

CHAPTER 2-FORMATION

201. PURPOSE

A limited liability company may be formed under this Code for any lawful business purpose or purposes except to do in the Nation any business for which another statute specifically requires some other business entity or natural person to be formed or used for such business.

202. POWERS

Unless the articles of organization provide otherwise and subject to any limitations provided in this Code or any other law of the Nation, a limited liability company may:

- (a) sue or be sued, or institute, participate in or defend any action or proceeding, whether judicial, arbitral, administrative or otherwise, in its name;
- (b) purchase, take, receive, lease or otherwise acquire, own, hold, improve, use or otherwise deal in or with real or personal property or an interest in real or personal property, wherever situated;
- (c) sell, convey, assign, encumber, mortgage, pledge, lease, exchange, transfer, create a security interest in or otherwise dispose of all or part of its property or assets;
- (d) purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, employ, sell, mortgage, lend, pledge or otherwise dispose of and otherwise use and deal in and with shares or other interests in, securities issued by and direct or indirect obligations of:
 - (1) other persons; or
 - (2) any Indian Nation, government, state, territory, governmental district or municipality or of any instrumentality or subdivision of any of them;
- (e) make contracts, including, but not limited to, contracts of guaranty and suretyship, incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds or other obligations, secure any of its obligations by mortgage, pledge or other encumbrance of all or any part of its property, franchises and income, make contracts of guaranty and suretyship that are necessary or convenient to the conduct, promotion or attainment of the business of (i) a limited liability company or other person at least a majority of the outstanding membership or other ownership interests of which are owned, directly or indirectly, by the contracting limited liability company, (ii) a limited liability company or other person that owns, directly or indirectly, at least a majority of the outstanding membership interests of the contracting limited liability company or (iii) a limited liability company or other person at least a

majority of the outstanding membership or other ownership interests of which are owned, directly or indirectly, by a limited liability company or other person that owns, directly or indirectly, at least a majority of the outstanding membership interests of the contracting limited liability company, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion or attainment of the business of the contracting limited liability company and make other contracts of guaranty and suretyship that are necessary or convenient to the conduct, promotion or attainment of the business of the contracting limited liability company. A limited liability company may make any contracts of guaranty and suretyship that are not necessary or convenient to the conduct, promotion or attainment of the business of the contracting limited liability company upon the vote of the percentage in interest of the members or class or classes of members provided in the operating agreement, or if no such percentage is so stated, upon the vote of a majority in interest of the members entitled to vote thereon; provided, however, that the operating agreement may provide that no such vote is required;

- (f) lend money for any lawful purpose, invest or reinvest its funds, or take and hold real or personal property as security for the payment of funds so loaned or invested;
- (g) conduct its business, carry on its operations, maintain offices and exercise the powers granted by this Code in any state, foreign country or other jurisdiction;
- (h) select or appoint managers, employees and agents of the limited liability company, define their duties and fix their compensation;
- (i) assist, lend money to and transact other business with a member, manager, agent or employee of such limited liability company;
- (j) make and alter its operating agreement, not inconsistent with its articles of organization or with the laws of this state, concerning the business of the limited liability company and the conduct of its affairs;
- (k) indemnify a member or manager or any other person;
- (l) pay pensions and establish pension plans, pension trusts, profit-sharing plans, profit-sharing trusts, equity bonus plans, equity option plans and other incentive plans for any of its members, managers, employees, agents or consultants or any of the directors, officers, managers, employees, agents or consultants or its affiliates;
- (m) make donations for the public welfare or for charitable, scientific, religious, civic, educational or similar purposes;
- (n) transact any lawful business in aid of governmental policy;

- (o) be a promoter, shareholder, general partner, limited partner, member, associate or manager of any association, corporation, partnership, limited partnership, limited liability company, joint venture, trust or other entity or enterprise;
- (p) cease its activities, cancel its articles of organization or dissolve and;
- (q) have and exercise all powers, in addition to those set forth in subdivisions (a) through (p) of this section, not inconsistent with law, necessary or convenient to effect any or all of the purposes for which the limited liability company is formed.

203. FORMATION

- (a) One or more persons may act as an organizer or organizers to form a limited liability company by (i) preparing the articles of organization of such limited liability company in accordance with section two hundred six of this Code, (ii) executing such articles of organization in accordance with section two hundred seven of this Code and (iii) filing such articles entitled "Articles of organization of...(name of limited liability company) under section two hundred three of the Limited Liability Company Code," in accordance with section two hundred nine of this Code.
- (b) An organizer may, but need not be, a member of the limited liability company that he or she forms.
- (c) At the time of its formation, a limited liability company must have at least one member.
- (d) A limited liability company is formed at the time of the filing of the initial articles of organization with the Nation Clerk or at any later time specified in the articles of organization, not to exceed sixty days from the date of such filing. The filing of the articles of organization shall, in the absence of actual fraud, be conclusive evidence of the formation of the limited liability company as of the time of filing or effective date if later, except in an action or special proceeding brought by the Nation Prosecutor. A limited liability company formed under this Code shall be a separate legal entity, the existence of which as a separate legal entity shall continue until the cancellation of the limited liability company's articles of organization.

204. LIMITED LIABILITY COMPANY NAME

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

- (a) shall contain without abbreviation the words "Limited Liability Company" or the abbreviation "L.L.C." or "LLC";
- (b) shall be such as to distinguish it from the name of (i) any domestic limited liability company, (ii) any authorized foreign limited liability company or (iii) a fictitious name

of an authorized foreign limited liability company filed pursuant to section eight hundred two of this Code, in each case, as such names appear on the index of names of existing domestic and authorized foreign limited liability companies of any type or kind, including fictitious names of authorized foreign limited liability companies filed pursuant to section eight hundred two of this Code, with the Nation Clerk, or names the right to which are reserved;

- (c) shall be the name used by the limited liability company in its conduct of business;
- (d) shall not contain any word or phrase, or any abbreviation or derivative thereof, the use of which is prohibited or restricted by any other statute of the Nation, unless in the latter case the restrictions have been complied with;
- (e) shall not contain the following phrases or any abbreviation or derivative thereof:

board of trade	Oneida Indian Nation police
chamber of commerce	Oneida
community renewal	Oneida Indian Nation
corporation	tenant relocation
incorporated	urban development
partnership	urban relocation
	Nation

- (f) shall not contain the following words, or any abbreviation or derivative thereof:

acceptance	guaranty
annuity	indemnity
assurance	insurance
attorney	investment
bank	lawyer
benefit	loan
bond	mortgage
casualty	savings
doctor	surety
endowment	title
fidelity	trust
finance	underwriter

unless the approval of the Nation Clerk is attached to the articles of organization or unless the word "doctor" or "lawyer" or an abbreviation or derivative thereof is used in a context that clearly denotes a purpose other than the practice of law or medicine;

- (g) shall not, unless the approval of the Nation Clerk is attached to the articles of organization or application for authority, contain the word "blind" or "handicapped."

- (h) shall not, unless the approval of the Nation Clerk is attached to the articles of organization or application for authority, contain the word "exchange" or any abbreviation or derivative thereof. Such approval shall not be granted by the Nation Clerk if in his or her opinion the use of the word "exchange" in the limited liability company's proposed name would falsely imply that the limited liability company conducts its business at a place where trade is carried on in securities or commodities by brokers, dealers, or merchants.

205. RESERVATION OF NAME

- (a) Subject to section two hundred four of this Code, the exclusive right to the use of a name may be reserved by:
 - (1) any person intending to form or cause the formation of a domestic limited liability company under this Code;
 - (2) any domestic limited liability company or any authorized foreign limited liability company intending to change its name;
 - (3) any foreign limited liability company intending to apply for authority to do business in the Nation and to adopt that name; and
 - (4) any person intending to form a foreign limited liability company and intending to have it apply for authority to do business in the Nation.
- (b) A fictitious name for use pursuant to section eight hundred two of this Code may be reserved by:
 - (1) and foreign limited liability company intending to apply for authority to do business in the Nation pursuant to section eight hundred two of this Code;
 - (2) any authorized foreign limited liability company intending to change the fictitious name under which it does business in the Nation; and
 - (3) any authorized foreign limited liability company that has changed its name in its jurisdiction, such new name not being available in the Nation.
- (c) Application to reserve a limited liability company name shall be delivered to the Nation Clerk. It shall set forth the name and address of the applicant, the name to be reserved and a statement of the basis for the application under subdivision (a) or (b) of this section. The Nation Clerk may require that there be included in the application a statement as to the nature of the business to be conducted by the limited liability company it being sufficient to state, either alone, or with other purposes, that the limited

liability company intends to conduct any lawful act or activity for which limited liability companies may be formed under this Code. If the name is available for use by the applicant for a limited liability company, the Nation Clerk shall reserve the name for the use of the applicant for a period of sixty days and issue a certificate of reservation. The restrictions and qualifications set forth in section two hundred four of this Code are not waived by the issuance of a certificate of reservation. The certificate of reservation shall include the name of the applicant, the name reserved and the date of reservation. The certificate of reservation (or in lieu thereof an affidavit by the applicant or by his or her agent or attorney that the certificate of reservation has been lost or destroyed) shall accompany the articles of organization or the application for authority when either is delivered to the Nation Clerk. The Nation Clerk may extend the reservation for additional periods of not more than sixty days each, upon the written request of the applicant or his or her attorney in fact or agent delivered to the Nation Clerk and filed before expiration of the reservation period then in effect. Such request shall have attached to it the certificate of reservation. No more than two such extensions shall be granted.

206. ARTICLES OF ORGANIZATION

- (a) The articles of organization of a limited liability company shall set forth:
- (1) the name of the limited liability company;
 - (2) the address where the office of the limited liability company is to be located;
 - (3) if the limited liability company is to have specific date of dissolution in addition to the events of dissolution set forth in section seven hundred one of this Code, the latest date on which the limited liability company is to dissolve;
 - (4) a designation of the Nation Clerk as agent of the limited liability company upon whom process against it may be served and the post office address within or without this state to which the Nation Clerk shall mail a copy of any process against the limited liability company served upon him or her;
 - (5) if the limited liability company is to have a registered agent, its name and address within the territorial jurisdiction of the Nation and a statement that the registered agent is to be the agent of the limited liability company upon whom process against it may be served;
 - (6) whether the limited liability company is to be managed by one or more members or a class or classes of members or by one or more managers or a class or classes of managers;
 - (7) if all or specified members are to be liable in their capacity as members for all or

specified debts, obligations or liabilities of the limited liability company as authorized pursuant to section six hundred nine of this Code, a statement that all or specified members are so liable for such debts, obligations or liabilities in their capacity as members of the limited liability company as authorized pursuant to section six hundred nine of this Code; and

- (8) any other provisions, not inconsistent with law, that the members elect to include in the articles of organization for the regulation of the internal affairs of the limited liability company, including, but not limited to, (A) the business purpose for which the limited liability company is formed, (B) a statement of whether there are limitations on the authority of members or managers or a class or classes thereof to bind the limited liability company and (C) any provisions that are required or permitted to be included in the operating agreement of the limited liability company pursuant to section four hundred seventeen of this Code.

(b) In order for a limited liability company to exercise the powers enumerated in this Code, it is not necessary to set forth such powers in its articles of organization.

207. EXECUTION OF ARTICLES OR CERTIFICATES

- (a) Each article or certificate required by this Code to be filed with the Nation Clerk shall be executed in the following manner:
 - (1) the initial articles of organization must be signed by an organizer or organizers of the limited liability company;
 - (2) a certificate of amendment must be signed by at least one member, manager or authorized person of the limited liability company;
 - (3) restated articles of organization or amended and restated articles of organization must be signed by at least one member, manager or authorized person of the limited liability company;
 - (4) a certificate of correction must be signed by at least one member, manager or authorized person of the limited liability company;
 - (5) a certificate of cancellation must be signed by at least one member, manager or authorized person of the limited liability company;
 - (6) all other certificates must be signed by at least one member, manager or authorized person of the limited liability company.
- (b) Any person may sign any articles or certificate by an attorney in fact. Powers of attorney relating to the signing of articles or a certificate by an attorney in fact need not be filed

with the Nation Clerk or provided as evidence of authority by the person filing but must be retained in the records of the limited liability company.

- (c) Each article or certificate must be signed and verified or affirmed under penalties of perjury.
- (d) Each article or certificate must be dated, and the name and capacity of each signer must be stated beneath or opposite his or her signature.

208. EXECUTION, AMENDMENT OR CANCELLATION BY JUDICIAL ACT

If a person required by section two hundred seven of this Code to execute articles or a certificate fails or refuses to do so, any member or any permitted assignee of a membership interest who is adversely affected by such failure or refusal may petition the court to direct the execution of such articles or certificate. If the court finds that such articles or certificate should be executed and that such person has failed or refused to execute such articles or certificate, it shall order such person to file the appropriate articles or certificate.

209. FILING WITH THE NATION CLERK

A signed articles of organization and any signed certificate of amendment or other certificates filed pursuant to this Code or of any judicial decree of amendment or cancellation shall be delivered to the Nation Clerk. If the instrument that is delivered to the Nation Clerk for filing complies as to form with the requirements of law and the filing fee required by any statute of the Nation in connection therewith has been paid, the instrument shall be filed and indexed by the Nation Clerk. The Nation Clerk shall not review such articles or certificates for legal sufficiency; its review shall be limited to determining that the form has been completed.

210. LIABILITY FOR FALSE STATEMENT IN ARTICLES OR CERTIFICATES

- (a) If any articles of organization, certificate of amendment or other certificate filed pursuant to this Code contains a materially false statement, one who suffers loss by reasonable reliance on the statement may recover damages for the loss from:
 - (1) any person who executes the articles of organization or certificate, or caused another to execute it on his or her behalf, and knew, and any manager who knew of the filing of such articles or certificate and who knew or should have known with the exercise of reasonable care and diligence, the statement to be false in any material respect at the time the articles or certificates was executed; and
 - (2) any manager who thereafter knows of the filing of such articles or certificate and who knows or should have known with the exercise of reasonable care and diligence that any arrangement or other fact described in such articles or certificate has changed, making the statement false in any material respect.

- (b) Notwithstanding paragraph two of subdivision (a) of this section, no person shall have any liability for failing to cause the amendment or cancellation of the articles of organization or a certificate to be filed or failing to file a petition for its amendment or cancellation, if the articles of organization certificate or petition is filed within ninety days of the time when that person knew or should have known that the statement in the articles of organization or certificate was false in any material respect.

211. AMENDMENT OF ARTICLES OF ORGANIZATION

- (a) A limited liability company may amend its articles of organization from time to time, in any and as many respects as may be desired by (i) preparing a certificate of amendment, entitled "Certificate of amendment of the articles of organization of...(name of the limited liability company) under section two hundred eleven of the Limited Liability Company Code," in accordance with this section, (ii) executing such certificate of amendment in accordance with section two hundred seven of this Code and (iii) filing such certificate of amendment in accordance with section two hundred nine of this Code.
- (b) The certificate of amendment may set forth only such provisions as might be lawfully contained in the initial articles of organization filed at the time of making such amendment.
- (c) The certificate of amendment shall set forth:
 - (1) the name of the limited liability company and, if it has been changed, the name under which it was formed;
 - (2) the date of filing its initial articles or organization; and
 - (3) each amendment effected thereby, setting forth the subject matter of each provision of the articles of organization that is to be amended or eliminated and the full text of the provision or provisions, if any, which are to be substituted or added.
- (d) In particular, but without limiting the general power of amendment as stated in subdivision (b) of this section, a limited liability company shall amend its articles of organization no later than ninety days after the happening of any of the following events:
 - (1) a change in the name of the limited liability company;
 - (2) a change in address in which the office of the limited liability company is to be located;

- (3) a change in the latest date, if any, on which the limited liability company is to dissolve;
- (4) the continuation of the limited liability company under section seven hundred one of this Code after an event of dissolution;
- (5) a change in the name or street address of its registered agent if such change is made other than pursuant to section three hundred two of this Code;
- (6) a change in the post office address to which the Nation Clerk shall mail a copy of any process against the limited liability company served upon him or her if such change is made other than pursuant to section three hundred one of this Code;
- (7) a change in whether the limited liability company is to be managed by one or more members of a class or classes of members or by one or more managers or a class or classes of managers;
- (8) the discovery of a materially false or inaccurate statement in the articles of organization; and
- (9) the decision to change any other statement in the articles of organization.

(e) Unless otherwise provided in this Code, a certificate of amendment shall be effective at the time of its filing with the Nation Clerk.

212. CERTIFICATE OF CORRECTION

The articles of organization, and certificate or any other instrument relating to a domestic or foreign limited liability company filed with the Nation Clerk under this Code may be corrected with respect to any informality or error apparent on the face, incorrect statement or defect in the execution thereof, including the deletion of any matter not permitted to be stated therein. A certificate, entitled "Certificate of correction of....(title of articles or certificate and name of limited liability company) under section two hundred twelve of the Limited Liability Company Code," shall be signed, verified and delivered to the Nation Clerk. It shall set forth the name of the limited liability company, the date the articles or certificate to be corrected was filed by the Nation Clerk, a statement as to the nature of the informality, error, incorrect statement or defect, the provision in the articles or certificate as corrected or eliminated and, if the execution was defective, the proper execution. The filing of the certificate of correction with the Nation Clerk shall not alter the effective date of the instrument being corrected and shall not affect any right or liability accrued or incurred before such filing. A name of a limited liability company may not be changed or corrected pursuant to this section.

213. AUTHORIZATION OF AMENDMENT OF ARTICLES OF ORGANIZATION

- (a) Except as provided in the operating agreement, an amendment of the articles of organization shall be authorized by at least a majority in interest of the members entitled to vote thereon.
- (b) Notwithstanding subdivision (a) of this section, unless the operating agreement provides otherwise (including, but not limited to, by restricting or enlarging the management powers or responsibilities of one or more managers or classes of managers), if the limited liability company is managed by one or more managers then any of the following amendments may be authorized by a majority of such managers:
 - (1) to change the name or street address of the registered agent, if any, of the limited liability company in the state;
 - (2) to change the post office address of the registered agent, if any, of the limited liability company in the state;
 - (3) to correct any error in the articles of organization pursuant to section two hundred twelve of this Code.

214. RESTATED ARTICLES OF ORGANIZATION

- (a) A limited liability company may at any time, and from time to time, restate in a single instrument the text of its articles of organization, without making any amendment thereby. Alternatively, a limited liability company may restate in a single instrument the text of its articles of organization and as amended thereby to effect any one or more of the amendments authorized by this Code.
- (b) The restated or amended and restated articles of organization, as the case may be, shall be executed in accordance with section two hundred seven of this Code.
- (c) The restated articles of organization shall be filed with the Nation Clerk in accordance with section two hundred nine of this Code and shall set forth:
 - (1) the name of the limited liability company and, if it has been changed, the name under which it was formed;
 - (2) the date of filing of its articles of organization; and
 - (3) if the restated articles of organization restate the text of the articles of organization without making any amendments, then a statement that the text of the articles of organization is thereby restated without amendment to read as therein set forth in full; or

- (4) if the restated articles restate the text of the articles of organization, and is amended thereby, then a statement that the articles of organization is amended to effect one or more of the amendments authorized by this Code, specifying each such amendment and that the text of the articles of organization is thereby restated as amended to read as therein set forth in full.
- (d) Any amendments effected in connection with the restatement of the articles of organization shall be subject to any other provisions of this Code, including, but not limited to, section two hundred thirteen of this Code, that would apply if a separate certificate of amendment were filed to effect such amendment.
- (e) Unless otherwise provided in this Code, the restated or amended and restated articles of organization, as the case may be, shall be effective at the time of its filing with the Nation Clerk.