

CHAPTER 12-PROFESSIONAL SERVICE LIMITED LIABILITY COMPANIES

1201. DEFINITIONS

As used in this Code, unless the context otherwise requires, the term:

- (a) "Licensing authority" means the Oneida Indian Nation. For the purposes of this Code a person licensed by the State of New York pursuant to its education law shall be presumed to be licensed by the Oneida Indian Nation.
- (b) "Profession" includes any practice as an attorney and counselor-at-law, or a licensed physician, and those professions designated in title eight of the New York education law.
- (c) "Professional" means an individual duly authorized to practice a profession, a professional service corporation, a professional service limited liability company, a foreign professional service limited liability company, a registered limited liability partnership, a foreign limited liability partnership, a foreign professional service corporation or a professional partnership.
- (d) "Professional service" means any type of service to the public that may be lawfully rendered by a member of a profession within the purview of his or her profession.
- (e) "Professional service limited liability company" means a limited liability company organized under this Code.
- (f) "Foreign professional service limited liability company" has the meaning given to it in subdivision (a) of section thirteen hundred one of this Code.
- (g) "Professional partnership" means (1) a partnership without limited partners each of whose partners is a professional authorized by law to render a professional service within the Nation, (2) a partnership without limited partners each of whose partners is a professional, at least one of whom is authorized by law to render a professional service within the Nation or (3) a partnership without limited partners authorized by, or holding a license, certificate, registration or permit issued by a licensing authority.

1202.LIMITED LIABILITY COMPANIES ORGANIZED UNDER OTHER PROVISIONS OF LAW

The provisions of this Code shall not apply to limited liability companies heretofore or hereafter duly formed under any other provision of law.

1203. FORMATION

- (a) One or more professionals each of whom is authorized by law to render a professional service within the Nation, or one or more professionals, at least one of whom is authorized by law to render a professional service within the Nation, may form, or cause to be formed, a professional service limited liability company for pecuniary profit under this Code for the purpose of rendering the professional service or services as such professionals are authorized to practice. With respect to a professional service limited liability company formed to provide medical services, each member of such limited liability company must be licensed to practice medicine in the Nation. With respect to a professional service limited liability company formed to provide dental services, each member of such limited liability company must be licensed to practice dentistry in the Nation. With respect to a professional service limited liability company formed to provide veterinary services, each member of such limited liability company shall be licensed to practice veterinary medicine. With respect to a professional service limited liability company formed to provide professional engineering, land surveying, architectural and/or landscape architectural services, each member of such limited liability company must be licensed to practice one or more of such professions in the Nation. In addition to engaging in such profession or professions, a professional service limited liability company may engage in any other business or activities as to which a limited liability company may be formed under section two hundred one of this Code. Notwithstanding any other provisions of this section, a professional service limited liability company (i) authorized to practice law may not engage in another profession or business or activities or (ii) which is engaged in a profession or other business or activities other than law may not engage in the practice of law.
- (b) The articles of organization of a professional service limited liability company shall meet the requirements of this Code and (i) shall state the profession or professions to be practiced by such limited liability company and (A) the names and residence addresses of all individuals who are to be the original members and the original managers, if any, of such limited liability company, and (B) the names and residence addresses or, if none, the business address of all shareholders, directors, officers, members, managers and partners of all professional service corporations, foreign professional service corporations, professional service limited liability companies, foreign professional service limited liability companies, registered limited liability partnerships, foreign limited liability partnerships, and professional partnerships who are to be the original members or managers, if any, who are individuals of such limited liability company, (ii) shall have attached thereto a certificate or certificates issued by the licensing authority or by the comparable authority of another state certifying that each of the proposed members and managers, if any, who are individuals is authorized by law to practice a profession that such limited liability company is being formed to practice and, if applicable, that one or more of such individuals are authorized to practice within the Nation each profession that such limited liability company will be authorized to practice, and (iii) if such proposed member or manager, if any, is a professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership, (A) such certificate or certificates issued by the licensing authority or

by the comparable authority of another state shall certify either (1) that each proposed member or manager is authorized by law to practice a profession that such limited liability company is being formed to practice and, if applicable, that each shareholder, member or partner of such proposed member or manager is authorized by law to render a professional service within the Nation or (2) that one or more of such proposed members and one or more of such proposed managers, are authorized to practice within the Nation each profession that such limited liability company will be authorized to practice and that one or more of the shareholders, members or partners of such proposed members or managers are authorized to practice within the Nation each profession that such limited liability company will be authorized to practice within the Nation and (B) there shall be attached to the articles of organization of the professional service limited liability company a certificate by an authorized officer of the jurisdiction of its formation that the professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership or foreign limited liability partnership is validly existing and, in the case of a foreign professional service corporation, foreign professional service limited liability company or foreign limited liability partnership, a certificate from the Nation Clerk that such foreign professional service corporation, foreign professional service limited liability company or foreign limited liability partnership is authorized to do business under the Oneida Indian Nation business corporation law, under this Code or under the Oneida Indian Nation partnership law, as the case may be.

- (c) A thereof shall be filed by the professional service limited liability company with the licensing authority within thirty days after the filing of such certificate or amendment with the Nation Clerk.
- (d) A professional service limited liability company, other than a professional service limited liability company authorized to practice law, shall be under the supervision of Oneida Indian Nation Clerk and be subject to disciplinary proceedings and penalties, and its articles of organization shall be subject to suspension, revocation or annulment for cause.
- (e) A professional service limited liability company authorized to practice law shall be subject to the regulation and control of, and its articles of organization shall be subject to suspension, revocation or annulment for cause by, the Oneida Nation Court.
- (f) The order of suspension, revocation or annulment of the articles of organization of a professional service limited liability company pursuant to subdivisions (d) or (e) of this section shall be effective upon the filing of such order with the Nation Clerk.

1204. RENDERING OF PROFESSIONAL SERVICE

- (a) No professional service limited liability company may render a professional service except through individuals authorized by law to render such professional service, as individuals, provided, that nothing in this Code shall authorize a professional service limited liability company to render a professional service in the Nation except through individuals authorized by law to render such professional service as individuals in the Nation.
- (b) Each final plan and report made or issued by a professional service limited liability company practicing professional engineering, architecture, landscape architecture or land surveying shall bear the name and seal of one or more professional engineers, architects, landscape architects or land surveyors, respectively, who are in responsible charge of such plan or report.
- (c) Each report, diagnosis, prognosis and prescription made or issued by a professional service limited liability company practicing medicine, dentistry, podiatry, optometry, ophthalmic dispensing, veterinary medicine, pharmacy, nursing, psychology, physical therapy or chiropractic shall bear the signature of one or more physicians, dentists, podiatrists, optometrists, ophthalmic dispensers, veterinarians, pharmacists, nurses, licensed psychologists, physical therapists or chiropractors, respectively, who are in responsible charge of such report, diagnosis, prognosis or prescription.
- (d) Each record, transcript report and hearing report prepared by a professional service limited liability company practicing certified shorthand reporting shall bear the signature of one or more certified shorthand reporters who are in responsible charge of such record, transcript, report or hearing report.
- (e) Each professional service limited liability company practicing public accounting or certified public accounting shall maintain records indicating the identity of each public accountant or certified public accountant, respectively, who was responsible for each report or statement that is issued, prepared or examined by such limited liability company.
- (f) Each opinion prepared by a professional service limited liability company practicing law shall bear the signature of one or more attorneys and counselors-at-law who are in responsible charge of such opinion.
- (g) In addition to the requirements pursuant to subdivisions (b) through (f) of this section, each document prepared by a professional service limited liability company that under the rules, regulations, laws or customs of the applicable profession is required to bear the signature of an individual in responsible charge of such document, shall be signed by one or more such individuals.

1205. PROFESSIONAL RELATIONSHIPS AND LIABILITIES

- (a) Each member, manager, employee or agent of a professional service limited liability company shall be personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or her or by any person under his or her direct supervision and control while rendering professional services on behalf of such limited liability company.
- (b) Each shareholder, director, officer, employee, member, manager, partner, and agent of a professional service corporation, foreign professional service corporation, professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership that is a member, manager, employee or agent of a professional service limited liability company shall be personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or her or by any person under his or her direct supervision and control while rendering professional services in his or her capacity as a member, manager, employee or agent of such professional service limited liability company.
- (c) The relationship of a professional to a professional service limited liability company with which such professional is associated, whether as member, manager, employee or agent, shall not modify or diminish the jurisdiction over such professional of the licensing authority and in the case of an attorney and counselor-at-law, or a professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership engaged in the practice of law, the Oneida Nation Court.

1206. PURPOSES OF FORMATION

No professional service limited liability company shall engage in any profession or professions other than those set forth in its articles of organization. A professional service limited liability company may only engage in a profession or professions as to which one or more of its members is authorized by law to render professional services in the Nation. In addition to engaging in such profession or professions, a professional service limited liability company may carry on, or conduct or transact any other business or other activities as to which a limited liability company may be formed under section two hundred one of this Code. Notwithstanding any other provision of this section, and subject to the next succeeding sentence of this section, a professional service limited liability company (i) authorized to practice law may only engage in another profession or other business or activities or (ii) which is engaged in a profession or other business or activities other than law may only engage in the practice of law, to the extent not prohibited by any other law of the Nation or any rule adopted by the appropriate appellate division of the Oneida Nation Court. Any professional service limited liability company may invest its funds in real estate, mortgages, stocks, bonds or any other type of investments.

1207.MEMBERSHIP OF PROFESSIONAL SERVICE LIMITED LIABILITY COMPANIES

- (a) A member of a professional service limited liability company shall be only:
- (1) A professional, other than a foreign professional service corporation, foreign professional service limited liability company or foreign limited liability partnership, authorized by law to practice in the Nation a profession that such limited liability company is authorized to practice and who is or has been engaged in the practice of such profession in such limited liability company or a predecessor entity, or who will engage in the practice of such profession in such limited liability company within thirty days of the date such professional becomes a member;
 - (2) A professional, other than a foreign professional service corporation, foreign professional service limited liability company or foreign limited liability partnership, authorized by law to practice in any foreign jurisdiction a profession that such limited liability company is authorized to practice and who is or has been engaged in the practice of such profession in such limited liability company or a predecessor entity, or who will engage in the practice of such profession in such limited liability company within thirty days of the date such professional becomes a member; or
 - (3) A foreign professional service corporation, foreign professional service limited liability company or foreign limited liability partnership authorized by law to practice in the Nation or in any foreign jurisdiction a profession that such limited liability company is authorized to practice and who is or has been engaged in the practice of such profession in such limited liability company or a predecessor entity, or who will engage in the practice of such profession in such limited liability company within thirty days of the date such professional becomes a member.
- (b) With respect to a professional service limited liability company formed to provide medical services as such services, each member of such limited liability company must be licensed to practice medicine in the Nation. With respect to a professional service limited liability company formed to provide dental services, each member of such limited liability company must be licensed to practice dentistry in the Nation. With respect to a professional service limited liability company formed to provide professional engineering, land surveying, architectural and/or landscape architectural services, each member of such limited liability company must be licensed to practice one or more of such professions in the Nation.
- (c) No member of a professional service limited liability company shall enter into a voting trust agreement, proxy or any other type of agreement vesting in another person, other than another member of such limited liability company or professional who would be eligible to become a member of such limited liability company, the authority to exercise voting power of any or all of the membership interests of such limited liability company. All membership interests or proxies granted or agreements made in violation of this section shall be void.

1209. DISQUALIFICATION OF MEMBERS, MANAGERS AND EMPLOYEES

If any member, manager or employee of a professional service limited liability company who has been rendering professional service to the public becomes legally disqualified to practice his, her or its profession within the Nation, he, she or it shall sever all employment with and financial interests (other than interests as a creditor or vested rights under a bona fide retirement program) in such limited liability company forthwith or as otherwise provided in section twelve hundred ten of this Code. All provisions of law regulating the rendering of professional services by a person elected or appointed to a public office shall be applicable to a member, manager or employee of such limited liability company in the same manner and to the same extent as if fully set forth herein. Such legal disqualification to practice such profession within the Nation shall be deemed to constitute an irrevocable offer by the disqualified member to sell his, her or its membership interest to the professional service limited liability company, pursuant to the provisions of section twelve hundred ten of this Code or of the articles of organization or operating agreement, which ever is applicable. Compliance with the terms of such offer shall be specifically enforceable in the Oneida Nation Court. A professional service limited liability company's failure to enforce compliance with this provision shall constitute a ground for its dissolution.

1210. DEATH, DISQUALIFICATION OR DISSOLUTION OF MEMBERS

- (a) A professional service limited liability company shall purchase or redeem the membership interest of a member in case of such member's death or disqualification pursuant to the provisions of section twelve hundred nine of this Code or in the case of a member that is a professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership, dissolution or disqualification of such professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership (in the case of registered limited liability partnership, foreign limited liability partnership and professional partnership, other than a dissolution followed by a reconstruction where at least a majority of the total interests in the current profits of a successor partnership are held by partners of the predecessor partnership that was a registered limited liability partnership, foreign limited liability partnership or professional partnership who were partners of such predecessor partnership immediately prior to the dissolution of such predecessor partnership) or the death, dissolution or disqualification of all of its shareholders, members or partners, within six months after the appointment of the executor or administrator or other legal representative of the estate of such deceased member, or within six months after such disqualification or dissolution, at the book value of such membership interest as of the end of the month immediately preceding the death, disqualification or dissolution of the member as determined from the records of such limited liability company in accordance with its regular method of accounting. The operating agreement of such limited liability company may modify this section by providing for a shorter

period of purchase or redemption, or an alternate method of determining the price to be paid for the membership interest, or both. If such limited liability company shall fail to purchase or redeem such membership interest within the required period, a successful plaintiff in an action to recover the purchase price of such membership interest shall also be awarded reasonable attorneys' fees and costs. Nothing herein contained shall prevent such limited liability company from paying pension benefits or other deferred compensation to or on behalf of a former or deceased member, manager or employee thereof, or where such member, manager or employee is a professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership, on behalf of a former or deceased shareholder, officer, director, member, manager, partner, or employee of such professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership, as otherwise permitted by law. The provisions of this section shall not be deemed to require the purchase of the membership interest of a disqualified member where the period of disqualification is for less than six months and the member again becomes eligible to practice his or her profession within six months from the date of disqualification (or, in the case of a disqualified member that is a professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership, where the period of disqualification of such professional service corporation, foreign professional corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership or all shareholders, members or partners of such professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership is for less than six months and such professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership or each such shareholder, member or partner becomes eligible to practice his or her profession within six months from the date of disqualification).

- (b) Notwithstanding the provisions of subdivisions (a) of this section, the professional service limited liability company shall not be required to purchase or redeem the membership interest of a deceased or disqualified or dissolved member if such membership interest, within the time limit prescribed by subdivision (a) of this section, is sold or transferred to another professional pursuant to the provisions of section twelve hundred eleven of this Code.

1211. TRANSFER OF A MEMBERSHIP INTEREST

- (a) No member of a professional service limited liability company may sell or assign his, her or its membership interest in such limited liability company except to another professional eligible to become a member of such limited liability company or except in trust to another professional who would be eligible to become a member if such professional were employed by such limited liability company.
- (b) Nothing contained in subdivision (a) of this section shall be constructed to prohibit the assignment of a membership interest by operation of law or by court decree. An assignee of a membership interest by operation of law or court decree shall have the rights of an assignee of a membership interest set forth in section six hundred three of this Code. Such assignee shall automatically become a member of the professional service limited liability company if such assignee would be eligible to be a member of such limited liability company and, a majority in interest of the members shall fail to redeem the membership interest so transferred, pursuant to section twelve hundred ten of this Code, within sixty days of receiving written notice of such transfer.
- (c) Any sale or transfer, except by operation of law or court decree or except for a professional service limited liability company having only one member, may be made only after the same shall have been approved by the vote or written consent of such proportion, not less than a majority in interest of the members, exclusive of the interest of the member proposing to sell or transfer such membership interest, as may be provided in the operating agreement of such professional service limited liability company. The voting interest held by the member proposing to sell or transfer his, her or its membership interest may not be voted or counted for any purpose, unless all the members consent that such interests be voted or counted. The professional service limited liability company may provide, in lieu of or in addition to the foregoing provisions, for the alienation of membership interests and may require the redemption of purchase of such membership interests by such limited liability company at prices and in a manner specifically set forth therein. The existence of the restrictions on the sale or transfer of a membership interest, as contained in this Code and, if applicable, in the operating agreement, shall be noted conspicuously on the face or back of every certificate representing a membership interest issued by a professional service limited liability company. Any sale or transfer in violation of such restrictions shall be void.

1212. LIMITED LIABILITY COMPANY NAME

- (a) Notwithstanding any other provision of law, the name of a professional service limited liability company may contain any word that, at the time of formation, could be used in the name of a partnership or professional service corporation practicing a profession that such limited liability company is authorized to practice and may not contain any word that could not be used by such partnership or professional service corporation; provided, however, the name of a professional service limited liability company may not contain the name of a deceased person unless:

- (1) such person's name was part of the name of such limited liability company at the time of such person's death; or
 - (2) such person's name was part of the name of an existing partnership or professional service corporation and at least two-thirds of such partnership's partners or corporation's shareholders, as the case may be, become members of such limited liability company.
- (b) A professional service limited liability company name shall end with the words "Professional Limited Liability Company" or "Limited Liability Company" or the abbreviation "P.L.L.C.", "PLLC", "L.L.C." or "LLC". The provisions of subdivision (a) of section two hundred four of this Code shall not apply to a professional service limited liability company.

1213. LIMITED LIABILITY COMPANY ACT APPLICABLE

A professional service limited liability company may consolidate or merge with another limited liability company formed under this Code, a foreign professional service limited liability company authorized to do business under this Code or other business entity, only if all of the professions practiced by such limited liability company, foreign limited liability company or other business entity could be practiced by a single limited liability company organized under this Code.

1214. MERGERS AND CONSOLIDATIONS

Notwithstanding any inconsistent provision of this Code, a professional service limited liability company, pursuant to the provisions of this Code, may be merged or consolidated with another limited liability company formed pursuant to the provisions of this Code, a foreign professional service limited liability company authorized to do business under article thirteen of this Code or other business entity formed or recognized under the laws of the Nation or any other state, provided that the limited liability company or other business entity that survives or that is formed pursuant thereto is a professional service limited liability company, a foreign professional service limited liability company authorized to do business under this Code or other business entity practicing the same profession or professions in the Nation or the Nation of its formation. The restrictions on the issuance, transfer or sale or membership interests of a professional service limited liability company other than the requirements of the first two sentences of subdivision (c) of section twelve hundred eleven of this Code, shall be suspended for a period not exceeding thirty days with respect to any issuance, transfer or sale of membership interests made pursuant to such merger or consolidation, provided that (a) no person or business entity who would not be eligible to be a member in the absence of this section shall vote or receive any distribution from such limited liability company; (b) after such merger or consolidation, any professional service limited liability company that survives or that is created thereby shall be subject to all the provisions of this Code; and (c) membership interests thereafter may be held only by persons or business entities who are eligible to be a member of such professional service limited liability company. Nothing herein contained shall be construed as permitting the practice of a profession in the Nation by a limited liability company that is not formed pursuant to the provisions of this Code or authorized to do

business in the Nation pursuant to the provisions of this Code.