

PONCA TRIBE OF NEBRASKA  
TITLE XV  
LIMITED LIABILITY COMPANIES

CHAPTER 1  
GENERAL PROVISIONS

**Section 15-1-1. 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 required under this Title to organize and establish a limited liability company and includes the articles as amended or restated.

2. "Contribution" means property or a benefit that is provided by a person to a limited liability company to become an owner or in the person's capacity as an owner.

3. "Distribution" means a direct or indirect transfer of money or other property from a limited liability company to or for the benefit of its owners or in the person's capacity as an owner, 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.

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

5. "Limited liability company" means, except when used in the phrase foreign limited liability company, an entity that is formed under this Title or that becomes subject to this Title.

6. "Majority in interest of the owners" means, at any particular time, one or more owners that hold a majority of the interests in the limited liability company, disregarding any interests held by persons that are not owners or not to be counted with respect to the matter at issue at that particular time.

7. "Majority of the owners" means, at any particular time, the majority of the owners of a limited liability company regardless of how many interests each owner holds in the limited liability company.

8. "Manager" means a person designated to manage a limited liability company under the articles of organization and/or operating agreement.

9. "Manager-managed limited liability company" means a limited liability company where management is vested in a manager.

10. "Operating agreement" means the agreement, whether or not referred to as an operating agreement and whether oral, implied, in writing, or any combination thereof, of all the owners of a limited liability company concerning the conduct of the business of the limited liability company and its relationships with its owners and includes the agreement as amended or restated.

11. "Organizer" means a person that acts to form a limited liability company.

12. "Owner" means a person that both:

a. Has become an owner of a limited liability company or was an owner when the limited liability company became subject to this Title; and

b. Has not dissociated under this Title.

13. "Owner-managed limited liability company" means a limited liability company where management is vested in one or more of the owners and not in any manager.

14. 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 15-1-2. 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 limited liability companies.

2. This Title shall apply to all limited liability companies to which Title XIV of this Code applies.

**Section 15-1-3. 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 15-1-4. 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 15-2-1. Formation.**

1. One or more persons at least the age of majority may act as organizers to form a limited liability company by delivering to the Office of the Secretary for filing the articles of organization.

2. A limited liability company shall have one or more owners. The organizers of a limited liability company need not be owners at the time of organization or thereafter.

3. A limited liability company is formed when the articles of organization become effective and at least one person has become an owner.

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

### **Section 15-2-2. Articles of Organization.**

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

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

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

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

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

e. If management of the limited liability company is vested in a manager, a statement to that effect;

f. The name and address of each person organizing the limited liability company;

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

h. If the limited liability company is a Tribal business entity, whether the limited liability company 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.

**Section 15-2-3. Amendment or Restatement of Articles.**

1. Articles of organization may be amended or restated at any time.

2. To amend its articles of organization, a limited liability company must deliver to the Office of the Secretary for filing an amendment stating:

a. The name of the limited liability company;

b. The date of filing of its initial articles of organization; and

c. The text of the amendment.

3. To restate its articles of organization, a limited liability company must deliver to the Office of the Secretary for filing a restatement of the articles, designated as such in its heading.

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

5. If an owner or manager of a limited liability company knows that any information in a filed articles of organization was inaccurate when the articles were filed or has become inaccurate due to changed circumstances, the owner or manager 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.

#### **Section 15-2-4. Operating Agreement.**

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

a. Relations among the owners as owners and between the owners and the limited liability company;

b. The rights and duties under this Title of a person in the capacity of manager;

c. The activities and affairs of the limited liability company and the conduct of those activities and affairs; and

d. The means and conditions for amending the operating agreement.

2. To the extent the operating agreement does not provide for a matter described in subsection 1 of this Section, this Title and any other law of the Tribe applicable to the limited liability company governs the matter.

3. A limited liability company is bound by and may enforce the operating agreement, whether or not the limited liability company has itself manifested assent to the operating agreement.

4. A person that becomes an owner of a limited liability company is deemed to assent to the operating agreement.

5. Two or more persons intending to become the initial owners of a limited liability company may make an agreement providing that, upon the formation of the limited liability company, the agreement will become the operating agreement. One person intending to become the initial owner of a limited liability company may assent to terms providing that, upon the formation of the limited liability company, the terms will become the operating agreement.

### **CHAPTER 3 OWNERS AND MANAGERS**

#### **Section 15-3-1. Admission of Owners.**

1. Upon formation of a limited liability company, a person becomes an owner:

a. As agreed upon the formation of the limited liability company; or

b. Unless the articles of organization or operating agreement provide otherwise, by acquiring an interest in the limited liability company.

2. After the formation of a limited liability company, a person becomes an owner:

a. As provided in the operating agreement;

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

c. With the affirmative vote or consent of all the owners;

d. Unless the articles of organization or operating agreement provide otherwise, by acquiring an interest in the limited liability company; or

e. If the person acquires an interest in the limited liability company by assignment, as provided in the operating agreement or this Title.

3. A person may become an owner of a limited liability company without:

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

**Section 15-3-2. Dissociation.**

1. A person ceases to be an owner of a limited liability company and is dissociated as an owner when:

- a. Unless the operating agreement provides that the person does not have the power to voluntarily withdraw, the person voluntarily withdraws as an owner and the limited liability company knows or has notice of the person's express will to withdraw as an owner, provided the person may designate a date of withdrawal as owner;

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

- c. The person is expelled as an owner pursuant to the operating agreement or this Title or other law of the Tribe applicable to the limited liability company;

- d. The person is expelled as an owner by the affirmative vote or consent of all the other owners if:

- i. It is unlawful to carry on the limited liability company's activities and affairs with the person as an owner; or

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

- e. Unless provided otherwise in the operating agreement or by the written consent of all owners, 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, the trust's or estate's entire transferable interest in the limited liability company is distributed;

h. On application by the limited liability company or an owner in an action brought in Tribal Court, the person is expelled as an owner 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 liability company's activities and affairs;

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

iii. Has engaged or is engaging in conduct relating to the limited liability company's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as an owner;



i. Unless provided otherwise in the operating agreement or by the written consent of all owners, 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 an owner under this Title or the operating agreement;

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

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

i. The limited liability company does not survive the transaction; or

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

l. The limited liability company dissolves and completes winding up.

2. The operating agreement may provide for other events which result in a person ceasing to be an owner of the limited liability company.

3. Unless otherwise provided in the operating agreement, upon notice of a merger, interest exchange, conversion, or division of the limited liability company, an owner who did not vote in favor of the merger, interest exchange, conversion, or division may, within twenty (20) days after receipt of the notice, voluntarily dissociate from the limited liability company under this Section and receive any distribution and value for the owner's interest to which the owner would otherwise be entitled upon dissociation under this Title.

4. If a person is dissociated as an owner:

a. The person's right to participate as an owner in the management and conduct of the limited liability company's activities and affairs terminates;

b. The person's duties and obligations as an owner end with regard to matters arising and events occurring after the person's dissociation; and

c. Subject to the provisions of this Chapter and any other law of the Tribe applicable to the limited liability company, any transferable interest owned by the person in the person's capacity as an owner immediately before dissociation is owned by the person solely as a transferee.

5. In addition to pursuing any remedies otherwise available under the operating agreement or applicable law, if a person has the power to withdraw as an owner, but the withdrawal is a breach of the operating agreement, the limited liability company may offset the damages against the amount otherwise distributable to the owner.

6. A person's dissociation as an owner does not of itself discharge the person from any debt, obligation, or other liability to the limited liability company or the other owners which the person incurred while an owner.

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

### **Section 15-3-3. Management.**

1. A limited liability company is an owner-managed limited liability company unless the articles or organization or operating agreement vests management in one or more managers.

2. Subject to the provisions of this Title and the operating agreement, in an owner-managed limited liability company, the following rules apply:

a. Except as expressly provided in this Title, the management and conduct of the limited liability company are vested in the owners;

b. Each owner has equal rights in the management and conduct of the limited liability company's activities and affairs;

c. A difference arising among owners as to a matter in the ordinary course of the activities and affairs of the limited liability company may be decided by a majority of the owners; and

d. The affirmative vote or consent of all the owners is required to undertake an act outside the ordinary course of the activities and affairs of the limited liability company.

3. Subject to the provisions of this Title and the operating agreement, in a manager-managed limited liability company, the following rules apply:

a. Except as expressly provided in this Title, any matter relating to the activities and affairs of the limited liability company is decided exclusively by the manager or, if there is more than one manager, by a majority of the managers;

b. Each manager has equal rights in the management and conduct of the limited liability company's activities and affairs;

c. The affirmative vote or consent of all owners is required to undertake an act outside the ordinary course of the limited liability company's activities and affairs;

d. The manager or managers shall be designated, appointed, elected, removed, or replaced by a vote of a majority of the owners;

e. A manager remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies;

f. A person need not be an owner or an individual to be a manager; and

g. A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or owners which the person incurred while a manager.

4. An action requiring the vote or consent of owners under this Title may be taken without a meeting, and an owner that is not the Tribe may appoint a proxy or other agent to vote, consent, or otherwise act for the owner by signing an appointing record, personally or by the owner's agent.

5. The dissolution of a limited liability company does not affect the applicability of this Section. However, a person that wrongfully causes dissolution of the limited liability company loses the right to participate in management as an owner and a manager.

6. An owner is not entitled to remuneration for services performed for an owner-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the limited liability company.

**Section 15-3-4. Voting of Owners.**

1. Unless otherwise provided in the operating agreement, this Title, or other law of the Tribe applicable to the limited liability company, an affirmative vote, approval, or consent shall be required to decide any matter connected with the business of a limited liability company as follows:

a. In an owner-managed limited liability company, a majority in interest of the owners; and

b. In an manager-managed limited liability company, more than fifty percent (50%) of the managers.

2. Unless otherwise provided in the operating agreement, this Title, or other law of the Tribe applicable to the limited liability company, the affirmative vote, approval, or consent of all owners shall be required to do any of the following:

a. Amend the articles of organization;

b. Issue an interest in the limited liability company to any person;

c. Adopt, amend, or revoke the operating agreement;

d. Allow the limited liability company to accept any additional contribution from an owner;

e. Allow a partial redemption of an interest in the limited liability company;

f. Value contributions of owners; or

g. Authorize a manager, owner, or other person to do any act on behalf of the limited liability company that contravenes the articles of organization or operating agreement.

3. Unless otherwise provided in the operating agreement, if any owner is precluded from voting with respect to a given matter, the interests in the limited liability company which the owner would otherwise have been entitled to vote shall be excluded from the total interests in the limited liability company for purposes of determining the majority in interest of the owners.

4. Unless otherwise provided in its operating agreement, this Title, or other law of the Tribe applicable to the limited liability company, if all or part of an interest in a limited liability company is assigned, the assigning owner shall be considered the owner of the assigned interest for purposes of determining the majority of interests in the limited liability company until the assignee of the interest becomes an owner.

**Section 15-3-5. Action by Written Consent.**

1. Unless the articles of organization or operating agreement require that action be taken only at an owners' meeting, any action that may be taken by the owners may be taken without a meeting if each owner entitled to vote on the action consents in writing to the action.

2. Consent under this Section may be withdrawn by an owner in writing at any time before the limited liability company receives a consent from each owner entitled to vote.

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

**Section 15-3-6. Duties of Owners and Managers.**

1. All owners and managers owe to the limited liability company and the owners fiduciary duties.

2. The fiduciary duties of an owner or manager include:

a. To act in a manner the owner or manager reasonably believes to be in the best interests of the limited liability company;

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 owners or managers information not already known by them but known by the owner or manager to be material to the discharge of the decision-making or oversight functions of the owners or managers, 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 limited liability company and hold as trustee for it any property, profit, or benefit derived by the owner or manager:

i. In the conduct or winding up of the limited liability company's activities and affairs;

ii. From a use by the owner or manager of the limited liability company's property; or

iii. From the appropriation of a limited liability company opportunity;

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

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

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 limited liability company or its owners in connection

with a matter in which the owner or manager has a material conflict of interest; and

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

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

4. All the owners of a limited liability company 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 owner and manager shall account to the limited liability company and hold as trustee for it any improper personal profit derived by that owner or manager without the consent of a majority of the disinterested owners or managers from:

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

b. A use by an owner or manager of the property of the limited liability company, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as an owner or manager.

6. A limited liability company's operating agreement or other private organizational documents may impose duties on its owners and managers that are in addition to, but not in abrogation of, those provided in this Section.

**Section 15-3-7. Owner or Manager as Agent.** 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. In an owner-managed limited liability company:

a. Each owner is an agent of the limited liability company for the purpose of its business, but not of any of the other owners; and

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

2. If the Tribe is an owner of a limited liability company, the Tribe's authority shall be exercised pursuant to Chapter 4 of Title XIV.

3. In a manager-managed limited liability company:

a. No owner, solely by being an owner, is an agent of the limited liability company or of the other owners;

b. Each manager is an agent of the limited liability company for the purpose of its business, but not for the owners; and

c. The act of any manager, including the execution in the name of the limited liability company of an instrument for apparently carrying on the ordinary course of business of the limited liability company, binds the limited liability company in the particular matter unless:

i. The manager in fact has no authority to act for the limited liability company in the matter; and

ii. The person with whom the manager is dealing knows or should know that the manager has no authority to act in the matter.

4. No act of an owner or manager that is not apparently authorized for carrying on the ordinary course of business of the limited liability company shall bind the limited liability company unless the act is in fact authorized at the time of the transaction or ratified thereafter.

**Section 15-3-8. Representations of Owner or Manager.**

1. In an owner-managed limited liability company, an admission or representation made by an owner concerning the business of a limited liability company within the scope of the owner's actual authority may be used as evidence against the limited liability company in any legal proceeding.



2. In a manager-managed limited liability company:

a. An admission or representation made by a manager concerning the business of a limited liability company within the scope of the manager's authority may be used as evidence against the limited liability company in any legal proceeding; and

b. The admission or representation of any owner, acting solely in the owner's capacity as an owner, is not evidence against the limited liability company in any legal proceeding.

**Section 15-3-9. Knowledge of Owner or Manager.**

1. In an owner-managed limited liability company, the following operates as notice to or knowledge of the limited liability company:

a. Notice to any owner of any matter relating to the business of the limited liability company;

b. Knowledge of any owner acting in the particular matter acquired while an owner or known by the person at the time of becoming an owner; and

c. Knowledge of any owner who reasonably could and should have communicated it to the acting owner.

2. In a manager-managed limited liability company:

a. The following operates as notice to or knowledge of the limited liability company:

i. Notice to any manager of any matter relating to the business of the limited liability company;

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

iii. Knowledge of any other manager who reasonably could and should have communicated it to the acting manager; and

b. Notice to or knowledge of any owner while the owner is acting solely in the capacity of an owner is not notice to or knowledge of the limited liability company.

**Section 15-3-10. Rights to Information and Records.**

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

2. The limited liability company shall furnish to each owner or the owner's legal representative:

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

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

**Section 15-3-11. Direct Action by Owner.**

1. An owner may maintain a direct action against another owner, a manager, or the limited liability company to enforce the owner's rights and protect the owner's interests, including rights and interests under the operating agreement or this Title or arising independently of the ownership relationship.

2. An owner 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 limited liability company.

**Section 15-3-12. Derivative Actions.**

1. An owner may maintain a derivative action to enforce a right of a limited liability company if:

a. Unless such a demand would be futile, the owner first makes a demand on the other owners or managers

requesting that they cause the limited liability company to bring an action to enforce the right; and

b. The owners or managers 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 owners or managers; or

b. Why demand should be excused as futile.

3. A derivative action to enforce a right of a limited liability company may be maintained only by a person that is an owner at the time the action is commenced and:

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

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

4. If a limited liability company is named as or made a party in a derivative proceeding, the limited liability company 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 limited liability company. If the limited liability company appoints a special litigation committee, on motion by the committee made in the name of the limited liability company, 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 owners. A special litigation committee may be appointed by the

affirmative vote or consent of a majority of the owners or managers not named as parties in the proceeding or, if all owners or managers are named as parties, a majority of all the owners or managers.

6. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company 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 limited liability company 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 limited liability company and not to the plaintiff; and

- b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the limited liability company.

10. Unless the limited liability company 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 limited liability company.

**CHAPTER 4**  
**DEALING WITH LIMITED LIABILITY COMPANY**

**Section 15-4-1. Nature of Limited Liability Company.** A limited liability company is an entity distinct from its owners.

**Section 15-4-2. Interests in Limited Liability Company.**

1. An interest in a limited liability company is personal property.

2. Unless otherwise provided in its operating agreement:

a. An interest in a limited liability company is assignable in whole or in part;

b. An assignment of an interest in a limited liability company 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 limited liability company does not dissolve the limited liability company;

d. Unless and until the assignee becomes an owner, the assignment of an interest in a limited liability company does not entitle the assignee to participate in the management or exercise the rights of an owner;

e. Unless and until the assignee of an interest in a limited liability company becomes an owner, the assignor continues to be an owner; and

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

3. Unless otherwise provided in the operating agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of an owner's interest in a limited liability

company is only an assignment and shall not cause the owner to cease to have the power to exercise any rights or powers of an owner.

4. An owner's personal representative, administrator, guardian, conservator, trustee, successor, or other legal representative shall have all the rights of an assignee of the owner'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 an owner under this Title or the operating agreement; or

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

5. Unless otherwise provided in the operating agreement or this Title, an assignee of an interest in a limited liability company may become an owner only if the other owners unanimously consent.

6. An assignee of an interest in a limited liability company who becomes an owner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the operating agreement, this Title, and other laws of the Tribe applicable to the limited liability company.

7. Unless otherwise provided in the operating agreement, an assignor of an interest in a limited liability company is not released from any liability to the limited liability company without the written consent of all the owners, whether or not the assignee becomes an owner.

### **Section 15-4-3. Charging Ownership Interest.**

1. On application to a court having valid jurisdiction over an owner and the subject matter by a judgment creditor of the owner, such court may enter a charging order against the transferable interest in the limited liability company of the

owner, other than an owner 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 owner's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the owner. The judgment creditor has only the rights of an assignee of the owner's interest.

3. At any time before foreclosure under this Section, the owner 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 limited liability company or one or more owners 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 owner. Except as otherwise provided in this Section, the purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become an owner, and has only the rights of an assignee of the owner's interest.

6. If a court orders foreclosure of a charging order lien against the sole owner of a limited liability company:

- a. The court shall confirm the sale;
- b. The purchaser at the sale obtains the owner's entire interest, not only the owner's transferable interest;
- c. The purchaser thereby becomes an owner; and
- d. The person whose interest was subject to the foreclosed charging order is dissociated as an owner.

7. This Section shall not be construed to deprive any owner of the benefit of any exemption of an interest in a limited liability company that may exist under applicable law.

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

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

**Section 15-4-4. Property of Limited Liability Company.**

1. Property may be acquired, held, and conveyed in the name of a limited liability company.

2. All property originally transferred to or acquired by a limited liability company is property of the limited liability company and not the owners individually.

3. Property acquired with funds of a limited liability company is presumed to be property of the limited liability company.

4. Subject to any limitations in its operating agreement or this Title, the property of a limited liability company may be transferred:

a. In an owner-managed limited liability company, by an instrument executed by any owner in the name of the limited liability company; and

b. In a manager-managed limited liability company, by an instrument executed by a manager in the name of the limited liability company.

**Section 15-4-5. Liability to Third Parties.**

1. A debt, obligation, or other liability of a limited liability company, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or other liability of the limited liability company. This subsection applies regardless of the dissolution of the limited liability company.

2. An owner or manager 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



company solely by reason of being or acting as an owner or manager. This subsection applies regardless of the dissolution of the limited liability company.

3. The failure of a limited liability company 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 an owner or manager for an act, debt, obligation, or other liability of the limited liability company.

**Section 15-4-6. Parties to Actions.** An owner of a limited liability company is not a proper party to a proceeding by or against a limited liability company solely by reason of being an owner, except if:

1. The object of the proceeding is to enforce an owner's right against or liability to the limited liability company; or

2. The action is brought by an owner under this Title.

**Section 15-4-7. Authority to Sue.**

1. Unless otherwise provided in its operating agreement, an action on behalf of a limited liability company may be brought in the name of the limited liability company by:

a. One or more owners, if authorized by a majority in interest of the owners excluding the vote of any owner who has an interest in the outcome of the action that is adverse to the interests of the limited liability company; or

b. In a manager-managed limited liability company, one or more managers, unless otherwise directed by a majority in interest of the owners, excluding any owner who has an interest in the outcome of the action that is adverse to the interests of the limited liability company.

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

**Section 15-4-8. Records.**

1. A limited liability company shall keep at its principal place of business all of the following:

a. A list, in alphabetical order, of each past and present owner and, if applicable, manager;

b. 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;

c. A copy of its operating agreement and all amendments thereto and restatements thereof;

d. A copy of all other organizational documents of the limited liability company, documents filed with the Office of the Secretary, and all amendments thereto and restatements thereof; and

e. A record of all matters referred to in this Title or other law of the Tribe applicable to the limited liability company as maintained in such records which are not otherwise specified in the operating agreement.

2. Failure of a limited liability company 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 limited liability company.

## **CHAPTER 5 CONTRIBUTIONS AND DISTRIBUTIONS**

### **Section 15-5-1. Contributions.**

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

2. The value of an owner's contribution shall be determined in the manner provided in the operating agreement. If the operating agreement does not fix a value to a contribution, the value of a contribution shall be approved by a majority in interest of the owners and be properly reflected in the records and information kept by the limited liability company under this Title. The value of contributions so determined shall be binding and conclusive on the limited liability company and its owners.

3. An obligation of a person to make a contribution to a limited liability company is not enforceable unless specified in writing signed by the person. A person's obligation to make a contribution to a limited liability company 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 limited liability company 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 owners. If a creditor of a limited liability company 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 15-5-2. Allocation of Profits and Losses.**

1. The profits and losses of a limited liability company shall be allocated among the owners in the manner provided in its operating agreement.

2. If the owners do not enter into an operating agreement or the operating 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 owner.

**Section 15-5-3. Distributions Generally.**

1. Except as provided in this Chapter, an owner is entitled to receive distributions from a limited liability company before the owner's dissociation from the limited liability company and before its dissolution and winding up:

a. To the extent and at the times or upon the events specified in the operating agreement; or

b. To the extent and at the times determined by the owners or managers.

2. An owner's dissociation does not entitle the person to a distribution.

3. Unless otherwise provided in the operating agreement, a person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in the laws of the Tribe, a limited liability company 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. Unless otherwise provided in the operating agreement, a person may not be compelled to accept a distribution of any asset in kind except for a liquidating distribution made proportionately.

4. Distributions of money or other assets of a limited liability company shall be allocated among the owners as provided in the operating agreement or, if the operating agreement does not provide for allocation of distributions, on the basis of the value of the contributions made by each owner.

5. If an owner becomes entitled to receive a distribution, the owner has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. However, the limited liability company's obligation to make a distribution is subject to offset for any amount owed to the limited liability company by the owner or a person dissociated as an owner on whose account the distribution is made. Nothing in this subsection shall limit any other remedy available to an owner under any other provision of applicable law or the operating agreement.

**Section 15-5-4. Distributions Upon Partial Redemption.** Except as provided in this Chapter, upon the distribution in partial liquidation of an owner's interest, the redeeming owner is entitled to receive:

1. The amount to which the owner is entitled under the operating agreement; and

2. If not otherwise provided in the operating agreement, the fair value of the redeemed interest based on the owner's right to share in distributions from the limited liability company.

**Section 15-5-5. Distribution Upon Dissociation.** Except as otherwise provided in this Chapter, upon an event of dissociation of an owner that does not cause dissolution of the limited liability company, the dissociating owner is entitled to receive:

1. Any distribution to which the owner is entitled under the operating agreement; and

2. If not otherwise provided in the operating agreement, the fair market value of the owner's interest in the limited liability company based on the owner's rights to share in distributions from the limited liability company.

**Section 15-5-6. Limitations on Distributions.**

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

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

b. The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement provides otherwise, the amount that would be needed to satisfy the preferential rights, if any, of owners upon dissolution and winding up.

2. A limited liability company 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 company's indebtedness to an owner incurred by reason of a distribution made in accordance with this Section is equivalent to the limited liability company'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 company's property that is created to secure the indebtedness to the owner.

**Section 15-5-7. Liability for Improper Distributions.**

1. An owner that is not the Tribe or a manager who votes or assents to a distribution in violation of this Chapter or the operating agreement is personally liable to the limited liability

company for the amount of the excess distribution, subject to contribution from all other managers or owners participating in such action.

2. To the extent the operating agreement expressly relieves an owner of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other owners, the liability stated in this Section applies to the other owners and not the owner relieved of the authority and responsibility.

3. An owner or manager who is held liable under this Section for an unlawful distribution is entitled to contribution from:

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

b. Each owner for the amount the owner accepted knowing the distribution was made in violation of this Chapter or the operating agreement.

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.

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