

COQUILLE INDIAN TRIBAL CODE

Chapter 230

Part 2 – Economic Development

Limited Liability Company

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CHAPTER 230
Limited Liability Company

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230.010 General

The Coquille Tribal Council, governing body of the Coquille Indian Tribe under the Tribe's Constitution adopted September 9, 1991, pursuant to the Indian Reorganization Act of 1934 and the Coquille Restoration Act of 1989, hereby establishes an ordinance for the formation of limited liability companies under tribal law.

230.020 [RESERVED]

230.101 Definitions

As used in this chapter unless the context otherwise requires:

“Bankruptcy” means an event that causes a person to cease to be a member as provided in 230-304 of this ordinance.

“Certificate of Formation” means the certificate referred to in 230-201 of this ordinance, and the certificate as amended.

“Contribution” means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in the person’s capacity as a member.

“Document” means:

- Any tangible medium on which information is inscribed, and includes handwritten, typed, printed or similar instruments, and copies of such instruments; and
- An electronic transmission.

“Electronic transmission” means any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

“Foreign limited liability company” means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction. When used in this chapter in reference to a foreign limited liability company, the terms “limited liability company agreement,” “limited liability company interest,” “manager” or “member” shall mean a limited liability company agreement, limited liability company interest, manager or member, respectively, under the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is formed.

“Knowledge” means a person’s actual knowledge of a fact, rather than the person’s constructive knowledge of the fact.

“Limited liability company” and **“domestic limited liability company”** means a limited liability company formed under the laws of the Tribe and having 1 or more members.

“Limited liability company agreement” means any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise), written, oral or implied, of the member or members as to the affairs of a limited liability company and the conduct of its business. A member or manager of a limited liability company or an assignee of a limited liability company interest is bound by the limited liability company agreement whether or not the member or manager or assignee executes the limited liability company agreement. A limited liability company (including any protected series or registered series thereof) is not required to execute its limited liability company agreement. A limited liability company (including any protected series or registered series thereof) is bound by its limited liability company agreement whether or not the limited liability company (or any protected series or registered series thereof) executes the limited liability company agreement. A limited liability company agreement of a limited liability company having only 1 member shall not be unenforceable by reason of there being only 1 person who is a party to the limited liability company agreement. A limited liability company agreement is not subject to any statute of frauds. A limited liability company agreement may provide rights to any person, including a person who is not a party to the limited liability company agreement, to the extent set forth therein. A written limited liability company agreement or another written agreement or writing:

- May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned;
- If such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) executes the limited liability company agreement or any other writing evidencing the intent of such person to become a member or assignee; or
- Without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) complies with the conditions for becoming a member or assignee as set forth in the limited liability company agreement or any other writing;
- Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in paragraph (9) a. of this section, or by reason of its having been signed by a representative as provided in this chapter; and
- May consist of 1 or more agreements, instruments or other writings and may include or incorporate 1 or more schedules, supplements or other writings containing provisions as to the conduct of the business and affairs of the limited liability company or any series thereof.

“Limited liability company interest” means a member’s share of the profits and losses of a limited liability company and a member’s right to receive distributions of the limited liability company’s assets.

“Liquidating trustee” means a person carrying out the winding up of a limited liability company.

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“Manager” means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, a limited liability company agreement or similar instrument under which the limited liability company is formed, and includes a manager of the limited liability company generally and a manager associated with a series of the limited liability company. Unless the context otherwise requires, references in this chapter to a manager (including references in this chapter to a manager of a limited liability company) shall be deemed to be references to a manager of the limited liability company generally and to a manager associated with a series with respect to such series.

“Member” means a person who is admitted to a limited liability company as a member as provided in 230-301 of this chapter, and includes a member of the limited liability company generally and a member associated with a series of the limited liability company. Unless the context otherwise requires, references in this chapter to a member (including references in this chapter to a member of a limited liability company) shall be deemed to be references to a member of the limited liability company generally and to a member associated with a series with respect to such series.

“Person” means a natural person, partnership (whether general or limited), limited liability company, trust (including a common law trust, business trust, statutory trust, voting trust or any other form of trust), estate, association (including any group, organization, co-tenancy, plan, board, council or committee), corporation, government (including a country, state, county or any other governmental subdivision, agency or instrumentality), custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.

“Personal representative” means, as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.

“Registered series” means a designated series of members, managers, limited liability company interests or assets that is formed in accordance with 230-218 of this chapter.

“Reservation” means any real property belonging to the Tribe or its members or any real property located within the geographic boundaries of the tract of land described in the Coquille Restoration Act or any real property granted to the Tribe by subsequent acts of Congress.

“Secretary of the Tribal Council” or **“Secretary”** means the Secretary/Treasurer of the Tribal Council of the Tribe.

“Series” means a designated series of members, managers, limited liability company interests or assets that is a protected series or a registered series, or that is neither a protected series nor a registered series.

“State” means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the Reservation of the Tribe.

“Tribal Attorney” means the attorney employed by the Tribe so designated.

“Tribal Council” means the Coquille Tribal Council.

“Tribal Court Clerk” means the clerk of the Coquille Tribal Court.

“Tribal Court” means the Coquille Indian Tribal Court established by the Tribe.

“Tribe” or “Tribal” refers the Coquille Indian Tribe.

230.102 Name Set Forth in Certificate

The name of each limited liability company as set forth in its certificate of formation:

1. Shall contain the words “Limited Liability Company” or the abbreviation “L.L.C.” or the designation “LLC”;
2. May contain the name of a member or manager;
3. Must be such as to distinguish it upon the records in the office of the Secretary from the name on such records of any corporation, partnership, limited partnership, statutory trust, limited liability company, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the Tribe or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership, or foreign limited liability company within in the Reservation; provided however, that a limited liability company may register under any name which is not such as to distinguish it upon the records in the office of the Secretary from the name on such records of any domestic or foreign corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability company reserved, registered, formed or organized under the laws of the Tribe with the written consent of the other corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability company, which written consent shall be filed with the Secretary; provided further, that, if on July 31, 2011, a limited liability company is registered (with the consent of another limited liability company) under a name which is not such as to distinguish it upon the records in the office of the Secretary from the name on such records of such other domestic limited liability company, it shall not be necessary for any such limited liability company to amend its certificate of formation to comply with this subsection;
4. May contain the following words: “Company,” “Association,” “Club,” “Foundation,” “Fund,” “Institute,” “Society,” “Union,” “Syndicate,” “Limited” or “Trust” (or abbreviations of like import); and
5. Shall not contain the word “bank,” or any variation thereof.

230.103 Reservation of Name

- (a) The exclusive right to the use of a name may be reserved by:
 - (1) Any person intending to organize a limited liability company under this chapter and to adopt that name;
 - (2) Any person intending to form a registered series of a limited liability company under this chapter and to adopt that name in accordance with 230-218(e) of this chapter;
 - (3) Any domestic limited liability company or any foreign limited liability company registered in the Reservation which, in either case, proposes to change its name;
 - (4) Any foreign limited liability company intending to register in the Reservation and adopt that name; and
 - (5) Any person intending to organize a foreign limited liability company and intending to have it register in the Reservation and adopt that name.

- (b) The reservation of a specified name shall be made by filing with the Secretary an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary finds that the name is available for use by a domestic or foreign limited liability company, the Secretary shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120-day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be canceled by filing with the Secretary a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be canceled and the name and address of the applicant or transferee. Unless the Secretary finds that any application, notice of transfer, or notice of cancellation filed with the Secretary as required by this subsection does not conform to law, upon receipt of all filing fees required by law the Secretary shall prepare and return to the person who filed such instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary.

A fee as set forth in 230-1105(a)(1) of this chapter shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

230.104 Registered Office; Registered Agent

- (a) Each limited liability company shall have and maintain in the Reservation:
- (1) A registered office, which may but need not be a place of its business in the Reservation; and
 - (2) A registered agent for service of process on the limited liability company, having a business office identical with such registered office, which agent may be any of:
 - a. The limited liability company itself;
 - b. An individual person;
 - c. A domestic limited liability company (other than the limited liability company itself), a domestic corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership), or a domestic statutory trust; or
 - d. A foreign corporation, a foreign limited liability partnership, a foreign limited partnership (including a foreign limited liability limited partnership), a foreign limited liability company, or a foreign statutory trust.
- (b) A registered agent may change the address of the registered office of the limited liability company(ies) for which it is registered agent to another address in the Reservation by paying a fee as set forth in 230-1105(a)(2) of this chapter and filing with the Secretary a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the limited liability companies for which it is a registered agent.

Upon the filing of such certificate, until further change of address, as authorized by law, the registered office in the Reservation of each of the limited liability companies for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a limited liability company, such registered agent shall file with the Secretary a certificate executed by such registered agent setting forth the new name of such registered agent, the name of such registered agent before it was changed, and the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and shall pay a fee as set forth in 230-1105(a)(2) of this chapter. A change of name of any person acting as a registered agent of a limited liability company as a result of (i) a merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law, (ii) the conversion of the registered agent into another person, or (iii) a division of the registered agent in which an identified resulting person succeeds to all of the assets and liabilities of the registered agent related to its registered agent business pursuant to the plan of division, as set forth in the certificate of division, shall each be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its certificate of formation under 230-202 of this chapter. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited liability company affected thereby.

- (c) The registered agent of 1 or more limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in 230-1105(a)(2) of this chapter and filing a certificate with the Secretary stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such limited liability companies as have ratified and approved such substitution, and the successor registered agent's address, as stated in such certificate, shall become the address of each such limited liability company's registered office in the Reservation. Filing of such certificate of resignation shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its certificate of formation under 230-202 of this chapter.
- (d) The registered agent of a limited liability company, including a limited liability company whose certificate of formation has been cancelled pursuant to 230-1108 of this chapter, may resign without appointing a successor registered agent by paying a fee as set forth in 230-1105(a)(2) of this chapter and filing a certificate of resignation with the Secretary, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to the limited liability company at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the limited liability company at its address last known to the registered agent and shall set forth the date of such notice. The certificate shall include such information last provided to the registered agent pursuant to subsection (g) of this section of this chapter for a communications contact for the limited liability company. Such information regarding the communications contact shall not be deemed public.

A certificate filed pursuant to this subsection must be on the form prescribed by the Secretary. After receipt of the notice of the resignation of its registered agent, the limited liability company for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. If such limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, the certificate of formation of such limited liability company shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each limited liability company (and each protected series and each registered series thereof) for which the resigned registered agent had been acting shall thereafter be upon the Secretary in accordance with 230-105 of this chapter.

(e) Every registered agent shall:

- (1) If an entity, maintain a business office in the Reservation which is generally open, or if an individual, be generally present at a designated location in the Reservation, at sufficiently frequent times to accept service of process and otherwise perform the functions of a registered agent;
- (2) If a foreign entity, be authorized to transact business in the Reservation;
- (3) Accept service of process and other communications directed to the limited liability companies (and any protected series or registered series thereof) and foreign limited liability companies for which it serves as registered agent and forward same to the limited liability company or foreign limited liability company to which the service or communication is directed;
- (4) Forward to the limited liability companies and foreign limited liability companies for which it serves as registered agent the statement for the annual tax for such limited liability company (and each registered series thereof) or such foreign limited liability company, as applicable, as described in 230-1107 of this chapter or an electronic notification of same in a form satisfactory to the Secretary; and
- (5) Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the registered agent maintains a record for the reduction of risk of unlawful business purposes.

(f) Any registered agent who at any time serves as registered agent for more than 50 entities (a "commercial registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications:

(1) A natural person serving as a commercial registered agent shall:

- a. Maintain a principal residence or a principal place of business in the Reservation;
- b. Maintain a Tribal business license;
- c. Be generally present at a designated location within the Reservation during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e) of this section;
- d. Provide the Secretary upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary shall require; and
- e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the natural person maintains a record for the reduction of risk of unlawful business purposes.

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- (2) A domestic or foreign corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a foreign limited liability partnership, a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:
- a. Have a business office within the Reservation which is generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e) of this section; b. Maintain a Tribal business license;
 - b. Have generally present at such office during normal business hours an officer, director or managing agent who is a natural person;
 - c. Provide the Secretary upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary shall require; and
 - d. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which it maintains a record for the reduction of risk of unlawful business purposes.
- (3) For purposes of this subsection and paragraph (i)(2)a. of this section, a commercial registered agent shall also include any registered agent which has an officer, director or managing agent in common with any other registered agent or agents if such registered agents at any time during such common service as officer, director or managing agent collectively served as registered agents for more than 50 entities, whether domestic or foreign.
- (g) Every domestic limited liability company and every foreign limited liability company qualified to do business in the Reservation shall provide to its registered agent and update from time to time as necessary the name, business address and business telephone number of a natural person who is a member, manager, officer, employee or designated agent of the domestic or foreign limited liability company who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the domestic or foreign limited liability company. A domestic limited liability company, upon receipt of a request by the communications contact delivered in writing or by electronic transmission, shall provide the communications contact with the name, business address and business telephone number of a natural person who has access to the record required to be maintained pursuant to 230-305(h) of this chapter. Every registered agent shall retain (in paper or electronic form) the above information concerning the current communications contact for each domestic limited liability company and each foreign limited liability company for which that registered agent serves as registered agent. If the domestic or foreign limited liability company fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such domestic or foreign limited liability company pursuant to this section.
- (h) The Secretary is fully authorized to issue such regulations, as may be necessary or appropriate to carry out the enforcement of subsections (e), (f) and (g) of this section, and to take actions reasonable and necessary to assure registered agents' compliance with subsections (e), (f) and (g) of this section. Such actions may include refusal to file documents submitted by a registered agent, including the refusal to file any documents regarding an entity's formation.

- (i) Upon application of the Secretary, the Tribal Court may enjoin any person or entity from serving as a registered agent or as an officer, director or managing agent of a registered agent.
 - (1) Upon the filing of a complaint by the Secretary pursuant to this section, the court may make such orders respecting such proceeding as it deems appropriate, and may enter such orders granting interim or final relief as it deems proper under the circumstances.
 - (2) Any 1 or more of the following grounds shall be a sufficient basis to grant an injunction pursuant to this section:
 - a. With respect to any registered agent who at any time within 1 year immediately prior to the filing of the Secretary's complaint is a commercial registered agent, failure after notice and warning to comply with the qualifications set forth in subsection (e) of this section and/or the requirements of subsection (f) or (g) of this section above;
 - b. The person serving as a registered agent, or any person who is an officer, director or managing agent of an entity registered agent, has been convicted of a felony or any crime which includes an element of dishonesty or fraud or involves moral turpitude; or c. The registered agent has engaged in conduct in connection with acting as a registered agent that is intended to or likely to deceive or defraud the public.
 - (3) With respect to any order the court enters pursuant to this section with respect to an entity that has acted as a registered agent, the Tribal Court may also direct such order to any person who has served as an officer, director or managing agent of such registered agent. Any person who, on or after January 1, 2007, serves as an officer, director or managing agent of an entity acting as a registered agent in the Reservation shall be deemed thereby to have consented to the appointment of such registered agent as agent upon whom service of process may be made in any action brought pursuant to this section, and service as an officer, director or managing agent of an entity acting as a registered agent in the Reservation shall be a signification of the consent of such person that any process when so served shall be of the same legal force and validity as if served upon such person within the Reservation, and such appointment of the registered agent shall be irrevocable.
 - (4) Upon the entry of an order by the Tribal Court enjoining any person or entity from acting as a registered agent, the Secretary shall mail or deliver notice of such order to each affected domestic or foreign limited liability company:
 - a. That has specified the address of a place of business in a record of the Secretary, to the address specified; or
 - b. An address of which the Secretary has obtained from the domestic or foreign limited liability company's former registered agent, to the address obtained.

If such a domestic limited liability company fails to obtain and designate a new registered agent within 30 days after such notice is given, the certificate of formation of such limited liability company shall be canceled. If such a foreign limited liability company fails to obtain and designate a new registered agent within 30 days after such notice is given, such foreign limited liability company shall not be permitted to do business in the Reservation and its registration shall be canceled. If any other affected domestic limited liability company fails to obtain and designate a new registered agent within 60 days after entry of an order by the Tribal Court enjoining such limited liability company's registered agent from acting as a registered agent, the certificate of formation of such limited liability company shall be canceled.

If any other affected foreign limited liability company fails to obtain and designate a new registered agent within 60 days after entry of an order by the Tribal Court enjoining such foreign limited liability company's registered agent from acting as a registered agent, such foreign limited liability company shall not be permitted to do business in the Reservation and its registration shall be canceled. If the Tribal Court enjoins a person or entity from acting as a registered agent as provided in this section and no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the domestic or foreign limited liability company for which the registered agent had been acting shall thereafter be upon the Secretary in accordance with 230-105 or 230-911 of this chapter. The Tribal Court may, upon application of the Secretary on notice to the former registered agent, enter such orders as it deems appropriate to give the Secretary access to information in the former registered agent's possession in order to facilitate communication with the domestic and foreign limited liability companies the former registered agent served.

- (j) The Secretary is authorized to make a list of registered agents available to the public, and to establish such qualifications and issue such rules and regulations with respect to such listing as the Secretary deems necessary or appropriate.
- (k) As contained in any certificate of formation, application for registration as a foreign limited liability company, or other document filed in the office of the Secretary under this chapter, the address of a registered agent or registered office shall include the street, number, city and postal code.

230.105 Service of Process on Domestic Limited Liability Companies and Protected Series or Registered Series Thereof

- (a) Service of legal process upon any domestic limited liability company or any protected series or registered series thereof shall be made by delivering a copy personally to any manager of the limited liability company in the Reservation, or the registered agent of the limited liability company in the Reservation, or by leaving it at the dwelling house or usual place of abode in the Reservation of any such manager or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the limited liability company in the Reservation. If service of legal process is made upon the registered agent of the limited liability company in the Reservation on behalf of any such protected series or registered series, such process shall include the name of the limited liability company and the name of such protected series or registered series. If the registered agent be a corporation, service of process upon it as such may be made by serving, in the Reservation, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of a manager or registered agent, or at the registered office or other place of business of the limited liability company in the Reservation, to be effective, must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the officer's return thereto. Process returnable forthwith must be delivered personally to the manager or registered agent.

- (b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the limited liability company or any protected series or registered series thereof upon the Secretary, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. If service of legal process is made upon the Secretary on behalf of any such protected series or registered series, such process shall include the name of the limited liability company and the name of such protected series or registered series. Process may be served upon the Secretary under this subsection by means of electronic transmission but only as prescribed by the Secretary. The Secretary is authorized to issue such rules and regulations with respect to such service as the Secretary deems necessary or appropriate. In the event that service is effected through the Secretary in accordance with this subsection, the Secretary shall forthwith notify the limited liability company by letter, directed to the limited liability company at its address as it appears on the records relating to such limited liability company on file with the Secretary or, if no such address appears, at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary that service is being effected pursuant to this subsection, and to pay the Secretary the sum of \$50 for the use of the Reservation, which sum shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary shall not be required to retain such information for a period longer than 5 years from the Secretary's receipt of the service of process.

230.106 Nature of Business Permitted; Powers

- (a) A limited liability company may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking.
- (b) A limited liability company shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its limited liability company agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.
- (c) Notwithstanding any provision of this chapter to the contrary, without limiting the general powers enumerated in subsection (b) of this section, a limited liability company shall, subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.

- (d) Unless otherwise provided in a limited liability company agreement, a limited liability company has the power and authority to grant, hold or exercise a power of attorney, including an irrevocable power of attorney.
- (e) Any act or transaction that may be taken by or in respect of a limited liability company under this chapter or a limited liability company agreement, but that is void or voidable when taken, may be ratified (or the failure to comply with any requirements of the limited liability company agreement making such act or transaction void or voidable may be waived) by the members, managers or other persons whose approval would be required under the limited liability company agreement:
 - (1) For such act or transaction to be validly taken; or
 - (2) To amend the limited liability company agreement in a manner that would permit such act or transaction to be validly taken, in each case at the time of such ratification or waiver; provided, that if the void or voidable act or transaction was the issuance or assignment of any limited liability company interests, the limited liability company interests purportedly issued or assigned shall be deemed not to have been issued or assigned for purposes of determining whether the void or voidable act or transaction was ratified or waived pursuant to this subsection. Any act or transaction ratified, or with respect to which the failure to comply with any requirements of the limited liability company agreement is waived, pursuant to this subsection shall be deemed validly taken at the time of such act or transaction. If an amendment to the limited liability company agreement to permit any such act or transaction to be validly taken would require notice to any members, managers or other persons under the limited liability company agreement and the ratification or waiver of such act or transaction is effectuated pursuant to this subsection by the members, managers or other persons whose approval would be required to amend the limited liability company agreement, notice of such ratification or waiver shall be given following such ratification or waiver to the members, managers or other persons who would have been entitled to notice of such an amendment and who have not otherwise received notice of, or participated in, such ratification or waiver. The provisions of this subsection shall not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act by other means permitted by law. Upon application of the limited liability company, any member, any manager or any person claiming to be substantially and adversely affected by a ratification or waiver pursuant to this subsection (excluding any harm that would have resulted if such act or transaction had been valid when taken), the Tribal Court may hear and determine the validity and effectiveness of the ratification of, or waiver with respect to, any void or voidable act or transaction effectuated pursuant to this subsection, and in any such application, the limited liability company shall be named as a party and service of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company, and no other party need be joined in order for the Tribal Court to adjudicate the validity and effectiveness of the ratification or waiver, and the Tribal Court may make such order respecting further or other notice of such application as it deems proper under these circumstances; provided, that nothing herein limits or affects the right to serve process in any other manner now or hereafter provided by law, and this sentence is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

230.107 Business Transaction of Member or Manager with the Limited Liability Company

Except as provided in a limited liability company agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume 1 or more obligations of, provide collateral for, and transact other business with, a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

230.108 Indemnification

Subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

230.109 Service of Process on Managers and Liquidating Trustees

- (a) A manager or a liquidating trustee of a limited liability company may be served with process in the manner prescribed in this section in all civil actions or proceedings brought in the Reservation involving or relating to the business of the limited liability company or a violation by the manager or the liquidating trustee of a duty to the limited liability company or any member of the limited liability company, whether or not the manager or the liquidating trustee is a manager or a liquidating trustee at the time suit is commenced. A manager's or a liquidating trustee's serving as such constitutes such person's consent to the appointment of the registered agent of the limited liability company (or, if there is none, the Secretary) as such person's agent upon whom service of process may be made as provided in this section. Such service as a manager or a liquidating trustee shall signify the consent of such manager or liquidating trustee that any process when so served shall be of the same legal force and validity as if served upon such manager or liquidating trustee within the Reservation and such appointment of the registered agent (or, if there is none, the Secretary) shall be irrevocable. As used in this subsection (a) and in subsections (b), (c) and (d) of this section, the term "manager" refers (i) to a person who is a manager as defined in 230-101 of this chapter and (ii) to a person, whether or not a member of a limited liability company, who, although not a "manager" as defined in 230-101 of this chapter, participates materially in the management of the limited liability company; provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a "manager" as defined in 230-101 of this chapter shall not, by itself, constitute participation in the management of the limited liability company.
- (b) Service of process shall be effected by serving the registered agent (or, if there is none, the Secretary) with 1 copy of such process in the manner provided by law for service of writs of summons. In the event service is made under this subsection upon the Secretary, the plaintiff shall pay to the Secretary the sum of \$50 for the use of the Reservation, which sum shall be taxed as part of the costs of the proceeding if the plaintiff shall prevail therein.

In addition, the notary of the court in which the civil action or proceeding is pending shall, within 7 days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to such manager or liquidating trustee at the principal place of business of the limited liability company (if such address is known) and at the manager's or liquidating trustee's address last known to the party desiring to make such service.

- (c) In any action in which any such manager or liquidating trustee has been served with process as hereinabove provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the notary as provided in subsection (b) of this section; however, the court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such manager or liquidating trustee reasonable opportunity to defend the action.
- (d) In a written limited liability company agreement or other writing, a manager or member may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of the Reservation, or the exclusivity of arbitration in a specified jurisdiction or the Reservation, and to be served with legal process in the manner prescribed in such limited liability company agreement or other writing. Except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or in the Reservation, a member who is not a manager may not waive its right to maintain a legal action or proceeding in the courts of the Reservation with respect to matters relating to the organization or internal affairs of a limited liability company.
- (e) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

The Tribal Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement this section and are not inconsistent with this section.

230.110 Contested Matters Relating to Managers; Contested Votes

- (a) Upon application of any member or manager, the Tribal Court may hear and determine the validity of any admission, election, appointment, removal or resignation of a manager of a limited liability company, and the right of any person to become or continue to be a manager of a limited liability company, and, in case the right to serve as a manager is claimed by more than 1 person, may determine the person or persons entitled to serve as managers; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the limited liability company relating to the issue. In any such application, the limited liability company shall be named as a party and service of copies of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company and upon the person or persons whose right to serve as a manager is contested and upon the person or persons, if any, claiming to be a manager or claiming the right to be a manager; and the registered agent shall forward immediately a copy of the application to the limited liability company and to the person or persons whose right to serve as a manager is contested and to the person or persons, if any, claiming to be a manager or the right to be a manager, in a postpaid, sealed, registered letter addressed to such limited liability company and such person or persons at their post office addresses last

known to the registered agent or furnished to the registered agent by the applicant member or manager. The Tribal Court may make such order respecting further or other notice of such application as it deems proper under these circumstances.

- (b) Upon application of any member or manager, the Tribal Court may hear and determine the result of any vote of members or managers upon matters as to which the members or managers of the limited liability company, or any class or group of members or managers, have the right to vote pursuant to the limited liability company agreement or other agreement or this chapter (other than the admission, election, appointment, removal or resignation of managers). In any such application, the limited liability company shall be named as a party and service of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company, and no other party need be joined in order for the Tribal Court to adjudicate the result of the vote. The Tribal Court may make such order respecting further or other notice of such application as it deems proper under these circumstances.
- (c) As used in this section, the term “manager” refers to a person:
 - (1) Who is a “manager” as defined in 230-101 of this chapter; and
 - (2) Whether or not a member of a limited liability company, who, although not a “manager” as defined in 230-101 of this chapter, participates materially in the management of the limited liability company; provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a “manager” as defined in 230-101 of this chapter shall not, by itself, constitute participation in the management of the limited liability company.
- (d) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

230.111 Interpretation and Enforcement of Limited Liability Company Agreement

Any action to interpret, apply or enforce the provisions of a limited liability company agreement, or the duties, obligations or liabilities of a limited liability company to the members or managers of the limited liability company, or the duties, obligations or liabilities among members or managers and of members or managers to the limited liability company, or the rights or powers of, or restrictions on, the limited liability company, members or managers, or any provision of this chapter, or any other instrument, document, agreement or certificate contemplated by any provision of this chapter, may be brought in the Tribal Court.

As used in this section, the term “manager” refers to a person:

- (1) Who is a “manager” as defined in 230-101 of this chapter; and
- (2) Whether or not a member of a limited liability company, who, although not a “manager” as defined in 230-101 of this chapter, participates materially in the management of the limited liability company; provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a “manager” as defined in 230-101 of this chapter shall not, by itself, constitute participation in the management of the limited liability company.

230.112 Judicial Cancellation of Certificate of Formation; Proceedings

- (a) Upon motion by the Tribal Attorney, the Tribal Court shall have jurisdiction to cancel the certificate of formation of any domestic limited liability company for abuse or misuse of its limited liability company powers, privileges or existence. The Tribal Attorney shall proceed for this purpose in the Tribal Court.
- (b) The Tribal Court shall have power, by appointment of trustees, receivers or otherwise, to administer and wind up the affairs of any domestic limited liability company whose certificate of formation shall be canceled by the Tribal Court under this section, and to make such orders and decrees with respect thereto as shall be just and equitable respecting its affairs and assets and the rights of its members and creditors.

230.113 Document Form, Signature and Delivery

- (a) Except as provided in subsection (b) of this section, without limiting the manner in which any act or transaction may be documented, or the manner in which a document may be signed or delivered:
 - (1) Any act or transaction contemplated or governed by this chapter or the limited liability company agreement may be provided for in a document, and an electronic transmission is the equivalent of a written document.
 - (2) Whenever this chapter or the limited liability company agreement requires or permits a signature, the signature may be a manual, facsimile, conformed or electronic signature. "Electronic signature" means an electronic symbol or process that is attached to, or logically associated with, a document and executed or adopted by a person with an intent to execute, authenticate or adopt the document. A person may execute a document with such person's signature.
 - (3) Unless otherwise provided in the limited liability company agreement or agreed between the sender and recipient, an electronic transmission is delivered to a person for purposes of this chapter and the limited liability company agreement when it enters an information processing system that the person has designated for the purpose of receiving electronic transmissions of the type delivered, so long as the electronic transmission is in a form capable of being processed by that system and such person is able to retrieve the electronic transmission. Whether a person has so designated an information processing system is determined by the limited liability company agreement or from the context and surrounding circumstances, including the parties' conduct. An electronic transmission is delivered under this section even if no person is aware of its receipt. Receipt of an electronic acknowledgement from an information processing system establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

This chapter shall not prohibit 1 or more persons from conducting a transaction long as the part or parts of the transaction that are governed by this chapter are documented, signed and delivered in accordance with this subsection or otherwise in accordance with this chapter. This subsection shall apply solely for purposes of determining whether an act or transaction has been documented, and the document has been signed and delivered, in accordance with this chapter and the limited liability company agreement.

- (b) Subsection (a) of this section shall not apply to:
- (1) A document filed with or submitted to the Secretary, or a Tribal Court or other judicial or governmental body of the Tribe;
 - (2) A certificate of limited liability company interest, except that a signature on a certificate of limited liability company interest may be a manual, facsimile, or electronic signature; and
 - (3) An act or transaction effected pursuant to 230-104, 230-105, or 230-109 or sections on Foreign Limited Liability Companies or Derivative Actions.

The foregoing shall not create any presumption about the lawful means to document a matter addressed by this subsection, or the lawful means to sign or deliver a document addressed by this subsection. A provision of the limited liability company agreement shall not limit the application of subsection (a) of this section unless the provision expressly restricts one or more of the means of documenting an act or transaction, or of signing or delivering a document, permitted by subsection (a) of this section.

- (c) In the event that any provision of this chapter is deemed to modify, limit or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et. seq., the provisions of this chapter shall control to the fullest extent permitted by § 7002(a) (2) of such act [15 U.S.C. § 7002(a)(2)].

230.201 Certificate of Formation

- (a) In order to form a limited liability company, 1 or more authorized persons must execute a certificate of formation. The certificate of formation shall be filed in the office of the Secretary and set forth:
- (1) The name of the limited liability company;
 - (2) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by 230-104 of this ordinance; and
 - (3) The name of each Manager or Member and a statement that the Company and each Manager or Member consents to at least be subject to the non-exclusive jurisdiction of the Tribal Court and any other matters the members determine to include therein.
- (b) In order to establish a limited liability company:
- (1) The Secretary shall, at the next regular meeting or special meeting of the Tribal Council, request a motion determining whether or not such a limited liability company may be formed; and
 - (2) The Tribal Council, in its sole discretion, may decide the motion by a Tribal Council resolution whether or not such a limited liability company may be formed.
- (c) A limited liability company is formed at the time of the passage of the Tribal Council resolution approving the certificate of formation or at any later date or time specified in the certificate of formation if, in either case, there has been substantial compliance with the requirements of this section. A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation.
- (d) A copy of the resolution approving the certificate of formation and a copy of the certificate of formation shall be retained in the office of the Secretary.

- (e) A limited liability company agreement may be entered into or otherwise existing either before, after or at the time of the filing of a certificate of formation and, whether entered into or otherwise existing before, after or at the time of such filing, may be made effective as of the effective time of such filing or at such other time or date as provided in or reflected by the limited liability company agreement.
- (f) A certificate of formation substantially complies with 230-201(a)(2) of this chapter if it contains the name of the registered agent and the address of the registered office even if the certificate of formation does not expressly designate such person as the registered agent or such address as the registered office or the address of the registered agent.

230.202 Amendment to Certificate of Formation

- (a) A certificate of formation is amended by filing a certificate of amendment thereto in the office of the Secretary. The certificate of amendment shall set forth:
 - (1) The name of the limited liability company; and
 - (2) The amendment to the certificate of formation.
- (b) A manager or, if there is no manager, then any member who becomes aware that any statement in a certificate of formation was false when made, or that any matter described has changed making the certificate of formation false in any material respect, shall promptly amend the certificate of formation.
- (c) A certificate of formation may be amended at any time for any other proper purpose.
- (d) Unless otherwise provided in this chapter or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the Secretary.

230.203 Cancellation of Certificate

- (a) A certificate of formation shall be canceled upon the dissolution and the completion of winding up of a limited liability company, or as provided in 230-104(d), 230-104 (i)(4), 230-112 or 230-1108 of this chapter, or upon the filing of a certificate of merger or consolidation or a certificate of ownership and merger if the limited liability company is not the surviving or resulting entity in a merger or consolidation or upon the future effective date or time of a certificate of merger or consolidation or a certificate of ownership and merger if the limited liability company is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer or upon the future effective date or time of a certificate of transfer, or upon the filing of a certificate of conversion to non-Tribal entity or upon the future effective date or time of a certificate of conversion to non-Tribal entity or upon the filing of a certificate of division if the limited liability company is a dividing company that is not a surviving company or upon the future effective date or time of a certificate of division if the limited liability company is a dividing company that is not a surviving company. A certificate of cancellation shall be filed in the office of the Secretary to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company and shall set forth:
 - (1) The name of the limited liability company;
 - (2) The date of filing of its certificate of formation;

- (3) If the limited liability company has formed 1 or more registered series whose certificate of registered series has not been canceled prior to the filing of the certificate of cancellation, the name of each such registered series;
 - (4) The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate; and
 - (5) Any other information the person filing the certificate of cancellation determines.
- (b) A certificate of cancellation that is filed in the office of the Secretary prior to the dissolution or the completion of winding up of a limited liability company may be corrected as an erroneously executed certificate of cancellation by filing with the office of the Secretary a certificate of correction of such certificate of cancellation in accordance with 230-211 of this chapter.
- (c) The Secretary shall not issue a certificate of good standing with respect to a limited liability company (or any registered series thereof) if its certificate of formation is canceled.

230.204 Execution

- (a) Each certificate required by this chapter to be filed in the office of the Secretary shall be executed by 1 or more authorized persons or, in the case of a certificate of conversion to limited liability company or certificate of limited liability company domestication, by any person authorized to execute such certificate on behalf of the other entity or non-United States entity, respectively, except that a certificate of merger or consolidation filed by a surviving or resulting other business entity shall be executed by any person authorized to execute such certificate on behalf of such other business entity.
- (b) Unless otherwise provided in a limited liability company agreement, any person may sign any certificate or amendment thereof or enter into a limited liability company agreement or amendment thereof by an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into a limited liability company agreement or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed in the office of the Secretary, but if in writing, must be retained by the limited liability company.
- (c) For all purposes of the laws of the Tribe, unless otherwise provided in a limited liability company agreement, a power of attorney or proxy with respect to a limited liability company granted to any person shall be irrevocable if it states that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power or proxy. Such irrevocable power of attorney or proxy, unless otherwise provided therein or in a limited liability company agreement, shall not be affected by subsequent death, disability, incapacity, dissolution, termination of existence or bankruptcy of, or any other event concerning, the principal. A power of attorney or proxy with respect to matters relating to the organization, internal affairs or termination of a limited liability company or granted by a person as a member or an assignee of a limited liability company interest or by a person seeking to become a member or an assignee of a limited liability company interest and, in either case, granted to the limited liability company, a manager or member thereof, or any of their respective officers, directors, managers, members, partners, trustees, employees or agents shall be deemed coupled with an interest sufficient in law to support an irrevocable power or proxy. The provisions of this subsection shall not be construed to limit the enforceability of a power of attorney or proxy that is part of a limited liability company agreement.

- (d) The execution of a certificate by a person who is authorized by this chapter to execute such certificate constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of such person's knowledge and belief, the facts stated therein shall be true at the time such certificate becomes effective as provided in this chapter.

230.205 Execution, Amendment or Cancellation by Judicial Order

- (a) If a person required to execute a certificate required by this chapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Tribal Court to direct the execution of the certificate. If the Tribal Court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary to record an appropriate certificate.
- (b) If a person required to execute a limited liability company agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Tribal Court to direct the execution of the limited liability company agreement or amendment thereof. If the Tribal Court finds that the limited liability company agreement or amendment thereof should be executed and that any person required to execute the limited liability company agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.

230.206 Filing

- (a) The signed copy of any certificate authorized to be filed under this chapter shall be delivered to the Secretary. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Any signature on any certificate authorized to be filed with the Secretary under any provision of this chapter may be a facsimile, a conformed signature or an electronically transmitted signature. Upon delivery of any certificate, the Secretary shall record the date and time of its delivery. Unless the Secretary finds that any certificate does not conform to law, upon receipt of all filing fees required by law the Secretary shall:
 - (1) Certify that any certificate authorized to be filed under this chapter has been filed in the Secretary's office by endorsing upon the signed certificate the word "Filed," and the date and time of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud. Except as provided in paragraph (a)(5) or (a)(6) of this section, such date and time of filing of a certificate shall be the date and time of delivery of the certificate;
 - (2) File and index the endorsed certificate;
 - (3) Prepare and return to the person who filed it or that person's representative a copy of the signed certificate, similarly endorsed, and shall certify such copy as a true copy of the signed certificate; and
 - (4) Cause to be entered such information from the certificate as the Secretary deems appropriate into the Tribes' Information System or any system which is a successor thereto in the office of the Secretary, and such information and a copy of such certificate shall be permanently maintained as a public record on a suitable medium.

The Secretary is authorized to grant direct access to such system to registered agents subject to the execution of an operating agreement between the Secretary and such registered agent. Any registered agent granted such access shall demonstrate the existence of policies to ensure that information entered into the system accurately reflects the content of certificates in the possession of the registered agent at the time of entry.

- (5) Upon request made upon or prior to delivery, the Secretary may, to the extent deemed practicable, establish as the date and time of filing of a certificate a date and time after its delivery. If the Secretary refuses to file any certificate due to an error, omission or other imperfection, the Secretary may hold such certificate in suspension, and in such event, upon delivery of a replacement certificate in proper form for filing and tender of the required fees within 5 business days after notice of such suspension is given to the filer, the Secretary shall establish as the date and time of filing of such certificate the date and time that would have been the date and time of filing of the rejected certificate had it been accepted for filing. The Secretary shall not issue a certificate of good standing with respect to any limited liability company or registered series with a certificate held in suspension pursuant to this subsection. The Secretary may establish as the date and time of filing of a certificate the date and time at which information from such certificate is entered pursuant to paragraph (a)(4) of this section if such certificate is delivered on the same date and within 4 hours after such information is entered.
- (6) If:
- a. Together with the actual delivery of a certificate and tender of the required fees, there is delivered to the Secretary a separate affidavit (which in its heading shall be designated as an affidavit of extraordinary condition) attesting, on the basis of personal knowledge of the affiant or a reliable source of knowledge identified in the affidavit, that an earlier effort to deliver such certificate and tender such fees was made in good faith, specifying the nature, date and time of such good faith effort and requesting that the Secretary establish such date and time as the date and time of filing of such certificate; or
 - b. Upon the actual delivery of a certificate and tender of the required fees, the Secretary in the Secretary's own discretion provides a written waiver of the requirement for such an affidavit stating that it appears to the Secretary that an earlier effort to deliver such certificate and tender such fees was made in good faith and specifying the date and time of such effort; and
 - c. The Secretary determines that an extraordinary condition existed at such date and time, that such earlier effort was unsuccessful as a result of the existence of such extraordinary condition, and that such actual delivery and tender were made within a reasonable period (not to exceed 2 business days) after the cessation of such extraordinary condition, then the Secretary may establish such date and time as the date and time of filing of such certificate. No fee shall be paid to the Secretary for receiving an affidavit of extraordinary condition.

For purposes of this subsection, an extraordinary condition means: any emergency resulting from an attack on, invasion or occupation by foreign military forces of, or disaster, catastrophe, war or other armed conflict, revolution or insurrection or rioting or civil commotion in, the United States or a locality in which the Secretary conducts its business or in which the good faith effort to deliver the certificate and tender the required fees is made, or the immediate threat of any of the foregoing; or any malfunction or outage of the electrical or telephone service to the Secretary's office, or weather or other condition in or about a locality in which the Secretary conducts its business, as a result of which the Secretary's office is not open for the purpose of the filing of certificates under this chapter or such filing cannot be effected without extraordinary effort. The Secretary may require such proof as it deems necessary to make the determination required under this paragraph (a)(6)c., and any such determination shall be conclusive in the absence of actual fraud. If the Secretary establishes the date and time of filing of a certificate pursuant to this subsection, the date and time of delivery of the affidavit of extraordinary condition or the date and time of the Secretary's written waiver of such affidavit shall be endorsed on such affidavit or waiver and such affidavit or waiver, so endorsed, shall be attached to the filed certificate to which it relates. Such filed certificate shall be effective as of the date and time established as the date and time of filing by the Secretary pursuant to this subsection, except as to those persons who are substantially and adversely affected by such establishment and, as to those persons, the certificate shall be effective from the date and time endorsed on the affidavit of extraordinary condition or written waiver attached thereto.

- (b) Notwithstanding any other provision of this chapter, any certificate filed under this chapter, other than a certification of formation filed pursuant to 230-201(c), shall be effective at the time of its filing with the Secretary or at any later date or time specified in the certificate. Upon the filing of a certificate of amendment (or judicial decree of amendment), certificate of correction, corrected certificate or restated certificate in the office of the Secretary, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation or certificate of registered series, as applicable, shall be amended, corrected or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), a certificate of merger or consolidation or a certificate of ownership and merger or a certificate of division which acts as a certificate of cancellation, a certificate of transfer, a certificate of conversion to a non-Tribal entity, or a certificate of conversion of registered series to protected series, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof), a certificate of merger or consolidation or a certificate of ownership and merger or a certificate of division which acts as a certificate of cancellation, a certificate of transfer, a certificate of conversion to a non-Tribal entity, or a certificate of conversion of registered series to protected series, as provided for therein, or as specified in 230-104(d), 230-104(i)(4), 230-112 or 230-1108 of this chapter, the certificate of formation or certificate of registered series, as applicable, is canceled. Upon the filing of a certificate of limited liability company domestication or upon the future effective date or time of a certificate of limited liability company domestication, the entity filing the certificate of limited liability company domestication is domesticated as a limited liability company with the effect provided in 230-212 of this chapter.

Upon the filing of a certificate of conversion to limited liability company or upon the future effective date or time of a certificate of conversion to limited liability company, the entity filing the certificate of conversion to limited liability company is converted to a limited liability company with the effect provided in 230-214 of this chapter. Upon the filing of a certificate of conversion of protected series to registered series, or upon the future effective date or time of a certificate of conversion of protected series to registered series, the protected series with respect to which such filing is made is converted to a registered series with the effect provided in 230-219 of this chapter. Upon the filing of a certificate of conversion of registered series to protected series, or upon the future effective date or time of a certificate of conversion of registered series to protected series, the registered series filing such certificate is converted to a protected series with the effect provided in 230-220 of this chapter. Upon the filing of a certificate of revival, a limited liability company or a registered series is revived with the effect provided in 230-1109 or 230-1110 of this chapter. Upon the filing of a certificate of transfer and domestic continuance, or upon the future effective date or time of a certificate of transfer and domestic continuance, as provided for therein, the limited liability company filing the certificate of transfer and domestic continuance shall continue to exist as a limited liability company of the Tribe with the effect provided in 230-213 of this chapter.

- (c) If any certificate filed in accordance with this chapter provides for a future effective date or time and if, prior to such future effective date or time set forth in such certificate, the transaction is terminated or its terms are amended to change the future effective date or time or any other matter described in such certificate so as to make such certificate false or inaccurate in any respect, such certificate shall, prior to the future effective date or time set forth in such certificate, be terminated or amended by the filing of a certificate of termination or certificate of amendment of such certificate, executed in accordance with 230-204 of this chapter, which shall identify the certificate which has been terminated or amended and shall state that the certificate has been terminated or the manner in which it has been amended. Upon the filing of a certificate of amendment of a certificate with a future effective date or time, the certificate identified in such certificate of amendment is amended. Upon the filing of a certificate of termination of a certificate with a future effective date or time, the certificate identified in such certificate of termination is terminated.
- (d) A fee as set forth in 230-1105(a)(3) of this chapter shall be paid at the time of the filing of a certificate of formation, a certificate of registered series, a certificate of amendment, a certificate of correction, a certificate of amendment of a certificate with a future effective date or time, a certificate of termination of a certificate with a future effective date or time, a certificate of cancellation, a certificate of merger or consolidation, a certificate of ownership and merger, a restated certificate, a corrected certificate, a certificate of conversion to limited liability company, a certificate of conversion to a non-Tribal entity, a certificate of conversion of protected series to registered series, a certificate of conversion of registered series to protected series, a certificate of transfer, a certificate of transfer and domestic continuance, a certificate of limited liability company domestication, a certificate of division or a certificate of revival.
- (e) The Secretary, acting as agent, shall collect and deposit in a separate account established exclusively for that purpose, a courthouse municipality fee with respect to each filed instrument and shall thereafter monthly remit funds from such account to the treasury of the Tribe. The fee to the Tribe shall be \$40 for each instrument filed with the Secretary in accordance with this section.

- (f) A fee as set forth in 230-1105(a)(4) of this chapter shall be paid for a certified copy of any paper on file as provided for by this chapter, and a fee as set forth in 230-1105(a)(5) of this chapter shall be paid for each page copied.
- (g) Any certificate or other document filed in the office of the Secretary and changing the address of a registered agent or registered office shall comply with 230-104(k) of this chapter.

230.207 Notice

The fact that a certificate of formation is on file in the office of the Secretary is notice that the entity formed in connection with the filing of the certificate of formation is a limited liability company formed under the laws of the Tribe and is notice of all other facts set forth therein which are required to be set forth in a certificate of formation by 230-201(a)(1) and (2) or 230-1202 of this chapter and which are permitted to be set forth in a certificate of formation by 230-215(b) or 230-218(b) of this chapter. The fact that a certificate of registered series is on file in the office of the Secretary is notice that the registered series named in such certificate of registered series has been formed pursuant to 230-218 of this chapter and is notice of all other facts set forth therein which are required to be set forth in a certificate of registered series by 230-218(d) of this chapter.

230.208 Restated Certificate

- (a) Restated certificate of formation.
 - (1) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of there having theretofore been filed with the Secretary 1 or more certificates or other instruments pursuant to any of the sections referred to in this chapter, and it may at the same time also further amend its certificate of formation by adopting a restated certificate of formation.
 - (2) If a restated certificate of formation merely restates and integrates but does not further amend the initial certificate of formation, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this chapter, it shall be specifically designated in its heading as a “Restated Certificate of Formation” together with such other words as the limited liability company may deem appropriate and shall be executed by an authorized person and filed as provided in 230-206 of this chapter in the office of the Secretary. If a restated certificate restates and integrates and also further amends in any respect the certificate of formation, as theretofore amended or supplemented, it shall be specifically designated in its heading as an “Amended and Restated Certificate of Formation” together with such other words as the limited liability company may deem appropriate and shall be executed by at least 1 authorized person, and filed as provided in 230-206 of this chapter in the office of the Secretary.

- (3) A restated certificate of formation shall state, either in its heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original certificate of formation with the Secretary, and the future effective date or time (which shall be a date or time certain) of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a limited liability company's certificate of formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.
 - (4) Upon the filing of a restated certificate of formation with the Secretary, or upon the future effective date or time of a restated certificate of formation as provided for therein, the initial certificate of formation, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.
 - (5) Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.
- (b) Restated certificate of registered series.
- (1) A registered series of a limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of registered series which are then in effect and operative as a result of there having theretofore been filed with the Secretary 1 or more certificates or other instruments pursuant to any of the sections referred to in this chapter, and it may at the same time also further amend its certificate of registered series by adopting a restated certificate of registered series.
 - (2) If a restated certificate of registered series merely restates and integrates but does not further amend the initial certificate of registered series, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this chapter, it shall be specifically designated in its heading as a "Restated Certificate of Registered Series" together with such other words as the registered series may deem appropriate and shall be executed by an authorized person and filed as provided in 230-206 of this chapter in the office of the Secretary. If a restated certificate restates and integrates and also further amends in any respect the certificate of registered series as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Registered Series" together with such other words as the registered series may deem appropriate and shall be executed by at least 1 authorized person, and filed as provided in 230-206 of this chapter in the office of the Secretary.

- (3) A restated certificate of registered series shall state, either in its heading or in an introductory paragraph, the name of the limited liability company, the present name of the registered series, and, if the name of the registered series has been changed, the name under which it was originally filed, and the date of filing of its original certificate of registered series with the Secretary, and the future effective date or time (which shall be a date or time certain) of the restated certificate of registered series if it is not to be effective upon the filing of the restated certificate of registered series. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a certificate of registered series, as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.
- (4) Upon the filing of a restated certificate of registered series with the Secretary, or upon the future effective date or time of a restated certificate of registered series as provided for therein, the initial certificate of registered series, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of registered series, including any further amendment or changes made thereby, shall be the certificate of registered series of such registered series, but the original effective date of formation of the registered series, as applicable, shall remain unchanged.
- (5) Any amendment or change effected in connection with the restatement and integration of a certificate of registered series shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

230.209 Merger and Consolidation

- (a) As used in this section and in 230-204, 230-217, 230-219, 230-220 and 230-221 of this chapter, “other business entity” means a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust, or any other incorporated or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), and a foreign limited liability company, but excluding a domestic limited liability company. As used in this section and in 230-210 and 230-301 of this chapter, “plan of merger” means a writing approved by a domestic limited liability company, in the form of resolutions or otherwise, that states the terms and conditions of a merger under subsection (i) of this section.
- (b) Pursuant to an agreement of merger or consolidation, 1 or more domestic limited liability companies may merge or consolidate with or into 1 or more domestic limited liability companies or 1 or more other business entities formed or organized under the laws of the Tribe or any other state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity. Unless otherwise provided in the limited liability company agreement, an agreement of merger or consolidation or a plan of merger shall be approved by each domestic limited liability company which is to merge or consolidate by members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members. In connection with a merger or consolidation hereunder, rights or securities of,

or interests in, a domestic limited liability company or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation, may remain outstanding or may be canceled. Notwithstanding prior approval, an agreement of merger or consolidation or a plan of merger may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation or plan of merger. Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary and effective on or prior to July 31, 2015, shall continue to be governed by the second sentence of this subsection as in effect on July 31, 2015.

- (c) Except in the case of a merger under subsection (i) of this section, if a domestic limited liability company is merging or consolidating under this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by 1 or more authorized persons on behalf of the domestic limited liability company when it is the surviving or resulting entity in the office of the Secretary. The certificate of merger or consolidation shall state:
- (1) The name, jurisdiction of formation or organization and type of entity of each of the domestic limited liability companies and other business entities which is 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 and 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) In the case of a merger in which a domestic limited liability company is the surviving entity, such amendments, if any, to the certificate of formation of the surviving domestic limited liability company as are desired to be effected by the merger (which amendments may amend and restate the certificate of formation of the surviving domestic limited liability company in its entirety);
 - (5) 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 certificate of merger or consolidation;
 - (6) 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;
 - (7) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited liability company or other business entity, on 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; and
 - (8) If the surviving or resulting entity is not a domestic limited liability company, or a corporation, partnership (whether general(including a limited liability partnership) or limited (including a limited liability limited partnership)) or statutory trust organized

- under the laws of the Tribe, a statement that such surviving or resulting other business entity agrees that it may be served with process within the Reservation 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 appointing the Secretary as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary. Process may be served upon the Secretary under this subsection by means of electronic transmission but only as prescribed by the Secretary. The Secretary is authorized to issue such rules and regulations with respect to such service as the Secretary deems necessary or appropriate. In the event of service hereunder upon the Secretary, the procedures set forth in 230-911(c) of this chapter shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the Secretary, and the Secretary shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in 230-911(c) of this chapter.
- (d) Unless a future effective date or time is provided in a certificate of merger or consolidation, or in the case of a merger under subsection (i) of this section in a certificate of ownership and merger, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the Secretary of a certificate of merger or consolidation or a certificate of ownership and merger.
- (e) A certificate of merger or consolidation or a certificate of ownership and merger shall act as a certificate of cancellation for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation. A certificate of merger or a certificate of ownership and merger that sets forth any amendment in accordance with paragraph (c)(4) or subsection (i) of this section shall be deemed to be an amendment to the certificate of formation of the limited liability company, and the limited liability company shall not be required to take any further action to amend its certificate of formation under 230-202 or 230-208 of this chapter with respect to such amendments set forth in the certificate of merger or certificate of ownership and merger. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.
- (f) An agreement of merger or consolidation or a plan of merger approved in accordance with subsection (b) of this section may:
- (1) Effect any amendment to the limited liability company agreement; or
 - (2) Effect the adoption of a new limited liability company agreement, in either case, for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation.

COQUILLE INDIAN TRIBAL CODE
CHAPTER 230
Limited Liability Company

Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be effective notwithstanding any provision of the limited liability company agreement relating to amendment or adoption of a new limited liability company agreement, other than a provision that by its terms applies to an amendment to the limited liability company agreement or the adoption of a new limited liability company agreement, in either case, in connection with a merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including that the limited liability company agreement of any constituent limited liability company to the merger or consolidation (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the limited liability company agreement of the surviving or resulting limited liability company.

- (g) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the Tribe, 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 Tribe, 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 chapter; but all rights of creditors and all liens upon any property of any of said domestic limited liability companies and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said domestic limited liability companies and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. 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 under 230-803 of this chapter or pay its liabilities and distribute its assets under 230-804 of this chapter, and the merger or consolidation shall not constitute a dissolution of such limited liability company.
- (h) A limited liability company agreement may provide that a domestic limited liability company shall not have the power to merge or consolidate as set forth in this section.

- (i) In any case in which (i) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations of which class there are outstanding shares that would be entitled to vote on such merger, is owned by a domestic limited liability company, (ii) 1 or more of such corporations is a corporation of the Tribe, and (iii) any corporation that is not a corporation of the Tribe is a corporation of any other state or the District of Columbia or another jurisdiction, the laws of which do not forbid such merger, the domestic limited liability company having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations, pursuant to a plan of merger. If a domestic limited liability company is causing a merger under this subsection, the domestic limited liability company shall file a certificate of ownership and merger executed by 1 or more authorized persons on behalf of the domestic limited liability company in the office of the Secretary. The certificate of ownership and merger shall certify that such merger was authorized in accordance with the domestic limited liability company's limited liability company agreement and this chapter, and if the domestic limited liability company shall not own all the outstanding stock of all the corporations that are parties to the merger, shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving domestic limited liability company or corporation upon surrender of each share of the corporation or corporations not owned by the domestic limited liability company, or the cancellation of some or all of such shares. In the case of a merger under this subsection in which a domestic limited liability company is the surviving entity, the certificate of ownership and merger may also state such amendments, if any, to the certificate of formation of the surviving domestic limited liability company as are desired to be effected by the merger (which amendments may amend and restate the certificate of formation of the surviving domestic limited liability company in its entirety). If a corporation surviving a merger under this subsection is not a corporation organized under the laws of the Tribe, then the terms and conditions of the merger shall obligate such corporation to agree that it may be served with process within the Reservation in any proceeding for enforcement of any obligation of the domestic limited liability company or any obligation of any constituent corporation of the Tribe, as well as for enforcement of any obligation of the surviving corporation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings, and to irrevocably appoint the Secretary as its agent to accept service of process in any such suit or other proceedings, and to specify the address to which a copy of such process shall be mailed by the Secretary. Process may be served upon the Secretary under this subsection by means of electronic transmission but only as prescribed by the Secretary. The Secretary is authorized to issue such rules and regulations with respect to such service as the Secretary deems necessary or appropriate. In the event of such service upon the Secretary in accordance with this subsection, the Secretary shall forthwith notify such surviving corporation thereof by letter, directed to such surviving corporation at its address so specified, unless such surviving corporation shall have designated in writing to the Secretary a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary that service is being

effected pursuant to this subsection and to pay the Secretary the sum of \$50 for the use of the Tribe, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary shall not be required to retain such information longer than 5 years from receipt of the service of process.

230.210 No Statutory Appraisal Rights

Unless otherwise provided in a limited liability company agreement or an agreement of merger or consolidation or a plan of merger or a plan of division, no appraisal rights shall be available with respect to a limited liability company interest or another interest in a limited liability company, including in connection with any amendment of a limited liability company agreement, any merger or consolidation in which the limited liability company or a registered series of the limited liability company is a constituent party to the merger or consolidation, any division of the limited liability company, any conversion of the limited liability company to another business form, any conversion of a protected series of the limited liability company to a registered series of such limited liability company, any conversion of a registered series of the limited liability company to a protected series of such limited liability company, any transfer to or domestication or continuance in any jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets. The Tribal Court shall have jurisdiction to hear and determine any matter relating to any appraisal rights provided in a limited liability company agreement or an agreement of merger or consolidation or a plan of merger or a plan of division.

230.211 Certificate of Correction

- (a) Whenever any certificate authorized to be filed with the office of the Secretary under any provision of this chapter has been so filed and is an inaccurate record of the action therein referred to, or was defectively or erroneously executed, such certificate may be corrected by filing with the office of the Secretary a certificate of correction of such certificate. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form, and shall be executed and filed as required by this chapter. The certificate of correction shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the certificate of correction shall be effective from the filing date.
- (b) In lieu of filing a certificate of correction, a certificate may be corrected by filing with the Secretary a corrected certificate which shall be executed and filed as if the corrected certificate were the certificate being corrected, and a fee equal to the fee payable to the Secretary for a certificate of correction as prescribed by 230-1105 of this chapter shall be paid and collected by the Secretary for the use of the Tribe in connection with the filing of the corrected certificate. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire certificate in corrected form.

A certificate corrected in accordance with this section shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the certificate as corrected shall be effective from the filing date.

230.212 Domestication of non-United State Entities

- (a) As used in this section and in 230-204 of this chapter, “non-United States entity” means a foreign limited liability company (other than 1 formed under the laws of a state) or a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).
- (b) Any non-United States entity may become domesticated as a limited liability company under the laws of the Tribe within the Reservation by complying with subsection (g) of this section and filing in the office of the Secretary in accordance with 230-206 of this chapter:
 - (1) A certificate of limited liability company domestication that has been executed in accordance with 230-204 of this chapter; and
 - (2) A certificate of formation that complies with 230-201 of this chapter and has been executed by 1 or more authorized persons in accordance with 230-204 of this chapter.

Each of the certificates required by this subsection (b) shall be filed simultaneously in the office of the Secretary and, if such certificates are not to become effective upon their filing as permitted by 230-206(b) of this chapter, then each such certificate shall provide for the same effective date or time in accordance with 230-206(b) of this chapter.

- (c) The certificate of limited liability company domestication shall state:
 - (1) The date on which and jurisdiction where the non-United States entity was first formed, incorporated, created or otherwise came into being;
 - (2) The name of the non-United States entity immediately prior to the filing of the certificate of limited liability company domestication;
 - (3) The name of the limited liability company as set forth in the certificate of formation filed in accordance with subsection (b) of this section;
 - (4) The future effective date or time (which shall be a date or time certain) of the domestication as a limited liability company if it is not to be effective upon the filing of the certificate of limited liability company domestication and the certificate of formation;
 - (5) The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-United States entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of limited liability company domestication; and
 - (6) That the domestication has been approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Tribal law, as appropriate.

- (d) Upon the filing in the office of the Secretary of the certificate of limited liability company domestication and the certificate of formation or upon the future effective date or time of the certificate of limited liability company domestication and the certificate of formation, the non-United States entity shall be domesticated as a limited liability company within the Reservation and the limited liability company shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding 230-201 of this chapter, the existence of the limited liability company shall be deemed to have commenced on the date the non-United States entity commenced its existence in the jurisdiction in which the non-United States entity was first formed, incorporated, created or otherwise came into being.
- (e) The domestication of any non-United States entity as a limited liability company within the Reservation shall not be deemed to affect any obligations or liabilities of the non-United States entity incurred prior to its domestication as a limited liability company within the Reservation, or the personal liability of any person therefor.
- (f) The filing of a certificate of limited liability company domestication shall not affect the choice of law applicable to the non-United States entity, except that from the effective date or time of the domestication, the law of the Tribe, including the provisions of this chapter, shall apply to the non-United States entity to the same extent as if the non-United States entity had been formed as a limited liability company on that date.
- (g) Prior to the time a certificate of limited liability company domestication becomes effective as provided in this chapter, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Tribal law, as appropriate, and a limited liability company agreement shall be approved by the same authorization required to approve the domestication.
- (h) When any domestication shall have become effective under this section, for all purposes of the laws of the Tribe, all of the rights, privileges and powers of the non-United States entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-United States entity, as well as all other things and causes of action belonging to such non-United States entity, shall remain vested in the domestic limited liability company to which such non-United States entity has been domesticated (and also in the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication) and shall be the property of such domestic limited liability company (and also of the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication), and the title to any real property vested by deed or otherwise in such non-United States entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such non-United States entity shall be preserved unimpaired, and all debts, liabilities and duties of the non-United States entity that has been domesticated shall remain attached to the domestic limited liability company to which such non-United States entity has been domesticated (and also to the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication), and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited liability company.

The rights, privileges, powers and interests in property of the non-United States entity, as well as the debts, liabilities and duties of the non-United States entity, shall not be deemed, as a consequence of the domestication, to have been transferred to the domestic limited liability company to which such non-United States entity has domesticated for any purpose of the laws of the Tribe.

- (i) When a non-United States entity has become domesticated as a limited liability company pursuant to this section, for all purposes of the laws of the Tribe, the limited liability company shall be deemed to be the same entity as the domesticating non-United States entity and the domestication shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a domestic limited liability company. Unless otherwise agreed, for all purposes of the laws of the Tribe, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the domestication shall not be deemed to constitute a dissolution of such non-United States entity. If, following domestication, a non-United States entity that has become domesticated as a limited liability company continues its existence in the foreign country or other foreign jurisdiction in which it was existing immediately prior to domestication, the limited liability company and such non-United States entity shall, for all purposes of the laws of the Tribe, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the Tribe and the laws of such foreign country or other foreign jurisdiction.
- (j) In connection with a domestication hereunder, rights or securities of, or interests in, the non-United States entity that is to be domesticated as a domestic limited liability company may be exchanged for or converted into cash, property, rights or securities of, or interests in, such domestic limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another domestic limited liability company or other entity, may remain outstanding or may be canceled.

230.213 Transfer or Continuance of Domestic Limited Liability Companies

- (a) Upon compliance with this section, any limited liability company may transfer to or domesticate or continue in any jurisdiction, other than any state, and, in connection therewith, may elect to continue its existence as a limited liability company within the Reservation.
- (b) If the limited liability company agreement specifies the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section, the transfer or domestication or continuance shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability company agreement does not specify the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized by the approval by

members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members. If a transfer or domestication or continuance described in subsection (a) of this section shall be authorized as provided in this subsection (b), a certificate of transfer if the limited liability company's existence as a limited liability company of the Tribe is to cease, or a certificate of transfer and domestic continuance if the limited liability company's existence as a limited liability company within the Reservation is to continue, executed in accordance with 230-204 of this chapter, shall be filed in the office of the Secretary in accordance with 230-206 of this chapter. The certificate of transfer or the certificate of transfer and domestic continuance shall state:

- (1) The name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;
- (2) The date of the filing of its original certificate of formation with the Secretary;
- (3) The jurisdiction to which the limited liability company shall be transferred or in which it shall be domesticated or continued and the name of the entity or business form formed, incorporated, created or that otherwise comes into being as a consequence of the transfer of the limited liability company to, or its domestication or continuance in, such foreign jurisdiction;
- (4) The future effective date or time (which shall be a date or time certain) of the transfer to or domestication or continuance in the jurisdiction specified in paragraph (b)(3) of this section if it is not to be effective upon the filing of the certificate of transfer or the certificate of transfer and domestic continuance;
- (5) That the transfer or domestication or continuance of the limited liability company has been approved in accordance with this section;
- (6) In the case of a certificate of transfer, (i) that the existence of the limited liability company as a limited liability company of the Tribe shall cease when the certificate of transfer becomes effective, and (ii) the agreement of the limited liability company that it may be served with process within the Reservation in any action, suit or proceeding for enforcement of any obligation of the limited liability company arising while it was a limited liability company of the Tribe, and that it irrevocably appoints the Secretary as its agent to accept service of process in any such action, suit or proceeding;
- (7) The address (which may not be that of the limited liability company's registered agent without the written consent of the limited liability company's registered agent, such consent to be filed with the certificate of transfer) to which a copy of the process referred to in paragraph (b)(6) of this section shall be mailed to it by the Secretary. Process may be served upon the Secretary under paragraph (b)(6) of this section by means of electronic transmission but only as prescribed by the Secretary. The Secretary is authorized to issue such rules and regulations with respect to such service as the Secretary deems necessary or appropriate. In the event of service hereunder upon the Secretary, the procedures set forth in 230-911(c) of this chapter shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary, and the Secretary shall notify the limited liability company that has transferred or domesticated or continued out of the Tribe at all such addresses furnished by the plaintiff in accordance with the procedures set forth in 230-911(c) of this chapter; and

- (8) In the case of a certificate of transfer and domestic continuance, that the limited liability company will continue to exist as a limited liability company of the Tribe after the certificate of transfer and domestic continuance becomes effective.
- (c) Upon the filing in the office of the Secretary of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Secretary of all fees prescribed in this chapter, the limited liability company shall cease to exist as a limited liability company of the Tribe. A copy of the certificate of transfer certified by the Secretary shall be prima facie evidence of the transfer or domestication or continuance by such limited liability company out of the Tribe. A copy of the certificate of transfer and domestic continuance certified by the Secretary shall be prima facie evidence of such limited liability company's transfer to or domestication or continuance in another jurisdiction and its continuance as a limited liability company within the Reservation.
- (d) The transfer or domestication or continuance of a limited liability company out of the Tribe in accordance with this section and the resulting cessation of its existence as a limited liability company of the Tribe pursuant to a certificate of transfer shall not be deemed to affect any obligations or liabilities of the limited liability company incurred prior to such transfer or domestication or continuance or the personal liability of any person incurred prior to such transfer or domestication or continuance, nor shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising prior to such transfer or domestication or continuance. Unless otherwise agreed, the transfer or domestication or continuance of a limited liability company out of the Tribe in accordance with this section shall not require such limited liability company to wind up its affairs under 230-803 of this chapter or pay its liabilities and distribute its assets under 230-804 of this chapter and shall not be deemed to constitute a dissolution of such limited liability company.
- (e) If a limited liability company files a certificate of transfer and domestic continuance, after the time the certificate of transfer and domestic continuance becomes effective, the limited liability company shall continue to exist as a limited liability company of the Tribe, and the laws of the Tribe, including this chapter, shall apply to the limited liability company to the same extent as prior to such time. So long as a limited liability company continues to exist as a limited liability company of the Tribe following the filing of a certificate of transfer and domestic continuance, the continuing domestic limited liability company and the entity or business form formed, incorporated, created or that otherwise came into being as a consequence of the transfer of the limited liability company to, or its domestication or continuance in, a foreign country or other foreign jurisdiction shall, for all purposes of the laws of the Tribe, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the Tribe and the laws of such foreign country or other foreign jurisdiction.
- (f) In connection with a transfer or domestication or continuance of a domestic limited liability company to or in another jurisdiction pursuant to subsection (a) of this section, rights or securities of, or interests in, such limited liability company may be exchanged for or converted into cash, property, rights or securities of, or interests in, the entity or business form in which the limited liability company will exist in such other jurisdiction as a consequence of the transfer or domestication or continuance or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another entity or business form, may remain outstanding or may be canceled.

- (g) When a limited liability company has transferred or domesticated or continued out of the Tribe pursuant to this section, the transferred or domesticated or continued entity or business form shall, for all purposes of the laws of the Tribe, be deemed to be the same entity as the limited liability company and shall constitute a continuation of the existence of such limited liability company in the form of the transferred or domesticated or continued entity or business form. When any transfer or domestication or continuance of a limited liability company out of the Tribe shall have become effective under this section, for all purposes of the laws of the Tribe, all of the rights, privileges and powers of the limited liability company that has transferred or domesticated or continued, and all property, real, personal and mixed, and all debts due to such limited liability company, as well as all other things and causes of action belonging to such limited liability company, shall remain vested in the transferred or domesticated or continued entity or business form (and also in the limited liability company that has transferred, domesticated or continued, if and for so long as such limited liability company continues its existence as a domestic limited liability company) and shall be the property of such transferred or domesticated or continued entity or business form (and also of the limited liability company that has transferred, domesticated or continued, if and for so long as such limited liability company continues its existence as a domestic limited liability company), and the title to any real property vested by deed or otherwise in such limited liability company shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such limited liability company shall be preserved unimpaired, and all debts, liabilities and duties of the limited liability company that has transferred or domesticated or continued shall remain attached to the transferred or domesticated or continued entity or business form (and also to the limited liability company that has transferred, domesticated or continued, if and for so long as such limited liability company continues its existence as a domestic limited liability company), and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as the transferred or domesticated or continued entity or business form. The rights, privileges, powers and interests in property of the limited liability company that has transferred or domesticated or continued, as well as the debts, liabilities and duties of such limited liability company, shall not be deemed, as a consequence of the transfer or domestication or continuance out of the Tribe, to have been transferred to the transferred or domesticated or continued entity or business form for any purpose of the laws of the Tribe.
- (h) A limited liability company agreement may provide that a domestic limited liability company shall not have the power to transfer, domesticate or continue as set forth in this section.

230.214 Conversion of Certain Entities to a Limited Liability Company

- (a) As used in this section and in 230-204 of this chapter, the term “other entity” means a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or a foreign limited liability company.

- (b) Any other entity may convert to a domestic limited liability company by complying with subsection (h) of this section and filing in the office of the Secretary in accordance with 230-206 of this chapter:
 - (1) A certificate of conversion to limited liability company that has been executed in accordance with 230-204 of this chapter; and
 - (2) A certificate of formation that complies with 230-201 of this chapter and has been executed by 1 or more authorized persons in accordance with 230-204 of this chapter.

Each of the certificates required by this subsection (b) shall be filed simultaneously in the office of the Secretary and, if such certificates are not to become effective upon their filing as permitted by 230-206(b) of this chapter, then each such certificate shall provide for the same effective date or time in accordance with 230-206(b) of this chapter.

- (c) The certificate of conversion to limited liability company shall state:
 - (1) The date on which and jurisdiction where the other entity was first created, incorporated, formed or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited liability company;
 - (2) The name and type of entity of the other entity immediately prior to the filing of the certificate of conversion to limited liability company;
 - (3) The name of the limited liability company as set forth in its certificate of formation filed in accordance with subsection (b) of this section; and
 - (4) The future effective date or time (which shall be a date or time certain) of the conversion to a limited liability company if it is not to be effective upon the filing of the certificate of conversion to limited liability company and the certificate of formation.
- (d) Upon the filing in the office of the Secretary of the certificate of conversion to limited liability company and the certificate of formation or upon the future effective date or time of the certificate of conversion to limited liability company and the certificate of formation, the other entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding 230-201 of this chapter, the existence of the limited liability company shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being.
- (e) The conversion of any other entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to such conversion.

- (f) When any conversion shall have become effective under this section, for all purposes of the laws of the Tribe, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall remain vested in the domestic limited liability company to which such other entity has converted and shall be the property of such domestic limited liability company, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the domestic limited liability company to which such other entity has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited liability company. The rights, privileges, powers and interests in property of the other entity, as well as the debts, liabilities and duties of the other entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic limited liability company to which such other entity has converted for any purpose of the laws of the Tribe.
- (g) Unless otherwise agreed, for all purposes of the laws of the Tribe, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity. When an other entity has been converted to a limited liability company pursuant to this section, for all purposes of the laws of the Tribe, the limited liability company shall be deemed to be the same entity as the converting other entity and the conversion shall constitute a continuation of the existence of the converting other entity in the form of a domestic limited liability company.
- (h) Prior to the time a certificate of conversion to limited liability company becomes effective as provided in this chapter, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate and a limited liability company agreement shall be approved by the same authorization required to approve the conversion.
- (i) In connection with a conversion hereunder, rights or securities of or interests in the other entity which is to be converted to a domestic limited liability company may be exchanged for or converted into cash, property, or rights or securities of or interests in such domestic limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another domestic limited liability company or other entity, may remain outstanding or may be canceled.
- (j) The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, an other entity to the Tribe by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including by the amendment of a limited liability company agreement or other agreement.

230.215 Series of Members, Managers, Limited Liability Company Interests or Assets

- (a) A limited liability company agreement may establish or provide for the establishment of 1 or more designated series of members, managers, limited liability company interests or assets. Any such series may have separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective. No provision of subsection (b) of this section or 230-218 of this chapter shall be construed to limit the application of the principle of freedom of contract to a series that is not a protected series or a registered series. Other than pursuant to 230-219, 230-220 and 230-221, a series may not merge, convert or consolidate pursuant to any section of this chapter or any other statute of this Tribe.
- (b) A series established in accordance with the following sentence is a protected series. Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, in the event that a limited liability company agreement establishes or provides for the establishment of 1 or more series, and to the extent the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof, and if the limited liability company agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the certificate of formation of the limited liability company, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the limited liability company agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. Neither the preceding sentence nor any provision pursuant thereto in a limited liability company agreement or certificate of formation shall (i) restrict a protected series or limited liability company on behalf of a protected series from agreeing in the limited liability company agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such protected series or (ii) restrict a limited liability company from agreeing in the limited liability company agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a protected series shall be enforceable against the assets of the limited liability company generally. A limited liability company agreement does not need to use the term protected when referencing series or refer to this section. Assets associated with a protected series may be held directly or indirectly, including in the name of such series, in the name of the limited liability company, through a nominee or otherwise. Records maintained for a protected series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof. Notice in a certificate of formation of the limitation on liabilities of a protected series as

referenced in this subsection shall be sufficient for all purposes of this subsection whether or not the limited liability company has established any protected series when such notice is included in the certificate of formation, and there shall be no requirement that (i) any specific protected series of the limited liability company be referenced in such notice, or (ii) such notice use the term protected when referencing series or include a reference to this section. The fact that a certificate of formation that contains the foregoing notice of the limitation on liabilities of a protected series is on file in the office of the Secretary shall constitute notice of such limitation on liabilities of a protected series. As used in this chapter, a reference to assets of a protected series includes assets associated with such series, a reference to assets associated with a protected series includes assets of such series, a reference to members or managers of a protected series includes members or managers associated with such series, and a reference to members or managers associated with a protected series includes members or managers of such series. The following shall apply to a protected series:

- (1) A protected series may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking. Unless otherwise provided in a limited liability company agreement, a protected series shall have the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued.
- (2) Except as otherwise provided by this chapter, no member or manager of a protected series shall be obligated personally for any debt, obligation or liability of such series, whether arising in contract, tort or otherwise, solely by reason of being a member or acting as manager of such series. Notwithstanding the preceding sentence, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of 1 or more protected series.
- (3) A limited liability company agreement may provide for classes or groups of members or managers associated with a protected series having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members or managers associated with such series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with such series. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the limited liability company agreement a class or group of a protected series of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members associated with a protected series shall have no voting rights.
- (4) A limited liability company agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a protected series the right to vote separately or with all or any class or group of the members or managers associated with such series, on any matter. Voting by members or managers associated with a protected series may be on a per capita, number, financial interest, class, group or any other basis.

- (5) Unless otherwise provided in a limited liability company agreement, the management of a protected series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of such series owned by all of the members associated with such series, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided, however, that if a limited liability company agreement provides for the management of a protected series, in whole or in part, by a manager, the management of such series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager of a protected series shall also hold the offices and have the responsibilities accorded to the manager as set forth in a limited liability company agreement. A protected series may have more than 1 manager. Subject to 230-602 of this chapter, a manager shall cease to be a manager with respect to a protected series as provided in a limited liability company agreement. Except as otherwise provided in a limited liability company agreement, any event under this chapter or in a limited liability company agreement that causes a manager to cease to be a manager with respect to a protected series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.
- (6) Notwithstanding 230-606 of this chapter, but subject to paragraphs (b)(7) and (b)(10) of this section, and unless otherwise provided in a limited liability company agreement, at the time a member of a protected series becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to all remedies available to, a creditor of such series, with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a protected series.
- (7) Notwithstanding 230-607(a) of this chapter, a limited liability company may make a distribution with respect to a protected series. A limited liability company shall not make a distribution with respect to a protected series to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their limited liability company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of such series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of this paragraph (b)(7), and who knew at the time of the distribution that the distribution violated this paragraph (b)(7), shall be liable to the protected series for the amount of the distribution. A member who receives a distribution in violation of this paragraph (b)(7), and who did not know at the time of the distribution that the distribution violated this paragraph (b)(7), shall not be liable for the amount of the distribution. Subject to 230-607(c) of this chapter, which shall apply to any distribution made with respect to a protected series under this paragraph (b)(7), this paragraph (b)(7) shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

- (8) Unless otherwise provided in the limited liability company agreement, a member shall cease to be associated with a protected series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's limited liability company interest with respect to such series. Except as otherwise provided in a limited liability company agreement, any event under this chapter or a limited liability company agreement that causes a member to cease to be associated with a protected series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the protected series, regardless of whether such member was the last remaining member associated with such series.
- (9) Subject to 230-801 of this chapter, except to the extent otherwise provided in the limited liability company agreement, a protected series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a protected series shall not affect the limitation on liabilities of such series provided by this subsection (b). A protected series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under 230-801 of this chapter or otherwise upon the first to occur of the following:
- a. At the time specified in the limited liability company agreement;
 - b. Upon the happening of events specified in the limited liability company agreement;
 - c. Unless otherwise provided in the limited liability company agreement, upon the vote or consent of members associated with such series who own more than 2/3 of the then-current percentage or other interest in the profits of such series of the limited liability company owned by all of the members associated with such series; or
 - d. The termination of such series under paragraph (b)(11) of this section.
- (10) Notwithstanding 230-803(a) of this chapter, unless otherwise provided in the limited liability company agreement, a manager associated with a protected series who has not wrongfully terminated such series or, if none, the members associated with such series or a person approved by the members associated with such series, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of such series owned by all of the members associated with such series, may wind up the affairs of such series; but the Tribal Court, upon cause shown, may wind up the affairs of a protected series upon application of any member or manager associated with such series, or the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a protected series may, in the name of the limited liability company and for and on behalf of the limited liability company and such series, take all actions with respect to such series as are permitted under 230-803(b) of this chapter. The persons winding up the affairs of a protected series shall provide for the claims and obligations of such series and distribute the assets of such series as provided in 230-804 of this chapter, which section shall apply to the winding up and distribution of assets of a protected series. Actions taken in accordance with this paragraph (b)(10) shall not affect the liability of members and shall not impose liability on a liquidating trustee. Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary

and effective on or prior to July 31, 2015, shall continue to be governed by the first sentence of this paragraph (b)(10) as in effect on July 31, 2015.

- (11) On application by or for a member or manager associated with a protected series, the Tribal Court may decree termination of such series whenever it is not reasonably practicable to carry on the business of such series in conformity with a limited liability company agreement.
- (12) For all purposes of the laws of the Tribe, a protected series is an association, regardless of the number of members or managers, if any, of such series.
- (c) If a foreign limited liability company that is registering to do business within the Reservation in accordance with 230-902 is governed by a limited liability company agreement that establishes or provides for the establishment of designated series of members, managers, limited liability company interests or assets having separate rights, powers or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on such application whether the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof, and whether any of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.
- (d) If a limited liability company agreement provides the manner in which a termination of a protected series may be revoked, it may be revoked in that manner and, unless the limited liability company has dissolved and such dissolution has not been revoked or the limited liability company agreement prohibits revocation of termination of a protected series, then notwithstanding the occurrence of an event set forth in paragraph (b)(9)a., b., or c. of this section, the protected series shall not be terminated and its affairs shall not be wound up if, prior to the completion of the winding up of the protected series, the protected series is continued, effective as of the occurrence of such event:
 - (1) In the case of termination effected by the vote or consent of the members associated with the protected series (or other persons whose approval is required for such termination pursuant to the limited liability company agreement), pursuant to such vote or consent (and the approval of any members associated with the protected series or other persons whose approval is required under the limited liability company agreement to revoke a termination contemplated by this paragraph); and
 - (2) In the case of termination under paragraph (b)(9)a. or b. of this section (other than a termination effected by the vote or consent of the members associated with the protected series (or other persons whose approval is required for such termination pursuant to the limited liability company agreement)), pursuant to such vote or consent that, pursuant to the terms of the limited liability company agreement, is required to amend the provision of the limited liability company agreement effecting such termination (and the approval of any members associated with the protected series or other persons whose approval is required under the limited liability company agreement to revoke a termination contemplated by this paragraph).

If a protected series is terminated by the dissolution of the limited liability company, unless the winding up of the protected series has been completed or the limited liability company agreement prohibits revocation of termination of the protected series, the termination of the protected series shall be automatically revoked upon any revocation of dissolution of the limited liability company in accordance with 230-806 of this chapter.

The provisions of this subsection shall not be construed to limit the accomplishment of a revocation of termination of a protected series by other means permitted by law.

230.215 Approval of Conversion of a Limited Liability Company

- (a) Upon compliance with this section, a domestic limited liability company may convert to a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or a foreign limited liability company.
- (b) If the limited liability company agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval by members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members.
- (c) Unless otherwise agreed, the conversion of a domestic limited liability company to another entity or business form pursuant to this section shall not require such limited liability company to wind up its affairs under 230-803 of this chapter or pay its liabilities and distribute its assets under 230-804 of this chapter, and the conversion shall not constitute a dissolution of such limited liability company. When a limited liability company has converted to another entity or business form pursuant to this section, for all purposes of the laws of the Tribe, the other entity or business form shall be deemed to be the same entity as the converting limited liability company and the conversion shall constitute a continuation of the existence of the limited liability company in the form of such other entity or business form.
- (d) In connection with a conversion of a domestic limited liability company to another entity or business form pursuant to this section, rights or securities of or interests in the domestic limited liability company which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the entity or business form into which the domestic limited liability company is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another entity or business form, may remain outstanding or may be canceled.

- (e) If a limited liability company shall convert in accordance with this section to another entity or business form organized, formed or created under the laws of a jurisdiction other than the Tribe, a certificate of conversion to non-Tribal entity executed in accordance with 230-204 of this chapter, shall be filed in the office of the Secretary in accordance with 230-206 of this chapter. The certificate of conversion to non-Tribal entity shall state:
- (1) The name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;
 - (2) The date of filing of its original certificate of formation with the Tribe;
 - (3) The jurisdiction in which the entity or business form, to which the limited liability company shall be converted, is organized, formed or created, and the name of such entity or business form;
 - (4) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective upon the filing of the certificate of conversion to non-Tribal entity;
 - (5) That the conversion has been approved in accordance with this section;
 - (6) The agreement of the limited liability company that it may be served with process within the Reservation in any action, suit or proceeding for enforcement of any obligation of the limited liability company arising while it was a limited liability company of the Tribe, and that it irrevocably appoints the Secretary as its agent to accept service of process in any such action, suit or proceeding;
 - (7) The address to which a copy of the process referred to in paragraph (e)(6) of this section shall be mailed to it by the Secretary. Process may be served upon the Secretary under paragraph (e)(6) of this section by means of electronic transmission but only as prescribed by the Secretary. The Secretary is authorized to issue such rules and regulations with respect to such service as the Secretary deems necessary or appropriate. In the event of service hereunder upon the Secretary, the procedures set forth in 230-911(c) of this chapter shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary with the address specified in this subdivision and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary, and the Secretary shall notify the limited liability company that has converted out of the Tribe at all such addresses furnished by the plaintiff in accordance with the procedures set forth in 230-911(c) of this chapter.
- (f) Upon the filing in the office of the Secretary of the certificate of conversion to non-Tribal entity or upon the future effective date or time of the certificate of conversion to non-Tribal entity and payment to the Secretary of all fees prescribed in this chapter, the limited liability company shall cease to exist as a limited liability company of the Tribe. A copy of the certificate of conversion to non-Tribal entity certified by the Secretary shall be prima facie evidence of the conversion by such limited liability company out of the Tribe.
- (g) The conversion of a limited liability company out of the Tribe in accordance with this section and the resulting cessation of its existence as a limited liability company of the Tribe pursuant to a certificate of conversion to non-Tribal entity shall not be deemed to affect any obligations or liabilities of the limited liability company incurred prior to such conversion or the personal liability of any person incurred prior to such conversion, nor shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising prior to such conversion.

- (h) When any conversion shall have become effective under this section, for all purposes of the laws of the Tribe, all of the rights, privileges and powers of the limited liability company that has converted, and all property, real, personal and mixed, and all debts due to such limited liability company, as well as all other things and causes of action belonging to such limited liability company, shall remain vested in the other entity or business form to which such limited liability company has converted and shall be the property of such other entity or business form, and the title to any real property vested by deed or otherwise in such limited liability company shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such limited liability company shall be preserved unimpaired, and all debts, liabilities and duties of the limited liability company that has converted shall remain attached to the other entity or business form to which such limited liability company has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such other entity or business form. The rights, privileges, powers and interests in property of the limited liability company that has converted, as well as the debts, liabilities and duties of such limited liability company, shall not be deemed, as a consequence of the conversion, to have been transferred to the other entity or business form to which such limited liability company has converted for any purpose of the laws of the Tribe.
- (i) A limited liability company agreement may provide that a domestic limited liability company shall not have the power to convert as set forth in this section.

230.217 Division of a Limited Liability Company

- (a) As used in this section and 230-203 and 230-301 of this chapter:
 - (1) “Dividing company” means the domestic limited liability company that is effecting a division in the manner provided in this section.
 - (2) “Division” means the division of a dividing company into 2 or more domestic limited liability companies in accordance with this section.
 - (3) “Division company” means a surviving company, if any, and each resulting company.
 - (4) “Division contact” means, in connection with any division, a natural person who is a resident of the Reservation, any division company in such division or any other domestic limited liability company or other business entity as defined in 230-209 of this chapter formed or organized under the laws of the Tribe, which division contact shall maintain a copy of the plan of division for a period of 6 years from the effective date of the division and shall comply with paragraph (g)(3) of this section.
 - (5) “Organizational documents” means the certificate of formation and limited liability company agreement of a domestic limited liability company.
 - (6) “Resulting company” means a domestic limited liability company formed as a consequence of a division.
 - (7) “Surviving company” means a dividing company that survives the division.
- (b) Pursuant to a plan of division, any domestic limited liability company may, in the manner provided in this section, be divided into 2 or more domestic limited liability companies. The division of a domestic limited liability company in accordance with this section and, if applicable, the resulting cessation of the existence of the dividing company pursuant to a certificate of division shall not be deemed to affect the personal liability of any person incurred prior to such division with respect to matters arising prior to such division, nor shall it be deemed to affect the validity or enforceability of any obligations or liabilities of

the dividing company incurred prior to such division; provided, that the obligations and liabilities of the dividing company shall be allocated to and vested in, and valid and enforceable obligations of, such division company or companies to which such obligations and liabilities have been allocated pursuant to the plan of division, as provided in subsection (l) of this section. Each resulting company in a division shall be formed in compliance with the requirements of this chapter and subsection (i) of this section.

- (c) If the limited liability company agreement of the dividing company specifies the manner of adopting a plan of division, the plan of division shall be adopted as specified in the limited liability company agreement. If the limited liability company agreement of the dividing company does not specify the manner of adopting a plan of division and does not prohibit a division of the limited liability company, the plan of division shall be adopted in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability company agreement of the dividing company does not specify the manner of adopting a plan of division or authorizing a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a division of the limited liability company, the adoption of a plan of division shall be authorized by the approval by members who own more than 50 percent of the then current percentage or other interest in the profits of the dividing company owned by all of the members. Notwithstanding prior approval, a plan of division may be terminated or amended pursuant to a provision for such termination or amendment contained in the plan of division.
- (d) Unless otherwise provided in a plan of division, the division of a domestic limited liability company pursuant to this section shall not require such limited liability company to wind up its affairs under 230-803 of this chapter or pay its liabilities and distribute its assets under 230-804 of this chapter, and the division shall not constitute a dissolution of such limited liability company.
- (e) In connection with a division under this section, rights or securities of, or interests in, the dividing company may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving company or any resulting company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or any other business entity which is not a division company or may be canceled or remain outstanding (if the dividing company is a surviving company).
- (f) A plan of division adopted in accordance with subsection (c) of this section:
 - (1) May effect any amendment to the limited liability company agreement of the dividing company if it is a surviving company in the division; or
 - (2) May effect the adoption of a new limited liability company agreement for the dividing company if it is a surviving company in the division; and
 - (3) Shall effect the adoption of a limited liability company agreement for each resulting company.

Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement for the dividing company, if it is a surviving company in the division, or adoption of a limited liability company agreement for each resulting company made pursuant to the foregoing sentence shall be effective at the effective time or date of the division.

Any amendment to a limited liability company agreement or adoption of a limited liability company agreement for the dividing company, if it is a surviving company in the division, shall be effective notwithstanding any provision in the limited liability company agreement of the dividing company relating to amendment or adoption of a new limited liability company agreement, other than a provision that by its terms applies to an amendment to the limited liability company agreement or the adoption of a new limited liability company agreement, in either case, in connection with a division, merger or consolidation.

(g) If a domestic limited liability company is dividing under this section, the dividing company shall adopt a plan of division which shall set forth:

(1) The terms and conditions of the division, including:

- a. Any conversion or exchange of the limited liability company interests of the dividing company into or for limited liability company interests or other securities or obligations of any division company or cash, property or rights or securities or obligations of or interests in any other business entity or domestic limited liability company which is not a division company, or that the limited liability company interests of the dividing company shall remain outstanding or be canceled, or any combination of the foregoing; and
- b. The allocation of assets, property, rights, series, debts, liabilities and duties of the dividing company among the division companies;

(2) The name of each resulting company and, if the dividing company will survive the division, the name of the surviving company;

(3) The name and business address of a division contact which shall have custody of a copy of the plan of division. The division contact, or any successor division contact, shall serve for a period of 6 years following the effective date of the division. During such 6-year period the division contact shall provide, without cost, to any creditor of the dividing company, within 30 days following the division contact's receipt of a written request from any creditor of the dividing company, the name and business address of the division company to which the claim of such creditor was allocated pursuant to the plan of division; and

(4) Any other matters that the dividing company determines to include therein.

(h) If a domestic limited liability company divides under this section, the dividing company shall file a certificate of division executed by 1 or more authorized persons on behalf of such dividing company in the office of the Secretary in accordance with 230-204 of this chapter and a certificate of formation that complies with 230-201 of this chapter for each resulting company executed by 1 or more authorized persons in accordance with 230-204 of this chapter.

(8) The certificate of division shall state:

- a. The name of the dividing company and, if it has been changed, the name under which its certificate of formation was originally filed and whether the dividing company is a surviving company;
- b. The date of filing of the dividing company's original certificate of formation with the Secretary;
- c. The name of each division company;
- d. The name and business address of the division contact required by paragraph (g)(3) of this section;
- e. The future effective date or time (which shall be a date or time certain) of the division if it is not to be effective upon the filing of the certificate of division;
- f. That the division has been approved in accordance with this section;

- g. That the plan of division is on file at a place of business of such division company as is specified therein, and shall state the address thereof;
 - h. That a copy of the plan of division will be furnished by such division company as is specified therein, on request and without cost, to any member of the dividing company; and
 - i. Any other information the dividing company determines to include therein.
- (2) A certificate of division may be amended to change the name or business address of the division contact in a certificate of division or to change information in the certificate of division required by paragraph (h)(1)g. of this section. A certificate of division is amended by filing a certificate of amendment thereto for each division company that exists as a limited liability company in the office of the Secretary. Each certificate of amendment of certificate of division must include all of the following:
 - a. The name of the dividing company and, if the name has been changed, the name under which the dividing company's certificate of formation was originally filed.
 - b. The name of the division company to which the amendment to the certificate of division relates.
 - c. The amendment to the certificate of division.
- (3) If the dividing company is a surviving company, a manager of the dividing company or, if there is no manager of the dividing company, any member of the dividing company, who becomes aware that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division was false when made, or that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division has changed, must promptly amend the certificate of division. If the dividing company is not a surviving company or no longer exists as a limited liability company, a manager of any resulting company or, if there is no manager of any resulting company, then any member of any resulting company who becomes aware that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division was false when made, or that the name or business address of the division contact, or information in the certificate of division required by paragraph (h)(1)g. of this section, in a certificate of division has changed, must promptly amend the certificate of division. This subsection does not apply after the expiration of a period of 6 years following the effective date of the division.
- (4) Unless otherwise provided in the plan of division or the certificate of division, each certificate of amendment of certificate of division must be executed as follows:
 - a. If the dividing company is a surviving company, by 1 or more authorized persons on behalf of the dividing company acting on behalf of the division company to which the certificate of amendment of certificate of division relates.
 - b. If the dividing company is not a surviving company or no longer exists as a limited liability company, by 1 or more authorized persons on behalf of a resulting company acting on behalf of the division company to which the certificate of amendment of certificate of division relates. Each division company is deemed to have consented to the execution of a certificate of amendment of certificate of division under this paragraph (h)(4).

- (5) Unless otherwise provided in this chapter or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment of certificate of division, a certificate of amendment of certificate of division is effective at the time of its filing with the Secretary.
- (6) Subject to this chapter, the Secretary shall accept the filing of certificates of amendment of certificate of division for all division companies resulting from the same certificate of division if at least 1 division company is in good standing at the time of such filings.
- (i) The certificate of division and each certificate of formation for each resulting company required by subsection (h) of this section shall be filed simultaneously in the office of the Secretary and, if such certificates are not to become effective upon their filing as permitted by 230-206(b) of this chapter, then each such certificate shall provide for the same effective date or time in accordance with 230-206(b) of this chapter. Concurrently with the effective date or time of a division, the limited liability company agreement of each resulting company shall become effective.
- (j) A certificate of division shall act as a certificate of cancellation for a dividing company which is not a surviving company.
- (k) A limited liability company agreement may provide that a domestic limited liability company shall not have the power to divide as set forth in this section.
- (l) Upon the division of a domestic limited liability company becoming effective:
 - (1) The dividing company shall be divided into the distinct and independent division companies named in the plan of division, and, if the dividing company is not a surviving company, the existence of the dividing company shall cease.
 - (2) For all purposes of the laws of the Tribe, all of the rights, privileges and powers, and all the property, real, personal and mixed, of the dividing company and all debts due on whatever account to it, as well as all other things and other causes of action belonging to it, shall without further action be allocated to and vested in the applicable division company in such a manner and basis and with such effect as is specified in the plan of division, and the title to any real property or interest therein allocated to and vested in any division company shall not revert or be in any way impaired by reason of the division.
 - (3) Each division company shall, from and after effectiveness of the certificate of division, be liable as a separate and distinct domestic limited liability company for such debts, liabilities and duties of the dividing company as are allocated to such division company pursuant to the plan of division in the manner and on the basis provided in paragraph (g)(1)b. of this section.
 - (4) Each of the debts, liabilities and duties of the dividing company shall without further action be allocated to and be the debts, liabilities and duties of such division company as is specified in the plan of division as having such debts, liabilities and duties allocated to it, in such a manner and basis and with such effect as is specified in the plan of division, and no other division company shall be liable therefor, so long as the plan of division does not constitute a fraudulent transfer under applicable law, and all liens upon any property of the dividing company shall be preserved unimpaired, and all debts, liabilities and duties of the dividing company shall remain attached to the division company to which such debts, liabilities and duties have been allocated in the plan of division, and may be enforced against such division company to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited liability company.

- (5) In the event that any allocation of assets, debts, liabilities and duties to division companies in accordance with a plan of division is determined by a court of competent jurisdiction to constitute a fraudulent transfer, each division company shall be jointly and severally liable on account of such fraudulent transfer notwithstanding the allocations made in the plan of division; provided, however, the validity and effectiveness of the division are not otherwise affected thereby.
- (6) Debts and liabilities of the dividing company that are not allocated by the plan of division shall be the joint and several debts and liabilities of all of the division companies.
- (7) It shall not be necessary for a plan of division to list each individual asset, property, right, series, debt, liability or duty of the dividing company to be allocated to a division company so long as the assets, property, rights, series, debts, liabilities or duties so allocated are reasonably identified by any method where the identity of such assets, property, rights, series, debts, liabilities or duties is objectively determinable.
- (8) The rights, privileges, powers and interests in property of the dividing company that have been allocated to a division company, as well as the debts, liabilities and duties of the dividing company that have been allocated to such division company pursuant to a plan of division, shall remain vested in each such division company and shall not be deemed, as a result of the division, to have been assigned or transferred to such division company for any purpose of the laws of the Tribe.
- (9) Any action or proceeding pending against a dividing company may be continued against the surviving company, if any, as if the division did not occur, but subject to paragraph (1)(4) of this section, and against any resulting company to which the asset, property, right, series, debt, liability or duty associated with such action or proceeding was allocated pursuant to the plan of division by adding or substituting such resulting company as a party in the action or proceeding.
- (m) In applying the provisions of this chapter on distributions, a direct or indirect allocation of property or liabilities in a division is not deemed a distribution for purposes of this chapter.
- (n) The provisions of this section shall not be construed to limit the means of accomplishing a division by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by this chapter or as otherwise permitted by law.
- (o) All limited liability companies formed on or after August 1, 2018, shall be governed by this section. All limited liability companies formed prior to August 1, 2018, shall be governed by this section; provided, that if the dividing company is a party to any written contract, indenture or other agreement entered into prior to August 1, 2018, that, by its terms, restricts, conditions or prohibits the consummation of a merger or consolidation by the dividing company with or into another party, or the transfer of assets by the dividing company to another party, then such restriction, condition or prohibition shall be deemed to apply to a division as if it were a merger, consolidation or transfer of assets, as applicable.

230.218 Registered Series of Members, Managers, Limited Liability Company Interests or Assets

- (a) If a limited liability company agreement provides for the establishment or formation of 1 or more series, then a registered series may be formed by complying with this 230-218. A limited liability company agreement does not need to use the term registered when referencing series or refer to this 230-218, and a reference in a limited liability company agreement for a registered series, including a registered series resulting from the conversion

of a protected series to a registered series, may continue to refer to 230-215 of this chapter, which reference shall be deemed a reference to this 230-218 with respect to such registered series. A registered series is formed by the filing of a certificate of registered series in the office of the Secretary.

- (b) Notice of the limitation on liabilities of a registered series as referenced in subsection (c) of this section shall be set forth in the certificate of formation of the limited liability company. Notice in a certificate of formation of the limitation on liabilities of a registered series as referenced in subsection (c) of this section shall be sufficient for all purposes of this subsection whether or not the limited liability company has formed any registered series when such notice is included in the certificate of formation, and there shall be no requirement that (i) any specific registered series of the limited liability company be referenced in such notice, (ii) such notice use the term registered when referencing series or include a reference to this 230-218, or (iii) the certificate of formation be amended if it includes a reference to 230-215 of this chapter. Any reference to 230-215 of this chapter in a certificate of formation of a limited liability company that has one or more registered series shall be deemed a reference to this 230-218 with respect to such registered series. The fact that a certificate of formation that contains the foregoing notice of the limitation on liabilities of a series is on file in the office of the Secretary shall constitute notice of such limitation on liabilities of a registered series.
- (c) Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, to the extent the records maintained for a registered series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the limited liability company agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. Neither the preceding sentences nor any provision pursuant thereto in a limited liability company agreement, certificate of formation or certificate of registered series shall (i) restrict a registered series or limited liability company on behalf of a registered series from agreeing in the limited liability company agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such registered series or (ii) restrict a limited liability company from agreeing in the limited liability company agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a registered series shall be enforceable against the assets of the limited liability company generally. Assets associated with a registered series may be held directly or indirectly, including in the name of such series, in the name of the limited liability company, through a nominee or otherwise. Records maintained for a registered series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof. As used in this chapter, a reference to assets of a registered series includes assets

associated with such series, a reference to assets associated with a registered series includes assets of such series, a reference to members or managers of a registered series includes members or managers associated with such series, and a reference to members or managers associated with a registered series includes members or managers of such series. The following shall apply to a registered series:

- (1) A registered series may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking. Unless otherwise provided in a limited liability company agreement, a registered series shall have the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued.
- (2) Except as otherwise provided by this chapter, no member or manager of a registered series shall be obligated personally for any debt, obligation or liability of such series, whether arising in contract, tort or otherwise, solely by reason of being a member or acting as manager of such series. Notwithstanding the preceding sentence, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of 1 or more registered series.
- (3) A limited liability company agreement may provide for classes or groups of members or managers associated with a registered series having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members or managers associated with such series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with such series. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the limited liability company agreement a class or group of a registered series of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members associated with a registered series shall have no voting rights.
- (4) A limited liability company agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a registered series the right to vote separately or with all or any class or group of the members or managers associated with such series, on any matter. Voting by members or managers associated with a registered series may be on a per capita, number, financial interest, class, group or any other basis.
- (5) Unless otherwise provided in a limited liability company agreement, the management of a registered series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of such series owned by all of the members associated with such series, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided, however, that if a limited liability company agreement provides for the management of a registered series, in whole or in part, by a manager, the management of such series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement.

- The manager of a registered series shall also hold the offices and have the responsibilities accorded to the manager as set forth in a limited liability company agreement. A registered series may have more than 1 manager. Subject to 230-602 of this chapter, a manager shall cease to be a manager with respect to a registered series as provided in a limited liability company agreement. Except as otherwise provided in a limited liability company agreement, any event under this chapter or in a limited liability company agreement that causes a manager to cease to be a manager with respect to a registered series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.
- (6) Notwithstanding 230-606 of this chapter, but subject to paragraphs (c)(7) and (c)(10) of this section, and unless otherwise provided in a limited liability company agreement, at the time a member of a registered series becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to all remedies available to, a creditor of such series, with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a registered series.
- (7) Notwithstanding 230-607(a) of this chapter, a limited liability company may make a distribution with respect to a registered series. A limited liability company shall not make a distribution with respect to a registered series to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their limited liability company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of such series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to the registered series for the amount of the distribution. A member who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to 230-607(c) of this chapter, which shall apply to any distribution made with respect to a registered series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.
- (8) Unless otherwise provided in the limited liability company agreement, a member shall cease to be associated with a registered series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member’s limited liability company interest with respect to such series. Except as otherwise provided in a limited liability company agreement, any event under this chapter or a limited liability company agreement that causes a member to cease to be associated with a registered series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the dissolution of the registered series,

- regardless of whether such member was the last remaining member associated with such series.
- (9) Subject to 230-801 of this chapter, except to the extent otherwise provided in the limited liability company agreement, a registered series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company. The dissolution of a registered series shall not affect the limitation on liabilities of such series provided by this subsection (c). A registered series is dissolved and its affairs shall be wound up upon the dissolution of the limited liability company under 230-801 of this chapter or otherwise upon the first to occur of the following:
- a. At the time specified in the limited liability company agreement;
 - b. Upon the happening of events specified in the limited liability company agreement;
 - c. Unless otherwise provided in the limited liability company agreement, upon the vote or consent of members associated with such series who own more than 2/3 of the then-current percentage or other interest in the profits of such series of the limited liability company owned by all of the members associated with such series; or
 - d. The dissolution of such series under paragraph (c)(11) of this section.
- (10) Notwithstanding 230-803(a) of this chapter, unless otherwise provided in the limited liability company agreement, a manager associated with a registered series who has not wrongfully dissolved such series or, if none, the members associated with such series or a person approved by the members associated with such series, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of such series owned by all of the members associated with such series, may wind up the affairs of such series; but the Tribal Court, upon cause shown, may wind up the affairs of a registered series upon application of any member or manager associated with such series, or the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a registered series may, in the name of the limited liability company and for and on behalf of the limited liability company and such series, take all actions with respect to such series as are permitted under 230-803(b) of this chapter. The persons winding up the affairs of a registered series shall provide for the claims and obligations of such series and distribute the assets of such series as provided in 230-804 of this chapter, which section shall apply to the winding up and distribution of assets of a registered series. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.
- (11) On application by or for a member or manager associated with a registered series, the Tribal Court may decree dissolution of such series whenever it is not reasonably practicable to carry on the business of such series in conformity with a limited liability company agreement.
- (12) For all purposes of the laws of the Tribe, a registered series is an association, regardless of the number of members or managers, if any, of such series.
- (d) In order to form a registered series of a limited liability company, a certificate of registered series must be filed in accordance with this subsection.
- (1) A certificate of registered series:
- a. Shall set forth:
 1. The name of the limited liability company; and
 2. The name of the registered series.

- b. May include any other matter that the members of such registered series determine to include therein.
- (2) A certificate of registered series shall be executed in accordance with 230-204 of this chapter and shall be filed in the office of the Secretary in accordance with 230-206 of this chapter. A certificate of registered series shall be effective as of the effective time of such filing unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of registered series. A certificate of registered series is not an amendment to the certificate of formation of the limited liability company.
- (3) A certificate of registered series is amended by filing a certificate of amendment thereto in the office of the Secretary. The certificate of amendment of certificate of registered series shall set forth:
 - a. The name of the limited liability company;
 - b. The name of the registered series; and
 - c. The amendment to the certificate of registered series.
- (4) A manager of a registered series or, if there is no manager, then any member of a registered series who becomes aware that any statement in a certificate of registered series filed with respect to such registered series was false when made, or that any matter described therein has changed making the certificate of registered series false in any material respect or noncompliant with paragraph (e)(1) of this section, shall promptly amend the certificate of registered series.
- (5) A certificate of registered series may be amended at any time for any other proper purpose.
- (6) Unless otherwise provided in this chapter or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment of certificate of registered series, a certificate of amendment of certificate of registered series shall be effective at the time of its filing with the Secretary.
- (7) A certificate of registered series shall be canceled upon the cancellation of the certificate of formation of the limited liability company named in the certificate of registered series, or upon the filing of a certificate of cancellation of the certificate of registered series or upon the future effective date or time of a certificate of cancellation of the certificate of registered series, or as provided in 230-1108(b) of this chapter, or upon the filing of a certificate of merger or consolidation of registered series if the registered series is not the surviving or resulting registered series in a merger or consolidation or upon the future effective date or time of a certificate of merger or consolidation of registered series if the registered series is not the surviving or resulting registered series in a merger or consolidation, or upon the filing of a certificate of conversion of registered series to protected series or upon the future effective date or time of a certificate of conversion of registered series to protected series. A certificate of cancellation of the certificate of registered series may be filed at any time, and shall be filed, in the office of the Secretary to accomplish the cancellation of a certificate of registered series upon the dissolution of a registered series for which a certificate of registered series was filed and completion of the winding up of such registered series. A certificate of cancellation of the certificate of registered series shall set forth:
 - a. The name of the limited liability company;
 - b. The name of the registered series;
 - c. The date of filing of the certificate of registered series;

- d. The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate of cancellation; and
 - e. Any other information the person filing the certificate of cancellation of the certificate of registered series determines.
- (8) A certificate of cancellation of the certificate of registered series that is filed in the office of the Secretary prior to the dissolution or the completion of winding up of a registered series may be corrected as an erroneously executed certificate of cancellation of the certificate of registered series by filing with the office of the Secretary a certificate of correction of such certificate of cancellation of the certificate of registered series in accordance with 230-211 of this chapter.
- (9) The Secretary shall not issue a certificate of good standing with respect to a registered series if its certificate of registered series is canceled or the limited liability company has ceased to be in good standing.
- (e) The name of each registered series as set forth in its certificate of registered series:
 - (1) Shall begin with the name of the limited liability company, including any word, abbreviation or designation required by 230-102 of this chapter;
 - (2) May contain the name of a member or manager;
 - (3) Must be such as to distinguish it upon the records in the office of the Secretary from the name on such records of any corporation, partnership, limited partnership, statutory trust, limited liability company, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the Tribe or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership or foreign limited liability company within the Reservation; provided, however, that a registered series may register under any name which is not such as to distinguish it upon the records in the office of the Secretary from the name on such records of any domestic or foreign corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability company reserved, registered, formed or organized under the laws of the Tribe with the written consent of the other corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability company, which written consent shall be filed with the Secretary;
 - (4) May contain the following words: “Company,” “Association,” “Club,” “Foundation,” “Fund,” “Institute,” “Society,” “Union,” “Syndicate,” “Limited,” “Public Benefit” or “Trust” (or abbreviations of like import); and
 - (5) Shall not contain the word “bank,” or any variation thereof, provided, however, that this section shall not be construed to prevent the use of the word “bank,” or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the limited liability company or the registered series, or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or this Tribe as determined by the office of the Secretary.
- (f) If a limited liability company agreement provides the manner in which a dissolution of a registered series may be revoked, it may be revoked in that manner and, unless the limited liability company has dissolved and such dissolution has not been revoked or the limited liability company agreement prohibits revocation of dissolution of a registered series, then

notwithstanding the occurrence of an event set forth in paragraph (c)(9)a., b., or c. of this section, the registered series shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation of the certificate of registered series in the office of the Secretary, the registered series is continued, effective as of the occurrence of such event:

- (1) In the case of dissolution effected by the vote or consent of the members associated with the registered series (or other persons whose approval is required for such dissolution pursuant to the limited liability company agreement), pursuant to such vote or consent (and the approval of any members associated with the registered series or other persons whose approval is required under the limited liability company agreement to revoke a dissolution contemplated by this paragraph); and
- (2) In the case of dissolution under paragraph (c)(9)a. or b. of this section (other than a dissolution effected by the vote or consent of the members associated with the registered series (or other persons whose approval is required for such dissolution pursuant to the limited liability company agreement)), pursuant to such vote or consent that, pursuant to the terms of the limited liability company agreement, is required to amend the provision of the limited liability company agreement effecting such dissolution (and the approval of any members associated with the registered series or other persons whose approval is required under the limited liability company agreement to revoke a dissolution contemplated by this paragraph).

If a registered series is dissolved by the dissolution of the limited liability company, unless a certificate of cancellation of the certificate of registered series with respect to such registered series has been filed in the office of the Secretary or the limited liability company agreement prohibits revocation of dissolution of the registered series, the dissolution of the registered series shall be automatically revoked upon any revocation of dissolution of the limited liability company in accordance with 230-806 of this chapter.

The provisions of this subsection shall not be construed to limit the accomplishment of a revocation of dissolution of a registered series by other means permitted by law.

230.219 Approval of Conversion of a Protected Series of a Domestic Limited Liability Company to a Registered Series of Such Domestic Limited Liability Company

- (a) A protected series of a domestic limited liability company may convert to a registered series of such domestic limited liability company by complying with this section and filing in the office of the Secretary in accordance with 230-206 of this chapter:
 - (1) A certificate of conversion of protected series to registered series that has been executed in accordance with 230-204 of this chapter; and
 - (2) A certificate of registered series that complies with 230-218(d) of this chapter and has been executed by 1 or more authorized persons in accordance with 230-204 of this chapter.

Each of the certificates required by this subsection (a) shall be filed simultaneously in the office of the Secretary and, if such certificates are not to become effective upon their filing as permitted by 230-206(b) of this chapter, then each such certificate shall provide for the same effective date or time in accordance with 230-206(b) of this chapter. An existing series may not become a registered series other than pursuant to this section.

- (b) If the limited liability company agreement specifies the manner of authorizing a conversion of a protected series of such limited liability company to a registered series of such limited liability company, the conversion of a protected series to a registered series shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of a protected series of such limited liability company to a registered series of such limited liability company and does not prohibit a conversion of a protected series to a registered series, the conversion shall be authorized by members of such protected series who own more than 50 percent of the then current percentage or other interest in the profits of such protected series owned by all of the members of such protected series.
- (c) Unless otherwise agreed, the conversion of a protected series of a limited liability company to a registered series of such limited liability company pursuant to this section shall not require such limited liability company or such protected series of such limited liability company to wind up its affairs under 230-803 or 230-215 of this chapter or pay its liabilities and distribute its assets under 230-804 or 230-215 of this chapter, and the conversion of a protected series of a limited liability company to a registered series of such limited liability company shall not constitute a dissolution of such limited liability company or a termination of such protected series. When a protected series of a limited liability company has converted to a registered series of such limited liability company pursuant to this section, for all purposes of the laws of the Tribe, the registered series shall be deemed to be the same series as the converting protected series and the conversion shall constitute a continuation of the existence of the protected series in the form of such registered series.
- (d) In connection with a conversion of a protected series of a limited liability company to a registered series of such limited liability company pursuant to this section, rights or securities of or interests in the protected series which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the registered series into which the protected series is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in any other business entity, may remain outstanding or may be canceled.
- (e) If a protected series shall convert to a registered series in accordance with this section, a certificate of conversion of protected series to registered series executed in accordance with 230-204 of this chapter shall be filed in the office of the Secretary in accordance with 230-206 of this chapter. The certificate of conversion of protected series to registered series shall state:
 - (1) The name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;
 - (2) The name of the protected series and, if it has been changed, the name of the protected series as originally established;
 - (3) The name of the registered series as set forth in its certificate of registered series filed in accordance with subsection (a) of this section;
 - (4) The date of filing of the original certificate of formation of the limited liability company with the Secretary;
 - (5) The date on which the protected series was established;
 - (6) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective upon the filing of the certificate of conversion of protected series to registered series; and
 - (7) That the conversion has been approved in accordance with this section.

- (f) A copy of the certificate of conversion of protected series to registered series certified by the Secretary shall be prima facie evidence of the conversion by such protected series to a registered series of such limited liability company.
- (g) When any conversion shall have become effective under this section, for all purposes of the laws of the Tribe, all of the rights, privileges and powers of the protected series that has converted, and all property, real, personal and mixed, and all debts due to such protected series, as well as all other things and causes of action belonging to such protected series, shall remain vested in the registered series to which such protected series has converted and shall be the property of such registered series, and the title to any real property vested by deed or otherwise in such protected series shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such protected series shall be preserved unimpaired, and all debts, liabilities and duties of the protected series that has converted shall remain attached to the registered series to which such protected series has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such registered series. The rights, privileges, powers and interests in property of the protected series that has converted, as well as the debts, liabilities and duties of such protected series, shall not be deemed, as a consequence of the conversion, to have been transferred to the registered series to which such protected series of such limited liability company has converted for any purpose of the laws of the Tribe.
- (h) A limited liability company agreement may provide that a protected series of a limited liability company shall not have the power to convert to a registered series of such limited liability company as set forth in this section.

230.220 Approval of Conversion of a Registered Series of a Domestic Limited Liability Company to a Protected Series of Such Domestic Limited Liability Company

- (a) Upon compliance with this section, a registered series of a domestic limited liability company may convert to a protected series of such domestic limited liability company. An existing registered series may not become a protected series other than pursuant to this section.
- (b) If the limited liability company agreement specifies the manner of authorizing a conversion of a registered series of such limited liability company to a protected series of such limited liability company, the conversion of a registered series to a protected series shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of a registered series of such limited liability company to a protected series of such limited liability company and does not prohibit a conversion of a registered series to a protected series, the conversion shall be authorized by members of such registered series who own more than 50 percent of the then current percentage or other interest in the profits of such registered series owned by all of the members of such registered series.
- (c) Unless otherwise agreed, the conversion of a registered series of a limited liability company to a protected series of such limited liability company pursuant to this section shall not require such limited liability company or such registered series of such limited liability company to wind up its affairs under 230-803 or 230-218 of this chapter or pay its liabilities and distribute its assets under 230-804 or 230-218 of this chapter, and the conversion of a registered series of a limited liability company to a protected series of such limited liability

company shall not constitute a dissolution of such limited liability company or of such registered series. When a registered series of a limited liability company has converted to a protected series of such limited liability company pursuant to this section, for all purposes of the laws of the Tribe, the protected series shall be deemed to be the same series as the converting registered series and the conversion shall constitute a continuation of the existence of the registered series in the form of such protected series.

- (d) In connection with a conversion of a registered series of a limited liability company to protected series of such limited liability company pursuant to this section, rights or securities of or interests in the registered series which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the protected series into which the registered series is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in any other business entity, may remain outstanding or may be canceled.
- (e) If a registered series shall convert to a protected series in accordance with this section, a certificate of conversion of registered series to protected series executed in accordance with 230-204 of this chapter shall be filed in the office of the Secretary in accordance with 230-206 of this chapter. The certificate of conversion of registered series to protected series shall state:
 - (1) The name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;
 - (2) The date of filing of the original certificate of formation of the limited liability company with the Secretary;
 - (3) The name of the registered series and, if it has been changed, the name under which its certificate of registered series was originally filed;
 - (4) The date of filing of its original certificate of registered series with the Secretary;
 - (5) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective upon the filing of the certificate of conversion of registered series to protected series; and
 - (6) That the conversion has been approved in accordance with this section.
- (f) A copy of the certificate of conversion of registered series to protected series certified by the Secretary shall be prima facie evidence of the conversion by such registered series to a protected series of such limited liability company.
- (g) When any conversion shall have become effective under this section, for all purposes of the laws of the Tribe, all of the rights, privileges and powers of the registered series that has converted, and all property, real, personal and mixed, and all debts due to such registered series, as well as all other things and causes of action belonging to such registered series, shall remain vested in the protected series to which such registered series has converted and shall be the property of such protected series, and the title to any real property vested by deed or otherwise in such registered series shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such registered series shall be preserved unimpaired, and all debts, liabilities and duties of the registered series that has converted shall remain attached to the protected series to which such registered series has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such protected series. The rights, privileges, powers and interests in property of the registered series that has converted, as well as the debts, liabilities and duties of such registered series, shall not be deemed, as a consequence of the conversion,

to have been transferred to the protected series to which such registered series of such limited liability company has converted for any purpose of the laws of the Tribe.

- (h) A limited liability company agreement may provide that a registered series of a limited liability company shall not have the power to convert to a protected series of such limited liability company as set forth in this section.

230.221 Merger and Consolidation of Registered Series

- (a) Pursuant to an agreement of merger or consolidation, 1 or more registered series may merge or consolidate with or into 1 or more other registered series of the same limited liability company with such registered series as the agreement shall provide being the surviving or resulting registered series. Unless otherwise provided in the limited liability company agreement, an agreement of merger or consolidation shall be approved by each registered series which is to merge or consolidate by members of such registered series who own more than 50 percent of the then current percentage or other interest in the profits of such registered series owned by all of the members of such registered series. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a registered series which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting registered series or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting registered series in the merger or consolidation, may remain outstanding or may be canceled. 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.
- (b) If a registered series is merging or consolidating under this section, the registered series surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation of registered series executed by 1 or more authorized persons on behalf of the registered series when it is the surviving or resulting registered series in the office of the Secretary. The certificate of merger or consolidation of registered series shall state:
 - (1) The name of each registered series which is to merge or consolidate and the name of the limited liability company that formed such registered series;
 - (2) That an agreement of merger or consolidation has been approved and executed by or on behalf of each registered series which is to merge or consolidate;
 - (3) The name of the surviving or resulting registered series;
 - (4) Such amendments, if any, to the certificate of registered series of the surviving registered series as are desired to be effected by the merger (which amendments may amend and restate the certificate of registered series of the surviving registered series in its entirety);
 - (5) 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 certificate of merger or consolidation of registered series;
 - (6) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting registered series or the limited liability company that formed such registered series, and shall state the address thereof; and

- (7) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting registered series, on request and without cost, to any member of any registered series which is to merge or consolidate.
- (c) Unless a future effective date or time is provided in a certificate of merger or consolidation of registered series, a merger or consolidation pursuant to this section shall be effective upon the filing in the office of the Secretary of a certificate of merger or consolidation of registered series.
- (d) A certificate of merger or consolidation of registered series shall act as a certificate of cancellation of the certificate of registered series of the registered series which is not the surviving or resulting registered series in the merger or consolidation. A certificate of merger or consolidation of registered series that sets forth any amendment in accordance with paragraph (b)(4) of this section shall be deemed to be an amendment to the certificate of registered series of the surviving registered series, and no further action shall be required to amend the certificate of registered series of the surviving registered series under 230-218 of this chapter with respect to such amendments set forth in such certificate of merger or consolidation. Whenever this section requires the filing of a certificate of merger or consolidation of registered series, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in such certificate of merger or consolidation.
- (e) An agreement of merger or consolidation approved in accordance with subsection (a) of this section may effect any amendment to the limited liability company agreement relating solely to the registered series that are constituent parties to the merger or consolidation. Any amendment to a limited liability company agreement relating solely to the registered series that are constituent parties to the merger or consolidation made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be effective notwithstanding any provision of the limited liability company agreement relating to amendment of the limited liability company agreement, other than a provision that by its terms applies to an amendment to the limited liability company agreement in connection with a merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including that the limited liability company agreement relating to any constituent registered series to the merger or consolidation (including a registered series formed for the purpose of consummating a merger or consolidation) shall be the limited liability company agreement of the surviving or resulting registered series.
- (f) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the Tribe, all of the rights, privileges and powers of each of the registered series that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said registered series, as well as all other things and causes of action belonging to each of such registered series, shall be vested in the surviving or resulting registered series, and shall thereafter be the property of the surviving or resulting registered series as they were of each of the registered series that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the Tribe, in any of such registered series, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said registered series shall be preserved unimpaired, and all debts, liabilities and duties of each of the said registered series that have merged or consolidated shall thenceforth attach

to the surviving or resulting registered series, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a registered series of a limited liability company, including a registered series which is not the surviving or resulting registered series in the merger or consolidation, shall not require such registered series to wind up its affairs under 230-218 of this chapter, or pay its liabilities and distribute its assets under 230-218 of this chapter and the merger or consolidation shall not constitute a dissolution of such registered series.

- (g) A limited liability company agreement may provide that a registered series of such limited liability company shall not have the power to merge or consolidate as set forth in this section.

230.301 Admission of Members

- (a) In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later to occur of:
 - (1) The formation of the limited liability company; or
 - (2) The time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when the person's admission is reflected in the records of the limited liability company or as otherwise provided in the limited liability company agreement.
- (b) After the formation of a limited liability company, a person is admitted as a member of the limited liability company:
 - (1) In the case of a person who is not an assignee of a limited liability company interest, including a person acquiring a limited liability company interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, upon the consent of all members or as otherwise provided in the limited liability company agreement;
 - (2) In the case of an assignee of a limited liability company interest, as provided in 230-704(a) of this chapter;
 - (3) In the case of a person being admitted as a member of a surviving or resulting limited liability company pursuant to a merger or consolidation approved in accordance with 230-209(b) of this chapter, as provided in the limited liability company agreement of the surviving or resulting limited liability company or in the agreement of merger or consolidation or plan of merger, and in the event of any inconsistency, the terms of the agreement of merger or consolidation or plan of merger shall control; and in the case of a person being admitted as a member of a limited liability company pursuant to a merger or consolidation in which such limited liability company is not the surviving or resulting limited liability company in the merger or consolidation, as provided in the limited liability company agreement of such limited liability company; or
 - (4) In the case of a person being admitted as a member of a division company pursuant to a division approved in accordance with 230-217(c) of this chapter, as provided in the limited liability company agreement of such division company or in the plan of division, and in the event of any inconsistency, the terms of the plan of division shall control; and in the case of a person being admitted as a member of a limited liability

company pursuant to a division in which such limited liability company is not a division company in the division, as provided in the limited liability company agreement of such limited liability company.

- (c) In connection with the domestication of a non-United States entity (as defined in 230-212 of this chapter) as a limited liability company within the Reservation in accordance with 230-212 of this chapter or the conversion of an other entity (as defined in 230-214 of this chapter) to a domestic limited liability company in accordance with 230-214 of this chapter, a person is admitted as a member of the limited liability company as provided in the limited liability company agreement.
- (d) A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in a limited liability company agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company. Unless otherwise provided in a limited liability company agreement, a person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a limited liability company interest in the limited liability company.
- (e) Unless otherwise provided in a limited liability company agreement or another agreement, a member shall have no preemptive right to subscribe to any additional issue of limited liability company interests or another interest in a limited liability company.

230.302 Classes and Voting

- (a) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members shall have no voting rights.
- (b) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis.
- (c) A limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

- (d) Unless otherwise provided in a limited liability company agreement, meetings of members may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on, consented to or approved by members, the members may take such action without a meeting, without prior notice and without a vote if consented to or approved, in writing, by electronic transmission or by any other means permitted by law, by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. Unless otherwise provided in a limited liability company agreement, if a person (whether or not then a member) consenting as a member to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a member at such future time so long as such person is then a member. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a limited liability company agreement, a consent transmitted by electronic transmission by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of this subsection.
- (e) If a limited liability company agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the limited liability company agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law, including as permitted by 230-209(f) of this chapter (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended). Unless otherwise provided in a limited liability company agreement, a supermajority amendment provision shall only apply to provisions of the limited liability company agreement that are expressly included in the limited liability company agreement. As used in this section, “supermajority amendment provision” means any amendment provision set forth in a limited liability company agreement requiring that an amendment to a provision of the limited liability company agreement be adopted by no less than the vote or consent required to take action under such latter provision.
- (f) If a limited liability company agreement does not provide for the manner in which it may be amended, the limited liability company agreement may be amended with the approval of all of the members or as otherwise permitted by law, including as permitted by 230-209(f) of this chapter.

230.303 Liability to 3rd Parties; No Waivers of Tribal Sovereign Immunity

- (a) Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

- (b) Notwithstanding the provisions of subsection (a) of this section, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of the limited liability company.
- (c) Notwithstanding any other provision contained in this ordinance, limited liability companies shall have the power to consent to such limited liability companies, but not the Tribe or any other tribal entity other than itself, being sued in courts or to have claims against it resolved through arbitration.
- (d) Notwithstanding any other provision contained in this ordinance, limited liability companies may not dispose of, mortgage, or otherwise encumber real or personal property of the Tribe, except that such limited liability companies may grant a leasehold mortgage or other security interest in such limited liability companies' leasehold interest in any lease of real or personal property of the Tribe to such limited liability company.

230.304 Events of Bankruptcy

A person ceases to be a member of a limited liability company upon the happening of any of the following events:

- (1) Unless otherwise provided in a limited liability company agreement, or with the consent of all members, a member:
 - a. Makes an assignment for the benefit of creditors;
 - b. Files a voluntary petition in bankruptcy;
 - c. Is adjudged a bankrupt or insolvent, or has entered against the member an order for relief, in any bankruptcy or insolvency proceeding;
 - d. Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
 - e. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature;
 - f. 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 the member's properties; or
- (2) Unless otherwise provided in a limited liability company agreement, or with the consent of all members, 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without the member's consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

230.305 Access to and Confidentiality of Information; Records

- (a) Each member of a limited liability company has the right, subject to such reasonable standards (including standards governing what information (including books, records and other documents) is to be furnished at what time and location and at whose expense) as may be set forth in a limited liability company agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:
- (1) True and full information regarding the status of the business and financial condition of the limited liability company;
 - (2) Promptly after becoming available, a copy of the limited liability company's federal, tribal, state and local income tax returns for each year, as applicable;
 - (3) A current list of the name and last known business, residence or mailing address of each member and manager;
 - (4) A copy of any written limited liability company agreement and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the limited liability company agreement and any certificate and all amendments thereto have been executed;
 - (5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and
 - (6) Other information regarding the affairs of the limited liability company as is just and reasonable.
- (b) Each manager shall have the right to examine all of the information described in subsection (a) of this section for a purpose reasonably related to the position of manager.
- (c) The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.
- (d) A limited liability company may maintain its books, records and other documents in other than paper form, including on, by means of, or in the form of any information storage device, method, or 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), if such form is capable of conversion into paper form within a reasonable time.
- (e) Any demand under this section shall be in writing and shall state the purpose of such demand.
- (f) Any action to enforce any right arising under this section shall be brought in the Tribal Court. If the limited liability company refuses to permit a member to obtain or a manager to examine the information described in subsection (a) of this section or does not reply to the demand that has been made within 5 business days (or such shorter or longer period of time as is provided for in a limited liability company agreement but not longer than 30 business days) after the demand has been made, the demanding member or manager may apply to the Tribal Court for an order to compel such disclosure. The Tribal Court is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such

information is entitled to the information sought. The Tribal Court may summarily order the limited liability company to permit the demanding member to obtain or manager to examine the information described in subsection (a) of this section and to make copies or abstracts therefrom, or the Tribal Court may summarily order the limited liability company to furnish to the demanding member or manager the information described in subsection (a) of this section on the condition that the demanding member or manager first pay to the limited liability company the reasonable cost of obtaining and furnishing such information and on such other conditions as the Tribal Court deems appropriate. When a demanding member seeks to obtain or a manager seeks to examine the information described in subsection (a) of this section, the demanding member or manager shall first establish:

- (1) That the demanding member or manager has complied with the provisions of this section respecting the form and manner of making demand for obtaining or examining of such information, and
- (2) That the information the demanding member or manager seeks is reasonably related to the member's interest as a member or the manager's position as a manager, as the case may be.

The Tribal Court may, in its discretion, prescribe any limitations or conditions with reference to the obtaining or examining of information, or award such other or further relief as the Tribal Court may deem just and proper. The Tribal Court may order books, records and other documents, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the Reservation and kept in the Reservation upon such terms and conditions as the order may prescribe.

- (g) If a member is entitled to obtain information under this chapter or a limited liability company agreement for a purpose reasonably related to the member's interest as a member or other stated purpose, the member's right shall be to obtain such information as is necessary and essential to achieving that purpose. The rights of a member or manager to obtain or examine information as provided in this section may be expanded or restricted in an original limited liability company agreement or in any subsequent amendment approved or adopted by all of the members or in compliance with any applicable requirements of the limited liability company agreement. The provisions of this subsection shall not be construed to limit the ability to expand or restrict the rights of a member or manager to obtain or examine information by any other means permitted by law.
- (h) A limited liability company shall maintain a current record that identifies the name and last known business, residence or mailing address of each member and manager.

230.306 Remedies for Breach of Limited Liability Company Agreement by Member

A limited liability company agreement may provide that:

- (1) A member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences; and
- (2) At the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences.

Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in 230-502(c) of this chapter.

230.401 Admission of Managers

A person may be named or designated as a manager of the limited liability company as provided in 230-101(12) of this chapter.

230.402 Management of Limited Liability Company

Unless otherwise provided in a limited liability company agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided however, that if a limited liability company agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager shall also hold the offices and have the responsibilities accorded to the manager by or in the manner provided in a limited liability company agreement. Subject to 230-602 of this chapter, a manager shall cease to be a manager as provided in a limited liability company agreement. A limited liability company may have more than 1 manager. Unless otherwise provided in a limited liability company agreement, each member and manager has the authority to bind the limited liability company.

230.403 Contributions by a Manager

A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of the manager's participation in the limited liability company as a member.

230.404 Classes and Voting

- (a) A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.
- (b) A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

- (c) A limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.
- (d) Unless otherwise provided in a limited liability company agreement, meetings of managers may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on, consented to or approved by managers, the managers may take such action without a meeting, without prior notice and without a vote if consented to or approved, in writing, by electronic transmission or by any other means permitted by law, by managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all managers entitled to vote thereon were present and voted. Unless otherwise provided in a limited liability company agreement, if a person (whether or not then a manager) consenting as a manager to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a manager at such future time so long as such person is then a manager. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a limited liability company agreement, a consent transmitted by electronic transmission by a manager or by a person or persons authorized to act for a manager shall be deemed to be written and signed for purposes of this subsection.

230.405 Remedies for Breach of Limited Liability Company Agreement by Manger

A limited liability company agreement may provide that:

- (1) A manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences; and
- (2) At the time or upon the happening of events specified in the limited liability company agreement, a manager shall be subject to specified penalties or specified consequences.

230.406 Reliance on Reports and Information by Member or Manager

A member, manager or liquidating trustee of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports or statements presented by another manager, member or liquidating trustee, an officer or employee of the limited liability company, or committees of the limited liability company, members or managers, or by any other person as to matters the member, manager or liquidating trustees reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company, or the value and amount of

assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the limited liability company or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to members or creditors might properly be paid.

230.407 Delegation of Rights and Powers to Manage

Unless otherwise provided in the limited liability company agreement, a member or manager of a limited liability company has the power and authority to delegate to 1 or more other persons any or all of the member's or manager's, as the case may be, rights, powers and duties to manage and control the business and affairs of the limited liability company, which delegation may be made irrespective of whether the member or manager has a conflict of interest with respect to the matter as to which its rights, powers or duties are being delegated, and the person or persons to whom any such rights, powers or duties are being delegated shall not be deemed conflicted solely by reason of the conflict of interest of the member or manager. Any such delegation may be to agents, officers and employees of a member or manager or the limited liability company, and by a management agreement or another agreement with, or otherwise to, other persons, including a committee of 1 or more persons. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager shall be irrevocable if it states that it is irrevocable. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company or cause the person to whom any such rights, powers and duties have been delegated to be a member or manager, as the case may be, of the limited liability company. No other provision of this chapter or other law shall be construed to restrict a member's or manager's power and authority to delegate any or all of its rights, powers and duties to manage and control the business and affairs of the limited liability company.

230.501 Form of Contribution

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

230.502 Liability for Contribution

- (a) Except as provided in a limited liability company agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value (as stated in the records of the limited liability company) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.
- (b) Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in

violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after the entering into of a limited liability company agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

- (c) A limited liability company agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's limited liability company interest to that of non defaulting members, a forced sale of that limited liability company interest, forfeiture of the defaulting member's limited liability company interest, the lending by other members of the amount necessary to meet the defaulting member's commitment, a fixing of the value of the defaulting member's limited liability company interest by appraisal or by formula and redemption or sale of the limited liability company interest at such value, or other penalty or consequence.

230.503 Allocation of Profits and Losses

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

230.504 Allocation of Distributions

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

230.505 Defense of Usury Not Available

No obligation of a member or manager of a limited liability company to the limited liability company, or to a member or manager of the limited liability company, arising under the limited liability company agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a member or manager, shall be subject to the defense of

usury, and no member or manager shall interpose the defense of usury with respect to any such obligation in any action.

230.506 Irrevocability of Subscription

For all purposes of 230-301(e) of the laws of the Tribe, a subscription for a limited liability company interest, whether submitted in writing, by means of electronic transmission, or as otherwise permitted by applicable law, is irrevocable if the subscription states that it is irrevocable to the extent provided by the terms of the subscription.

230.601 Interim Distributions

Except as provided in this chapter, to the extent and at the times or upon the happening of the events specified in a limited liability company agreement, a member is entitled to receive from a limited liability company distributions before the member's resignation from the limited liability company and before the dissolution and winding up thereof.

230.602 Resignation of Manager

A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. A limited liability company agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that a limited liability company agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates a limited liability company agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the limited liability company agreement and offset the damages against the amount otherwise distributable to the resigning manager.

230.603 Resignation of Member

A member may resign from a limited liability company only at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. Notwithstanding anything to the contrary under applicable law, unless a limited liability company agreement provides otherwise, a member may not resign from a limited liability company prior to the dissolution and winding up of the limited liability company. Notwithstanding anything to the contrary under applicable law, a limited liability company agreement may provide that a limited liability company interest may not be assigned prior to the dissolution and winding up of the limited liability company.

Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary and effective on or prior to July 31, 1996, shall continue to be governed by this section as in effect on July 31, 1996.

230.604 Distribution Upon Resignation

Except as provided in this chapter, upon resignation any resigning member is entitled to receive any distribution to which such member is entitled under a limited liability company agreement and, if not otherwise provided in a limited liability company agreement, such member is entitled to receive, within a reasonable time after resignation, the fair value of such member's limited liability company interest as of the date of resignation based upon such member's right to share in distributions from the limited liability company.

230.605 Distribution in Kind

Except as provided in a limited liability company agreement, 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. Except as provided in a limited liability company agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company. Except as provided in the limited liability company agreement, a member may be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed is equal to a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

230.606 Right to Distribution

Subject to 230-607 and 230-804 of this chapter, and unless otherwise provided in a limited liability company agreement, 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 a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

230.604 Limitations on Distribution

- (a) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability. For purposes of this subsection (a), the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.
- (b) A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to a limited liability company for the amount of the distribution. A

member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (c) of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

- (c) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of 3 years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said 3-year period and an adjudication of liability against such member is made in the said action.

230.701 Nature of Limited Liability Company Interest

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

230.702 Assignment of Limited Liability Company Interest

- (a) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in a limited liability company agreement or, unless otherwise provided in the limited liability company agreement, upon the vote or consent of all of the members of the limited liability company.
- (b) Unless otherwise provided in a limited liability company agreement:
- (1) An assignment of a limited liability company interest does not entitle the assignee to become or to exercise any rights or powers of a member;
 - (2) An assignment of a limited liability company interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and
 - (3) 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 the member's limited liability company interest. Unless otherwise provided in a limited liability company agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company interest of a member 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.
- (c) Unless otherwise provided in a limited liability company agreement, a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company. A limited liability company agreement may provide for the assignment or transfer of any limited liability company interest represented by such a certificate and make other provisions with respect to such certificates. A limited liability company shall not have the power to issue a certificate of limited liability company interest in bearer form.
- (d) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest

becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

- (e) Unless otherwise provided in the limited liability company agreement, a limited liability company may acquire, by purchase, redemption or otherwise, any limited liability company interest or other interest of a member or manager in the limited liability company. Unless otherwise provided in the limited liability company agreement, any such interest so acquired by the limited liability company shall be deemed canceled.

230.703 Member's Limited Liability Company Interest Subject to Charging Order

- (a) On application by a judgment creditor of a member or of a member's assignee, a court having jurisdiction may charge the limited liability company interest of the judgment debtor to satisfy the judgment. To the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of such limited liability company interest.
- (b) A charging order constitutes a lien on the judgment debtor's limited liability company interest.
- (c) This chapter does not deprive a member or member's assignee of a right under exemption laws with respect to the judgment debtor's limited liability company interest.
- (d) The entry of a charging order is the exclusive remedy by which a judgment creditor of a member or a member's assignee may satisfy a judgment out of the judgment debtor's limited liability company interest and attachment, garnishment, foreclosure or other legal or equitable remedies are not available to the judgment creditor, whether the limited liability company has 1 member or more than 1 member.
- (e) No creditor of a member or of a member's assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.
- (f) The Tribal Court shall have jurisdiction to hear and determine any matter relating to any such charging order.

230.704 Right of Assignee to Become Member

- (a) An assignee of a limited liability company interest becomes a member:
 - (1) As provided in the limited liability company agreement;
 - (2) Unless otherwise provided in the limited liability company agreement, upon the vote or consent of all of the members of the limited liability company; or
 - (3) Unless otherwise provided in the limited liability company agreement by a specific reference to this subsection or otherwise provided in connection with the assignment, upon the voluntary assignment by the sole member of the limited liability company of all of the limited liability company interests in the limited liability company to a single assignee. An assignment will be voluntary for purposes of this subsection if it is consented to by the member at the time of the assignment and is not effected by foreclosure or other similar legal process.
- (b) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this chapter. Notwithstanding the foregoing, unless otherwise provided in a limited liability company agreement, an assignee who becomes a member is

liable for the obligations of the assignor to make contributions as provided in 230-502 of this chapter, but shall not be liable for the obligations of the assignor under 230.601-607 of this chapter. However, the assignee is not obligated for liabilities, including the obligations of the assignor to make contributions as provided in 230-502 of this chapter, unknown to the assignee at the time the assignee became a member and which could not be ascertained from a limited liability company agreement.

- (c) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from liability to a limited liability company under 230.501-506 and 230.601-607 of this chapter.

230.705 Powers of Estate of Deceased of Incompetent Member

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's personal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power under a limited liability company agreement of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its personal representative.

230.801 Dissolution

- (a) A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:
 - (1) At the time specified in a limited liability company agreement, but if no such time is set forth in the limited liability company agreement, then the limited liability company shall have a perpetual existence;
 - (2) Upon the happening of events specified in a limited liability company agreement;
 - (3) Unless otherwise provided in a limited liability company agreement, upon the vote or consent of members who own more than 2/3 of the then-current percentage or other interest in the profits of the limited liability company owned by all of the members;
 - (4) At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:
 - a. Unless otherwise provided in a limited liability company agreement, within 90 days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that a limited liability company agreement may provide that the personal representative of the last remaining member shall be obligated to agree to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, or

- b. A member is admitted to the limited liability company in the manner provided for in the limited liability company agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within 90 days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the limited liability company agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company.
- (5) The entry of a decree of judicial dissolution under 230-802 of this chapter.
- (b) Unless otherwise provided in a limited liability company agreement, the death, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of an event that terminates the continued membership of any member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution.

230.802 Judicial Dissolution

On application by or for a member or manager the Tribal Court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement.

230.803 Winding Up

- (a) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the limited liability company owned by all of the members, may wind up the limited liability company's affairs; but the Tribal Court, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, or the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary and effective on or prior to July 31, 2015, shall continue to be governed by this subsection as in effect on July 31, 2015.
- (b) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in 230-203 of this chapter, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members and managers and without imposing liability on a liquidating trustee.

230.804 Distribution of Assets

- (a) Upon the winding up of a limited liability company, the assets shall be distributed as follows:
 - (1) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members and former members under 230-601 or 230-604 of this chapter;
 - (2) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under 230-601 or 230-604 of this chapter; and
 - (3) Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.
- (b) A limited liability company which has dissolved:
 - (1) Shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited liability company;
 - (2) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited liability company which is the subject of a pending action, suit or proceeding to which the limited liability company is a party; and
 - (3) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or that have not arisen but that, based on facts known to the limited liability company, are likely to arise or to become known to the limited liability company within 10 years after the date of dissolution.

If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in the limited liability company agreement, any remaining assets shall be distributed as provided in this chapter. Any liquidating trustee winding up a limited liability company's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

- (c) A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the limited liability company for the amount of the distribution. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (d) of this section, this subsection

shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

- (d) Unless otherwise agreed, a member who receives a distribution from a limited liability company to which this section applies shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of 3 years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said 3-year period and an adjudication of liability against such member is made in the said action.
- (e) Section 230-607 of this chapter shall not apply to a distribution to which this section applies.

230.805 Trustees or Receivers for Limited Liability Companies; Appointment; Powers; Duties

When the certificate of formation of any limited liability company formed under this chapter shall be canceled by the filing of a certificate of cancellation pursuant to 230-203 of this chapter, the Tribal Court, on application of any creditor, member or manager of the limited liability company, or any other person who shows good cause therefor, at any time, may either appoint 1 or more of the managers of the limited liability company to be trustees, or appoint 1 or more persons to be receivers, of and for the limited liability company, to take charge of the limited liability company's property, and to collect the debts and property due and belonging to the limited liability company, with the power to prosecute and defend, in the name of the limited liability company, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the limited liability company, if in being, that may be necessary for the final settlement of the unfinished business of the limited liability company. The powers of the trustees or receivers may be continued as long as the Tribal Court shall think necessary for the purposes aforesaid.

230.806 Revocation of Dissolution

If a limited liability company agreement provides the manner in which a dissolution may be revoked, it may be revoked in that manner and, unless a limited liability company agreement prohibits revocation of dissolution, then notwithstanding the occurrence of an event set forth in 230-801(a)(1), (2), (3) or (4) of this chapter, the limited liability company shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation in the office of the Secretary, the limited liability company is continued, effective as of the occurrence of such event:

- (1) In the case of dissolution effected by the vote or consent of the members (or other persons whose approval is required for such dissolution pursuant to the limited liability company agreement), pursuant to such vote or consent (and the approval of any members or other persons whose approval is required under the limited liability company agreement to revoke a dissolution contemplated by this paragraph);
- (2) In the case of dissolution under 230-801(a)(1) or (2) of this chapter (other than a dissolution effected by the vote or consent of the members (or other persons whose approval is required for such dissolution pursuant to the limited liability company agreement) or the occurrence of an event that causes the last remaining member to cease to be a member), pursuant to such vote or consent that, pursuant to the terms of the limited liability company agreement, is required to amend the provision of the

- limited liability company agreement effecting such dissolution (and the approval of any members or other persons whose approval is required under the limited liability company agreement to revoke a dissolution contemplated by this paragraph); and
- (3) In the case of dissolution effected by the occurrence of an event that causes the last remaining member to cease to be a member, pursuant to the vote or consent of the personal representative of the last remaining member of the limited liability company or the assignee of all of the limited liability company interests in the limited liability company (and the approval of any other persons whose approval is required under the limited liability company agreement to revoke a dissolution contemplated by this paragraph).

If there is no remaining member of the limited liability company and the personal representative of the last remaining member or the assignee of all of the limited liability company interests in the limited liability company votes in favor of or consents to the continuation of the limited liability company, such personal representative or such assignee, as applicable, shall be required to agree to the admission of a nominee or designee as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member. The provisions of this section shall not be construed to limit the accomplishment of a revocation of dissolution by other means permitted by law.

230.901 Law Governing

- (a) Subject to the Constitution of the Tribe:
- (1) The laws of the state, territory, possession, other tribe, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers; 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 Tribe.
- (b) A foreign limited liability company shall be subject to 230-106 of this chapter.

230.902 Registration Required; Application

Before doing business within the Reservation, a foreign limited liability company shall register with the Secretary. In order to register, a foreign limited liability company shall submit to the Secretary:

- (1) A copy executed by an authorized person of an application for registration as a foreign limited liability company, setting forth:
 - a. The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business within the Reservation;
 - b. The state, territory, possession or other jurisdiction or country where formed, the date of its formation and a statement from an authorized person that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;
 - c. The nature of the business or purposes to be conducted or promoted within the Reservation;

- d. The address of the registered office and the name and address of the registered agent for service of process required to be maintained by 230-904(b) of this chapter;
 - e. A statement that the Secretary is appointed the agent of the foreign limited liability company for service of process under the circumstances set forth in 230-910(b) of this chapter; and
 - f. The date on which the foreign limited liability company first did, or intends to do, business within the Reservation.
- (2) A certificate, as of a date not earlier than 6 months prior to the filing date, issued by an authorized officer of the jurisdiction of its formation evidencing its existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto.
- (3) A fee as set forth in 230-1105(a)(6) of this chapter shall be paid.

230.903 Issuance of Registration

- (a) If the Secretary finds that an application for registration conforms to law and all requisite fees have been paid, the Secretary shall:
- (1) Certify that the application has been filed by endorsing upon the original application the word “Filed”, and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;
 - (2) File and index the endorsed application.
- (b) The Secretary shall prepare and return to the person who filed the application or the person’s representative a copy of the original signed application, similarly endorsed, and shall certify such copy as a true copy of the original signed application.

230.904 Name; Registered Office; Registered Agent

- (a) A foreign limited liability company may register with the Secretary under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words “Limited Liability Company” or the abbreviation “L.L.C.” or the designation “LLC” and that could be registered by a domestic limited liability company; provided however, that a foreign limited liability company may register under any name which is not such as to distinguish it upon the records in the office of the Secretary from the name on such records of any domestic or foreign corporation, partnership, statutory trust, limited liability company, limited partnership, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the Tribe with the written consent of the other corporation, partnership, statutory trust, limited liability company, limited partnership, registered series of a limited liability company or registered series of a limited partnership, which written consent shall be filed with the Secretary.
- (b) Each foreign limited liability company shall have and maintain within the Reservation:
- (1) A registered office which may but need not be a place of its business within the Reservation; and
 - (2) A registered agent for service of process on the foreign limited liability company, having a business office identical with such registered office, which agent may be any of:
 - a. An individual resident within the Reservation,

- b. A domestic limited liability company, a domestic corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a domestic statutory trust, or
 - c. A foreign corporation, a foreign limited liability partnership, a foreign limited partnership (including a foreign limited liability limited partnership), a foreign limited liability company (other than the foreign limited liability company itself), or a foreign statutory trust.
- (c) A registered agent may change the address of the registered office of the foreign limited liability company or companies for which the agent is registered agent to another address within the Reservation by paying a fee as set forth in 230-1105(a)(7) of this chapter and filing with the Secretary a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the foreign limited liability companies for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the foreign limited liability companies for which it is registered agent. Upon the filing of such certificate, until further change of address, as authorized by law, the registered office within the Reservation of each of the foreign limited liability companies for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a foreign limited liability company, such registered agent shall file with the Secretary a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed and the address at which such registered agent has maintained the registered office for each of the foreign limited liability companies for which it is registered agent, and shall pay a fee as set forth in 230-1105(a)(7) of this chapter. A change of name of any person acting as a registered agent of a foreign limited liability company as a result of (i) a merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law, (ii) the conversion of the registered agent into another person, or (iii) a division of the registered agent in which an identified resulting person succeeds to all of the assets and liabilities of the registered agent related to its registered agent business pursuant to the plan of division, as set forth in the certificate of division, shall each be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the application of each foreign limited liability company affected thereby and each such foreign limited liability company shall not be required to take any further action with respect thereto to amend its application under 230-905 of this chapter. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each foreign limited liability company affected thereby.
- (d) The registered agent of 1 or more foreign limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in 230-1105(a)(7) of this chapter and filing a certificate with the Secretary stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected foreign limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such foreign limited liability companies as have ratified and approved such substitution and the successor registered agent's address, as stated in such

certificate, shall become the address of each such foreign limited liability company's registered office within the Reservation. Filing of such certificate of resignation shall be deemed to be an amendment of the application of each foreign limited liability company affected thereby and each such foreign limited liability company shall not be required to take any further action with respect thereto to amend its application under 230-905 of this chapter.

- (e) The registered agent of a foreign limited liability company, including a foreign limited liability company that has ceased to be registered as a foreign limited liability company within the Reservation pursuant to 230-1107(h) of this chapter, may resign without appointing a successor registered agent by paying a fee as set forth in 230-1105(a)(7) of this chapter and filing a certificate of resignation with the Secretary, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to the foreign limited liability company at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the foreign limited liability company at its address last known to the registered agent and shall set forth the date of such notice. The certificate shall include such information last provided to the registered agent pursuant to 230-104(g) of this chapter for a communications contact for the foreign limited liability company. Such information regarding the communications contact shall not be deemed public. A certificate filed pursuant to this subsection must be on the form prescribed by the Secretary. After receipt of the notice of the resignation of its registered agent, the foreign limited liability company for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning. If such foreign limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, such foreign limited liability company shall not be permitted to do business within the Reservation and its registration shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each foreign limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary in accordance with 230-911 of this chapter.

230.905 Amendment to Application

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 false in any respect, the foreign limited liability company shall promptly file in the office of the Secretary a certificate, executed by an authorized person, correcting such statement, together with a fee as set forth in 230-1105(a)(6) of this chapter.

230.906 Cancellation of Registration

A foreign limited liability company may cancel its registration by filing with the Secretary a certificate of cancellation, executed by an authorized person, together with a fee as set forth in 230-1105(a)(6) of this chapter. The registration of a foreign limited liability company shall be canceled as provided in 230-104(i)(4), 230-904(e) and 230-1107(h) of this chapter. A cancellation does not terminate the authority of the Secretary to accept service of process on the foreign limited

liability company with respect to causes of action arising out of the doing of business within the Reservation.

230.907 Doing Business Without Registration

- (a) A foreign limited liability company doing business within the Reservation may not maintain any action, suit or proceeding within the Reservation until it has registered within the Reservation, and has paid to the Tribe all fees and penalties for the years or parts thereof, during which it did business within the Reservation without having registered.
- (b) The failure of a foreign limited liability company to register within the Reservation does not impair:
 - (1) The validity of any contract or act of the foreign limited liability company;
 - (2) The right of any other party to the contract to maintain any action, suit or proceeding on the contract; or
 - (3) Prevent the foreign limited liability company from defending any action, suit or proceeding in any court of the Tribe.
- (c) A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business within the Reservation without registration.
- (d) Any foreign limited liability company doing business within the Reservation without first having registered shall be fined and shall pay to the Secretary \$200 for each year or part thereof during which the foreign limited liability company failed to register within the Reservation.

230.908 Foreign Limited Liability Companies Doing Business Without Having Qualified; Injunctions

The Tribal Court shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business within the Reservation if such foreign limited liability company has failed to register under this chapter or if such foreign limited liability company has secured a certificate of the Secretary under 230-903 of this chapter on the basis of false or misleading representations. Upon the motion of the Tribal Attorney or upon the relation of proper parties, the Tribal Attorney shall proceed for this purpose by complaint in any county in which such foreign limited liability company is doing or has done business.

230.909 Execution; Liability

Section 18-204(d) of this chapter shall be applicable to foreign limited liability companies as if they were domestic limited liability companies.

230.910 Service of Process on Registered Foreign Limited Liability Companies

- (a) Service of legal process upon any foreign limited liability company shall be made by delivering a copy personally to any managing or general agent or manager of the foreign limited liability company within the Reservation or the registered agent of the foreign limited liability company within the Reservation, or by leaving it at the dwelling house or usual place of abode within the Reservation of any such managing or general agent,

manager or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the foreign limited liability company within the Reservation. If the registered agent be a corporation, service of process upon it as such may be made by serving, within the Reservation, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of any managing or general agent, manager or registered agent, or at the registered office or other place of business of the foreign limited liability company within the Reservation, to be effective must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the officer's return thereto. Process returnable forthwith must be delivered personally to the managing or general agent, manager or registered agent.

- (b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the foreign limited liability company upon the Secretary, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. Process may be served upon the Secretary under this subsection by means of electronic transmission but only as prescribed by the Secretary. The Secretary is authorized to issue such rules and regulations with respect to such service as the Secretary deems necessary or appropriate. In the event that service is effected through the Secretary in accordance with this subsection, the Secretary shall forthwith notify the foreign limited liability company by letter, directed to the foreign limited liability company at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary that service is being effected pursuant to this subsection, and to pay to the Secretary the sum of \$50 for the use of the Tribe, which sum shall be taxed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary, the fact that service has been effected pursuant to this subsection, the return date thereof and the day and hour when the service was made. The Secretary shall not be required to retain such information for a period longer than 5 years from the Secretary's receipt of the service of process.

230.911 Service of Process on Unregistered Foreign Limited Liability Companies

- (a) Any foreign limited liability company which shall do business within the Reservation without having registered under 230-902 of this chapter shall be deemed to have thereby appointed and constituted the Secretary of the Tribe its agent for the acceptance of legal process in any civil action, suit or proceeding against it in any tribal, state or federal court arising or growing out of any business done by it within the Reservation. The doing of business within the Reservation by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon an

authorized manager or agent personally within the Reservation. Process may be served upon the Secretary under this subsection by means of electronic transmission but only as prescribed by the Secretary. The Secretary is authorized to issue such rules and regulations with respect to such service as the Secretary deems necessary or appropriate.

- (b) Whenever the words “doing business,” “the doing of business” or “business done in this Tribe,” by any such foreign limited liability company are used in this section, they shall mean the course or practice of carrying on any business activities within the Reservation, including, without limiting the generality of the foregoing, the solicitation of business or orders within the Reservation.
- (c) In the event of service upon the Secretary in accordance with subsection (a) of this section, the Secretary shall forthwith notify the foreign limited liability company thereof by letter, directed to the foreign limited liability company at the address furnished to the Secretary by the plaintiff in such action, suit or proceeding. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served upon the Secretary. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary that service is being made pursuant to this subsection, and to pay to the Secretary the sum of \$50 for the use of the Tribe, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary, the return date thereof, and the day and hour when the service was made. The Secretary shall not be required to retain such information for a period longer than 5 years from the receipt of the service of process.

230.912 Activities Not Constituting Doing Business

- (a) Activities of a foreign limited liability company within the Reservation that do not constitute doing business for the purpose of this chapter include:
 - (1) Maintaining, defending or settling an action or proceeding;
 - (2) Holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;
 - (3) Maintaining bank accounts;
 - (4) Maintaining offices or agencies for the transfer, exchange or registration of the 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 Reservation before they become contracts;
 - (7) Selling, by contract consummated outside the Reservation, and agreeing, by the contract, to deliver into the Reservation, machinery, plants or equipment, the construction, erection or installation of which within the Reservation requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or installation;

- (8) Creating, as borrower or lender, or acquiring indebtedness with or without a mortgage or other security interest in property;
 - (9) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;
 - (10) Conducting an isolated transaction that is not 1 in the course of similar transactions;
 - (11) Doing business in interstate commerce; and
 - (12) Doing business within the Reservation as an insurance company.
- (b) A person shall not be deemed to be doing business within the Reservation solely by reason of being a member or manager of a domestic limited liability company or a foreign limited liability company.
- (c) This section does not apply in determining whether a foreign limited liability company is subject to service of process, taxation or regulation under any other law of the Tribe.

230.1001 Right to Bring Action

A member or an assignee of a limited liability company interest may bring an action in the Tribal Court in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

230.1002 Proper Plaintiff

In a derivative action, the plaintiff must be a member or an assignee of a limited liability company interest at the time of bringing the action and:

- (1) At the time of the transaction of which the plaintiff complains; or
- (2) The plaintiff's status as a member or an assignee of a limited liability company interest had devolved upon the plaintiff by operation of law or pursuant to the terms of a limited liability company agreement from a person who was a member or an assignee of a limited liability company interest at the time of the transaction.

230.1003 Complaint

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

230.1004 Expenses

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a limited liability company.

230.1101 Construction and Application of Chapter and Limited Liability Company Agreement

- (a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.
- (b) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.
- (c) To the extent that, at law or in equity, a member or manager or other person has duties (including fiduciary duties) to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement, the member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the limited liability company agreement; provided, that the limited liability company agreement may not eliminate the implied contractual covenant of good faith and fair dealing.
- (d) Unless otherwise provided in a limited liability company agreement, a member or manager or other person shall not be liable to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement for breach of fiduciary duty for the member's or manager's or other person's good faith reliance on the provisions of the limited liability company agreement.
- (e) A limited liability company agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a member, manager or other person to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement; provided, that a limited liability company agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.
- (f) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this chapter.
- (g) [RESERVED]
- (h) Action validly taken pursuant to 1 provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy 1 or more requirements prescribed by such other provision.
- (i) A limited liability company agreement that provides for the application of Tribal law shall be governed by and construed under the laws of the Tribe in accordance with its terms.
- (j) The provisions of this chapter shall apply whether a limited liability company has 1 member or more than 1 member.

230.1102 Short Ordinance

This chapter may be cited as the "Coquille Limited Liability Company Ordinance."

230.1103 Severability

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

230.1104 Cases Not Provided for in this Chapter

In any case not provided for in this Ordinance, the rules of law and equity, including the rules of law and equity relating to fiduciary duties and the law merchant, shall constitute persuasive authority, and with the laws of the Tribe, shall govern pursuant to the application of law as set forth in the Coquille Tribal Court Ordinances.

This Ordinance is based in large part on the Limited Liability Act of the State of Delaware, and the judicial construction of such law by the Delaware Court of Chancery shall also constitute persuasive authority in the interpretation and application of this Ordinance by the Tribal Court.

230.1105 Fees

- (a) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary for the use of the Tribe:
 - (1) Upon the receipt for filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation pursuant to 230-103(b) of this chapter, a fee in the amount of \$75.
 - (2) Upon the receipt for filing of a certificate under 230-104(b) of this chapter, a fee in the amount of \$200, upon the receipt for filing of a certificate under 230-104(c) of this chapter, a fee in the amount of \$200, and upon the receipt for filing of a certificate under 230-104(d) of this chapter, a fee in the amount of \$2.00 for each limited liability company whose registered agent has resigned by such certificate.
 - (3) Upon the receipt for filing of a certificate of formation under 230-201 of this chapter or a certificate of registered series under 230-218 of this chapter, a fee in the amount of \$70 and upon the receipt for filing of a certificate of limited liability company domestication under 230-212 of this chapter, a certificate of transfer or a certificate of transfer and domestic continuance under 230-213 of this chapter, a certificate of conversion to limited liability company under 230-214 of this chapter, a certificate of conversion to a non-Tribal entity under 230-216 of this chapter, a certificate of amendment under 230-202, 230-217(h)(2), or 230-218(d)(3) of this chapter (except as otherwise provided in paragraph (a)(11) of this section), a certificate of cancellation under 230-203 or 230-218(d)(7) of this chapter, a certificate of merger or consolidation or a certificate of ownership and merger under 230-209 of this chapter, a restated certificate of formation or a restated certificate of registered series under 230-208 of this chapter, a certificate of amendment of a certificate with a future effective date or time under 230-206(c) of this chapter, a certificate of termination of a certificate with a future effective date or time under 230-206(c) of this chapter, a certificate of correction under 230-211 of this chapter, a certificate of division under 230-217 of this chapter, a certificate of conversion of protected series to registered series under 230-219 of this chapter, a certificate of conversion of registered series to protected series

- under 230-220 of this chapter, a certificate of merger or consolidation of registered series under 230-221 of this chapter or a certificate of revival under 230-1109 or 230-1110 of this chapter, a fee in the amount of \$180, plus, in the case of a certificate of cancellation under 230-203 of this chapter, a fee in the amount of \$50 for each registered series of the limited liability company named in the certificate of cancellation.
- (4) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of \$50 for each copy certified. In addition, a fee of \$2.00 per page shall be paid in each instance where the Secretary provides the copies of the document to be certified.
 - (5) The Secretary may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies which are not certified by the Secretary, a fee of \$10 shall be paid for the first page and \$2.00 for each additional page. Notwithstanding any provision of law granting access to public records, the Secretary upon request shall issue only photocopies or electronic image copies of public records in exchange for the fees described in this section, and in no case shall the Secretary be required to provide copies (or access to copies) of such public records (including without limitation bulk data, digital copies of instruments, documents and other papers, databases or other information) in an electronic medium or in any form other than photocopies or electronic image copies of such public records in exchange, as applicable, for the fees described in this section.
 - (6) Upon the receipt for filing of an application for registration as a foreign limited liability company under 230-902 of this chapter, a certificate under 230-905 of this chapter or a certificate of cancellation under 230-906 of this chapter, a fee in the amount of \$200.
 - (7) Upon the receipt for filing of a certificate under 230-904(c) of this chapter, a fee in the amount of \$200, upon the receipt for filing of a certificate under 230-904(d) of this chapter, a fee in the amount of \$200, and upon the receipt for filing of a certificate under 230-904(e) of this chapter, a fee in the amount of \$2.00 for each foreign limited liability company whose registered agent has resigned by such certificate.
 - (8) For preclearance of any document for filing, a fee in the amount of \$250.
 - (9) For preparing and providing a written report of a record search, a fee of up to \$100.
 - (10) For issuing any certificate of the Secretary, including but not limited to a certificate of good standing with respect to a limited liability company or a registered series thereof, other than a certification of a copy under paragraph (a)(4) of this section, a fee in the amount of \$50, except that for issuing any certificate of the Secretary that recites all of the filings with the Secretary of a limited liability company or all of the filings of any registered series or that lists all of the registered series formed by a limited liability company, a fee of \$175 shall be paid for each such certificate. For issuing any certificate via the Secretary's online services, a fee of up to \$175 shall be paid for each certificate.
 - (11) For receiving and filing and/or indexing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee in the amount of \$200. For filing any instrument submitted by a limited liability company or foreign limited liability company that only changes the registered office or registered agent and is specifically captioned as a certificate of amendment changing only the registered office or registered agent, a fee in the amount of \$50 provided that no fee shall be charged pursuant to 230-206(e) of this chapter.

- (12) The Secretary may in the Secretary's own discretion charge a fee of \$60 for each check received for payment of any fee that is returned due to insufficient funds or the result of a stop payment order.
- (b) In addition to those fees charged under subsection (a) of this section, there shall be collected by and paid to the Secretary the following:
 - (1) For all services described in subsection (a) of this section that are requested to be completed within 30 minutes on the same day as the day of the request, an additional sum of up to \$7,500 and for all services described in subsection (a) of this section that are requested to be completed within 1 hour on the same day as the day of the request, an additional sum of up to \$1,000 and for all services described in subsection (a) of this section that are requested to be completed within 2 hours on the same day of the request, an additional sum of up to \$500;
 - (2) For all services described in subsection (a) of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to \$300; and
 - (3) For all services described in subsection (a) of this section that are requested to be completed within a 24-hour period from the time of the request, an additional sum of up to \$150.

The Secretary shall establish (and may from time to time amend) a schedule of specific fees payable pursuant to this subsection.

- (c) The Secretary may in the Secretary's discretion permit the extension of credit for the fees required by this section upon such terms as the secretary shall deem to be appropriate.
- (d) The Secretary shall retain from the revenue collected from the fees required by this section a sum sufficient to provide at all times a fund of at least \$500, but not more than \$1,500, from which the secretary may refund any payment made pursuant to this section to the extent that it exceeds the fees required by this section. The funds shall be deposited in a financial institution which is a legal depository of Tribe moneys to the credit of the Secretary and shall be disbursable on order of the Secretary.
- (e) [RESERVED].

230.1106 Reserved Power of the Tribe to Alter or Repeal Chapter

All provisions of this chapter may be altered from time to time or repealed and all rights of members and managers are subject to this reservation. Unless expressly stated to the contrary in this chapter, all amendments of this chapter shall apply to limited liability companies and members and managers whether or not existing as such at the time of the enactment of any such amendment.

230.1107 Taxation of Limited Liability Companies and Registered Series

- (a) For purposes of any tax imposed by the Tribe or any instrumentality, agency or political subdivision of the Tribe, a domestic limited liability company or a foreign limited liability company qualified to do business within the Reservation shall be classified in the same manner as it is classified for federal income tax purposes. For purposes of any tax imposed by the Tribe or any instrumentality, agency or political subdivision of the Tribe, a member or an assignee of a member of a domestic limited liability company or a foreign limited liability company qualified to do business within the Reservation shall have the same status as such member or assignee of a member has for federal income tax purposes.

- (b) [RESERVED]
- (c) [RESERVED]
- (d) [RESERVED]
- (e) [RESERVED]
- (f) [RESERVED]
- (g) [RESERVED]
- (h) [RESERVED]
- (i) [RESERVED]
- (j) [RESERVED]
- (k) [RESERVED]
- (l) [RESERVED]
- (m) [RESERVED]
- (n) [RESERVED]

230.1108 [RESERVED]

230.1109 Revival of Domestic Limited Liability Company

- (a) A domestic limited liability company whose certificate of formation has been canceled pursuant to 230-104(d), 230-104(i)(4) or 230-1108(a) of this chapter may be revived by filing in the office of the Secretary a certificate of revival of limited liability company accompanied by the payment of the fee required by 230-1105(a)(3) of this chapter and payment of the annual tax due under 230-1107 of this chapter and all penalties and interest thereon due at the time of the cancellation of its certificate of formation. The certificate of revival of limited liability company shall set forth:
 - (1) The name of the limited liability company at the time its certificate of formation was canceled and, if such name is not available at the time of revival, the name under which the limited liability company is to be revived;
 - (2) The date of filing of the original certificate of formation of the limited liability company;
 - (3) The address of the limited liability company's registered office within the Reservation and the name and address of the limited liability company's registered agent within the Reservation;
 - (4) A statement that the certificate of revival of limited liability company is filed by 1 or more persons authorized to execute and file such certificate of revival to revive the limited liability company; and
 - (5) Any other matters the persons executing the certificate of revival of limited liability company determine to include therein.
- (b) The certificate of revival of limited liability company shall be deemed to be an amendment to the certificate of formation of the limited liability company, and the limited liability company shall not be required to take any further action to amend its certificate of formation under 230-202 of this chapter with respect to the matters set forth in such certificate of revival.
- (c) Upon the filing of a certificate of revival of limited liability company, a limited liability company, each registered series thereof whose certificate of registered series has been canceled as a result of the cancellation of the certificate of formation of the limited liability company pursuant to 230-104(d), 230-104(i)(4) or 230-1108(a) of this chapter, and each protected series thereof that has not been terminated and wound up, shall be revived with

the same force and effect as if the certificate of formation of the limited liability company had not been canceled pursuant to 230-104(d), 230-104(i)(4) or 230-1108(a) of this chapter. Such revival shall validate all contracts, acts, matters and things made, done and performed by the limited liability company, any protected series or registered series thereof, or by the members, managers, employees and agents of the limited liability company or such series during the time when the certificate of formation of the limited liability company was canceled pursuant to 230-104(d), 230-104(i)(4) or 230-1108(a) of this chapter, with the same force and effect and to all intents and purposes as if the certificate of formation of the limited liability company had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the limited liability company or any protected series or registered series thereof at the time the certificate of formation of the limited liability company was canceled pursuant to 230-104(d), 230-104(i)(4) or 230-1108(a) of this chapter or which were acquired by the limited liability company or any protected series or registered series thereof following the cancellation of the certificate of formation of the limited liability company pursuant to 230-104(d), 230-104(i)(4) or 230-1108(a) of this chapter, and which were not disposed of prior to the time of the limited liability company's revival, shall be vested in the limited liability company or the applicable protected series or registered series after the revival of the limited liability company as fully as they were held by the limited liability company or such series at, and after, as the case may be, the time the certificate of formation of the limited liability company was canceled pursuant to 230-104(d), 230-104(i)(4) or 230-1108(a) of this chapter. After the revival of the limited liability company, the limited liability company and any protected series or registered series thereof shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in the name of and on behalf of the limited liability company or such series by the members, managers, employees and agents of the limited liability company or such series prior to the limited liability company's revival as if the certificate of formation of the limited liability company had at all times remained in full force and effect.

230.1110 Revival of Registered Series

- (a) A registered series whose certificate of registered series has been canceled pursuant to 230-1108(b) of this chapter may be revived by filing in the office of the Secretary a certificate of revival of registered series accompanied by the payment of the fee required by 230-1105(a)(3) of this chapter and payment of the annual tax due under 230-1107 of this chapter and all penalties and interest thereon due at the time of the cancellation of its certificate of registered series. The certificate of revival of registered series shall set forth:
 - (1) The name of the limited liability company at the time the certificate of registered series was canceled and, if such name has changed, the name of the limited liability company at the time of revival of the registered series;
 - (2) The name of the registered series at the time the certificate of registered series was canceled and, if such name is not available at the time of revival, the name under which the registered series is to be revived;
 - (3) The date of filing of the original certificate of registered series;
 - (4) A statement that the certificate of revival of registered series is filed by 1 or more persons authorized to execute and file such certificate of revival to revive the registered series; and

- (5) Any other matters the persons executing the certificate of revival of registered series determine to include therein.
- (b) The certificate of revival of registered series shall be deemed to be an amendment to the certificate of registered series, and no further actions shall be required to amend its certificate of registered series under 230-218(d)(3) of this chapter with respect to the matters set forth in such certificate of revival.
- (c) Upon the filing of a certificate of revival of registered series, a registered series shall be revived with the same force and effect as if its certificate of registered series had not been canceled pursuant to 230-1108(b) of this chapter. Such revival shall validate all contracts, acts, matters and things made, done and performed by the registered series, its members, managers, employees and agents during the time when its certificate of registered series was canceled pursuant to 230-1108(b) of this chapter, with the same force and effect and to all intents and purposes as if the certificate of registered series had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the registered series at the time its certificate of registered series was canceled pursuant to 230-1108(b) of this chapter or which were acquired by the registered series following the cancellation of its certificate of registered series pursuant to 230-1108(b) of this chapter, and which were not disposed of prior to the time of its revival, shall be vested in the registered series after its revival as fully as they were held by the registered series at, and after, as the case may be, the time its certificate of registered series was canceled pursuant to 230-1108(b) of this chapter. After its revival, the registered series shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its members, managers, employees and agents prior to its revival as if its certificate of registered series had at all times remained in full force and effect.

230.1201 Law Application to Statutory Public Benefit Limited Liability Companies; How Formed

This chapter applies to all statutory public benefit limited liability companies, as defined in 230-1202(a) of this chapter. If a limited liability company is formed as or elects to become a statutory public benefit limited liability company in the manner prescribed in this section, it shall be subject in all respects to the provisions of this chapter, except to the extent this chapter imposes additional or different requirements, in which case such additional or different requirements shall apply, and notwithstanding 230-1101 of this chapter or any other provision of this chapter, such additional or different requirements imposed by this chapter may not be altered in the limited liability company agreement. If a limited liability company is not formed as a statutory public benefit limited liability company, it may become a statutory public benefit limited liability company in the manner specified in its limited liability company agreement or by amending its limited liability company agreement and certificate of formation to comply with the requirements of this chapter.

230.1202 Statutory Public Benefit Limited Liability Company Defined; Contents of Certification of Formation and Limited Liability Company Agreement

- (a) A “statutory public benefit limited liability company” is a for-profit limited liability company formed under and subject to the requirements of this chapter that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable

manner. To that end, a statutory public benefit limited liability company shall be managed in a manner that balances the members' pecuniary interests, the best interests of those materially affected by the limited liability company's conduct, and the public benefit or public benefits set forth in its limited liability company agreement and in its certificate of formation. A statutory public benefit limited liability company shall state in its limited liability company agreement and in the heading of its certificate of formation that it is a statutory public benefit limited liability company and shall set forth in its limited liability company agreement and in its certificate of formation 1 or more specific public benefits to be promoted by the limited liability company. In the event of any inconsistency between the public benefit or benefits to be promoted by the limited liability company as set forth in its limited liability company agreement and in its certificate of formation, the limited liability company agreement shall control as among the members, the managers and other persons who are party to or otherwise bound by the liability company agreement. A manager of a statutory public benefit limited liability company or, if there is no manager, then any member of a statutory public benefit limited liability company who becomes aware that the specific public benefit or benefits to be promoted by the limited liability company as set forth in its limited liability company agreement are inaccurately set forth in its certificate of formation, shall promptly amend the certificate of formation. Any provision in the limited liability company agreement or certificate of formation of a statutory public benefit limited liability company that is inconsistent with this chapter shall not be effective to the extent of such inconsistency.

- (b) "Public benefit" means a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than members in their capacities as members) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature. "Public benefit provisions" means the provisions of a limited liability company agreement contemplated by this chapter.

230.1203 Certain Amendments and Mergers; Votes Required [Repealed]

230.1204 Duties of Members or Managers

- (a) The members or managers or other persons with authority to manage or direct the business and affairs of a statutory public benefit limited liability company shall manage or direct the business and affairs of the statutory public benefit limited liability company in a manner that balances the pecuniary interests of the members, the best interests of those materially affected by the limited liability company's conduct, and the specific public benefit or public benefits set forth in its limited liability company agreement and certificate of formation. Unless otherwise provided in a limited liability company agreement, no member, manager or other person with authority to manage or direct the business and affairs of the statutory public benefit limited liability company shall have any liability for monetary damages for the failure to manage or direct the business and affairs of the statutory public benefit limited liability company as provided in this subsection.
- (b) A member or manager of a statutory public benefit limited liability company or any other person with authority to manage or direct the business and affairs of the statutory public benefit limited liability company shall not, by virtue of the public benefit provisions or 230-1202(a) of this chapter, have any duty to any person on account of any interest of such person in the public benefit or public benefits set forth in its limited liability company

agreement and certificate of formation or on account of any interest materially affected by the limited liability company's conduct and, with respect to a decision implicating the balance requirement in subsection (a) of this section, will be deemed to satisfy such person's fiduciary duties to members and the limited liability company if such person's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

230.1205 Periodic Statements and Third-Party Certification

A statutory public benefit limited liability company shall no less than biennially provide its members with a statement as to the limited liability company's promotion of the public benefit or public benefits set forth in its limited liability company agreement and certificate of formation and as to the best interests of those materially affected by the limited liability company's conduct. The statement shall include:

- (1) The objectives that have been established to promote such public benefit or public benefits and interests;
- (2) The standards that have been adopted to measure the limited liability company's progress in promoting such public benefit or public benefits and interests;
- (3) Objective factual information based on those standards regarding the limited liability company's success in meeting the objectives for promoting such public benefit or public benefits and interests; and
- (4) An assessment of the limited liability company's success in meeting the objectives and promoting such public benefit or public benefits and interests.

230.1205 Derivative Suits

Members of a statutory public benefit limited liability company or assignees of limited liability company interests in a statutory public benefit limited liability company owning individually or collectively, as of the date of instituting such derivative suit, at least 2% of the then-current percentage or other interest in the profits of the limited liability company or, in the case of a limited liability company with limited liability company interests listed on a national securities exchange, the lesser of such percentage or limited liability company interests of at least \$2,000,000 in market value, may maintain a derivative lawsuit to enforce the requirements set forth in 230-1204(a) of this chapter.

230.1207 No Effect on Other Limited Liability Companies

This chapter shall not affect a statute or rule of law that is applicable to a limited liability company that is not a statutory public benefit limited liability company.

230.1208 Accomplishment by Other Means

The provisions of this chapter shall not be construed to limit the accomplishment by any other means permitted by law of the formation or operation of a limited liability company that is formed or operated for a public benefit (including a limited liability company that is designated as a public benefit limited liability company) that is not a statutory public benefit limited liability company.

COQUILLE INDIAN TRIBAL CODE
CHAPTER 230
Limited Liability Company

History of Amendments

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