

**Fort Peck Tribal Court**  
**807 Court Avenue - P.O. Box 1027**  
**Poplar, MT 59255**



**Title 24 – Commercial Law**

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## **Chapter 1. General Provisions and Definitions**

### **Subchapter A. General Provisions**

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#### **Sec. 101. Scope**

This Chapter, and all subsequent Chapters and Sections of this Title, shall apply to the over-all processes and procedures for engaging in commercial activities with the Fort Peck Tribal Government and/or individual Indians and non-Indians under the civil jurisdiction of the Fort Peck Tribes.

#### **Sec. 102. Purposes: Rules of Construction; Variation by Agreement**

(1) This Title shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Title are:

(a) To simplify, clarify and modernize the tribal law governing commercial transactions, and

(b) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties.

(3) The effect of provisions of the Title may be varied by agreement, except as otherwise provided in this Title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this Title of the words "unless otherwise agreed" or words of similar import does not imply that the

effect of other provisions may not be varied by agreement under subsection (3).

(5) In this Title unless the context otherwise requires:

(a) Words in the singular number include the plural, and in the plural include the singular;

(b) Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

#### **Sec. 103. Supplementary General Principles of Law Applicable**

Unless displaced by the particular provisions of this Title the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, or other validating or invalidating cause shall supplement its provisions.

#### **Sec. 104. Remedies to Be Liberally Administered**

(1) The remedies provided by this Title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Title or by other rule of law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specifies a different and limited effect

### **Subchapter B. General Definitions**

#### **Sec. 111. General Definitions.**

Subject to additional definitions contained in the subsequent Chapters of this Title which are applicable to specific Sections thereof, and unless the context otherwise requires, in this Title;

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title. Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts. (Compare "Contract")

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note by air waybill.

(7) "Burden of establishing a fact" means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(8) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be person in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(9) "Conspicuous": A term of clause is conspicuous when it is so written that a reasonable person against who it is to operate ought to have noticed

it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(10) "Contract" means the total legal obligation which results from the parties agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement")

(11) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(12) "Credit committee" means the Tribal Credit Committee as currently established under tribal and/or federal law and procedure.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, warehouse receipt or order for the delivery of goods, and also any other documents which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible Goods" are goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honestly in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or endorsed to him or his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent as determined by the Tribal Court.

(23) "Insolvency Proceedings" are any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(24) "Joint venture" means an association of persons with intent, by way of contract, express or implied, to engage in and carry out a single business adventure for joint profit, for which purpose they combine their efforts, property, money, skill, and knowledge, but without creating a partnership in the legal or technical sense of the term, or a corporation, and they agree that there shall be community of interest among shall be a community of interest among them as to the purpose of the undertaking, and that each co-adventurer shall stand in the relation of principal, as well as agent, as to each of the other co-adventurer, with an equal right of control of the means employed to carry out the common purpose of the adventure.

(25) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(26) A person has "notice" of a fact when:

(a) He has actual knowledge of it; or  
(b) He has received a notice or notification of it; or

(c) From all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge

rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

(27) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) It comes to his attention; or

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by as the place for receipt of such communications.

(28) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(29) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(30) "Party", as distinct from "third Party", means a person who has engaged in a transaction or made an agreement within this Title.

(31) "Persons" includes an individual or an organization.

(32) "Personal Property" is property used or bought for use primarily for personal, family, or household purposes.

(33) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

(34) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(35) "Purchaser" means a person who takes by purchase.

(36) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a court or tribunal.

(37) "Repossession" means a taking of possession after a relinquishment of possession. A remedy of the vendor upon default by the buyer under a conditional sale contract. The remedy of the holder of a trust receipt in retaking possession of the subject matter of the receipt upon default of the debtor.

(38) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(39) "Rights" includes remedies.

(40) "Secretary of State" for the purposes of filing under Article 9 the term "Secretary of State" shall mean the Fort Peck Tribal "Secretary/Accountant."

(41) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment of delivery to the buyer is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Chapter 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale is not a "security interest", but a buyer may also acquire a "security interest" by complying with Chapter 9. Unless a lease or consignment is intended as security, reservation of title there under is not a "security interest", but a buyer may also acquire a "security interest" by

complying with Chapter 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales. Whether a lease is intended as security is to be determined by the facts of each case; however,

(a) The inclusion of option to purchase does not of itself make the lease one intended for security, and

(b) An agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(42) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified there on otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice with the time at which it would have arrived if properly sent has the effect of a proper sending.

(43) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(44) "Surety" includes guarantor.

(45) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(46) "Term" means that portion of an agreement which relates to a particular matter.

(47) "Tribe or Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation unless otherwise set forth in writing in a commercial document.

(48) "Unauthorized" signature or endorsement means one made without actual, implied or apparent authority and includes a forgery.

(49) "Value" means a person gives "value" for rights if he acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately

available credit whether or not drawn upon an whether or not a chargeback is provided for in the event of difficulties in collection; or

(b) As security for or in total or partial satisfaction of a pre-existing claim; or

(c) By accepting delivery pursuant to a pre-existing contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.

(50) "Warehouse Receipt" is a receipt issued by a person engaged in the business of storing goods for hire.

(51) "Written" or "writing" includes printing, typewriting or any intentional reduction to tangible form.

## **Chapter 2. Sales**

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### **Sec. 201. Applicable Codes.**

(a) Under the authority set forth in title 4 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which it has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 2 - Sales, Sections 2-101 through 2-725, of the Uniform Commercial Code (UCC), as such Code has been adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof. Section 2-204 shall be amended to include the following provisions as 2-204 (4):

For transactions involving the shipment of cattle or cattle being released from auction yards for shipment, the seller may issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(1) The bank on which the buyer's warrant, check, or draft was drawn notifies the seller, or his/her designated bank, that the instrument of payment has cleared the bank for payment; and,

(2) A copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC, whenever such version is revised and reprinted.

### **Sec. 202. Effective Date.**

This Chapter shall become effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

## **Chapter 3. Commercial Paper**

### **Sections:**

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### **Sec. 301. Applicable Codes.**

(a) Under the authority set forth in Title 6 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which it has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 3 - Commercial Paper, Sections 3-101 through 3-805, of the Uniform Commercial Code (UCC), as such Code has been adopted by the American Law Institute and the National Congress of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC, whenever such version is revised and reprinted.

### **Sec. 302. Effective Date.**

This Chapter shall become effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

## **Chapter 4. Bank Deposits and Collections**

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### **Sec. 401. Applicable Codes.**

(a) Under the authority set forth in Title 6 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which it has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 4 - Bank Deposits and Collections, Sections 4-101 through 4 -504, of the Uniform Commercial Code (UCC), as such Code has been adopted by the American Law Institute and the National Congress of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC, whenever such version is revised and reprinted.

### **Sec. 402. Effective Date.**

This Chapter shall become effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

## **Chapter 5. Letters of Credit**

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### **Sec. 501. Applicable Codes.**

(a) Under the authority set forth in Title 6 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which it has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 5 - Letters of Credit, Sections 5-501 through 5-117, of the Uniform Commercial Code (UCC), as such Code has been

adopted by the American Law Institute and the National Congress of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC whenever such version is revised and reprinted.

### **Sec. 502. Effective Date.**

This Chapter shall become effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

## **Chapter 6. Bulk Transfers**

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### **Sec. 601. Applicable Codes.**

(a) Under the authority set forth in Title 6 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which it has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 6 - Letters of Credit, Sections 6-101 through 6-111, of the Uniform Commercial Code (UCC), as such Code has been adopted by the American Law Institute and National Congress of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC, whenever such version is revised and reprinted.

### **Sec. 602. Effective Date.**

This Chapter shall become effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

## **Chapter 7. Warehouse Receipts, Bills of Lading and other Documents of Title**

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### **Sec. 701. Applicable Codes.**

(a) Under the authority set forth in Title 6 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which it has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 7 - Warehouse Receipts, Bills of Lading and Other Documents of Title, Sections 7-101 through 7-603, of the Uniform Commercial Code (UCC), as such Code has been adopted by the American Law Institute and the National Congress of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC, whenever such version is revised and reprinted.

### **Sec. 702. Effective Date.**

This Chapter shall be effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

## **Chapter 8. Repossession of Personal Property**

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### **Sec. 801. Scope.**

This Chapter shall apply to actions to repossess personal property of Indians, and the personal property on trust land on the Reservation, by persons holding a security interest in such property. It shall apply whether or not the transaction occurred or the credit was extended on the Reservation. For purposes of this Title, a security interest shall be an interest in personal property which secures payment or performance of an obligation.

### **Sec. 802. Self-help repossession forbidden.**

No person shall repossess personal property of Indians or from trust land, except with the written permission of the owner of the property, obtained at the time repossession is sought, unless authorized by a Court order issued under this Chapter.

### **Sec. 803. Submission to Jurisdiction.**

Any person bringing suit in Tribal Court seeking repossession of personal property shall be deemed to have submitted to the jurisdiction of the Court with respect to the entire transaction giving rise to the right of repossession, whether or not, the transaction occurred on the Reservation.

### **Sec. 804. Action for Repossession.**

(a) Any person may bring an action in Tribal Court for repossessing of personal property. The action shall name the owner of the property or the person possessing the property, and all persons holding a security interest in the property, if known, as defendants.

(b) A complaint for repossession of the property shall comply with Title 6, Section 101 of this Code, and shall include:

(1) The location of the property sought to be repossessed, if known.

(2) A description of the property in sufficient detail to identify it for the Court or those implementing a repossession order.

(3) A description of the agreement which gives rise to the security interest. A copy of the agreement shall be attached to the complaint.



(4) Allegations of facts showing that the security interest falls within the scope of this Chapter.

(5) Allegations of facts showing that the breach of the agreement which gives rise to the right of repossession.

(6) Where applicable, the total balance due and owing under the agreement.

(c) A complaint for repossession shall be served as provided in Title 6, Section 102, except that service by publication is not permitted on the owner or possessor of the property.

#### **Sec. 805. Hearing on action.**

(a) The hearing required by Title 6, Section 103 shall be held as soon as possible but not less than fifteen (15) days after the complaint is filed. At that hearing, the Court shall hear evidence from the plaintiff and the defendant, and shall determine whether the plaintiff has a security interest in the property, and whether there has been a breach of the agreement giving rise to a right of repossession under the agreement.

(b) If it appears that the plaintiff is entitled to repossess the property, the Court shall enter an order authorizing the plaintiff to repossess the property. If it appears that, notwithstanding the Court order, an attempt by plaintiff to repossess the property will lead to a breach of the peace, the Court may order the property seized by the BIA police. The Court may stay execution of the order pending final disposition of plaintiff's claims and defendant's counterclaims, if defendant posts a bond in the sum claimed by plaintiff.

(c) If any defendant makes any claims by the way of counterclaim, setoff or otherwise, or if any other security interest holder makes a claim and the Court finds there is probable cause to believe the claim or claims may be meritorious, the Court may take appropriate action to preserve the property until all claims to it are resolved, including:

(1) Impounding the property in the custody of the Court, or

(2) Requiring a bond to be posted by the plaintiff in an amount sufficient to cover the other parties' claims as a condition to issuing an order for repossession, or

(3) Requiring a commercially reasonable disposition of the property under supervision of the Court, and payment of the proceeds into Court.

These claims shall be finally determined at the trial required by Section 201 of Title 6.

#### **Sec. 806. Disposal of property.**

(a) In all cases where repossession of property is permitted, a return shall be filed with the Court showing what action was taken on the repossession order, and how the property was disposed of by plaintiff. Plaintiff shall fully account for the proceeds from the property.

(b) All repossessed property shall be disposed of in a commercially reasonable manner and the proceeds applied to the claims of the plaintiff including reasonable costs and attorneys' fees if permitted by the security agreement. Any surplus shall be returned to the owner of the property, unless claims are made by others with security interests in the property, in which case the surplus shall be paid into the Court pending disposition of those claims.

(c) Plaintiff may seek a court judgment against the owner of the property for the balance owing, if any, after disposal of the property.

#### **Sec. 807. Emergency repossessions.**

(Repealed as per Tribal Resolution No. 3363-87-10, Dated 10-26-87.)

#### **Sec. 808. Governing procedures.**

(a) Actions for repossession under this Chapter are civil actions. Such actions are governed by Titles 2 and 6 of this Code and applicable rules of procedure of the Tribal Court to the extent consistent with this Chapter.

(b) If the right to repossession of the property is regulated by contract, the Court shall apply and be governed by the terms of the contract unless they are unconscionable, contrary to law, or inconsistent with this Chapter.

#### **Sec. 809. Civil liability.**

Any person who violates Section 802 of this Chapter and any business whose employee violates such section shall be civilly liable to the

owner of the property repossessed and to the person to whom credit was extended for any loss caused by failure to comply with such sections; provided that, the owner and person to whom credit was extended shall have the right to recover as liquidated damages an amount not less than ten percent (10%) of the principal amount of the original secured debt.

## **Chapter 9. Secured Transactions; Sales of Accounts and Chattel Paper**

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### **Sec. 901. Applicable Codes.**

(a) Under the authority set forth in Title 6 - Civil Procedure, Chapter 5, Section 501 (a) - (d), the Fort Peck Tribal Court shall, in determining any case over which it has jurisdiction, give effect to and apply the General Provisions and Official Comments of Article 9 - Secured Transactions; Sales of Accounts and Chattel Paper, Sections 9-101 through 9-507, of the Uniform Commercial Code (UCC), as such Code has been adopted by the American Law Institute and the National Congress of Commissioners on Uniform State Laws, except where those provisions conflict with another provision of the Tribes' Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof. As provided by this Section of the Code:

Section 9-503 of the Tribes' Code shall read:

Except as otherwise provided by Chapter 8 of this Title, or otherwise agreed, a secured party has on default, the right to take possession of the collateral. In taking possession, a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides, the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal, a secured party

may render equipment unusable, and may dispose of collateral on the debtor's premises under 9-504.

(b) The Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC, whenever such version is revised and reprinted.

### **Sec. 902. Effective Date.**

This Chapter shall become effective on January 1, 1992. It applies to transactions entered into and events occurring after such date.

## **Chapter 10. Nonprofit Corporations**

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### **Sec. 1001. Scope.**

The provisions of this Chapter shall apply to all corporations organized hereunder, or which elect to accept the provisions of this Chapter if such corporation was previously incorporated under prior Tribal or State provisions.

### **Sec. 1002. Permissible Purposes.**

Corporations may be organized under this Chapter for any lawful purpose or purposes including, but not limited to, one or more of the following: educational; scientific; research; literary; musical; social; athletic; patriotic; political; civil; professional; commercial; mutual improvement; or promotion of the Arts.

### **Sec. 1003. Definitions.**

As used in this Ordinance, the terms:

(a) "Corporation or Domestic Corporation: - means an entity organized and incorporated subject to the provisions of this Chapter.

(b) "Not for Profit Corporation" - means a corporation exempt from taxation under Section 501 (c) of the Internal Revenue Code of 1954; or a corporation no part of the income of which is distributable to its members, directors, or officers; except nothing in this Chapter shall be construed as prohibiting the payment of reasonable compensation for services rendered and the making of distribution upon dissolution or final liquidation as permitted in this Chapter.

(c) "Article of Incorporation": - means the original articles of incorporation and all amendments thereto, including articles of merger or consolidation, and in the case of a corporation created by a special ordinance or resolutions of the Tribal Council, means such special ordinance or resolution and any amendments thereto.

(d) "By-laws" - means the Code or Codes of Rules adopted for the regulation or management of the affairs of a corporation irrespective of the names or names by which such rules are designated.

(e) "Member" - means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or by-laws.

(f) "Board of Directors" - means the group of persons vested with the management of the affairs of a corporation or other Tribally recognized organization irrespective of the names by which such group is designated.

(g) "Insolvent" - means that a corporation is unable to pay its debts as they become due in the usual course of its affairs.

(h) "Treasurer" - means the Corporate Treasurer or the agent or agents designated by him/her to perform any function vested in the Treasurer by this Ordinance.

(i) "Reservation" - means the Fort Peck Assiniboiné and Sioux Reservation.

(j) "The Court" - means except where otherwise specified, the Assiniboiné and Sioux Tribal Court.

(k) "Secretary/Accountant" - means the person appointed by the Tribal Executive Board to serve in the capacity of Tribal Secretary/Accountant as per the provisions of the Assiniboiné and Sioux Tribal Constitution and By-Laws.

#### **Sec. 1004. General Powers.**

Each corporation shall have the power:

(a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(b) If it so elects, to sue and be sued, complain and defend, in its corporate name;

(c) To have a corporate seal which may be altered at pleasure and to use the same by causing it, or a facsimile thereof, to be impressed or affixed in any other manner reproduced;

(d) To purchase, take, receive, lease, take by gift or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(e) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(f) To lend money to and otherwise assist its employees other than its officers and directors;

(g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, corporations, whether or not, incorporated under this Chapter and whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof or any other Indian Tribe;

(h) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchise and income;

(i) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(j) To conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this Chapter:

(k) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(l) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws, ordinances, and regulations of the Assiniboiné and/or Sioux Tribe and the United

States, for the administration and regulation of the affairs of the corporation; and

(m) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for religious, charitable, scientific research, or educational purposes, or for other purposes for which the corporation is organized.

#### **Sec. 1005. Defense of Ultra Vires.**

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a member or a director against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation. If the act or transfer sought to be enjoined is being, or is to be, performed pursuant to any contract to which the corporation is a party, the Court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, as the case may be, compensation for the loss or damages sustained by either of them which may result from the action of the Court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damages sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or directors of the corporation for exceeding their authority; and

(c) In a proceeding by the Tribal Secretary/Accountant as provided in this Chapter, to dissolve the corporation or in a proceeding by the Tribal Secretary/Accountant to enjoin the corporation from the transaction of authorized acts.

#### **Sec. 1006. Corporate Name.**

The Corporate Name:

(a) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation; and

(b) Shall not be the same as, or deceptively similar to the name of any corporation, whether for profit or not for profit organized under this Chapter or any other Chapter or resolution of the Tribe to transact business or conduct affairs in the Reservation.

(c) The right to the exclusive use of a particular corporate name may be reserved by filing an appropriate application with the Tribal Secretary/Accountant. If the Secretary/Accountant finds that such name is available for corporate use, he/she shall reserve such name for the exclusive use by the applicant.

#### **Sec. 1007. Registered Office and Registered Agent.**

(a) Each corporation shall have and continuously maintain on the Reservation a registered office which may be but need not be its principal office, and a registered agent.

(b) A corporation may change its registered office or agent, or both upon filing with the Tribal Secretary/Accountant a statement which meets the requirements of an appropriate form established by the Secretary/Accountant.

#### **Sec. 1008. Registered Agent as an Agent for Service.**

(a) The registered agent appointed by a corporation as provided in this Chapter shall be an agent of such corporation upon whom a process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent on this Reservation or whenever its registered agent cannot, with reasonable diligence, be found at the registered office, then the Tribal Secretary/Accountant shall be an agent of such corporation upon whom any such process, notice, or demand shall be made by delivering to and leaving with them, or with any

clerk having charge of their office, duplicate copies of such process, notice or demand. In the event that any such process, notice or demand is served on the Tribal Secretary/Accountant, he/she shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office.

(c) The Tribal Secretary/Accountant shall keep a record of all processes, notices, and demands served upon him/her under this Section, and shall keep a record therein the time of such service and his/her action with respect thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

#### **Sec. 1009. Members.**

A corporation may have one or more classes of members or may have no members. If the corporation has members, the manner of election or appointment and the qualifications and rights of the members shall be set forth in the articles of incorporation or the by-laws. If the corporation has no members, that fact shall be set forth in the articles of incorporation. A corporation may issue certificates evidencing membership therein. Members shall not be liable, as such, on corporate obligations.

#### **Sec. 1010. Meetings of Members.**

(a) Meetings of members may be held at such place within or without the Reservation as may be provided in the by-laws or, where not inconsistent with the by-laws, in the notice of the meeting.

(b) An annual meeting of the members shall be held at such time as may be provided in the by-laws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the members may be called by the President, the Board of Directors, or by such other officers or persons or number of proportion of members as may be provided in the articles of incorporation or the by-laws.

#### **Sec. 1011. Notice of Members Meeting.**

Written or printed notice stating the place, day and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall in the absence of a provision in the by-laws specifying a different period of notice, be delivered not less than ten (10) or more than thirty(30) days before the date of the meeting, either personally or by mail; or at the direction of the president, or the Board of Directors or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his/her address as it appears on the records of the corporation, with postage thereon prepaid.

#### **Sec. 1012. Voting.**

(a) Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation.

(b) A member may vote in person, or unless the articles of incorporation or the by-laws otherwise provide, may vote by proxy executed in writing by the member or his/her duly authorized representative in-fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Where the articles of incorporation or the by-laws so provide, voting on all matters including the election of directors or officers where they are to be elected by the members, may be conducted by mail.

(c) If a corporation has no members or if the members have no right to vote, the directors shall have the sole voting power and shall have all the authority and may take any action herein permitted by members.

#### **Sec. 1013. Quorum.**

(a) The by-laws shall provide the number or percentage of members entitled to vote represented in person or by proxy, or the number of percentage of votes represented in person or by proxy, which shall constitute a quorum at a meet-

ing of members. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this Chapter, the articles of incorporation or the by-laws.

(b) Unless otherwise provided by the articles of incorporation or the by-laws, the members present at a duly organized meeting may continue to do business until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum.

(c) If a meeting cannot be organized because a quorum had not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called.

#### **Sec. 1014. Board of Directors.**

The affairs of a corporation shall be managed by a Board of Directors. Directors need not be residents of the Reservation or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the by-laws may prescribe other qualifications for Directors.

#### **Sec. 1015. Number, Election, Classification and Removal of Directors.**

(a) The number of directors of a corporation shall be not less than three (3). Subject to such limitation, the number of directors shall be fixed by the by-laws, except as to the number of the first Board of Directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the by-laws, unless the articles of incorporation provide that a change in the number of directors shall be made only amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the

absence of a by-law fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(b) The names and addresses of the members of the first Board of Directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual election of directors or for such period as may be specified in the articles of incorporation or the by-laws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the terms of office, the term of office of a director shall be one (1) year.

(c) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he/she is elected or appointed and until his/her successor shall have been elected or appointed and qualified, except in the case of ex officio directors.

(d) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or the by-laws, and if none be provided, may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his/her election.

#### **Sec. 1016. Vacancies.**

Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of any increase in the number of directors may be filled by the affirmative vote of a majority of the then members of the Board of Directors, though less than a quorum of the board, unless the articles of incorporation or the by-laws provide that a vacancy or directorship so created shall be filled in the some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his/her predecessor in office.

#### **Sec. 1017. Quorum of Directors.**

A majority of the number of directors fixed by the by-laws, or in the absence of a by-law fixing

the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation, or the by-laws, but in no event shall a quorum consist of less than one-third (1/3) of the number of directors so stated or fixed. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act or a greater number is required by this Chapter or by the articles of incorporation or the by-laws.

#### **Sec. 1018. Committees.**

In the articles of incorporation or the by-laws so provide, the Board of Directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees, each of which shall consist of two (2) or more directors, which committees, to the extent provided in said resolution, in the articles of incorporation or in the by-laws of the corporation, shall have and exercise the authority of the Board of Directors in the management of the corporation. Other committees not having and exercising the authority of the Board of Directors in the management of the corporation may be designated and appointed by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual director, of any responsibility imposed upon it or him/her by law.

#### **Sec. 1019. Place and Notice of Directors' Meetings.**

Meetings of the Board of Directors, regular or special, may be held at such place within or without the Reservation, and upon such notice as may be prescribed by the by-laws, or where not inconsistent with the by-laws, by resolution of the Board of Directors, a director's attendance at any meeting shall constitute a waiver of notice of such meeting, excepting such attendance at a meeting by the director for the purpose of objecting to the

transaction of business because the meeting is not lawfully called or convened. Neither the business to be transacted, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of such notice, of such meeting, unless otherwise provided in the articles of incorporation or the by-laws.

#### **Sec. 1020. Officers.**

(a) The officers of a corporation shall consist of a president, a secretary, and treasurer, and may include one or more vice-presidents, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three (3) years as may be prescribed in the articles of incorporation or the by-laws. In the absence of any such provision, all officers shall be elected or appointed annually by the Board of Directors. If the by-laws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(b) The articles of incorporation or the by-laws may provide that any one or more officers of the corporation or other organizations shall be ex officio members of the Board of Directors.

(c) The officers of a corporation may be designated by such other titles as may be provided in the articles of incorporation or the by-laws.

(d) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the by-laws, or as may be determined by resolution of the Board of Directors not inconsistent with the by-laws.

#### **Sec. 1021. Removal of Officers.**

Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever, in their judgment, the best interest of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an



officer or agent shall not itself create contract rights.

#### **Sec. 1022. Books and Records.**

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, Board of Directors, and committees having any of the authority of the Board of Directors; and shall keep at its registered office or principle office on the Reservation, a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member having voting rights, or his/her agent or attorney for any proper purpose at any reasonable time.

#### **Sec. 1023. Shares of Stock and Dividends Prohibited.**

A corporation shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation, including pensions, in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation, may make distribution to its members or others as permitted by this Chapter. No such payment benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

#### **Sec. 1024. Loans to Directors and Officers.**

Although loans may be made by a corporation to its directors or officers, the directors of a corporation who vote for or assent to the making of a loan to a director or an officer of the corporation, and any officer participating in the making of such a loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

#### **Sec. 1025. Incorporators.**

One (1) or more persons of the age of twenty-one (21) years or more may act as incorporators

of a corporation by signing, certifying, and delivering one (1) original and one (1) copy to the Tribal Secretary/Accountant, articles of incorporation for such corporation.

#### **Sec. 1026. Articles of Incorporation.**

(a) The articles of incorporation shall set forth:

- (1) The name of the corporation;
  - (2) The period of duration, which may be perpetual;
  - (3) The purpose or purposes for which the corporation is organized;
  - (4) If the corporation is to have no members, a statement to that effect;
  - (5) If the corporation is to have members, any provision which the incorporators elect to set forth in the articles of incorporation stating the qualifications and rights of members and conferring, limiting, or denying the right to vote;
  - (6) If the directors of any of them are not to be elected or appointed by members, a statement of the manner in which such directors shall be elected or appointed, or that the manner of such election or appointment of such directors shall be provided in the by-laws;
  - (7) Any provisions, not inconsistent with this Chapter or any other law or ordinance of the Assiniboine and/or Sioux Tribe which the incorporators elect to set forth in the articles of the corporation, including any provision for distribution of assets on dissolution or final liquidation and any provisions which under this Chapter is required or permitted to be set forth in the bylaws;
  - (8) The address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address;
  - (9) The number of directors constituting the initial Board of Directors, and the names and addresses, including street and number, if any, of the person who are to serve as the initial directors until the first annual meeting or until their successors be elected and qualify; and
  - (10) The name and address, including street and number, if any of each incorporator.
- (b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Chapter.

(c) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the by-laws shall be controlling. Whenever a provision of the articles of incorporation is inconsistent with a by-law, the provision of the articles of incorporation shall be controlling.

#### **Sec. 1027. Filing of Articles of Incorporation.**

(a) One (1) original and one (1) copy of the articles of incorporation shall be delivered to the Tribal Secretary/Accountant.

(b) If the Tribal Secretary/Accountant finds that the articles of incorporation conform to law, he/she shall, when all fees and charges have been paid as prescribed in this Chapter:

(1) Endorse on the original and the copy of the word "FILED" and the month, day, and year of the filing thereof;

(2) File the original in the office of the Tribal Secretary/Accountant;

(3) Issue a certificate of incorporation to which the Secretary/Accountant shall affix the copy of the original; and

(4) Deliver the certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto, to the incorporators of their representative.

#### **Sec. 1028. Effect of Issuance of Certificate of Incorporation.**

Upon the incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the corporation have been complied with and that the corporation has been incorporated under this Chapter, except as against the Assiniboine and Sioux Tribes in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

#### **Sec. 1029. By-laws.**

In the initial by-laws of a corporation shall be adopted by its Board of Directors. The power to

alter, amend, or repeal the by-laws or adopt new by-laws shall be vested in the Board of Directors unless otherwise provided in the articles of incorporation or the by-laws.

#### **Sec. 1030. Organizational Meeting.**

(a) After the issuance of the certificate of incorporation, an organizational meeting of the Board of Directors named in the articles of incorporation shall be held within the Reservation at the call of a majority of the directors so named for the purpose of adopting by-laws, (unless the power to adopt bylaws has been reserved by the articles of incorporation to the members, in which event the by-laws shall be adopted by the members, electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least five (5) days notice thereof by mail to each director so named; which notice shall state the time and place of the meeting; provided, however, that if all the directors shall waive notice in writing and fix a time and place for said organization meeting, no notice shall be required of such meeting.

(b) A first meeting of the members may be held at the call of the directors, or a majority of them upon at least five (5) days notice, for such purposes as shall be stated in the notice of the meeting.

#### **Sec. 1031. Right to Amend Articles of Incorporation.**

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired; provided that its articles of incorporation as amended contain only such provisions as are lawful under this Chapter.

#### **Sec. 1032. Procedure to Amend Articles of Incorporation.**

Amendments to the articles of incorporation shall be made in the following manner:

(a) Where there are members having voting rights, the Board of Directors shall adopt a resolution setting forth the proposed amendment and directing that it is to be submitted to a vote at a

meeting of members having voting rights, which may be either an annual or special meeting.

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be affected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Chapter for the giving of notice of meetings of members. If the meeting to be annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting;

(c) The proposed amendment shall be adopted upon receiving the affirmative vote of at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting;

(d) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the Board of Directors upon receiving a vote of a majority of the directors in office; and

(e) Any number of amendments may be submitted and voted upon at any one meeting.

#### **Sec. 1033. Articles of Amendment.**

The articles of amendment shall be executed in duplicate by the corporation; by its president or a vice-president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth:

(a) The name of the corporation;

(b) The amendment so adopted;

(c) Where there are members having voting rights:

(1) A statement setting forth the date of the meeting of the members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting; or

(2) A statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(d) Where there are no members, or no members having voting rights, a statement of such

fact, the date of the meeting of the Board of Directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

#### **Sec. 1034. Filing of Articles of Amendment.**

(a) Duplicate originals of the articles of amendment shall be delivered to the Tribal Secretary/Accountant.

(b) If the Tribal Secretary/Accountant finds that the articles of amendment conform to law, they shall, when all fees and charges have been paid as prescribed in this Chapter:

(1) Endorse on each of such duplicate originals the word, "FILED", and the month, day, and year of the filing thereof;

(2) File one of such duplicate originals in their office;

(3) Issue a certificate of amendment to which they shall affix the other duplicate original; and

(4) Deliver the certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto, to the corporation or its representative.

#### **Sec. 1035. Effect of Certificate of Amendment.**

(a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought or against such corporation under its former name shall abate for that reason.

#### **Sec. 1036. Voluntary Dissolution.**

(a) Where there are members having voting rights, the Board of Directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of

members having voting rights, which may be either an annual meeting or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time frame and in the manner provided in this Chapter, for the giving of notice of meetings to members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting;

(b) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the Board of Directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office; and

(c) Upon adoption of such resolution by the members, or by the Board of Directors where there are no members or members with voting rights, the corporation shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof; shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation and shall proceed to collect its assets and apply and distribute them as provided in this Chapter.

#### **Sec. 1037. Distribution of Assets.**

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(a) All liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provisions shall be made therefore;

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements;

(c) Assets received and held by the corporation subject to limitations, permitting their use only for charitable, religious, missionary, benevolent, education, or similar purposes, but not held upon a condition requiring return, transfer, or

conveyance by reason of the dissolution, shall be transferred, or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Chapter;

(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others; and

(e) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, as may be specified if a plan of distribution is adopted as provided in this Chapter.

#### **Sec. 1038. Plan for Distribution.**

A plan providing for the distribution of assets, not inconsistent with the provisions of this Chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Chapter requires a plan for distribution, in the following manner:

(a) Where there are members having voting rights, the Board of Directors shall adopt a resolution recommending a plan of distribution and directing that the plan be submitted to a vote at a meeting of members having voting rights, which may be either an annual meeting or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting; and

(b) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the Board of Directors upon receiving the vote of a majority of the directors in office.

#### **Sec. 1039. Revocation of Voluntary Dissolution Proceedings.**

A corporation may, at any time prior to the issuance of a certificate of dissolution by the Tribal Secretary/Accountant as hereinafter provided, revoke the action previously taken to dissolve the corporation in the following manner:

(a) Where there are members having voting rights, the Board of Directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at the meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes of such meeting, is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such a meeting within the time and in the manner provided in this Chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds (2/3) of the votes entitled to be cast by members present or represented by proxy at such meeting;

(b) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the Board of Directors upon receiving the vote of a majority of the directors in office; and

(c) Upon adoption of such resolution by the members, or by the Board of Directors, where there are no members or no members with voting rights, the corporation may thereupon again conduct its affairs. If the articles of dissolution have been delivered to the Tribal Secretary/Accountant, notice of such revocation shall be given to him/her in writing.

#### **Sec. 1040. Articles of Dissolution.**

If voluntary dissolution proceedings have not been revoked; when all debts, liabilities, and obligations of the corporation shall have been paid and discharged, or adequate provisions shall have been made to do so, and all of the remaining property and assets of the corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this Chapter, articles of dissolution shall be executed in duplicate by the corporation; by its president or a vice-president, and the corporation seal shall be affixed and attested by its secretary or an assistant secretary, and such statement shall set forth:

(a) The name of the corporation;

(b) Where there are members having voting rights:

(1) A statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds (2/3) of the votes entitled to be cast by members or represented by proxy at such meeting; or

(2) A statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(c) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the Board of Directors at which the resolution to dissolve received the vote of a majority of the directors in office;

(d) That all debts, liabilities, and obligations of the corporation have been paid and discharged or that adequate provision has been made to do so;

(e) That all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this Chapter; and

(f) That there are no suits pending against the corporation in any Court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

**Sec. 1041. Filing of Articles of Dissolution.**

(a) Duplicate originals of such articles of dissolution shall be delivered to the Tribal Secretary/Accountant.

(b) If the Tribal Secretary/Accountant finds that such articles of dissolution conform to law, he/she shall, when all fees and charges have been paid as prescribed in this Chapter:

(1) Endorse on each of such duplicate originals the word, "FILED", and the month, day, and year of such filing thereof;

(2) File one of such duplicate original in the office of the Secretary/Accountant;

(3) Issue a certificate of dissolution to which he/she shall affix the other duplicate original; and

(4) Deliver the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed, to the representative of the dissolved corporation.

(c) Upon the issuance of such certificate of dissolution, the existence of the corporation shall cease, except for the purposes of suits, other proceedings, and appropriate corporate action by members, directors, and officers, as provided in this Chapter.

**Sec. 1042. Involuntary Dissolution.**

(a) A corporation may be dissolved involuntarily by a decree of the Court in an action instituted by the Tribal Secretary/Accountant in the name of the Assiniboiné and Sioux Tribes, when it is made to appear to the Court that:

(1) The franchise of the corporation was procured through fraud; or

(2) The corporation has continued to exceed or abuse the authority conferred upon it by this Chapter; or

(3) The corporation has failed for ninety (90) days to appoint and maintain a registered agent as provided in this Chapter; or

(4) The corporation has failed for ninety (90) days after change of its registered office or registered agent to deliver to the Tribal Secretary/Accountant a statement of such change.

(b) At least thirty (30) days before any action for the involuntary dissolution of a corporation shall be filed by the Tribal Secretary/Accountant,

he/she shall notify the corporation by certified or registered mail addressed to such corporation at its registered office, a notice of intent to file such suit and the reasons therefore. If, before action is filed, the corporation shall submit satisfactory evidence that said franchise was not procured through fraud or that the corporation has not exceeded or abused such authority or shall appoint or maintain a registered agent as provided in this Chapter, or deliver to the Tribal Secretary/Accountant, the required statement of change or registered agent, the Tribal Secretary/Accountant shall not file an action against such a corporation for such cause. If, after action is filed, for a reason stated in paragraph (3) or (4) of the preceding subsection, the corporation shall, as the case may be, appoint or maintain a registered agent as provided in this Chapter, or shall deliver to the Tribal Secretary/Accountant, the required statement of change of registered agent, and shall pay the costs of such action, the action for such cause shall abate.

**Sec. 1043. Jurisdiction of Court to Liquidate Assets and Affairs of Corporation.**

The Assiniboiné and Sioux Tribal Court shall have full power to liquidate the assets and affairs of a corporation:

(a) In any action by a member of director when it is made to appear:

(1) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(3) That the corporate assets are being misapplied or wasted; or

(4) That the corporation is unable to carry out its purposes.

(b) In an action by a creditor:

(1) When the claim of the creditor has been reduced to judgment and an execution thereon

has been returned unsatisfied and it is established that the corporation is insolvent; or

(2) When the corporation has admitted in writing and the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation to have its dissolution continued under the supervision of the Court;

(d) When an action has been commenced by the Tribal Secretary/Accountant to dissolve a corporation and it is made to appear that liquidation of its affairs should precede the entry of a decree of dissolution;

(e) It shall not be necessary to make directors or members parties to any such action or proceeding unless relief is sought against them personally.

#### **Sec. 1044. Procedure in Liquidation of Corporation by Court.**

(a) In proceedings to liquidate the assets and affairs of a corporation, the Court shall have the power to issue injunctions, to appoint receivers pendente lite, with such powers and duties as the Court, from time to time, may direct, and to take such other proceedings as may be required to preserve the corporate assets whenever situated, and carry on the affairs of the corporation until a full hearing can be had.

(b) After a hearing, had upon such notice as the Court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the Court, the Court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority subject to the order of the Court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such power and duties may be increased or diminished at any time during the proceedings.

(c) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition of the assets shall be applied and distributed as follows:

(1) All costs and expenses of the Court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made to do so;

(2) Assets held by the corporation upon conditions requiring return, transfer, or conveyance, which conditions occurs by reason of dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, missionary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of dissolution, may be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the Court may direct;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of the members or any class or classes of members, or provide for distribution to others; and

(5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this Chapter, or where no plan of distribution has been adopted, as the Court may direct.

(d) The Court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct their payment out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(e) A receiver of a corporation appointed under the provisions of this Section shall have authority

to sue and defend in all courts in his/her own name as receiver of such corporation. The Court appointing such receiver shall, for the purposes of this Chapter, have exclusive jurisdiction of the corporation and its property, wherever situated.

**Sec. 1045. Qualification of Receivers.**

A receiver shall in all cases be a natural person or a domestic corporation authorized to act as receiver, and shall in all cases give such bond as the Court may direct with such sureties as the Court may require.

**Sec. 1046. Filing of Claims in Liquidation Proceedings.**

In proceedings to liquidate the assets and affairs of a corporation, the Court may require all creditors of the corporation to file with the Clerk of Court or with the receiver, in such form as the Court may prescribe, proofs under oath of their respective claims. If the Court requires the filing of claims, it shall fix a date which shall be not less than four (4) months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the Court may extend the time for the filing of claims. Creditors and claimants failing to file proofs or claims on or before the date so fixed may be barred, by order of the Court, from participating in the distribution of the assets of the corporation.

**Sec. 1047. Discontinuance of Liquidation Proceedings.**

The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear that cause for liquidation no longer exists. In such event, the Court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

**Sec. 1048. Decree of Involuntary Dissolution.**

In proceedings to liquidate the assets and affairs of a corporation, when the costs and ex-

penses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, and all the property and assets have been applied so far as they will to their payment, the Court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

**Sec. 1049. Filing of Decree of Dissolution.**

Whenever the Court shall enter a decree dissolving a corporation, it shall be the duty of the Clerk of Court to cause a certified copy of the decree to be delivered to the Tribal Secretary/Accountant, who shall file the same. No fee shall be charged by the Tribal Secretary/Accountant for the filing.

**Sec. 1050. Deposits with Tribal Secretary/Accountant.**

Upon voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who are unknown or cannot be found, or who are under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Tribal Secretary/Accountant and shall be paid over to such person or to his/her legal representative upon proof satisfactory to the Court of his/her right thereto.

**Sec. 1051. Survival of Remedy after Dissolution.**

The dissolution of a corporation or the expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members for any right or claim existing, or any liability incurred, prior to such dissolution is suit or other proceeding thereon is commenced within two (2) years after the date of such dissolution. Any suit or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and



officers shall have the power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two (2) years so as to extend its period of duration.

#### **Sec. 1052. Annual Report of Corporations.**

(a) Each corporation shall prepare an annual report setting forth:

- (1) The name of the corporation;
- (2) The address of its registered office and the name of its registered agent;
- (3) A brief statement of the character of the affairs which the corporation is actually conducting; and
- (4) The names and respective addresses, including street and number, if any, of the directors and officers of the corporation.

(b) Such annual report shall be made on forms prescribed and furnished by the Tribal Secretary/Accountant and the report information shall be given as of the date of the execution of the report. It shall be executed by the corporation; by its president, a vice-president, secretary, or assistant secretary, treasurer, or assistant treasurer, if the corporation is in the hands of a receiver or receivers, or trustee, it shall be executed by such receiver, receivers, or trustee.

#### **Sec. 1053. Filing of Annual Report of Corporation.**

Such annual report of a corporation shall be delivered to the Tribal Secretary/Accountant between the first day of January and the first day of March of each year. If the Secretary/Accountant finds that such report conforms to law, he/she shall file the same. If he/she finds that it does not so conform, he/she shall promptly return the same to the corporation for any necessary correction, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinafter provided shall not apply. If such report is corrected to conform to the requirements of this

Chapter and returned to the Tribal Secretary/Accountant in sufficient time to be filed prior to the first day of July of the year in which it is due.

#### **Sec. 1054. Penalties Imposed Upon Corporations.**

Each corporation that fails or refuses to file its annual report for any year within the time prescribed by this Chapter shall be subject to a penalty of one hundred dollars (\$100.00), to be assessed by the Tribal Secretary/Accountant.

#### **Sec. 1055. Fees for Filing Documents and Issuing Certificates.**

The Tribal Secretary/Accountant shall charge and collect a reasonable fee for:

- (a) Filing articles of incorporation and issuing a certificate of incorporation;
- (b) Filing articles of amendment and issuing a certificate of amendment;
- (c) Filing a statement of change of address of registered office or change of registered agent, or both;
- (d) Filing of articles of dissolution;
- (e) Filing a statement of election to accept this Chapter and issuing certificate of acceptance;
- (f) Filing any other statement or report, including an annual report of a domestic or foreign corporation;
- (g) Indexing each document filed, except an annual report;
- (h) Furnishing a certified copy of any document, instrument, or paper relating to a corporation;
- (i) Furnishing a certificate as to the existence of a fact relating to a corporation; and

The Tribal Secretary/Accountant is authorized to make regulations providing for reasonable fees for other services not listed in this Section.

#### **Sec. 1056. Certificate and Certified Copies to be Received in Evidence.**

All certificates issued by the Tribal Secretary/Accountant in accordance with the provisions of this Chapter and all copies of documents filed in his/her office in accordance with the provisions of this Chapter, when certified by

him/her, shall be taken and received in all Tribal Courts, public offices, and official bodies as prima facie evidence of the existence or non-existence of the facts relating to corporations.

**Sec. 1057. Forms to be Furnished by the Tribal Secretary/Accountant.**

All reports required by this Chapter to be filed in the office of the Tribal Secretary/Accountant shall be made on forms which shall be prescribed and furnished by the Tribal Secretary/Accountant. Forms for all other documents to be filed in the office of the Tribal Secretary/Accountant shall be furnished by the Tribal Secretary/Accountant upon request, but their use, unless otherwise specifically prescribed in this Chapter, shall not be mandatory.

**Sec. 1058. Greater Voting Requirements.**

Whenever, to approve of a corporate action, the articles of incorporation require the vote or concurrence of a greater proportion of members or directors than is required by this Chapter, the provisions of the articles of incorporation shall control.

**Sec. 1059. Waiver of Notice.**

Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Chapter, under the provisions of the articles of incorporation, or by-laws of the corporation, a waiver of the notice in writing signed by the person or person entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Presence without objection also waives notice.

**Sec. 1060. Action by Members or Directors without a Meeting.**

Any action required by this Chapter to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting, if consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect

to the subject matter of the action, or all of the directors, as the case may be. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or documents filed with the Tribal Secretary/Accountant under this Ordinance.

**Sec. 1061. Effect of Invalidity of Part of this Chapter.**

If any portion (s) of this Chapter is/are found to be invalid or unconstitutional by the Tribal Court, such findings shall not affect the remaining portion (s) of this Chapter.

**Sec. 1062. Reservation of Power.**

The Tribal Executive Board shall at all times have the power to prescribe such regulations, provisions and limitations as it may deem advisable and necessary. Such regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of this Chapter, and the Tribal Executive Board shall have the power to amend, repeal or modify this Chapter at any time.

**Sec. 1063. Unauthorized Assumption of Corporate Powers.**

All persons who assume to act as a corporation without authority to do so shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

**(PURSUANT TO RESOLUTION NO. 2526-91-8, Approved 12/09/91.)**

**Chapter 11. Corporation Code**

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**Sec. 1101. Citation.**

This Code shall be known as the Fort Peck Tribes Tribal Corporation Code.

**Sec. 1102. Definitions.**

For the purpose of this Code, unless the language or context clearly indicates that a different meaning is intended, the words, terms and phrases defined in this section have the meanings given to them.

Acquiring corporation. "Acquiring corporation" means the tribal or foreign corporation that acquires the shares of a corporation in an exchange.

Address. "Address" means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which shall not be a post office box.

Articles. "Articles" means, in the case of a corporation incorporated under or governed by this Code, articles of incorporation, articles of amendment, a resolution of election to become governed by this Code, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, and articles of dissolution. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the Tribal Secretary or other officer of the Tribe.

Board. "Board" means the board of directors of a corporation.

Class. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation. Closely held corporation. "Closely held corporation" means a corporation which does not have more than 35 shareholders.

Constituent Corporation. "Constituent Corporation" means a tribal or foreign corporation that is a party to a merger or exchange.

Corporation. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this Code.

Court. "Court" means the Fort Peck Tribal Court.

Director. "Director" means a member of the board.

Distribution. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares. A distribution may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.

Filed with the Tribal Secretary. "Filed with the Tribal Secretary" means that an original of a document meeting the applicable requirements of this Code, signed and accompanied by a filing fee of \$25.00, has been delivered to the Tribal Secretary of the Tribe on the Reservation. The Tribal Secretary shall endorse on the original the word "Filed" and the month, day, year, and time of filing, record the document in the office of the Tribal Secretary, and return the document to the person who delivered it for filing.

Foreign Corporation. "Foreign Corporation" means a corporation organized for profit that is incorporated under laws other than the laws of the Tribe.

Good faith. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

Intentionally. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a law if the person intentionally does the act or causes the result prohibited by the law, or if the person intentionally fails to do the act or cause the result required by the law, even though the person may not know of the existence or constitutionality of the law or the scope or meaning of the terms used in the law.

Know; knowledge. A person “knows” or has “knowledge” of a fact when the person has actual knowledge of it. A person does not “know” or have “knowledge” of a fact merely because the person has reason to know of the fact.

Legal representative. “Legal representative” means a person empowered to act for another person, including, but not limited to, an agent, officer, partner, or associate of, an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of the person or estate of a person.

Notice. “Notice” is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation. In all other cases, “notice” is given to a person when mailed to the person at an address designated by the person or at the last known address of the person, or when communicated to the person orally, or when handed to the person, or when left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein. Notice by mail is given when deposited in the United States mail with sufficient postage affixed. Notice is deemed received when it is given.

Officer. “Officer” means a person elected, appointed, or otherwise designated as an officer by the board, and any other person deemed elected as an officer pursuant to section 1151.

Organization. “Organization” means a tribal or foreign corporation, foreign limited liability company, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

Outstanding shares. “Outstanding shares” means all shares duly issued and not reacquired by a corporation.

Parent. “Parent” of a specified corporation means a corporation that directly, or indirectly through related corporations, owns more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation.

Person. “Person” includes a natural person and an organization.

Principal executive office. “Principal executive office” means an office where the elected or appointed chief executive officer of a corporation has an office. If the corporation has no elected or appointed chief executive officer, “principal executive office” means the registered office of the corporation.

Registered office. “Registered office” means the place designated in the articles of a corporation as the registered office of the corporation.

Related corporation. “Related corporation” of a specified corporation means a parent or subsidiary of the specified corporation or another subsidiary of a parent of the specified corporation.

Reservation. “Reservation” means the reservation of the Tribe as is now or hereafter may be recognized by the Secretary of the Interior of the United States of America.

Security. “Security” means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable shares; investment contract; investment metal contract or investment gem contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in payments out of production under the right, title or lease; or in general, any interest or instrument commonly known as security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. “Security” does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

Series. “Series” means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

Share. “Share” means one of the units, however designated, into which the shareholders’ proprietary interests in a corporation are divided.

Shareholder. “Shareholder” means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.

Signed. “Signed” means that the signature of a person has been written on a document and, with respect to a document required by this Code ‘to be filed with the Tribal Secretary,’ means that the document has been signed by a person authorized to do so by this Code, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or the holders of the required proportion or number of the voting power of the shares present and entitled to vote. A signature on a document not required by this Code to be filed with the Tribal Secretary may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

Subsidiary. “Subsidiary” of a specified corporation means a corporation having more than 50 percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related corporations, by the specified corporation.

Surviving corporation. “Surviving corporation” means the tribal or foreign corporation resulting from a merger.

Transaction statement. “Transaction statement” means the “initial transaction statement” of uncertificated securities sent to:

(a) The new registered owner, and, if applicable, to the registered pledgee; or

(b) The registered owner, consistent with procedures of the Uniform Commercial Code of Montana.

Tribal Corporation. “Tribal Corporation” means a corporation that is incorporated under this Code.

Tribal Executive Board. “Tribal Executive Board” means the Tribal Executive Board of the Fort Peck Tribes.

Tribal Secretary. “Tribal Secretary” means the Tribal Secretary for the Fort Peck Tribal Executive Board.

Tribe. “Tribe” means the Fort Peck Tribes.

Trust land. “Trust land” means land held in trust by the United States government for the benefit of the Tribe.

Vote. “Vote” includes authorization by written action.

Written action. “Written action” means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

## **Supchapter A. Application**

### **Sec. 1103 Reserved.**

### **Sec. 1104. Reservation of Right.**

The Tribe reserves the right to amend or repeal the provisions of this Code. A corporation incorporated under or governed by this Code is subject to this reserved right.

### **Sec. 1105. Corporations Wholly Owned by the Tribe.**

The provisions of sections 1101 through 11136 shall apply to all corporations incorporated under this Code and wholly owned, directly or indirectly, by the Tribe and shall override any other provisions in this Code to the contrary. In the case of tribal corporations wholly owned, directly or indirectly, by the Tribe, all provisions of this Code are subject to the provisions of sections 1101 through 11136.

**Sec. 1106. Sovereign Immunity of the Tribe Not Waived.**

By the adoption of this Code, the Tribe does not waive its sovereign immunity or consent to suit in any court, federal, tribal or state, and neither the adoption of this Code, nor the incorporation of any corporation hereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any such court.

**Subchapter B. Incorporation; Articles**

**Sec. 1107. Purposes.**

A corporation may be incorporated under this Code for any business purpose or purposes, unless some other Code of the Tribe requires incorporation for any of those purposes under a different law. Unless otherwise provided in its articles, a corporation has general business purposes.

**Sec. 1108. Incorporators.**

One or more enrolled members of the Tribe of full age may act as incorporators of a corporation by filing with the Tribal Secretary articles of incorporation for the corporation.

**Sec. 1109. Articles.**

**Subdivision 1. Required provisions.** The articles of incorporation shall contain:

- (a) The name of the corporation;
- (b) The address of the registered office of the corporation and the name of its registered agent, if any, at that address;
- (c) The aggregate number of shares that the corporation has authority to issue; and
- (d) The name and address of each incorporator.

**Subdivision 2. Provisions that may be modified only in articles.** The following provisions govern a corporation unless modified in the articles:

- (a) A corporation has general business purposes;
- (b) A corporation has perpetual existence and certain powers;
- (c) The power to adopt, amend, or repeal the bylaws is vested in the board;

(d) A corporation must allow cumulative voting for directors;

(e) The affirmative vote of a majority of directors present is required for an action of the board;

(f) A written action by the board taken without a meeting must be signed by all directors;

(g) The board may authorize the issuance of securities and rights to purchase securities;

(h) All shares are common shares entitled to vote and are of one class and one series;

(i) All shares have equal rights and preferences in all matters not otherwise provided for by the board;

(j) The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes;

(k) The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits, divisions, or combinations, and determine the value of nonmonetary consideration;

(l) Shares of a class or series must not be issued to holders of shares of another class or series to effectuate share dividends or splits, divisions, or combinations, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued;

(m) A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board;

(n) A shareholder has no preemptive rights, unless otherwise provided by the board;

(o) The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this Code requires the affirmative vote of a majority of the voting power of all shares entitled to vote;

(p) Shares of a corporation acquired by the corporation may be reissued;

(q) Each share has one vote unless otherwise provided in the terms of the share;

(r) A corporation may issue shares for a consideration less than the par value, if any, of the shares; and



(s) The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval (section 1157).

Subdivision 3. Provisions that may be modified either in articles or in bylaws. The following provisions govern a corporation unless modified either in the articles or in the bylaws:

(a) Directors serve for an indefinite term that expires at the next regular meeting of shareholders (section 1131);

(b) The compensation of directors is fixed by the board (section 1133);

(c) A certain method must be used for removal of directors (section 1137);

(d) A certain method must be used for filling board vacancies (section 1138);

(e) If the board fails to select a place for a board meeting, it must be held at the principal executive office (section 1139, subdivision 1);

(f) The notice of a board meeting need not state the purpose of the meeting (section 1139, subdivision 3);

(g) A majority of the board is a quorum for a board meeting (section 1141);

(h) A committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present (section 1144 subdivision 2);

(i) The board may establish a special litigation committee (section 1144);

(j) The chief executive officer and chief financial officer have specified duties, until the board determines otherwise (section 1148);

(k) Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so (section 1154);

(l) The board may establish uncertificated shares (section 1162, subdivision 7);

(m) Regular meetings of shareholders need not be held, unless demanded by shareholders holding at least ten percent of the voting power under certain conditions (section 1167);

(n) In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten days notice is required for a

meeting of shareholders (section 1169, subdivision 2);

(o) The number of shares required for a quorum at a shareholders meeting is a majority of the voting power of the shares entitled to vote at the meeting (section 1173);

(p) The board may fix a date up to 60 days before the date of a shareholders meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting (section 1174, subdivision 1);

(q) Indemnification of certain persons is required (section 1187); and

(r) The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement (section 1188, subdivision 1).

Subdivision 4. Optional provisions; specific subjects. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board, fixing a greater than majority director or shareholder vote, or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:

(a) The members of the first board may be named in the articles (section 1128 subdivision 1);

(b) A manner for increasing or decreasing the number of directors may be provided (section 1129);

(c) Additional qualifications for directors may be imposed (section 1130);

(d) Directors may be classified (section 1134);

(e) The day or date, time, and place of board meetings may be fixed (section 1139, subdivision 1);

(f) Absent directors may be permitted to give written consent or opposition to a proposal (section 1140);

(g) A larger than majority vote may be required for board action (section 1142);

(h) Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the chief executive officer (section 1148, subdivision 2);

(i) Additional officers may be designated (section 1149);

(j) Additional powers, rights, duties, and responsibilities may be given to officers (section 1150);

(k) A method for filling vacant offices may be specified (section 1153, subdivision 3);

(l) A certain officer or agent may be authorized to sign share certificates (section 1162, subdivision 2);

(m) The transfer or registration of transfer of securities may be restricted (section 1166);

(n) The day or date, time, and place of regular shareholder meetings may be fixed (section 1167, subdivision 3);

(o) Certain persons may be authorized to call special meetings of shareholders (section 1168, subdivision 1);

(p) Notices of shareholder meetings may be required to contain certain information (section 1169, subdivision 3);

(q) A larger than majority vote may be required for shareholder action (section 1171);

(r) Voting rights may be granted in or pursuant to the articles to persons who are not shareholders (section 1174, subdivision 4);

(s) Corporate actions giving rise to dissenter rights may be designated (section 1183, subdivision 1, clause (e));

(t) The rights and priorities of persons to receive distributions may be established (section 1188); and

(u) A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles (section 1145, subdivision 4).

Subdivision 5. Optional provisions: generally. The articles may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the corporation.

Subdivision 6. Powers need not be stated. It is not necessary to set forth in the articles any of the corporate powers granted by this Code.

## **Sec. 1110. Corporate Name.**

### **Subdivision 1. Requirements; prohibitions.**

The corporate name:

(a) Shall be in the language of the Tribe, or in the English language or in any other language expressed in English letters or characters;

(b) Shall contain the word "corporation," "incorporated," or "limited," or shall contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&;

(c) Shall not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose;

(d) Shall be distinguishable upon the records in the office of the Tribal Secretary from the name of a tribal corporation or other legal entity, whether tribal or foreign, authorized or registered to do business on the Reservation or, whether or not authorized or registered to do business on the Reservation is well known on the Reservation, whether profit or nonprofit, or a name the right to which is, at the time of incorporation, reserved or provided for in section 1111, unless there is filed with the articles one of the following:

(1) The written consent of the tribal corporation or other legal entity authorized or registered to do business on the Reservation or the holder of a reserved name or a name filed by or registered with the Tribal Secretary having a name that is not distinguishable;

(2) A certified copy of a final decree of the court establishing the prior right of the applicant to the use of the name on the Reservation, or establishing that the corporation or other legal entity with the name that is not distinguishable has been incorporated or on file with the Tribal Secretary for at least three years prior thereto, and has been totally inactive, provided notice of a hearing on the matter has been given to such corporation or entity, if possible.

**Subdivision 2. Names continued.** Subdivision 1, clause (d) does not affect the right of a tribal corporation existing on the effective date of this Code, or a foreign corporation authorized to do business on the Reservation on that date to continue the use of its name.

**Subdivision 3. Determination.** The Tribal Secretary shall determine whether a name is “distinguishable” from another name for purposes of this section and section 1111.

**Subdivision 4. Other laws affecting use of names.** This section and section 1111 do not abrogate or limit any law of unfair competition or unfair practices, nor any Trademark Code, nor the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, nor derogate the common law or the principles of equity.

**Subdivision 5. Use of name by successor corporation.** A corporation that is merged with another tribal or foreign corporation, or that is incorporated by the reorganization of one or more tribal or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a tribal corporation all or substantially all of the assets of another tribal or foreign corporation including its name, may have the same name as that used on the Reservation by any of the other corporations, if the other corporation was incorporated under the laws of the Tribe, or is authorized to transact business on the Reservation.

**Subdivision 6. Injunction.** The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but the court may, upon application of the Tribe or of a person interested or affected, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the Tribal Secretary and a certificate of incorporation issued.

## **Sec. 1111. Reserved Name.**

**Subdivision 1. Who may reserve.** The exclusive right to the use of a corporate name otherwise permitted by section 1110 may be reserved by:

(a) A person doing business on the Reservation under that name;

(b) A person intending to incorporate under this Code;

(c) A tribal corporation intending to change its name;

(d) A foreign corporation intending to make application for a certificate of authority to transact business on the Reservation;

(e) A foreign corporation authorized to transact business on the Reservation and intending to change its name;

(f) A person intending to incorporate a foreign corporation and intending to have the foreign corporation make application for a certificate of authority to transact business on the Reservation; or

(g) A foreign corporation doing business under that name or a name deceptively similar to that name in one or more states of the United States and not described in clause (d), (e), or (f).

**Subdivision 2. Method of reservation.** The reservation shall be made by filing with the Tribal Secretary a request that the name be reserved. If the name is available for use by the applicant, the Tribal Secretary shall reserve the name for the exclusive use of the applicant for a period of 12 months. The reservation may be renewed for successive 12-month periods.

**Subdivision 3. Transfer of reservation.** The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the Tribal Secretary a notice of the transfer and specifying the name and address of the transferee.

## **Sec. 1112. Registered Office; Registered Agent.**

**Subdivision 1. Registered office.** A corporation shall continuously maintain a registered office. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.

**Subdivision 2. Registered agent.** A corporation may designate in its articles a registered

agent. The registered agent may be a natural person residing on the Reservation, or a tribal corporation. The registered agent must maintain an office that is identical with the registered office.

**Sec. 1113. Change of Registered Office or Registered Agent; Change of Name of Registered Agent.**

**Subdivision 1. Statement.** A corporation may change its registered office, designate or change its registered agent, or state a change in the name of its registered agent, by filing with the Tribal Secretary a statement containing:

- (a) The name of the corporation;
- (b) If the address of its registered office is to be changed, the new address of its registered office;
- (c) If its registered agent is to be designated or changed, the name of its new registered agent;
- (d) If the name of its registered agent is to be changed, the name of its registered agent as changed;
- (e) A statement that the address of its registered office and the address of the office of its registered agent, as changed, will be identical; and
- (f) A statement that the change of registered office or registered agent was authorized by resolution approved by the affirmative vote of a majority of the directors present.

**Subdivision 2. Resignation of agent.** A registered agent of a corporation may resign by filing with the Tribal Secretary a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates 30 days after the notice is filed with the Tribal Secretary.

**Subdivision 3. Change of business address or name of agent.** If the office address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the Tribal Secretary a statement as required in subdivision 1, except that it need be signed only by the registered agent, need not be responsive to clause (e) or (f), and must state that a copy

of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

**Sec. 1114. Amendment of Articles.**

The articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each incorporator may be omitted. Unless otherwise provided in this Code, the articles may be amended or modified only in accordance with sections 1115 to 1118. An amendment which merely restates the then existing articles of incorporation, as amended, is not an amendment for the purposes of section 1135, subdivision 2, or 1161, subdivision 9.

**Sec. 1115. Procedure for Amendment Before Issuance of Shares.**

Before the issuance of shares by a corporation, the articles may be amended pursuant to section 1126 by the incorporators or by the board. The articles may be amended by the board to change a statement pursuant to section 1156, subdivision 3, establishing or fixing the rights and preferences of a class or series of shares before the issuance of any shares of that class or series.

**Sec. 1116. Procedure for Amendment After Issuance of Shares.**

**Subdivision 1. Manner of amendment.** After the issuance of shares by the corporation, the articles may be amended in the manner set forth in this section.

**Subdivision 2. Submission to shareholders.** A resolution approved by the affirmative vote of a majority of the directors present, or proposed by a shareholder or shareholders holding three percent or more of the voting power of the shares entitled to vote, that sets forth the proposed amendment shall be submitted to a vote at the next regular or special meeting of the shareholders of which notice has not yet been given but still can be timely given. Any number of amendments

may be submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a 15-month period. The resolution may amend the articles in their entirety to restate and supersede the original articles and all amendments to them. The provisions of this subdivision regarding shareholder-proposed amendments do not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder shall govern.

**Subdivision 3. Notice.** Written notice of the shareholders' meeting setting forth the substance of the proposed amendment shall be given to each shareholder in the manner provided in section 1169 for the giving of notice of meetings of shareholders.

**Subdivision 4. Approval by shareholders.**

(a) The proposed amendment is adopted when approved by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote, except as provided in paragraphs (b) and (c) and subdivision 5.

(b) For a closely held corporation, if the articles provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles is the larger of:

(1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

(2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

(c) For corporations other than closely held corporations, if the articles provide for a larger proportion or number to transact a specified type of business at a meeting, the affirmative vote of that larger proportion or number is necessary to amend the articles to decrease the proportion or number necessary to transact the business.

**Subdivision 5. Certain restatements.** An amendment that merely restates the existing articles, as amended, may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the shareholders as provided in subdivisions 2, 3, and 4.

**Sec. 1117. Class or Series Voting on Amendments.**

The holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of the class or series;

(b) Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series;

(c) Effect an exchange, or create a right of exchange, of all or any part of the share of another class or series for the shares of the class or series;

(d) Change the rights or preferences of the shares of the class or series;

(e) Change the shares of the class or series, whether with or without par value, in the same or a different number of shares, either with or without par value, of the same or another class or series;

(f) Create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;

(g) Divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the board to do so;

(h) Limit or deny any existing preemptive rights of the shares of the class or series or

(i) Cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

#### **Sec. 1118. Articles of Amendment.**

When an amendment has been adopted, articles of amendment shall be prepared that contain:

(a) The name of the corporation;

(b) The amendment adopted;

(c) With respect to an amendment restating the articles, a statement that the amendment restating the articles correctly sets forth without change the corresponding provisions of the articles as previously amended if the amendment was approved only by the board;

(d) If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, division, combination, or cancellation of issued shares, a statement of the manner in which it will be effected; and

(e) A statement that the amendment has been adopted pursuant to this Code.

#### **Sec. 1119. Effect of Amendment.**

**Subdivision 1. Effect on cause of action.** An amendment does not affect an existing cause of action in favor of or against the corporation, nor a pending suit to which the corporation is a party, nor the existing rights of persons other than shareholders.

**Subdivision 2. Effect of change of name.** If the corporate name is changed by the amendment, a suit brought by or against the corporation under its former name does not abate for that reason.

**Subdivision 3. Effect of amendments restating articles.** When effective under section 1121, an amendment restating the articles in their entirety supersedes the original articles and all amendments to the original articles.

#### **Sec. 1120. Filing Articles.**

Articles of incorporation and articles of amendment shall be filed with the Tribal Secretary.

#### **Sec. 1121. Effective Date of Articles.**

Articles of incorporation are effective and corporate existence begins when the articles of incorporation are filed with the Tribal Secretary accompanied by a payment of \$125.00, which includes a \$100.00 incorporation fee in addition to the \$25.00 filing fee. Articles of amendment and articles of merger are effective when filed with the Tribal Secretary or at another time within 30 days after filing if the articles of amendment so provide. Articles of merger must be accompanied by a fee of \$125.00, which includes a \$100.00 merger fee in addition to the \$25.00 filing fee.

#### **Sec. 1122. Presumption; Certificate of Incorporation.**

When the articles of incorporation have been filed with the Tribal Secretary and the required fee has been paid to the Tribal Secretary, it is presumed that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated, and the Tribal Secretary shall issue a certificate of incorporation to the corporation, but this presumption does not apply against the Tribe in a proceeding to cancel or revoke the certificate of incorporation or to compel the involuntary dissolution of the corporation.

### **Subchapter C. Powers**

#### **Sec. 1123. Powers.**

**Subdivision 1. Generally, limitations.** A corporation has the powers set forth in this section, subject to any limitations provided in any other law of the Tribe or in its articles.

**Subdivision 2. Duration.** A corporation has perpetual duration.

**Subdivision 3. Legal capacity.** A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.

**Subdivision 4. Property ownership.** A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

**Subdivision 5. Property disposition.** A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest therein, wherever situated.

**Subdivision 6. Trading in securities; obligations.** A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of and otherwise use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any tribal or foreign government or instrumentality thereof.

**Subdivision 7. Contracts; mortgages.** A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises and income.

**Subdivision 8. Investment.** A corporation may invest and reinvest its funds.

**Subdivision 9. Holding property as security.** A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.

**Subdivision 10. Location.** A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this Code anywhere in the universe.

**Subdivision 11. Donations.** A corporation may make donations, irrespective of corporate benefit, for the public welfare; for social, community, charitable, religious, educational, scientific, civic, literary, and for similar or related purposes.

**Subdivision 12. Pensions; benefits.** A corporation may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and

carry out, wholly or partially at the expense of the corporation employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related corporations' officers, directors, employees, and agents and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

**Subdivision 13. Participating in management.** A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of an organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.

**Subdivision 14. Insurance.** A corporation may provide for its benefit life insurance and other insurance with respect to the services of any or all of its officers, directors, employees, and agents, or on the life of a shareholder for the purpose of acquiring at the death of the shareholder any or all shares in the corporation owned by the shareholder.

**Subdivision 15. Corporate seal.** A corporation may have, alter at pleasure, and use a corporate seal as provided in section 1124.

**Subdivision 16. Bylaws.** A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in section 1127.

**Subdivision 17. Committees.** A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in section 1144 and fix their compensation.

**Subdivision 18. Officers; employees; agents.** A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties as provided in sections 1147 to 1155 and fix their compensation.

**Subdivision 19. Securities.** A corporation may issue securities and rights to purchase securities as provided in sections 1156 to 1165.

**Subdivision 20. Loans; guaranties; sureties.** A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provide in section 1185.

**Subdivision 21. Advances.** A corporation may make advances to its directors, officers and employees and those of its subsidiaries as provided in section 1186.

**Subdivision 22. Indemnification.** A corporation shall indemnify those persons identified in section 1187 against certain expenses and liabilities only as provided in section 1187 and may indemnify other persons.

**Subdivision 23. Assumed names.** A corporation may conduct all or part of its business under one or more assumed names, provided each assumed name is registered with the Tribal Secretary.

**Subdivision 24. Other powers.** A corporation may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the corporation is incorporated.

**Subdivision 25. Trust Land.** Any corporation which holds an interest in trust land may not encumber that interest without the prior approval of the Tribal Council and the Bureau of Indian Affairs.

**Subdivision 26. Sovereign Immunity of the Tribe.** Consent to suit by a corporation shall in no way extend to the Tribe, nor shall a consent to suit by a corporation in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe.

#### **Sec. 1124. Corporate Seal.**

**Subdivision 1. Seal not required.** A corporation may, but need not, have a corporate seal, and the use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary.

**Subdivision 2. Required words; use.** If a corporation has a corporate seal, the seal may consist of a mechanical imprinting device, or a rubber stamp with a facsimile of the seal affixed thereon, or a facsimile or reproduction of either. The seal need include only the word “Seal,” but it may also include a part or all of the name of the corporation and a combination, derivation, or abbreviation of either or both of the phrases “a Tribal Corporation – Fort Peck Tribes” and “Corporate Seal.” If a corporate seal is used, it or a facsimile of it may be affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on any document.

#### **Sec. 1125. Effect of Lack of Power; Ultra Vires.**

The doing, continuing, or performing by a corporation of an act, or an executed or wholly or partially executory contract, conveyance or transfer to or by the corporation, if otherwise lawful, is not invalid because the corporation was without the power to do, continue, or perform the act, contract, conveyance, or transfer, unless the lack of power is established in the court:

(a) In a proceeding by a shareholder against the corporation to enjoin the doing, continuing, or performing of the act, contract, conveyance, or transfer. If the unauthorized act, continuation, or performance sought to be enjoined is being, or to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if just and reasonable in the circumstances, set aside and enjoin the performance of the contract and in so doing may allow to the corporation or to the other parties to the contract compensation for the loss or damage sustained as a result of the action of the court in setting aside and enjoining the performance of the contract;

(b) In a proceeding by or in the name of the corporation, whether acting directly or through a legal representative, or through shareholders in a representative or derivative suit, against the incumbent or former officers or directors of the corporation for exceeding or otherwise violating their authority, or against a person having actual knowledge of the lack of power; or



(c) In a proceeding by the Tribal Executive Board, as provided in section 11114, to dissolve the corporation, or in a proceeding by the Tribal Executive Board to enjoin the corporation from the transaction of unauthorized business.

#### **Subchapter D. Organization; By-Laws**

##### **Sec. 1126. Organization.**

**Subdivision 1. Role of incorporators.** If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected or until shares are issued, whichever occurs first.

**Subdivision 2. Meeting.** After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including, without limitation, amending the articles, electing directors, adopting bylaws, electing officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal, approving forms of certificates or transaction statements for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting.

##### **Sec. 1127. Bylaws.**

**Subdivision 1. Generally.** A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the corporation not inconsistent with law or the articles.

**Subdivision 2. Power of board.** Initial bylaws may be adopted pursuant to section 1126 by the

incorporators or by the first board. Unless reserved by the articles to the shareholders, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subdivision 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws, the board shall not adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors.

**Subdivision 3. Power of shareholders; procedure.** If a shareholder or shareholders holding three percent or more of the voting power of the shares entitled to vote propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board and the resolution sets forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 1116, subdivisions 2 to 4, for amendment of the articles. The provisions of this subdivision regarding shareholder-proposed amendments shall not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder shall govern.

#### **Subchapter E. Board**

##### **Sec. 1128. Board.**

**Subdivision 1. Board to manage.** The business and affairs of a corporation shall be managed by or under the direction of a board, subject to the provisions of subdivision 2 and section 1179. The members of the first board may be named in the articles or elected by the incorporators pursuant to section 1126 or by the shareholders.

**Subdivision 2. Shareholder management.**

The holders of the shares entitled to vote for directors of the corporation may, by unanimous affirmative vote, take any action that this Code requires or permits the board to take. As to an action taken by the shareholders in that manner:

(a) The directors have no duties, liabilities, or responsibilities as directors under this Code with respect to or arising from the action;

(b) The shareholders collectively and individually have all of the duties, liabilities, and responsibilities of directors under this Code with respect to and arising from the action;

(c) If the action relates to a matter required or permitted by this Code or by any other law to be approved or adopted by the board, either with or without approval or adoption by the shareholders, the action is deemed to have been approved or adopted by the board; and

(d) A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board is satisfied by a statement that the shareholders have taken the action under this subdivision.

**Sec. 1129. Number.**

The board shall consist of one or more directors. The number of directors shall be fixed by or in the manner provided in the articles or bylaws. The number of directors may be increased or, subject to section 1137, decreased at any time by amendment to or in the manner provided in the articles or bylaws.

**Sec. 1130. Qualifications; Election.**

Directors shall be natural persons. The method of election and any additional qualifications for directors may be imposed by or in the manner provided in the articles or bylaws. A director need not be a member of the Tribe unless the articles of incorporation or bylaws so prescribe.

**Sec. 1131. Terms.**

Unless fixed terms are provided for in the articles or bylaws, a director serves for an indefinite term that expires at the next regular meeting of

the shareholders. A fixed term of a director shall not exceed five years. A director holds office for the term for which the director was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director.

**Sec. 1132. Acts Not Void or Voidable.**

The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the officers or the board void or voidable.

**Sec. 1133. Compensation.**

Subject to any limitations in the articles or bylaws, the board may fix the compensation of directors.

**Sec. 1134. Classification of Directors.**

Directors may be divided into classes as provided in the articles or bylaws.

**Sec. 1135. Cumulative Voting for Directors.**

**Subdivision 1. Voting rights.** Unless the articles provide that there shall be no cumulative voting, and except as provided in section 1137, subdivision 5, each shareholder entitled to vote for directors has the right to cumulate those votes in the election of directors by giving written notice of intent to cumulate those votes to any officer of the corporation before the meeting, or to the presiding officer at the meeting at which the election is to occur at any time before the election of directors at the meeting, in which case:

(a) The presiding officer at the meeting shall announce, before the election of directors, that shareholders shall cumulate their votes; and

(b) Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes represented by the shares, or by distributing all of those votes on the same principle among any number of candidates.

**Subdivision 2. Modifications.** No amendment to the articles or bylaws which has the effect of

denying, limiting, or modifying the right to cumulative voting for directors provided in this section shall be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.

#### **Sec. 1136. Resignation.**

A director may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective time is specified in the notice.

#### **Sec. 1137. Removal of Directors.**

**Subdivision 1. Modification.** The provisions of this section apply unless modified by the articles, the bylaws, or an agreement described in section 1179.

**Subdivision 2. Removal by directors.** A director may be removed at any time, with or without cause, if:

(a) The director was named by the board to fill a vacancy;

(b) The shareholders have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and

(c) A majority of the remaining directors present affirmatively vote to remove the director.

**Subdivision 3. Removal by shareholders.** One or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of the proportion or number of the voting power of the shares of the classes or series the director represents sufficient to elect them, except as provided in subdivision 4.

**Subdivision 4. Exception for corporations with cumulative voting.** In a corporation having cumulative voting, unless the entire board is removed simultaneously, a director is not removed from the board if there are cast against removal of the director the votes of a proportion of the voting power sufficient to elect the director at an election of the entire board under cumulative voting.

**Subdivision 5. Election of replacements.** New directors may be elected at a meeting at

which directors are removed. If the corporation allows cumulative voting and a shareholder notifies the presiding officer at any time prior to the election of new directors of intent to cumulate the votes of the shareholder, the presiding officer shall announce before the election that cumulative voting is in effect, and shareholders shall cumulate their votes as provided in section 1135, clause (b).

#### **Sec. 1138. Vacancies.**

Unless different rules for filling vacancies are provided for in the articles or bylaws:

(a)(1) Vacancies on the board resulting from the death, resignation, removal, or disqualification of a director may be filled by the affirmative vote of a majority of the remaining directors, even though less than a quorum; and

(2) Vacancies on the board resulting from newly created directorships may be filled by the affirmative vote of a majority of the directors serving at the time of the increase; and

(b) Each director elected under this section to fill a vacancy holds office until a qualified successor is elected by the shareholders at the next regular or special meeting of the shareholders.

#### **Sec. 1139. Board Meetings.**

**Subdivision 1. Time; place.** Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the Reservation that the board may select or by any means described in subdivision 2. If the board fails to select a place for a meeting, the meeting shall be held at the principal executive office, unless the articles or bylaws provide otherwise.

#### **Subdivision 2. Electronic communications.**

(a) A conference among directors by any means of communication through which the directors may simultaneously hear each other during the conference constitutes a board meeting, if the same notice is given of the conference as would be required by subdivision 3 for a meeting, and if the number of directors participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting

by that means constitutes presence in person at the meeting.

(b) A director may participate in a board meeting not described in paragraph (a) by any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

**Subdivision 3. Calling meetings; notice.** Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving ten days' notice to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

**Subdivision 4. Previously scheduled meetings.** If the day or date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

**Subdivision 5. Waiver of notice.** A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting.

#### **Sec. 1140. Absent Directors.**

If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition shall be counted as a vote in favor of or against the proposal and shall be entered in the minutes or other

record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

#### **Sec. 1141. Quorum.**

A majority, or a larger or smaller proportion or number provided in the articles or bylaws, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion or number otherwise required for a quorum.

#### **Sec. 1142. Act of the Board.**

The board shall take action by the affirmative vote of a majority of directors present at a duly held meeting, except where this Code or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this Code for a particular action, the articles shall control.

#### **Sec. 1143. Action without Meeting.**

**Subdivision 1. Method.** An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.

**Subdivision 2. Effective time.** The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.

**Subdivision 3. Notice; liability.** When written action is permitted to be taken by less than all directors, all directors shall be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken thereby.

#### **Sec. 1144. Committees.**

**Subdivision 1. Generally.** A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

**Subdivision 2. Membership.** Committee members shall be natural persons. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present.

**Subdivision 4. Procedure.** Sections 1139 to 1143 apply to committees and members of committees to the same extent as those sections apply to the board and directors.

**Subdivision 5. Minutes.** Minutes, if any, of committee meetings shall be made available upon request to members of the committee and to any director.

**Subdivision 6. Standard of conduct.** The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 1145.

**Subdivision 7. Committee members deemed directors.** Committee members are deemed to be directors for purposes of sections 1145, 1146, and 1187.

#### **Sec. 1145. Standard of Conduct.**

**Subdivision 1. Standard; liability.** A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.

##### **Subdivision 2. Reliance.**

(a) A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or

(3) A committee of the board upon which the director does not serve, duly established in accordance with section 1144, as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

(b) Paragraph (a) does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by paragraph (a) unwarranted.

**Subdivision 3. Presumption of assent; dissent.** A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:

(a) Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, in which case the director shall not be considered to be present at the meeting for any purpose of this Code;

(b) Votes against the action at the meeting; or

(c) Is prohibited by section 1146 from voting on the action.

**Subdivision 4. Elimination or limitation of liability.** A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles. The articles shall not eliminate or limit the liability of a director:

(a) For any breach of the director's duty of loyalty to the corporation or its shareholders;

(b) For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(c) Under section 1191;

(d) For any transaction from which the director derived an improper personal benefit; or

(e) For any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective.

#### **Sec. 1146. Director Conflicts of Interest.**

**Subdivision 1. Conflict; procedure when conflict arises.** A contract or other transaction between a corporation and one or more of its directors, or between a corporation and an organization in or of which one or more of its directors are directors, officers, or legal representatives or have a material financial interest, is not void or voidable because the director or directors or the other organizations are parties or because the director or directors are present at the meeting of the shareholders or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if:

(a) The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;

(b) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the shareholders and the contract or transaction is approved in good faith by (1) the holders of two-thirds of the voting power of the shares entitled to

vote which are owned by persons other than the interested director or directors, or (2) the unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote;

(c) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or

(d) The contract or transaction is a distribution described in section 1188, subdivision 1, or a merger or exchange described in section 1192, subdivision 1 or 2.

**Subdivision 2. Material financial interest.** For purposes of this section:

(a) A director does not have a material financial interest in a resolution fixing the compensation of the director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, even though the first director is also receiving compensation from the corporation; and

(b) A director has a material financial interest in each organization in which the director, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters of the director, or any combination of them have a material financial interest.

**Subdivision 3. Compensation agreements.** During any tender offer or request or invitation for tenders of any class or series of shares of a publicly held corporation, other than an offer, request, or invitation by the publicly held corporation, the publicly held corporation shall not enter into or amend, directly or indirectly, agreements containing provisions, whether or not dependent on the occurrence of any event or contingency, that increase, directly or indirectly, the current or future compensation of any officer or director of the publicly held corporation. This subdivision does not prohibit routine increases in compensation, or other routine compensation agreements,

undertaken in the ordinary course of the publicly held corporation's business.

## **Subchapter F. Officers**

### **Sec. 1147. Officers Required.**

A corporation shall have one or more natural persons exercising the functions of the offices, however designated, of chief executive officer and chief financial officer.

### **Sec. 1148. Duties of Required Officers.**

#### **Subdivision 1. Presumption; modification.**

Unless the articles, the bylaws, or a resolution adopted by the board and not inconsistent with the articles or bylaws, provide otherwise, the chief executive officer and chief financial officer have the duties specified in this section.

**Subdivision 2. Chief executive officer.** The chief executive officer shall:

- (a) Have general active management of the business of the corporation;
- (b) When present, preside at all meetings of the board and of the shareholders;
- (c) See that all orders and resolutions of the board are carried into effect;
- (d) Sign and deliver in the name of the corporation any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to some other officer or agent of the corporation;
- (e) Maintain records of and, whenever necessary, certify all proceedings of the board and the shareholders; and
- (f) Perform other duties prescribed by the board.

**Subdivision 3. Chief financial officer.** The chief financial officer shall:

- (a) Keep accurate financial records for the corporation;
- (b) Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;

- (c) Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers therefor;

- (d) Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;

- (e) Render to the chief executive officer and the board, whenever requested, an account of all transactions by the chief financial officer and of the financial condition of the corporation; and

- (f) Perform other duties prescribed by the board or by the chief executive officer.

### **Sec. 1149. Other Officers.**

The board may elect or appoint, in a manner set forth in the articles or bylaws or in a resolution approved by the affirmative vote of a majority of the directors present, any other officers or agents the board deems necessary for the operation and management of the corporation, each of whom shall have the powers, rights, duties, responsibilities, and terms in office provided for in the articles or bylaws or determined by the board.

### **Sec. 1150. Multiple Offices.**

Any number of offices or functions of those offices may be held or exercised by the same person. If a document must be signed by persons holding different offices or functions and a person holds or exercises more than one of those offices or functions, that person may sign the document in more than one capacity, but only if the document indicates each capacity in which the person signs.

### **Sec. 1151. Officers Deemed Elected.**

In the absence of an election or appointment of officers by the board, the person or persons exercising the principal functions of the chief executive officer or the chief financial officer are deemed to have been elected to those offices, except for the purpose of determining the location of the principal executive office, which in that case is the registered office of the corporation.

**Sec. 1152. Contract Rights.**

The election or appointment of a person as an officer or agent does not, of itself, create contract rights. A corporation may enter into a contract with an officer or agent for a period of time if, in the board's judgment, the contract would be in the best interests of the corporation. The fact that the contract may be for a term longer than the terms of the directors who authorized or approved the contract does not make the contract void or voidable.

**Sec. 1153. Resignation; Removal; Vacancies.**

**Subdivision 1. Resignation.** An officer may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.

**Subdivision 2. Removal.** An officer may be removed at any time, with or without cause by a resolution approved by the affirmative vote of a majority of the directors present, subject to the provisions of a shareholder control agreement. The removal is without prejudice to any contractual rights of the officer.

**Subdivision 3. Vacancy.** A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of chief executive officer or chief financial officer shall, be filled for the unexpired portion of the term in the manner provided in the articles or bylaws, or determined by the board, or pursuant to section 1151.

**Sec. 1154. Delegation.**

Unless prohibited by the articles or bylaws or by a resolution approved by the affirmative vote of a majority of the directors present, an officer elected or appointed by the board may, without the approval of the board, delegate some or all of the duties and powers of an office to other persons. An officer who delegates the duties or powers of an office remains subject to the standard of conduct for an officer with respect to the discharge of all duties and powers so delegated.

**Sec. 1155. Standard of Conduct.**

An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 1154 is deemed an officer for purposes of this section and sections 1182 and 1187.

**Subchapter G. Shares; Shareholders****Sec. 1156. Authorized Shares.**

**Subdivision 1. Board may authorize.** Subject to any restrictions in the articles, a corporation may issue securities and rights to purchase securities only when authorized by the board.

**Subdivision 2. Terms of shares.** All the shares of a corporation:

(a) Shall be of one class and one series, unless the articles establish, or authorize the board to establish, more than one class or series;

(b) Shall be common shares entitled to vote and shall have equal rights and preferences in all matters not otherwise provided for by the board, unless and to the extent that the articles have fixed the relative rights and preferences of different classes and series; and

(c) Shall have, unless a different par value is specified in the articles, a par value of one cent per share, solely for the purpose of a law, statute or rule imposing a tax or fee based upon the capitalization of a corporation, and a par value fixed by the board for the purpose of a statute or rule requiring the shares of the corporation to have a par value.

**Subdivision 3. Procedure for fixing terms.**

(a) Subject to any restrictions in the articles, the power granted in subdivision 2 may be exercised by a resolution or resolutions approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or



series. Any of the rights and preferences of a class or series:

(1) May be made dependent upon facts ascertainable outside the articles, or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and

(2) May incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

(b) A statement setting forth the name of the corporation and the text of the resolution and certifying the adoption of the resolution and the date of adoption shall be filed with the Tribal Secretary before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles; provided, however, where the shareholders have received notice of the creation of shares with rights or preferences not set forth in the articles before the issuance of the shares, the statement may be filed any time within one year after the issuance of the shares. The resolution is effective when the statement has been filed with the Tribal Secretary; or, if it is not required to be filed with the Tribal Secretary before the issuance of shares, on the date of its adoption by the directors.

(c) A statement filed with the Tribal Secretary in accordance with paragraph (b) is not considered an amendment of the articles for purposes of sections 1117 and 1183.

**Subdivision 4. Specific terms.** Without limiting the authority granted in this section, a corporation may issue shares of a class or series:

(a) Subject to the right of the corporation to redeem any of those shares at the price fixed for their redemption by the articles or by the board or at a price determined in the manner specified by the articles or by the board;

(b) Entitling the shareholders to cumulative, partially cumulative, or noncumulative distributions in the amounts fixed by the articles or by the board or in amounts determined in the manner specified by the articles or by the board;

(c) Having preference over any class or series of shares for the payment of distributions of any or all kinds;

(d) Convertible into shares of any other class or any series of the same or another class on the terms fixed by the articles or by the board or on terms determined in the manner specified by the articles or by the board; or

(e) Having full, partial, or no voting rights, except as provided in section 1117.

## **Sec. 1157. Share Dividends, Divisions, and Combinations.**

**Subdivision 1. Power to effect.** A corporation may effect a share dividend or a division or combination of its shares as provided in this section. As used in this section, the terms “division” and “combination” mean dividing or combining shares of any class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

**Subdivision 2. When shareholder approval required; filing of articles of amendment.**

(a) Articles of amendment must be adopted by the board and the shareholders under sections 1116 and 1117 to effect a division or combination if, as a result of the proposed division or combination:

(1) The rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or

(2) The percentage of authorized shares remaining unissued after the division or combination will exceed the percentage of authorized shares that were unissued before the division or combination.

For purposes of this section, an increase or decrease in the relative voting right of the shares that are the subject of the division or combination that arises solely from the increase or decrease in the number of the shares outstanding is not an adverse effect on the outstanding shares of any class

or series and any increase in the percentage of authorized shares remaining unissued arising solely from the elimination of fraction shares under section 1164 must be disregarded.

(b) If a division or combination is effected under this subdivision, articles of amendment must be prepared that contain the information required by section 1118.

**Subdivision 3. By action of board alone; filing of articles of amendment.**

(a) Subject to the restrictions provided in subdivision 2 or any restrictions in the articles, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 1116 and 1117. In effecting division or combination under this subdivision, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.

(b) If a division or combination that includes an amendment of the articles is effected under this subdivision, then articles of amendment must be prepared that contain the information required by section 1118 and a statement that the amendment will not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and will not result in the percentage of authorized shares that remains unissued after the division or combination exceeding the percentage of authorized shares that were unissued before the division or combination.

**Sec. 1158. Subscriptions for Shares.**

**Subdivision 1. Signed writing.** A subscription for shares, whether made before or after the incorporation of a corporation, is not enforceable against the subscriber unless it is in writing and signed by the subscriber.

**Subdivision 2. Irrevocable period.** A subscription for shares is irrevocable for a period of six months, unless the subscription agreement

provides for, or unless all of the subscribers consent to, an earlier revocation.

**Subdivision 3. Payment; installments.** A subscription for shares, whether made before or after the incorporation of a corporation, shall be paid in full at the time or times or in the installments, if any, specified in the subscription agreement. In the absence of a provision in the subscription agreement specifying the time at which the subscription is to be paid, the subscription shall be paid at the time or times determined by the board but a call made by the board for payment on subscriptions shall be uniform for all shares of the same class or for all shares of the same series.

**Subdivision 4. Method of collection; forfeiture; cancellation or sale for account of subscriber.**

(a) Unless otherwise provided in the subscription agreement, in the event of default in the payment of an installment or call when due, the corporation may proceed to collect the amount due in the same manner as a debt due the corporation.

(b) If the amount due on a subscription for shares remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent subscriber, the shares subscribed for may be offered for sale by the corporation for a price in money equaling or exceeding the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale. If the shares subscribed for are sold pursuant to this paragraph, the corporation shall pay to the delinquent subscriber or to the delinquent subscriber's legal representative the lesser of

(i) The excess of net proceeds realized by the corporation over the sum of the amount owed by the delinquent subscriber plus the expenses incidental to the sale, and

(ii) The amount actually paid by the delinquent subscriber. If the shares subscribed for are not sold pursuant to this paragraph, the corporation may collect the amount due in the same manner as a debt due the corporation or cancel the subscription in accordance with paragraph (c).

(c) If the amount due on a subscription for shares remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent subscriber and the shares subscribed for by the delinquent subscriber have not been sold pursuant to paragraph (b), the corporation may cancel the subscription, in which event the shares subscribed for must be restored to the status of authorized but unissued shares, the corporation may retain the portion of the subscription price actually paid that does not exceed ten percent of the subscription price, and the corporation shall refund to the delinquent subscriber or the delinquent subscriber's legal representative that portion of the subscription price actually paid which exceeds ten percent of the subscription price.

#### **Sec. 1159. Consideration for Shares; Value and Payment; Liability.**

**Subdivision 1. Consideration; procedure.** Subject to any restrictions in the articles:

(a) Shares may be issued for any consideration, including, without limitation, money or other tangible or intangible property received by the corporation or to be received by the corporation under a written agreement, or services rendered to the corporation or to be rendered to the corporation under a written agreement, as authorized by resolution approved by the affirmative vote of a majority of the directors present, or approved by the affirmative vote of the holders of a majority of the voting power of the shares present, valuing all nonmonetary consideration and establishing a price in money or other consideration, or a minimum price, or a general formula or method by which the price will be determined; and

(b) Upon authorization in accordance with section 1157, the corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or issue its own shares pro-rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. No shares of a

class or series, shares of which are then outstanding, shall be issued to the holders of shares of another class or series (except in exchange for or in conversion of outstanding shares of the other class or series), unless the issuance either is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

**Subdivision 2. Value; liability.** The determinations of the board or the shareholders as to the amount or fair value or the fairness to the corporation of the consideration received or to be received by the corporation for its shares or the terms of payment, as well as the agreement to issue shares for that consideration, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances, and, unless otherwise required by the articles, the consideration may be less than the par value, if any, of the shares. Directors or shareholders who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving an issue of shares for a consideration that is unfair to the corporation, or overvalue property or services received or to be received by the corporation as consideration for shares issued, are jointly and severally liable to the corporation for the benefit of the then shareholders who did not consent to and are damaged by the action, to the extent of the damages of those shareholders. A director or shareholder against whom a claim is asserted pursuant to this subdivision, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors or shareholders who are liable under this section.

**Subdivision 3. Payment; liability; contribution; statute of limitations.**

(a) A corporation shall issue only shares that are nonassessable or that are assessable but are issued with the unanimous consent of the shareholders. "Nonassessable" shares are shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation.

Consideration in the form of a promissory note, a check, or a written agreement to transfer property or render services to a corporation in the future is fully paid when the note, check, or written agreement is delivered to the corporation.

(b) If shares are issued in violation of paragraph (a), the following persons are jointly and severally liable to the corporation for the difference between the agreed consideration for the shares and the consideration actually received by the corporation:

(1) A director or shareholder who was present and entitled to vote but who failed to vote against the issuance of the shares knowing of the violation;

(2) The person to whom the shares were issued; and

(3) A successor or transferee of the interest in the corporation of a person described in clause (1) or (2), including a purchaser of shares, a subsequent assignee, successor, or transferee, a pledgee, a holder of any other security interest in the assets of the corporation or shares granted by the person described in clause (1) or (2), or a legal representative of or for the person or estate of the person, which successor, transferee, purchaser, assignee, pledgee, holder, or representative acquired the interest knowing of the violation.

(c)(1) A pledgee or holder of any other security interest in all or any shares that have been issued in violation of paragraph (a) is not liable under paragraph (b) if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.

(2) A pledgee, holder of any other security interest, or legal representative is liable under paragraph (b) only in that capacity. The liability of the person under paragraph (b) is limited to the assets held in that capacity for the person or estate of the person described in clause (1) or (2) of paragraph (b).

(3) Each person liable under paragraph (b) has a full right of contribution on an equitable basis from all other persons liable under paragraph (b) for the same transaction.

(4) An action shall not be maintained against a person under paragraph (b) unless commenced within two years from the date on which shares are issued in violation of paragraph (a).

## **Sec. 1160. Rights to Purchase.**

**Subdivision 1. Definition.** “Right to purchase” means the right, however designated, pursuant to the terms of a security or agreement, entitling a person to subscribe to, purchase, or acquire securities of a corporation, whether by the exchange or conversion of other securities, or by the exercise of options, warrants, or other rights, or otherwise, but excluding preemptive rights.

**Subdivision 2. Transferability; separability.** Rights to purchase may be either transferable or nontransferable and either separable or inseparable from other securities of the corporation, as the board may determine under this section.

**Subdivision 3. Issuance permitted.** A corporation may issue rights to purchase after the terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board, subject to any restrictions in the articles.

**Subdivision 4. Terms set forth.** The instrument evidencing the right to purchase or, if no instrument exists, a transaction statement, shall set forth in full, summarize, or incorporate by reference all the terms, provisions, and conditions applicable to the right to purchase.

## **Sec. 1161. Preemptive Rights.**

**Subdivision 1. Presumption; modification.** Unless denied or limited in the articles or by the board pursuant to section 1156, subdivision 2, clause (b), a shareholder of a corporation has the preemptive rights provided in this section.

**Subdivision 2. Definition.** A preemptive right is the right of a shareholder to acquire a certain fraction of the unissued securities or rights to purchase securities of a corporation before the corporation may offer them to other persons.

**Subdivision 3. When right accrues.** A shareholder has a preemptive right whenever the corporation proposes to issue new or additional

shares or rights to purchase shares of the same series as the series held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder, or new or additional securities other than shares, or rights to purchase securities other than shares, that are exchangeable for, convertible into, or carry a right to acquire new or additional shares of the same series as the series held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder.

**Subdivision 4. Exemptions.** A shareholder does not have a preemptive right to acquire securities or rights to purchase securities that are:

- (a) Issued for a consideration other than money;
- (b) Issued pursuant to a plan of merger or exchange;
- (c) Issued pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote;
- (d) Issued upon exercise of previously issued rights to purchase securities of the corporation;
- (e) Issued pursuant to a public offering of the corporation's securities or rights to purchase securities. For purposes of this clause, "public offering" means an offering of the corporation's securities or rights to purchase securities if the resale or other distribution of those securities or rights to purchase securities is not restricted by Tribal, state or federal securities laws; or
- (f) Issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a law of this Tribe or a statute of the United States.

**Subdivision 5. Fraction to be acquired.** The fraction of the new issue that each shareholder may acquire by exercise of a preemptive right is the ratio that the number of shares of that class or series owned by the shareholder before the new issue bears to the total number of shares of that class or series issued and outstanding before the new issue.

**Subdivision 6. Waiver.** A shareholder may waive a preemptive right in writing. The waiver is binding upon the shareholder whether or not

consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed issuance described in the waiver.

**Subdivision 7. Notice.** When proposing the issuance of securities with respect to which shareholders have preemptive rights under this section, the board shall cause notice to be given to each shareholder entitled to preemptive rights. The notice shall be given at least ten days before the date by which the shareholder must exercise a preemptive right and shall contain:

- (a) The number or amount of securities with respect to which the shareholder has a preemptive right, and the method used to determine that number or amount;
- (b) The price and other terms and conditions upon which the shareholder may purchase them; and
- (c) The time within which and the method by which the shareholder must exercise the right.

**Subdivision 8. Issuance to others.** Securities that are subject to preemptive rights but not acquired by shareholders in the exercise of those rights may, for a period not exceeding one year after the date fixed by the board for the exercise of those preemptive rights, be issued to persons the board determines, at a price not less than, and on terms no more favorable to the purchaser than, those offered to the shareholders. Securities that are not issued during that one year period shall, at the expiration of the period, again become subject to preemptive rights of shareholders.

**Subdivision 9. Modification.** No amendment to the articles which has the effect of denying, limiting, or modifying the preemptive rights provided in this section shall be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.

## **Sec. 1162. Share Certificates; Issuance and Contents; Uncertified Shares.**

**Subdivision 1. Certificated; uncertificated.** The shares of a corporation shall be either certificated shares or uncertificated shares. Each

holder of certificated shares issued in accordance with section 1159, subdivision 3, paragraph (a) is entitled to a certificate of shares.

**Subdivision 2. Certificates; signature required.** Certificates shall be signed by an agent or officer authorized in the articles or bylaws to sign share certificates or, in the absence of an authorization, by an officer.

**Subdivision 3. Signature valid.** If a person signs or has a facsimile signature placed upon a certificate while an officer, transfer agent, or registrar of a corporation, the certificate may be issued by the corporation, even if the person has ceased to have that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of its issue.

**Subdivision 4. Form of certificate.** A certificate representing shares of a corporation shall contain on its face:

- (a) The name of the corporation;
- (b) A statement that the corporation is incorporated under the laws of the Fort Peck Tribes;
- (c) The name of the person to whom it is issued; and
- (d) The number and class of shares, and the designation of the series, if any, that the certificate represents.

**Subdivision 5. Limitations set forth.** A certificate representing shares issued by a corporation authorized to issue shares of more than one class or series shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to an shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class or series authorized to be issued, so far as they have been determined, and the authority of the board to determine the relative rights and preferences of subsequent classes or series.

**Subdivision 6. Prima facie evidence.** A certificate signed as provided in subdivision 2 is prima facie evidence of the ownership of the shares referred to in the certificate.

**Subdivision 7. Uncertificated shares.** Unless uncertificated shares are prohibited by the articles

or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any or all classes and series of its shares will be uncertificated shares. The resolution does not apply to shares represented by a certificate until the certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the new shareholder the information required by this section to be stated on certificates. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

## **Sec. 1163. Lost Share Certificates; Replacement.**

**Subdivision 1. Issuance.** A new share certificate may be issued to replace one that is alleged to have been lost, stolen, or destroyed. The owner must

- (i) Notify the issuer within a reasonable time after having notice of the loss and request a replacement before the issuer has notice that the security has been acquired by a bona fide purchaser;
- (ii) File with the issuer a sufficient indemnity bond; and
- (iii) Satisfy any other reasonable requirements imposed by the issuer.

Subdivision 2. Not overissue. The issuance of a new certificate under this section does not constitute an overissue of the shares it represents.

## **Sec. 1164. Fractional Shares.**

**Subdivision 1. Issuance; alternative exchange.** A corporation may issue fractions of a share originally or upon transfer. If it does not issue fractions of a share, it shall in connection with an original issuance of shares:

- (a) Arrange for the disposition of fractional interests by those entitled to them;
- (b) Pay in money the fair value of fractions of a share as of the time when persons entitled to receive the fractions are determined; or

(c) Issue scrip or warrants in registered or bearer form that entitle the holder to receive a certificate for a full share upon the surrender of the scrip or warrants aggregating a full share.

**Subdivision 2. Restrictions; rights.** A corporation shall not pay money for fractional shares if that action would result in the cancellation of more than 20 percent of the outstanding shares of a class. A determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificate or a transaction statement for a fractional share does, but scrip or warrants do not unless they provide otherwise, entitle the shareholder to exercise voting rights or to receive distributions. The board may cause scrip or warrants to be issued subject to the condition that they become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

#### **Sec. 1165. Liability of Subscribers and Shareholders With Respect to Shares .**

A subscriber for shares or a shareholder of a corporation is under no obligation to the corporation or its creditors with respect to the shares subscribed for or owned, except to pay to the corporation the full consideration for which the shares are issued or to be issued.

#### **Sec. 1166. Restriction on Transfer or Registration of Securities.**

**Subdivision 1. How imposed.** A restriction on the transfer or registration of transfer of securities of a corporation may be imposed in the articles, in the bylaws, by a resolution adopted by the shareholders, or by an agreement among or other written action by a number of shareholders or holders of other securities or among them and the corporation. A restriction is not binding with respect to securities issued prior to the adoption of the restriction, unless the holders of those securities are parties to the agreement or voted in favor of the restriction.

**Subdivision 2. Restrictions permitted.** A written restriction on the transfer or registration of transfer of securities of a corporation that is not manifestly unreasonable under the circumstances and is noted conspicuously on the face or back of the certificate or transaction statement may be enforced against the holder of the restricted securities or a successor or transferee of the holder, including a pledgee or a legal representative. Unless noted conspicuously on the face or back of the certificate or transaction statement, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate document creating or describing the restriction.

#### **Sec. 1167. Regular Meetings of Shareholders.**

**Subdivision 1. Frequency.** Regular meetings of shareholders may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles or bylaws or by subdivision 2.

**Subdivision 2. Demand by shareholder.** If a regular meeting of shareholders has not been held during the immediately preceding 15 months, shareholders holding at least ten percent of the voting power of all shares entitled to vote may demand a regular meeting of shareholders by written notice of demand given to the chief executive officer or the chief financial officer of the corporation. Within 30 days after receipt of the demand by one of those officers, the board shall cause a regular meeting of shareholders to be called and held on notice no later than 90 days after receipt of the demand, all at the expense of the corporation. If the board fails to cause a regular meeting to be called and held as required by this subdivision, the shareholder or shareholders making the demand may call the regular meeting by giving notice as required by section 1169, all at the expense of the corporation.

**Subdivision 3. Time; place.** A regular meeting, if any, shall be held on the day or date and at

the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder pursuant to subdivision 2 shall be held on the Reservation.

**Subdivision 4. Elections required; other business.** At each regular meeting of shareholders there shall be an election of qualified successors for directors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting. No other particular business is required to be transacted at a regular meeting. Any business appropriate for action by the shareholders may be transacted at a regular meeting.

#### **Sec. 1168. Special Meetings of Shareholders.**

**Subdivision 1. Who may call.** Special meetings of the shareholders may be called for any purpose or purposes at any time, by:

- (a) The chief executive officer;
- (b) The chief financial officer;
- (c) Two or more directors;
- (d) A person authorized in the articles or bylaws to call special meetings; or
- (e) A shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote, except that a special meeting for the purpose of considering any action to directly or indirectly facilitate or effect a business combination, including any action to change or otherwise affect the composition of the board of directors for that purpose, must be called by 25 percent or more of the voting power of all shares entitled to vote.

**Subdivision 2. Demand by shareholders.** A shareholder or shareholders holding the voting power specified in subdivision 1, paragraph (e), may demand a special meeting of shareholders by written notice of demand given to the chief executive officer or chief financial officer of the corporation and containing the purposes of the meeting. Within 30 days after receipt of the demand by one of those officers, the board shall cause a special meeting of shareholders to be called and held on notice no later than 90 days after receipt

of the demand, all at the expense of the corporation. If the board fails to cause a special meeting to be called and held as required by this subdivision, the shareholder or shareholders making the demand may call the meeting by giving notice as required by section 1169, all at the expense of the corporation.

**Subdivision 3. Time; place.** Special meetings shall be held on the date and at the time and place fixed by the chief executive officer, the chief financial officer, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subdivision 2 shall be held on the Reservation.

**Subdivision 4. Business limited.** The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the shareholders have waived notice of the meeting in accordance with section 1169 subdivision 4.

#### **Sec. 1169. Notice.**

**Subdivision 1. To whom given.** Except as otherwise provided in this Code, notice of all meetings of shareholders shall be given to every holder of shares entitled to vote, unless:

(a) The meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment; or

(b) The following have been mailed by first class mail to a shareholder at the address in the corporate records and returned undeliverable:

(1) Two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or

(2) All payments of dividends sent during a 12-month period, provided there are at least two sent during the 12-month period. An action or meeting that is taken or held without notice under clause (2) has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to



the corporation, the notice requirement is reinstated.

**Subdivision 2. When given.** In all instances where a specific minimum notice period has not otherwise been fixed by law, the notice shall be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than 60 days before the date of the meeting.

**Subdivision 3. Contents.** The notice shall contain the date, time, and place of the meeting, and any other information required by this Code. In the case of a special meeting, the notice shall contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles or bylaws or deemed necessary or desirable by the board or by any other person or persons calling the meeting.

**Subdivision 4. Waiver, objections.** A shareholder may waive notice of a meeting of shareholders. A waiver of notice by a shareholder entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a shareholder at a meeting is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

## **Sec. 1170. Electronic Communications.**

**Subdivision 1. Electronic conferences.** If and to the extent authorized in the bylaws or by the board of a closely held corporation, a conference among shareholders by any means of communication through which the shareholders may simultaneously hear each other during the conference constitutes a regular or special meeting of shareholders, if the same notice is given of the conference to every holder of shares entitled to vote as would be required by this Code for a meeting, and if the number of shares held by the shareholders

participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a conference by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 1176 are met.

**Subdivision 2. Participation by electronic means.** If and to the extent authorized in the bylaws or by the board of a closely held corporation, a shareholder may participate in a regular or special meeting of shareholders not described in subdivision 1 by any means of communication through which the shareholder, other shareholders so participating, and all shareholders physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 1176 are met.

**Subdivision 3. Waiver.** Waiver of notice of a meeting by means of communication described in subdivisions 1 and 2 may be given in the manner provided in section 1169, subdivision 4. Participation in a meeting by means of communication described in subdivisions 1 and 2 is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

## **Sec. 1171. Act of the Shareholders.**

**Subdivision 1. Majority required.** The shareholders shall take action by the affirmative vote of the holders of the greater of

(1) A majority of the voting power of the shares present and entitled to vote on that item of business, or

(2) A majority of the voting power of the minimum number of the shares entitled to vote that would constitute a quorum for the transaction of business at the meeting, except where this Code or the articles require a larger proportion or number. If the articles require a larger proportion

or number than is required by this Code for a particular action, the articles control.

**Subdivision 2. Voting by class.** In any case where a class or series of shares is entitled by this Code, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares present of that class or series, or of the total outstanding shares of that class or series, as the proportion required pursuant to subdivision 1, unless the articles require a larger proportion. Unless otherwise stated in the articles or bylaws in the case of voting as a class, the minimum percentage of the total number of shares of the class or series which must be present shall be equal to the minimum percentage of all outstanding shares entitled to vote required to be present under section 1173.

#### **Sec. 1172. Action Without a Meeting.**

An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed by all of the shareholders entitled to vote on that action. The written action is effective when it has been signed by all of those shareholders, unless a different effective time is provided in the written action.

#### **Sec. 1173. Quorum.**

The holders of a majority of the voting power of the shares entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion or number is provided in the articles or bylaws. If a quorum is present when a duly called or held meeting is convened, the shareholders present may continue to transact business until adjournment, even though the withdrawal of a number of shareholders originally present leaves less than the proportion or number otherwise required for a quorum.

#### **Sec. 1174. Voting Rights.**

**Subdivision 1. Determination.** The board may fix a date not more than 60 days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of shareholders as the date

for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only shareholders on that date are entitled to notice of and permitted to vote at that meeting of shareholders.

**Subdivision 2. Certification of beneficial owner.** A resolution approved by the affirmative vote of a majority of the directors present may establish procedure whereby a shareholder may certify in writing to the corporation that all or a portion of the shares registered in the name of the shareholder are held for the account of one or more beneficial owners. Upon receipt by the corporation of the writing, the persons specified as beneficial owners, rather than the actual shareholder, are deemed the shareholders for the purposes specified in the writing.

**Subdivision 3. One vote per share.** Unless otherwise provided in the articles or in the terms of the shares, a shareholder has one vote for each share held.

**Subdivision 4. Nonshareholders.** The articles may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote under this section.

**Subdivision 5. Jointly owned shares.** Shares owned by two or more shareholders may be voted by any one of them unless the corporation receives written notice from any one of them denying the authority of that person to vote those shares.

**Subdivision 6. Manner of voting; presumption.** Except as provided in subdivision 5, a holder of shares entitled to vote may vote any portion of the shares in any way the shareholder chooses. If a shareholder votes without designating the proportion or number of shares voted in a particular way, the shareholder is deemed to have voted all of the shares in that way.

#### **Sec. 1175. Voting of Shares by Organizations and Legal Representatives.**

**Subdivision 1. Shares held by other corporation.** Shares of a corporation registered in the name of another tribal or foreign corporation may be voted by the chief executive officer or another legal representative of that corporation.

**Subdivision 2. Shares held by subsidiary.** Except as provided in subdivision 3, shares of a corporation registered in the name of a subsidiary are not entitled to vote on any matter.

**Subdivision 3. Shares controlled in fiduciary capacity.** Shares of a corporation in the name of or under the control of the corporation or a subsidiary in a fiduciary capacity are not entitled to vote on any matter, except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or gives the corporation binding instructions on how to vote the shares.

**Subdivision 4. Voting by certain representatives.** Shares under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or attorney-in-fact may be voted by the person, either in person or by proxy, without registration of those shares in the name of the person. Shares registered in the name of a trustee of a trust or in the name of a custodian may be voted by the person, either in person or by proxy, but a trustee of a trust or a custodian shall not vote shares held by the person unless they are registered in the name of the person.

**Subdivision 5. Voting by trustee in bankruptcy or receiver.** Shares registered in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Shares under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without registering the shares in the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.

**Subdivision 6. Shares held by other organizations.** Shares registered in the name of an organization not described in subdivisions 1 to 5 may be voted either in person or by proxy by the legal representative of that organization.

**Subdivision 7. Pledged shares.** A shareholder whose shares are pledged may vote those shares until the shares are registered in the name of the pledgee. If the corporation pledges its own shares

under section 1189, subdivision 1, the corporation shall not be entitled to vote the shares at a meeting or otherwise.

## **Sec. 1176. Proxies.**

**Subdivision 1. Authorization.** A shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy with an officer of the corporation at or before the meeting at which the appointment is to be effective. A written appointment of a proxy may be signed by the shareholder or authorized by the shareholder by transmission of a telegram, cablegram, or other means of electronic transmission, provided that the telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the shareholder. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, provided that the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed or otherwise authorized by any one of them, unless the corporation receives from any one of those shareholders written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

**Subdivision 2. Duration.** The appointment of a proxy is valid for 11 months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest in the shares or in the corporation.

**Subdivision 3. Termination.** An appointment may be terminated at will, unless the appointment is coupled with an interest, in which case it shall not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by

filing written notice of the termination of the appointment with an officer of the corporation, or by filing a new written appointment of a proxy with an officer of the corporation. Termination in either manner revokes all prior proxy appointments and is effective when filed with an officer of the corporation.

**Subdivision 4. Revocation by death, incapacity.** The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by an officer of the corporation before the proxy exercises the authority under that appointment.

**Subdivision 5. Multiple proxies.** Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a shareholder:

(a) Any one of them may vote the shares on each item of business in accordance with specific instructions contained in the appointment; and

(b) If no specific instructions are contained in the appointment with respect to voting the shares on a particular item of business, the shares shall be voted as a majority of the proxies determine. If the proxies are equally divided, the shares shall not be voted.

**Subdivision 6. Vote of proxy accepted; liability.** Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the corporation may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the shareholder or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

**Subdivision 7. Limited authority.** If a proxy is given authority by a shareholder to vote on less than all items of business considered at a meeting of shareholders, the shareholder is considered to be present and entitled to vote by the proxy for purposes of section 1171, subdivision 1, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a shareholder who abstains

with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subdivision.

## **Sec. 1177. Voting Trusts.**

**Subdivision 1. Authorization; period; termination.** Shares in a corporation may be transferred to a trustee pursuant to written agreement, for the purpose of conferring on the trustee the right to vote and otherwise represent the beneficial owner of those shares for a period not exceeding 15 years, except that if the agreement is made in connection with an indebtedness of the corporation, the voting trust may extend until the indebtedness is discharged. Unless otherwise specified in the agreement, the voting trust may be terminated at any time by the beneficial owners of a majority of the voting power of the shares held by the trustee. A copy of the agreement shall be filed with the corporation.

**Subdivision 2. Voting by trustees.** Unless otherwise provided in the trust agreement, if there are two or more trustees, the manner of voting is determined as provided in section 1174, subdivision 5.

## **Sec. 1178. Shareholder Voting Agreements.**

A written agreement among persons who are then shareholders or subscribers for shares to be issued, relating to the voting of their shares, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of section 1176 regarding proxies and is not subject to the provisions of section 1177 regarding voting trusts.

## **Sec. 1179. Shareholder Control Agreements.**

**Subdivision 1. Authorized.** A written agreement among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subdivision 2.

**Subdivision 2. Method of approval; enforceability; copies.**

(a) A written agreement among persons described in subdivision 1 that relates to the control of or the liquidation and dissolution of the corporation, the relations among them, or any phase of the business and affairs of the corporation, including, without limitation, the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued.

(b) The agreement is enforceable by the persons described in subdivision 1 who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A copy of the agreement shall be filed with the corporation. The existence and location of a copy of the agreement shall be noted conspicuously on the face or back of each certificate for shares issued by the corporation and on each transaction statement.

(c) A shareholder, a beneficial owner of shares, or another person having a security interest in shares has the right upon written demand to obtain a copy of the agreement from the corporation at the expense of the corporation.

**Subdivision 3. Liability.** The effect of an agreement authorized by this section is to relieve the board and the director or directors in their capacities as directors of, and to impose upon the parties to the agreement, the liability for acts or omissions imposed by law upon directors to the extent that and so long as the discretion or powers of the directors in the management of the business and affairs of the corporation are exercised by the shareholders under a provision in the agreement. A shareholder is not liable pursuant to this subdivision by virtue of a shareholder vote, if the shareholder had no right to vote on the action.

**Subdivision 4. Other agreements.** This section does not apply to, limit, or restrict agreements

otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among shareholders or between the shareholders and the corporation with respect to any of the matters described in this section.

**Sec. 1180. Books and Records; Inspection.**

**Subdivision 1. Share register, dates of issuance.**

(a) A corporation shall keep at its principal executive office, or at another place or places within the United States determined by the board, a share register not more than one year old, containing the names and addresses of the shareholders and the number and classes of shares held by each shareholder.

(b) A corporation shall also keep, at its principal executive office, or at another place or places within the United States determined by the board, a record of the date on which certificates or transaction statements representing shares were issued.

**Subdivision 2. Other documents required.** A corporation shall keep at its principal executive office, or, if its principal executive office is outside the Reservation, shall make available at its registered office within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subdivision 4, originals or copies of:

(a) Records of all proceedings of shareholders for the last three years;

(b) Records of all proceedings of the board for the last three years;

(c) Its articles and all amendments currently in effect;

(d) Its bylaws and all amendments currently in effect;

(e) Financial statements required by section 1181 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter a public record;

(f) Reports made to shareholders generally within the last three years;

(g) A statement of the names and usual business addresses of its directors and principal officers;

(h) Voting trust agreements described in section 1177;

(i) Shareholder control agreements described in section 1179; and

(j) A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under section 1156, subdivision 3.

**Subdivision 3. Financial records.** A corporation shall keep appropriate and complete financial records.

**Subdivision 4. Right to inspect.**

(a) A shareholder, beneficial owner, or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time:

(1) The share register; and

(2) All documents referred to in subdivision 2.

(b) A shareholder, beneficial owner, or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has a right, upon written demand, to examine and copy, in person or by a legal representative, other corporate records at any reasonable time only if the shareholder, beneficial owner, or holder of a voting trust certificate demonstrates a proper purpose for the examination.

(c) A shareholder, beneficial owner, or a holder of a voting trust certificate of a publicly held corporation has, upon written demand stating the purpose and acknowledged before the Tribal Secretary, a right at any reasonable time to examine and copy the corporation's share register and other corporate records reasonably related to the stated purpose and described with reasonable particularity in the written demand upon demonstrating the stated purpose to be a proper purpose. The acknowledged or verified demand must be directed to the corporation at its registered office

on the Reservation or at its principal place of business.

(d) For purposes of this section, a "proper purpose" is one reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.

**Subdivision 5. Protective orders.** On application of the corporation, the court may issue a protective order permitting the corporation to withhold portions of the records of proceedings of the board for a reasonable period of time, not to exceed 12 months, in order to prevent premature disclosure of confidential information which would be likely to cause competitive injury to the corporation. A protective order may be renewed for successive reasonable periods of time, each not to exceed 12 months and in total not to exceed 36 months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action which the shareholder, beneficial owner, or holder of a voting trust certificate might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the corporation, it shall award reasonable expenses, including attorney's fees and disbursements, to the shareholder, beneficial owner, or holder of a voting trust certificate. This subdivision does not limit the right of the court to grant other protective orders or impose other reasonable restrictions on the nature of the corporate records that may be copied or examined under subdivision 4 or the use or distribution of the records by the demanding shareholder, beneficial owner, or holder of a voting trust certificate.

**Subdivision 6. Other use prohibited.** A shareholder, beneficial owner, or holder of a voting trust certificate who has gained access under this section to any corporate record including the share register may not use or furnish to another for use the corporate record or a portion of the contents for any purpose other than a proper purpose. Upon application of the corporation, the court may issue a protective order or order other

relief as may be necessary to enforce the provisions of this subdivision.

**Subdivision 7. Cost of copies.** Copies of the share register and all documents referred to in subdivision 2, if required to be furnished under this section, shall be furnished at the expense of the corporation. In all other cases, the corporation may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

**Subdivision 8. Computerized records.** The records maintained by a corporation, including its share register, financial records, and minute books, may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or micro-images, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert any of the records referred to in subdivision 4 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subdivision 7. A copy of the conversion is admissible in evidence, and shall be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

#### **Sec. 1181. Financial Statements.**

A corporation shall, upon written request by a shareholder, furnish annual financial statements, including at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, which shall be prepared on the basis of accounting methods reasonable in the circumstances and may be consolidated statements of the corporation and one or more of its subsidiaries. In the case of statements audited by a public accountant, each copy shall be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy shall be accompanied by a statement of the chief financial officer or other person in charge of the corporation's financial records stating the reasonable

belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

#### **Sec. 1182. Equitable Remedies.**

If a corporation or an officer or director of the corporation violates a provision of this Code, the court may, in an action brought by a shareholder of the corporation, grant any equitable relief it deems just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the shareholder.

#### **Sec. 1183. Rights of Dissenting Shareholders.**

**Subdivision 1. Actions creating rights.** A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) An amendment of the articles that materially and adversely affects the rights or preferences of the shares of the dissenting shareholder in that it:

(1) Alters or abolishes a preferential right of the shares;

(2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of the shares;

(3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares;

(4) Excludes or limits the right of a shareholder to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights;

(b) A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation not made in the usual or regular

course of its business, but not including a disposition in dissolution described in section 11105, subdivision 2, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;

(c) A plan of merger, whether or not under this Code, to which the corporation is a party, except as provided in subdivision 3;

(d) A plan of exchange, whether or not under this Code, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to be voted on the plan; or

(e) Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.

**Subdivision 2. Beneficial owners.**

(a) A shareholder shall not assert dissenters' rights as to less than all of the shares registered in the name of the shareholder, unless the shareholder dissents with respect to all the shares that are beneficially owned by another person but registered in the name of the shareholder and discloses the name and address of each beneficial owner on whose behalf the shareholder dissents. In that event, the rights of the dissenter shall be determined as if the shares as to which the shareholder has dissented and the other shares were registered in the names of different shareholders.

(b) A beneficial owner of shares who is not the shareholder may assert dissenters' rights with respect to shares held on behalf of the beneficial owner, and shall be treated as a dissenting shareholder under the terms of this section and section 1184, if the beneficial owner submits to the corporation at the time of or before the assertion of the rights a written consent of the shareholder.

**Subdivision 3. Rights not to apply.** The right to obtain payment under this section does not apply to a shareholder of the surviving corporation

in a merger, if the shares of the shareholder are not entitled to be voted on the merger.

**Subdivision 4. Other rights.** The shareholders of a corporation who have a right under this section to obtain payment for their shares do not have a right at law or in equity to have a corporate action described in subdivision 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation.

**Sec. 1184. Procedures for Asserting Dissenter's Rights.**

**Subdivision 1. Definitions.**

(a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Corporation" means the issuer of the shares held by a dissenter before the corporate action referred to in section 1183, subdivision 1 or the successor by merger of that issuer.

(c) "Fair value of the shares" means the value of the shares of a corporation immediately before the effective date of the corporate action referred to in section 1183, subdivision 1.

(d) "Interest" means interest commencing five days after the effective date of the corporate action referred to in section 1183, subdivision 1, up to and including the date of payment, calculated at the rate provided by the laws of the Tribe for interest on verdicts and judgments, or if the laws of the Tribe do not establish a rate, then at the rate provided by the laws of the State of Montana for interest on verdicts and judgments.

**Subdivision 2. Notice of action.** If a corporation calls a shareholder meeting at which any action described in section 1183, subdivision 1 is to be voted upon, the notice of the meeting shall inform each shareholder of the right to dissent and shall include a copy of section 1183 and this section and a brief description of the procedure to be followed under these sections.

**Subdivision 3. Notice of dissent.** If the proposed action must be approved by the shareholders, a shareholder who wishes to exercise dissenters' rights must file with the corporation before the vote on the proposed action a written notice



of intent to demand the fair value of the shares owned by the shareholder and must not vote the shares in favor of the proposed action.

**Subdivision 4. Notice of procedure; deposit of shares.**

(a) After the proposed action has been approved by the board and, if necessary, the shareholders, the corporation shall send to all shareholders who have complied with subdivision 3 and to all shareholders entitled to dissent if no shareholder vote was required, a notice that contains:

(1) The address to which a demand for payment and certificates of certificated shares must be sent in order to obtain payment and the date by which they must be received;

(2) Any restrictions on transfer of uncertificated shares that will apply after the demand for payment is received;

(3) A form to be used to certify the date on which the shareholder, or the beneficial owner on whose behalf the shareholder dissents, acquired the shares or an interest in them and to demand payment; and

(4) A copy of section 1183 and this section and a brief description of the procedures to be followed under these sections.

(b) In order to receive the fair value of the shares, a dissenting shareholder must demand payment and deposit certificated shares or comply with any restrictions on transfer of uncertificated shares within 30 days after the notice was given, but the dissenter retains all other rights of a shareholder until the proposed action takes effect.

**Subdivision 5. Payment; return of shares.**

(a) After the corporate action takes effect, or after the corporation receives a valid demand for payment, whichever is later, the corporation shall remit to each dissenting shareholder who has complied with subdivisions 3 and 4 the amount the corporation estimates to be the fair value of the shares, plus interest, accompanied by:

(1) The corporation's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the effective date

of the corporate action, together with the latest available interim financial statements;

(2) An estimate by the corporation of the fair value of the shares and a brief description of the method used to reach the estimate; and

(3) A copy of section 1183 and this section, and a brief description of the procedure to be followed in demanding supplemental payment.

(b) The corporation may withhold the remittance described in paragraph (a) from a person who was not a shareholder on the date the action dissented from was first announced to the public or who is dissenting on behalf of a person who was not a beneficial owner on that date. If the dissenter has complied with subdivisions 3 and 4, the corporation shall forward to the dissenter the materials described in paragraph (a), a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subdivision 6. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subdivisions 7 and 8 apply.

(c) If the corporation fails to remit payment within 60 days of the deposit of certificates or the imposition of transfer restrictions on uncertificated shares, it shall return all deposited certificates and cancel all transfer restrictions. However, the corporation may again give notice under subdivision 4 and require deposit or restrict transfer at a later time.

**Subdivision 6. Supplemental payment; demand.** If a dissenter believes that the amount remitted under subdivision 5 is less than the fair value of the shares plus interest, the dissenter may give written notice to the corporation of the dissenter's own estimate of the fair value of the shares, plus interest, within 30 days after the corporation mails the remittance under subdivision 5, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the corporation.

**Subdivision 7. Petition; determination.** If the corporation receives a demand under subdivision

6, it shall, within 60 days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the corporation or file in court a petition requesting that the court determine the fair value of the shares, plus interest. The petition shall name as parties all dissenters who have demanded payment under subdivision 6 and who have not reached agreement with the corporation. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court deems proper, to receive evidence on and recommend the amount of the fair value of the shares. The court shall determine whether the shareholder or shareholders in question have fully complied with the requirements of this section, and shall determine the fair value of the shares, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the corporation or by a dissenter. The fair value of the shares as determined by the court is binding on all shareholders, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the shares as determined by the court, plus interest, exceeds the amount, if any, remitted under subdivision 5, but shall not be liable to the corporation for the amount, if any, by which the amount, if any, remitted to the dissenter under subdivision 5 exceeds the fair value of the shares as determined by the court, plus interest.

**Subdivision 8. Costs; fees; expenses.**

(a) The court shall determine the costs and expenses of a proceeding under subdivision 7, including the reasonable expenses and compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the corporation, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment under subdivision 6 is found to be arbitrary, vexatious, or not in good faith.

(b) If the court finds that the corporation has failed to comply substantially with this section, the court may assess all fees and expenses of any

experts or attorneys as the court deems equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.

(c) The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.

**Subchapter H. Loans; Obligations; Distributions**

**Sec. 1185. Loans; Guarantees; Suretyship.**

**Subdivision 1. Prerequisites.** A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the directors present and:

(a) Is in the usual and regular course of business of the corporation;

(b) Is with, or for the benefit of, a related corporation, an organization in which the corporation has a financial interest, an organization with which the corporation has a business relationship, or an organization to which the corporation has the power to make donations;

(c) Is with, or for the benefit of, an officer or other employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or a subsidiary, and may reasonably be expected, in the judgment of the board, to benefit the corporation; or

(d) Has been approved by:

(1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested person or persons, or

(2) The unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.

**Subdivision 2. Interest; security.** A loan, guaranty, surety contract, or other financial assistance under subdivision 1 may be with or without interest and may be unsecured or may be secured

in any manner, including, without limitation, a grant of a security interest in shares of the corporation.

Subdivision 3. Banking authority not granted. This section does not grant any authority to act as a bank or to carry on the business of banking.

#### **Sec. 1186. Advances.**

A corporation may, without a vote of the directors, advance money to its directors, officers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

#### **Sec. 1187. Indemnification.**

##### **Subdivision 1. Definitions.**

(a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) “Corporation” includes a tribal or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor’s existence ceased upon consummation of the transaction.

(c) “Official capacity” means

(1) With respect to a director, the position of director in a corporation,

(2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation, and

(3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, officer, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

(d) “Proceeding” means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.

(e) “Special legal counsel” means counsel who has not represented the corporation or a related corporation, or a director, officer, member of a committee of the board, or employee, whose indemnification is in issue.

##### **Subdivision 2. Indemnification mandatory; standard.**

(a) Subject to the provisions of subdivision 4, a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys’ fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

(1) Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys’ fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;

(2) Acted in good faith;

(3) Received no improper personal benefit and section 1146, if applicable, has been satisfied;

(4) In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

(5) In the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (1) or (2), reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in

subdivision 1, paragraph (c), clause (3), reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

(b) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in this subdivision.

**Subdivision 3. Advances.** Subject to the provisions of subdivision 4, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding,

(a) Upon receipt by the corporation of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subdivision 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the corporation, if it is ultimately determined that the criteria for indemnification have not been satisfied, and

(b) After a determination that the facts then known to those making the determination would not preclude indemnification under this section. The written undertaking required by clause (a) is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

**Subdivision 4. Prohibition or limit on indemnification or advances.** The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions

contained in subdivisions 2 and 3 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring prior to the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.

**Subdivision 5. Reimbursement to witnesses.** This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys' fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

**Subdivision 6. Determination of eligibility.**

(a) All determinations of whether indemnification of a person is required because the criteria set forth in subdivision 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 shall be made:

(1) By the board by a majority of a quorum; directors who are at the time parties to the proceeding shall not be counted for determining either a majority or the presence of a quorum;

(2) If a quorum under clause (1) cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;

(3) If a determination is not made under clause (1) or (2), by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to clause (1) or (2) or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;

(4) If a determination is not made under clauses (1) to (3), by the shareholders, excluding the votes of shares held by parties to the proceeding; or

(5) If an adverse determination is made under clauses (1) to (4) or under paragraph (b), or if no determination is made under clauses (1) to (4) or under paragraph (b) within 60 days after (i) the later to occur of the termination of a proceeding or a written request for indemnification to the corporation or (ii) a written request for an advance of expenses, as the case may be, by the court, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

(b) With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subdivision 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.

**Subdivision 7. Insurance.** A corporation may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under the provisions of this section.

**Subdivision 8. Disclosure.** A corporation that indemnifies or advances expenses to a person in accordance with this section in connection with a

proceeding by or on behalf of the corporation shall report to the shareholders in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of shareholders.

**Subdivision 9. Indemnification of other persons.** Nothing in this section shall be construed to limit the power of the corporation to indemnify other persons by contract or otherwise.

## **Sec. 1188. Distributions.**

**Subdivision 1. When permitted.** The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with subdivision 2, that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous, and the corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution. The effect of a distribution on the ability of the corporation to pay its debts in the ordinary course of business after making the distribution shall be measured in accordance with subdivision 3. The right of the board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by, or the rights and priorities of persons to receive distributions may be established by, the articles or bylaws or an agreement.

**Subdivision 2. Determination presumed proper.** A determination that the corporation will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 1145 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 1145 or 1191 will accrue if the requirements of this subdivision have been met.

**Subdivision 3. Effect measured.**

(a) In the case of a distribution made by a corporation in connection with a purchase, redemption, or other acquisition of its shares, the effect of the distribution shall be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the corporation, or as of the date on which the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is the earliest.

(b) The effect of any other distribution shall be measured as of the date of its authorization if payment occurs 120 days or less following the date of authorization or as of the date of payment if payment occurs more than 120 days following the date of authorization.

(c) Indebtedness of a corporation incurred or issued in a distribution in accordance with this section to a shareholder who as a result of the transaction is no longer a shareholder is on a parity with the indebtedness of the corporation to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the corporation or a related corporation, or subject to any other agreement between the corporation and the shareholder.

(d) Sections 1188 to 1191 supersede all other laws of the Tribe with respect to distributions.

#### Subdivision 4. Restrictions.

(a) A distribution may be made to the holders of a class or series of shares only if:

(1) All amounts payable to the holders of shares having a preference for the payment of that kind of distribution, other than those holders who give notice to the corporation of their agreement to waive their rights to that payment, are paid; and

(2) The payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights, unless the distribution is made to those shareholders in the order and to the extent of their respective priorities or the holders of shares who do not receive distributions in that order give notice to the corporation of their agreement to waive their rights

to that distribution. A determination that the payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 1145 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation, or other methods, reasonable in the circumstances. Liability under section 1145 or 1191 will not arise if the requirements of this paragraph are met.

(b) If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro-rata according to the order of priority of preferences by classes and by series within those classes unless those holders who do not receive distributions in that order give notice to the corporation of their agreement to waive their rights to that distribution.

### **Sec. 1189. Power to Acquire Shares.**

**Subdivision 1. When permitted; status of shares.** A corporation may acquire its own shares, subject to section 1188 and subdivision 3. If the corporation pledges the shares to secure payment of the redemption price thereof, then the corporation shall not be deemed to have acquired the shares for the purposes of this subdivision until the pledge is released. Shares acquired by a corporation constitute authorized but unissued shares of the corporation, unless the articles provide that they shall not be reissued, in which case the number of authorized shares is reduced by the number of shares acquired.

**Subdivision 2. Statement of cancellation.** If the number of authorized shares of a corporation is reduced by an acquisition of its shares, the corporation shall, no later than the time it makes its next annual report to shareholders or, if no report is made, no later than three months after the end of the fiscal year in which the acquisition occurs, file with the Tribal Secretary a statement of cancellation showing the reduction in the authorized shares. The statement shall contain:

- (a) The name of the corporation;
- (b) The number of acquired shares canceled, itemized by classes and series; and
- (c) The aggregate number of authorized shares itemized by classes and series, after giving effect to the cancellation.

**Subdivision 3. Limitation on share purchases.** A publicly held corporation shall not, directly or indirectly, purchase or agree to purchase any shares entitled to vote from a person (or two or more persons who act as a partnership, limited partnership, syndicate, or other group pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise for the purpose of acquiring, owning, or voting shares of the publicly held corporation) who beneficially owns more than five percent of the voting power of the publicly held corporation for more than the market value thereof if the shares have been beneficially owned by the person for less than two years, unless the purchase or agreement to purchase is approved at a meeting of shareholders by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote or the publicly held corporation makes an offer, of at least equal value per share, to all holders of shares of the class or series and to all holders of any class or series into which the securities may be converted. For purposes of determining the period that shares have been beneficially owned by a person:

(1) Shares acquired by the person by gift from a donor are deemed to have first become beneficially owned by the person when the shares were acquired by the donor;

(2) Shares acquired by a trust from the settlor of the trust, or shares acquired from the trust by a beneficiary of the trust, are deemed to have first become beneficially owned by the trust or the beneficiary when the shares were acquired by the settlor; and

(3) Shares acquired by an estate or personal representative as a result of the death or incapacity of a person, or shares acquired from the estate or personal representative by an heir, devisee, or beneficiary of the deceased or incapacitated person, are deemed to have first become beneficially

owned by the estate, personal representative, heir, devisee, or beneficiary when the shares were acquired by the deceased or incapacitated person.

## **Sec. 1190. Liability of Shareholders for Illegal Distributions.**

**Subdivision 1. Liability.** A shareholder who receives a distribution made in violation of the provisions of section 1188 is liable to the corporation, its receiver or other person winding up its affairs, or a director under section 1191, subdivision 2, but only to the extent that the distribution received by the shareholder exceeded the amount that properly could have been paid under section 1188.

**Subdivision 2. Statute of limitations.** An action shall not be commenced under this section more than two years from the date of the distribution.

## **Sec. 1191. Liability of Directors for Illegal Distributions.**

**Subdivision 1. Liability.** In addition to any other liabilities, a director who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of section 1188 or a restriction contained in the articles or bylaws or an agreement, and who fails to comply with the standard of conduct provided in section 1145, is liable to the corporation jointly and severally with all other directors so liable and to other directors under subdivision 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 1188.

**Subdivision 2. Contribution from shareholders.** A director against whom an action is brought under this section with respect to a distribution may implead in that action all shareholders who received the distribution and may compel pro-rata contribution from them in that action to the extent provided in section 1190, subdivision 1.

**Subdivision 3. Impleader, contribution from directors.** A director against whom an action is brought under this section with respect to a distribution may implead in that action all other directors who voted for or consented in writing to the

distribution and may compel pro-rata contribution from them in that action.

**Subdivision 4. Statute of limitations.** An action shall not be commenced under this section more than two years from the date of the distribution.

## **Subchapter I. Merger, Exchange, Transfer**

### **Sec. 1192. Merger, Exchange, Transfer.**

**Subdivision 1. Merger.** Any two or more corporations may merge, resulting in a single corporation, with or without a business purpose, pursuant to a plan of merger approved in the manner provided in sections 1193 to 1199.

**Subdivision 2. Exchange.** A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation pursuant to a plan of exchange approved in the manner provided in sections 1193 to 1195, and 1197 to 1199.

**Subdivision 3. Transfer.** A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in section 11100.

**Subdivision 4. Reserved.**

### **Sec. 1193. Plan of Merger or Exchange.**

**Subdivision 1. Contents of plan.** A plan of merger or exchange shall contain:

(a) The names of the corporations proposing to merge or participate in an exchange, and:

(1) In the case of a merger, the name of the surviving corporation;

(2) In the case of an exchange, the name of the acquiring corporation;

(b) The terms and conditions of the proposed merger or exchange;

(c)(1) In the case of a merger, the manner and basis of converting the shares of the constituent corporations into securities of the surviving corporation or of any other corporation, or, in whole or in part, into money or other property; or

(2) In the case of an exchange, the manner and basis of exchanging the shares to be acquired for securities of the acquiring corporation or any other corporation or, in whole or part, into money or other property;

(d) In the case of a merger, a statement of any amendments to the articles of the surviving corporation proposed as part of the merger; and

(e) Any other provisions with respect to the proposed merger or exchange that are deemed necessary or desirable.

**Subdivision 2. Other agreements.** The procedure authorized by this section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a negotiated agreement with the shareholders or otherwise.

### **Sec. 1194. Plan Approval.**

**Subdivision 1. Board approval; notice to shareholders.** A resolution containing the plan of merger or exchange shall be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent corporation and shall then be submitted at a regular or a special meeting to the shareholders of

(i) Each constituent corporation, in the case of a plan of merger, and

(ii) The corporation whose shares will be acquired by the acquiring corporation in the exchange, in the case of a plan of exchange. If shareholders holding any class or series of stock of the corporation are entitled to vote on the plan of merger or exchange pursuant to this section, written notice shall be given to every shareholder of a corporation, whether or not entitled to vote at the meeting, not less than 14 days nor more than 60 days before the meeting, in the manner provided in section 1169 for notice of meetings of shareholders. The written notice shall state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange shall be included in or enclosed with the notice.

#### **Subdivision 2. Approval by shareholders.**

(a) At the meeting a vote of the shareholders shall be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote.



Except as provided in paragraph (b), a class or series of shares of the corporation is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles, entitle the class or series of shares to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

(b) A class or series of shares of the corporation is not entitled to vote as a class or series solely because the plan of merger or exchange effects a cancellation of the shares of the class or series if the plan of merger or exchange effects a cancellation of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger or exchange and shareholders of shares of that class or series are entitled to obtain payment for the fair value of their shares under section 1183 in the event of the merger or exchange.

**Subdivision 3. When approval by shareholders not required.** Notwithstanding the provisions of subdivisions 1 and 2, submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not required if:

(a) The articles of the corporation will not be amended in the transaction;

(b) Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately thereafter;

(c) The number of shares of the corporation entitled to vote immediately after the merger, plus the number of shares of the corporation entitled to vote issuable on conversion of securities other than shares or on the exercise of rights to purchase securities issued by virtue of the terms of the transaction, will not exceed by more than 20 percent, the number of shares of the corporation entitled to vote immediately before the transaction; and

(d) The number of participating shares of the corporation immediately after the merger, plus the number of participating shares of the corporation issuable on conversion, or on the exercise of

rights to purchase, securities issued in the transaction, will not exceed by more than 20 percent, the number of participating shares of the corporation immediately before the transaction. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

## **Sec. 1195. Articles of Merger or Exchange; Certificate.**

**Subdivision 1. Contents of articles.** Upon receiving the approval required by section 1194, articles of merger or exchange shall be prepared that contain:

(a) The plan of merger or exchange; and

(b) A statement that the plan has been approved by each corporation pursuant to this Code.

**Subdivision 2. Articles signed, filed.** The articles of merger or exchange shall be signed on behalf of each constituent corporation and filed with the Tribal Secretary.

**Subdivision 3. Certificate.** The Tribal Secretary shall issue a certificate of merger to the surviving corporation or its legal representative and a certificate of exchange to the acquiring corporation or its legal representative.

## **Sec. 1196. Merger of Subsidiary.**

**Subdivision 1. When authorized; contents of plan.** A parent owning at least 90 percent of the outstanding shares of each class and series of a subsidiary directly, or indirectly through related corporations, may merge the subsidiary into itself or into any other subsidiary at least 90 percent of the outstanding shares of each class and series of which is owned by the parent directly, or indirectly through related corporations, without a vote of the shareholders of itself or any subsidiary or may merge itself, or itself and one or more of the subsidiaries, into one of the subsidiaries under this section. A resolution approved by the affirmative vote of a majority of the directors of the parent present shall set forth a plan of merger that contains:

(a) The name of the subsidiary or subsidiaries, the name of the parent and the name of the surviving corporation;

(b) The manner and basis of converting the shares of the subsidiary or subsidiaries or parent into securities of the parent, subsidiary, or of another corporation or, in whole or in part, into money or other property;

(c) If the parent is a constituent corporation but is not the surviving corporation in the merger, a provision for the pro-rata issuance of shares of the surviving corporation to the holders of shares of the parent on surrender of any certificates for shares of the parent; and

(d) If the surviving corporation is a subsidiary, a statement of any amendments to the articles of the surviving corporation that will be part of the merger. If the parent is a constituent corporation but is not the surviving corporation in the merger, the resolution is not effective unless it is also approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with section 1194 if the parent is a tribal corporation or in accordance with the laws under which it is incorporated if the parent is a foreign corporation.

**Subdivision 2. Notice to shareholders of subsidiary.** A copy of the plan of merger shall be mailed to each shareholder, other than the parent and any subsidiary, of each subsidiary that is a constituent corporation in the merger.

**Subdivision 3. Articles of merger, contents of articles.** Articles of merger shall be prepared that contain:

(a) The plan of merger;

(b) The number of outstanding shares of each class and series of each subsidiary that is a constituent corporation in the merger and the number of shares of each class and series of the subsidiary or subsidiaries owned by the parent directly, or indirectly through related corporations;

(c) The date a copy of the plan of merger was mailed to shareholders, other than the parent or a subsidiary, of each subsidiary that is a constituent corporation in the merger; and

(d) A statement that the plan of merger has been approved by the parent under this section.

**Subdivision 4. Articles signed, filed.** Within 30 days after a copy of the plan of merger is mailed to shareholders of each subsidiary that is a constituent corporation to the merger, or upon waiver of the mailing by the holders of all outstanding shares of each subsidiary that is a constituent corporation to the merger, the articles of merger shall be signed on behalf of the parent and filed with the Tribal Secretary.

**Subdivision 5. Certificate.** The Tribal Secretary shall issue a certificate of merger to the parent or its legal representative or, if the parent is a constituent corporation but is not the surviving corporation in the merger, to the surviving corporation or its legal representative.

**Subdivision 6. Rights of dissenting shareholders.** In the event all of the stock of one or more tribal subsidiaries of the parent that is a constituent party to a merger under this section is not owned by the parent directly, or indirectly through related corporations, immediately prior to the merger, the shareholders of each tribal subsidiary have dissenters' rights under section 1183, without regard to sections 1183, subdivision 3, and 1184. If the parent is a constituent corporation but is not the surviving corporation in the merger, and the articles of incorporation of the surviving corporation immediately after the merger differ from the articles of incorporation of the parent immediately prior to the merger in a manner that would entitle a shareholder of the parent to dissenters' rights under section 1183, subdivision 1, paragraph (a), if the articles of incorporation of the surviving corporation constituted an amendment to the articles of incorporation of the parent, that shareholder of the parent has dissenters' rights as provided under sections 1183 and 1184. Except as provided in this subdivision, sections 1183 and 1184 do not apply to any merger effected under this section.

**Subdivision 7. Nonexclusivity.** A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 1193, 1194, and

1195 instead of this section, in which case this section does not apply.

### **Sec. 1197. Abandonment.**

**Subdivision 1. By shareholders or plan.** After a plan of merger or exchange has been approved by the shareholders entitled to vote on the approval of the plan as provided in section 1194 and before the effective date of the plan, it may be abandoned:

(a) If the shareholders of each of the constituent corporations entitled to vote on the approval of the plan as provided in section 1194 have approved the abandonment at a meeting by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote and, if the shareholders of a constituent corporation are not entitled to vote on the approval of the plan under section 1194, the board of directors of the constituent corporation has approved the abandonment by the affirmative vote of a majority of the directors present;

(b) If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

(c) Pursuant to subdivision 2.

**Subdivision 2. By board.** A plan of merger or exchange may be abandoned, before the effective date of the plan, by a resolution of the board of directors of any constituent corporation abandoning the plan of merger or exchange approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan.

**Subdivision 3. Filing of articles.** If articles of merger or exchange have been filed with the Tribal Secretary, but have not yet become effective, the constituent corporations, in the case of abandonment under subdivision 1, clause (a), the constituent corporations or any one of them, in the case of abandonment under subdivision 1, clause (b), or the abandoning corporation in the case of abandonment under subdivision 2, shall file with the Tribal Secretary articles of abandonment that contain:

(a) The names of the constituent corporations;

(b) The provision of this section under which the plan is abandoned; and

(c) If the plan is abandoned under subdivision 2, the text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan.

### **Sec. 1198. Effective Date of Merger or Exchange; Effect.**

**Subdivision 1. Effective date.** A merger or exchange is effective when the articles of merger or exchange are filed with the Tribal Secretary or on a later date specified in the articles of merger or exchange.

**Subdivision 2. Effect on corporation.** When a merger becomes effective:

(a) The constituent corporations become a single corporation, the surviving corporation;

(b) The separate existence of all constituent corporations except the surviving corporation ceases;

(c) The surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this Code;

(d) The surviving corporation possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent corporations. All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares, and all other choses in action, and every other interest of or belonging to or due to each of the constituent corporations vests in the surviving corporation without any further act or deed. Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent corporation by its current officers or, if the corporation no longer exists, by its last officers. The title to any real estate or any interest therein vested in any of the constituent corporations does not revert nor in any way become impaired by reason of the merger;

(e) The surviving corporation is responsible and liable for all the liabilities and obligations of each of the constituent corporations. A claim of

or against or a pending proceeding by or against a constituent corporation may be prosecuted as if the merger had not taken place, or the surviving corporation may be substituted in the place of the constituent corporation.

Neither the rights of creditors nor any liens upon the property of a constituent corporation are impaired by the merger; and

(f) The articles of the surviving corporation are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

**Subdivision 3. Effect on shareholders.** When a merger or exchange becomes effective, the shares of the corporation or corporations to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are deemed to be exchanged in the case of an exchange. The holders of those shares are entitled only to the securities money, or other property into which those shares have been converted or for which those shares have been exchanged in accordance with the plan, subject to any dissenter's rights under section 1183.

## **Sec. 1199. Merger or Exchange With Foreign Corporation.**

**Subdivision 1. When permitted.** A tribal corporation may merge with or participate in an exchange with a foreign corporation by following the procedures set forth in this section, if:

(1) With respect to a merger, the merger is permitted by the laws of the jurisdiction under which the foreign corporation is incorporated; and

(2) With respect to an exchange, the corporation whose shares will be acquired is a tribal corporation, whether or not the exchange is permitted by the laws of the jurisdiction under which the foreign corporation is incorporated.

**Subdivision 2. Laws applicable before transaction.** Each tribal corporation shall comply with the provisions of sections 1192 to 1199 with respect to the merger or exchange of shares of corporations and each foreign corporation shall com-

ply with the applicable provisions of the laws under which it was incorporated or by which it is governed.

**Subdivision 3. Tribal surviving corporation.** If the surviving corporation in a merger will be a tribal corporation, it shall comply with all the provisions of this Code.

**Subdivision 4. Foreign surviving corporation.** If the surviving corporation in a merger will be a foreign corporation and will transact business on the Reservation, it shall comply with any laws of the Tribe regarding qualification by a foreign corporation to do business on the Reservation. In every case the surviving corporation shall file with the Tribal Secretary:

(a) An agreement that it may be served with process on the Reservation in a proceeding for the enforcement of an obligation of a constituent corporation and in a proceeding for the enforcement of the rights of a dissenting shareholder of a constituent corporation against the surviving corporation;

(b) An irrevocable appointment of the Tribal Secretary as its agent to accept service of process in any proceeding, and an address to which process may be forwarded; and

(c) An agreement that it will promptly pay to the dissenting shareholders of each tribal constituent corporation the amount, if any, to which they are entitled under section 1184.

## **Sec. 11100. Transfer of Assets; When Permitted.**

**Subdivision 1. Shareholder approval; when not required.** A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, in which case no shareholder approval is required.

**Subdivision 2. Shareholder approval; when required.** A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote. Written notice of the meeting shall be given to all shareholders whether or not they are entitled to vote at the meeting. The written notice shall state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.

**Subdivision 3. Signing of documents.** Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.

**Subdivision 4. Transferee liability.** The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this Code or other laws of the Tribe.

## **Subchapter J. Dissolution**

### **Sec. 11101. Methods of Dissolution.**

A corporation may be dissolved:

- (a) By the incorporators pursuant to section 11102;
- (b) By the shareholders pursuant to sections 11103 to 11107; or
- (c) By order of the court pursuant to sections 11110 to 11118.

### **Sec. 11102. Voluntary Dissolution by Incorporators.**

**Subdivision 1. Manner.** A corporation that has not issued shares may be dissolved by the incorporators in the manner set forth in this section.

**Subdivision 2. Articles of dissolution.**

(a) A majority of the incorporators shall sign articles of dissolution containing:

- (1) The name of the corporation;
- (2) The date of incorporation;
- (3) A statement that shares have not been issued;
- (4) A statement that all consideration received from subscribers for shares to be issued, less expenses incurred in the organization of the corporation, has been returned to the subscribers; and
- (5) A statement that no debts remain unpaid.

(b) The articles of dissolution shall be filed with the Tribal Secretary.

**Subdivision 3. Effective date.** When the articles of dissolution have been filed with the Tribal Secretary, the corporation is dissolved.

**Subdivision 4. Certificate.** The Tribal Secretary shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

- (a) The name of the corporation;
- (b) The date and time the articles of dissolution were filed with the Tribal Secretary; and
- (c) A statement that the corporation is dissolved.

### **Sec. 11103. Voluntary Dissolution by Shareholders.**

**Subdivision J. Manner.** A corporation may be dissolved by the shareholders when authorized in the manner set forth in this section.

**Subdivision 2. Notice; approval.**

(a) Written notice shall be given to each shareholder, whether or not entitled to vote at a meeting of shareholders, within the time and in the manner provided in section 1169 for notice of meetings of shareholders and whether the meeting is a regular or a special meeting, shall state

that a purpose of the meeting is to consider dissolving the corporation.

(b) The proposed dissolution shall be submitted for approval at a meeting of shareholders. If the proposed dissolution is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution shall be commenced.

#### **Sec. 11104. Filing Notice of Intent to Dissolve; Effect.**

**Subdivision 1. Contents.** If dissolution of the corporation is approved pursuant to section 11103, subdivision 2, the corporation shall file with the Tribal Secretary a notice of intent to dissolve. The notice shall contain:

(a) The name of the corporation;

(b) The date and place of the meeting at which the resolution was approved pursuant to section 11103, subdivision 2; and

(c) A statement that the requisite vote of the shareholders was received, or that all shareholders entitled to vote signed a written action.

**Subdivision 2. Winding up.** When the notice of intent to dissolve has been filed with the Tribal Secretary, and subject to section 11108, the corporation shall cease to carry on its business, except to the extent necessary for the winding up of the corporation. The shareholders shall retain the right to revoke the dissolution proceedings in accordance with section 11108 and the right to remove directors or fill vacancies on the board. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the Tribal Secretary.

**Subdivision 3. Remedies continued.** The filing with the Tribal Secretary of a notice of intent to dissolve does not affect any remedy in favor of the corporation or any remedy against it or its directors, officers, or shareholders in those capacities, except as provided in sections 11106, 11107, and 11120.

#### **Sec. 11105. Procedure in Dissolution.**

**Subdivision 1. Collection; payment.** When a notice of intent to dissolve has been filed with the Tribal Secretary, the board, or the officers acting under the direction of the board shall proceed as soon as possible:

(a) To collect or make provision for the collection of all known debts due or owing to the corporation, including unpaid subscriptions for shares;

(b) Except as provided in sections 11106, 11107, and 11120, to pay or make provision for the payment of all known debts, obligations, and liabilities of the corporation according to their priorities; and

(c) To give notice to creditors and claimants under section 11106 or to proceed under section 11107.

**Subdivision 2. Transfer of assets.** Notwithstanding the provisions of section 11100, when a notice of intent to dissolve has been filed with the Tribal Secretary, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the shareholders.

**Subdivision 3. Distribution to shareholders.** All tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation shall be distributed to the shareholders in accordance with section 1188, subdivision 4.

#### **Sec. 11106. Dissolution Procedure for Corporations That Give Notice to Creditors and Claimants.**

**Subdivision 1. When permitted; how given.** When a notice of intent to dissolve has been filed with the Tribal Secretary, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or non-contingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in a legal newspaper on the Reservation and by giving written notice to known creditors and claimants.

**Subdivision 2. Contents.** The notice to creditors and claimants shall contain:

(a) A statement that the corporation is in the process of dissolving;

(b) A statement that the corporation has filed with the Tribal Secretary a notice of intent to dissolve;

(c) The date of filing the notice of intent to dissolve;

(d) The address of the office to which written claims against the corporation must be presented; and

(e) The date by which all the claims must be received, which shall be the later of 90 days after published notice or, with respect to a particular known creditor or claimant, 90 days after the date on which written notice was given to that creditor or claimant. Published notice is deemed given on the date of first publication for the purpose of determining this date.

**Subdivision 3. Claims against corporations that give notice.**

(a) A corporation that gives notice to creditors and claimants has 30 days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is deemed accepted.

(b) A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has 60 days from the date of rejection, 180 days from the date the corporation filed with the Tribal Secretary the notice of intent to dissolve, or 90 days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue any other remedies with respect to the claim.

(c) A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 11120.

(d) A creditor or claimant whose claim is rejected by the corporation under paragraph (b) is

barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in paragraph (b).

**Subdivision 4. Articles of dissolution; when filed.** Articles of dissolution for a corporation that has given notice to creditors and claimants under this section must be filed with the Tribal Secretary after:

(1) The 90-day period in subdivision 2, paragraph (e), has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or

(2) The longest of the periods described in subdivision 3, paragraph (b), has expired and there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision 3, paragraph (b).

**Subdivision 5. Contents of articles.** The articles of dissolution must state:

(1) The last date on which the notice was given and:

(i) That the payment of all creditors and claimants filing a claim within the 90-day period in subdivision 2, paragraph (e), has been made or provided for; or

(ii) The date on which the longest of the periods described in subdivision 3, paragraph (b), expired;

(2) that the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with section 1188, subdivision 4, or that adequate provision has been made for that distribution; and

(3) that there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision 3, paragraph (b), or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

**Sec. 11107. Dissolution Procedure for Corporations That Do Not Give Notice.**

**Subdivision 1. Articles of dissolution; when filed.** Articles of dissolution for a corporation that has not given notice to creditors and claimants in the manner provided in section 11106 must be filed with the Tribal Secretary after:

(1) The payment of claims of all known creditors and claimants has been made or provided for; or

(2) At least two years have elapsed from the date of filing the notice of intent to dissolve.

**Subdivision 2. Contents of articles.** The articles of dissolution must state:

(1) If articles of dissolution are being filed pursuant to subdivision 1, clause (1), that all known debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment or discharge;

(2) That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with section 1188, subdivision 4, or that adequate provision has been made for that distribution; and

(3) That there are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

**Subdivision 3. Claims against corporations that do not give notice.**

(a) If the corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed. A creditor or claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.

(b) If the corporation has not paid or provided for all known creditors and claimants at the time articles of dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two

years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 11120.

**Sec. 11108. Revocation of Dissolution Proceedings.**

**Subdivision 1. Generally.** Dissolution proceedings commenced pursuant to section 11103 may be revoked prior to filing of articles of dissolution.

**Subdivision 2. Notice to shareholders; approval.** Written notice shall be given to every shareholder entitled to vote at a shareholders' meeting within the time and in the manner provided in section 1169 for notice of meetings of shareholders and shall state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings. The proposed revocation shall be submitted to the shareholders at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution proceedings are revoked.

**Subdivision 3. Effective date; effect.** Revocation of dissolution proceedings is effective when a notice of revocation is filed with the Tribal Secretary. The corporation may thereafter resume business.

**Sec. 11109. Effective Date of Dissolution; Certificate.**

**Subdivision 1. Effective date.** When the articles of dissolution have been filed with the Tribal Secretary, the corporation is dissolved.

**Subdivision 2. Certificate.** The Tribal Secretary shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

(1) The name of the corporation;

(2) The date and time the articles of dissolution were filed with the Tribal Secretary; and

(3) A statement that the corporation is dissolved.



**Sec. 11110. Supervised Voluntary Dissolution.**

After the notice of intent to dissolve has been filed with the Tribal Secretary and before a certificate of dissolution has been issued, the corporation or, for good cause shown, a shareholder or creditor may apply to the court to have the dissolution conducted or continued under the supervision of the court as provided in sections 11111 to 11120.

**Sec. 11111. Judicial Intervention; Equitable Remedies or Dissolution.**

**Subdivision 1. When permitted.** The court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:

(a) In a supervised voluntary dissolution pursuant to section 11110;

(b) In an action by a shareholder when it is established that:

(1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;

(2) The directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders, directors, or officers, or as employees of a closely held corporation;

(3) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

(4) The corporate assets are being misapplied or wasted; or

(5) The period of duration as provided in the articles has expired and has not been extended as provided in section 11123;

(c) In an action by a creditor when:

(1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or

(2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or

(d) In an action by the Tribal Executive Board to dissolve the corporation in accordance with section 11114 when it is established that a decree of dissolution is appropriate.

**Subdivision 2. Buy-out on motion.** In an action under subdivision 1, clause (b), involving a closely held corporation at the time the action is commenced and in which one or more of the circumstances described in that clause is established, the court may, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under all of the circumstances of the case.

The purchase price of any shares so sold shall be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court, provided that, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms set forth in them, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.

Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under section 1184, subdivision 5, paragraph (a).

If the parties are unable to agree on fair value within 40 days of entry of the order, the court shall determine the fair value of the shares under

the provisions of section 1184 subdivision 7, and may allow interest or costs as provided in section 1184, subdivisions 1 and 8.

The purchase price shall be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within 40 days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subdivision and provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus such additional costs, expenses, and fees as may be awarded will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as might be awarded.

**Subdivision 3. Condition of corporation.** In determining whether to order equitable relief, dissolution, or a buy-out, the court shall take into consideration the financial condition of the corporation but shall not refuse to order equitable relief, dissolution, or a buy-out solely on the ground that the corporation has accumulated or current operating profits.

**Subdivision 4. Considerations in granting relief involving closely held corporations.** In determining whether to order equitable relief, dissolution, or a buy-out, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other.

**Subdivision 5. Dissolution as remedy.** In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buy-out, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision 1, clause (b) or (c). Lesser relief may be ordered in any case

where it would be appropriate under all the facts and circumstances of the case.

**Subdivision 6. Expenses.** If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

**Subdivision 7. Venue; parties.** Proceedings under this section shall be brought in the court. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

## **Sec. 1112. Procedure in Involuntary or Supervised Voluntary Dissolution.**

**Subdivision 1. Action before hearing.** In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be held.

**Subdivision 2. Action after hearing.** After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. A receiver has authority, subject to the order of the court, to continue the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.

**Subdivision 3. Discharge of obligations.** The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the following order of priority to the payment and discharge or:

(a) The costs and expenses of the proceedings, including attorneys' fees and disbursements;

(b) Debts, taxes and assessments due the Tribe, its subdivisions, the United States, states

and their subdivisions, and other tribes and their subdivisions, in that order;

(c) Claims duly proved and allowed to employees under the provisions of any applicable workers' compensation act; provided, that claims under this clause shall not be allowed if the corporation carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

(d) Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and

(e) Other claims duly proved and allowed.

**Subdivision 4. Remainder to shareholders.**

After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, shall be distributed to the shareholders in accordance with section 1188, subdivision 4.

**Sec. 11113. Qualifications of Receivers; Powers.**

**Subdivision 1. Qualifications.** A receiver shall be a natural person or a tribal corporation or a foreign corporation authorized to transact business on the Reservation. A receiver shall give bond as directed by the court with the sureties required by the court.

**Subdivision 2. Powers.** A receiver may sue and defend in the court as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property.

**Sec. 11114. Action by Tribal Executive Board.**

**Subdivision 1. When permitted.** A corporation may be dissolved involuntarily by a decree of the court in an action filed by the Tribal Executive Board when it is established that:

(a) The articles and certificate of incorporation were procured through fraud;

(b) The corporation was incorporated for a purpose not permitted by section 1107;

(c) The corporation failed to comply with the requirements of sections 1103 to 1122 essential to incorporation under or election to become governed by this Code;

(d) The corporation has flagrantly violated a provision of this Code, or has violated a provision of this Code more than once, or has violated more than one provision of this Code; or

(e) The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate franchise, privileges, or enterprise.

**Subdivision 2. Notice to corporation; correction.** An action shall not be commenced under this section until 30 days after notice to the corporation by the Tribal Executive Board of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the Tribal Executive Board shall give the corporation 30 additional days in which to effect the correction before filing the action.

**Sec. 11115. Filing Claims in Proceedings to Dissolve.**

**Subdivision 1. In proceedings referred to in section 11111** to dissolve a corporation, the court may require all creditors and claimants of the corporation to file their claims under oath with the Tribal Secretary or with the receiver in a form prescribed by the court.

**Subdivision 2. If the court requires the filing of claims,** it shall fix a date, which shall be not less than 120 days from the date of the order, as the last day for the filing of claims, and shall prescribe the notice of the fixed date that shall be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the corporation.

**Sec. 11116. Discontinuance of Dissolution Proceedings.**

The involuntary or supervised voluntary dissolution of a corporation shall be discontinued at any time during the dissolution proceedings when it is established that cause for dissolution no longer exists. When this is established, the court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the corporation all its remaining property and assets.

**Sec. 11117. Decree of Dissolution.**

**Subdivision 1. When entered.** In an involuntary or supervised voluntary dissolution after the costs and expenses of the proceedings and all debts, obligations, and liabilities of the corporation have been paid or discharged and all of its remaining property and assets have been distributed to its shareholders or, if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations, and liabilities, when all the property and assets have been applied so far as they will go to their payment according to the priorities set forth in section 11112, the court shall enter a decree dissolving the corporation.

**Subdivision 2. Effective date.** When the decree dissolving the corporation has been entered, the corporation is dissolved.

**Sec. 11118. Filing Decree.**

After the court enters a decree dissolving a corporation, the Tribal Secretary shall file a certified copy of the decree in his office. The Tribal Secretary shall not charge a fee for filing the decree.

**Sec. 11119. Deposit With Tribal Treasurer of Amount Due Certain Shareholders.**

Upon dissolution of a corporation, the portion of the assets distributable to a shareholder who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive the distributive portion, shall be reduced to money and deposited with the Tribal Treasurer. The amount deposited is appropriated to the Tribal Treasurer and shall be paid over to the shareholder or a legal representative, upon proof

satisfactory to the tribal treasurer of a right to payment.

**Sec. 11120. Claims Barred; Exceptions.**

**Subdivision 1. Claims barred.** Except as provided in this section, a creditor or claimant whose claims are barred under section 11106, 11107, or 11115 includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, and all those claiming through or under the creditor or claimant.

**Subdivision 2. Claims reopened.** At any time within one year after articles of dissolution have been filed with the Tribal Secretary pursuant to section 11106 or 11107, subdivision 1, clause (2), or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to the court to allow a claim:

(a) Against the corporation to the extent of undistributed assets; or

(b) If the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability shall be limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder, but in no event may a shareholder's liability exceed the amount which that shareholder actually received in the dissolution.

**Subdivision 3. Obligations incurred during dissolution proceedings.** All known contractual debts, obligations, and liabilities incurred in the course of winding up the corporation's affairs shall be paid or provided for by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy before the expiration of the applicable statute of limitations against the officers and directors of the corporation who are responsible for, but who fail to cause the corporation to pay or make provision for payment of the debts, obligations, and liabilities or against shareholders to the extent permitted under section 11191.

This subdivision does not apply to dissolution under the supervision or order of the court.

**Sec. 11121. Right to Sue or Defend After Dissolution.**

After a corporation has been dissolved, any of its former officers, directors, or shareholders may assert or defend, in the name of the corporation, any claim by or against the corporation.

**Sec. 11122. Omitted Assets.**

Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to shareholders may be transferred by the court to any person entitled to those assets.

**Subchapter K. Extension**

**Sec. 11123. Extension After Duration Expired.**

**Subdivision 1. Extension by amendment.** A corporation whose period of duration as provided in the articles has expired and which has continued to do business despite that expiration may reinstate its articles and extend the period of corporate duration, including making the duration perpetual, at any time after the date of expiration by filing an amendment to the articles as set forth in this section.

**Subdivision 2. Contents of amendment.** An amendment to the articles shall be approved by the affirmative vote of a majority of the directors present and shall include:

(a) The date the period of duration expired under the articles;

(b) A statement that the period of duration will be perpetual or, if some shorter period is to be provided, the date to which the period of duration is extended; and

(c) A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.

**Subdivision 3. Approval by shareholders.** The amendment to the articles shall be presented, after notice, to a meeting of the shareholders. The amendment is adopted when approved by the shareholders pursuant to section 1116.

**Subdivision 4. Filing.** Articles of amendment conforming to section 1118 shall be filed with the Tribal Secretary.

**Sec. 11124. Effect of Extension.**

Filing with the Tribal Secretary of articles of amendment extending the period of duration of a corporation:

(a) Relates back to the date of expiration of the original period of duration of the corporation as provided in the articles;

(b) Validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and

(c) Restores to the corporation all the assets and rights of the corporation to the extent they were held by the corporation before expiration of its original period of duration, except those sold or otherwise distributed after that time.

**Subchapter L. Corporate Registration**

**Sec. 11125 Fort Peck Tribal Corporate Registration.**

**Subdivision 1. Information required.** A tribal corporation shall once each calendar year file with the Tribal Secretary a registration containing:

(a) The name of the corporation;

(b) The address of its principal executive office, if different from the registered office address;

(c) The address of its registered office;

(d) The name of its registered agent;

(e) The name and business address of the officer or other person exercising the principal functions of the chief executive officer of the corporation; and

(f) The signature of a person authorized to sign the registration on behalf of the corporation.

**Subdivision 2. Information public.** The information required by subdivision 1 is public data.

**Subdivision 3. Loss of good standing.** A corporation that fails to file a registration pursuant to the requirements of subdivision 1 loses its good standing. The corporation may regain its good standing by filing a single annual registration and paying a \$25.00 fee.

**Subdivision 4. Notice of repeated violation.**

If a corporation fails for three consecutive years to file a registration pursuant to the requirements of subdivision 1, the Tribal Secretary shall give notice by first class mail to the corporation at its registered office that it has violated this section and is subject to dissolution by the office of the Tribal Secretary if the delinquent registration is not filed pursuant to subdivision 1 and the \$25.00 fee paid within 60 days after the mailing of the notice. For purposes of this subdivision, “delinquent registration” means a single annual registration.

**Subdivision 5. Penalty.**

(a) A corporation that has failed for three consecutive years to file a registration pursuant to the requirements of subdivision 1, has been notified of the failure pursuant to subdivision 4, and has failed to file the delinquent registration during the 60-day period described in subdivision 4, shall be dissolved by the Tribal Secretary as described in paragraph (b).

(b) Immediately after the expiration of the 60-day period described in paragraph (a), if the corporation has not filed the delinquent registration, the Tribal Secretary shall issue a certificate of involuntary dissolution, and a copy of the certificate shall be filed in the office of the Tribal Secretary. The original certificate shall be sent to the registered office of the corporation. The Tribal Secretary shall annually inform the Tribal Executive Board and the Tribal Treasurer of the names of corporations dissolved under this section during the preceding year. A corporation dissolved in this manner is not entitled to the benefits of section 11120. The liability, if any, of the shareholders of a corporation dissolved in this manner shall be determined and limited in accordance with section 1190, except that the shareholders shall have no liability to any director of the corporation under section 1191, subdivision 2.

**Subdivision 6. Reinstatement.** A corporation may retroactively reinstate its corporate existence after statutory dissolution by filing a single annual registration and paying a \$25.00 fee. Filing the annual registration with the Tribal Secretary:

(1) Returns the corporation to active status as of the date of the statutory dissolution;

(2) Validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and

(3) Restores to the corporation all assets and rights of the corporation and its shareholders to the extent they were held by the corporation and its shareholders before the statutory dissolution occurred, except to the extent that assets or rights were affected by acts occurring after the dissolution or sold or otherwise distributed after that time.

**Subchapter M. Actions Against Corporations**  
**Sec. 11126. Service of Process on Corporation.**

**Subdivision 1. Who may be served.** A process, notice, or demand required or permitted by law to be served upon a corporation may be served either upon the registered agent, if any, of the corporation named in the articles, or upon an officer of the corporation, or upon the Tribal Secretary as provided in this section.

**Subdivision 2. Service on Tribal Secretary; when permitted.** If a corporation has appointed and maintained a registered agent on the Reservation but neither its registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to appoint or maintain a registered agent on the Reservation and an officer of the corporation cannot be found at the registered office, then the Tribal Secretary is the agent of the corporation upon whom the process, notice, or demand may be served. The return of a licensed law enforcement official, or the affidavit of a person not a party, that no registered agent or officer can be found at the registered office on the Reservation is conclusive evidence that the corporation has no registered agent or officer at its registered office. Service on the Tribal Secretary of any process, notice, or demand is deemed personal service upon the corporation and shall be made by filing with the Tribal Secretary duplicate copies of the process, notice or demand. The Tribal Secretary shall immediately forward, by certified mail addressed to the

corporation at its registered office, a copy of the process, notice, or demand. Service on the Tribal Secretary is returnable in not less than 30 days notwithstanding a shorter period specified in the process, notice, or demand.

**Subdivision 3. Record of service.** There shall be maintained in the office of the Tribal Secretary a record of all processes, notices, and demands served upon the Tribal Secretary under this section, including the date and time of service and the action taken with reference to it.

**Subdivision 4. Other methods of service.** Nothing in this section limits the right of a person to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

#### **Sec. 11127. Court Action; Remedies and Penalties.**

**Subdivision 1. Court action.** The court shall have the authority to determine, apply and enforce appropriate remedies and penalties, including, but not limited to, civil fines, for violations of this Code, or of the articles of incorporation or bylaws of any corporation formed pursuant to this Code. The remedies available to corporations and their shareholders, shall include declaratory and injunctive relief, and special writs of mandamus, to compel actions necessary to secure the rights, obligations or privileges of such parties, whether or not those rights, obligations or privileges arise under this Code. A prevailing plaintiff in any action shall be awarded costs and reasonable attorneys fees.

**Subdivision 2. Tribal intervention.** If it appears at any stage of a proceeding in the court that the Tribe is, or is likely to be, interested therein, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the Tribal Executive Board in the same manner prescribed for serving a summons in a civil action. The Tribal Executive Board shall intervene in a proceeding when the Tribal Executive Board determines that the public interest requires it, whether or not the Tribal Executive Board has been served.

### **Subchapter N. Corporations Wholly Owned By The Tribe**

#### **Sec. 11128. Scope.**

Sections 11128 through 11138 apply to all tribal corporations wholly owned by the Tribe, whether directly or as a subsidiary of another tribal corporation wholly owned by the Tribe, as provided in section 11129.

#### **Sec. 11129. Application.**

**Subdivision 1. Corporations directly owned by the Tribe.** The consent of the Tribal Executive Board shall be required prior to the incorporation under this Code of any corporation to be wholly owned by the Tribe. For this purpose, the incorporator shall file with the Tribal Secretary, when the incorporator files the articles of incorporation of a corporation to be wholly owned by the Tribe, a certified copy of a resolution of the Tribal Executive Board authorizing the formation of the corporation.

**Subdivision 2. Corporations indirectly owned by the Tribe.** The consent of the board of directors of the corporation wholly owned by the Tribe shall be required prior to the incorporation under this Code of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe. For this purpose, the incorporator shall file with the Tribal Secretary, when the incorporator files the articles of incorporation of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe, a certified copy of a resolution of the board of the parent corporation authorizing the formation of the subsidiary corporation.

**Subdivision 3. Designation in articles.** The articles of a corporation wholly owned, directly or indirectly, by the Tribe and subject to the provisions of sections 11128 to 11136 shall expressly so state and when accepting the articles for filing, the Tribal Secretary shall note that the corporation is governed by the provisions of this Code applicable to wholly owned tribal corporations.

**Sec. 11130. Special Powers, Privileges and Immunities of Corporations Wholly Owned by the Tribe.**

**Subdivision 1. Scope.** The special powers, privileges and immunities described in this section shall be available only to a corporation wholly owned, directly or indirectly, by the Tribe.

**Subdivision 2. Jurisdictional and tax immunities.** All of the rights, privileges and immunities of the Tribe concerning federal, state, or local taxes, regulations and jurisdiction are hereby conferred on all tribal corporations wholly owned, directly or indirectly, by the Tribe to the same extent that the Tribe would have such rights, privileges and immunities if it engaged in the activities undertaken by the corporation. Absent consent by the corporation, a corporation wholly owned, directly or indirectly, by the Tribe shall not be subject to taxation by the Tribe, except to the extent that such taxation is necessary and reasonably appropriate to compensate the Tribe for services provided to the corporation by the Tribe.

**Subdivision 3. Sovereign immunity.** The sovereign immunity of the Tribe is hereby conferred on all tribal corporations wholly owned, directly or indirectly, by the Tribe. A corporation wholly owned, directly or indirectly, by the Tribe shall have the power to sue and is authorized to consent to be sued in the court, and in all other courts of competent jurisdiction, provided, however, that:

(a) No such consent to suit shall be effective against the corporation unless such consent is:

- (1) Explicit,
- (2) Contained in a written contract or commercial document to which the corporation is a party, and
- (3) Specifically approved by the board of directors of the corporation, and

(b) Any recovery against such corporation shall be limited to the assets of the corporation. Any consent to suit may be limited to the court or courts in which suit may be brought, to the matters that may be made the subject of the suit and to the assets or revenues of the corporation against which any judgment may be executed.

**Sec. 11131. Board.**

**Subdivision 1. Removal of Directors.** A director of a corporation wholly owned, directly or indirectly, by the Tribe may be removed with or without cause by the Tribal Executive Board.

**Subdivision 2. Loans to Directors.** A corporation wholly owned, directly or indirectly, by the Tribe may not lend money to or guarantee the personal obligation of a director, officer or employee of the corporation under any circumstances.

**Sec. 11132. Shares in Corporations Wholly Owned by the Tribe; Shareholders; Voting.**

**Subdivision 1. Shares in wholly owned corporations.** Share certificates (or transaction statements for uncertificated shares) of corporations wholly owned, directly, by the Tribe shall be issued in the name of the Tribe, and all such shares shall be held by and for the Tribe. No member of the Tribe shall have any personal ownership interest in any corporation wholly owned, directly or indirectly, by the Tribe, whether by virtue of such person's status as a member of the Tribe or otherwise.

**Subdivision 2. Shares.** A corporation wholly owned, directly, by the Tribe may not issue preferred or special shares.

**Subdivision 3. Voting.** A member of the Tribal Executive Board shall be authorized to vote shares of the corporation owned by the Tribe, as contemplated by section 1174, Subdivision 4 of this Code, in the following manner: Each member shall have the right to vote that number of shares which is equal to a fraction of the total shares owned by the Tribe. The fraction is calculated by dividing the total number of shares owned by the Tribe by the number of Tribal Executive Board members holding such office at the date on which the vote is taken. Each member of the Tribal Executive Board shall enjoy such voting rights in the corporation as is provided by the Constitution and bylaws of the Tribe to such person as a member of the Tribal Executive Board. Such voting rights shall be enjoyed for as long as such Executive Board member remains a duly elected member of the Tribal Executive Board. In voting the shares of a corporation wholly owned by the Tribe, the



members of the Tribal Executive Board are acting not in a personal capacity but in a representative capacity on behalf of the Tribe itself.

**Subdivision 4. Proxies illegal.** Section 1176 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe. Any proxy given for the voting of shares in a corporation wholly owned, directly or indirectly, by the Tribe shall be void and unenforceable.

**Subdivision 5. Voting trusts illegal.** Section 1177 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe. Any voting trust agreement for any interest held in a corporation wholly owned, directly or indirectly, by the Tribe shall be void and unenforceable.

**Subdivision 6. Shareholder control agreements illegal.** Section 1179 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe. Any shareholder control agreement for any interest held in a corporation wholly owned, directly or indirectly, by the Tribe shall be void and unenforceable.

**Subdivision 7. No cumulative voting.** Section 1135 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe.

#### **Sec. 11133. Liability of Tribe as Shareholder.**

Neither the Tribe nor any member of the Tribal Executive Board shall be under any obligation to a corporation wholly owned, directly or indirectly, by the Tribe or to the creditors of any such corporation and the Tribe shall not be deemed to have waived any of the Tribe's privileges or immunities if the Tribe incorporates, owns or operates a corporation, directly or indirectly.

#### **Sec. 11134. Shareholder Meetings.**

**Subdivision 1. Annual Meeting.** Annual meetings of the Tribal Executive Board, in its capacity as the shareholders of a corporation wholly owned, directly, by the Tribe, shall be held at such time and at such place on the Reservation as the board of directors shall determine. If the board of directors fails to set the time and date of meeting, it shall be held on the second Tuesday in January of each year. At such annual meeting, the Tribal Executive Board, in its capacity as the

shareholders of the corporation, shall transact such business as may properly be brought before the meeting. Such meetings may be called and held in the same manner as applicable law provides for meetings of the Tribal Executive Board.

**Subdivision 2. Special meetings.** Special meeting of the Tribal Executive Board, in its capacity as the shareholders of the corporation, may be called and held for any purpose in the manner provided for the call and holding of special meetings of the Tribal Executive Board.

**Subdivision 3. Notice of Meetings.** The board of directors shall notify the Tribal Executive Board of the date, time and place of the annual meeting of shareholders at least 20 days before the meeting and of any special meeting of the shareholders at least five days before the meeting. Notices shall be deemed to be effective if placed in the U.S. Mail, with proper first class postage affixed, at least 22 days (but not more than 62 days) prior to an annual meeting, and at least 7 days (but not more than 62 days) prior to a special meeting, or on the date personally delivered to the Secretary of the Tribal Executive Board.

**Subdivision 4. Time and Place of Shareholders' Meetings.** Meetings of the shareholders of the corporation shall be held at the principal place of business or of the corporation or at such other location within the Fort Peck Indian Reservation at such time and place as the board of directors shall fix.

**Subdivision 5. Manner of Meeting.** Except as otherwise provided in these Articles, the shareholders of the corporation may conduct regular or special meetings through the use of any means and procedures which are proper for meetings of the Tribal Executive Board.

**Subdivision 6. Presiding Officer.** The Chairman of the Tribal Executive Board shall preside over any shareholders' meeting.

#### **Sec. 11135. Assets; Distributions of Income.**

**Subdivision 1. Assets.** Subject to the contractual and sovereign rights of others, including the Tribe, the corporation shall have as its corporate assets, and the authority to acquire, manage, own,

use, pledge, encumber, or otherwise dispose of, the following:

(a) All funds which the corporation may acquire by subscription, grant, gift, loan or other means,

(b) All interests in real and personal property, whether of a tangible or intangible nature, which the corporation may acquire by subscription, grant, gift, loan, purchase, lease or other means, and

(c) All earnings, interest, dividends, accumulations, contract rights, claims and other proceeds arising from any of the foregoing.

**Subdivision 2. Distribution of Net Income to Tribe Required.** All or that portion of the net income of a corporation wholly owned, directly, by the Tribe shall be distributed to the Tribe at such time as the Tribal Executive Board may determine. The net income of any wholly owned subsidiary of such a corporation and the corporation's share of the net income of any subsidiary of such a corporation, shall be determined in accordance with generally accepted accounting principles. Upon request of the Tribal Executive Board, the board of directors of a corporation wholly owned, directly, by the Tribe will, if the corporation controls a subsidiary, cause the subsidiary to distribute to the corporation all or such portion of the net income of the subsidiary as may be requested by the Tribal Executive Board.

**Sec. 11136. Voluntary Dissolution by Incorporators.**

A corporation wholly owned, directly, by the Tribe with no shares having been issued may be dissolved by a resolution adopted by the incorporators, or if a board of directors has been appointed or elected, by the board of directors and separately concurred in by a majority of the members of the Tribal Executive Board.

**Subchapter O. Effective Date and Authority**  
**Sec. 11137. Severability; Effect of Invalidity of Part of This Code.**

If the court shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph,

section, article or part of this Code, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Code, but the effect thereof shall be confined to the clause, sentence, paragraph, section, article or part of this Code as adjudged to be invalid or unconstitutional.

**Sec. 11138. Effective Date.**

This Code shall be in full force and effect according to its terms from and after January 22, 2001.

**Sec. 11139. Authority.**

This Code is enacted by the Fort Peck Tribes Tribal Executive Board under the authority vested in the Tribal Executive Board by Article 7, Section 5 of the Constitution and Bylaws of the Fort Peck Tribes, as amended. The Tribal Executive Board reserves the right to repeal or amend the provisions of this Code, subject to the limitation of section 11140.

**Sec. 11140. No Impairment of Contracts.**

Otherwise lawful contracts and other obligations of any corporation shall not be impaired by any subsequent action of the Tribe or the Tribal Executive Board. Actions to restrain any attempts to impair contracts of tribal corporations, or to declare such actions null and void, shall be available to any interested party in court. Nothing in this section shall be construed to restrict the general application of law, or of this Code to the acts and contracts of tribal corporations.

**(PURSUANT TO RESOLUTION NO. 1433-01-01, Approved 01/22/01.)**

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## **Sec. 1201. Purposes of the LLC Act; Rules of Construction**

(1) This Part and all subsequent Parts and sections of this Chapter are for the purpose for developing and implementing the processes and procedures for the formation and operation of limited liability companies under tribal law.

(2) This Chapter shall be liberally construed and applied to promote its underlying purposes and policies.

## **Sec. 1202. Definitions.**

As used in this Chapter, unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to Section 1209 of this Chapter and those articles as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the tribe, state or country where it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

(4) "Corporation" means a corporation formed under the laws of this tribe or a foreign corporation.

(5) "Court" includes every court having jurisdiction in the case, and the Fort Peck Tribal Court with regard to enforcement of the provisions of this Chapter.

(6) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Chapter 11 of the United States Code or a comparable order under federal, state, or tribal law governing insolvency.

(7) "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this part to become a member in a professional limited liability company.

(8) "Distribution" means a transfer of money, property, or other benefit to a member in that

member's capacity as a member of a limited liability company or to a transferee of a member's distributional interest.

(9) "Distributional interest" means all of a member's interest in the distributions of a limited liability company.

(10) "Event of dissociation" means an event that causes a person to cease to be a member.

(11) "Foreign corporation" means a corporation that is organized under laws other than the laws of the Fort Peck Tribes. (12) "Foreign limited liability company" means an entity that is

(a) An unincorporated entity;

(b) Organized under laws other than the laws of the Fort Peck Tribes; (c) organized under a statute pursuant to which an entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity.

(13) "Foreign limited partnership" means a limited partnership formed under any laws other than the laws of the Fort Peck Tribes.

(14) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under laws other than the laws of the Fort Peck Tribes.

(15) "Licensing authority" means an officer, board, agency, court, or other authority on the Fort Peck Reservation that has the power to issue a license or other legal authorization to render a professional service.

(16) "Limited liability company" or "domestic limited liability company" means an organization that is formed under this part.

(17) "Limited partnership" means a limited partnership formed under the laws of the Fort Peck Tribes or a foreign limited partnership.

(18) "Manager" means a person who, whether or not a member of a manager-managed company, is vested with authority under Section 1225 of this Chapter.

(19) "Manager-managed company" means a limited liability company that is so designated in its articles of organization.

(20) "Member" means a person who has been admitted to membership in a limited liability company, as provided in Section 1226 of this

Chapter and who has not dissociated from the limited liability company.

(21) "Member-managed company" means a limited liability company other than a manager-managed company.

(22) "Operating agreement" means an agreement, including amendments, as to the conduct of the business and affairs of a limited liability company and the relations among the members, managers, and the company that is binding upon all of the members.

(23) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

(24) "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

(25) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of the Fort Peck Tribes and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

(26) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this part to own shares issued by a professional limited liability company.

(27) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is recoverable in a perceivable form.

(28) "Secretary" means the Secretary/Accountant of the Fort Peck Tribes.

(29) "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it.

(30) "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 Tribes.

(31) "Term company" means a limited liability company designated as a term company in its articles of organization.

**Sec. 1203. Name.**

(1) (a) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or the abbreviations "l.l.c.", or "llc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(b) The name of a limited liability company as set forth in its articles of organization may not contain business name identifiers or other language that states or implies that the limited liability company is a business other than a limited liability company.

(2) A limited liability company name must be distinguishable on the records of the Secretary from:

(a) The name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of the Fort Peck Tribes;

(b) The name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business on the Fort Peck Reservation;

(c) Any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the Secretary; and

(d) The corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

**Sec. 1204. Reservation of Name.**

(1) The exclusive right to use a name may be reserved by:

(a) A person intending to organize a limited liability company and to adopt that name;

(b) A limited liability company or foreign limited liability company registered with the Fort Peck Tribes that intends to adopt that name;

(c) A foreign limited liability company intending to register with the Fort Peck Tribes and to adopt that name; or

(d) A person intending to organize a foreign limited liability company and to have it registered with the Fort Peck Tribes and to adopt that name.

(2) The reservation must be made by filing with the Secretary application, executed by the applicant, to reserve a specified name. 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 nonrenewable period of 120 days from the date the application is filed.

(3) The right to the exclusive use of a reserved name may be transferred to another person by filing with the Secretary a notice of the transfer, executed by the applicant for whom the name was reserved, and by specifying the name to be transferred and the name and address of the transferee. The transfer may not extend the term during which the name is reserved.

**Sec. 1205. Registered Office and Registered Agent.**

(1) A limited liability company shall continuously maintain with the Fort Peck Tribes:

(a) A registered office on the Fort Peck Reservation that may, but need not be, the same as its place of business; and

(b) A registered agent for service of process who resides on the Fort Peck Reservation and who may be served process, at the registered office, or their residence, or business office.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the Secretary accepting the appointment.

(3) A limited liability company may change its registered office or registered agent, or both, by delivering to the Secretary a statement setting forth:

(a) The name of the limited liability company;

(b) The address of its current registered office;

(c) If the address of its registered office is to be changed, the new address of the registered office; and

(d) If its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address.

(4) The change of address of the registered office or registered agent is effective on delivery of the statement to the Secretary. The appointment of a new registered agent is effective on delivery of the statement to the Secretary and on receipt by the Secretary of evidence that the new registered agent has accepted appointment pursuant to subsection (2).

(5) A registered agent of a limited liability company may resign as registered agent by delivering a written notice and two copies to the Secretary. The Secretary shall mail a copy of the notice to the limited liability company at its registered office and its principal place of business. The appointment of the registered agent terminates 30 days after receipt of the notice by the Secretary or on the appointment of a new registered agent, whichever occurs first.

(6) If a registered agent changes its address to another place on the Fort Peck Reservation, it may change the address by delivering a statement to the Secretary as required by subsection (3), except that it need be signed only by the registered agent. The statement must recite that a copy of the statement has been mailed to the limited liability company.

#### **Sec. 1206. Purpose of a Limited Liability Company.**

(1) A limited liability company organized under Part 2 of this Chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of organization.

(2) Limited liability companies may be organized under Part 2 of this Chapter for any lawful purpose except for the purpose of banking or insurance.

#### **Sec. 1207. Powers.**

A limited liability company may:

(1) If it so elects, sue, be sued, complain, and defend in its name;

(2) Transact its business, carry on its operations, and have and exercise the powers granted by this part in any tribe or state; in any territory, district, or possession of the United States; and in any foreign country;

(3) Make contracts and guarantees, incur liabilities, and borrow money;

(4) Sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any of its assets;

(5) Acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;

(6) Issue notes, bonds, and other obligations and secure any of them by mortgage, deed of trust, or security interest of any of its assets;

(7) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of domestic and foreign corporations, associations, general or limited partnerships, limited liability companies, business trusts, and individuals;

(8) Invest its surplus funds, lend money from time to time in any manner that may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold real property and personal property as security for the payment of funds loaned or invested;

(9) Elect or appoint agents and define their duties and fix their compensation;

(10) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(11) Be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership, domestic or foreign limited liability company, joint venture, trust, or other enterprise;

(12) Indemnify and hold harmless any member, agent, or employee from and against any

claims and demands whatsoever, except in the case of action or failure to act by the member, agent, or employee that constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;

(13) Cease its activities and dissolve;

(14) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any of its current or former directors, officers, employees, and agents;

(15) Make donations for the public welfare or for charitable, religious, scientific, or educational purposes and, in time of war, make donations in aid of war activities; and

(16) Do every other act not inconsistent with law that is appropriate to promote and further the business and affairs of the limited liability company.

#### **Sec. 1208. Effect of Operating Agreement-Nonwaivable Provisions.**

(1) Except as provided in subsection (2), all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business and to govern relations among the members, managers, and company. To the extent that the operating agreement does not otherwise provide, this part governs relations among the members, managers, and company.

(2) An operating agreement need not be in writing except as otherwise provided in this part to:

(a) Vary the recordkeeping requirements under Section 1230 of the Chapter;

(b) Vary the rights of members to share in distributions under Section 1237 or Section 1258 of the Chapter; or

(c) Vary the process for admission of members under Section 1226 of the Chapter.

(3) The operating agreement may not:

(a) Unreasonably restrict a right to information or access to records under Section 1230 of the Chapter.

(b) Eliminate the duty of loyalty under Section 1229 of the Chapter, but the agreement may:

(i) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(ii) Specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(c) Unreasonably reduce the duty of care under Section 1229 of the Chapter;

(d) Eliminate the obligation of good faith and fair dealing under Section 1229 of the Chapter, but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(e) Vary the right to expel a member upon the occurrence of an event specified in Section 1247 of the Chapter

(f) Vary the requirement to wind up the limited liability company's business in a case specified in Section 1254(l)(c) or Section 1255 of the Chapter; or

(g) Restrict the rights of a person under this part, other than a manager, member, or transferee of a member's distributional interest.

#### **Sec. 1209. Formation.**

(1) One or more persons may form a limited liability company consisting of one or more members by signing and filing articles of organization with the Secretary. The person or persons need not be members of the limited liability company at the time of formation or after formation has occurred. A limited liability company is a legal entity distinct from its members.

(2) Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed with the Secretary.

(3) The filing of the articles of organization by the Secretary pursuant to Section 1213 of the Chapter is conclusive proof that the organizers have satisfied all conditions precedent to the creation of a limited liability company.



### **Sec. 1210. Articles of Organization.**

(1) The articles of organization must set forth:

(a) The name of the limited liability company that satisfies the requirements of Section 1203 of this Chapter;

(b) Whether the company is a term company and, if so, the term specified;

(c) The complete street address of its principal place of business on the Fort Peck Reservation and, if different, its registered office and the name and complete street address of its registered agent at the registered office on the Fort Peck Reservation;

(d) (i) If the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) If the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and street addresses of the initial members;

(e) Whether one or more members of the company are to be liable for the limited liability company's debts and obligations;

(f) If the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(g) Any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in Section 1207 of the Chapter.

(3) The articles of organization may not vary any nonwaivable provision set out in this Chapter. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) The operating agreement controls as to managers, members, and a member's transferee; and

(b) The articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment.

### **Sec. 1211. Amendment of Articles of Organization-Restatement.**

(1) The articles of organization of a limited liability company are amended by filing articles of amendment with the Secretary. The articles of amendment must set forth:

(a) The name of the limited liability company;

(b) The date the articles of organization were filed; and

(c) The amendment to the articles of organization.

(2) The articles of organization may be amended as desired, so long as the amended articles of organization contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.

(3) Articles of organization may be restated at any time. Restated articles of organization must be filed with the Secretary, must be specifically designated as such in the heading, and must state either in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its articles of organization. Restated articles of organization supersede the original articles of organization and any previous amendments to the original articles of organization.

(4) An amendment to the articles of organization of a limited liability company must be in the form and manner designated by the Secretary.

### **Sec. 1212. Execution of Documents.**

(1) Unless otherwise specified in this part, a document required by this part to be filed with or delivered to the Secretary must be executed:

(a) By any manager if management of the limited liability company is vested in one or more

managers or by a member if management of the limited liability company is reserved to the members;

(b) If the limited liability company has not been formed, by the person or persons forming the limited liability company; or

(c) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(2) The person executing the document shall sign it and state, beneath or opposite the signature, the person's name and the capacity in which the person signs.

(3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document do not need to be shown to or filed with the Secretary.

#### **Sec. 1213. Filing With Secretary.**

(1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of the articles of organization or any other document required to be filed pursuant to this part must be delivered to the Secretary. If the Secretary determines that the documents conform to the filing provisions of this part, the Secretary shall, when all required filing fees have been paid:

(a) Endorse on each signed original and duplicate copy the word "filed" and the date and time of its acceptance for filing;

(b) Retain the signed original in the Secretary's files; and

(c) Return the duplicate copy to the person who filed it or to the person's representative.

(2) If the Secretary is unable to make the determination required for filing by subsection (1) at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the Secretary subsequently determines that the documents as delivered conform to the filing provisions of Part 2 of this Chapter.

(3) The filing fee shall be \$25.00, except for the Tribes or a tribally-owned business.

#### **Sec. 1214. Effect of Delivery or Filing of Articles of Organization.**

(1) A limited liability company is formed when the articles of organization are delivered to the Secretary for filing.

(2) Each copy of the articles of organization stamped "filed" and marked with the filing date is conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under this part.

#### **Sec. 1215. Annual Report For Secretary.**

(1) A limited liability company or a foreign limited liability company authorized to transact business by the Fort Peck Tribes on the Fort Peck Reservation shall deliver to the Secretary, for filing, an annual report that sets forth:

(a) The name of the limited liability company and the tribe, state, or country under whose law it is organized;

(b) The mailing address and, if different, street address of its registered office and the name of its registered agent at that office on the Fort Peck Reservation;

(c) The address of its principal office;

(d) (i) If the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) If the management of a limited liability company is reserved to the members, a statement to that effect;

(e) If the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the Secretary between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized

or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the Secretary between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the Secretary shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business on the Fort Peck Reservation shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with this Chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

#### **Sec. 1216. Administrative Dissolution-Rules.**

(1) A domestic limited liability company maybe dissolved involuntarily by order of the Secretary if the limited liability company:

(a) (i) Has failed for 60 days after a change of its registered office or registered agent to file in the office of the Secretary a statement of the change; or

(ii) Has failed for 60 days to appoint and maintain a registered agent on the Fort Peck Reservation;

(b) Has failed for 140 days to file its annual report within the time required by law;

(c) Has failed to remit any fees required by law;

(d) Procured its certificate of existence through fraud; or

(e) has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice of the alleged excesses or abuses has been received from the Secretary by the registered agent of the limited liability company.

(2) If dissolution is sought under subsection (1)(d) or (1)(e), the Secretary may dissolve a limited liability company when an alleged violation of subsection (1)(d) or (1)(e) is established by an order of tribal court or a court of another appropriate jurisdiction. In addition to any other person authorized by law, the Secretary or the tribal prosecutor may maintain an action in tribal court to implement the provisions of this section.

#### **Sec. 1217. Reinstatement of Dissolved Limited Liability Company.**

(1) The Secretary may:

(a) Reinstates a limited liability company that has been dissolved under the provisions of Section 1216 of this Chapter.

(b) Restore to a reinstated limited liability company its right to carry on business on the Fort Peck Reservation to exercise all of its privileges and immunities.

(2) A limited liability company applying for reinstatement shall submit to the Secretary the application, executed by a person who was a member at the time of dissolution, setting forth:

(a) The name of the limited liability company;

(b) A statement that the assets of the limited liability company have not been liquidated;

(c) A statement that a majority of its members have authorized the application for reinstatement; and

(d) If its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.

(3) The limited liability company shall submit with its application for reinstatement:

(a) All annual reports not yet filed with the Secretary.

(4) When all requirements are met and the Secretary reinstates the limited liability company to its former rights, the Secretary shall:

(a) Conform and file in the office of the Secretary reports, statements, and other instruments submitted for reinstatement;

(b) Immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and

(c) Upon demand, issue to the limited liability company one or more certified copies of the certificate of reinstatement.

(5) The Secretary shall not order a reinstatement if 5 years have elapsed since the dissolution.

(6) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was involuntarily dissolved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization.

#### **Sec. 1218. Fees For Filing, Copying, and Services.**

(1) The Secretary shall collect fees for the following:

(a) Filing documents as required by this Chapter; and

(b) Copying documents, priority handling documents, transmitting facsimile copies of documents, and providing computer-generated information.

#### **Sec. 1219. License Fee.**

(1) In addition to the filing fee authorized by Section 1218 of this Chapter, the Secretary shall charge and collect from each foreign limited liability company:

(a) A license fee at the time of filing its articles of incorporation; and

(b) A license fee at the time of filing an application for a certificate of authority to transact business.

#### **Sec. 1220. Correcting Filed Record.**

(1) A limited liability company or foreign limited liability company may correct a record filed

by the Secretary if the record contains a false or erroneous statement or was defectively signed.

(2) A record must be corrected by:

(a) Preparing articles of correction that:

(i) Describe the record, including its filing date, or have attached a copy of the record to the articles of correction;

(ii) Specify the incorrect statement and the reason that it is incorrect or the manner in which the signing was defective; and

(iii) Correct the incorrect statement or defective signing; and

(b) Delivering the corrected record to the Secretary for filing.

(3) Articles of correction are effective retroactively on the effective date of the record that they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, the articles of correction are effective when filed.

#### **Sec. 1221. Certificate of Existence or Authority.**

(1) A person may request the Secretary to furnish a certificate of existence for a limited liability company or a certificate of authority for a foreign limited liability company.

(2) A certificate of existence for a limited liability company must set forth:

(a) The company's name;

(b) That it is organized under the laws of the Fort Peck Tribes, the date of organization, whether its duration is at-will or for a specified term, and, if for a specified term, the period specified;

(c) If payment is reflected in the records of the Secretary and if nonpayment affects the existence of the company that all fees, taxes, and penalties owed to the Fort Peck Tribes have been paid;

(d) Whether its most recent annual report required by Section 1215 of this Chapter has been filed with the Secretary;

(e) That articles of termination have not been filed; and

(f) Other facts of record in the office of the Secretary if requested by the applicant.

(3) A certificate of authority for a foreign limited liability company must set forth:

(a) The company's name used on the Fort Peck Reservation;

(b) That it is authorized to transact business on the Fort Peck Reservation;

(c) Whether its most recent annual report required by Section 1215 of the Chapter has been filed with the Secretary;

(d) That a certificate of cancellation has not been filed; and

(e) Other facts of record in the office of the Secretary if requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or authority issued by the Secretary may be relied upon as conclusive evidence as of the date of the certificate that the domestic or foreign limited liability company is in existence or is authorized to transact business on the Fort Peck Reservation.

#### **Sec. 1222. Liability For False Statement in Filed Record.**

Subject to Section 1227 of this Chapter, if a record authorized or required to be filed under this Chapter contains a false statement, a person who suffers loss by reliance on the statement may recover damages for the loss from the person who signed the record or caused another to sign it on that person's behalf and who knew the statement to be false at the time that the record was signed.

#### **Sec. 1223. Filing By Judicial Act.**

If a person required by Section 1212 of this Chapter to execute any record or document fails or refuses to do so, a person who is adversely affected by the failure or refusal may petition the Fort Peck Tribal Court to direct the signing of the record or document. If the court finds that it is proper for the record or document to be signed and that a designated person has failed or refused to sign the record, it shall order the Secretary to sign and file an appropriate record or document.

#### **Sec. 1224. Knowledge and Notice.**

(1) A person knows a fact if the person has actual knowledge of the fact.

(2) A person has notice of a fact if the person:

(a) Knows the fact;

(b) Has received a notification of the fact; or

(c) Has reason to know that the fact exists from other facts known to the person at the time in question.

(3) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person, whether or not the other person knows the fact.

(4) A person receives a notification when the notification:

(a) Comes to the person's attention; or

(b) Is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) (a) An entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction:

(i) When an individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact; or

(ii) When the fact would have been brought to the individual's attention had the entity exercised reasonable diligence.

(b) (i) An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity and there is reasonable compliance with the routines.

(ii) Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and to know that the transaction would be materially affected by the information.

#### **Sec. 1225. Agency Power of Members and Managers.**

(1) Except as provided in subsection (2), a member is an agent of the limited liability company for the purpose of its business or affairs and the act of a member, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the

limited liability company binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) A member, acting solely in the capacity as a member, may not be an agent of the limited liability company; and

(b) A manager is an agent of the limited liability company for the purpose of its business or affairs and the act of a manager, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(3) An act of a manager or a member that is not apparently for carrying on in the usual way the business of the limited liability company does not bind the limited liability company, unless authorized in accordance with the articles of organization or the operating agreement, at the time of the transaction or at any other time.

(4) An act of a manager or member in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

#### **Sec. 1226. Admissions of Members and Managers.**

(1) Except as provided in subsection (2), an admission or representation made by a member concerning the business or affairs of a limited liability company within the scope of the member's authority as provided for by this part is evidence against the limited liability company.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) An admission or representation made by a manager concerning the business or affairs of a limited liability company within the scope of the manager's authority, as provided for by this part, is evidence against the limited liability company; and

(b) The admission or representation of a member, acting solely in the capacity as a member, may not constitute evidence.

#### **Sec. 1227. Limited Liability Company Liability For Member's or Manager's Conduct.**

(1) A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a member or manager acting in the ordinary course of business of the company or with the authority of the company.

(2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company power or management of its business is not a ground for imposing personal liability on the member or managers of the limited liability company.

#### **Sec. 1228. Management and Voting.**

(1) Unless the articles of organization or the operating agreement provide otherwise, in a member-managed company:

(a) Each member has equal rights in the management and conduct of the company's business; and

(b) Except as provided in subsection (3), any matter relating to the business of the company may be decided by a majority of the members.

(2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-managed company:

(a) Each manager has equal rights in the management and conduct of the company's business;

(b) Except as provided in subsection (3), any matter relating to the business of the company

may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(c) A manager:

(i) Must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

(ii) Holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(3) Unless the articles of organization or the operating agreement provide otherwise, the only matters of a member-managed or manager-managed company's business requiring the consent of all of the members are:

(a) The amendment of the operating agreement under Section 1208 of this Chapter;

(b) The authorization or ratification of acts or transactions under Section 1208(3)(b)(ii) of this Chapter that would otherwise violate the duty of loyalty;

(c) An amendment to the articles of organization under Section 1211 of this Chapter;

(d) The compromise of an obligation to make a contribution under Section 1234 of this Chapter;

(e) The compromise, as among members, of an obligation to make a contribution or return money or other property paid or distributed in violation of this part;

(f) The making of interim distributions under Section 1237 of this Chapter, including the redemption or repurchase of an interest;

(g) The admission of a new member;

(h) The use of the company's property to redeem an interest subject to a charging order;

(i) The consent to dissolve the company under Section 1254 of this Chapter;

(j) A waiver of the right to have the company's business wound up and the company terminated under Section 1254 of this Chapter;

(k) The sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with or without goodwill.

(4) Action requiring the consent of members or managers under this Chapter may be taken without a meeting.

(5) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

### **Sec.1229. General Standards of Member's and Manager's Conduct.**

(1) The only fiduciary duties that a member owes to a member-managed company and the other members are the duty of loyalty imposed by subsection (2) and the duty of care imposed by subsection (3).

(2) A member's duty of loyalty to a member-managed company and its other members is limited to the following:

(a) To account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;

(b) To refrain from dealing with the company in the conduct or winding up of the company's business on behalf of a party or as a person having an interest adverse to the company; and

(c) To refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

(3) A member's duty of care to a member-managed company and the other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A member shall discharge the duties under this part or the operating agreement to a member-managed company and its other members and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A member of a member-managed company does not violate a duty or obligation under this part or under the operating agreement merely because the member's conduct furthers the member's own interest.

(6) A member of a member-managed company may lend money to and transact other business

with the company. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.

(7) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last-surviving member as if the person were a member.

(8) In a manager-managed company:

(a) A member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member;

(b) A manager is held to the same standards of conduct as those prescribed for members in subsections (2) through (6);

(c) A member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct prescribed for members in subsections (2) through (6) to the extent that the member exercises the managerial authority vested in a manager by this part; and

(d) A manager is relieved of liability imposed by law for violation of the standards prescribed for members by subsections (2) through (6) to the extent of the managerial authority delegated to the members by the operating agreement.

### **Sec. 1230. Records and Information.**

(1) Unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall keep at its principal place of business the following:

(a) A current and past list, setting forth the full name and last-known mailing address of each member and manager, if any, set forth in alphabetical order;

(b) A copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(c) Copies of the limited liability company's (if applicable) federal, state, and local income tax returns and financial statements, if any, for the 3 most recent years or, if the returns and statements were not prepared for any reason, copies of the

information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the period;

(d) Copies of any effective written operating agreements and all amendments and copies of any written operating agreements no longer in effect;

(e) Unless provided in writing in an operating agreement:

(i) A writing, if any, setting forth the amount of cash, the agreed value of other property or services contributed by each member, and the times or events upon which any additional contributions agreed to by each member are to be made;

(ii) A writing, if any, stating events that require the limited liability company to be dissolved and its affairs wound up; and

(iii) Other writings, if any, prepared pursuant to a requirement in an operating agreement.

(2) (a) A member may, at the member's own expense, inspect and copy any limited liability company record, wherever the record is located, upon reasonable request during ordinary business hours.

(b) A former member and agents or attorneys of a former member must be provided access and the same right to copy records pertaining to the period that the former member was a member.

(3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in the managers, shall render, to the extent the circumstances make it just and reasonable, true and full information of all things affecting the members to any member and to the legal representative of any deceased member or of any member under legal disability.

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



**Sec. 1231. Actions By Members.**

(1) A member may maintain an action against a limited liability company or another member for legal or equitable relief, with or without an accounting as to the company's business, to enforce:

(a) The member's rights under the operating agreement;

(b) The member's rights under this part; or

(c) The rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

(2) The accrual of a right of action under this section and any time limits for asserting the right of action for a remedy under this section are governed by the laws of the Fort Peck Tribes. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

**Sec. 1232. Continuation of Term Company After Expiration of Specified Term.**

(1) If a term company is continued after the expiration of the specified term, the rights and duties of the members and managers remain the same as they were at the expiration of the term except to the extent inconsistent with rights and duties of members and managers of an at-will company.

(2) If the members in a member-managed term company or the managers in a manager-managed term company continue the business without any winding up of the business of the company, it continues as an at-will company.

**Sec. 1233. Contributions to Capital.**

An interest in a limited liability company may be issued in exchange for tangible or intangible property or other benefit to the company, including money, promissory notes, services performed, or other agreements to contribute cash or property or contracts for services to be performed.

**Sec. 1234. Liability For Contribution.**

(1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing signed by the member.

(2) (a) Except as provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any enforceable promises to contribute cash or property or to perform services even if the member is unable to perform because of death, disability, or other reason.

(b) 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 value or the stated contribution that has not been made.

(3) (a) Unless otherwise provided in the articles of organization or the operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this part may be compromised only with the unanimous consent of the members.

(b) A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (1), and without notice of any compromise, may enforce the original obligation.

**Sec. 1235. Sharing of Profits and Losses.**

Unless otherwise provided in the articles of organization or a written operating agreement, each member must be repaid that member's contributions to capital and share equally in the profits, losses, and surpluses remaining after all liabilities, including those to members, are satisfied.

**Sec. 1236. Member's and Manager's Rights to Payments and Reimbursement.**

(1) A limited liability company shall reimburse a member or manager for payments made and indemnify a member or manager for liabilities incurred by the member or manager in the ordinary course of the business of the company or for the preservation of the company's business or property.

(2) A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution that the member agreed to make.

(3) A payment or advance made by a member that gives rise to an obligation of a limited liability company under subsection (1) or (2) constitutes a loan to the company upon which interest accrues from the date of the payment or advance.

(4) A member is not entitled to remuneration for services performed for a limited liability company except for reasonable compensation for services rendered in winding up the business of the company.

#### **Sec. 1237. Sharing of Distributions.**

Except as provided in Section 1258 of this Chapter, distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in writing in the articles of organization or the operating agreement. If the articles of organization or the operating agreement does not so provide in writing, each member shall share equally in any distribution. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in the articles of organization or the operating agreement or at the times determined by the members or managers pursuant to Section 1228(3)(f).

#### **Sec. 1238. Distribution In Kind.**

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

(1) a member, regardless of the nature of the member's contribution, may not demand or receive any distribution from a limited liability company in any form other than cash; and

(2) a member may not be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the members exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

#### **Sec. 1239. Distributions.**

(1) A distribution may not be made if, after giving effect to the distribution:

(a) The limited liability company would not be able to pay its debts as they become due in the usual course of business; or

(b) The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or the operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member receiving the distribution.

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) on either:

(a) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(b) A fair valuation or other method that is reasonable under the circumstances.

(3) Except as provided in subsection (5), the effect of a distribution under subsection (1) is measured as of:

(a) The date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(b) The date payment is made if it occurs more than 120 days after the date of authorization.

(4) A limited liability company's indebtedness to a member incurred by reason of a distribution to be made to that member in accordance with this section is at parity with the limited liability company's indebtedness to its general unsecured creditors, except as otherwise provided by agreement.

(5) For purposes of this section:

(a) If terms of indebtedness provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection (2); and

(b) If the indebtedness is issued as a distribution, each payment of principal or interest on the

indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

#### **Sec. 1240. Liability Upon Wrongful Distribution.**

(1) A member or manager who votes for or assents to a distribution in violation of the articles of organization, the operating agreement, or Section 1239 of this Chapter is personally liable to the limited liability company, but not to other persons, for the amount of the distribution that exceeds what could have been distributed without violating Section 1239 of this Chapter or the articles of organization or the operating agreement if it is established that the member or manager did not perform the member's or manager's duties in compliance with Section 1229 of this Chapter.

(2) A member of a manager-managed company who knew a distribution was made in violation of Section 1239 of this Chapter, the articles of organization, or the operating agreement is personally liable to the company, but only to the extent that the distribution received by that member exceeded the amount that could have properly been paid to that member under Section 1239 of this Chapter.

(3) A member or manager against whom an action is brought under this section may implead in the action: (a) other members and managers who voted for or assented to the distribution in violation of subsection (1) and may compel contribution from them; and (b) members who received a distribution in violation of subsection (2) and may compel a contribution from the members in the amount received in violation of subsection (2).

(4) A proceeding under this section is barred unless it is commenced within 2 years after the date of the distribution.

#### **Sec. 1241. Right to Distribution.**

Subject to Section 1258, when a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

#### **Sec. 1242. Ownership of Limited Liability Company Property.**

(1) Property transferred to or otherwise acquired by a limited liability company becomes property of the limited liability company. A member has no interest in specific limited liability company property.

(2) Property may be acquired, held, and conveyed in the name of the limited liability company. Any estate in real property may be acquired in the name of the limited liability company, and title to any estate acquired must vest in the limited liability company rather than in the members individually.

#### **Sec. 1243. Transfer of Real Property.**

(1) Except as provided in subsection (5), title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

(2) Title to property of the limited liability company that is held in the name of one or more members or managers may be transferred by an instrument of transfer executed by the persons in whose name title is held if there is an indication in the instrument transferring title to the property to them of:

(a) Their capacity as members or managers of a limited liability company; or

(b) The existence of a limited liability company, even if the name of the limited liability company is not indicated.

(3) Property transferred under subsection (1) or (2) may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company under Section 1225 of this Chapter unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

(4) Title to property of the limited liability company may be transferred free of any claims of the limited liability company or its members by the persons in whose name title is held to a transferee who gives value without having notice that it is property of a limited liability company if title is held in the name of one or more persons other than the limited liability company and there is no indication in the instrument transferring title to the property to them of:

(a) Their capacity as members or managers of a limited liability company; or

(b) The existence of a limited liability company.

(5) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) Title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company; and

(b) A member, acting solely in the capacity of a member, may not transfer title as provided in subsection (5)(a).

#### **Sec. 1244. Nature of Distributional Interest.**

(1) A member is not a co-owner of, and does not have a transferable interest in, property of a limited liability company.

(2) A member's distributional interest in a limited liability company is personal property and, subject to the provisions of Section 1246 of this Chapter, may be transferred in whole or in part.

(3) An operating agreement may provide that a members distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to the provisions of Section 1246 of this Chapter, may also provide for the transfer of any interest represented by the certificate.

#### **Sec. 1245. Rights of Judgment Creditor.**

(1) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the distributional interest of the member with payment of the unsatisfied

amount of judgment, with interest. To the extent charged, the judgment creditor has only the rights of an assignee of the distributional interest. This part does not deprive a member of the benefit of any exemption laws applicable to a distributional interest.

(2) The court may appoint a receiver of the share of the distributions due or to become due to a judgment debtor and make all other orders, directions, accounts, and inquiries that the judgment debtor may have made or that the circumstances require to give effect to the charging order.

(3) A charging order constitutes a lien on the judgment debtors distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser of the distributional interest at a foreclosure sale has the rights of a transferee.

(4) At any time before foreclosure, a distributional interest that is charged may be redeemed:

(a) By the judgment debtor;

(b) By one or more of the other members with property other than the company's; or

(c) With the company's property if permitted by the operating agreement.

(5) This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company.

#### **Sec. 1246. Transfer of Distributional Interest-Rights of Transferee.**

(1) A transfer of a members distributional interest does not entitle the transferee to become a member or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled.

(2) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in writing in the operating agreement or if all other members consent.

(3) A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and the provisions of this part. A transferee who becomes a member also is liable for the transferor members obligations to make contributions under Section 1234 of this Chapter and for obligations under to return unlawful distributions, but the transferee is not obligated for the transferor members liabilities unknown to the transferee at the time that the transferee becomes a member.

(4) Whether or not a transferee of a distributional interest becomes a member under subsection (2), the transferor is not released from liability to the limited liability company under the operating agreement or the provisions of this Chapter.

(5) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, may not require access to information concerning the company's transactions, and may not inspect or copy any of the company's records.

(6) A transferee who does not become a member is entitled to:

(a) Receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) Receive, upon dissolution and winding up of the limited liability company's business:

(i) In accordance with the transfer, the net amount otherwise distributable to the transferor; and

(ii) A statement of account only from the date of the latest statement of account agreed to by all the members; and

(c) Seek under Section 1255(2) of this Chapter a judicial determination that it is equitable to dissolve and wind up the company's business.

(7) A limited liability company does not have to give effect to a transfer until it has notice of the transfer.

## **Sec. 1247. Events Causing Member's Dissociation.**

A member is dissociated from a limited liability company upon the occurrence of any of the following events:

(1) The company's having notice of the member's express will to withdraw upon the date of notice or on a later date if specified by the member;

(2) An event agreed to in the operating agreement as causing the member's dissociation;

(3) Upon transfer of all of a member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest that has not been foreclosed;

(4) The member's expulsion pursuant to the operating agreement;

(5) The member's expulsion by unanimous vote of the other members if:

(a) It is unlawful to carry on the company's business with the member;

(b) There has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest, which has not been foreclosed;

(c) Within 90 days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

(d) A partnership or a limited liability company that is a member has been dissolved, and its business is being wound up;

(6) On application by the company or another member, the member's expulsion by judicial determination because the member:

(a) Engaged in wrongful conduct that adversely and materially affected the company's business;

(b) Willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under Section 1229 of this Chapter; or

(c) Engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the business with the member;

(7) The member's:

(a) Becoming a debtor in bankruptcy;

(b) Executing an assignment for the benefit of creditors;

(c) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of all or substantially all of the member's property; or

(d) Failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence or failing within 90 days after the expiration of stay to have the appointment vacated;

(8) In the case of a member who is an individual:

(a) The member's death;

(b) The appointment of a guardian or general conservator for the member; or

(c) A judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

(9) In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, except that this subsection does not apply to the substitution of a successor trustee;

(10) In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or

(11) Termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust.

#### **Sec. 1248. Member's Power to Dissociate-Wrongful Dissociation.**

(1) Unless otherwise provided in the operating agreement, a member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, pursuant to Section 1247 of this Chapter.

(2) If the operating agreement has not eliminated a member's power to dissociate, the member's dissociation from a limited liability company is wrongful only if:

(a) It is in breach of an express provision of the agreement; or

(b) Before the expiration of the specified term of a term company:

(i) The member withdraws by express will;

(ii) The member is expelled by judicial determination under Section 1247(6) of this Chapter;

(iii) The member is dissociated by becoming a debtor in bankruptcy; or

(iv) In the case of a member that is not an individual, trust, other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

(3) A member that wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.

(4) If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under subsection (2), damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation.

#### **Sec. 1249. Effect of Member's Dissociation.**

(1) Upon a member's dissociation:

(a) in an at-will company, the company shall cause the dissociated member's distributional interest to be purchased as provided under Section 1250 and Section 1251 of this Chapter; and

(b) In a term company:

(i) If the company dissolves and winds up its business on or before the expiration of its specified term, Part 8 of this part applies to determine the dissociated member's rights to distributions; and

(ii) If the company does not dissolve and wind up its business on or before the expiration of its specified term, the company shall ensure that the dissociated member's distributional interest is purchased under Section 1250 and Section 1251 of this Chapter on the date that was specified for the expiration of the term at the time of the member's dissociation.

(2) Upon a member's dissociation from a limited liability company:

(a) The member's right to participate in the management and conduct of the company's business terminates, except as otherwise provided in Section 1256 of this Chapter, and the member ceases to be a member and must be treated the same as a transferee of a member;

(b) The member's duty of loyalty under Section 1229(2)(c) of this Chapter terminates; and

(c) The member's duty of loyalty under Section 1229(2)(a) and (2)(b) of this Chapter and duty of care under Section 1229(3) of this Chapter continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the company's business pursuant to Section 1256 of this Chapter.

### **Sec. 1250. Company Purchase of Distributional Interest.**

(1) A limited liability company shall purchase a distributional interest of a:

(a) Member of an at-will company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under Section 1254 of this Chapter; or

(b) Member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the

specified term does not result in a dissolution and winding up of the company's business under Section 1256 of this Chapter.

(2) A limited liability company shall deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than 30 days after the date determined under subsection (1). The purchase offer must be accompanied by:

(a) A statement of the company's assets and liabilities as of the date determined under subsection (1);

(b) The latest available balance sheet and income statement, if any; and

(c) An explanation of how the estimated amount of the payment was calculated.

(3) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. If a default occurs, the dissociated member is entitled to commence a proceeding to have the company dissolved under Section 1255(1)(d) of this Chapter.

(4) If an agreement to purchase the distributional interest is not made within 120 days after the date determined under subsection (1), the dissociated member, within another 120 days, may commence a proceeding against the limited liability company to enforce the purchase. The company, at its expense, shall notify in writing all of the remaining members and any other person that the court directs of the commencement of the proceeding. The jurisdiction of the court in which a proceeding is commenced under this subsection is plenary and exclusive.

(5) The tribal court shall determine the fair value of the distributional interest in accordance with the standards set forth in Section 1251 of this Chapter, together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

(6) Damages for wrongful dissociation under Section 1248(2) of this Chapter and all other amounts owing, whether or not currently due, from the dissociated member to a limited liability

company, must be offset against the purchase price.

**Sec. 1251. Court Action to Determine Fair Value of Distributional Interest.**

(1) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

(a) Determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributional interests for any other purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;

(b) Specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on a dissociated member; and

(c) Require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

(2) After the dissociated member delivers the assignment, the dissociated member has no further claim against the company, its members, officers, or managers, if any, other than a claim to any unpaid balance of the purchase price or a claim under any agreement with the company or the remaining members that is not terminated by the court.

(3) If the purchase is not completed in accordance with the court's specified terms, the company is to be dissolved upon application under Section 1255(1)(d) of this Chapter. If a limited liability company is so dissolved, the dissociated member has the same rights and priorities in the company's assets as if the sale of the distributional interest had not been ordered.

(4) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or not in good

faith, it may award one or more other parties reasonable expenses, including attorney fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with Section 1250(2) of this Chapter.

(5) Interest must be paid on the amount awarded from the date determined under Section 1250(1) of this Chapter to the date of payment.

**Sec. 1252. Dissociated Members Power to Bind Limited Liability Company.**

For 2 years after a member dissociates without the dissociation resulting in a dissolution and winding up of a limited liability company's business, the company is bound by an act of the dissociated member that would have bound the company under Section 1225 of this Chapter before dissociation only if at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated member was then a member;

(2) Did not have notice of the member's dissociation; and

(3) Is not considered to have had notice under Section 1253 of this Chapter.

**Sec. 1253. Statement of Dissociation.**

(1) A dissociated member or a limited liability company shall file in the office of the Secretary a statement of dissociation, stating the name of the company and that the member is dissociated from the company.

(2) For the purposes of Section 1225 and Section 1252 of this Chapter, a person not a member is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

**Sec. 1254. Dissolution.**

(1) A limited liability company is dissolved and its affairs must be wound up when one of the following occurs:

(a) At the time or upon the occurrence of events specified in writing in the articles of organization or operating agreement;

(b) Consent of the number or percentage of members specified in the operating agreement;



(c) An event that makes it unlawful for all or substantially all of the business of the company to be continued, but any cure of illegality within 90 days after notice to the company of the event is effective retroactively to the date of the event for purposes of this section;

(d) The expiration of the term specified in the articles of organization; or

(e) Entry of a decree of judicial dissolution under Section 1255 of this Chapter.

(2) Subject to subsection (3), a limited liability company continues after dissolution only for the purpose of winding up its business.

(3) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

(a) the limited liability company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

(b) the rights of a third party accruing under the provisions of Section 1257(1) or arising out of conduct by the third party in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

### **Sec. 1255. Judicial Dissolution.**

(1) On application by or for a member or a dissociated member, the Fort Peck Tribal Court may order dissolution of a limited liability company, or other appropriate relief, when:

(a) The economic purpose of the company is likely to be unreasonably frustrated;

(b) Another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member remaining as a member;

(c) It is not otherwise reasonably practicable to carry on the company's business in conformity

with the articles of organization and the operating agreement;

(d) The company failed to purchase the petitioner's distributional interest as required by Section 1249 of this Chapter or

(e) The members or managers in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

(2) On application by a transferee of a member's interest, The Fort Peck Tribal Court may determine that it is equitable to wind up the company's business:

(a) After the expiration of the specified term, if the company was for a specified term at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or

(b) At any time, if the company was at will at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer.

### **Sec. 1256. Winding Up.**

(1) Except as otherwise provided in the articles of organization or the operating agreement, the business or affairs of the limited liability company may be wound up:

(a) By the members or managers who have authority under Section 1240 of this Chapter to manage the limited liability company prior to dissolution; or

(b) If one or more of the members or managers have engaged in wrongful conduct or upon other cause shown, by the Fort Peck Tribal Court on application of any member or any members legal representative or assignee.

(2) The persons winding up the business or affairs of the limited liability company may, in the name of and for and on behalf of the limited liability company:

(a) Prosecute and defend suits;

(b) Settle and close the business of the limited liability company;

(c) Dispose of and transfer the property of the limited liability company;

(d) Discharge the liabilities of the limited liability company; and (e) distribute to the members any remaining assets of the limited liability company.

#### **Sec. 1257. Agency Power and Liability of Members or Managers After Dissolution.**

(1) Except as provided in subsections (3) through (5), after an event causing dissolution of the limited liability company, a member may bind the limited liability company:

(a) By an act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) By any transaction that would have bound the limited liability company, if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of termination is presumed to constitute notice of dissolution for purposes of subsection (1)(b).

(3) An act of a member that would not otherwise be binding on the limited liability company under subsection (1) is binding if it is authorized by the limited liability company.

(4) An act of a member that would be binding under subsection (1) or would be otherwise authorized and that is in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager may exercise the authority of a member under subsection (1) and a member may not exercise the authority if the member is acting solely in the capacity of a member.

(6) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for the winding up of the company's business is liable to the company for any damage caused by the act.

#### **Sec. 1258. Distribution of Assets.**

Upon the winding up of a limited liability company, the assets must 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, other than liabilities to members for distributions under Section 1240 of this Chapter;

(2) Unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under Section 1240 of this Chapter;

(3) Unless otherwise provided in writing in the articles of organization or a written operating 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.

#### **Sec. 1259. Articles of Termination.**

(1) At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the Secretary articles of termination stating:

(a) The name of the limited liability company;

(b) The reason for filing the articles of termination;

(c) The effective date of the articles of termination, which must be a date certain, if they are not to be effective upon the filing;

(d) The name of the agent or agents authorized to receive service of process after dissolution or termination of the limited liability company;

(e) The name of the person or persons authorized to wind up the business and authorized to execute documents on behalf of the limited liability company;

(f) The date of the dissolution; and

(g) That the company's business has been wound up and the legal existence of the company has been terminated.

(2) The existence of a limited liability company is terminated upon the filing of the articles of termination or upon a later effective date, if specified in the articles of termination.

**Sec. 1260. Known Claims Against Dissolved or Terminated Limited Liability Companies.**

(1) A dissolved or terminated limited liability company may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved or terminated limited liability company shall notify its known claimants in writing of the dissolution or termination at any time after the effective date of the dissolution or termination. The written notice must:

(a) Describe information that must be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be less than 120 days from the later of the effective date of the written notice or the filing of the articles of termination pursuant to Section 1259 of this Chapter, by which the dissolved or terminated limited liability company must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved or terminated limited liability company is barred:

(a) If a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved or terminated limited liability company by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved or terminated limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, 'claim' does not include a contingent liability or a claim based on an event occurring after the effective date of the dissolution or termination.

**Sec. 1261. Unknown Claims Against Dissolved or Terminated Limited Liability Companies.**

(1) Subject to Section 1260 of this Chapter and subsections (2) through (5) of this section, the dissolution or termination of a limited liability company, including dissolution by the expiration of

its term, does not take away or impair any remedy available to or against the limited liability company or its members or managers for any claim or right, whether or not the claim or right existed or accrued prior to dissolution or termination. A proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its name. The members and managers have power to take action as appropriate to protect the remedy, right, or claim.

(2) A dissolved or terminated limited liability company may publish notice of its dissolution or termination and request that persons having claims against it present the claims in accordance with the notice.

(3) The notice must:

(a) Be published at least once in a newspaper of general circulation on the Fort Peck Reservation where the dissolved or terminated limited liability company's principal office is located;

(b) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(c) State that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within 5 years after publication of the notice.

(4) If a dissolved or terminated limited liability company publishes a notice in accordance with subsection (3) The claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved or terminated company within 5 years after the publication date of the notice:

(a) A claimant who did not receive written notice under Section 1260 of this Chapter;

(b) A claimant whose claim was timely sent to the dissolved or terminated company but not acted on; and

(c) A claimant whose claim is contingent on or based on an event occurring after the effective date of dissolution or termination.

(5) A claim not barred under this section may be enforced:

(a) Against the dissolved or terminated limited liability company, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member of the dissolved or terminated company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

#### **Sec. 1262. Involuntary Dissolution-Procedure.**

(1) A limited liability company that is guilty of any of the actions or omissions described in Section 1216(1) of this Chapter is in default. By reason of the default, the limited liability company may be involuntarily dissolved by order of the Secretary, thereby forfeiting its right to transact any business on the Fort Peck Reservation.

(2) On or before September 1 of each year, the Secretary shall compile a list of defaulting limited liability companies, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(3) The Secretary shall give notice to the defaulting limited liability companies by:

(a) Mailing a letter addressed to the limited liability company in care of its registered agent or any director or officer; or

(b) Publication of a general notice once a month for 3 consecutive months in the newspaper of the Fort Peck Reservation.

(4) The notice referred to in subsection (3) must specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in Section 1216 of this Chapter have been rectified within 90 days following the mailing or publication of notice:

(a) The Secretary will dissolve the defaulting limited liability companies;

(b) Defaulting limited liability companies will forfeit the amount of any tax, penalty, or costs to the Fort Peck Tribes; and

(c) Defaulting limited liability companies will forfeit their rights to carry on business within the Fort Peck Reservation.

(5) After 90 days following mailing or publication of each notice, the Secretary may, by order, dissolve all limited liability companies that have

not satisfied the requirements of applicable law and compile a full and complete list containing the names of all limited liability companies that have been so dissolved. The Secretary shall immediately give notice to the dissolved limited liability companies as specified in subsection (3).

(6) In the case of involuntary dissolution, all the property and assets of the dissolved limited liability companies must be held in trust by the members or managers of the limited liability companies and the limited liability companies may carry on business only as necessary to wind up and liquidate their business and affairs under Section 1254 of this Chapter and to notify claimants under Sections 1260 and 1261 of this Chapter.

(7) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent for service of process.

#### **Sec. 1263. Reinstatement Following Administrative Dissolution.**

(1) A limited liability company administratively dissolved may apply to the Secretary for reinstatement within 5 years after the effective date of dissolution. The applicant shall file an official application. The application must:

(a) Recite the name of the company and the effective date of its administrative dissolution;

(b) State that the ground for dissolution either did not exist or has been eliminated;

(c) State that the company's name satisfies the requirements of Section 1203 of this Chapter;

(d) Contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid; and (e) include all annual reports not yet filed with the Secretary.

(2) If the Secretary determines that the application contains the information required by subsection (1) and that the information is correct, the Secretary shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of

the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred.

**Sec. 1264. Appeal From Denial of Reinstatement.**

(1) If the Secretary denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary shall serve the company with a record that explains the reason or reasons for the denial.

(2) The company may appeal the denial of reinstatement to the Fort Peck Tribal Court within 30 days after service of the notice of denial. The company shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary's certificate of dissolution, the company's application for reinstatement, and the Secretary's notice of denial.

(3) The court may summarily order the Secretary to reinstate the dissolved company or may take other action that the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

**Sec. 1265. Authority to Transact Business Required.**

(1) A foreign limited liability company may not transact business on the Fort Peck Reservation until it obtains a certificate of authority from the Secretary.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) Maintaining, defending, or settling any proceeding;

(b) Holding meetings of the members or managers or carrying on other activities concerning internal affairs of the limited liability company;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositaries with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the Fort Peck Reservation before they become contracts;

(g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a function of the limited liability company;

(j) Conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) Transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

(4) Except as provided in subsection (2), a foreign limited liability company is transacting business within the meaning of subsection (1) if it enters into a contract with Fort Peck Tribes, an agency or department of the Fort Peck Tribes, or a wholly owned business or subsidiary business of the Fort Peck Tribes and must apply for and receive a certificate of authority to transact business before entering into the contract. The Secretary shall provide written notice to the contracting parties regarding the requirement that a foreign limited liability company obtain a certificate of authority. The foreign limited liability company must be allowed 30 days from the date of the notice to obtain the certificate of authority, and an existing contract may not be voided prior to the expiration of the 30 days.

**Sec. 1266. Consequences of Transacting Business Without Authority.**

(1) A foreign limited liability company transacting business on the Fort Peck Reservation without a certificate of authority may not maintain a proceeding in Fort Peck Tribal Court until it obtains a certificate of authority.

(2) The successor to a foreign limited liability company that transacted business on the Fort Peck Reservation without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in Fort Peck Tribal Court until the foreign limited liability company or its successor obtains a certificate of authority.

(3) Fort Peck Tribal Court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign limited liability company or its successor obtains the certificate.

(4) A foreign limited liability company is liable for a civil penalty of \$50 for each day, but not to exceed a total of \$10,000 for each year, that it transacts business on the Fort Peck Reservation without a certificate of authority. The Fort Peck Tribal prosecutor may collect all penalties due under this subsection and deposit them to the general fund.

(5) Notwithstanding the provisions of subsections (1) and (2) and except as provided in subsection (6), the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding on the Fort Peck Reservation.

(6) A contract between the Fort Peck Tribes, an agency or department of the Fort Peck Tribes, or a wholly owned business of the Fort Peck Tribes and a foreign limited liability company that has failed to obtain a certificate of authority from Fort

Peck Tribes, the contracting agency or department of the Fort Peck Tribes, or the contracting wholly owned business of the Fort Peck Tribes.

**Sec. 1267. Application For Certificate of Authority.**

(1) A foreign limited liability company may apply for a certificate of authority to transact business on the Fort Peck Reservation by delivering an application to the Secretary for filing. The application must set forth:

(a) The name of the foreign limited liability company or, if its name is unavailable for use on the Fort Peck Reservation, a name that satisfies the requirements of Section 1273 of this Chapter;

(b) The name of the state, tribe, or country under whose law it is organized;

(c) Its date of organization and period of duration;

(d) The street address of its principal office;

(e) The address of its registered office on the Fort Peck Reservation and the name of its registered agent at that office; and

(f) The names and usual business addresses of its current managers, if different from its members.

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state, tribe, or country under whose law the foreign limited liability company is organized.

**Sec. 1268. Registered Office and Registered Agent of Foreign Limited Liability Company.**

Each foreign limited liability company authorized to transact business by the Fort Peck Tribes shall continuously maintain on the Fort Peck Reservation:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent who shall be: (a) an individual who resides on the Fort Peck Reservation and whose business office may be identical with the registered office; or (b) a domestic corporation, a limited liability company, or a foreign

corporation or foreign limited liability company authorized to transact business by the Fort Peck Tribes.

#### **Sec. 1269. Resignation of Registered Agent of Foreign Limited Liability Company.**

(1) The registered agent of a foreign limited liability company may resign the agency appointment by signing and delivering to the Secretary for filing the original and two copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the Secretary shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if the office has not been discontinued. The Secretary shall mail the other copy to the foreign limited liability company at its principal office address shown in its most recent annual report.

(3) The agency appointment is terminated and the registered office discontinued, if provided in the statement, 30 days after the date on which the statement was filed.

#### **Sec. 1270. Change of Registered Office or Registered Agent of Foreign Limited Liability Company.**

(1) A foreign limited liability company authorized to transact business on the Fort Peck Reservation may change its registered office or registered agent, or both, by delivering to the Secretary, for filing, a statement of change setting forth:

(a) The foreign limited liability company's name;

(b) The street address of its current registered office;

(c) If the address of its registered office is to be changed, the new address of the registered office on the Fort Peck Reservation;

(d) The name and address of its current registered agent;

(e) If its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address; and

(f) The fact that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent are identical.

(2) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the registered agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary, for filing, a statement of change that complies with the requirements of subsection (1) and that states that the foreign limited liability company has been notified of the change.

#### **Sec. 1271. Amended Certificate of Authority.**

(1) A foreign limited liability company authorized to transact business on the Fort Peck Reservation shall obtain an amended certificate of authority from the Secretary if it changes:

(a) Its name;

(b) The period of its duration; or

(c) The state, tribe or country of its organization.

(2) The requirements of Section 1267 of this Chapter for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

#### **Sec. 1272. Effect of Certificate of Authority.**

(1) A certificate of authority issued by the Secretary authorizes a foreign limited liability company to transact business on the Fort Peck Reservation subject to the right of the Fort Peck Tribes to revoke the certificate as provided in this part.

(2) A foreign limited liability company with a valid certificate of authority has the same rights and privileges as a domestic company of similar character and, except as otherwise provided by this part, is subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic limited liability company of similar character.

(3) This part does not authorize the Fort Peck Tribes to regulate the organization or internal affairs of a foreign limited liability company authorized to transact business on the Fort Peck Reservation.

#### **Sec. 1273. Name.**

A certificate of authority may not be issued to a foreign limited liability company unless the name of the company satisfies the requirements of Section 1203 of this Chapter. If the name of a foreign limited liability company does not satisfy the requirements of Section 1203 of this Chapter, to obtain or maintain a certificate of authority:

(1) The foreign limited liability company may add the words "limited liability company", the abbreviation "l.l.c.", or the abbreviation "l.c." to its name for use on the Fort Peck Reservation; or

(2) If its real name is unavailable, the foreign limited liability company may use an assumed business name that is available and that satisfies the requirements of Section 1215 of this Chapter, if it files the assumed business name with the Secretary.

#### **Sec. 1274. Withdrawal of Foreign Limited Liability Company.**

(1) A foreign limited liability company authorized to transact business on the Fort Peck Reservation may not withdraw from the Fort Peck Reservation until it obtains a certificate of withdrawal from the Secretary.

(2) A foreign limited liability company authorized to transact business on the Fort Peck Reservation may apply for a certificate of withdrawal by delivering an application to the Secretary for filing. The application must set forth:

(a) The name of the foreign limited liability company and the name of the state, tribe, or country under whose law it is organized;

(b) That it is not transacting business on the Fort Peck Reservation and that it surrenders its authority to transact business on the Fort Peck Reservation;

(c) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business on the Fort Peck Reservation;

(d) A mailing address to which the Secretary may mail a copy of any process served on the Secretary under subsection (3);

(e) A commitment to notify the Secretary in the future of any change in its mailing address;

(f) Additional information as may be necessary or appropriate to enable the Secretary to determine and assess any unpaid fees or taxes payable by the foreign limited liability company.

(3) After the withdrawal of the foreign limited liability company is effective, service of process on the Secretary under this section is service on the foreign limited liability company. Upon receipt of process, the Secretary shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under subsection (2).

#### **Sec. 1275. Grounds For Revocation.**

The Secretary may commence a proceeding under Section 1276 of this Chapter to revoke the certificate of authority of a foreign limited liability company authorized to transact business on the Fort Peck Reservation if:

(1) The foreign limited liability company does not deliver its annual report to the Secretary within 140 days after it is due;

(2) The foreign limited liability company is without a registered agent or registered office on the Fort Peck Reservation for 60 days or more;

(3) The foreign limited liability company does not inform the Secretary under Section 1205 of this Chapter that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance; or

(4) The Secretary receives a duly authenticated certificate from the Secretary or other official having custody of company records in the



state, tribe, or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or disappeared as the result of a merger.

**Sec. 1276. Procedure For and Effect of Revocation.**

(1) If the Secretary determines that one or more grounds exist under Section 1275 of this Chapter for revocation of a certificate of authority, the Secretary shall serve the foreign limited liability company with written notice of the Secretary's determination.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary that each ground determined by the Secretary does not exist within 60 days after service of the notice is mailed, the Secretary may revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The Secretary shall file the original of the certificate and mail a copy to the foreign limited liability company.

(3) The authority of a foreign limited liability company to transact business on the Fort Peck Reservation ceases on the date shown on the certificate revoking its certificate of authority.

(4) The Secretary's revocation of a foreign limited liability company's certificate of authority appoints the Secretary as the foreign limited liability company's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign limited liability company was authorized to transact business on the Fort Peck Reservation. Service of process on the Secretary under this subsection is service on the foreign limited liability company. Upon receipt of process, the Secretary shall mail a copy of the process to the secretary of the foreign limited liability company at its principal office shown in its most recent annual report or in any subsequent communication received from the foreign limited liability company, stating the current mailing address of its principal office or, if

no report or communication is on file, in its application for a certificate of authority.

(5) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the foreign limited liability company.

**Sec. 1277. Appeal From Revocation.**

(1) A foreign limited liability company may appeal the Secretary's revocation of its certificate of authority to the Fort Peck Tribal Court within 30 days after service of the certificate of revocation is mailed. The foreign limited liability company may appeal by petitioning the court to set aside the revocation and by attaching to the petition copies of its certificate of authority and the Secretary's certificate of revocation.

(2) The court may summarily order the Secretary to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

**Sec. 1278. Admission of Foreign Professional Limited Liability Companies -- Application -- Revocation.**

(1) A foreign professional limited liability company is entitled to a certificate of authority to transact business on the Fort Peck Reservation only if:

(a) The name of the foreign professional limited liability company meets the requirements of Section 1283 of this Chapter;

(b) The foreign professional limited liability company is organized only for purposes for which a professional limited liability company may be organized under Part 11 of this Chapter; and

(c) All the members and not less than one-half of the managers of the foreign professional limited liability company are qualified persons with respect to the foreign professional limited liability company.

(2) Notwithstanding Section 1265 a foreign professional limited liability company may not be required to obtain a certificate of authority to

transact business on the Fort Peck Reservation unless it maintains an office on the Fort Peck Reservation for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the members and not less than one-half of the managers are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the foreign professional limited liability company.

(4) The certificate of authority may be revoked by the Secretary if the foreign professional limited liability company fails to comply with any provision of Part 11 of this Chapter. The licensing authority shall certify to the Secretary, from time to time, the names of all foreign professional limited liability companies that have given cause for revocation, together with the pertinent facts, and shall concurrently mail to each foreign professional limited liability company at its registered office on the Fort Peck Reservation a notice that the certification has been made. A certificate of authority of a foreign professional limited liability company may not be revoked unless there have been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during the 60 days.

(5) A foreign professional limited liability company is subject to all other provisions of Part 11 of this Chapter not inconsistent with this section.

#### **Sec. 1279. Suits By and Against Limited Liability Company.**

Suit may be brought by or against a limited liability company in its own name.

#### **Sec. 1280. Service of Process.**

(1) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company.

(2) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process on the Fort Peck

Reservation or the agent for service of process cannot with reasonable diligence be found at the agents address, the Secretary is an agent of the company upon whom process, notice, or demand may be served.

(3) Service of any process, notice, or demand on the Secretary may be made by delivering to and leaving with the Secretary duplicate copies of the process, notice, or demand and, when applicable, pursuant to the service provisions of the Fort Peck Tribal Rules of Civil Procedure. If the process, notice, or demand is not served pursuant to the provisions of the Fort Peck Tribal Rules of Civil Procedure, the Secretary shall forward one of the copies by registered mail, return receipt requested, to the company at its designated office, and the Secretary may require the person requesting the service to reimburse the Secretary for mailing costs. Service is effected under this subsection at the earliest of:

(a) The date on which the company receives the process, notice, or demand;

(b) The date shown on the return receipt, if signed on behalf of the company; or

(c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(4) The Secretary shall keep a record of all processes, notices, and demands served pursuant to this section and record the time of and the action taken regarding the service.

(5) This section does not affect the right to serve process, notice, or demand in any manner otherwise provided by law.

#### **Sec. 1281. Derivative Actions-Proper Plaintiff-Pleading-Expenses.**

(1) A member of a limited liability company may maintain an action in the Fort Peck Tribal Court in the right of the company if the members or managers having authority to bring the action have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

(2) In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced and:

(a) Must have been a member at the time of the transaction of which the plaintiff complains; or

(b) The plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

(3) In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the reasons for not making the effort.

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

#### **Sec. 1282. Purposes of Professional Limited Liability Companies.**

Professional limited liability companies may be organized under this part only for the purpose of rendering professional services and services ancillary to professional services within a single profession, except that a professional limited liability company may be organized for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which companies may be organized under this part to the extent that the combination of professional purposes or professional and business purposes is permitted by the licensing laws and rules of the Fort Peck Tribes applicable to the professions.

#### **Sec. 1283. Professional Limited Liability Company Name.**

The name of a domestic or foreign professional limited liability company:

(1) Must contain the words "professional limited liability company", "professional limited

company", "professional l.l.c.", "professional llc", "p.l.l.c.", or "pllc"; and

(2) Must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of organization.

#### **Sec. 1284. Professional Limited Liability Company Managers.**

At least one-half of the managers of a professional limited liability company must be qualified persons with respect to the limited liability company.

#### **Sec. 1285. Membership In Professional Limited Liability Company.**

(1) Only the following persons may be members of a professional limited liability company:

(a) Natural persons authorized by law of the Fort Peck Tribes or any other tribe, state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of organization of the professional limited liability company;

(b) General partnerships in which all the partners are authorized by law of the Fort Peck Tribes or any other tribe, state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law of the Fort Peck Tribes to render a professional service permitted by the articles of organization of the professional limited liability company; and

(c) Domestic or foreign professional corporations and domestic or foreign professional limited liability companies authorized by law of the Fort Peck Tribes or tribe, state to render a professional service permitted by the articles of organization of the professional limited liability company.

(2) The licensing authority may by rule further restrict or condition the issuance of membership interests in order to preserve ethical standards, but a rule may not cause a member at the time the rule becomes effective to become a disqualified person.

**Sec. 1286. Rendering Services.**

A domestic or foreign professional limited liability company may render professional services on the Fort Peck Reservation only through natural persons permitted to render the services on the Fort Peck Reservation; however, nothing in this part requires any person employed by a professional limited liability company to be licensed to perform services for which a license is not otherwise required or prohibits the rendering of professional services by a licensed natural person acting in that person's individual capacity, even if the person is a member or manager of a professional limited liability company.

**Sec. 1287. Responsibility For Services.**

(1) An individual who renders professional services as a member or an employee of a domestic or foreign professional limited liability company is liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual had rendered the services as a sole practitioner. A member or an employee of a professional limited liability company is not liable for the conduct of other members or employees unless the member or employee is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional limited liability company whose member or employee performs professional services within the scope of the member's or employee's employment or apparent authority to act for the company is liable to the same extent as the member or employee.

(3) Except as otherwise provided by statute, the personal liability of a member of a domestic or foreign professional limited liability company is no greater in any respect than that of a member of a limited liability company otherwise organized under this part.

**Sec. 1288. Relationship to Clients And Patients.**

(1) The relationship between an individual performing professional services as an employee of a domestic or foreign professional limited liability company and a client or patient is the same as

if the individual performed the services as a sole practitioner.

(2) The relationship between a domestic or foreign professional limited liability company performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of the Fort Peck Tribes extends to a domestic or foreign professional limited liability company and its employees.

**(AS PER RESOLUTION NO. 2048-2005-08,  
DATED AUGUST 22, 2005)**