



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
17763 S. Muskogee Ave.
Tahlequah, OK 74464

Legislation Text

File #: LA-15-96, Version: 1

An Act

LEGISLATIVE ACT '96 - 15

CHEROKEE NATION CODE ANNOTATED TITLE 18 CORPORATIONS CHAPTER 2 CHEROKEE NATION LIMITED LIABILITY COMPANY
ACT; DECLARING AN EMERGENCY

'200 Short title

'201 Definitions

'202 Purposes for formation

'203 Powers and authority

'204 Articles of organization--Filing

'205 Articles of organization--Contents

'206 Articles of organization--Execution

'207 Delivery of articles of organization and other documents to Office of the Principal Chief or his authorized representative;
Filing♦Fees♦Amendment♦Cancellation

'208 Name of company--Restrictions

209 Reservation and transfer of company name

'210 Principal office and registered agent

'211 Articles of organization♦Amendment

'212 Articles of correction

'213 Management of company with managers

'214 Managers♦Election♦Removal

'215 Management of company without designated managers

'216 Managers--Duties--Good faith--Liability

'217 Member or manager--Limitation or elimination of liability♦Indemnification

'218 Managers--Majority vote required

'219 Manager as agent of limited liability company--Unauthorized acts--Property transactions

'219.1 Title to property♦Transfer

'220 Members--Voting rights

1221 Records required to be kept--Member access to information--Managers may inspect and copy records

'222 Liability solely as manager or member

'223 Contribution of member♦Form

'224 Performance of obligations--Compromise--Remedies for failure to perform

'225 Allocation of profits and losses--Distributions

'226 Distributions♦Time

'227 Dissociating member--Receipt of fair market value of interest in company

'228 Distribution--Cash--Asset in kind

'229 Distribution--Status and rights of member

'230 Distribution♦Restrictions♦Effect on indebtedness

'231 Wrongful distribution--Liability of member♦Action for recovery

j

'232 Membership interest♦Status

'233 Assignment of membership interest

'234 Judgment creditor--Rights and interests

'235 Assignee of interest in limited liability company♦Membership rights, powers,
restrictions and liabilities♦Rights and liability of assignor♦Admission to membership directly
in limited liability company

'236 Cessation of membership in limited liability company--Events causing--Withdrawal as member♦Rights of legal representative of deceased
or incompetent member

'237 Dissolution and winding up of affairs♦Causes

'238 Decree of dissolution

'239 Winding up business or affairs♦Ways♦Acts and transactions of member or
manager♦ Presumptive notice

'240 Winding up of affairs♦Distribution of assets

'241 Articles of dissolution

'242 Foreign limited liability company--Laws governing♦Powers, rights and privileges

243 Foreign limited liability company--Registration procedure

'244 Foreign limited liability company--Duties of the Office of the Principal Chief or his authorized representative

'245 Foreign limited liability company--Name

'246 Foreign limited liability company♦Correction certificate--Recording changes

'247 Foreign limited liability company♦Certificate of withdrawal

'248 Foreign limited liability company♦Necessity of registration to transact business in the Cherokee Nation

'249 Foreign limited liability company♦Acts not constituting transacting business in the Cherokee Nation

'250 Foreign limited liability company♦Action to restrain transacting business in the Cherokee Nation

'251 Action to recover judgment--Conditions

'252 Derivative action--Complaint

'253 Derivative action♦Expenses♦Disposition of proceeds

'254 Merger or consolidation

'255 Fees

'256 Action to compel execution or filing of articles or other documents

'257 Application of act to foreign and interstate commerce

'258 Rules of construction of act

'259 District court--Jurisdiction

'260 Cases not covered by this act

'261 Provisions as cumulative

'262 Severability

'263 Emergency declared

'200 Short title

This act [FN1] shall be known and may be cited as the "CHEROKEE NATION LIMITED LIABILITY COMPANY ACT".

[FN1] Section 200 et seq. of this title.

'201 Definitions

As used in this act, [FN1] unless the context otherwise requires:

1. "Articles of organization" means documents filed under Section 205 of this title for the purpose of forming a limited liability company;
2. "Bankrupt" means bankrupt under the United States Bankruptcy Code, as amended, [FN21 or insolvent under any state insolvency act;
3. "Business" means any trade, occupation, profession or other activity regardless of whether engaged in for gain, profit or livelihood;
4. "Capital contribution" means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services;
5. "Capital interest" means the fair market value as of the date contributed of a member's capital contribution as adjusted for any additional capital contributions or withdrawals;
6. "Corporation" means a corporation formed under the laws of the Cherokee Nation or a foreign corporation as defined in this section;
7. "Event of dissociation" means an event that causes a person to cease to be a member, as provided in Section 236 of this title;
8. "Court" includes every court and judge having jurisdiction in the case;
9. "Foreign corporation" means a corporation formed under the laws of any state in the United States, or under the laws of the District of Columbia or any foreign country other than the laws of the Cherokee Nation;
10. "Foreign limited liability company" means an entity that is:
 - a. an unincorporated association,
 - b. organized under the laws of a state in the United States or organized under the Laws of any foreign country, other than the laws of the Cherokee Nation,
 - c. organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and
 - d. not required to be registered or organized under any statute of the Cherokee Nation other than this act;
11. "Foreign limited partnership" means a limited partnership formed under the laws of any state in the United States, or under the laws of the District of Columbia or any foreign country other than the laws of the Cherokee Nation;
12. "Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association having two or more members that is organized and existing under the laws of the Cherokee Nation;
13. "Limited partnership" means a limited partnership formed under the laws of the Cherokee Nation or a foreign limited partnership as defined in this section;
14. "Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement;
- 3
15. "Member" means a person with an ownership interest in a limited liability company, with the rights and obligations specified under this act;
16. "Membership interest" or "interest" means a member's rights in the limited liability company, collectively, including the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company's assets, and any right to vote or participate in management;
17. "Operating agreement" means any agreement of the members as to the affairs of a limited liability company and the conduct of its business;
18. "Person" means an individual, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, the Cherokee Nation, a corporation or any other legal or commercial entity; and
19. "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
20. "Indian Country" means Indian Country as defined by the United States Code, title 18, section 1151.

[FN1] Section 200 et seq. of this title. [FN21 11 U.S.C.A.'101 et seq.

202 Purposes for formation

A limited liability company may be organized under this act [FN1] and may conduct business in any state, in Indian Country, as defined by Section 1151, of Title 18 of the United States Code, or in any foreign country for any lawful purpose, except the business of banking and insurance.

[FN1] Section 200 et seq. of this title.

'203 Powers and authority

Each limited liability company may:

1. Sue, be sued, complain and defend in all courts;
 2. Transact its business, carry on its operations and have and exercise the powers granted by this section in the Cherokee Nation District Court, in any state, territory, district or possession of the United States, and in any foreign country;
 3. Make contracts and guarantees, incur liabilities, and borrow money;
 4. Sell, convey, lease, exchange, transfer, mortgage, pledge, and otherwise dispose of all or any part of its property and assets;
 5. Acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;
 6. Issue notes, bonds and other obligations and secure any of them by mortgage or deed of trust or security interest of any or all of its assets;
 7. Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge or otherwise dispose of and otherwise use and deal in and
- 4
- with stock or other interests in and obligations of domestic and foreign corporations, associations, general or limited partnerships, limited liability companies, business trusts, and individuals;
8. Invest its surplus funds, lend money from time to time in any manner which may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold real property and personal property as security for the payment of funds so loaned or invested;
 9. Elect or appoint agents and define their duties and fix their compensation;
 10. Be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership, limited liability company, joint venture, trust or other enterprise;
 11. Indemnify and hold harmless any member, agent, or employee from and against any and all claims and demands whatsoever, except in the case of action or failure to act by the member, agent, or employee which constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;
 12. Make and alter operating agreements, not inconsistent with its articles of organization or with the laws of the Cherokee Nation, for the administration and regulation of the affairs of the limited liability company;
 13. Cease its activities and dissolve; and
 14. Do every other act not inconsistent with law which is appropriate to promote and attain the purposes set forth in its articles of organization.

'204 Articles of organization♦Filing

A. One or more tribal members of the Cherokee Nation, pursuant to Article III, Section 1 of the Cherokee Nation Constitution, or Cherokee Nation and one or more tribal members, persons, partnerships, associations or corporations may form a limited liability company upon the filing of executed articles of organization with the Office of the Principal Chief or his authorized representative.

B. 1. When the Office of the Principal Chief or his authorized representative files the articles of organization, the proposed organization becomes a limited liability company under the name and subject to the purposes, conditions, and provisions stated in the articles.

2. Filing of the articles by the Office of the Principal Chief or his authorized representative is conclusive evidence of the formation of the limited liability company.

C. A corporation incorporated under the Cherokee Nation Limited Liability Company Act must maintain its principal office in Indian Country, as defined by Title 18, Section 1151 of the United States Code within Cherokee Nation boundaries.

'205 Articles of organization♦Contents

A. The articles of organization shall set forth:

1. The name of the limited liability company;
2. The latest date on which the limited liability company is to dissolve; and

3. The street address of its principal place of business in Indian Country, any state, or foreign country and the name and address of its resident agent who shall be a member of a federally recognized tribe under the laws of the United States of America and reside within the boundaries of the Cherokee Nation.

B. It is not necessary to set out in the articles of organization any of the powers enumerated in this act. [FN1]

[FN1] Section 200 et seq. of this title.

'206 Articles of organization♦Execution

A. Articles required by this act [FN1] to be filed with the Office of the Principal Chief or his authorized representative shall be executed in the following manner:

1. Articles of organization must be signed by at least one person who need not be a member of the limited liability company; and
2. Articles of amendment, correction or dissolution must be signed by a manager.

B. Any person may sign any articles by an attorney in fact. Powers of attorney relating to the signing of articles by an attorney in fact need not be sworn to, verified or acknowledged, and need not be filed with the Office of the Principal Chief or his authorized representative.

C. The execution of any articles under this act constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

D. Any signature on any instrument authorized to be filed with the Office of the Principal Chief or his authorized representative under this act may be a facsimile.

[FN1] Section 200 et seq. of this title.

'207 Delivery of articles of organization and other documents to Office of the Principal Chief or his authorized representative; Filing♦Fees♦Amendment♦Cancellation

A. Two signed copies of the articles of organization or any articles of amendment or dissolution or of any decree of judicial amendment or dissolution shall be delivered to the Office of the Principal Chief or his authorized representative. A person who executes articles as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Office of the Principal Chief or his authorized representative finds that any articles do not conform to law, upon receipt of all filing fees required by law he shall:

1. Endorse on each copy the word "filed" and the day, month and year of the filing thereof;
2. File one copy in his office; and
3. Return the other copy to the person who filed it or his representative.

B. Upon the filing of articles of amendment or a decree of judicial amendment in the Office of the Principal Chief or his authorized representative, the articles of organization shall be amended as set forth therein and upon the effective date of articles of dissolution or a

decree of judicial dissolution, the articles of organization are canceled.

6

'208 Name of company Restrictions

The name of each limited liability company as set forth in its articles of organization:

1. Shall contain either the words "limited liability company" or "limited company" or the abbreviations "L.L.C." or "L.C." The word "limited" may be abbreviated as "LTD." and the word "Company" may be abbreviated as "CO."; and

2. a. May not be the same as or indistinguishable from:

(1) names upon the records in the Office of the Principal Chief or his authorized representative of then existing limited liability companies whether organized pursuant to the laws of the Cherokee Nation or licensed or registered as foreign limited liability companies,

Or

(2) names upon the records in the Office of the Principal Chief or his authorized representative of corporations organized under the laws of the Cherokee Nation or of foreign corporations registered in accordance with the laws of the Cherokee Nation then existing or which existed at any time during the preceding three (3) years, or

(3) names upon the records in the Office of the Principal Chief or his authorized representative of limited partnerships formed under the laws of the Cherokee Nation or of foreign limited partnerships registered in accordance with the laws of the Cherokee Nation, or

(4) trade names, fictitious names, or other names reserved with the Principal Chief or his authorized representative.

b. The provisions of subparagraph a of this paragraph shall not apply if one of the following is filed with the Office of the Principal Chief or his authorized representative:

(1) the written consent of the other limited liability company, corporation, limited partnership, or holder of the trade name, fictitious name or other reserved name to use the same or indistinguishable name with the addition of one or more words, numerals, numbers or letters to make that name distinguishable upon the records of the Office of the Principal Chief or his authorized representative, except that the addition of words, numerals, numbers or letters to make the name distinguishable shall not be required where such written consent states that the consenting entity is about to change its name, cease to do business, withdraw from the Cherokee Nation or be wound up, or

(2) a certified copy of a final decree of any final judicial decree of the Cherokee Nation establishing the prior right of such limited liability company or holder of a limited liability company name to the use of such name in the Cherokee Nation.

'209 Reservation and transfer of company name

A. The exclusive right to use a specified name for a domestic or foreign limited liability company, in good faith, may be reserved by:

1. A person who intends to organize a domestic limited liability company or a foreign limited liability company to be registered in the Cherokee Nation and to adopt that name;

2. A domestic limited liability company or a foreign limited liability company registered in the Cherokee Nation which proposes to adopt that name; or

3. A foreign limited liability company which intends to register in the Cherokee Nation and adopt that name.

7

B. A person seeking to reserve a specified name shall file an application executed by the applicant with the Office of the Principal Chief or his authorized representative and pay the filing fee required by law. If the Office of the Principal Chief or his authorized representative finds that the name is available for use by a domestic or foreign limited liability company, he shall reserve the name for the exclusive use of the applicant for a period of sixty (60) days.

C. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the Office of the Principal Chief or his authorized representative a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

210 Principal office and registered agent

A. Each limited liability company shall continuously maintain in Indian Country, as defined by Section 1151 of Title 18 of the United States Code and within the Cherokee Nation boundaries:

1. A principal office; and

2. A resident agent for service of process on the limited liability company that is an individual resident within the Cherokee Nation boundaries, or a domestic or qualified foreign corporation, limited liability company, or limited partnership.

B. 1. A limited liability company may designate or change its resident agent or principal office by filing with the Office of the Principal Chief or his authorized representative a statement authorizing the designation or change and signed by any manager.

2. A limited liability company may change the address of its resident agent by filing with the Office of the Principal Chief or his authorized representative a statement of the change signed by any manager.

3. A designation or change of a principal office or resident agent or address of the resident agent for a limited liability company under this subsection is effective when the Office of the Principal Chief or his authorized representative files the statement.

C. 1. A resident agent who changes his address in the Cherokee Nation may notify the Office of the Principal Chief or his authorized representative of the change by filing with the Office of the Principal Chief or his authorized representative a statement of the change signed by him or on his behalf.

2. The statement shall include:

a. the name of the limited liability company for which the change is effective,

b. the new address of the resident agent, and

c. the date on which the change is effective, if to be effective after the filing date.

3. If the new address of the resident agent is the same as the new address of the principal office of the limited liability company, the statement may include a change of address of the principal office if

a. the resident agent notifies the limited liability company of the change in writing, and

b. the statement recites that the resident agent has done so.

4. Unless otherwise provided in the statement, the change of address of the resident agent or principal office is effective when the Office of the Principal Chief or his authorized representative files the statement.

D. 1. A resident agent may resign by filing with the Office of the Principal Chief or his authorized representative a counterpart or

photocopy of the signed resignation.

2. Unless a later time is specified in the resignation, it is effective thirty (30) days after it is filed.

' 211 Articles of organization ♦ Amendment

A. The articles of organization shall be amended when:

1. There is a change in the name of the limited liability company;
2. There is a false or erroneous statement in the articles of organization;
3. There is a change in the time as stated in the articles of organization for the cancellation of the limited liability company; or
4. The members desire to restate the articles of organization in their entirety or to make a change in any other statement or to add a statement in the articles of organization in order to accurately represent their agreement.

B. An amendment to the articles of organization of a limited liability company shall set forth:

1. The name of the limited liability company;
2. The date of filing the articles of organization; and
3. The amendment to the articles of organization.

' 212 Articles of correction

A. If any document filed with the Office of the Principal Chief or his authorized representative under this act [FM] contains any typographical error, error of transcription, or other technical error or has been defectively executed, the document may be corrected by the filing of articles of correction.

B. Articles of correction shall set forth:

1. The title of the document being corrected;
2. The name of each party to the document being corrected;
3. The date that the document being corrected was filed; and
4. The provision in the document as previously filed and as corrected and, if execution of the document was defective, the manner in which it was defective.

9

C. Articles of correction may not make any other change or amendment which would not have complied in all respects with the requirements of this act at the time the document being corrected was filed.

D. Articles of correction shall be executed in the same manner in which the document being corrected was required to be executed.

E. Articles of correction may not:

1. Change the effective date of the document being corrected; or
2. Affect any right or liability accrued or incurred before its filing, except that any right or liability accrued or incurred by reason of the error or defect being corrected shall be extinguished by the filing if the person having the right has not detrimentally relied on the original document.

F. Notwithstanding that any instrument authorized to be filed with the Office of the Principal Chief or his authorized representative pursuant to the provisions of this act is, when filed inaccurately, defectively, or erroneously executed, sealed or acknowledged, or otherwise defective in any respect, the Office of the Principal Chief or his authorized representative shall not be liable to any person for the preclearance for filing, or the filing and indexing of the instrument by the Office of the Principal Chief or his authorized representative.

[FN1] Section 200 et seq. of this title.

213 Management of company with managers

A. Except as otherwise provided in the articles of organization, operating agreement, or this act, [FN1] a limited liability company shall be managed by or under the authority of one or more managers who may but need not be members.

B. The articles of organization or operating agreement may prescribe qualifications for managers.

C. The number of managers shall be specified in or fixed in accordance with the articles of organization or operating agreement.

[FN1] Section 200 et seq. of this title.

' 214 Managers ♦ Election ♦ Removal

Unless otherwise provided in the articles of organization or operating agreement:

1. The election of managers shall be by majority vote of the members; and
2. Any or all managers may be removed, with or without cause, by the written consent of the members.

215 Management of company without designated managers

The articles of organization or operating agreement may provide that the business of the limited liability company shall be managed without designated managers. So long as such provision continues in effect:

1. The members shall be deemed to be managers for purposes of applying provisions of this act, [FN1] unless the context clearly requires otherwise;

10

2. The members shall have and be subject to all duties and liabilities of managers; and

3. A member signing on behalf of the limited liability company shall sign as a manager.

Section 200 et seq. of this title.

' 216 Managers ♦ Duties ♦ Good faith ♦ Liability

Subject to the provisions of Section 217 of this title:

1. A manager shall discharge his duties as a manager in good faith, with the care an ordinary prudent person in a like position could exercise under similar circumstances, and in the manner he reasonably believes to be in the best interests of the limited liability company;
2. In discharging his duties, a manager may rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:
 - a. one or more employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented,
 - b. legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence, or
 - c. a committee of managers of which he is not a member if the manager reasonably believes the committee merits confidence;
3. A manager is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph 2 of this section unwarranted;
4. A manager is not liable for any action taken as a manager, or any failure to take any action, if he performed the duties of his office in

compliance with this section; and

5. Except as otherwise provided in the articles of organization or operating agreement, every manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager without the informed consent of the members from any transaction connected with the conduct or winding up of the limited liability company or from any personal use by him of its property.

♦ 217 Member or manager ♦ Limitation or elimination of liability ♦ Indemnification

A. Subject to subsection B of this section, the articles of organization or operating agreement may:

1. Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in Section 216 of this title; and

2. Provide for indemnification of a member or manager for judgments, settlements, penalties, fines or expenses incurred in any proceeding because he is or was a member or manager.

B. No provision permitted under subsection A of this section shall limit or eliminate the liability of a manager for:

II

1. Any breach of the manager's duty of loyalty to the limited liability company or its members;

2. Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

3. Any transaction from which the manager derived an improper personal benefit. ' 218 Managers ♦ Majority vote required

Except as otherwise provided in the articles of organization or operating agreement, if the limited liability company has more than one manager, all decisions of the managers shall be made by majority vote of the managers.

219 Manager as agent of limited liability company ♦ Unauthorized acts ♦ Property transactions

A. Every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including the execution in the limited liability company name of any instrument for apparently carrying on the business of the limited liability company of which he is a manager, binds the limited liability company, unless the manager so acting lacks the authority to act for the limited liability company in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority. The unauthorized acts of the manager shall bind the limited liability company as to persons acting in good faith who have no knowledge of the fact that the manager had no such authority.

B. Subject to the provisions of the Cherokee Nation Code Annotated, instruments and documents providing for the acquisition, mortgage, or disposition of real or personal property of the limited liability company shall be valid and binding upon the limited liability company if executed by one or more of its managers.

' 219.1 Title to property ♦ Transfer

A. Title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company.

B. Title to property of the limited liability company that is held in the name of one or more members or managers with an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, even if the name of the limited liability company is not indicated, may be transferred by an instrument of transfer executed by the persons in whose name title is held.

C. Property transferred under subsections A or B of this section may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company under Section 219 of Title 18 of the Cherokee Nation Code Annotated, unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

D. Title to property of the limited liability company that is held in the name of one or more persons other than the limited liability company without an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, may be transferred free of any

12

claims of the limited liability company or the members by the person in whose name title is held to a transferee who gives value without having notice that it is property of a limited liability company.

' 220 Members ♦ Voting rights

A. Unless otherwise provided in the articles of organization or operating agreement, the members of a limited liability company shall vote in proportion to their respective capital interests. Unless the context otherwise requires, references in this act [FNI] to a vote or the consent of the members shall mean a vote or consent of the members holding a majority of the capital interests. The vote or consent may be evidenced in the minutes of a meeting of the members or by a written consent in lieu of a meeting.

B. Except as required in this act, and unless otherwise provided in the articles of organization or operating agreement, a majority vote of the members shall be required to approve the following matters:

1. The dissolution and winding up of the limited liability company;

2. The sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited liability company;

3. Merger of the limited liability company with another domestic limited liability company or other business entity; and

4. An amendment to the articles of organization or operating agreement.

C. The articles of organization or operating agreement may alter the above voting rights and provide for any other voting rights of members. [FN1] Section 200 et seq. of this title.

'221 Records required to be kept ♦ Member access ♦ Managers may inspect and copy records

A. Unless otherwise provided in a written operating agreement, a limited liability company shall keep at its principal place of business the following:

1. A current and a past list of the full name and last-known mailing address of each member and manager;

1 Copies of records that would enable a member to determine the relative voting rights of the members;

3. A copy of the articles of organization, together with any amendments thereto;

4. Copies of the limited liability company's federal, state and local income tax returns and financial statements, if any, for the three most recent years or, if such returns and statements were not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the members to enable them to prepare their federal, state and local tax returns for such period;

5. Copies of any effective written operating agreements and all amendments thereto and copies of any written operating agreements no longer

in effect; and

13

6. Unless provided in writing in an operating agreement, a wilting setting out:

- a. the amount of cash and a statement of the agreed value of other property or services contributed by each member and the times at which or events upon the happening of which any additional contributions agreed to be made by each member are to be made, and
- b. the events upon the happening of which the limited liability company is to be dissolved and its affairs wound up, and
- c. any other information prepared pursuant to a requirement in an operating agreement.

B. A member, for any purpose reasonably related to the member's interest, may:

1. At the member's own expense, inspect and copy any limited liability company record upon reasonable request during ordinary business hours;

2. Obtain from time to time upon reasonable demand:

- a. true and complete information regarding the state of the business and financial condition of the limited liability company,
 - b. promptly after becoming available, a copy of the limited liability company's state and local income tax returns for each year, and
 - c. other information regarding the affairs of the limited liability company as is just and reasonable; and
3. Have a formal accounting of the limited liability company's affairs whenever circumstances render it just and reasonable.

C. A manager, for any purpose reasonably related to his position, may inspect and copy any limited liability company records upon reasonable request during ordinary business hours.

D. Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

' 222 Liability solely as manager or member

A person who is a member or manager, or both, of a limited liability company is not liable for the obligations of a limited liability company solely by reason of being such member or manager or both.

' 223 Contribution of member ♦ Form

The contribution of a member to a limited liability company may be in cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.

14

' 224 Performance of obligations ♦ Compromise ♦ Remedies for failure to perform

A. 1. Except as otherwise provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any written promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or other reason.

2. If a member does not make the required contribution of property or services, he is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value, as stated in the operating agreement, of the stated contribution that has not been made.'

B. 1. The obligation of a member to make a contribution or return money or other property paid or distributed in violation of this act [FN1] may be compromised only upon compliance with the operating agreement, or, if the operating agreement does not so provide, with the unanimous consent of the members.

2. A compromise shall not impair the right of any creditor to enforce the obligation or to require the obligation to be enforced if:

- a. such creditor relied upon the obligation and the absence in the operating agreement of the limited liability company's authority to compromise the obligation, or
- b. a duty to the creditor was breached in the making of the compromise.

C. An operating agreement may provide that the capital interest of a member who fails to make any contribution or other payment that the member is required to make shall be subject to specified remedies for, or specified consequences of, the failure. The remedy or consequence may take the form of reducing the defaulting member's capital interest in the limited liability company, subordinating the defaulting member's capital interest in the limited liability company to that of the non-defaulting members, a forced sale of the capital interest in the limited liability company, forfeiture of the capital interest in the limited liability company, the lending by the non-defaulting members of the amount necessary to meet the commitment, a fixing of the value of the member's capital interest in the limited liability company by appraisal or by formula and redemption and sale of the member's capital interest in the limited liability company at that value, or other remedy or consequences.

Section 200 et seq. of this title.

♦ 225 Allocation of profits and losses ♦ Distributions

Except as otherwise provided in the operating agreement:

1. The profits and losses of a limited liability company shall be allocated among the members in proportion to their respective capital interests; and

2. Distributions of the limited liability company shall be made to the members in proportion to their right to share in the profits of the limited liability company.

' 226 Distributions ♦ Time

Except as otherwise provided in this act, [FN1] a member is entitled to receive distributions from a limited liability company before the withdrawal of the member from the limited liability company and before the dissolution and winding up of the limited liability company to the extent and at the times upon which the members unanimously agree or as provided in the operating agreement.

15

[FN1} Section 200 et seq. of this title.

' 227 Dissociating member--Receipt of fair market value of interest in company

Upon the occurrence of an event of dissociation under Section 236 of this title which does not cause dissolution, a dissociating member is entitled to receive any distribution which the member is entitled to receive under the operating agreement or, if not provided in the operating agreement, within a reasonable time after dissociation, the fair market value of the member's interest in the limited liability company as of the date of dissociation. For the purpose of this section, unless the operating agreement otherwise provides, the term "fair market value" shall mean the amount which a willing buyer would pay to a willing seller, neither being under a compulsion to buy or sell, and both being cognizant of all relevant facts concerning the value of a dissociating member's interest.

' 228 Distribution ♦ Cash ♦ Asset in kind

Except as otherwise provided in the operating agreement:

1. A member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash; and
2. No member may be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds the percentage which the member's interest in the limited liability company is of all of the interests in the limited liability company.

' 229 Distribution♦Status and rights of member

At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

' 230 Distribution♦Restrictions♦Effect on indebtedness

A. A distribution may not be made if, after giving effect to the distribution:

1. The limited liability company would not be able to pay its debts as they become due in the usual course of business; or
2. The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

B. The limited liability company may base a determination that a distribution is not prohibited under subsection A of this section on:

1. Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or
2. A fair valuation or other method that is reasonable in the circumstances.

C. Except as provided in subsection E of this section, the effect of a distribution under subsection A of this section is measured as of 16

1. The date the distribution is authorized, if the payment occurs within one hundred twenty (120) days after the date of authorization; or
2. The date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

D. A limited liability company's indebtedness to a member, incurred by reason of a distribution made in accordance with this section, is at parity with the limited liability company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

E. 1. If the terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection B of this section; and

2. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

' 231 Wrongful distribution♦Liability of member♦Action for recovery

If a member has received a distribution in violation of the operating agreement or Section 230 of this title, the member shall be liable to the limited liability company for the amount of the distribution wrongfully made. An action for the recovery of any wrongful distribution to a member must be brought within three (3) years from the date of the distribution.

' 232 Membership interest♦Status

A membership interest is personal property. A member has no interest in specific limited liability company property.

' 233 Assignment of membership interest

A. Unless otherwise provided in the articles of organization or an operating agreement:

1. A membership interest is assignable in whole or in part;
2. An assignment of a membership interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or become or to exercise any rights or powers of a member,
3. An assignment entitles the assignee to receive such distribution or distributions to which the assignor was entitled to the extent assigned;
4. Until the assignee of a limited liability company interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights of a member, subject to the members' right to remove the assignor pursuant to Section 236 of this title, the removal of an assignor shall not itself cause the assignee to become a member,
5. Until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and
6. The assignor of a membership interest is not released from his liability as a member solely as a result of the assignment.

17

B. The articles of organization or an operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and also may provide for the assignment or transfer of any membership interest represented by such a certificate and make other provisions with respect to such certificates.

C. A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his membership interest. Unless otherwise provided in the operating agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against any or all of the membership interest of a member is not an assignment and shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

234 Judgment creditor♦Rights and interests

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest. This act [FN11 does not deprive any member of the benefit of any exemption laws applicable to his membership interest. This section shall be the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

[FN11 Section 200 et seq. of this title.

' 235 Assignee or interest in limited liability company♦Membership rights, powers, restrictions and liabilities♦Rights and liability of assignor♦Admission .to membership directly in limited liability company

A. An assignee of an interest in a limited liability company may become a member if and to the extent that:

1. The articles of organization or an operating agreement provides; or
2. The members consent in writing.

B. An assignee who becomes a member, to the extent assigned, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreement and this act. [FN1] However, unless otherwise provided in the articles of organization, an operating agreement or other written agreement, an assignee who becomes a member also is liable for any obligations of his assignor to make contributions as provided in Section 224 of this title, but shall not be liable for the obligations of his assignor under Section 231 of this title. However, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time he became a member and which could not be ascertained from a written operating agreement.

C. Regardless of whether an assignee of an interest becomes a member, the assignor is not released from his liability to the limited liability company under Sections 224 and 231 of this title.

D. Except as otherwise provided in writing in the operating agreement, a member who assigns his entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member when any assignee of his interest becomes a member with respect to the assigned interest.

Is

E. Subject to subsection F of this section, a person acquiring a limited liability company interest directly from the limited liability company may become a member in a limited liability company upon compliance with the operating agreement or, if the operating agreement does not so provide in writing, upon the written consent of the members.

F. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or

2. The time provided in the operating agreement, or if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

[FNI] Section 200 et seq. of this title.

' 236 Cessation of membership in limited liability company ♦ Events causing ♦ Withdrawal as member ♦ Rights of legal representative of deceased or incompetent member

A. A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

1. The member withdraws by voluntary act from the limited liability company as provided in subsection C of this section;

2. The member ceases to be a member of the limited liability company as provided in Section 234 of this title;

3. The member is removed as a member either:

a. in accordance with the operating agreement, or

b. except as provided in writing in the operating agreement, when the member assigns all of his interest in the limited liability company, by an affirmative vote of a majority in number of the members who have not assigned their interests;

4. Subject to contrary written provision in the operating agreement, or written consent of all other members:

a. when the member:

(1) makes an assignment for the benefit of creditors,

(2) files a voluntary petition in bankruptcy,

(3) is adjudicated as bankrupt or insolvent,

(4) files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation,

(5) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature, or

19

(6) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of his properties,

b. after one hundred twenty (120) days from the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety (90) days after the expiration of any stay, the appointment is not vacated,

c. when, in the case of a member who is an individual:

(1) his death, or

(2) the entry of an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate,

d. when, in the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee,

e. when, in the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company,

f. when, in the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the revocation of its charter and the lapse of ninety (90) days after notice to the corporation of revocation without a reinstatement of its charter, or

g. when, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

B. The members may provide in writing in the operating agreement for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

C. Unless the operating agreement specifically denies in writing the power to withdraw voluntarily, a member may withdraw at any time by giving ninety (90) days' written notice to the other members or the notice required by the operating agreement. Unless the operating agreement specifically provides in writing a right to withdraw voluntarily, or if the withdrawal occurs as a result of otherwise wrongful conduct of the member, a member's voluntary withdrawal shall constitute a breach of the operating agreement and the limited liability company may recover from the withdrawing member damages, including the reasonable cost of replacing the services that the withdrawn member was obligated to perform. The limited liability company may offset its damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law. The limited liability company shall not, however, be entitled to any equitable remedy that would prevent a member from exercising his power to withdraw unless such power was denied in the operating agreement.

D. If a member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his

property, the member's executor, administrator, guardian, conservator, or other legal representative has all of the rights of an assignee of the member's interest.

20

' 237 Dissolution and winding up of affairs ♦ Causes

A limited liability company is dissolved and its affairs shall be wound up upon the earlier of:

1. The time or the occurrence of events specified in writing in the articles of organization or operating agreement;
2. The written consent of all of the members;
3. An event of dissociation of a member, unless the limited liability company is continued either by the unanimous consent of the remaining members within ninety (90) days following the occurrence of any such event or as otherwise provided in writing in the operating agreement; or
4. Entry of a decree of judicial dissolution under Section 238 of this title.

238 Decree of dissolution
On application by or for a member, the district court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

' 239 Winding up business or affairs ♦ Ways -- Acts and transactions of member or manager ♦ Presumptive notice

A. Except as otherwise provided in the articles of organization or operating agreement:

1. The business or affairs of the limited liability company may be wound up in one of the following ways:
 - a. by the managers, or
 - b. if one or more of the members or managers have engaged in conduct that casts reasonable doubt on their ability to wind up the business or affairs of the limited liability company, or upon other cause shown, by the district court on application of any member, his legal representative, or assignee; and
2. The persons winding up the business or affairs of the limited liability company may, in the name of, and for and on behalf of, the limited liability company:
 - a. prosecute and defend suits,
 - b. settle and close the business of the limited liability company,
 - c. dispose of and transfer the property of the limited liability company,
 - d. discharge the liabilities of the limited liability company, and
 - e. distribute to the members any remaining assets of the limited liability company.

B. Except as provided in subsections D and E of this section, after an event causing dissolution of the limited liability company any manager can bind the limited liability company:

21

1. By any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and
 2. By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.
- C. The filing of the articles of dissolution shall be presumed to constitute notice of dissolution for purposes of paragraph 2 of subsection B of this section.
- D. An act of a manager or member that is not binding on the limited liability company pursuant to subsection B of this section is binding if it is otherwise authorized by the limited liability company.
- E. An act of a manager or member that would be binding under subsection B or would be otherwise authorized but that is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

' 240 Winding up of affairs ♦ Distribution of assets

Upon the winding up of a limited liability company, the assets shall be distributed as follows:

1. Payment, or adequate provision for payment, shall be made to creditors, including to the extent permitted by law, members who are creditors, in satisfaction of liabilities of the limited liability company;
2. Except as provided in writing in the articles of organization or operating agreement, to members or former members in satisfaction of liabilities for distributions under Sections 226 and 227 of this title; and
3. Except as provided in writing in the articles of organization or operating agreement, to members and former members first for the return of their contributions and second respecting their membership interests, in proportions in which the members share in distributions.

' 241 Articles of dissolution

After the dissolution of the limited liability company, pursuant to Section 237 of this title, the limited liability company shall file articles of dissolution in the Office of the Principal Chief or his authorized representative upon payment of the filing fee required by Section 255 of this title, the articles of dissolution shall set forth:

1. The name of the limited liability company;
2. The date of filing of its articles of organization;
3. The reason for filing the articles of dissolution;
4. The effective date of the articles of dissolution if they are not to be effective upon the filing; and
5. Any other information the members or managers filing the certificate determine.

22

' 242 Foreign limited liability company ♦ Laws governing ♦ Powers, rights and privileges

A. Subject to the Constitution of the Cherokee Nation:

1. The laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its managers and members; and
2. A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of the Cherokee Nation.

B. A foreign limited liability company holding a valid registration in the Cherokee Nation shall have no greater rights and privileges than a domestic limited liability company. The registration shall not be deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in the Cherokee Nation.

' 243 Foreign limited liability company ♦ Registration procedure

Before transacting business in the Cherokee Nation, a foreign limited liability company shall register with the Office of the Principal Chief or his

authorized representative. In order to register, a foreign limited liability company shall:

1. Pay to the Office of the Principal Chief or his authorized representative a registration fee required by Section 56 of this act;
2. Provide the Office of the Principal Chief or his authorized representative with an original certificate from the certifying officer of the jurisdiction of the foreign limited liability company's organization attesting to the foreign limited liability company's organization under the laws of such jurisdiction; and
3. Submit to the Office of the Principal Chief or his authorized representative an application in duplicate for registration as a foreign limited liability company, signed by a manager, member, or other person, and setting forth:
 - a. the name of the foreign limited liability company and, if different, the name under which it proposes to transact business in the Cherokee Nation,
 - b. the state or other jurisdiction and date of its organization,
 - c. the name and street address of a registered agent in the Cherokee Nation which agent shall be an individual resident of the Cherokee Nation, a domestic corporation, a foreign corporation having a place of business and authorized to do business in the Cherokee Nation, a domestic limited liability company, or a foreign limited liability company having a place of business and authorized to do business in the Cherokee Nation,
 - d. a statement that the Office of the Principal Chief or his authorized representative is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed under subparagraph c of this paragraph, or if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence,
 - e. the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited liability company, and

23

f. such additional information as may be necessary or appropriate in order to enable the Office of the Principal Chief or his authorized representative to determine whether such limited liability company is entitled to transact business in the Cherokee Nation.

' 244 Foreign limited liability company ♦ Duties of the Office of the Principal Chief or his authorized representative

If the Office of the Principal Chief or his authorized representative finds that an application for registration conforms to the provisions of this act [FM] and all requisite fees have been paid, it shall:

1. Endorse on the applications the word "filed", and the month, day, and year of the filing;
2. File in its office one copy of the application;
3. Issue a certificate of registration to transact business in the Cherokee Nation; and
4. Return the certificate of registration, together with a copy of the application to the person who filed the application or his representative.

[FN1] Section 200 et seq. of this title.

' 245 Foreign limited liability company ♦ Name

No certificate of registration shall be issued to a foreign limited liability company unless the name of such company satisfies the requirements of Section 208 of this title. If the name of a foreign limited liability company does not satisfy the requirements of Section 208 of this title, to obtain or maintain a certificate of registration, the foreign limited liability company may use a designated name that is available, and which satisfies the requirements of Section 208 of this title, if it informs the Office of the Principal Chief or his authorized representative of the designated name.

' 246 Foreign limited liability company ♦ Correction certificate ♦ Recording changes

A. If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file in the Office of the Principal Chief or his authorized representative a certificate, signed by a manager, member or other person, correcting the statement and pay the fee provided for in Section 255 of this title.

B. A registered foreign limited liability company shall record any changes in its principal office, its registered agent, or the registered agents address, by filing with the Office of the Principal Chief or his authorized representative a statement of the change and paying the fee provided for in Section 255 of this title.

' 247 Foreign limited liability company ♦ Certificate of withdrawal

A. A foreign limited liability company authorized to transact business in the Cherokee Nation may withdraw from the Cherokee Nation upon procuring from the Office of the Principal Chief or his authorized representative a certificate of withdrawal. In order to procure such certificate, the foreign limited liability company shall file with the Office of the Principal Chief or his authorized representative an application for withdrawal and pay the fee provided for in Section 255 of this title. The application for withdrawal shall set forth:

24

1. The name of the foreign limited liability company and the state or other jurisdiction under the laws of which it is organized;
 2. That the foreign limited liability company is not transacting business in the Cherokee Nation;
 3. That the foreign limited liability company surrenders its certificate of registration to transact business in the Cherokee Nation;
 4. That the foreign limited liability company revokes the authority of its registered agent for service of process in the Cherokee Nation and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in the Cherokee Nation during the time the foreign limited liability company was authorized to transact business in the Cherokee Nation may thereafter be made on such foreign limited liability company by service thereof upon the Office of the Principal Chief or his authorized representative; and
 5. An address to which a person may mail a copy of any process against the foreign limited liability company.
- B. The application for withdrawal shall be executed by the foreign limited liability company by one of its managers, members, or other persons, or, if the foreign limited liability company is in the hands of a receiver or trustee, by such receiver or trustee on behalf of the foreign limited liability company.

' 248 Foreign limited liability company ♦ Necessity of registration to transact business in the Cherokee Nation

A. A foreign limited liability company transacting business in the Cherokee Nation may not maintain an action, suit, or proceeding in a court of the Cherokee Nation until it has registered in the Cherokee Nation as provided in this act. [FN1]

B. The failure of a foreign limited liability company to register in the Cherokee Nation does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of the Cherokee Nation.

C. A foreign limited liability company, by transacting business in the Cherokee Nation without registration, appoints the Office of the Principal

Chief or his authorized representative as its agent for service of process with respect to a cause of action arising out of the transaction of business in the Cherokee Nation.

D. A member of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of such company's having transacted business in the Cherokee Nation without a valid certificate of registration.

[E1s11] Section 200 et seq. of this title.

' 249 Foreign limited liability company ♦ Acts not constituting transacting business in the Cherokee Nation

A. The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this act: [EN!]

1. Maintaining, defending, or settling any proceeding;

25

2. Holding meetings of its members or carrying on any other activities concerning its internal affairs;

3. Maintaining bank accounts;

4. Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities;

5. Selling through independent contractors;

6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the Cherokee Nation before they become contracts;

7. Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

B. Securing or collecting debts or enforcing mortgages and security interest in property securing the debts;

9. Holding, protecting, renting, maintaining and operating real or personal property in the Cherokee Nation so acquired;

10. Selling or transferring title to property in the Cherokee Nation to any person; or

11. Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature.

B. For the purposes of this section, any foreign limited liability company which owns income-producing real or tangible personal property in the Cherokee Nation, other than property exempted by subsection A of this section, will be considered transacting business in the Cherokee Nation.

C. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in the Cherokee Nation or to regulation under any other law of the Cherokee Nation.

[FN1] Section 200 et seq. of this title.

' 250 Foreign limited liability company ♦ Action to restrain transacting business in the Cherokee Nation

The General Counsel of the Cherokee Nation may maintain an action to restrain a foreign limited liability company from transacting business in the Cherokee Nation in violation of this act. [FN1]

[FN1] Section 200 et seq. of this title.

' 251 Action to recover judgment ♦ Conditions

A member may bring an action in the right of the limited liability company to recover a judgment in its favor if all of the following conditions are met:

26

1. Either:

a. management of the limited liability company is vested in a manager or managers who have the sole authority to cause the limited liability company to sue in its own right, or

b. management of the limited liability company is reserved to the members but the plaintiff does not have the authority to cause the limited liability company to sue in its own right under the provisions of an operating agreement; and

2. The plaintiff has made demand on those managers or those members with such authority requesting that such managers or such members cause the limited liability company to sue in its own right; and

3. The members or managers with such authority have wrongfully refused in the exercise of their business judgment to bring the action or, after adequate time to consider the demand, have failed to respond to such demand; and

4. The plaintiff

a. is a member of the limited liability company at the time of bringing the action, and

b. was a member of the limited liability company at the time of the transaction of which he complains, or his status as a member of the limited liability company thereafter developed upon him pursuant to the terms of the operating agreement from a person who was a member at such time; and

5. The plaintiff fairly and adequately represents the interests of the members in enforcing the rights of the limited liability company.

' 252 Derivative action ♦ Complaint

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by the managers or the members who would otherwise have the authority to cause the limited liability company to sue in its own right.

' 253 Derivative action ♦ Expenses ♦ Disposition of proceeds

A. If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, and shall direct him to remit to the limited liability company the remainder of those proceeds received by him.

B. In any action hereafter instituted in the right of any domestic or foreign limited liability company by a member or members thereof, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendants the reasonable expenses, including attorneys' fees, incurred by them in the defense of such action.

27

' 254 Merger or consolidation

A. Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into one or more domestic limited liability companies or other business entities, formed or organized under the laws of the Cherokee Nation, any state of the United States, or the District of Columbia, with such domestic limited liability company being the surviving or resulting domestic limited liability

company or other business entity. As used in this section, "other business entity" means a corporation, a business trust, a common law trust, or an unincorporated business including a partnership, whether general or limited, but excluding a domestic limited liability company.

B. Unless otherwise provided in the articles of organization or the operating agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by a majority of the members or, if there is more than one class or group of members, then by a majority of each class or group. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

C. If a domestic limited liability company is merging or consolidating pursuant to this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file articles of merger or consolidation with the Office of the Principal Chief or his authorized representative. The articles of merger or consolidation shall state:

1. The name and jurisdiction of formation or organization of each of the domestic limited liability companies or other business entities which are to merge or consolidate;
2. That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities which is to merge or consolidate;
3. The name of the surviving or resulting domestic limited liability company or other business entity;
4. The future effective date or time, which shall be a date or time certain, of the merger or Consolidation if it is not to be effective upon the filing of the articles of merger or consolidation;
5. That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;
6. That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited liability company or other business entity, upon request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate;
7. In the case of a merger, any amendments or changes in the articles of organization of the surviving domestic limited liability company that are to be effected by the merger;
8. In the case of a consolidation, that the articles of organization of the resulting domestic limited liability company shall be as set forth in an attachment to the articles of consolidation; and

28

9. If the surviving or resulting entity is not a domestic limited liability company or business entity formed or organized pursuant to the laws of the Cherokee Nation, a statement that such surviving or resulting other business entity agrees it may be served with process in the Cherokee Nation in any action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate; irrevocably appoints the Office of the Principal Chief or his authorized representative as its agent to accept service of process in any such action, suit or proceeding; and specifies the address to which a copy of such process shall be mailed to the entity by the Office of the Principal Chief or his authorized representative.

D. Any failure to file the articles of merger or consolidation in connection with a merger or consolidation which was effective prior to the effective date of this act shall not affect the validity or effectiveness of any such merger or consolidation.

E. A merger or consolidation shall be effective upon the filing with the Office of the Principal Chief or his authorized representative of articles of merger or consolidation, unless a future effective date or time is provided in the articles of merger or consolidation.

F. Articles of merger or consolidation shall act as articles of dissolution for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

G. Once any merger or consolidation is effective pursuant to this section, for all purposes of the laws of the Cherokee Nation, all of the rights, privileges and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated and all property, real, personal and mixed, and all debts due to any of said domestic limited liability companies and other business entities, as well as all other things and causes of action belonging to each of such domestic limited liability companies and other business entities shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each of the domestic limited liability companies and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the Cherokee Nation, in any of such domestic limited liability companies and other business entities shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of any said

domestic limited liability companies and other business entities shall be preserved unimpaired. All debts, liabilities and duties of each of the domestic limited liability companies and other business entities that have merged or consolidated shall thereafter attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against the limited liability company or other entity to the same extent as if the debts, liabilities and duties had been incurred or contracted by the limited liability company or other entity. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited liability company to wind up its affairs pursuant to Section 237 of this title or pay its liabilities and distribute its assets pursuant to Section 240 of this title.

255 Fees

The Office of the Principal Chief or his authorized representative shall charge and collect the following fees:

1. For filing the original articles of organization, a fee of One Hundred Dollars (\$100.00);
2. For filing amended, corrected or restated articles of organization, a fee of Fifty Dollars (\$50.00);
3. For filing articles of merger or consolidation and issuing a certificate of merger or consolidation, a fee of One Hundred Dollars (\$100.00);
4. For filing articles of dissolution and issuing a certificate of cancellation, a fee of Fifty Dollars (\$50.00);
5. For filing a certificate of correction of statements in an application for registration of a foreign limited liability company, a fee of One Hundred Dollars (\$100.00);
6. For issuing a certificate for any purpose whatsoever, a fee of Ten Dollars (\$10.00);
7. For filing an application for reservation of a name, or for filing a notice of the transfer or cancellation of any name reservation, a fee of Ten Dollars (\$10.00);

- 8. For filing a statement of change of address of the principal office or resident agent, or both, or the resignation of a resident agent, a fee of Twenty-five Dollars (\$25.00);
- 9. For filing an application for registration as a foreign limited liability company, a fee of Three Hundred Dollars (\$300.00);
- 10. For filing an application of withdrawal as provided in Section 247 of this title, a fee of One Hundred Dollars (\$100.00);
- 11. For any service of notice, demand, or process upon the Office of the Principal Chief or his authorized representative as resident agent of a limited liability company, a fee of Ten Dollars 010.001 which amount may be recovered as taxable costs by the party to be sued, action, or proceeding causing such service to be made if such party prevails therein; and
- 12. For acting as the registered agent, a fee of Forty Dollars (\$40.00) shall be paid on the first day of July each year to the Office of the Principal Chief or his authorized representative.

All fees shall be properly accounted for and shall be paid into an account held by the Office of the Principal Chief or his authorized representative. [FN1]

[FN1] Section 200 et seq. of this title.

' 256 Action to compel execution or filing of articles or other documents

Any person who is adversely affected by the failure or refusal of any person to execute and file any articles or other document to be filed under this act [FN1] may petition the district court of the Cherokee Nation to direct the execution and filing of the articles or other document. If the court finds that it is proper for the articles or other document to be executed and filed and that there has been failure or refusal to execute and file such document, it shall order the Office of the Principal Chief or his authorized representative to file the appropriate articles or other document.

[FM] Section 200 et seq. of this title.

' 257 Application of act to foreign and interstate commerce

The provisions of this act [FN1] shall apply to commerce with the Cherokee Nation, foreign nations and among the several states of the United States only as permitted by law.

30

[NI] Section 200 et seq. of this title. ' 258 Rules of construction of act

A. The rules that statutes in derogation of the common law are to be strictly construed shall have no application to this act. [FN1]

B. The law of estoppel shall apply to this act.

C. The law of agency shall apply under this act.

D. This act shall not be construed so as to impair the obligations of any contract existing when the act goes into effect, nor to affect any action or proceedings begun or right accrued before this act takes effect.

[FN1] Section 200 et seq. of this title. ' 259 District court Jurisdiction

The district court shall have jurisdiction to enforce the provisions of this act. [FN1]

[FN1] Section 200 et seq. of this title.

' 260 Cases not covered by this act

In any case not provided for in this act, [FN1] the rules of law and equity, including the law merchant, as applied in Oklahoma and other jurisdictions with provisions similar to those in Oklahoma shall govern.

[FN1] Section 200 et seq. of this title.

' 261 Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

' 262 Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

' 263 Emergency declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

31

Enacted by the Council of the Cherokee Nation on the 15th day of JULY, 1996.

Garland Eagle, President Cherokee Nation Council

ATTEST: Mary Flute-Cooksey, Secretary Cherokee Nation Council

Approved and signed by the Principal Chief this 15TH day of JULY, 1996

Joe Byrd, Principal Chief Cherokee Nation

ATTEST: Jeannie Battles, Secretary/Treasurer Cherokee Nation

YEAS AND NAYS AS RECORDED:

Troy Poteete	Chairman	Dora Mae Watie	Yea
Sam Ed Bush	Yea	Nick Lay	Nay
Mary Cooksey	Yea	Bill Baker	Yea
Harold De Moss	Nay	Don Crittenden	Yea
Paula Holder	Yea	Barbara Conness	Yea
Charles "Chuck" Hoskins	Yea	William Smoke	Yea
Harold "Jiggs" Phillips	Yea	Barbara Starr-Scott	

32

ACT NARRATIVE

AN ACT RELATING TO CHEROKEE NATION LIMITED LIABILITY COMPANY ACT

Districts this Act will affect: ALL

Program Operations: DIVISION OF LAW & JUSTICE

Departmental Contact: KIMBERLY TEEHEE, J.D., LAW CLERK

Purpose: To create new law authorizing the adoption of the Cherokee Nation Limited Liability Company Act.

Analysis: The proposed legislation is modeled after the Delaware Corporation Code and the Oklahoma General Corporation Code. This proposed legislation is widely accepted across the United States and comports with modern business practices. Both tribal members and the Cherokee Nation may form a limited liability company.