject to inspection and copying under this Section, on application of the member, the Tribal Court may summarily order inspection and copying of the records demanded at the cooperative's expense.

10. Unless the cooperative is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if the Tribal Court orders inspection and copying of the records demanded, it shall also order the cooperative to pay the member's costs, including reasonable legal counsel fees, incurred to obtain the order, unless the cooperative proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded. Unless the member is the Tribe or a Tribal business entity, the Tribal Court may order a member to pay all or a portion of the cooperative's costs, including reasonable legal counsel fees, if the demand to inspect is denied in whole or in material part.

11. If the Tribal Court orders inspection and copying of records pursuant to this Section, it may impose reasonable restrictions on the use or distribution of the records by the member.

12. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe, including a cooperative that is a Tribal business entity.

CHAPTER 4 BOARD OF DIRECTORS

Section 22-4-1. Board of Directors.

1. The affairs of a cooperative must be managed by, or under the direction of, a board of directors. The board may adopt policies and procedures that do not conflict with the

organizational documents of the cooperative or this Title or other law of the Tribe applicable to the cooperative.

2. The board of directors of a cooperative must have at least three (3) individuals, unless the cooperative has fewer than three (3) members. If the cooperative has fewer than three (3) members, the number of directors may not be fewer than the number of members.

3. Initial directors may be named in the articles of organization, elected by the members, or, prior to the admission of members, elected by the incorporators. An initial director serves until a successor is elected and qualified or the director is removed, resigns, is adjudged incapacitated, or dies. Initial directors need not be members. Thereafter, directors shall be elected at the annual meeting of the members. Unless the articles of organization provide otherwise, the initial directors may cause the cooperative to accept members, including those necessary for the cooperative to begin business.

4. Unless the organizational documents provide otherwise and other than initial directors, each director of a cooperative must be an individual who is a member of the cooperative or an individual who is designated for purposes of qualifying and serving as a director by a member that is not an individual. If the organizational documents provide for nonmember directors, the number of nonmember directors may not exceed:

a. One (1), if there are two (2) to four (4) directors;

b. Two (2), if there are five (5) through eight (8) directors; or

c. One-third (1/3) of the total number of directors if there are at least nine (9) directors.

5. Subject to the requirements of this Section, the organizational documents may provide for the election of all or a specified number of directors by one or more districts or classes of members. Subject to the requirements of this Section, the organizational documents may provide for the nomination or election of directors by districts or classes, directly or by district delegates. If a class of members consists of a single member, the organizational documents may provide for the member to appoint a director or directors.

6. The organizational documents may provide qualifications for directors in addition to those in this Section.

7. Except as otherwise provided by the organizational documents or elsewhere in this Title, directors must be elected at an annual members meeting. Unless the organizational documents provide otherwise, cumulative voting for directors is prohibited.

Unless the organizational documents provide otherwise, a director may be an officer or employee of the cooperative.

8. Unless the organizational documents provide otherwise, the term of a director expires at the annual members meeting following the director's election or appointment. The organizational documents may provide for longer terms for directors, but the term of a director may not exceed three (3) years. Unless the organizational documents provide otherwise, a director may be reelected.

9. A director continues to serve until a successor director is elected or appointed and qualifies or the director is removed, resigns, is adjudged incapacitated, or dies. However, unless the organizational documents provide otherwise, a director does not serve the remainder of the director's term if the director ceases to qualify to be a director.

10. Unless the organizational documents provide otherwise, the following rules apply to removal of a director:

a. Members may remove a director with or without cause;

b. A member or members holding at least ten percent (10%) of the total voting power entitled to be voted in the election of a director may demand removal of the director by one or more signed petitions submitted to the officer of the cooperative charged with keeping its records;

c. Upon receipt of a petition for removal of a director, an officer of the cooperative or the board of directors shall:

i. Call a special meeting of members to be held not later than ninety (90) days after receipt of the petition by the cooperative; and

ii. Mail or otherwise transmit or deliver in writing notice of the meeting to the members entitled to vote on the removal and to the director to be removed; and

d. A director is removed if the votes in favor of removal are equal to or greater than the votes required to elect the director.

11. A board of directors may suspend a director if, considering the director's course of conduct and the inadequacy of other available remedies, immediate suspension is necessary for the best interests of the cooperative and the director is engaging, or has engaged, in:

a. Fraudulent conduct with respect to the cooperative or its members;

b. Gross abuse of the position of director;

c. Intentional or reckless infliction of harm on the cooperative; or

d. Any other behavior, act, or omission as provided by the organizational documents.

12. A suspension of a director is effective for thirty (30) days unless the board of directors calls and gives notice of a special meeting of members for removal of the director before the end of the thirty (30) day period, in which case the suspension is effective until adjournment of the meeting or the director is removed.

13. A director may resign at any time by giving notice in writing to the cooperative. Unless the notice states a later effective date, a resignation is effective when the notice is received by the cooperative.

14. Unless the organizational documents provide otherwise, a vacancy on the board of directors must be filled:

a. Within a reasonable time by majority vote of the remaining directors until the next annual members meeting or a special meeting of members called to fill the vacancy; and

b. For the unexpired term of the vacating director.

15. Unless the organizational documents provide otherwise, if a vacating director was elected or appointed by a class of members or a district:

a. The new director must be of that class or district; and

b. The selection of the director for the unexpired term must be conducted in the same manner as would the selection for that position without a vacancy.

16. If a member appointed a vacating director, the organizational documents may provide for that member to appoint a director to fill the vacancy.

17. Unless the organizational documents provide otherwise, the board of directors may fix the compensation of directors and nondirector members of board committees.

18. A board of directors shall meet at least annually and, unless the organizational documents provide otherwise, may hold meetings inside or outside the territory of the Tribe. Unless the organizational documents provide otherwise, a board of directors may permit directors to attend or conduct board meetings through the use of any means of communication, if all directors attending the meeting can communicate with each other during the meeting.

19. Unless the organizational documents provide otherwise, a board of directors may establish a time, date, and place for regular board meetings, and notice of the time, date, place, or purpose of those meetings is not required.

20. Unless the organizational documents provide otherwise, notice of the time, date, and place of a special meeting of a board of directors must be given to all directors at least three (3) days before the meeting, the notice must contain a statement of the purpose of the meeting, and the meeting is limited to the matters contained in the statement.

21. Unless the articles of organization provide for a greater number, a majority of the total number of directors specified by the organizational documents constitutes a quorum for a meeting of the directors. If a quorum of the board of directors is present at the beginning of a meeting, any action taken by the directors present is valid even if withdrawal of

directors originally present results in the number of directors being fewer than the number required for a quorum. A director present at a meeting but objecting to notice as provided in this Section does not count toward a quorum.

22. Each director shall have one vote for purposes of decisions made by the board of directors. Unless a law applicable to the cooperative or the organizational documents provide for a greater number generally or for any particular act of the board of directors, the affirmative vote of a majority of directors present at a meeting is required for action by the board of directors.

23. Unless the organizational documents provide otherwise, a director may waive any required notice of a meeting of the board of directors in writing before, during, or after the meeting. Unless the organizational documents provide otherwise, a director's participation in a meeting is a waiver of notice of that meeting unless:

a. The director objects to the meeting at the beginning of the meeting or promptly upon the director's arrival at the meeting and does not thereafter vote in favor of or otherwise assent to any action taken at the meeting for which notice has not been given; or

b. The director promptly objects upon the introduction of any matter for which notice has not been given and does not thereafter vote in favor of or otherwise assent to the action taken on the matter.

24. Unless prohibited by the organizational documents, any action that may be taken by a board of directors may be taken without a meeting if each director consents in writing to the action. Consent under this subsection may be withdrawn by a director in writing at any time before the cooperative receives consent from all directors. A record of consent for any action under this subsection may specify the effective date or time of the action.

Section 22-4-2. Board Committees.

1. Unless the organizational documents provide otherwise, a board of directors may create one or more committees and appoint one or more individuals to serve on a committee.

2. Unless the organizational documents provide otherwise, an individual appointed to serve on a committee of a cooperative need not be a director or member.

3. An individual who is not a director and serves on a committee has the same rights, duties, and obligations as a director serving on the committee.

4. Unless the organizational documents provide otherwise, each committee of a cooperative may exercise the powers delegated to it by the board of directors, but a committee may not:

a. Approve allocations or distributions except according to a formula or method prescribed by the board of directors;

b. Approve or propose to members action requiring approval of members; or

c. Fill vacancies on the board of directors or any of its committees.

Section 22-4-3. Officers.

1. A cooperative has the officers:

a. Provided in the organizational documents; or

b. Established by the board of directors in a manner not inconsistent with the organizational documents.

2. The organizational documents may designate or, if the organizational documents do not designate, the board of directors shall designate, one of the cooperative's officers for preparing all records required by this Title and for the authentication of records of the cooperative.

3. Unless the organizational documents provide otherwise, the board of directors shall appoint the officers of the cooperative.

4. Officers of a cooperative shall perform the duties the organizational documents prescribe or as authorized by the board of directors not in a manner inconsistent with the organizational documents or this Title.

5. The election or appointment of an officer of a cooperative does not of itself create a contract between the cooperative and the officer.

6. Unless the organizational documents provide otherwise, an individual may simultaneously hold more than one office in a cooperative.

7. The board of directors may remove an officer at any time with or without cause.

8. An officer of a cooperative may resign at any time by giving notice in writing to the cooperative. Unless the notice specifies a later time, the resignation is effective when the notice is given.

Section 22-4-4. Duties of Directors and Officers.

1. All directors and officers owe fiduciary duties to the cooperative and the members.

2. The fiduciary duties of a director or officer include:

a. To act in a manner the director or officer reasonably believes to be in the best interests of the cooperative and the members;

b. To discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances;

c. To disclose, or cause to be disclosed, to the other directors or officers information not already known by them but known by the director or officer to be material to the discharge of the decision-making or oversight functions of the directors, unless disclosure would violate another duty imposed under applicable law, a legally enforceable obligation of confidentiality, or a professional ethics rule;

d. To account to the cooperative and hold as trustee for it any property, profit, or benefit derived by the director or officer:

i. In the conduct or winding up of the cooperative's activities and affairs;

ii. From a use by the director or officer of the cooperative's property; or

iii. From the appropriation of a cooperative opportunity;

e. To refrain from dealing with the cooperative in the conduct or winding up of the cooperative's activities and affairs as or on behalf of a person having an interest adverse to the cooperative;

f. To refrain from competing with the cooperative in the conduct of the cooperative's activities and affairs before the dissolution of the cooperative;

g. To refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, a violation of any law involving moral turpitude, or knowing violation of other applicable law;

h. To refrain from a willful failure to deal fairly with the cooperative or its members in connection with a matter in which the director or officer has a material conflict of interest; and

i. To refrain from a transaction from which the director or officer may derive an improper personal profit.

3. Unless the articles of organization provide otherwise, in considering the best interests of a cooperative, a director discharging the duties of director, in conjunction with considering the long and short term interest of the cooperative and its patron members as well as the other interests required under the laws of the Tribe, may consider:

a. The interests of employees, customers, and suppliers of the cooperative;

b. The interests of the community in which the cooperative operates; and

c. Other cooperative principles and values that may be applied in the context of the decision.

4. All directors and officers shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the cooperative, and

the organizational documents consistently with the contractual obligation of good faith and fair dealing.

5. In discharging the director's or officer's duties, unless the director or officer has knowledge that would make reliance unwarranted, a director or officer is entitled to rely on:

a. One or more other directors, officers, or employees of the cooperative whom the director or officer reasonably believes to be reliable and competent in the matters presented;

b. Legal counsel, public accountants, or other persons retained by the cooperative as to matters involving skills or expertise the director or officer reasonably believes are within the person's professional or expert competence; or

c. A committee of the board of which the director or officer is not a member if the director or officer reasonably believes the committee merits confidence.

6. The members of a cooperative may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the fiduciary duties in this Section.

7. Every director and officer shall account to the cooperative and hold as trustee for it any improper personal profit derived by that director or officer without the consent of a majority of the disinterested directors from:

a. A transaction connected with the organization, conduct, or dissolution and winding up of the cooperative; and

b. A use by a director or officer of the property of the cooperative, including confidential or proprietary information, or other matters entrusted to the person as a result of the person's status as a director or officer.

8. A cooperative's organizational documents may impose duties on its directors and officers that are in addition to, but not in abrogation of, those provided in this Section.

Section 22-4-5. Conflicts of Interest.

1. A director or officer shall not vote or participate in any discussion or action of the board of directors concerning a matter where the director or officer or any of their immediate family has a business or personal interest which conflicts with the interests of the cooperative.

2. A transaction with the cooperative in which a director has an interest is voidable by the cooperative solely because of the director's interest in the transaction unless:

a. The material facts of the transaction and the director's interest in the transaction were disclosed to or known by the board of directors at the time of approval of the transaction and a majority of the directors approved or ratified the transaction, provided that any director with an interest in the transaction does not vote on the approval or ratification and is not counted toward the minimum number of directors required to constitute a quorum;

b. The material facts of the transaction and the director's interest in the transaction were disclosed to or known by the members entitled to vote and the members authorized, approved, or ratified the transaction by a majority vote of the members entitled to vote, excluding any members who is also a director and has an interest in the transaction; or

c. The transaction was fair to the cooperative at the time it was approved.

3. A cooperative shall not lend any money to or guarantee the personal debts or obligations of any director or officer of the cooperative unless:

a. The members approve the loan or guarantee by a majority vote of the members entitled to vote, excluding any member who is also a director and has an interest in the transaction; or

b. The board of directors determines the loan or guarantee benefits the cooperative and a majority of the directors approve the loan or guarantee, provided that any director with an interest in the transaction does not vote on the approval and is not counted toward the minimum number of directors required to constitute a quorum.

4. Notwithstanding anything to the contrary in this Title, a director does not have a conflict of interest under this Section or the organizational documents solely because the director's conduct relating to the duties of the director may further the director's own interest.

Section 22-4-6. Directors and Officers as Agent. An individual is not an agent for a cooperative solely by being a director or officer.

Section 22-4-7. Representations of Directors and Officers. An admission or representation made by a director or officer concerning the affairs of a cooperative within the scope of the director's or officer's authority may be used as evidence against the cooperative in any legal proceeding.

Section 22-4-8. Knowledge of Director or Officer. The following operates as notice to or knowledge of a cooperative:

1. Notice to any director or officer of any matter relating to the business of the cooperative;

2. Knowledge of the director or officer acting in the particular matter acquired while a director or officer or known by the person at the time of becoming a director or officer; and

3. Knowledge of any other director or officer who reasonably could and should have communicated it to the acting director or officer.

Section 22-4-9. Right to Information.

1. A director or a member of a committee may obtain, inspect, and copy all information regarding the state of activities and financial condition of the cooperative and other information regarding the activities of the cooperative if the information is reasonably related to the performance of the director's duties as director or the committee member's duties as a member of the committee.

2. Information obtained in accordance with this Section may not be used in any manner that would violate any duty of or to the cooperative.

CHAPTER 5

LIMITED COOPERATIVES**Section 22-5-1. Requirements for Formation.**

1. To form a limited cooperative:

a. In addition to any other requirements for articles of organization of the cooperative in this Title, the articles of organization of a limited cooperative must state all of the following:

i. That the cooperative is a limited cooperative; and

ii. That the cooperative is authorized to have investment members; and

b. In addition to the requirements for bylaws of cooperatives generally in this Title, the bylaws of the limited cooperative must include a statement concerning the manner in which profits and losses are allocated and how distributions are made among investor members and between patron members and investor members.

2. An existing cooperative may become a limited cooperative by amending its articles of organization and bylaws in accordance with the provisions of this Title to include the requirements in this Section.

3. A limited cooperative is formed when:

a. The articles of organization complying with this Section becomes effective; and

b. The requirements for a cooperative generally to be formed have been met.

4. The Office of the Secretary's filing of the articles of organization of a limited cooperative is conclusive proof that the limited cooperative is organized and formed under this Title.

Section 22-5-2. Dual Capacity.

1. A person may have a patron member's interest and an investor member's interest in a limited cooperative.

2. A person that is both a patron member and investor member has the rights, powers, duties, and obligations provided by this Title, other laws of the Tribe applicable to the limited cooperative, and the organizational documents in each of those capacities. When the person acts as a patron member, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the limited cooperative, and the organizational documents for patron members. When the person acts as an investor member, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the limited cooperative, and the organizational documents for investor members.

Section 22-5-3. Voting of Investor Members.

1. Unless the organizational documents provide otherwise, each investor member has one vote. The organizational documents may provide for the allocation of investor member voting power by class, classes, or any combination of classes.

2. If a limited cooperative has both patron and investor members, the following rules apply:

a. The total voting power of all patron members may not be less than a majority of the entire voting power entitled to vote;

b. Action on any matter is approved only upon the affirmative vote of at least a majority of:

i. All members voting at the meeting unless more than a majority is required by this Title, other law of the Tribe applicable to the cooperative, or the organizational documents; and

ii. All votes cast by patron members, unless the organizational documents require a larger affirmative vote by patron members; and

c. The organizational documents may provide for the percentage of the affirmative votes that must be cast by investor members to approve the matter.

3. If voting by a proxy is permitted, an investor member may appoint only another investor member as a proxy.

Section 22-5-4. Approval of Actions. Subject to and in addition to requirements in this Title governing cooperatives generally, the following rules apply to approval of actions in a limited cooperative with investor members:

1. Unless the organizational documents require a greater percentage of votes by patron members, an amendment to the articles of organization must be approved by at least a majority of the votes cast by patron members.

2. Unless the organizational documents require a greater percentage of votes by patron members, an amendment to the bylaws must be approved by a majority of the votes cast by patron members.

3. Unless the organizational documents require a greater percentage of votes by patron members, a proposed disposition of assets which requires approval of the members must be approved by at least a majority of the votes cast by patron members.

Section 22-5-5. Board of Directors. The following rules apply to the number of directors in a limited cooperative with investor members:

1. Unless the organizational documents require a greater number:

a. The number of directors that must be patron members may not be fewer than:

i. One (1), if there are two (2) or three (3) directors;

ii. Two (2), if there are four (4) or five (5) directors;

iii. Three (3), if there are six (6) through eight (8) directors; or

iv. One-third (1/3) of the directors if there are at least nine (9) directors;

2. A majority of the board of directors must be elected exclusively by patron members; and

3. The directors who are not elected exclusively by patron members may be elected by the investor members.

Section 22-5-6. Interest in Limited Cooperative. In a limited cooperative with investor members, while a person is a member of the cooperative, the person:

1. If admitted as a patron member, remains a patron member;

2. If admitted as an investor member, remains an investor member; and

3. If admitted as a patron member and investor member remains a patron and investor member if not dissociated in one of the capacities.

Section 22-5-7. Removal of Limited Cooperative Status.

1. A limited cooperative may become a cooperative that is not a limited cooperative without formal conversion by:

a. Amending its organizational documents to eliminate any matters which establish the cooperative as a limited cooperative, including any authorization for investor members; and

b. Dissociating any investor members in accordance with this Title and the organizational documents last in effect while the cooperative was a limited cooperative.

2. A limited cooperative becomes a cooperative that is not a limited cooperative when:

a. The organizational documents complying with this Section becomes effective; and

b. The cooperative has only patron members.

CHAPTER 6 WORKER COOPERATIVES

Section 22-6-1. Requirements for Formation.

1. To form a worker cooperative, in addition to the requirements for articles of organization of cooperatives generally in this Title, the articles of organization of a

worker cooperative must state that the cooperative is a worker cooperative.

2. To form a worker cooperative:

a. In addition to any other requirements for articles of organization of the cooperative in this Title, the articles of organization of a worker cooperative must state all of the following:

i. That the cooperative is a worker cooperative; and

ii. That the workers of the cooperative will be the members; and

b. In addition to the requirements for bylaws of cooperatives generally in this Title, the bylaws of the worker cooperative must include a statement concerning the manner in which patronage will be determined for members.

3. An existing cooperative may become a worker cooperative by amending its articles of organization and bylaws in accordance with the provisions of this Title to include the requirements in this Section and otherwise comply with the requirements of this Chapter.

4. A worker cooperative is formed when:

a. The articles of organization complying with this Section becomes effective; and

b. The requirements for a cooperative generally to be formed have been met.

5. The Office of the Secretary's filing of the articles of organization of a worker cooperative is conclusive proof that the worker cooperative is organized and formed under this Title.

Section 22-6-2. Members as Employees. The existence of a cooperative as a worker cooperative does not, by itself, establish that members who are workers are employees of the cooperative for any purpose.

Section 22-6-3. Limited Worker Cooperatives.

1. A worker cooperative may be or become a limited worker cooperative by complying with the requirements for formation of a limited cooperative under this Title in addition to the requirements for formation of a worker cooperative under this Chapter.

2. In a limited worker cooperative, at least fifty-one percent (51%) of the members must be workers.

3. In a limited worker cooperative, the requirements of this Chapter and all requirements governing limited cooperatives apply to the cooperative.

Section 22-6-4. Collective Board Worker Cooperatives.

1. A collective board worker cooperative is a worker cooperative:

- a. That is not a limited worker cooperative;
- b. Where all members are workers; and
- c. Where all members are members of the board of directors.

2. In a collective board worker cooperative, the following rules apply:

- a. Every member is both a director and a member;
- b. A member may be an officer in addition to being a director and member;
- c. A member has the rights, powers, duties, and obligations provided by this Title, other laws of the Tribe applicable to the cooperative, and the organizational documents in each of the capacities as a member, a director, and, if an officer, an officer;
- d. When a member acts as a member, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the cooperative, and the organizational documents for members;
- e. When a member acts as a director, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the

cooperative, and the organizational documents for directors;

f. When a member who is an officer acts as an officer, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the cooperative, and the organizational documents for officers;

g. Notwithstanding anything else to the contrary in this Title, a collective board worker cooperative shall not be required to hold an annual meeting of members or any other meeting of members, but may hold such meetings in the manner provided in this Title; and

h. Unless the organizational documents require that action be taken at a members meeting and not a directors meeting, any action that may be taken by the members of a cooperative may be taken by the board of directors, provided the act of the board of directors complies with any requirements for quorum and number of members or percentage of voting power for a members meeting required to take the action.

Section 22-6-5. Patronage. Patronage in a worker cooperative may be measured by work performed, including, but not limited to, wages earned, number of hours worked, number of jobs created, or some combination of these measures.

Section 22-6-6. Removal of Worker Cooperative Status.

1. A worker cooperative may become a cooperative that is not a worker cooperative without formal conversion by amending its organizational documents to eliminate any matters which establish the cooperative as a worker cooperative.

2. A worker cooperative becomes a cooperative that is not a worker cooperative when the organizational documents complying with this Section becomes effective.

**CHAPTER 7
DEALING WITH COOPERATIVE**

Section 22-7-1. Nature of Cooperative. The relations between a cooperative and its members are consensual. A cooperative is an entity distinct from its members.

Section 22-7-2. Cooperatives Not Restraint of Trade. No cooperative formed under or subject to this Title shall solely by its organization and existence be deemed to be a conspiracy or a combination in restraint of trade, an illegal monopoly, or an attempt to lessen competition or to fix prices arbitrarily, nor shall the marketing or purchasing contracts and agreements between any cooperative and its members or any agreements authorized in this Title be considered illegal as such, an unlawful restraint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal purpose.

Section 22-7-3. Marketing Contracts.

1. If a marketing contract provides for the sale of products, commodities, or goods to a cooperative, the sale transfers title to the cooperative upon delivery or at any other specific time expressly provided by the contract.

2. A marketing contract may:

a. Authorize a cooperative to create an enforceable security interest in the products, commodities, or goods delivered; and

b. Allow the cooperative to sell the products, commodities, or goods delivered and pay the sales price on a pooled or other basis after deducting selling costs, processing costs, overhead, expenses, and other charges.

3. Some or all of the provisions of a marketing contract between a member and a cooperative may be contained in the organizational documents.

4. The initial duration of a marketing contract may not exceed ten (10) years, but the contract may be self-renewing for additional periods not exceeding five (5) years each. Unless the contract provides for another manner or time for termination, either party may terminate the contract by giving notice in writing at least ninety (90) days before the end of the current term.

5. Damages to be paid to a cooperative for breach or anticipatory repudiation of a marketing contract may be liquidated, but only at an amount or under a formula that is reasonable in light of the actual or anticipated harm caused by

the breach or repudiation. A provision that so provides is not a penalty.

6. Upon a breach of a marketing contract, whether by anticipatory repudiation or otherwise, a cooperative may seek:

- a. An injunction to prevent further breach; and
- b. Specific performance.

7. The remedies in this Section are in addition to any other remedies available to a cooperative under any other applicable law.

8. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe, including a cooperative that is a Tribal business entity.

Section 22-7-4. Interests in Cooperative.

1. A member's interest in a cooperative:

- a. Is personal property;
- b. Consists of:
 - i. Governance rights;
 - ii. Financial rights; and
 - iii. The right or obligation, if any, to do business with the cooperative; and
 - iv. May be in certificated or uncertificated form.

2. Unless a cooperative is a limited cooperative with investor members, a member's interest is a patron member's interest.

3. Unless a transfer is restricted or prohibited by the organizational documents:

- a. A member may transfer its financial rights in the cooperative; and

b. A member's interest other than financial rights is not transferable.

4. The terms of any restriction on transferability of financial rights must be:

a. Set forth in the organizational documents and the member records of the cooperative; and

b. Conspicuously noted on any certificate evidencing a member's interest.

5. A transfer of a member's financial rights in violation of a restriction on transfer contained in the organizational documents is ineffective if the intended transferee has actual or constructive notice of the restriction at the time of transfer.

6. If the transfer of a member's financial rights are not restricted:

a. A transferee of a member's financial rights, to the extent the rights are transferred, has the right to share in the allocation of profits or losses and to receive the distributions and patronage refunds to the member transferring the interest to the same extent as the transferring member;

b. A transferee of a member's financial rights does not become a member upon transfer of the rights unless the transferee is admitted as a member by the cooperative; and

c. A cooperative need not give effect to a transfer under this Section until the cooperative has notice of the transfer.

7. A member or transferee may create an enforceable security interest in its financial rights in a cooperative.

8. Unless the organizational documents provide otherwise, a member may not create an enforceable security interest in the member's governance rights in a cooperative.

9. The organizational documents may provide that a cooperative has a security interest in the financial rights of a member to secure payment of any indebtedness or other obligation of the member to the cooperative. A security interest provided

for in the organizational documents is enforceable under the laws of the Tribe.

10. Unless the organizational documents provide otherwise, a member may not compel the cooperative to offset financial rights against any indebtedness or obligation owed to the cooperative.

Section 22-7-5. Charging Membership Interest.

1. On application to a court having valid jurisdiction over a member and the subject matter by a judgment creditor of the member, such court may enter a charging order against the financial rights of the member, other than a member which is the Tribe or a Tribal business entity, for the unsatisfied amount of the judgment.

2. Except as otherwise provided in this Section, a charging order constitutes a lien on the member's financial rights and requires the cooperative to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the member. The judgment creditor has only the rights of an assignee of the member's financial rights.

3. At any time before foreclosure under this Section, the member whose financial rights are subject to a charging order under this Section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

4. At any time before foreclosure under this Section, a cooperative or one or more members whose financial rights are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order. Unless the organizational documents provide otherwise, the cooperative may act under this subsection only with the consent of all members whose financial rights are not subject to the charging order.

5. Upon a showing that distributions and patronage refunds under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the financial rights of the member. Except as otherwise provided in this Section, the purchaser at the foreclosure sale obtains only the financial rights, does not

thereby become a member, and has only the rights of an assignee of the member's financial rights.

6. This Section shall not be construed to deprive any member of the benefit of any exemption of an interest in a cooperative that may exist under applicable law.

7. This Section provides the exclusive remedy by which a person seeking in the capacity of judgment creditor to enforce a judgment against a member may satisfy the judgment from the member's interest.

8. In no event shall the Tribe's interest in a cooperative be attachable, chargeable, or subject to lien or encumbrance without the Tribe's express written consent or express waiver of its sovereign immunity.

Section 22-7-6. Property of Cooperative.

1. Property may be acquired, held, and conveyed in the name of a cooperative.

2. All property originally transferred to or acquired by a cooperative is property of the cooperative and not the members individually.

3. Property acquired with funds of a cooperative is presumed to be property of the cooperative.

4. Subject to any limitations in its articles of organization, its bylaws, this Title, or other law of the Tribe applicable to the cooperative, the property of a cooperative may be transferred by an instrument executed by a director in the name of the cooperative.

Section 22-7-7. Disposition of Assets.

1. Except as otherwise provided in this Section, unless the articles of organization provide otherwise, member approval is not required for a cooperative to:

a. Sell, lease, exchange, license, or otherwise dispose of all or any part of the assets of the cooperative in the usual and regular course of business; or

b. Mortgage, pledge, dedicate to the repayment of indebtedness, or encumber in any way all or any part of the

assets of the cooperative whether or not in the usual and regular course of business.

2. Any sale, lease, exchange, license, or other disposition of assets of a cooperative which would leave the cooperative without significant continuing business activity requires approval of the cooperative's members as follows:

a. A majority of the board of directors, or a greater percentage if required by the organizational documents, must approve the proposed disposition; and

b. The board of directors must call a members meeting to consider the proposed disposition, hold the meeting not later than ninety (90) days after approval of the proposed disposition by the board, and mail or otherwise transmit or deliver in writing to each member:

i. The terms of the proposed disposition;

ii. A recommendation that the members approve the disposition, or if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;

iii. A statement of any condition of the board's submission of the proposed disposition to the members; and

iv. Notice of the meeting at which the proposed disposition will be considered, which must be given in the same manner as notice of a special meeting of members.

c. Subject to a different requirement in the organizational documents which complies with this Section, the proposed disposition must be approved by at least two-thirds (2/3) of the voting power of members present at a members meeting called under this subsection.

3. The organizational documents may require that the percentage of votes required under this Section to approve a proposed disposition is:

a. A different percentage that is not less than a majority of members voting at the meeting;

- b. Measured against the voting power of all members;
or
- c. A combination of the foregoing.

4. Subject to any contractual obligations, after a disposition of assets is approved and at any time before the consummation of the disposition, a cooperative may approve an amendment to the contract for disposition or the resolution authorizing the disposition or approve abandonment of the disposition:

- a. As provided in the contract or the resolution;
and
- b. Except as prohibited by the resolution, with the same affirmative vote of the board of directors and of the members as was required to approve the disposition.

5. The voting requirements for districts, classes, or voting groups apply to approval of a disposition of assets under this Section.

Section 22-7-8. Liability to Third Parties.

1. A debt, obligation, or other liability of a cooperative, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or other liability of the cooperative. This subsection applies regardless of the dissolution of the cooperative.

2. A member, director, or officer is not personally liable, directly or indirectly, by way of contribution or otherwise, for an act, debt, obligation, or other liability of the cooperative solely by reason of being or acting as a member, director, or officer. This subsection applies regardless of the dissolution of the cooperative.

3. The failure of a cooperative to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member, director, or officer for an act, debt, obligation, or other liability of the cooperative.

Section 22-7-9. Parties to Actions. A member of a cooperative is not a proper party to a proceeding by or against a cooperative solely by reason of being a member, except if:

1. The object of the proceeding is to enforce a member's right against or liability to the cooperative; or
2. The action is brought by a member under this Title.

Section 22-7-10. Authority to Sue.

1. Unless otherwise provided in its organizational documents, an action on behalf of a domestic or foreign cooperative may be brought in the name of the cooperative by:

- a. One or more members as a derivative action in accordance with this Title; or
- b. One or more directors, if authorized by the board of directors, unless otherwise directed by a majority vote of the members entitled to vote, excluding members who have an interest in the outcome of the action that is adverse to the interests of the cooperative.

2. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe or a Tribal business entity, as a member or otherwise.

Section 22-7-11. Records.

1. A cooperative shall keep at its principal place of business all of the following:

- a. A record of its members in a form that permits preparation of a list of the names and addresses of all members in alphabetical order by district or class of members showing each current member in a district or class;
- b. A list of the names and business addresses of its current directors and officers;
- c. A copy of its articles of organization and all amendments thereto and restatements thereof together with executed copies of any powers of attorney under which any articles were executed;

d. A copy of its bylaws and all amendments thereto and restatements thereof;

e. A copy of its most recent annual report delivered to the Office of the Secretary;

f. A copy of all other organizational documents of the cooperative, documents filed with the Office of the Secretary, and all amendments thereto and restatements thereof;

g. Any notices to members on which a document filed with the Office of the Secretary is dependent;

h. Resolutions adopted by its board of directors;

i. All written communications within the past three (3) years to members;

j. Minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors;

k. All annual financial statements prepared for the cooperative for its last three (3) fiscal years and any audit or other reports with respect to such financial statements; and

l. A record of all matters referred to in this Title or other law of the Tribe applicable to the cooperative as maintained in such records which are not otherwise specified in the articles of organization or bylaws.

2. A cooperative shall maintain accounting records in a form that permits preparation of its financial statements.

3. The organizational documents may require that more information be maintained.

4. Failure of a cooperative to keep or maintain any of the records required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the cooperative.

CHAPTER 8
CONTRIBUTIONS AND DISTRIBUTIONS

Section 22-8-1. Contributions.

1. The organizational documents of a cooperative must establish the amount, manner, or method of determining any contribution requirements for members or must authorize the board of directors to establish the amount, manner, or other method of determining any contribution requirements for members.

2. Unless the organizational provide otherwise, the contributions of a member to a cooperative may consist of money or property transferred to, services performed for, or another benefit provided to the cooperative or an agreement to transfer money or property to, perform services for, or provide another benefit to the cooperative.

3. The receipt and acceptance of contributions and the valuation of contributions must be reflected in a cooperative's records.

4. Unless the organizational documents provide otherwise, the board of directors shall determine the value of a member's contributions received or to be received and the determination by the board of directors of valuation is conclusive for purposes of determining whether the member's contribution obligation has been met.

5. Except as otherwise provided in the agreement, the following rules apply to an agreement made by a person before formation of a cooperative to make a contribution to the cooperative:

a. The agreement is irrevocable for six (6) months after the agreement is signed by the person unless all parties to the agreement consent to the revocation;

b. If a person does not make a required contribution:

i. The person is obligated, at the option of the cooperative, once formed, to contribute money equal to the value of that part of the contribution that has not been made, and the obligation may be enforced as a debt to the cooperative; or

ii. The cooperative, once formed, may rescind the agreement if the debt remains unpaid more than twenty (20) days after the cooperative demands payment from the person, and upon rescission neither the person nor the cooperative have any further rights or obligations with respect to each other under the agreement.

6. Unless the organizational documents or an agreement to make a contribution other than money to a cooperative provide otherwise, if a person does not make a required contribution to a cooperative, the person or the person's estate is obligated, at the option of the cooperative, to contribute money equal to the value of the part of the contribution which has not been made.

Section 22-8-2. Allocation of Profits and Losses.

1. The organizational documents of a cooperative may provide for allocating profits of a cooperative among members, among persons that are not members but conduct business with the cooperative, to an unallocated account, or to any combination thereof. Unless the organizational documents provide otherwise, losses of the cooperative must be allocated in the same proportion as profits.

2. Unless the organizational documents provide otherwise, all profits and losses of a cooperative must be allocated to patron members.

3. If a cooperative is a limited cooperative with investor members, the organizational documents may not reduce the allocation to patron members to less than fifty percent (50%) of profits. For purposes of this subsection, the following rules apply:

a. Amounts paid or due on contracts for the delivery to the cooperative by patron members of products, goods, or services are not considered amounts allocated to patron members; and

b. Amounts paid, due, or allocated to investor members as a stated fixed return on equity are not considered amounts allocated to investor members.

4. Unless prohibited by the organizational documents, in determining the profits for allocation under this Section, the

board of directors may first deduct and set aside a part of the profits to create or accumulate:

a. An unallocated capital reserve; and

b. Reasonable unallocated reserves for specific purposes, including expansion and replacement of capital assets; education, training, cooperative development; creation and distribution of information concerning principles of cooperation; and community responsibility.

5. Subject to the provisions of this Section and the organizational documents, the board of directors shall allocate the amount remaining after any deduction or setting aside of profits for unallocated reserves under this Section:

a. To patron members in the ratio of each member's patronage to the total patronage of all patron members during the period for which allocations are to be made; and

b. If the cooperative is a limited cooperative with investor members, in the ratio of each investor member's contributions to the total contributions of all investor members.

6. For purposes of allocation of profits and losses or specific items of profits or losses of a cooperative to members, the organizational documents may establish allocation units or methods based on separate classes of members or, for patron members, on class, function, division, district, department, allocation units, pooling arrangements, members' contributions, or other equitable methods.

7. The allocations of amounts remaining after any deduction or setting aside of profits for unallocated reserves under this Section shall be distributed as patronage refunds to the members at least once every twelve (12) months on an equitable basis as determined by the board of directors or in accordance with the organizational documents. This subsection shall not be construed as prohibiting the retention of amounts allocated to members as a means of providing capital for the cooperative.

8. If a cooperative has retained funds allocated to members as authorized under this Section, the board of directors shall have the right, in accordance with the organizational documents and policies established by the board of directors, to

redeem or retire the funds so retained. All decisions relating to the redemption or retirement of such funds shall be made solely by the board of directors.

Section 22-8-3. Distributions Generally.

1. Unless the organizational documents provide otherwise and except as provided in this Chapter, the board of directors may authorize, and the cooperative may make, distributions to members.

2. Unless the organizational documents provide otherwise, distributions to members may be made in any form, including money, capital credits, allocated patronage equities, revolving fund certificates, and the cooperative's own or other securities.

Section 22-8-4. Redemption or Repurchase. Property distributed to a member by a cooperative, other than money, may be redeemed or repurchased as provided in the organizational documents but a redemption or repurchase may not be made without authorization by the board of directors. The board may withhold authorization for any reason in its sole discretion. A redemption or repurchase is treated as a distribution for purposes of this Chapter.

Section 22-8-5. Limitations on Distributions.

1. A cooperative may not declare or make a distribution if, after the distribution:

a. The cooperative would not be able to pay its debts as they become due in the ordinary course of the cooperative's activities and affairs; or

b. The cooperative's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the cooperative were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members whose preferential rights are superior to the rights of persons receiving the distribution.

2. A cooperative may base a determination that a distribution is not prohibited under subsection 1 on:

a. Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

b. A fair valuation or other method that is reasonable under the circumstances.

3. A cooperative's indebtedness to a member incurred by reason of a distribution made in accordance with this Section is equivalent to the cooperative's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement.

4. A cooperative's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of subsection 1 if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this Section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

5. For purposes of this Section, "distribution" does not include:

a. Reasonable compensation for present or past services;

b. Payments made in the ordinary course of business for commodities or goods; or

c. Payments made under a bona fide retirement or other bona fide benefits program.

Section 22-8-6. Liability for Improper Distributions.

1. If a director of a cooperative consents to a distribution made in violation of this Chapter and in consenting to the distribution fails to comply with the duties of directors under the laws of the Tribe, the director is personally liable to the cooperative for the amount of the distribution that exceeds the amount that could have been distributed without the violation of this Chapter.

2. A person that receives a distribution knowing that the distribution violated this Chapter is personally liable to the

cooperative but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under this Chapter.

3. A director who is held liable under this Section for an unlawful distribution is entitled to contribution from:

a. Every other director who could be held liable under this Section for the unlawful distribution; and

b. Each person for the amount the person accepted knowing the distribution was made in violation of this Chapter.

4. An action to recover under this Section may be brought in the Tribal Court. An action under this Section is barred unless commenced no later than two (2) years after the date of the distribution.

5. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

AGENDA ITEM REQUEST
(for employees only)

DATE SUBMITTED: 8/16/2022

All agenda item requests must be approved by the Tribal Business Manager and forwarded to the Niobrara Office, Attn: Jan Colwell **five (5) working days before the meeting.**

Meeting of: Tribal Council
 Executive Committee

Meeting Date: 9/6/2022

Subject: Selection of Judge Pro Tempore as required by Code

ACTION REQUEST: (Please describe request in the form of a motion)

Requesting a Resolution appointing three (3) Judge Pro Tempore as required in the Ponca Tribal Law and Order Code Section 1-2-6

Will there be support materials for this agenda item? Yes No
(If there are support materials, one copy must be attached)

Submitted By: 

APPROVED _____
Executive Management

**PONCA TRIBE OF NEBRASKA
TRIBAL COUNCIL**

RESOLUTION 22-_____

WHEREAS: The Ponca Tribe of Nebraska is a federally recognized Indian Tribe (P.L. 101-484) whose business affairs are conducted by the Ponca Tribal Council as defined in the Constitution approved July 22, 1994 by the Acting Deputy Commissioner of Indian Affairs; and

WHEREAS: Pursuant to the Constitution of the Ponca Tribe of Nebraska, the Ponca Tribal Council exercises legislative powers to enact and promulgate resolutions and ordinances subject to all express restriction upon such powers contained in the Constitution; and

WHEREAS: Article V, Section 1 (j) of the Constitution provides that the Ponca Tribal Council has the power to safeguard and promote the peace, safety, morals, and general welfare of the Tribe through judicial administration; and

WHEREAS: Article V, Section 1 (l) of the Constitution authorizes the Ponca Tribal Council to adopt resolutions regulating the procedure of Tribal officials; and

WHEREAS: Article V, Section 1 (o) of the Constitution empowers the Ponca Tribal Council to protect and preserve the property, wildlife, and natural resources of the Tribe; and

WHEREAS: Article VI of the Constitution establishes the Judicial Branch of the Tribe; and

WHEREAS: Pursuant to Section 1-2-6 of the Ponca Tribal Law and Order Code, Tribal Council finds in necessary to appoint three judges pro tempore who may be called into service when the needs arises; and

WHEREAS: The Tribal Council finds it necessary to appoint three (3) Judges Pro Tempore; and

WHEREAS: The Tribal Council has selected Melissa M. Oestmann, Charles H. Tripp and Marsha L. Harlan who are willing and qualified to sit as Judges Pro Tempore to hear and determine any cases when necessary according to Section 1-2-6 of the Ponca Tribal Law and Order Code. Their term shall be one (1) year, but they may be reappointed by the Tribal Council; and

NOW, THEREFORE, BE IT RESOLVED, the Tribal Council hereby appoints Melissa M. Oestmann, Charles H. Tripp and Marshal L. Harlan as Judges Pro Tempore for the Ponca Tribal Court.

BE IT FURTHER RESOLVED that the term of the Judge Pro Tempore shall begin September 6, 2022 and continue for one (1) year in accordance with the laws of the Ponca Tribe of Nebraska; and

BE IT FINALLY RESOLVED that the Tribal Council hereby approve the attached contracts with Judge Pro Tempore Melissa M. Oestmann, Judge Pro Tempore Charles H. Tripp and Judge

Pro Tempore Marsha L. Harlan which shall govern their appointment and compensation as though set forth herein, and the Vice Chairwoman is authorized to execute said contract.

CERTIFICATION

THIS IS TO CERTIFY AND AFFIRM that the above and foregoing resolution was duly authorized and passed by the Tribal Council of the Ponca Tribe of Nebraska at a duly called meeting via Lifesize on the ____ day of September, 2022 by a vote of ____ Ayes; ____ Nays; ____ Abstained; ____ Absent. Chairperson ____ voting ____ not voting. A quorum of ____ was present.

ATTEST

Rebecca Sullivan, Vice Chairwoman
Ponca Tribe of Nebraska

Kyle Taylor, Secretary
Ponca Tribe of Nebraska