

CF-07-08, February 26, 2008.

§ 2805. Petition for assessment of release

Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the Director to conduct a site screening and evaluation, as appropriate, to assess the hazards to public health and the environment which are associated with such release or threatened release.

History

CF-07-08, February 26, 2008.

Title 5

Commerce and Trade

History

Common or Contract Carriers previously codified at Chapter 19, §§ 3201-3203 has been redesignated to Title 5, Chapter 3, Subchapter 2, §§ 411-413. (1995)

Signs, Billboards, and Advertising Devices previously codified as Chapter 21, §§ 3401-3412 has been redesignated to Title 5, Chapter 3, Subchapter 3, §§ 421-432. (1995)

Chapter 1. Industrial Development Program

§ 1. Participation in peripheral community programs

A. The President of the Navajo Nation is directed to advise peripheral communities of the willingness of the Navajo Nation to participate in peripheral community programs for development of industries where such industries will create payrolls for Navajos.

B. Participation in peripheral community programs may include negotiation of arrangements for Navajo Nation participation in provision for plant facilities for prospective industrial operators and training for Navajo workers.

C. Negotiations shall provide adequate assurance covering employment for Navajos and shall be subject to approval of the Navajo Nation Council where the expenditure of Navajo Nation funds is contemplated.

History

CO-40-55, 1955 Ex. Vol. p. 332, October 15, 1955.

Development of industrial and business enterprises.

ACMY-131-69, May 15, 1969.

ACAP-100-69, April 14, 1969, Lukachukai, Arizona.

ACAU-162-68, August 16, 1968, Post Offices at Shiprock, Lukachukai and Teec Nos Pos.

ACN-216-67, November 20, 1967, amending ACO-212-67.

ACO-212-67, October 6, 1967, Navajo, New Mexico.

ACS-201-67, September 22, 1967, Padre Point.

ACJY-160-67, July 26, 1967, Window Rock Post Office.

ACJN-147-67, June 30, 1967, Black Creek Canyon Area.

CMA-40-66, March 3, 1966, Public Works and Economic Development Act of 1965.

ACMA-34-65, March 29, 1965, Post-Office facilities.

Revision note. Pursuant to CD-68-89, Resolve #9, references to "Chairman" changed to "President".

§ 2. Agreements—Generally

The President of the Navajo Nation is authorized to negotiate, and with the approval of the appropriate oversight Committee of the Navajo Nation Council, to execute on behalf of the Navajo Nation, agreements with federal, state, municipal, or private agencies, including industrial operators and potential industrial operators, which in the President's opinion will further the policy of industrial development. Such agreements may or may not provide for expenditures of funds.

History

CD-68-85.

CD-44-55, § 2, 1955 Res. p. 38, December 8, 1955.

Leases. CAU-40-63, August 22, 1963.

CAU-45-76, August 20, 1976.

CN-70-75, November 26, 1975.

CD-78-75, December 18, 1975.

CJA-15-74, January 24, 1974.

CJA-9-74, January 17, 1974.

CAU-63-73, August 31, 1973.

ACMY-189-71, May 12, 1971.

ACAP-69-67, April 13, 1967.

ACW-74-67, May 22, 1967.

CAU-47-73, August 30, 1973.

CMA-49-66, March 8, 1966

CMA-15-64.

CAP-54-66, April 20, 1966.

ACMA-34-66, March 23, 1966.

ACS-111-65, September 20, 1965.

CJA-1-65, January 8, 1965.

Revision note. Pursuant to CD-68-89, Resolve clause 9, reference to "Chairman" changed to "President". Previous reference to the "Government Services Committee" is changed to "appropriate oversight committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004)

Cross References

Economic Development Committee, economic and business development, powers, see 2 N.N.C. § 724(D).

Intergovernmental Relations Committee, contract powers, see 2 N.N.C. § 824(B) (6).

Standing committee, authority to contract, see 2 N.N.C. § 185(B).

§ 3. Borrowing interim construction financing funds

The President of the Navajo Nation is authorized to execute any and all instruments necessary to arrange for the borrowing of interim construction financing funds for Economic Development Administration projects which have been or may be specifically authorized by the appropriate oversight Committee of the Navajo Nation Council.

History

ACS-202-67, September 22, 1967.

Revision note. Previous reference to the "Government Services Committee" is changed to "appropriate oversight Committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004)

Cross References

Outside agreements, see 2 N.N.C. § 824(B) (6).

§ 4. Joint participation

A. The President of the Navajo Nation, subject to the approval of the appropriate oversight Committee of the Navajo Nation Council, is authorized to negotiate and execute agreements with industrial participants and such others for Navajo Nation assistance in the establishment and continuance of industrial operations contemplated and proposed by such participants, provided that reasonable safeguards are afforded for employment of Navajos in connection with such operations.

B. In the event such joint participation requires the participation of the Navajo Nation as a stockholder in one or more corporations, the members of the appropriate oversight Committee of the Navajo Nation Council and the President of the Navajo Nation are authorized to represent the Navajo Nation in such corporations as trustee stockholders on behalf of the Navajo Nation and its members.

History

CN-59-56, § 2, 1956 Res. p. 121, November 1, 1956, app. by Commissioner of Indian Affairs December 14, 1956.

Revision note. Previous reference to the "Government Services Committee" is changed to "appropriate oversight Committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004)

Cross References

Navajo Corporation Code, see 5 N.N.C. § 3100 et seq.

§ 5. Acquisition of land

A. The President of the Navajo Nation is authorized to enter into option agreements and lease agreements and acquire and accept deeds of land to the Navajo Nation as may be required in connection with execution of the industrialization program.

B. Agreements for the purchase of land for industrial purposes shall be subject to the availability of funds and prior approval of the appropriate oversight Committee of the Navajo Nation Council.

C. Agreements for the lease or option of lands for periods extending beyond one year shall be subject to the prior approval of the appropriate oversight Committee of the Navajo Nation Council.

D. Agreements for the lease of lands for industrial purposes obligating Navajo Nation funds in an amount in excess of one dollar (\$1.00) per year for any period of more than 10 years shall receive prior approval of the Navajo Nation Council.

E. The Navajo Nation Council obligates itself to appropriate Navajo Nation funds in an amount not to exceed ten thousand dollars (\$10,000) annually for the purposes of this Section and subject to the limitations of Navajo

Nation law.

History

CM-39-56, 1956 Res. p. 123, May 25, 1956.

Revision note. Section 5(E), "this section" has been deleted, and in lieu thereof, "Navajo Nation Law" has been inserted pursuant to CD-68-89, Resolve 4, which "repeals and declares null and void rules, regulations and laws or parts thereof which are inconsistent with the provisions of Title Two, Navajo Nation Code, as amended herein". Previous reference to the "Government Services Committee" is changed to "appropriate oversight Committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004)

Cross References

Acquisition of land generally, see 16 N.N.C. § 1 *et seq.*

Committee approval of Navajo Nation agreements, see Committee powers: generally, 2 N.N.C. § 185(B); Resources Committee, 2 N.N.C. § 695; Economic Development Committee, 2 N.N.C. § 724(D); and Intergovernmental Relations Committee, 2 N.N.C. § 824(B)(6).

Chapter 2. Navajo Nation Business Opportunity Act

History

CAP-37-02, April 19, 2002.

CJY-59-85, July 30, 1985.

§ 201. Title; Findings; Legislative Purpose and Intent

A. This Act shall be known and cited as the Navajo Nation Business Opportunity Act; Title 5, Navajo Nation Code, §§ 201 through 215.

B. Whereas the Navajo Nation Council finds:

1. The Navajo Nation is comprised of more than 25,000 square miles of land;

2. The Navajo Nation population now exceeds 250,000 members, of which over 175,000 members reside within the Navajo Nation. In addition, residents of the Navajo Nation include approximately 8,000 non-Navajos;

3. The unemployment rate of the Navajo Nation is approximately fifty percent (50%);

4. In 1996, the United States Congress enacted the Personal Responsibility and Work Reconciliation Act of 1996 (P.L. 104-193 "Welfare Reform Act"). This Act will impact thousands of Navajo people. As a result, there is a need to accelerate the development of privately owned businesses and provide more employment opportunities;

5. There is a need within the Navajo Nation to accelerate business development and economic growth within the Navajo Nation;

6. Although the Navajo Nation has a population that is approximately 90% Navajo, approximately 76% of the contracts by the Navajo Nation between the years 1994 and 2003 were awarded to non-Navajos, according to the Navajo Nation award data; and

7. The Navajo Nation's sovereign status is directly related to its ability and authority to regulate all commercial activities within the Navajo Nation, including those of non-Indians and non-member Indians. In addition, the Treaty of 1868 between the Navajo Nation and the United States recognizes the inherent authority of the Navajo Nation to exclude non-Indians from the Navajo Nation. Pursuant to this authority, engaging in business within the Navajo Nation is a privilege granted by the Navajo Nation and is subject to such conditions as the Navajo Nation may require, subject to applicable federal law. The privilege of entering into the Navajo Nation for the purpose of engaging in business is therefore conditioned upon, among other things, compliance with this Act.

C. The purpose of this Act is to:

1. Promote the economic self-sufficiency of the Navajo Nation by granting "first opportunity" and/or preference in contracting to Navajo and/or Indian owned and operated businesses;

2. Promote competitive bidding and contracting opportunities among Navajo businesses;

3. Develop a dynamic and self-sustaining private sector for the Navajo Nation;

4. Increase Navajo business and employment opportunities for the Navajo people;

5. Provide for business certification in accordance with current Navajo Nation laws; and

6. Regulate the conduct of those engaging in business within the Navajo Nation in order to protect and promote the economic security and welfare of the Navajo Nation.

D. It is not the intent of this Act to require the Navajo Nation or any other public entities or private entities to contract with non-qualified Navajo businesses.

E. It is the intent of this Act to grant first opportunity and contracting preference to qualified Navajo-owned or Indian-owned businesses for all contracts, subcontracts, grants and subgrants issued by public and private entities within the Navajo Nation.

F. The provisions of this Act should be liberally interpreted to promote economic development and the growth of Navajo-owned businesses within

the Navajo Nation.

G. The Navajo Nation shall determine the nature, composition, qualification, and preference certification of all businesses subject to the provisions of this Act.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 1, July 30, 1985.

§ 202. Definitions

For all purposes of this Act, the following definitions shall be applicable:

A. "Bid Shopping" is defined herein as any practice involving the solicitation or communication of any competitor's bid prior to and after bid opening, thereby providing an unfair advantage and opportunity to underbid any competitor.

B. "Bidders" is defined as buyers and sellers of goods and services who offer to perform a contract for work and labor or to supply services and goods at a specified price.

C. "Broker" is defined as buyers and sellers of goods and services including agents/negotiators between buyer and seller, who do not have custody of property or will not personally perform the contract to provide the goods or services.

D. "Dealer" is defined as one who buys to sell for resale, not one who buys to keep, or makes to sell.

E. "Established Business" is defined as a for-profit economic entity, firm or other organization, engaged in business activities with ownership, custody and control of an existing adequate inventory or providing professional services with a published address and telephone number and making significant contributions to the Navajo economy.

F. "Front" is defined as a business claiming to have fifty-one percent (51%) or more Navajo or other Indian ownership of any commercial, industrial, or other economic entity or organization, but without the Navajo or other Indian owner or owners exercising the major role in decision-making for operations, profit-sharing and actual management control.

G. "Navajo Indian" or "Navajo" is defined as a person who is an enrolled member of the Navajo Nation.

H. "Navajo Nation" shall have the same definition as used at 1 N.N.C. § 552 including:

1. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:

a. All lands within the exterior boundaries of the Navajo Indian Reservation, including the Navajo Partitioned Land, or of the Eastern Navajo portion of the Navajo Nation, including Alamo, Tohajiilee, and Ramah, or of Navajo-dependent Indian Communities;

b. All lands held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indian; and

c. All other lands over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law or to which the Navajo Nation has ownership through the Treaty of 1868.

I. "Other Indian" is defined as an Indian other than Navajo who is an enrolled member of a federally recognized Indian Tribe within the United States.

J. "Owned and Controlled" is defined as having at least fifty-one percent (51%) or more ownership of any commercial, industrial, or other economic entity, firm or organization, provided that such ownership shall consist of active participation in decision-making role in operations, profit-sharing and actual management control.

K. "Prime Contractor" is defined as any party, or entity which undertakes, offers to undertake or purports to have the capacity to undertake contracting of a project for a specified price and is authorized and responsible for the management, coordination, completion, supervision or subcontracting for the contracted project.

L. "Procuring Party" is defined as the party that initiates the proceeding to cause a project to be bid for contracting.

M. "Prospective bidders" is defined as potential buyers or sellers of goods and services who offer to perform a contract for work and labor or supply services and goods at a specific price.

N. "Private entity" is defined as a privately-owned business entity doing business on the Navajo Nation, including corporations which are wholly-owned by the Navajo Nation.

O. "Public entity" is defined as an entity which is a part of the Navajo Nation government.

P. "Subcontractor" is defined as any party or entity to which any contract is let by the prime contractor or its subcontractor for materials, equipment, transportation or other goods and services on that prime contract, regardless of tier.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 2, July 30, 1985.

Revision note. The Commerce Department was discontinued pursuant to the 1981 Budget and replaced by the Business Regulatory Department within the Division of Economic Development.

§ 203. Jurisdiction; Application; Compliance Requirements and Violations

A. General Jurisdiction. The Navajo Nation has the inherent sovereign authority to authorize and regulate business activities of business entities within the jurisdiction of the Navajo Nation, as defined in 7 N.N.C. § 254.

B. Application. This Act shall apply uniformly to all public and private entities engaging in business on the Navajo Nation and to the Navajo Nation itself. This Act shall apply to all procurement contracts exceeding fifty thousand dollars (\$50,000) and on a limited basis to those procurement contracts less than fifty thousand dollars (\$50,000).

C. Inapplicability to Lease and Other Transactions. This Act shall not apply to the negotiation, execution, award, transfer, assignment or approval of business site leases, homesite leases, office space leases, shopping center leases, mineral or non mineral leases, subleases, permits, licenses and transactions that are governed by other applicable laws and regulations of the Navajo Nation and the United States. This Act shall not apply to activities of private persons who contract for goods or services for their individual use or benefit.

D. Implementing Federal Indian Preference Laws and Regulations. To the fullest extent possible, this Act and its rules and regulations shall be construed in accordance with applicable federal Indian preference laws and regulations. Specifically, with respect to any self-determination contract or portion of a self-determination contract intended to benefit the Navajo Nation, this Act and any other applicable tribal employment or contract preference laws shall govern with respect to the administration of the contract or portion of the contract in accordance with the Indian Self Determination and Education Assistance Act, 25 U.S.C §§ 450(e)(c). If federal or state funded contracts specifically provide for the application of Indian preference rather than Navajo preference, the procuring party shall attempt to negotiate with such party in order to apply the provisions of this Act. In the event federal or state law expressly precludes the application of this Act, then Indian preference laws shall be applied and shall not constitute a violation of this Act.

E. Falsification or Concealment of Information; Sanctions and Penalties. Any person who authorizes, or knowingly or recklessly omits, or allows, or falsifies, or otherwise misrepresents any fact or matter material to any determination required by this Act, shall be subject to all applicable sanctions and penalties provided under this Act and any other applicable laws or regulations of the Navajo Nation.

F. Bid-Shopping. Bid shopping shall be prohibited.

G. Conflicts of Interest: Disqualification. No official or employee of the Navajo Nation government or entity of the Navajo Nation which is authorized to implement this Act shall promote, approve or participate in any matter pending before that agency or entity, in which such official or employee or any member of his or her immediate family has an economic or other special interest pursuant to the Navajo Nation Ethics in Government Law. The failure or refusal of such official or employee to abstain from such participation as required thereunder, shall render void any approval or action taken by the Navajo Nation Government or entity in which such official or employee participated, to the extent such action is favorable to the business entity in which such official or employee had an interest. The official(s) or employee(s) in conflict shall be subject to all applicable sanctions and penalties provided by law.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 3, July 30, 1985.

Revision note. CJY-59-85 inadvertently omitted the first Paragraph of § 203(D). See ACJN-112-85, Exhibit B, § 3.4, and Exhibit C, which recommended an "addition to § 3.4 [§ 203(D)]", not a substitution.

§ 204. Required Business and Contracting Preference Priorities; Certification Requirements

A. Preference Priorities. The Navajo Nation shall certify all businesses pursuant to the following Navajo business opportunity priority classification:

1. Priority #1. Certification shall be granted to any one hundred percent (100%) Navajo-owned and controlled business, having its principal place of business on or off the Navajo Nation.

2. Priority #2. Certification shall be granted to any fifty-one percent (51%) to ninety-nine percent (99%) Navajo or fifty-one percent (51%) to one hundred percent (100%) other Indian owned and controlled business or one hundred percent (100%) Navajo Nation owned and controlled economic enterprise having its principal place of business on or off the Navajo Nation.

B. Obtaining a Priority Certification and Required Compliance. To receive a priority certification under this Act, the business must satisfactorily demonstrate that the business meets the requirements of § 204(A) (1) or (2).

C. Appeal of Priority Certification Determination. Any business denied a priority classification may appeal the determination pursuant to § 211 hereof.

D. Conditions and Requirements for Broker and Dealer Certification;

Established Businesses. Brokers and dealers as defined in § 202 of this Act shall be certified for those activities which brokers and dealers normally conduct throughout the United States, subject to pre-qualification by the contract-letting, purchasing or procuring entity requesting such broker and/or dealer's services. Certification of brokers and dealers shall further be limited to those having an established business as defined in § 202 herein and certified only for the services being performed. Certification of any broker or dealer shall not qualify any other entity, firm or organization thereof. Such other entities, firms or organizations shall be individually subject to the provisions and conditions herein.

E. Partnership Certification. To be certified as eligible for any Navajo Business Opportunity hereunder, Navajo or other Indian ownership and control must be at least fifty-one percent (51%) of the entire partnership business, as well as the project or transaction for which Navajo Business Opportunity is sought, regardless of the number of general or limited partners.

F. Joint Venture Certification. To be eligible for any Navajo Business Opportunity hereunder, Navajo or other Indian ownership and control must be at least fifty-one percent (51%) of the overall combined joint venture, as well as the project or transaction for which Navajo Business Opportunity is sought, with profits to be divided from each venture in proportion to such respective interest.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 4, July 30, 1985.

Revision note. The Commerce Department was discontinued by the 1981 Budget and organization chart. See § C.

§ 205. Navajo Business Opportunity Procedures in Bidding and Procurement

A. Initial Determination of Maximum Feasible Price or Cost by Contracting or Procuring Party. The determination of the maximum feasible price or cost, in accordance with appropriate Business Regulatory Department rules and regulations, shall be made by the contracting or procuring party prior to soliciting bids and proposals. The maximum feasible price or cost may take into account market price, budgetary constraints and prototype cost and may not be revealed until the award of the contract.

B. Notice to the Business Regulatory Department. Prior to bid openings, the procuring party shall provide to the Business Regulatory Department:

1. A copy of the bid solicitation;
2. A copy of the notice published in the newspaper; and
3. A list of all businesses notified, including the dates and manner of such notices.

C. Bid Opening Procedures and Requirements. The following procedures shall be used at bid openings when there is more than one priority business submitting a bid:

1. All bids submitted by Priority #1 businesses shall be opened first.

2. The procuring entity shall determine the qualifications of the bidders based on qualifications established in accordance § 205(A)(2). Bids submitted by businesses deemed non-qualified or non-responsive shall not be considered.

3. The award shall be made to the qualified Priority #1 bidder with the lowest responsive bid among the Priority #1 bidders provided the bid does not exceed the maximum feasible price or cost.

4. If there is no qualified Priority #1 bidder, or if there is no qualified Priority #1 bidder with a bid less than or equal to the maximum feasible price or cost, the bids of the Priority #2 businesses shall then be opened and award shall be given to the qualified Priority #2 bidder with the lowest responsive bid provided the bid is less than or equal to the maximum feasible price or cost.

5. If no qualified Priority #1 or Priority #2 bidder is entitled to award, bidding may then be open to all other bidders, subject to the same specifications, qualifications and maximum feasible price or cost.

6. Any modifications of the specifications, qualifications or maximum feasible cost or price made subsequent to bid opening and which does not result in a contract award shall be rebid pursuant to the above procedures.

7. Notwithstanding any provision of this Act, in the event that federal law prohibits bid or procurement opportunity or preference as provided herein or prohibits negotiations with a bidder other than the bidder with the lowest bid or price offer, the initial bidding shall be opened to all Priority #1 and #2 businesses; and award shall be made to the bidder offering the lowest price, provided that the bid is less than or equal to the maximum feasible cost or price.

D. Subcontracting Requirements. Prior to the bid opening, prime contractors shall submit to the Business Regulatory Department a subcontracting plan listing the following:

1. Subcontractors and suppliers to be used by the prime contractor;

2. Procedures used in selecting subcontractors and suppliers; and

3. Subcontracts or lease agreements for equipment to be used in performance of the contract.

E. Prime and Subcontractor Performance Bonding: Permitted Alternatives. The prime contractor shall obtain surety bonding or other performance security

from subcontractors to secure their performance and wage obligations including, but not limited to cash bonds, letters of credit and cash monitoring systems such as retention, escrow and/or assignment of construction accounts. The prime contractor shall determine the form of performance security. The prime contractor shall maintain guaranteed security and be ultimately liable for performance of subcontractors.

F. Minimum Subcontract and Procurement Percentage Requirements. The Business Regulatory Department shall have the authority to require all procurement entities and prime contractors to comply with current minimum percentages for procurement and subcontract awards to Navajo-owned and controlled entities, firms and organizations, based upon availability and qualifications of such entities to provide specific products and services.

G. Prior Approval of Modifications. Any contract modification that results in a higher cost or price in excess of twenty percent (20%) of the original amount of the contract or if the procuring party substantially modifies such project, activity or transaction, shall be subject to review and approval by the Business Regulatory Department, to ensure that such modifications are not contrary to the purposes, intent or other provisions of other applicable laws.

H. Required Adherence to Priority Certification. Procuring entities shall not award contracts to non-Navajo owned and controlled entities at a price equal to or greater than the price offered by an equally qualified Priority #1 or #2 business.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 5, July 30, 1985.

Cross References

Contracts, see 2 N.N.C. § 223.

§ 206. Waivers

No Waiver of any requirement of this Act shall be granted except by valid resolution of the Navajo Nation Council.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 6, July 30, 1985.

§ 207. Implementation and Compliance with Navajo Nation Business Opportunity Provisions; Specific Duties and Responsibilities

A. Economic Development Committee. The Economic Development Committee of the Navajo Nation Council shall have the responsibility and authority to review, amend, modify and approve proposed rules and regulations for implementation of this Act.

B. Division of Economic Development. The Division of Economic Development of the Navajo Nation shall be responsible for administering, enforcing and implementing the provisions herein.

C. Business Regulatory Department. The Business Regulatory Department within the Division of Economic Development, shall be responsible for:

1. Developing and maintaining a certification program to determine the appropriate certification priority of business entities.

2. Promulgating rules and regulations to implement this Act. All proposed rules and regulations shall be published for public comments at least 90 days prior to submission to the Economic Development Committee of the Navajo Nation Council for final review and approval.

3. Publishing, maintaining and making available approved rules, regulations, guidelines and forms including provisions of this Act, to ensure that all Navajo Nation entities, all business entities and the Navajo People are kept fully informed of all current laws, rules, regulations and procedures for compliance hereto.

4. Regularly reviewing such rules and regulations in coordination with other Navajo Nation entities and agencies for applicability to economic and market conditions and their relevance to the interests of the Navajo People and the Navajo Nation and the intent of this Act.

5. Enforcing compliance with this Act, pursuant to the intent of this Act and the rules and regulations adopted hereto; requiring applicability of this Act to any proposed contract, subcontract or other transaction to be performed within the Navajo Nation by or on behalf of the Navajo Nation, as part of required clearance procedures, prior to approval by the appropriate oversight committee or authority; and requiring prebid, preconstruction or pre-qualification requirements as needed and appropriate to comply with this Act.

6. Coordinating efforts with federal agencies that require Indian preference or maximum utilization of minority business enterprises.

7. Maintaining and publishing a current Source List of all certified Priority #1 and #2 business entities, persons, firms, enterprises or organizations. By including an entity on such a Source List, the Business Regulatory Department in no way certifies that the entity is qualified to perform in the category in which it is listed. The purpose of this Source List is to utilize such list as a source document only for contract-letting and procuring parties required to determine and notify available Navajo and other Indian-owned entities in the respective areas of commerce which are subject to the provisions of this Act.

8. Providing, in accordance with its responsibilities, capabilities and available resources, in coordination with those of other responsible and appropriate Navajo Nation departments and entities, such community, governmental and business sector educational programs, information and advice as may be necessary and appropriate from time to time, to the continued understanding and awareness by such entities of the policies, objectives, and current procedural requirements for compliance with all provisions of this Act and the current rules and regulations adopted hereunder.

9. Recommend disciplinary action for Navajo Nation employees or officials found to be in violation or noncompliance with this Act pursuant to the applicable Executive, Judicial, or Legislative Navajo Nation Personnel Policies Manual, or the Ethics in Government Law.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 7, July 30, 1985.

CD-68-89, December 15, 1989.

Cross References

Contracts, generally, see 2 N.N.C. § 185(B).

Contract signatures, see 2 N.N.C. § 222.

§ 208. Certification of Eligible Entities and Authorization of Business Activities

Establishment of Procedure. The Business Regulatory Department shall have the following duties, responsibilities and authority:

A. Require timely submission of information and documentation on percentage of ownership and organization structure as required herein for certification or recertification eligibility;

B. Deny certification if required information is not provided in a timely manner;

C. Renew, suspend or decertify certifications. Annual, temporary or conditional certifications may be issued based on the circumstances. Certifications shall be reviewed based on new information or changes in organization or operations which materially affect eligibility for certification. Reviews shall be conducted in a manner so as to avoid any loss of eligibility to entities entitled hereto;

D. Certified businesses entities shall be required to disclose changes in organization and/or ownership that may materially affect the eligibility for

preference priority certification; and

E. All confidential certification information shall be kept confidential and shall not be disclosed except as necessary in a proceeding under this Act and other applicable laws.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 8, July 30, 1985.

§ 209. Monitoring and Enforcement

A. Navajo Nation Review and Approval Process. All proposed professional services, procurement and construction contracts shall be reviewed by the Business Regulatory Department for compliance with the Act.

B. Procedure Upon Alleged Violation. To investigate alleged violations or noncompliance of this Act, the Business Regulatory Department shall:

1. Investigate any alleged violation and/or complaint under this Act upon receipt of a written document;

2. Prepare a written summary of facts constituting a violation of the Act or applicable rules, and provide all statements of witnesses along with the summary thereof; and

3. Initially seek voluntary compliance and appropriate remedial action pursuant to this Act.

4. If voluntary compliance or remediation is not possible, the Department shall render a decision pursuant to this Act.

5. A decision by the Business Regulatory Department may be appealed pursuant to § 211 of this Act.

C. Interim Project Suspension; Temporary Restraining Orders and Permanent Injunctive Relief from Navajo Nation Court.

1. In the event of a violation of or noncompliance with this Act presenting a probability of continuing material and irreparable harm which is greater than the harm from suspension of performance, the Executive Director of the Division of Economic Development shall, with assistance from the Navajo Nation Department of Justice, on behalf of the threatened interests of the Navajo Nation and of innocent third parties, immediately apply to the District Court of the Navajo Nation for a temporary restraining order and an order to show cause why permanent injunctive relief should not be granted (including orders to permanently cease and desist such performance as determined appropriate) according to the Navajo Nation Rules of Appellate Procedure.

2. If a Navajo Nation Court orders suspension of performance, the Division of Economic Development shall take immediate remedial action as authorized by said Court to prevent or minimize material harm and damage to innocent third parties and to the interests of the Navajo Nation resulting or likely to result from such suspension of performance.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 9, July 30, 1985.

Note. § 209(C)(1) reference to Navajo Nation Rules of Civil Appellate Procedure changed to the Navajo Nation Rules of Civil Procedure.

§ 210. Imposition of sanctions

Upon opportunity for hearing and determination as provided herein, the Administrative Hearing Officer may impose any and all of the following sanctions for violation of this Act or the rules and regulations lawfully promulgated hereunder:

A. Civil monetary fines not to exceed five hundred dollars (\$500.00) per day, per violation.

B. Suspension or termination of a party's authorization to engage in business activity on the Navajo Nation; provided that the party shall be given a reasonable time to remove its equipment and other property it may have on the Navajo Nation and to take such measures to facilitate the satisfaction or assumption of any contractual obligations it has.

C. Prohibit the party from engaging in future business activity on the Navajo Nation for a specified period or permanently, pursuant to applicable laws of the Navajo Nation.

D. Require the party to make such changes in its performance, organization or operations to comply with this Act.

E. Impose other sanctions as appropriate to ensure compliance and to remedy any harm or damages from violation of this Act pursuant to applicable laws.

F. Recommend corrective or remedial action to the President of the Navajo Nation, or the Navajo Nation Council or its appropriate standing committee for Navajo Nation entities in violation or noncompliance with this Act.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

§ 211. Appeals

A. Appeals to Business Regulatory Department. Appeals can be made by those businesses who are denied priority certification or parties that are adversely affected by a decision with the Act. Appeals shall not include those matters which are found through an investigation conducted under § 208 (b) of this Act to be private contractual disputes between parties. If a business is denied priority certification, the business may appeal the decision for administrative resolution to the Director of the Business Regulatory Department (or successor agency or designee) by filing with the Director a notice of appeal within 10 days of the date of the written adverse decision. The written notice of appeal shall:

1. Identify the business that was denied certification or license or adversely affected by a decision made pursuant to this Act;
2. Provide a short statement indicating the nature and circumstances of the denial or decision;
3. State the basis for the appeal; and,
4. State the remedial action being sought by the business or party.

B. Appeals to the Hearing Officer. If the Director upholds the Department's decision to deny certification to the affected business, the appealing party may appeal the Director's decision to the Navajo Office of Hearings and Appeals for assignment to an Administrative Hearing Officer.

1. The hearing officer shall hear the appeal within 30 days of receipt of the notice of appeal.
2. Upon mutual agreement with the appealing party, time extensions in increments of not more than 15 days may be granted.
3. Notice shall be provided to the parties at least 10 days in advance of hearing date.
4. Each party at the hearing may be represented by legal counsel and shall have the opportunity to subpoena witnesses and documents, present evidence and examine witnesses.
5. After the hearing each party shall have 10 days to submit in writing proposed findings of facts and conclusions of law. The hearing officer may uphold or reverse the appealed decision(s) or any part thereof, but may not grant any other relief.
6. The hearing officer shall issue written findings of facts and conclusions of law that shall state the decision and grounds thereof.

C. Appeals to the Courts. The decision of the hearing officer may be appealed by the party adversely affected to the Navajo Nation Supreme Court pursuant to the Navajo Nation Rules of Civil Appellate Procedure. The court

shall review the decision of the hearing officer and the administrative record only. The decision shall not be subject to de novo review on appeal. The court may substitute its judgment on those questions of law within its special competence but shall otherwise uphold the decision of the hearing officer where reasonable.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 11, July 30, 1985.

§ 212. Other Navajo Nation Entities and Associated Agencies

All Navajo Nation entities, departments and other agencies involved in any stage of contracting, subcontracting or other procurement process shall comply with this Act in accordance with applicable law.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 12, July 30, 1985.

§ 213. Severability

If any provision of this Act or any rule or regulation adopted hereto is found invalid, the remainder of this Act and of the rules and regulations adopted hereto shall not be affected thereby.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 13, July 30, 1985.

§ 214. Effective Date

The effective date of this Act shall be the date of its approval by the Navajo Nation Council.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 15, July 30, 1985.

§ 215. Periodic Review and Amendments

This Act may be amended from time to time only by the Navajo Nation Council upon the recommendation of the Economic Development Committee.

History

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 18, July 30, 1985.

Note. Previously numbered Section 216. Former Section 215 deleted.

Chapter 3. Control of Businesses within the Navajo Nation

History

Redesignated. Signs, Billboards, and Advertising Devices was moved from Title 5, Chapter 21, §§ 3401-3412 to Title 5, Chapter 3, Subchapter 3, §§ 421-432. (1995)

Subchapter 1. General Provisions

§ 401. Privilege of doing business—Authority to grant, deny or withdraw

The Navajo Nation Council, in order to promote the further economic development of the Navajo people, and in order to clearly establish and exercise the Navajo Nation's authority to regulate the conduct and operations of business within the Navajo Nation, hereby declares that the Navajo Nation has the sole and exclusive authority to grant, deny, or withdraw the privilege of doing business within the Navajo Nation, except where such authority is withdrawn from the Navajo Nation by the Constitution and applicable laws of the United States.

History

CMY-33-70, § 1, May 12, 1970.

§ 402. Businesses presently operating within the Navajo Nation

The privilege of doing business is hereby expressly granted to those businesses presently operating within the Navajo Nation pursuant to leases or permits for the use of land, or pursuant to contractual agreements with the Navajo Nation, its enterprises, and agencies subject to the control or supervision of the Navajo Nation Council or the Economic Development Committee, or with the lessees of the Navajo Nation.

History

CMY-33-70, § 2, May 12, 1970.

Cross References

Economic Development Committee Plan of Operation, 2 N.N.C. § 721 *et seq.*, CD-68-89, December 15, 1989.

§ 403. Conditions for continuation

The grant of the privilege of doing business within the Navajo Nation contained in 5 N.N.C. § 402 is conditioned upon the business' compliance with the applicable laws of the Navajo Nation and upon the continuing effect or validity of prior leases, permits, or contracts authorizing the business to enter upon lands subject to the jurisdiction of the Navajo Nation.

History

CMY-33-70, § 3, May 12, 1970.

§ 404. Revocation; modification or alteration of privilege

The Navajo Nation Council reserves the right to revoke this grant of the privilege of doing business within the Navajo Nation; to modify, limit, or otherwise alter the extent of this grant; and to establish and enact such laws relating to the establishment or conduct of business within the Navajo Nation as it may deem desirable.

History

CMY-33-70, § 4, May 12, 1970.

Subchapter 2. Common or Contract Carriers

History

Redesignated. Common or Contract Carriers was moved from Title 5, Chapter 19, §§ 3201-3203 to Title 5, Chapter 3, Subchapter 2, §§ 411-413. (1995)

§ 411. License requirement

No common or contract carrier shall, by means of its agents or equipment, enter upon or make use of any lands belonging to the Navajo Nation with the intention of picking up ore produced from mines on Navajo Nation land or petroleum products or helium produced at wells on Navajo Nation lands for delivery inside of the Navajo Nation or for the purpose of picking up and transporting any articles whatever except United States mail from one point on Navajo Nation lands to another point on Navajo Nation lands, without first securing a license so to do from the President of the Navajo Nation.

History

ACMA-59-59, March 27, 1959, app. May 19, 1959.

§ 412. Issuance of license; terms and conditions

A. The President of the Navajo Nation shall issue licenses permitting any common carrier or contract carrier to enter upon and use Navajo Nation lands for business purposes, as aforesaid, upon a showing by the applicant for such license that he or she is of good moral character and is financially responsible and upon receipt by the President of the following stipulation in writing from such applicant, together with a fee of three hundred dollars (\$300.00):

1. The carrier will maintain in force at all times while on Navajo Nation land a liability insurance policy with limits of not less than one hundred thousand dollars (\$100,000) for each person injured or a total of three hundred thousand dollars (\$300,000) for all personal injuries arising out of a single accident, and ten thousand dollars (\$10,000) for all property damage resulting from a single accident.

2. The carrier will pay to the Navajo Nation one percent (1%) of its annual gross revenue from shipments picked up on Navajo Nation lands, provided, however, that the three hundred dollars (\$300.00) initial fee and each subsequent annual fee of three hundred dollars (\$300.00) shall be credited against such percentage fees as they accrue.

3. The carrier will employ Navajos in all its operations on Navajo Nation land in all positions for which they are available and qualified and will establish such reasonable apprentice training program for Navajos in connection with its operations as the President may prescribe, it being understood that one percent (1%) of the actual costs of such apprenticeship or training program shall be deducted from the gross revenues of the carrier upon which said carrier shall be required to pay to the Navajo Nation the percentage fee herein above specified.

4. The carrier will comply with the Navajo Nation labor policy as the same may be set forth from time to time by the Navajo Nation Council, and with all other rules and regulations relating to its use of Navajo Nation land now or hereafter in force.

5. The carrier will pay an annual fee on or before the 31st day of January of each calendar year in the amount of three hundred dollars (\$300.00), which fee shall be credited against its percentage fees for the ensuing year as the same accrue, but no part of which shall be refunded if the percentage fees do not amount to three hundred dollars (\$300.00) during such year, or if the carrier ceases doing business on Navajo Nation land during the year.

6. The carrier will make such of its books and records as are necessary to determine the fees which may be due available to inspection of accountants employed by the Navajo Nation at all reasonable times and at a convenient place designated in advance by the carrier.

B. The President shall include the provisions of Subsection (A) in any license issued by him, and may include such other items and conditions as he deems advisable.

C. Licenses issued pursuant to this Section shall be for a term of not to

exceed five years.

History

ACMA-59-59, March 27, 1959, app. May 19, 1959.

Cross References

"Navajo Nation", use of term, see 1 N.N.C. § 501.

§ 413. Navajo Police; exclusion of carriers; impounding equipment

Any carrier required to be licensed who shall enter upon Navajo Nation land without a license duly issued by the President of the Navajo Nation as provided in 5 N.N.C. § 412, may be excluded from Navajo Nation lands pursuant the procedures set forth at 17 N.N.C. § 1901 et seq.

History

ACMA-59-59, March 27, 1959, app. May 19, 1959.

Annotations

1. Treaty of 1868 between the Navajo Tribe of Indians and the United States, at Article II

Dodge v. Nakai, 298 F. Supp. 26, (1969).

Subchapter 3. Signs, Billboards, and Advertising Devices

History

Redesignated. Signs, Billboards, and Advertising Devices was moved from Title 5, Chapter 21, §§ 3401-3412 to Title 5, Chapter 3, Subchapter 3, §§ 421-432. (1995)

§ 421. Permits

No person, firm, corporation, or association of any kind shall erect, attempt to erect, place or maintain any sign or signs, billboard or advertising device or matter of any kind upon any part or portion of the Navajo Nation or any lands owned, leased or controlled by the Navajo Nation without first obtaining a permit.

History

ACJ-42-57, June 18, 1957.

AC-24-49, 1922-1951, p. 522, December 16, 1949.

Cross References

"Navajo Nation", use of term, see 1 N.N.C. § 501.

§ 422. Exceptions

Directional and/or road signs, warning signs, and informative signs pointing out scenic and/or points of historical note and/or importance may be erected without a permit by Department of Interior or the State Commission having jurisdiction of the street, road and/or highway along which the same is to be erected, or by the Navajo Nation.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

§ 423. Application for permit; approval; fees—Generally

A. Any person, firm, corporation, or association may make application to the Navajo Division of Economic Development, upon forms to be furnished by such Division, and shall obtain the approval of the Navajo Land Department and the road engineer of the subagency jurisdiction where the sign, billboard, or advertising device is to be located, and such other department or office as may have jurisdiction of and/or an interest in the area on the date of the application.

B. The applicant shall pay a five-year permit fee of three hundred dollars (\$300.00) for each permit except permits for directional, informative and/or road signs, which permit or any renewal thereof may be renewed for an additional five-year term, without the filing of a new application, by the payment of the five-year permit fee then in force at the time of such renewal, on or before January 31 of the year ensuing after the termination of the permit or any renewal thereof. Fees shall not be prorated for fractions of a year.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

Revision note. References throughout this Subchapter to the "Tribal Enterprise Department" have been changed to the "Division of Economic Development"; similarly, references to the "Land Investigations Department" have been changed to "Navajo Land Department." (2005)

§ 424. Holders of business site leases

A. The holders of business site leases from the Navajo Nation may make application, as provided in 5 N.N.C. § 423, for a permit for the erection of an informative sign or signs on the Navajo Nation or any lands owned, leased or controlled by the Navajo Nation showing the location of and the type of business and/or accommodations furnished and/or operated by them, and shall pay a permit fee of one hundred twenty-five dollars (\$125.00) for a five-year period for each permit, which permit may be renewed as provided in 5 N.N.C. § 423. Such permit shall be for a sign of a design similar to one of the designs approved.

B. At the time the permit is granted, the Navajo Division of Economic Development shall furnish a numbered permit plate or tag, as provided in 5

N.N.C. § 426, which shall be attached to the sign by the permittee as provided by such Section.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

§ 425. Granting of permits

The President of the Navajo Nation, with the approval of the Area Director, shall grant permits for the erection and maintenance of signs, billboards or other advertising devices provided that all requirements set forth in this Chapter have been fully and strictly complied with.

History

ACS-101-58, September 10, 1958.

Revision note. The General Superintendent for the Bureau of Indian Affairs is now referred to as the Area Director.

§ 426. Permit plate or tag

A. At the time the permit is granted, the Navajo Division of Economic Development shall furnish a numbered permit plate or tag showing the period for which the permit was issued, and which the permittee shall affix to the lower left hand corner of the sign, billboard, or advertising device.

B. Any sign, billboard or advertising device not bearing a permit plate or tag shall be removed and destroyed by the duly authorized agent or officer of the Navajo Nation.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

§ 427. Restrictions on location

A. No permit to erect or maintain a sign, billboard or advertising device, or matter of any kind, except permits for directional, informative and/or road signs, shall be granted except for those areas bordering upon or adjacent to the following streets, roads, and/or highways running into, through or across the Navajo Nation or any lands owned, leased or controlled by the Navajo Nation or any part thereof, to wit:

1. U.S. Highway 66;
2. New Mexico Highway 491;
3. New Mexico Highway 68;
4. Arizona Highway 89-Arizona State Highway 64; and
5. Glen Canyon Dam access highway and such other streets, roads

and/or highways as the appropriate standing committee of the Navajo Nation Council shall from time to time designate and determine.

B. No permit shall be granted to erect or maintain a sign, billboard, or advertising device or matter of any kind, to wit:

1. Nearer than 50 feet to a street, road or highway right-of-way;
2. Nearer than 300 feet to an intersection or railroad crossing;
3. In a stream bed, wash, or arroyo;
4. Determined by the Navajo Division of Economic Development to be apt to obstruct or obscure the view of any person or persons lawfully using the street, road, or highway adjacent to which the same is placed;
5. Nearer than 500 feet to an existing sign;
6. Determined by the Navajo Division of Economic Development to, in any way, interfere with or be a menace to the public health, welfare, and safety of the inhabitants and/or residents of the Navajo Nation; or
7. Legally designated or established park.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

Cross References

Committee powers, generally, see 2 N.N.C. § 102(G).

Economic Development Committee, powers, see 2 N.N.C. § 724(B).

Transportation and Community Development Committee, powers, see 2 N.N.C. § 423(E).

§ 428. Character

No permit shall be granted to erect or maintain a sign, billboard or advertising device, or matter of any kind, which is cheap, flimsy, or offensive to good taste and propriety, as determined by the Navajo Division of Economic Development.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

§ 429. Advertising copy; location; change

Advertising copy may be placed on both sides of a sign or signs, billboard, or advertising device or matter and may be changed at any time without the payment of an additional fee, provided the same is approved by the Navajo Division of Economic Development.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

§ 430. Revocation or termination of permit

Any permit granted under the provisions of this Chapter may be revoked or terminated if the land upon which the sign or signs, billboard or advertising device is located in pursuance of such permit is or shall be required for the use of the Navajo Nation or any member thereof, or is determined by the Navajo Division of Economic Development to be required for a higher level of use, provided that the unearned portion of the permit fee is refunded to the permittee within a reasonable time after such revocation or termination.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

§ 431. Removal

Any sign, billboard, or advertising device or advertising matter found remaining on the Navajo Nation or any lands owned, leased or controlled by the Navajo Nation after January 31 following the expiration of the permit or any renewal thereof for the same, shall be removed and destroyed by the duly authorized agent or officer of the Navajo Nation.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

§ 432. Waiver of permit fee

The President of the Navajo Nation, upon the recommendation of the Navajo Division of Economic Development and with the consent and concurrence of the Vice-President, may waive the payment of the permit fee on behalf of any established and recognized religious and/or charitable organization for the placing or erection of a sign soliciting support for the organization or showing the location of the same.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

Chapter 4. Navajo Private Industry Council

§ 501. Establishment

A. The Navajo Private Industry Council, hereinafter referred to as "NNPIC", is established pursuant to Public Law 97-300, 29 USC §§ 1512 and 1513, Job Training Partnership Act (JTPA).¹

B. The NNPIC shall operate within the JTPA yearly funding cycle beginning

July and ending June of each year.

History

ACN-218a-85, Exhibit A, November 14, 1985.

§ 502. Purpose

A. The Navajo Private Industry Council (NNPIC) is established for the following purposes:

1. Provide advice and guidance for involvement of Job Training Partnership Act (JTPA) ¹ Programs, as administered by the Navajo Division of Human Resources (NDHR), in the private sector of the Navajo Nation economy;

2. Encourage and recommend creative uses of JTPA resources to assist in the development of the private sector;

3. Develop specific private sector employment and training projects in conjunction and coordination with NDHR and other Navajo Nation departments;

4. Advise and/or make recommendations to the Human Services Committee of the Navajo Nation Council to examine labor policies, standards, specifications, and regulatory elements so as to eliminate burdensome procedures in the development of training activities in the private sector;

5. Assist in the development of economic development plans which relate to the formation of job training activities and new job creation in conjunction with NDHR and other appropriate Navajo Nation departments;

6. Support local Navajo small business initiatives;

7. Promote both private and public development entities to become more responsible to the overall development of the private sector with the purpose of increasing Navajo Nation consumer expenditures; and

8. Develop and design private sector development plans by:

a. Analyzing availability of private sector jobs, including information of employer, occupation, industry, and location;

b. Surveying employment demands and training possibilities in the private sector, such as apprenticeships, in order to develop projections of short and long range labor needs;

c. Refining training and employment programming to accommodate current private sector labor needs;

d. Assessing and using current labor market information contained in all economic development plans;

e. Ensuring that NDHR job training plans are consistent with and complementary to programs funded by other federal agencies and administered by other Navajo Nation departments or non-Navajo Nation entities;

f. Evaluating NDHR/JTPA program and activities and making recommendations thereto;

g. Evaluating NDHR's OJT contracting activities and making recommendations in resolving various problem areas; and

h. Reporting on NNPIC activities to the Human Services Committee of the Navajo Nation Council on a quarterly basis.

History

ACN-218a-85, Exhibit A, November 14, 1985.

Revision note. References to "Labor and Manpower Committee" throughout this Chapter have been changed to "Human Services Committee" pursuant to the 1989 Title II amendments. CD-68-89. References to "Navajo Division of Labor NDOL" have been changed to "Navajo Division of Human Resources" pursuant to changes in Plans of Operation relating to organizational structure.

§ 503. Powers

A. The Navajo Private Industry Council (NNPIC) shall have all powers necessary and proper to carry out the purposes set forth in this Plan of Operation.

B. The NNPIC shall:

1. Review and recommend appropriations, allocations, cancellation and reappropriation of funds received under the Job Training Partnership Act (JTPA)¹ for private sector activities;

2. Review and provide recommendations on all draft plans that address job training and employment services in the private sector, after consulting with federal, state, Navajo Nation components, local organizations, institutions, and employers; and

3. Serve as the mediator in resolving any disputes regarding any contract, subcontract, agreement, or amendment between a service provider in the private sector and the Navajo Nation, if said dispute complaints could not be resolved by the NDHR Executive Director or his/her subordinates after review of the complaints.

History

ACN-218a-85, Exhibit A, November 14, 1985.

Cross References

Human Services Committee, powers, see 2 N.N.C. § 604(B).

Intergovernmental Relations Committee, powers, see 2 N.N.C. § 824(B) (6).

§ 504. Membership; selection; Chairman and Vice-Chairman; term of office

A. Membership.

1. The Navajo Private Industry Council (NNPIC) shall consist of eight members and shall consist of:

a. Representatives of the private sector, who shall constitute a majority of the membership of the council and who shall be owners of business concerns, chief executives or chief operating officers of non-governmental employers, or other private sector executives who have substantial management or policy responsibility; and

b. Representatives of educational agencies (representative of all educational agencies in the service delivery area), organized labor, rehabilitation agencies, community-based organizations, economic development agencies, and the public employment service.

2. Each member may pick an alternate with delegated voting power to serve whenever the member is absent from meetings. The purpose of the delegated voting power shall be to promote the inclusion and optimal representation in accordance with Job Training Partnership Act (JTPA), § 102(a)(1) and (2).¹ The alternate shall be designated to serve co-terminus with each delegator.

B. Selection.

1. All members of the NNPIC shall be appointed by the President of the Navajo Nation. A majority of the members must represent industries or establishments in the private sector.

2. Recommendation shall be made by the NNPIC to replace any member, including his alternate, who fails to attend for three consecutive scheduled meetings.

3. Should a NNPIC member be terminated because of being unable to attend the meetings, the NNPIC members may tentatively appoint that terminated member's alternate as a member pending the approval of the President of the Navajo Nation.

C. Chairman and Vice-chairman.

1. The Chairman and Vice-Chairman of the NNPIC shall be elected from among its members.

2. The Chairman of the NNPIC shall:

a. Preside over scheduled meetings; in the Chairman's absence, the Vice-Chairman shall preside; and

b. Act as the Chief Administrator over the purpose and

objectives of the NNPIC.

D. Term of Office. The NNPIC members shall serve a term of office coinciding with the USDOL JTPA "designation" periods, which is every two years beginning on July 1, 1995. The President of the Navajo Nation shall appoint members for replacements two months prior to the expiration date. The term shall be staggered at intervals of one year.

History

ACN-218a-85, Exhibit A, November 14, 1985.

§ 505. Meetings; procedure

A. Meetings. The Chairman of the Navajo Private Industry Council (NNPIC) shall call a regular meeting at least once every quarter. All meetings of NNPIC shall be open to the general public.

B. Procedure.

1. The NNPIC shall develop its own procedures for the conduct of meetings.

2. All meetings shall be recorded and minutes of each meeting shall be provided.

3. All official business of NNPIC will be transacted by majority vote of those provided.

4. Members of the NNPIC shall be reimbursed for meeting expenses for each meeting during which its assigned business was conducted.

C. Quorum. A quorum shall consist of four members or alternates.

History

ACN-218a-85, Exhibit A, November 14, 1985.

§ 506. Executive committee

A. The Navajo Private Industry Council (NNPIC) shall designate subcommittees when deemed necessary and appropriate.

B. A subcommittee shall consist of no less than three members, appointed by the Chairman of the NNPIC.

C. Members of the subcommittees shall be reimbursed for expenses associated with each meeting, including per diem and mileage costs.

History

ACN-218a-85, Exhibit A, November 14, 1985.

§ 507. Amendments

This Plan of Operation may be amended from time to time by the Government Services Committee of the Navajo Nation Council upon the recommendation of the Human Services Committee and the Navajo Private Industry Council (NNPIC).

History

ACN-218a-85, Exhibit A, November 14, 1985.

Cross References

Standing committee authority over the NNPIC, redesignation pursuant to CD-68-89, December 15, 1989, see 2 N.N.C. § 341 *et seq.*, 2 N.N.C. § 601 *et seq.*

Chapter 5. Credit Services Department

History

ACF-21-88, February 4, 1988.

Former Subchapters 1, 3, 5, 7 and 9 were rescinded by ACD-234-85, which consolidated and incorporated all resolutions regarding loan activities, and transferred administration of all loan activities to the Navajo Credit Department.

Former Subchapter 1, entitled General Provisions, consisting of §§ 601-624, was derived from CJ-1-48 and ACJ-25-55, and related to the Revolving Credit Fund and loans generally.

Former Subchapter 3, entitled Purchase, Construction or Major Repairs of Buildings, consisting of § 801-810, was derived from ACMA-64-59, related to policy governing loans made for the purchase, construction or major repairs of homes and other buildings.

Former Subchapter 5, entitled Revolving Credit Program; Declaration of Policy and Plan of Operation, consisting of §§ 851-889, was derived from ACMY-63-62, and later superseded by ACAU-102-82, related to loan procedures generally.

Former Subchapter 7, entitled Navajo Small Business Emergency Loan Program, consisting of § 931-940, was derived from ACAU-102-82 and related to providing loan funds to Navajo businesses.

Former Subchapter 9, entitled Navajo Personal Emergency Loan Program, consisting of § 981-989, was derived from ACJY-122-83 and related to providing loan funds to Navajo individuals.

Revision note. Resolution ACF-21-88 repealed ACD-234-85 which also involved the repeal of §§ 608-637, 2 N.N.C. § 374(B)(12) delegated the Budget and Finance Committee authority to oversee this loan program.

§ 601. Establishment

There is established the Credit Services Department within the Division of Finance of the Navajo Nation.

History

ACF-21-88, Exhibit B, February 4, 1988.

CO-50-87.

ACO-234-85.

CF-13-85.

Revision note. ACF-21-88 rescinded ACD-234-85 and §§ 608-637.

§ 602. Purpose

A. The purpose of the Credit Services Department shall be to provide administration and management of the Personal Loan Program (formerly known as the Emergency Personal Loan Program) and the Navajo Home Loan Program (formerly known as the Navajo Revolving Credit Program), and all of the assets and outstanding accounts receivable associated therein. Specifically the Credit Services Department shall:

1. Administer the Personal Loan Program and the Navajo Home Loan Program in accordance with all Navajo Nation law, and the Operating Policies and Guidelines for the respective programs, as approved by the Budget and Finance Committee of the Navajo Nation Council;

2. Service all accounts receivable associated with the Personal Loan Program and the Navajo Home Loan Program so as to protect the Navajo Nation's interest in property pledged to secure any loans made under the program;

3. Implement collection efforts in regards to funds due and owing the Navajo Nation resulting from loans made under the respective programs;

4. Assist the Budget and Finance Committee of the Navajo Nation Council in the completion of their duties and responsibilities as set forth in their Plan of Operation, as approved by Resolution ACN-229-87; and

5. Disseminate information to the public regarding the respective programs and credit matters generally, and provide technical assistance as needed.

History

ACF-21-88, Exhibit B, February 4, 1988.

Cross References

Budget and Finance Committee Authority, see 2 N.N.C. § 374(B)(12) and (13).

Business Industrial Development Funds, see 12 N.N.C. § 1701 *et seq.*

§ 603. Personnel and organization

A. There is established the position of Director of the Credit Services Department, and such other professional and support staff positions as may be approved by the Navajo Nation Office of Personnel Management and budgeted by the Navajo Nation Council. The Director shall have the authority to hire the Department's professional and support staff, pursuant to the Navajo Nation Personnel Policies and Procedures. All Department personnel shall be subject to the Navajo Nation personnel compensation, benefits, policies and procedures.

B. The Credit Services Department shall be administratively aligned within the Division of Finance, and under the supervision of the Group Director for Financial Management of the Navajo Nation.

History

ACF-21-88, Exhibit B, February 4, 1988.

§ 604. Duties, responsibilities, and authority of the Credit Services Department

A. General. The Director shall have the authority necessary and proper to carry out the purposes set forth in § 602 of this Plan of Operation.

B. Specifics. Under general administrative supervision of the Division of Finance and the Group Director of the Financial Management, the Director, or his designee, shall have the authority to:

1. Accept, review, evaluate, and process applications for loans from the respective programs in accordance with operating policies and guidelines adopted by the Budget and Finance Committee;

2. Close approved loans in accordance with operating policies and guidelines approved by the Budget and Finance Committee and accounting policies and procedures of the Navajo Nation;

3. Manage and service loan accounts arising from loans made under the respective programs, and to take, or cause to be taken all appropriate actions to protect property interests of the Navajo Nation;

4. Initiate collection proceedings, including the referral of accounts to the Department of Justice for litigation or other appropriate action, for all sums due and owing the Navajo Nation arising from loans made under the respective programs;

5. Recommend policies and procedures to the Budget and Finance Committee of the Navajo Nation Council;

6. Prepare and present periodic accounting and operational reports to appropriate parties;

7. Execute documents on behalf of the Navajo Nation in regards to the closing of loans, and the placement and release of liens on personal property, and the release of leasehold mortgages pertaining to loans that have been paid in full;

8. Publish or cause to be published, public information material pertaining to the respective programs, and other credit and financing matters; and

9. Complete such other assignments, or take such other action as is necessary to protect the property and assets of the Navajo Nation associated with the respective programs, as may be directed by the Controller of the Navajo Nation.

History

ACF-21-88, Exhibit B, February 4, 1988.

§ 605. Office location and hours

A. The administrative office of the Credit Services Department shall be located in Window Rock, Navajo Nation (Arizona). The mailing address is as follows:

Credit Services Department P.O. Box 2405 Window
Rock, Navajo Nation (Arizona) 86515

B. The office shall be open Monday through Friday, between 8:00 A.M. and 5:00 P.M., or such other regular office hours as may be established for the Navajo Nation government.

History

ACF-21-88, Exhibit B, February 4, 1988.

§ 606. Miscellaneous

A. Within this Plan of Operation, the singular shall include the plural, and the masculine shall include the feminine, as is appropriate.

B. The Credit Services Department shall coordinate with all appropriate departments and offices of the Navajo Nation in the administration and management of the respective programs.

History

ACF-21-88, Exhibit B, February 4, 1988.

§ 607. Amendments to the Plan of Operation

This Plan of Operation may be amended by the Government Services Committee of the Navajo Nation Council, upon the recommendation of the Budget and Finance Committee of the Navajo Nation Council.

History

ACF-21-88, Exhibit B, February 4, 1988.

ACD-234-85, December 19, 1985, rescinding §§ 801-810, 851-889, 931-940, and 981-989.

§§ 608 to 637. [Rescinded]

History

ACF-21-88, Exhibit B, February 4, 1988.

Cross References

Business Industrial Development Fund Loans, see 12 N.N.C. § 1701 *et seq.*

Chapter 7. Consumer Protection

Subchapter 1. Unfair Trade Practices

§ 1101. Title

This Subchapter may be cited as the Navajo Nation Unfair Consumer Practices Act.

History

CJY-71-99, July 21, 1999.

§ 1102. Purpose

The purpose of this Act is to protect consumers within the Navajo Nation from a wide range of unfair, deceptive and unconscionable sales practices by sellers of goods and services within the Nation.

History

CJY-71-99, July 21, 1999.

§ 1103. Definitions

As used in the Navajo Nation Unfair Consumer Practices Act:

A. "Person" includes, where applicable, natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates;

B. "Seller-initiated telephone sale" means a sale, lease or rental of goods or services in which the seller or his representative solicits the sale by telephoning the prospective purchasers and in which the sale is consummated entirely by telephone or mail, but does not include a transaction:

1. In which a person solicits a sale from a prospective purchaser who has previously made an authorized purchase from the seller's business; or

2. In which the purchaser is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. 1635 or regulations issued pursuant thereto;

C. "Trade" or "commerce" includes the advertising, offering for sale, sale or distribution of any services and any property and any other article, commodity or thing of value, including any trade or commerce directly or indirectly affecting the people of the Navajo Nation.

D. "Unfair or deceptive trade practice" means any false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by any person in the regular course of his trade or commerce, which may, tends to, or does, deceive or mislead any person and includes but is not limited to:

1. Representing goods or services as those of another when the goods or services are not the goods or services of another;

2. Causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;

3. Causing confusion or misunderstanding as to affiliation, connection or association with or certification by another;

4. Using deceptive representations or designations of geographic origin in connection with goods or services;

5. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he or she does not have;

6. Representing that goods are original, new, or unused if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand, or if the goods have been used to an extent that is materially different from the fact;

7. Representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;

8. Disparaging the goods, services or business of another by false or misleading representations;

9. Indicating that goods or services will be supplied in greater quantity than the seller intends;

10. Offering goods or services with intent not to supply reasonable expectable public demand;

11. Making false or misleading statements of fact concerning the price of goods or services, the prices of competitors or one's own price at a past or future time or the reasons for, existence of, or amounts of, price reduction;

12. Making false or misleading statements of fact for the purpose of obtaining appointments for the demonstration, exhibition or other sales presentation of goods or services;

13. Packaging goods for sale in a container that bears a trademark or trade name identified with goods formerly packaged in the container, without authorization, unless the container is labeled or marked to disclaim a connection between the contents and the trademark or trade name;

14. Using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;

15. Stating that a transaction involves a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies or obligations that it does not involve;

16. Stating that services, replacements or repairs are needed if they are not needed;

17. Failure to deliver the quality or quantity of goods or services contracted for;

18. Stating or suggesting that goods or services are available to the consumer for a reason that does not exist;

19. Stating or suggesting that goods or services have been supplied in accordance with a previous representation, if they have not;

20. Requiring the execution of any consent to storage, consent to repair, or consent to removal of property from the Navajo Nation as a contract condition.

E. "Unconscionable trade practice" means any act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services or in the extension of credit or in the collection of debts which to a person's detriment:

1. Takes advantage of the lack of knowledge, lack of formal education, ignorance, illiteracy, inability to read or understand the language of an agreement or the verbal representation made in connection to a transaction, or the ability, experience or capacity of a person to an unreasonably unfair degree; or

2. Results in a gross disparity between the value received by a person and the price paid; or

3. Results in a gross disparity between the price paid and the price at which similar property or services were readily obtainable in similar transactions by like consumers at the time the transaction was entered into; or

4. Results in a transaction in which the consumer is unable to receive a substantial benefit from the subject of the transaction at the time the transaction is entered into; or

5. Results in a transaction for which there was no reasonable probability of payment of the obligation in full at the time the transaction was entered into; or

6. Results in transaction which is substantially one-sided in favor of the supplier; or

7. Is based upon a misleading statement of opinion which the consumer was likely to rely upon to his or her detriment.

History

CJY-71-99, July 21, 1999.

Annotations

1. Unconscionable arbitration clause

"Considering all of these principles together, the Court holds that the specific arbitration clause in the financing contract is unenforceable. Though arbitration generally is encouraged, clauses that mandate arbitration are not immune from scrutiny for unconscionability or consistency with Fundamental Law." *Green Tree Servicing, LLC v. Duncan*, No. SC-CV-46-05, slip op. at 12 (Nav. Sup. Ct. August 18, 2008).

§ 1104. Unfair or deceptive and unconscionable trade practices prohibited

Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.

History

CJY-71-99, July 21, 1999.

Annotations

1. Unconscionable arbitration clause

"Considering all of these principles together, the Court holds that the specific arbitration clause in the financing contract is unenforceable. Though arbitration generally is encouraged, clauses that mandate arbitration are not immune from scrutiny for unconscionability or consistency with Fundamental Law." *Green Tree Servicing, LLC v. Duncan*, No. SC-CV-46-05, slip op. at 12 (Nav. Sup. Ct. August 18, 2008).

§ 1105. Chain referral sales technique; prohibited

The use or employment of any chain referral sales technique, plan, arrangement or agreement whereby the buyer is induced to purchase merchandise or services upon the seller's representation or promise that if the buyer will furnish the seller names of other prospective buyers of like or identical merchandise that the seller will contact the named prospective buyers and the buyer will receive a reduction in the purchase price by means of a cash rebate, commission, credit toward balance due or any other consideration, is declared to be an unlawful practice within the meaning of the Unfair Consumer Practices Act.

History

CJY-71-99, July 21, 1999.

§ 1106. Misrepresentation of motor vehicles; penalty

A. The willful misrepresentation of the age or condition of a motor vehicle by any person including regrooving tires or performing chassis repair, without informing the purchaser of the vehicle that the regrooving or chassis repair has been performed, is an unlawful practice within the meaning of the Unfair Consumer Practices Act. Unless the alleged misrepresentation is based wholly on repair of damage, the disclosure of which was not required pursuant to Subsection (B) of this Section when there has been repair for which disclosure is required shall constitute prima facie evidence of willful misrepresentation.

B. Except as provided in Subsections (C) and (D) of this Section, a seller of a motor vehicle shall furnish at the time of sale of a motor vehicle an affidavit that:

1. Describes the vehicle; and

2. States to the best of the seller's knowledge whether there has been an alteration or chassis repair due to wreck damage.

C. No affidavit shall be required pursuant to this Section if the flat rate manual cost of the alteration or chassis repair is less than six percent (6%) of the sales price of the vehicle.

D. In the case of a private-party sale of a vehicle, an affidavit shall not be furnished.

History

CJY-71-99, July 21, 1999.

§ 1107. Private remedies

A. A person likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers

reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person, is not required.

B. Any person who suffers any loss of money or property, real or personal, as a result of any employment by another person of a method, act or practice declared unlawful by the Unfair Consumer Practices Act may bring an action to recover actual damages or the sum of one thousand dollars (\$1,000), whichever is greater. Where the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice has willfully engaged in the trade practice, the court may award up to three times actual damages or three thousand dollars (\$3,000), whichever is greater, to the party complaining of the practice.

C. The court shall award attorneys' fees and costs to the party complaining of an unfair or deceptive trade practice or unconscionable trade practice if he prevails. The court shall award attorneys' fees and costs to the party charged with an unfair or deceptive trade practice or an unconscionable trade practice if it finds that the party complaining of such trade practice brought an action for which there was no subjective good faith basis. Attorneys' fees shall be calculated using the Lodestar method.

D. The relief provided in this Section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of the Navajo Nation.

E. In any class action filed under this Section, the court may award damages to the named plaintiffs as provided in Subsection (B) of this Section and may award members of the class such actual damages as were suffered by each member of the class as a result of the unlawful method, act or practice.

F. Proof of an unfair or deceptive trade practice or unconscionable trade practice shall be a defense and absolute bar to recovery to a claim on any contract or obligation filed with the courts of the Navajo Nation. A defendant who prevails on such a defense shall be awarded attorneys fees incurred through responding to the claim, which shall be calculated using the Lodestar method.

History

CJY-71-99, July 21, 1999.

§ 1108. Construction

The Unfair Consumer Practices Act neither enlarges nor diminishes the rights of parties in private litigation.

History

CJY-71-99, July 21, 1999.

§ 1109. Door-to-door sales; contracts; requirements; prohibitions

A. In connection with any door-to-door sale, it constitutes an unfair or deceptive trade practice for any seller to:

1. Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution that is in the same language as that principally used in the oral sales presentation and that shows the date of the transaction and contains the name and address of the seller and, in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

2. Fail to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", that shall be attached to the contract or receipt and easily detachable and that shall contain in ten-point bold face type the following information and statements in the same language as that used in the contract:

"NOTICE OF CANCELLATION

Date

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice or send a telegram to:

(Name of seller)

at _____

(Address of seller's place of business)

not later than midnight of _____.

(Date)

I hereby cancel this transaction.

(Date)

(Buyer's signature)"

3. Fail, before furnishing copies of the notice of cancellation to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation;

4. Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this Section or 7 N.N.C. § 621, including specifically his right to cancel the sale in accordance with the provisions of this Section;

5. Fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel;

6. Misrepresent in any manner the buyer's right to cancel;

7. Fail or refuse to honor any valid notice of cancellation by a buyer and, within 10 business days after the receipt of such notice, fail to:

a. Refund all payments made under the contract or sale;

b. Return in substantially as good condition as when received by the seller any goods or property traded in; and

c. Cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction;

8. Negotiate, transfer, sell or assign any notice or other evidence of indebtedness to a finance company or other third party prior to

midnight of the fifth business day following the day the contract was signed or the goods or services were purchased; and

9. Fail to notify the buyer, within 10 business days of receipt of his notice of cancellation, whether the seller intends to repossess or to abandon any shipped or delivered goods.

B. The cancellation period provided for in this Section shall not begin until the buyer has been informed of his right to cancel and has been provided with copies of the notice of cancellation.

C. For the purposes of this Section:

1. "Business day" means any calendar day except Sunday or the following business holidays: New Year's Day, Washington's birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, Martin Luther King, Jr.'s birthday and any other legal public holiday of the Navajo Nation or the United States;

2. "Consumer goods or services" means goods or services other than perishable goods or agricultural products purchased, leased or rented primarily for personal, family or household purposes, including courses of instruction or training, regardless of the purpose for which they are taken;

3. "Door-to-door sale" means a sale, lease or rental of consumer goods or services with a purchase price of twenty-five dollars (\$25.00) or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the primary place of business of the seller. A door-to-door sale includes seller initiated telephone sales and sales at periodic outdoor markets. A door-to-door sale does not include a transaction:

a. Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis;

b. In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. § 1635, or regulations issued pursuant thereto;

c. In which the buyer has initiated the contract and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days;

d. In which the buyer has initiated the contract and specifically requested the seller to visit his home for the purpose of

repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion;

e. Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission; or

f. In which a consumer acquires the use of goods under the terms of a rental-purchase agreement with an initial rental period of one week or less, by placing a telephone call to a lessor and by requesting that specific goods be delivered to the consumer's residence or such other place as the consumer directs and consummation of the rental-purchase agreement occurs after the goods are delivered; or

g. For the sale of handcrafts, including but not limited to jewelry, weavings, paintings, drawings, or other works of graphic art and ceramics, and food items or herbs and herbal remedies collected, processed or made, in any manner whatsoever, and offered for sale by an enrolled member of the Navajo Nation.

4. "Place of business" means the main or permanent branch office or local address of a seller;

5. "Purchase price" means the total price paid or to be paid for the consumer goods or services, including all interest and service charges; and

6. "Seller" means any person, partnership, corporation or association engaged in the door-to-door sale of consumer goods or services.

History

CJY-71-99, July 21, 1999.

§ 1110. Limitation of retail purchases unlawful

It is unlawful for any merchant to advertise or offer for sale any item of merchandise with a limitation upon the number of the item that any retail purchaser may purchase at the advertised price. It is further unlawful for any merchant offering or advertising any item of merchandise in his place of business at any given price to refuse to sell to any prospective retail purchaser for cash the whole or any part of his stock of such item at such price. However, this Section shall not be applicable to a purchaser purchasing for resale. All remedies available under the Unfair Consumer Practices Act shall apply to violations of this Subsection.

History

CJY-71-99, July 21, 1999.

Subchapter 2. Pyramid or Multilevel Sales

§ 1111. Title

This Subchapter may be cited as the Navajo Nation Pyramid Promotional Schemes Act.

History

CJY-71-99, July 21, 1999.

§ 1112. Purpose

The purpose of this Act is to shield residents of the Navajo Nation from pyramid sales schemes and to provide authority to halt such schemes before residents of the Nation are subjected to financial loss.

History

CJY-71-99, July 21, 1999.

§ 1113. Definitions

As used in the Pyramid Promotional Schemes Act:

A. "Compensation" includes a payment based on a sale or distribution made to a person who either is a participant in a pyramid promotional scheme or has the right to become a participant upon payment;

B. "Consideration" means the payment of cash or the purchase of goods, services or intangible property but does not include:

1. The purchase of goods or services furnished at cost to be used in making sales and not for resale; or

2. Time and effort spent in pursuit of sales or recruiting activities.

C. "Pyramid promotional scheme" means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from any person's introduction of other persons into participation in the plan or operation rather than from the sale of goods, services or intangible property by the participant or other persons introduced into the plan or operation.

History

CJY-71-99, July 21, 1999.

§ 1114. Prohibition; defenses excluded

A. A person shall not establish, operate, advertise or promote a pyramid

promotional scheme.

B. A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan or operation does not change the identity of the scheme as a pyramid promotional scheme nor is it a defense under this article that a participant, on giving consideration, obtains any goods, services or intangible property in addition to the right to receive compensation.

History

CJY-71-99, July 21, 1999.

§ 1115. Private remedies

A. A person likely to be damaged by any method, act or practice which is declared by the Pyramid Promotional Schemes Act to be unlawful may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required.

B. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court may award attorneys' fees to a prevailing defendant if the party complaining of an unlawful practice has brought an action which he or she knew to be groundless.

C. The relief provided in this Section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of the Navajo Nation.

History

CJY-71-99, July 21, 1999.

§ 1116. Action by Attorney General

A. Whenever the Attorney General has reasonable belief that any person is using, has used or is about to use any method, act or practice which is declared by the Pyramid Promotional Schemes Act to be unlawful and that proceedings would be in the public interest, he may bring an action in the name of the Navajo Nation against that person to restrain, by temporary or permanent injunction, the use of such method, act or practice. The action may be brought in the district court of the district in which the person resides or has his principal place of business or in the district court in the district in which the person is using, has used or is about to use the practice which has been alleged to be unlawful under the Pyramid Promotional Schemes Act. The Attorney General acting on behalf of the Navajo Nation shall not be required to post bond when seeking a temporary or permanent injunction.

B. In any action brought under Subsection (A) of this Section, the court may, upon petition of the Attorney General, require that the person engaged in the unlawful practice make restitution to all persons of money, property or other things received from them in any transaction related to the unlawful

practice; and it is further provided that if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the Pyramid Promotional Schemes Act, the Attorney General, upon petition to the court, may recover on behalf of the Navajo Nation a civil penalty not exceeding ten thousand dollars (\$10,000) per violation.

History

CJY-71-99, July 21, 1999.

Subchapter 3. Motor Vehicle Warranties

§ 1117. Title

This Subchapter may be cited as the Motor Vehicle Warranties Compliance Act.

History

CJY-71-99, July 21, 1999.

§ 1118. Purpose

The purpose of this Act is to provide a mechanism which ensures that consumers of new or used motor vehicles within the Navajo Nation are able to enforce warranty rights in those vehicles.

History

CJY-71-99, July 21, 1999.

§ 1119. Definitions

As used in the Motor Vehicle Quality Assurance Act:

A. "Collateral charges" means those additional charges to a consumer not directly attributed to a manufacturer's suggested retail price label for a new motor vehicle and includes all taxes, license, title and registration fees and other governmental charges related to the purchase of the vehicle;

B. "Comparable motor vehicle" means an identical or reasonably equivalent motor vehicle;

C. "Consumer" means the purchaser, other than for purposes of resale, of a new or used motor vehicle normally used for personal, family or household purposes, any persons to whom such a motor vehicle has been transferred during the duration of an express warranty applicable to the motor vehicle and any other persons entitled by the terms of warranty to enforce the obligations of the warranty;

D. "Express warranty" means any written or oral affirmation of the fact of promise made by a manufacturer to a consumer in connection with the sale or new motor vehicles which relates to the nature of the material or workmanship

or to a specified level of performance over a specified period of time, including any terms or conditions precedent to the enforcement of obligations pursuant to the warranty;

E. "Manufacturer" means any person engaged in the manufacturing, assembling, importing or distributing of a motor vehicle as a regular business;

F. "Motor vehicle" means a passenger motor vehicle including an automobile, pickup truck, motorcycle or van normally used for personal, family or household purposes, whose gross vehicle weight is less than ten thousand pounds; and

G. "Used motor vehicle" means any motor vehicle that, at the time of purchase by the buyer, has been previously owned by or has been used by the seller in a manner consistent with ownership, or that has a certified odometer reading of five thousand (5,000) miles or more.

History

CJY-71-99, July 21, 1999.

§ 1120. Conformation to express warranties for new motor vehicles

A. If a new motor vehicle does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties.

B. If the manufacturer or its agent or authorized dealer, after a reasonable number of attempts, is unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the motor vehicle to the consumer, the manufacturer shall replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. The subtraction of a reasonable allowance for use shall apply when either a replacement or refund of the new motor vehicle occurs. As used in this Subsection, a reasonable allowance for use shall be an amount equal to the number of miles driven by the consumer prior to his first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair multiplied by 30 cents per mile. Refunds shall be made to consumers or lienholders as their interests may appear.

C. It shall be presumed that a reasonable number of attempts as mentioned in Subsection (B) of this Section have been undertaken to conform a new motor vehicle to the applicable express warranties if:

1. The same uncorrected nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized

dealers within the express warranty term or during the period of two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but the nonconformity continues to exist; or

2. The vehicle is in the possession of the manufacturer, its agent or authorized dealer for repair a cumulative total of 30 or more business days during such term or during such period whichever is the earlier date, exclusive of down time for routine maintenance as prescribed by the manufacturer. The term of an express warranty, such one-year period and such 30-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood or other natural disaster. In no event shall the presumption herein provided apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and an opportunity to cure the defect alleged. The manufacturer shall provide written notice and instruction to the consumer, either in the warranty or a separate notice, of the litigation to file this written notification before invoking the remedies available pursuant to the Motor Vehicle Warranties Compliance Act.

History

CJY-71-99, July 21, 1999.

§ 1121. Affirmative defenses

It shall be an affirmative defense to any claim under the Motor Vehicle Warranties Compliance Act that:

A. An alleged nonconformity does not substantially impair the use and market value of the motor vehicle;

B. A nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle;

C. A claim by a consumer was not filed in good faith; or

D. Any other affirmative defense allowed by law.

History

CJY-71-99, July 21, 1999.

§ 1122. Used motor vehicles; title; implied warranty of merchantability disclaimer; waiver; burden of proof; remedies

A. Unless the seller is a used motor vehicle dealer, before the seller attempts to sell a used motor vehicle the seller shall possess the title to the used motor vehicle and the title shall be in the seller's name.

B. A used motor vehicle dealer shall not exclude, modify or disclaim the implied warranty of merchantability or limit the remedies for a breach of that warrant, except as otherwise provided in this Section, before midnight of the

thirtieth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven 1500 miles after delivery, whichever is earlier. In calculating time under this Subsection, a day on which the warranty is breached is excluded and all subsequent days in which the motor vehicle fails to conform with the implied warranty of merchantability are also excluded. In calculating distance under this Subsection, the miles driven to obtain or in connection with repair, servicing or testing of the motor vehicle that fails to conform with the implied warranty of merchantability are excluded. An attempt to exclude, modify or disclaim the implied warranty of merchantability or to limit the remedies for a breach of that warranty, except as otherwise provided in this Section, in violation of this Subsection renders a purchase agreement voidable at the option of the purchaser.

C. For the purposes of this Section, the implied warranty of merchantability is met if the motor vehicle functions in a safe condition and is substantially free of any defect that significantly limits the use of the motor vehicle for the ordinary purpose of transportation on any public highway. The implied warranty of merchantability expires at midnight of the thirtieth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven 1500 miles after delivery, whichever is earlier. In calculating time under this Subsection, a day on which the warranty is breached is excluded and all subsequent days in which the motor vehicle fails to conform with the implied warranty of merchantability are also excluded. In calculating distance under this Subsection, the miles driven to obtain or in connection with the repair, servicing or testing of the motor vehicle that fails to conform with the implied warranty of merchantability are excluded.

D. The implied warranty of merchantability described in this Section does not extend to damage that occurs after the sale of the motor vehicle and that is the result of any abuse, misuse, neglect, failure to perform regular maintenance or to maintain adequate oil, coolant or other required fluid or lubricant or off road use, racing or towing.

E. If the implied warranty of merchantability described in this Section is breached, the consumer shall give reasonable notice to the seller before the purchaser exercises any remedies. The seller shall have a reasonable opportunity to repair the vehicle and the consumer shall pay one-half of the cost of the first two repairs necessary to bring the vehicle in compliance with the warranty. The consumer's payments are limited to a maximum payment of twenty-five dollars (\$25.00) for each repair. The seller shall pay the costs of all subsequent repairs.

F. The maximum liability of the seller under this Section is limited to the purchase price paid for the used motor vehicle.

G. An agreement for the sale of a used motor vehicle by a used motor vehicle dealer is voidable at the option of the consumer unless it contains on its face the following conspicuous statement printed in bold-faced ten point or larger type set off from the body of the agreement:

"The seller hereby warrants that this vehicle will be fit for the ordinary purposes for which the vehicle is used for 30 days or 1500 miles after delivery, whichever is earlier, except with regard to particular defects disclosed on the first page of this agreement. You (the purchaser) will have

to pay up to twenty-five dollars (\$25.00) for each of the first two repairs if the warranty is violated."

H. The inclusion of the statement prescribed in Subsection (G) of this Section in the agreement does not create an express warranty.

I. A consumer of a used motor vehicle may waive the implied warranty of merchantability described in this Section only for a particular defect in the vehicle and only if all of the following conditions are satisfied:

1. The used motor vehicle dealer fully and accurately discloses to the consumer that because of circumstances unusual to the used motor vehicle dealer's business, the used motor vehicle has a particular defect.

2. The consumer agrees to buy the used motor vehicle after disclosure of the defect.

3. Before the sale, the consumer indicates agreements to the waiver by signing and dating the following conspicuous statement that is printed on the first page of the sales agreement in bold-faced ten point or larger type and that is written in the language in which the presentation was made:

"Attention purchaser: Sign here only if the dealer told you that this vehicle has the following problem(s) and that you agree to buy the vehicle on those terms:

1. _____
2. _____
3. _____"

J. The dealer has the burden to prove by a preponderance of the evidence that the dealer complied with Subsection (I) of this Section.

K. For any breach of the implied warranty of merchantability described in this Section, the consumer may, once the seller has had a reasonable opportunity to repair as described in Subsection (E), bring an action to recover the purchase price paid. The court shall award attorneys' fees, calculated using the Lodestar method, to a prevailing purchaser.

History

CJY-71-99, July 21, 1999.

§ 1123. Limitation of action

Any action brought to enforce the provisions of the Motor Vehicle Warranties Compliance Act shall be commenced within two years following the date of original delivery of the motor vehicle to a consumer.

History

CJY-71-99, July 21, 1999.

§ 1124. Attorney fees

A consumer who prevails in an action brought to enforce the provisions of the Motor Warranties Compliance Assurance Act shall be entitled to receive attorneys' fees, calculated using the Lodestar method, and court costs from the manufacturer. If a consumer does not prevail in such an action and brings that action for frivolous reasons or in subjective bad faith, the manufacturer shall be entitled to receive attorneys' fees and court costs from the consumer.

History

CJY-71-99, July 21, 1999.

Subchapter 4. Rental-Purchase Agreements

§ 1125. Title

This Subchapter may be cited as the Navajo Nation Rental-Purchase Agreement Act.

History

CJY-71-99, July 21, 1999.

§ 1126. Purpose

The purpose of this Act is to define the rights of consumers who enter into rental-purchase agreements and to protect their interest in those agreements or the property obtained pursuant to those agreements.

History

CJY-71-99, July 21, 1999.

§ 1127. Definitions

As used in the Rental-Purchase Agreement Act:

A. "Advertisement" means a commercial message in any medium that solicits a consumer to enter a rental-purchase agreement;

B. "Cash sale price" means the price stated in a rental-purchase agreement for which the lessor would have sold and the consumer would have bought the goods that are the subject matter of a rental-purchase agreement if the transaction had been a sale for cash and may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements;

C. "Consumer" means an individual who rents goods under a rental-purchase agreement to be used primarily for personal, family or household purposes;

D. "Consummation" means the date on which a consumer enters a rental-purchase agreement;

E. "Goods" means personal property of which a consumer acquires use under a rental-purchase agreement;

F. "Lessor" means a person who regularly provides the use of goods under rental-purchase agreements and to whom rental payments are initially payable on the face of the rental-purchase agreement; and

G. "Rental-purchase agreement" means an agreement for the use of goods by an individual for personal, family or household purposes, for an initial period of four months or less, that is automatically renewable with each payment after the initial period, that does not obligate or require the consumer to continue renting or using the goods beyond the initial period and that permits the consumer to become the owner of the goods.

History

CJY-71-99, July 21, 1999.

§ 1128. Exempted transactions; relationship to other laws

The Rental-Purchase Agreement Act does not apply to the following:

A. Rental-purchase agreements made primarily for business, commercial or agricultural purposes;

B. A lease of a safe deposit box;

C. A lease or bailment of personal property that is incidental to the lease of real property and provides that the consumer has no option to purchase the leased property;

D. A lease of a motor vehicle; or

E. A lease of a mobile home.

History

Revision note. For purposes of statutory format, "or" added at end of Subsection (D).

CJY-71-99, July 21, 1999.

Note. Section renumbered for consistent Code format. (2004).

§ 1129. General requirements of rental-purchase agreements

A. Each rental-purchase agreement shall be in writing, dated, signed by the consumer and lessor and completed as to all essential provisions.

B. The printed or typed portion of the rental-purchase agreement, other than instructions for completion, shall be in a size equal to at least

eight-point type. The rental-purchase agreement shall be designated "rental-purchase agreement".

C. The lessor shall deliver to the consumer, or mail to him at his address shown on the rental-purchase agreement, a copy of the agreement as accepted by the consumer. Until the lessor does so, a consumer who has not received delivery of the rented goods shall have the right to rescind his rental-agreement and receive a refund of all payments made. An acknowledgment by the consumer of delivery of a copy of the rental-purchase agreement shall be in a size equal to at least ten-point bold type and, if contained in the agreement, shall appear directly above the consumer's signature.

D. The rental-purchase agreement shall contain the names of the lessor and consumer, the lessor's business address and the residence or other address of the consumer as specified by the consumer.

E. The lessor shall disclose to the consumer the information required by § 1130 of the Rental-Purchase Agreement Act on the face of the rental-purchase agreement above the line for the consumer's signature. The disclosures shall be made at or before consummation of the rental-purchase agreement. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by the disclosures. If a disclosure becomes inaccurate as a result of any act, occurrence or any agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of the Rental-Purchase Agreement Act.

F. A lessor who provides an advertisement in any language other than English shall have rental-purchase agreements printed in each non-English language of the advertisement and shall make those rental-purchase agreements available to consumers.

History

CJY-71-99, July 21, 1999.

§ 1130. Disclosures

A. For each rental-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

1. Whether the periodic payment is weekly, monthly or otherwise, the dollar amount of each payment and the total number and total dollar amount of all periodic payments necessary to acquire ownership of the goods;

2. A statement that the consumer will not own the goods until the consumer has paid the total amount necessary to acquire ownership;

3. A statement advising the consumer whether the consumer is liable for loss or damage to the goods and, if so, a statement that the liability will not exceed the fair market value of the goods as of the time they are lost or damaged;

4. A brief description of the goods, sufficient to identify the

goods to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the goods are new or used. A statement that indicates new goods are used is not a violation of the Rental-Purchase Agreement Act;

5. A statement of the cash sale price of the goods, but if one rental-purchase agreement involves a lease of two or more items as a set, a statement of the aggregate cash price of all items shall satisfy this requirement;

6. The total of initial payments paid or required at or before consummation of the rental-purchase agreement delivery of the goods, whichever is later;

7. A statement that the total amount of payments does not include other charges or fees and a statement of all other charges or fees;

8. A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option, and the price, formula or method for determining the early purchase price;

9. A statement identifying the party responsible for maintaining or servicing the goods while they are being rented, together with a description of that responsibility and a statement that if any part of a manufacturer's express warranty covers the goods at the time the consumer acquires ownership of them, it shall be transferred to the consumer, if allowed by the terms of the warranty;

10. A statement that the consumer may terminate the rental-purchase agreement without penalty by voluntarily surrendering or returning the goods in good repair, reasonable wear and tear excepted, along with any past due rental payments upon expiration of any rental period. This disclosure shall be in bold type;

11. Notice of the right to reinstate a rental-purchase agreement, as provided in the Rental-Purchase Agreement Act; and

12. The following notice printed or typed in size equal to at least ten-point bold type:

"NOTICE TO THE CONSUMER

Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the agreement you sign."

B. With respect to matters governed by the federal Consumer Credit Protection Act, 15 U.S.C. § 1601 *et seq.*, compliance with that act satisfies the requirements of this Section.

History

CJY-71-99, July 21, 1999.

§ 1131. Prohibited provisions

A rental-purchase agreement shall not contain:

- A. A confession of judgment;
- B. A negotiable instrument;
- C. A security interest or any other claim of a property interest in any property of the consumer;
- D. A wage assignment;
- E. A waiver by the consumer of claims or defenses;
- F. A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises unlawfully or to commit any breach of the peace in the repossession of goods;
- G. A provision either waiving the terms of 7 N.N.C. § 621 or purporting to be an advance consent to the removal of property from the Navajo Nation. The provisions of 7 N.N.C. § 621 shall apply to all rental-purchase agreements;
- H. A provision requiring the purchase of insurance or a liability damage waiver from the lessor for goods that are the subject of the rental-purchase agreement;
- I. A provision that mere failure to return goods constitutes probable cause for a criminal action;
- J. A provision requiring the consumer to make a payment in addition to regular periodic payments in order to acquire ownership of the goods or a provision requiring the consumer to make periodic payments totaling more than the dollar amount necessary to acquire ownership as disclosed pursuant to § 1125 of the Rental-Purchase Agreement Act;
- K. A provision for more than one reinstatement fee on any one periodic payment, regardless of the period of time during which it remains unpaid; or
- L. A provision of or a late charge or any other type of charge or penalty for reinstating a rental-purchase agreement, other than a reinstatement fee; however, a lessor may use the term "late charge" or a similar term to refer to a reinstatement fee.

History

CJY-71-99, July 21, 1999.

§ 1132. Reinstatement

A. A consumer who fails to make a timely rental payment may reinstate the rental-purchase agreement without losing any rights or options that exist under the agreement by the payment of the following charges within five days of the

renewal date of an agreement with monthly periodic payments or within two days of the renewal date of an agreement requiring periodic payments more frequently than monthly:

1. All past due rental charges;
2. If the goods have been picked up, the reasonable costs of pickup and redelivery; and
3. Any applicable reinstatement fee.

B. If a consumer has paid less than two-thirds of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than 21 days after the date of the return of the goods.

C. If a consumer has paid two-thirds or more of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than 30 days after the date of the return of the goods.

D. Nothing in this Section shall prevent a lessor from attempting to repossess property in conformity with 7 N.N.C. § 621 during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same goods, if available, or with substitute goods of comparable quality and condition.

History

CJY-71-99, July 21, 1999.

§ 1133. Renegotiations and extensions

A. A renegotiation occurs when any term of a rental-purchase agreement that is required to be disclosed by § 1125 of the Rental-Purchase Agreement Act is changed by agreement between the lessor and consumer. A renegotiation creates a new rental-purchase agreement requiring the lessor to give all the disclosures required by § 1125 of the Rental-Purchase Agreement Act.

B. A renegotiation shall not include:

1. Reinstatement of a rental-purchase agreement in accordance with § 1127 of the Rental-Purchase Agreement Act;
2. A lessor's waiver or failure to assert any claim against the consumer;
3. A deferral, extension or waiver of a portion of a periodic payment or of one or more periodic payments; or

4. A change, made at the consumer's request, of the day of the week or month on which periodic payments are to be made.

History

CJY-71-99, July 21, 1999.

§ 1134. Advertising

A. An advertisement that refers to or states the dollar amount of a periodic payment and the right to acquire ownership of a specific item shall also clearly and conspicuously state:

1. That the transaction advertised is a rental-purchase agreement;
2. The total number and total amount of periodic payments necessary to acquire ownership of the item; and
3. That the consumer acquires no ownership rights in the item unless the total amount necessary to acquire is paid.

B. Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable for failure to comply with the provisions of this Section.

C. The provisions of Subsection (A) of this Section shall not apply to an advertisement that does not refer to or state the amount of any payment or that is published in the yellow pages of a telephone directory or in any similar directory of business.

D. Every item displayed or offered under a rental-purchase agreement shall bear a tag or card that clearly and conspicuously indicates in Arabic numerals each of the following:

1. The cash price of the item;
2. The amount of the periodic payment; and
3. The total number and total amount of periodic payments necessary to acquire ownership.

E. An advertisement in any language other than English shall contain disclosures as required by this Section in the non-English language.

History

CJY-71-99, July 21, 1999.

§ 1135. Enforcement; remedies; limitations

A. A lessor who fails to comply with requirements of the Rental-Purchase Agreement Act is liable to the consumer damaged thereby in an amount equal to:

1. The actual damages sustained by the consumer as a result of the lessor's failure to comply and twenty-five percent (25%) of the total of payments necessary to acquire ownership, but not less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000); and

2. The costs of the action and attorneys' fees, calculated using the Lodestar method, as determined by the court.

B. A consumer may not take any action to offset the amount for which a lessor is potentially liable under Subsection (A) of this Section against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This Subsection does not bar a consumer then in default on an obligation from asserting a violation of the Rental-Purchase Agreement Act as an original action or as a defense or counterclaim to an action brought by a lessor against the consumer.

C. A consumer may assert a violation of the Rental-Purchase Agreement Act as an original action or as a defense or counterclaim to an action brought by a lessor against the consumer.

D. The remedies of a consumer, pursuant to the provisions of this Section, are in addition to any other rights or remedies available to a consumer pursuant to applicable laws or regulations.

E. No action under this Section may be brought in any court of competent jurisdiction more than two years after the date the consumer made his last rental payment or more than two years after the date of the occurrence of the violation that is the subject of the suit, whichever is later.

History

CJY-71-99, July 21, 1999.

§ 1136. Lessor's defenses

A. If a lessor establishes by a preponderance of evidence that a violation of the Rental-Purchase Agreement Act was unintentional or the result of a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, the lessor shall not be subject to the provisions of § 1131 of the Rental-Purchase Agreement Act and the validity of the transaction is not affected. Examples of bona fide errors are clerical errors, calculation errors, errors due to unintentionally improper computer programming or data entry and printing errors, but do not include errors of legal judgment with respect to a lessor's obligations under the Rental-Purchase Agreement Act.

B. A lessor is not subject to the provisions of § 1131 of the Rental-Purchase Agreement Act if, within 60 days after discovering a failure to comply with a requirement of the Rental-Purchase Agreement Act and prior to the institution of an action for noncompliance and prior to the receipt of written notice of the noncompliance from the consumer, the lessor notifies the consumer of the noncompliance and makes whatever adjustments in the appropriate account are necessary to correct the noncompliance.

C. No provision of § 1131 of the Rental-Purchase Agreement Act applies to any action done or omitted in good faith in conformity with some provision of that act, notwithstanding that after the action or omission has occurred the provision is amended, rescinded or determined by judicial or other competent authority to be invalid for any reason.

History

Revision Note (2005). To correct a typographical error, in the first sentence of Subsection (A), "adopted a avoid such errors" was changed to read "adopted to avoid such errors".

CJY-71-99, July 21, 1999.

Subchapter 5. Pawn Transactions

§ 1137. Title

The provisions of this Subchapter may be cited as the Navajo Nation Pawn Regulation Act.

History

CJY-71-99, July 21, 1999.

§ 1138. Definitions

As used in the Pawn Regulation Act:

A. "Pawnbroker" means a person engaged in the business of making pawn transactions;

B. "Pawn service charge" means the sum of all charges, payable directly or indirectly by the pledger and imposed directly or indirectly by the pawnbroker as an incident to the pawn transaction;

C. "Pawnshop" means the location or premises at which a pawnbroker regularly conducts his business;

D. "Pawn transaction" means either the act between a pawnbroker and a person pledging a good of lending money or extending credit on the security or pledged goods or of purchasing tangible personal property with an express or implied agreement or understanding that it may be redeemed or repurchased by the seller at a stipulated price;

E. "Person" means an individual, partnership, corporation, joint venture, trust, association or any other legal entity however organized;

F. "Pledged goods" means tangible personal property other than choses in action, securities or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with the pawn transaction;

G. "Local law enforcement agency" means the Navajo Department of Public Safety; and

H. "Local government" or "local government authority" means a chapter or other local government.

History

CJY-71-99, July 21, 1999.

§ 1139. Purpose

The purpose of the Pawn Regulation Act is to:

A. Prevent frauds, unfair practices, discriminations against, impositions on, or abuses of, the citizens of the Navajo Nation;

B. Exercise the police power of the Nation to insure a sound system of making pawn transactions and acquiring and disposing of tangible personal property by and through pawnshops and to prevent unlawful pawn transactions, particularly in stolen property, through regulating pawnbrokers and certain persons employed by or in pawnshops;

C. Ensure financial responsibility to the Nation and to the public;

D. Ensure compliance with federal, Navajo Nation and local laws, rules, regulations and ordinances;

E. Assist local governments in the exercise of their police power; and

F. To protect from exploitation, abuse or its own improvidence that segment of society within the Nation which relies from time to time for its need upon money or credit extended by pawnbrokers and given upon the security of art, handcraft or movable personal possessions.

History

CJY-71-99, July 21, 1999.

§ 1140. Permits required, inspection fee; penalty

A. In addition to any occupational or other license required by the local government, every pawnbroker shall obtain a pawnbroker permit from his or her local government, and that permit shall be conspicuously displayed in the pawnbroker's place of business. Said permit will expire on July 1 of each year and must be renewed by that date. Upon obtaining the permit, every pawnbroker shall register with the local law enforcement agency.

B. The local government may impose upon pawnbrokers a pawnbroker permit fee, in an amount to be set by the local government, to cover the expense of administration of the Pawn Regulation Act. No person who has been convicted of a felony shall be eligible for a permit.

C. Doing business as a pawnbroker without a permit constitutes a violation of this Section and is subject to the general penalty provisions of the Pawn Regulation Act.

History

CJY-71-99, July 21, 1999.

§ 1141. Administration; applicability of other laws

A. The local government may adopt such rules and regulations as necessary for the equitable administration of the Pawn Regulation Act.

B. Nothing in the Pawn Regulation Act shall be construed to prohibit a local government from enacting additional requirements governing pawnbrokers, not inconsistent with that Act.

History

CJY-71-99, July 21, 1999.

§ 1142. Pawnbroker; bond required

No person shall engage in business as a pawnbroker without having executed and delivered a bond to his local government in the sum of five thousand dollars (\$5,000). The bond shall be in a form approved by the local government and shall be conditioned upon the conduct of the pawnbroker's business according to the provisions of the Pawn Regulation Act. The bond shall be for the benefit of each and every person damaged by a breach of any condition set forth in the bond. Every pawnbroker shall provide the local government with 30 days' notice in writing of the cancellation of the bond.

History

CJY-71-99, July 21, 1999.

§ 1143. Application for permit; requirements

A. Each application for an original or a renewal permit shall be submitted in writing to the local government and contain such information as is required by the local government and be accompanied by the applicable permit fee amount.

B. Each application shall be accompanied by the name, social security number, address and date of birth of each agent, servant and employee of the applicant engaged in the business of pawn transactions. Changes in such list must be indicated on each renewal application.

C. Every pawnbroker shall furnish with each application for an original or renewal permit proof of execution and delivery of the bond to the local government.

History

CJY-71-99, July 21, 1999.

§ 1144. Suspension or revocation of permit; notice; hearing

A. The local government authority may institute proceedings for the suspension or revocation of any permit issued pursuant to the Pawn Regulation Act upon the filing of a written complaint by the local law enforcement agency, the designated representative of that local law enforcement agency or the Attorney General, charging the permit holder or an employee thereof, of having violated any provision of the Pawn Regulation Act.

B. The local government authority shall serve written notice upon the permit holder of the alleged violation. The notice requirement is satisfied if personal service of the notice is had upon the holder of the permit or is posted in a conspicuous place upon the permit holder's place of business.

C. The local government authority shall set a date for hearing on the complaint not more than 10 days, nor less than five days, after the date of notice unless waived by all parties thereto. The notice provided for in Subsection (B) of this Section shall specify the date and time of the hearing.

D. The permit holder and any other interested person shall have the right to appear at this administrative hearing and to produce evidence. The rules of evidence shall not apply. If, after holding this hearing, the local government authority determines that the permit holder is in violation of the provisions of the Pawn Regulation Act as charged in the complaint, the local government authority shall issue a written order. The order may suspend the permit for a stated period of time or permanently revoke the permit. The local government authority shall cause such order to be served upon the permit holder and filed in the administrative offices of the local government for public inspection within five business days after the hearing. Service of the order on the permit holder shall be as specified in Subsection (B) of this Section, and the official serving the order shall have the authority to remove the permit from the premises and deliver the permit to the local government authority. This hearing shall be the final administrative remedy.

History

CJY-71-99, July 21, 1999.

§ 1145. Pawnbroker reports; records; delivery; violations

A. Every pawnbroker shall each day accurately complete a report of all used property of every kind received or purchased in a pawn transaction during the preceding business day on a form approved by the local law enforcement agency. Either a driver's license or other photo identification card shall be required of each person entering into a pawn transaction with a pawnbroker. Each item received shall be listed on a separate report form. Said report shall include the following:

1. Name of item;
2. Description of the item including make and model number, if any;

3. Serial number and other identifying marks, if any;
4. Date, time and type of pawn transaction;
5. Name and address of person offering the item;
6. Description of the persons offering the item including sex, complexion, hair color, approximate height and weight, and date of birth; and
7. Type of identification used by person offering item and identifying number of said identification. If the person presents a driver's license, the report shall also indicate the state of issuance.

B. All reports required by this Section shall be completed accurately and be made available by 12 o'clock noon of the day following the day of the pawn transaction and shall be delivered or mailed to the local law enforcement agency within three days of the pawn transaction.

C. Property purchased directly from another permit holder regulated by the Pawn Regulations who has already reported the item pursuant to this Section is exempt from the requirements of this Section.

D. Persistent or frequent erroneous or incomplete entries in or delays in the submitting of the above required reports shall constitute a violation of this Section and are subject to the general penalty provisions of the Pawn Regulations.

E. The reports and records of the permit holder required pursuant to this Section, as well as every item received in pawn, shall be available for inspection by the local government authority, the Attorney General, the local law enforcement agency or any sworn member of that law enforcement agency at all reasonable times.

F. Each item pledged to or purchased by the permit holder for which a report is required shall have attached to it a tag with an alphabetic or numerical identification system matching that item with its corresponding report and record.

History

CJY-71-99, July 21, 1999.

§ 1146. Pawn ticket

A. Every pawnbroker shall at the time of each pawn transaction deliver to the person pawning any good, a ticket signed by the pawnbroker containing the substance of the entry required to be made in his report pursuant to § 1141 of the Pawn Regulation Act.

B. The holder of such ticket shall be presumed to be the person entitled to redeem the pledge and the pawnbroker shall deliver such article to the person so presenting such ticket on payment of principal and all lawful charges.

C. The pawn ticket required by this Section shall further contain all disclosures of credit terms required to be disclosed to the pledger by the federal Truth in Lending Act.¹

History

Revision Note (2002). Term "of" inserted between "holder" and "such" at Subsection (B).

CJY-71-99, July 21, 1999.

§ 1147. Default; disposition of pledged property

A. Except as otherwise specified in this Section, upon default by the pledger, the pawnbroker shall comply with the requirements of §§ 9-501 through 9-507, Title 5A, Navajo Nation Code, in the disposition of the pledged goods.

B. Notwithstanding Subsection (A) of this Section, the pawnbroker shall not dispose of the pledged property, except by redemption, until at least 90 days after the indebtedness has become due.

C. Notwithstanding Subsection (A) of this Section, if the pawnbroker disposes of the pledged property by sale in the regular course of his business, such sale shall conform to the requirements of § 9-504, Title 5A, Navajo Nation Code, and if a surplus remains after sale of the pledged property the pawnbroker must make a record of the sale and the amount of the surplus and must notify the pledger by first class mail sent to the pledger's last known address of the amount of the surplus and the pledger's right to claim it at a specified location within 90 days of the date of mailing of the notice if the surplus is one hundred dollars (\$100.00) or less, or within 12 months of the date of the mailing of the notice if the surplus is greater than one hundred dollars (\$100.00). In the event that the first class mail addressed to any person is returned unclaimed to the pawnbroker, then the pawnbroker must post and maintain on a conspicuous public part of his premises an appropriately entitled list naming each such person. Ninety days or 12 months, as applicable, after the date of such mailing whichever is later, the pawnbroker may retain any surplus remaining unclaimed by the pledger as his own property.

History

CJY-71-99, July 21, 1999.

§ 1148. Record of disposition of pledged property

Every pawnbroker shall keep a permanent record, fully itemized, of all pledged property disposed of following default by the pledger. The record shall include the following:

- A. The number of the pawn transaction;
- B. The name and address of the pledgor;

C. The date of the pawn transaction and the date of the last payment received as service charge or on principal;

D. The date of disposition of the pledged property pursuant to § 1147 of the Pawn Regulation Act;

E. The method of disposition of the pledged property; and

F. The amount and disposition of any surplus following disposition of the pledged property.

History

Revision Note (2005). Section referenced in § 1148(D) is corrected to conform with statutory intent.

CJY-71-99, July 21, 1999.

§ 1149. Pawn service charge

A. For the first 30-day period of the pawn transaction, a pawnbroker may charge seven dollars fifty cents (\$7.50) or ten percent (10%) of the amount loaned, whichever is greater, provided that such charge shall not be made on the refinancing of an existing loan or credit transaction. A loan or extension of credit shall be considered to be refinancing of an existing loan if any part of the proceeds of the subsequent loan is applied toward the payment of a prior loan with the same pawnbroker.

B. For the remaining period of the pawn transaction, including any refinancing, no pawnbroker shall charge directly, indirectly or by any subterfuge a pawn service charge in connection with any pawn transaction at a rate in excess of one and one-half percent ($1\frac{1}{2}\%$) per month on the unpaid principal balance of the loan or extension of credit.

C. The foregoing pawn service charges are limiting maximums and nothing herein shall be construed to prohibit a pawnbroker from contracting for or receiving a lesser rate than here established.

History

CJY-71-99, July 21, 1999.

§ 1150. Prohibited practices

A pawnbroker shall not:

A. Knowingly enter into a pawn transaction with a person under the age of 18 years or under the influence of alcohol, any narcotic, drug, stimulant or depressant;

B. Make any agreement requiring the personal liability of a pledger in connection with the pawn transaction;

C. Accept any waiver, in writing or otherwise, of any right or protection

accorded a pledger under the Pawn Regulation Act;

D. Fail to exercise reasonable care to protect pledged goods from loss or damage;

E. Fail to return a pledged good to a pledger upon payment of the full amount due to the pawnbroker on the pawn transaction. In the event a pledged good is lost or damaged while in the possession of the pawnbroker, the pawnbroker shall compensate the pledger for the reasonable value of the lost or damaged good;

F. Make any charge for insurance in connection with a pawn transaction;

G. Purchase or otherwise receive any item of property from which the manufacturer's name plate, serial number or identification mark has been obviously defaced, altered, covered or destroyed;

H. Purchase or otherwise receive any item of property which the permit holder knows is not lawfully owned by the person offering the same;

I. Enter into a pawn transaction in which the unpaid principle balance exceeds two thousand dollars (\$2,000);

J. Require that any of the proceeds of any cash loan be spent at the pawnbroker's place of business or in any other manner directed by the pawnbroker; or

K. Make any agreement in which the pledged property is a motor vehicle.

History

CJY-71-99, July 21, 1999.

§ 1151. General penalties

Any pawnbroker or permit holder who is found guilty of a violation of any provision of the Pawn Regulation Act shall be guilty of an offense. Any pawnbroker or permit holder who is not a member of the Navajo Nation and who is found guilty of a violation of the Act may be excluded from the Nation pursuant to 17 N.N.C. § 1901. Any pawnbroker or permit holder who violates any provision of the Pawn Regulation Act shall be subject to having his permit revoked or suspended by the local government pursuant to the provisions of § 1140 of the Pawnbrokers Act. Revocation or suspension of such permit will not bar prosecution of the permit holder under the penal provisions of the Pawn Regulation Act. Criminal prosecution will not bar proceedings to revoke or suspend the holder's permit.

History

CJY-71-99, July 21, 1999.

§ 1152. Forfeiture

The violation of any provision of the Pawn Regulation Act in any covered

transaction shall be deemed a forfeiture of the entire amount of the pawn service charge contracted for or allowable under the transaction. In the event a pawn service charge in excess of the amounts allowable under the Pawn Regulation Act has been paid in any covered transaction, the person by who it has been paid, or his or her legal representative, may recover back by civil action triple the amount of service charge paid, or one thousand dollars (\$1,000), whichever is greater. The court shall also award attorneys' fees, calculated by the Lodestar method. Any civil action under this Section shall be commenced within two years from the date the usurious transaction was consummated.

History

CJY-71-99, July 21, 1999.

Subchapter 6. Finance Charge Rates

§ 1153. Title

The provisions of this Subchapter may be cited as the Navajo Nation Finance Charge Rate Limitation Act.

History

CJY-71-99, July 21, 1999.

§ 1154. Purpose

The purpose of this Act is to ensure against the lending of money within the Navajo Nation at unconscionable, excessive or usurious rates of interest. The Act also prevents the enforcement of contracts within the Nation, regardless of where they are entered into, which charge usurious interest rates.

History

CJY-71-99, July 21, 1999.

§ 1155. Retail Installment Contract Rates

A. In any retail installment contract, including retail installment accounts, a seller may contract for and if so contracted for, the holder thereof may charge, receive, and collect a finance charge which shall not exceed an annualized rate equal to the prime interest rate, as indicated in the latest print edition of the Wall Street Journal, at the time the contract is executed plus fifteen (15) percentage points above the prime rate. For retail installment contracts, the rate which is stated in the contract may not be changed for any reason during the term of the contract. In the case of retail installment accounts, the finance charge shall only be charged on the outstanding balances of the contract as it changes from month to month.

B. For purposes of this Act, the term "finance charge" shall include all charges which are incident to, or a condition of, the extension of credit.

History

CJA-08-06, January 27, 2006.

CJY-71-99, July 21, 1999.

§ 1156. Private remedies

A. It shall be a complete defense to any claim on a retail installment contract that the rate charged is in excess of the rate authorized by this Act. No amount of charges in excess of those authorized by this Act may be reduced to judgment.

B. Any seller who contracts for a finance charge in excess of the rates authorized by this Act shall be liable for a penalty of three times the amount of the finance charge which is in excess of the rate authorized by this Act, but in any event not less than one thousand dollars (\$1,000).

C. The court shall award attorneys' fees, calculated using the Lodestar method, to any consumer who prevails on a defense or claim under this Act. Any claim under this Act must be brought within two years of the date on which the claim is created.

History

CJY-71-99, July 21, 1999.

Subchapter 7. Motor Vehicle Deficiency Charges

§ 1157. Title

This Subchapter may be cited as the Motor Vehicle Consumer Protection Act.

History

CJY-71-99, July 21, 1999.

§ 1158. Purpose

A. The purpose of the Motor Vehicle Consumer Protection Act is to protect buyers of new or used motor vehicles both inside and beyond the territorial boundaries of the Navajo Nation.

B. The Act is designed to help remedy problems faced by buyers when used motor vehicles break down shortly after their purchase, leaving buyers with no recourse against the seller, and when deficiency judgments are issued against buyers that do not fairly reflect the detriment suffered by the seller, but which create enormous and unjust burdens for the buyers.

C. The protections offered by this Act should be effected by limiting the relief offered by Navajo Nation courts to the seller of a motor vehicle if that

seller fails to offer the buyer such protections as are detailed herein.

History

Revision Note (2002). For purposes of statutory format, this Section was designated by Subsections.

CJY-71-99, July 21, 1999.

§ 1159. Definitions

As used in the Motor Vehicle Consumer Protection Act:

A. "Deficiency" means the difference between the contract sales price of a motor vehicle, as contracted for between buyer and seller (including all interest or financing costs charged to the buyer, less any unearned finance charges rebated according the accounting rule of 78ths), and the sum of (a) all payments made toward that contract sales price by the purchaser, and (b) any sum acquired by the seller for the resale of the motor vehicle at auction for the purpose of recouping the contract sales price;

B. "Motor vehicle" means a passenger motor vehicle including an automobile, pickup truck, motorcycle or van normally used for personal, family or household purposes which is legally registered for use on the Navajo Nation, and whose gross vehicular weight is less than 10,000 pounds;

C. "Used motor vehicle" means any motor vehicle that, at the time of purchase by the buyer, has been previously owned by or has been used by the seller in a manner consistent with ownership, or that has a certified odometer reading of 5,000 miles or more;

D. "Seller" means any person or entity in the business of selling motor vehicles at the rate of five motor vehicles or more per year in the 365 days preceding an action governed by this Subchapter and who is a plaintiff in an action governed by this Subchapter, and does not include individuals who are the sellers of motor vehicles previously used for their own personal, family or household purposes, and who have sold less than five motor vehicles in the year preceding an action governed by this Subchapter;

E. "Buyer" means any person subject to the laws of the Navajo Nation who has bought a motor vehicle and who is the defendant in an action governed by this Subchapter, and may include any cosigner, surety or guarantor to a motor vehicle sales contract;

F. "Principal" means any amount due, on a motor vehicle sales contract or retail installment sales contract, as consideration for the item tendered to the buyer by the seller, exclusive of financing charges;

G. "Financing charges" means any amount due on a retail sales contract as consideration for the extension of credit on a contract, exclusive of the cost of the principal.

History

CJY-71-99, July 21, 1999.

§ 1160. Limitation on Issuance of Deficiency Judgments for Used Motor Vehicles

A. No court of the Navajo Nation shall have jurisdiction to enter a judgment, or to recognize or enforce a judgment of a foreign court, requiring a defendant to pay a deficiency on a motor vehicles sales contract or a motor vehicle retail installment sales contract, without first having obtained sufficient evidence of the following:

1. That the seller of the used motor vehicle agreed:

a. In writing and at the time of sale;

b. To accept the return of the used motor vehicle at any time during the duration of a 10-day "grace" period beginning the day following the delivery of the vehicle to the buyer, on the basis of any complaint whatsoever regarding the quality, condition, or price of the vehicle, for a full and immediate refund of all monies paid by the buyer;

c. Had the buyer sign an acknowledgment of this agreement;

d. That such acknowledgment form provided sufficient notification of the buyer's rights under this Subchapter; and

e. That seller provided a copy of such form to the buyer at the time and place of delivery; and

2. That the buyer failed to return the used motor vehicle within that grace period.

B. In the event the vehicle is returned during the grace period, the seller may charge the buyer a reasonable rate for mileage actually used by the buyer, not to exceed 30 cents (.30) per mile.

C. The grace period does not apply to the sale of new motor vehicles.

D. For the purposes of this Section, it will be insufficient evidence for a seller merely to affirm the offer of the required grace period by statement in pleading, unless such pleadings are accompanied by a copy of the written agreement to such a grace period that bears the buyer's signature of acknowledgment dated at the time of sale.

E. In cases where the buyer's English language skills are sufficiently limited to prevent a thorough understanding of written forms or spoken English instructions, as shown by a preponderance of the evidence, the written agreement to the grace period that bears the buyer's signature of acknowledgment must also be accompanied by a certification that a translator assisted to fully explain the agreement.

F. This protection may not be waived by buyers at any time; any attempt to waive these rights shall be considered a nullity by the court despite evidence of consideration paid for the signing of such waiver.

G. In any claim or action brought by a seller in which the seller claims a deficiency which is not authorized by the terms of this Subchapter, the court shall award attorneys' fees, calculated using the Lodestar method, to a buyer who prevails on a defense that the deficiency was not authorized by this Act.

History

CJY-71-99, July 21, 1999.

§ 1161. Limitation on the Amount of Deficiency Judgments for Motor Vehicles

A. A judgment against a buyer ordering the payment of a deficiency on a motor vehicle sales contract or a motor vehicle retail installment sales contract shall be calculated to allow only the recovery of the seller's actual costs and projected profits, and therefore shall be limited to an amount not to exceed the sum of:

1. A percentage, calculated as the current prime lending rate plus two percent (2%), of either the seller's original purchase costs for the motor vehicle, if any, or the manufacturer's suggested retail price, whichever in the court's estimation is a more accurate means of discovering the seller's projected profits from the motor vehicle's sale in a given case; plus

2. The seller's original costs to purchase the motor vehicle, if any, minus any amount paid by the buyer toward the principal to the date of the court's order, minus any amount gained by the seller from the resale of the vehicle at auction subsequent to the vehicle's repossession, for the recoupment of the seller's purchase costs; plus

3. Financing charges due under the contract from the date of sale to the date of the court's order, minus any amount paid by the buyer toward the financing charges to the date of the court's order; plus

4. Reasonable documented repossession costs, if any; plus

5. Reasonable documented attorney's fees, if any.

B. The seller's costs must be established by a preponderance of the evidence; however, statistical evidence of costs will not be a substitute for evidence specific to the complaint.

C. In cases where a motor vehicle retail installment contract has been assigned to a party other than the seller, the assignee shall have the same rights and liabilities as would the seller for purposes of recovery under this Act, and the buyer has the same rights and liabilities against that assignee as they would against the seller.

D. For the purposes of this Section, payments made pursuant to motor vehicle retail installment sales contracts are to be allotted to principal and interest according to the accounting method agreed to by the motor vehicle retail installment sales contract.

History

CJY-71-99, July 21, 1999.

Chapter 8. Housing

Subchapter 1. Manufactured Housing

§ 1301. Title

This Subchapter may be cited as the "Navajo Nation Manufactured Housing Act".

History

CJA-13-99, January 27, 1999.

§ 1302. Definitions

As used in the Manufactured Housing Act:

A. "Broker" means any person who, for a fee, commission or valuable consideration, lists, sells, offers for sale, exchanges, offers to exchange, rents or leases or offers to rent or lease pre-owned manufactured homes for another person or who negotiates, offers to negotiate, locates or brings together a buyer and a seller or offers to locate or bring together a buyer and a seller in conjunction with the sale, exchange, rental or lease of a pre-owned manufactured home. A broker may or may not be an agent of any party involved in the transaction. No person shall be considered a broker unless engaged in brokerage activities related to the sale, exchange or lease-purchase of two or more pre-owned manufactured homes to consumers in any consecutive 12-month period;

B. "Certificate of qualification" means a certificate issued by the program to a qualifying party;

C. "Committee" means the Economic Development Committee of the Navajo Nation Council;

D. "Consumer" means any person who seeks or acquires by purchase, exchange or lease-purchase a manufactured home;

E. "Dealer" means any person engaged in the business of buying for resale, selling or exchanging manufactured homes or offering manufactured homes for sale, exchange or lease-purchase to consumers. No person shall be considered a dealer unless engaged in the sale, exchange or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period. A dealer may also engage in any brokerage activities included under the definition of broker in this Section; provided, "dealer" shall not include:

1. Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

2. Public officers while performing their duties as such officers;
and

3. Finance companies, banks and other lending institutions covering sales of repossessed manufactured houses;

F. "Director" means the director of the manufactured housing program;

G. "Inspection agency" means any firm, partnership, corporation, association or other legal entity or any combination thereof approved in accordance with regulations adopted by the program as having the personnel and equipment available to adequately inspect for the proper construction of manufactured homes or house trailers not used exclusively for recreational purposes;

H. "Inspector" means a person appointed by the program as being qualified to adequately inspect the construction, electrical installations and mechanical installations of manufactured homes and their repair and modification, as well as the installation, tiedowns, blocking, skirting, water, gas and sewer connections of any manufactured homes within the Navajo Nation;

I. "Installer" means any person who installs manufactured homes for remuneration;

J. "Installation" means, but is not limited to, preparation by an installer of a manufactured home site, construction of tie-down facilities and connection to on-site utility terminals;

K. "Manufacturer" means any person who manufactures or assembles manufactured homes or any component of manufactured homes;

L. "Manufactured home" means a movable or portable housing structure over thirty-two feet in length or over eight feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two or more units separately towable but designed to be joined into one integral unit, as well as a single unit.

"Manufactured home" does not include recreational vehicles or modular or premanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property.

"Manufactured home" includes any movable or portable housing structure over twelve feet in width and forty feet in length which is used for nonresidential purposes;

M. "Permit" means a certificate issued by the program to the dealer or installer of a manufactured home indicating that the manufactured home meets the minimum requirements for occupancy provided for by codes or regulations of the program;

N. "Person" includes an individual, firm, partnership, corporation, association or other legal entity or any combination thereof;

O. "Program" means the manufactured housing program of the Business Regulatory Department of the Division of Economic Development;

P. "Qualifying party" means any individual who submits to the examination for a license, other than a broker's or salesperson's license, to be issued under the Manufactured Housing Act to a licensee, other than an individual, and who after passing such an examination is responsible for the licensee's compliance with the requirements of that Act and with the rules, regulations, codes and standards adopted and promulgated in accordance with the provisions of the Manufactured Housing Act;

Q. "Repairman" means any person who, for remuneration or consideration, modifies, alters or repairs the structural, mechanical or electrical systems of a manufactured home; and

R. "Salesperson" means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured homes to consumers as an employee or agent of a dealer.

History

CJA-13-99, January 27, 1999.

§ 1303. Purpose

It is the intent of the Navajo Nation Council that the large and growing manufactured housing industry within the Navajo Nation be supervised and regulated by the Business Regulatory Department of the Division of Economic Development. The purpose of the Manufactured Housing Act is to insure the purchasers and users of manufactured homes of the essential conditions of health and safety which are their right and to provide that the business practices of the industry are fair and orderly among the members of the industry with due regard to the ultimate consumers in this important area of human shelter.

History

CJA-13-99, January 27, 1999.

§ 1304. Powers and duties of program

The program shall:

A. Prepare, administer and grade examinations for licensure under the classification sought by each applicant;

B. Issue licenses and certificates of qualification in accordance with the provisions of the Manufactured Housing Act;

C. Establish and collect fees authorized to be collected by the program pursuant to the Manufactured Housing Act;

D. Subject to the approval of the committee, adopt rules and regulations

relating to the construction, repair, modification, installation, tie-down, hook-up and sale of all manufactured homes, which regulations shall be uniform throughout the Navajo Nation and shall be enforced by inspectors for the program to insure minimum standards of safety within the Navajo Nation and any of its political subdivisions. Ordinances of any political subdivision of the Navajo Nation relating to gas, including natural gas, liquefied petroleum gas or synthetic natural gas, electricity, sanitary plumbing and installation or sale of manufactured homes shall not be inconsistent with any rules, regulations, codes or standards adopted by the program pursuant to the Manufactured Housing Act;

E. Adopt a budget and submit it as designated by law for approval;

F. Make regular reports to the Executive Director of the Division of Economic Development concerning the operations of the program. The report shall contain the program's recommendations for legislation it deems necessary to improve the licensing and the ethical and technical practices of the manufactured housing industry and to protect the public welfare;

G. Subject to the approval of the committee, adopt such rules, regulations, codes and standards as are necessary to carry out the provisions of the Manufactured Housing Act;

H. Prepare a uniform manufacturer's warranty and require its adoption as a condition of licensure by all manufacturers of manufactured homes doing business within the Navajo Nation;

I. Subject to the approval of the committee, adopt by regulation the mobile home construction and safety standards contained in the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.*, as amended;

J. Subject to the approval of the committee, adopt by regulation the mobile home procedural and enforcement regulations, 24 C.F.R. 3282, as amended, promulgated by the Department of Housing and Urban Development pursuant to the National Mobile Home Construction and Safety standards Act of 1974, 42 U.S.C. 5401 *et seq.*, as amended;

K. Issue permits and provide for a single inspection of every installation within the Navajo Nation regardless of the location;

L. Subject to the approval of the committee, adopt regulations prescribing standards for the installation or use of electrical wiring, the installation of all fixtures, plumbing, consumer's gas pipe, including natural gas, liquefied petroleum gas and synthetic natural gas, appliances and materials installed in the course of mechanical installation and the construction, alteration, installation and repair of all manufactured homes intended for use in flood or mudslide areas. The regulations shall give due regard to standards prescribed by the federal insurance administration pursuant to regulation 1910, Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 5757, all as amended, and shall give due regard to physical, climatic and other conditions peculiar to the Navajo Nation;

M. Conduct "inspector schools" so that each inspector under the program's

jurisdiction is capable of giving a complete one-time inspection for the sufficiency of unit installation, construction and mechanical and electrical systems;

N. Enter into cooperative agreements with federal agencies relating to manufactured housing and accept and use federal grants, matching funds or other financial assistance to further the purposes of the Manufactured Housing Act. The program may enter into agreements with Chapters and other local governments to provide for the inspection of manufactured homes by employees of chapters and other local governments, to be performed under the supervision and control of the program. The program may allow all or a portion of the inspection fee collected by a local public body to be retained by the local public body. The portion of the fee retained shall be determined by the program and shall be related to the completeness of the inspection performed;

O. Administer oaths through any member of the program, the director or a hearing officer;

P. Subject to the approval of the committee, adopt rules and regulations for the conduct of hearings and the presentation of views, consistent with the regulations promulgated by the Department of Housing and Urban Development, 24 C.F.R. 3282.151 through 3282.156, as amended;

Q. Subject to the approval of the committee, adopt by regulations a requirement that dealers, repairmen and installers provide to consumers warranties on their product and work and prescribe by regulation minimum requirements of such warranties;

R. Coordinate with the qualifying inspectors for any multiple inspection program provided by Navajo Nation Housing Services or Navajo Housing Authority for inspection of manufactured homes; and

S. Subject to the approval of the committee, adopt regulations codes and standards for manufactured homes used for nonresidential purposes; provided such manufactured home being used for nonresidential purposes on the effective date of this act shall not be required to meet Uniform Building Code standards, except as to requirements for access to the handicapped, but manufactured homes being used for nonresidential purposes after the effective date shall be required to meet Uniform Building Code standards.

History

CJA-13-99, January 27, 1999.

§ 1305. Bonding requirements; dealers, brokers, salespersons, manufacturers, repairmen and installers

A. The program with the approval of the committee, may by regulation require each dealer, broker, salesperson, manufacturer, repairman and installer to furnish and maintain with the program a consumer protection bond underwritten by a corporate surety in a sum to be determined by regulation and in such form, and with either unit or blanket coverage, as required by regulations, to be conditioned upon the dealer, broker, salesperson, manufacturer, repairman or installer complying with the provisions of the

Manufactured Housing Act and any other law applying to the licensee, and also as indemnity for any loss sustained by any person damaged:

1. As a result of a violation by the licensee of any provision of the Manufactured Housing Act or of any regulation of the program adopted pursuant to that Act;

2. As a result of a violation of any regulation adopted by the program;

3. By fraud of a licensee in the execution or performance of a contract; or

4. By misrepresentation or the making of false promises through the advertising or the agents of a licensee.

B. The consumer protection bond may include provisions for the indemnification for any loss sustained by any consumer as the result of the refusal, failure or inability to transfer good and sufficient legal title to the consumer by the transferor or any other party claiming title.

C. The committee may attach and disburse for cause any consumer protection bond furnished to the program pursuant to this Section. The program, subject to the approval of the committee, shall adopt the necessary rules and regulations to administer the provisions of this Section.

History

CJA-13-99, January 27, 1999.

§ 1306. License required; classification; examination

A. No person shall engage in business as a manufacturer, dealer, broker, repairman, installer or salespersons of manufactured homes unless licensed as provided in the Manufactured Housing Act.

B. The committee shall adopt regulations creating a system of license classifications covering the occupations of dealer, broker, manufacturer, repairman, installer and salesperson and providing for the qualifications and examination for each class of license.

C. No person shall import for sale or exchange, or engage in the business of selling leasing or exchanging or offering for sale, lease or exchange, any manufacturer home manufactured by any person who is not licensed as a manufacturer under the Manufactured Housing Act.

History

CJA-13-99, January 27, 1999.

§ 1307. Licensure; exemption

The provisions of § 1306 shall not apply to licensed real estate brokers or salesmen acting as agents for another person in the sale of real property on

which is located one or more manufactured homes whose installation has been approved as provided in regulations of the committee.

History

CJA-13-99, January 27, 1999.

§ 1308. License; application; issuance

A. Application for a license required under § 1306 for one of the classified occupations, or for a certificate of qualification of a qualifying party of a licensee other than an individual licensee, shall be submitted to the program on forms prescribed and furnished by the program. The application shall contain such information and be accompanied by such attachments as are required by regulations of the program. The forms shall be accompanied by the prescribed fee.

B. No license shall be issued by the program to any person unless the program is satisfied that he is or has in his employ a qualifying party who is qualified for the classification for which the application is made and who has satisfied the requirements of Subsection (C) of this Section.

C. An applicant for licensure shall:

1. Demonstrate financial responsibility as required by regulations of the committee;

2. Be of good reputation;

3. Not have engaged illegally in the licensed classification that he is applying for within one year prior to making the application;

4. Demonstrate familiarity with the rules and regulations adopted by the committee concerning the classification for which application is made;

5. If a corporation, have complied with the laws of the Navajo Nation regarding qualifications for doing business within the Nation or have been incorporated in and have and maintain a registered agent and a registered office in the Navajo Nation;

6. If an individual or partnership, have maintained residence or street address in the Navajo Nation for at least 30 days preceding the date of application; and

7. Personally or through the applicant's qualifying party successfully pass an examination administered by the program in the license classification for which application is made.

History

CJA-13-99, January 27, 1999.

§ 1309. Qualifying party; examination; certificate

A. Except as provided in Subsection (C) of this Section, no certificate of qualification shall be issued to any individual desiring to be a qualifying party until he or she has passed with a satisfactory score an examination prepared, administered and graded by the program.

B. The examination where applicable shall consist of:

1. General business knowledge, the rules and regulations of the program and committee and the provisions of the Manufactured Housing Act;

2. Technical knowledge and familiarity with the prescribed codes and minimum standards, which may be prepared and administered by an employee of the program who is expert in the particular classification for which certification is sought; and

3. General knowledge of the statutes of the Navajo Nation relating to the sale, exchange or lease of manufactured homes, contracts of sale, agency and brokerage.

C. If a licensee is subject to suspension by the committee for failure of the licensee to have a qualifying party in his employ, and the employment of the qualified party is terminated without fault of the licensee, then an employee of the licensee who is experienced in the classification for which the certificate of qualification was issued and who has been employed two or more years by the licensee shall be issued without examination a temporary certificate of qualification in the classification for which the licensee is licensed. The temporary qualifying party shall be subject to passing the examination as set forth in this Section within one year from the date of the temporary certificate's issuance.

D. A certificate of qualification is not transferable.

History

CJA-13-99, January 27, 1999.

§ 1310. Program fees

The program shall by regulation establish reasonable annual license fees, fees for examinations and inspection and permit fees. Fees shall be set to reflect the actual cost of licensing and regulation, and in the case of the examination they shall reflect the actual cost of preparing and administering the examination. All fees shall be paid to the Controller for deposit and transfer.

History

CJA-13-99, January 27, 1999.

§ 1311. Suspension and revocation

Any license or certificate of qualification issued by the program shall be suspended for a definite period or revoked by the committee for any of the

following causes:

A. If a licensee or a qualifying party of a licensee violates any provision of the Manufactured Housing Act or any regulations adopted by the program or Committee pursuant to that Act;

B. False, misleading or deceptive advertising;

C. Knowingly contracting or performing a service beyond the scope of the license;

D. Misrepresentation of a material fact by the applicant in obtaining a license or certificate;

E. Misrepresentation or commission of a material fact in any manufactured home transaction;

F. Failure to comply with the warranty requirements of the Manufactured Housing Act or any regulation of the committee pursuant to those requirements;

G. Failure by manufacturer or dealer to transfer good and sufficient title to the purchaser of a manufactured home;

H. Failure by a broker or dealer to provide the buyer and the seller of a preowned manufactured home with a closing statement as required by regulation of the committee;

I. Conviction of a licensee or a qualifying party of a licensee in any court of competent jurisdiction of a felony or any offense involving moral turpitude; or

J. Failure by a dealer or broker in the transfer of a preowned manufactured home not owned at the time of the transaction by the dealer or broker to comply with title transfer provisions set forth by regulation of the program.

History

CJA-13-99, January 27, 1999.

§ 1312. Hearing officer

The Navajo Nation Office of Hearings and Appeals shall preside over and take evidence at any hearing held pursuant to the Manufactured Housing Act.

History

CJA-13-99, January 27, 1999.

§ 1313. Committee and program; consumer complaints; orders; suspension; revocation

In addition to the other duties imposed on the committee and program under the Manufactured Housing Act, the committee and program shall receive

complaints from any consumer who claims to be harmed by any licensee and shall attempt to have the complaints adjusted to the reasonable satisfaction of the consumer. If the committee or program cannot secure a proper adjustment, the committee or program shall prepare a formal complaint for the consumer, and the committee shall determine whether the licensee is in violation of the Manufactured Housing Act or of rules and regulations promulgated under that Act. If the licensee is in violation of the Manufactured Housing Act or of the rules and regulations promulgated under that Act, the committee may order him to comply, may suspend his license until such time as the licensee complies with the order of the committee or may revoke his license.

History

CJA-13-99, January 27, 1999.

§ 1314. Unlicensed dealers, brokers, salespersons, repairmen, manufacturers and installers; penalties

It is unlawful for any person to act in the capacity of a dealer, broker, salesperson, repairman, manufacturer or installer within the meaning of the Manufacturer Housing Act without a license required by that Act. Any person who conspires with any person to violate any provision of that Act requiring a dealer, broker, salesperson, repairman, manufacturer or installer to obtain a license and maintain a license in good standing is guilty of an offense and upon conviction shall be punished by a fine of not less than one thousand dollars (\$1,000) or ten percent (10%) of the dollar value of the contracted work performed while acting in the capacity of a dealer, broker, salesperson, repairman, manufacturer or installer without having been issued a dealer's, broker's, salesperson's, repairman's, manufacturer's, or installer's license, whichever is greater.

History

CJA-13-99, January 27, 1999.

Revision Note (2003). To correct a typographical error, in the second sentence, "without have been issued" was changed to "without having been issued".

§ 1315. Committee or program; powers of injunctions; mandamus

The program or committee may enforce the provisions of the Manufactured Housing Act through the Attorney General by injunction, mandamus or any proper legal proceeding in the district court of the district in which the offense was committed.

History

CJA-13-99, January 27, 1999.

§ 1316. Penalties

A. Any person who knowingly and willfully violates a provision of the Manufactured Housing Act or any rule, regulation or administrative order of the committee or program in a manner that threatens the health or safety of any

purchaser or consumer commits an offense and on conviction shall be fined not more than one thousand dollars (\$1,000) or shall be confined not longer than one year or both.

B. In any action brought to enforce any provision of the Manufactured Housing Act, the Attorney General, upon petition to the court, may recover on behalf of the Navajo Nation a civil penalty not to exceed one thousand dollars (\$1,000) for each violation, except that the maximum civil penalty may not exceed one million dollars (\$1,000,000) for any related series of violations occurring within one year from the date of the first violation.

C. Failure by a manufacturer or dealer to comply with warranty provisions of the Manufactured Housing Act or any implied warranties or the violation of any provision of the Manufactured Housing Act by any person is an unfair or deceptive trade practice in addition to those practices defined in the Unfair Consumer Practices Act and is actionable pursuant to the Unfair Consumer Practices Act. As such, the venue provisions and all remedies available in the Unfair Consumer Practices Act apply to and are in addition to the remedies in the Manufactured Housing Act.

History

CJA-13-99, January 27, 1999.

Chapter 9. Navajo Nation Enterprises

Subchapter 1. Navajo Arts and Crafts Enterprise

Cross References

General limitation on compensation of members of boards of enterprise, industries, authorities, colleges, etc., of the Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

United States Code

Indian Arts and Crafts Board, 25 U.S.C. § 305 *et seq.*

Counterfeiting Indian Arts and Crafts Board trade-mark, 18 U.S.C. § 1158.

Code of Federal Regulations

Affixation of government certificate of genuineness to Navajo all-wool woven fabrics, see 25 CFR § 307.1 *et seq.*

Regulations for use of certificates of Indian Arts and Crafts Board, see 25 CFR § 308.1 *et seq.*

Standards governing Navajo, Pueblo, and Hopi silver and turquoise products, see 25 CFR § 301.1 *et seq.*

Use of government mark on Navajo, Pueblo, and Hopi silver, see 25 CFR § 304.1 *et seq.*

§ 1501. Establishment

There is established an enterprise of the Navajo Nation known as the Navajo Arts and Crafts Enterprise, hereafter called the "Enterprise".

History

CJY-33-03, July 23, 2003, deletes Subsections (B) and (C).

CJY-49-98, July 21, 1998.

CN-87-72, Plan, §§ I, II, IV, November 9, 1972.

§ 1502. History and purposes

A. The Navajo people have excelled in various crafts for hundreds of years, and by the mid-eighteenth century were specially noted for their weaving, baskets and pottery. The Navajo people also learned ironsmithing and later adapted this craft into silversmithing and a wide variety of silver items developed. Today Navajo handwoven rugs, silver jewelry, baskets, pottery, paintings and other crafts are in high demand worldwide.

Over time some Navajo artisans become so adept at their craft that they produced extra crafts for sale as a means to support their family and to augment cattle, horse and sheep sales and other trading activities. As skills and markets developed for these artisans, competing products began appearing in the market and placed the Navajo craftsman in jeopardy.

Tribal leaders recognized the need to be better represented in the marketplace, and in 1941 chartered the Navajo Arts and Crafts Guild to better market Navajo-made product and counter the increasing supply of imitation items. The "Guild" was changed to "Enterprise" in 1971 and exists today as the only Navajo Nation-owned business enterprise engaged in the purchase and sale of Navajo arts and crafts, and through this marketing channel functions as a defense against competing products flooding the market place and eroding the livelihood of the Navajo artisan and craftsman.

B. The purposes of NACE are:

1. To showcase the artistry and crafts of the Navajo Nation and to be represented in the market place;

2. To establish outlets as may be cost effective for the sale of Navajo arts and crafts and related merchandise on or near the Navajo Nation, throughout the United States and around the world;

3. To provide a source of raw materials at a fair price to Navajo artisans for use in the creation of Navajo arts and crafts;

4. To purchase at fair-market rates finished products at a fair price from Navajo artisans and craftspeople, and from such other sources as may be necessary to provide a fully integrated arts and crafts facility; and

5. To promote Navajo arts and crafts in any and all other ways deemed by NACE to be in the best interests of the Navajo Nation.

History

CJY-33-03, July 23, 2003, amended Subsection (A) and added new Subsections (B) (1) and (B) (2), renumbered prior Subsections (B) (1) and (B) (2) to (B) (3) and (B) (4) and deleted prior Subsection (B) (3) and (B) (4).

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § III(1.2), November 9, 1972.

§ 1503. Organization

A. The business and affairs of NACE shall be conducted by a Board of Directors composed of five members, with one member representing a Navajo Nation Craftspeople Association and one member represented by a Navajo Nation Council Delegate. Three members are needed to form a quorum and to conduct business.

B. The NACE Board of Directors shall set policy including, but not limited to, establishing procurement policy, personnel policy, general discount rates and financial policies for NACE.

C. The NACE Board of Directors shall be appointed by the President of the Navajo Nation subject to confirmation by the Economic Development of the Navajo Nation Council.

History

CJY-33-03, July 23, 2003. Deleted prior Section 1503, Powers; created new Section 1503, Organization, and included thereunder amended Subsection (A) and a new Subsection (B).

CJY-49-98, July 21, 1998.

ACAP-54-84, Section 1, April 13, 1984 which amended CN-87-72, Plan, § V, November 9, 1972.

Cross References

Confirmation of enterprise Board members, see 2 N.N.C. § 724(E) (1).

General limitation on compensation of members of boards of enterprise, industries, authorities, colleges, etc., of Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

§ 1504. Legislative Oversight

NACE shall operate under the legislative oversight of the Economic Development Committee of Navajo Nation Council pursuant to 2 N.N.C. § 724(E). NACE shall operate pursuant to a Plan of Operation recommended by the NACE

Board of Directors and adopted by the Economic Development Committee of the Navajo Nation Council.

History

CJY-33-03, July 23, 2003, amended generally. Formerly § 1505.

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § VI, November 9, 1972.

§ 1505. Amendments

Sections 1501 through 1505 may be amended from time to time by the Economic Development Committee of the Navajo Nation Council upon recommendation of the Board of Directors of NACE.

History

CJY-33-03, July 23, 2003, Amended generally, formerly § 1506.

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § XIII, November 9, 1972.

Note. This Section was previously 5 N.N.C. § 1508.

§ 1506. [Reserved]

History

CJY-33-03, July 23, 2003, deleted the "former §1507."

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § VIII, November 9, 1972.

Note. This Section was previously 5 N.N.C. § 1509.

Cross References

Economic Development Committee powers, see 2 N.N.C. § 724.

Budget and Finance Committee authority, see 2 N.N.C. § 374(B)(5).

§ 1507. [Reserved]

History

CJY-33-03, July 23, 2003, deleted the "former §1508."

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § IX, November 9, 1972.

Note. This Section was previously 5 N.N.C. § 1510.

Cross References

Budget and Finance Committee powers, see 2 N.N.C. § 374(B) (1).

Economic Development Committee powers, see 2 N.N.C. § 724.

§ 1508. [Reserved]

History

CJY-33-03, July 23, 2003, deleted the "former §1509."

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § X, November 9, 1972.

Note. CO-67-78 provided a commercial line of credit for the Navajo Arts and Crafts Enterprise, authorized by the Navajo Tribal Council and in an amount not to exceed five hundred thousand dollars (\$500,000).

Note. This Section was previously 5 N.N.C. § 1511.

§ 1509. [Reserved]

History

CJY-33-03, July 23, 2003, deleted the "former §1510."

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § XI, November 9, 1972.

Note. This Section was previously 5 N.N.C. § 1512.

§ 1510. [Reserved]

History

CJY-33-03, July 23, 2003, deleted the "former §1511."

CJY-49-98, July 21, 1998.

§ 1511. [Reserved]

History

CJY-33-03, July 23, 2003, deleted the "former §1512."

CJY-49-98, July 21, 1998.

Subchapter 3. [Reserved]

§§ 1551 to 1568. [Reserved]

History

Note. Navajo Forest Products Industries' plan of operation codified at 5 N.N.C. §§ 1551-1568 was rescinded and deleted from the Navajo Nation Code by Resolution CAP-23-02, April 17, 2002.

CAP-23-02, April 17, 2002.

ACJY-137-89, July 7, 1989.

ACS-208-76, September 16, 1976.

ACJY-19-70, July 14, 1970.

ACS-210-69, September 3, 1969.

CO-109-66, October 7, 1966.

CF-9-61, February 9, 1961.

ACMA-39-61, March 7, 1961.

CN-68-60, November 21, 1960

ACS-174-60, September 20, 1960.

CJ-38-58, § 3, July 23, 1958.

CF-14-58.

ACF-19-57, February 26, 1957.

CA-42-52, August 12, 1952.

1922-1951 Res. p. 616, July 12, 1951.

Subchapter 5. Navajo Agricultural Products Industry

§ 1601. Establishment

There is hereby established the Navajo Agricultural Product Industry (NAPI), as an enterprise of the Navajo Nation.

History

CJY-60-01, July 20, 2001.

CJY-50-97, July 22, 1997.

ACO-232-75, § 2, October 16, 1975.

ACMA-77-72, § 1, March 16, 1972.

ACAP-123-70, Plan, § 2, April 16, 1970.

Cross References

General limitation on compensation of members of boards of enterprises, industries, authorities, colleges, etc. of Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

§ 1602. Purpose

NAPI is organized to operate a profitable commercial farm in accordance with its plan of operation and applicable laws and regulations, separate and distinct from the Navajo Indian Irrigation Project.

History

CJY-60-01, July 20, 2001.

CJY-50-97, July 22, 1997.

ACAP-123-70, Plan, § 3, April 16, 1970.

§ 1603. Organization

A. Board of Directors for NAPI shall be appointed by the President of the Navajo Nation and confirmed by the Economic Development Committee of the Navajo Nation Council.

B. The Board of Directors shall set policy including, but not limited to, establishing personnel policies, procurement policies and financial policies for NAPI. The Board of Directors shall hire and supervise the Chief Executive Officer who shall hire under contract a Chief Financial Officer. The Chief Financial Officer shall be accountable to the Board of the Directors and to the Chief Executive Officer and shall be supervised by the Chief Executive Officer in conformity with job descriptions established for the Chief Financial Officer and the Chief Executive Officer, and with Navajo Agricultural Products Industry's approved policies and procedures. The Chief Financial Officer shall submit all monthly, quarterly and annual reports to the Chief Executive Officer and Board of Directors simultaneously.

C. The Chief Executive Officer shall administer the daily operations of NAPI. The Chief Executive Officer shall be responsible and accountable to the Board of Directors and shall employ necessary personnel in accordance with the personnel policies applicable to NAPI.

D. No elected official of the federal, state or Navajo Nation government shall be a member of the Board of Directors. No employee of the federal, state or Navajo Nation government shall be a member of the Board of Directors.

History

CO-39-08, October 22, 2008.

Note (2008). Slightly reworded at Subsection B by adding the word "who" in the second sentence for grammatical purposes.

CJY-60-01, July 20, 2001.

CJY-50-97, July 22, 1997.

ACAP-123-70, Plan, § 3, April 16, 1970.

§ 1604. Legislative oversight

The Navajo Agricultural Products Industry shall operate under the legislative oversight of the Economic Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 724(E). NAPI shall operate pursuant to a Plan of Operation recommended by the NAPI Board of Directors in consultation with the President of the Navajo Nation and adopted by the Economic Development Committee of the Navajo Nation Council.

History

CJY-60-01, July 20, 2001, deleted Section on NAPI's powers.

CJY-50-97, July 22, 1997.

ACD-353-71, § 1, December 15, 1971.

ACAP-123-70, Plan, § 7, April 16, 1970.

Cross References

Economic Development Committee powers, see 2 N.N.C. § 724(E).

§ 1605. Amendments

Sections 1601 through 1605 may be amended from time to time by the Navajo Nation Council upon the recommendation of the Economic Development Committee of the Navajo Nation Council after consultation with the Navajo Agricultural Products Industry Board of Directors and the President of the Navajo Nation.

History

CJY-60-01, July 20, 2001, deleted Section of Indemnification of Officers, Employees and Members of Board.

CJY-50-97, July 22, 1997.

ACAP-123-70, Plan, § 7, par. 5, April 16, 1970.

§ 1606. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on Board Membership.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1607. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on meetings.

CJY-50-97, July 22, 1997.

ACO-418-73, § 1, October 10, 1973.

ACAP-123-70, April 16, 1970.

§ 1608. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on NAPI officers.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1609. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on the General Manager.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1610. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on Navajo Nation Investment.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1611. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on the accounting system.

CJY-50-97, July 22, 1997.

ACAP-123-70, Plan, § 13, passed April 16, 1970, as amended by ACD-217-89, December 8, 1989, amending ACAP-123-70, April 16, 1970.

§ 1612. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on books and records.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1613. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on audits.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1614. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on insurance.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1615. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on training of Navajos.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1616. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on immunity from suits.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1617. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on compliance with Navajo Nation law.

CJY-50-97, July 22, 1997.

§ 1618. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on amendments.

CJY-50-97, July 22, 1997.

§§ 1619 to 1636. [Reserved]

Subchapter 6. Native Broadcast Enterprises

History

Redesignated. KTNN Radio Station Enterprise was previously codified at 21 N.N.C. §§ 601-617. CAP-23-03, April 24, 2003, amended KTNN's enabling legislation, renamed the enterprise and moved enacted enabling legislation for Native Broadcast Enterprises to Title 5, Chapter 9, Subchapter 6, §§ 1651-1655.

§ 1651. Establishment

There is hereby established the Native Broadcast Enterprises (NBE) as an enterprise of the Navajo Nation.

History

CAP-23-03, April 24, 2003.

§ 1652. Purpose

The NBE is organized to operate KTNN (AM), a clear channel 50,000 watts commercial radio station operating on 660 kilohertz, and KWRK (FM), a 100,000 watts commercial radio station operating on 96.1 megahertz, and any other business ventures the enterprise may undertake to further this purpose. This enterprise shall operate as a commercial, profit-making, quasi-independent entity of the Navajo Nation subject to the Federal Communication Commission's Rules and Regulations.

History

CAP-23-03, April 24, 2003.

§ 1653. Organization

A. A management board for NBE shall be appointed by the President of the Navajo Nation and confirmed by the Economic Development Committee of the Navajo Nation Council. The management board shall be held to the same standards and governed by the same laws as the board of directors of a private corporation.

B. The management board for NBE shall set policy, including but not limited to, establishing personnel policies, procurement policies and financial policies for NBE.

C. The general manager shall administer the daily operations of NBE. The general manager shall be responsible and accountable to the management board and shall employ necessary personnel in accordance with the personnel policies applicable to NBE.

History

CAP-23-03, April 24, 2003.

§ 1654. Legislative Oversight

The Native Broadcast Enterprise shall operate under the legislative oversight of the Economic Development Committee of the Navajo Nation Council pursuant to 2 N.N.C. § 724(E). NBE shall operate pursuant to a plan of operation recommended by the NBE management board in consultation with the President of the Navajo Nation and adopted by the Economic Development Committee of the Navajo Nation Council.

History

CAP-23-03, April 24, 2003.

§ 1655. Amendments

This enabling legislation may be amended from time to time by the Navajo Nation Council upon recommendation of the NBE management board in consultation with the President of the Navajo Nation and approval by the Economic Development Committee of the Navajo Nation Council.

History

CAP-23-03, April 24, 2003.

§§ 1656 to 1686. [Reserved]

History

CAP-23-03, April 24, 2003.

Subchapter 7. Navajo Nation Gaming Enterprise

§ 1701. Establishment

The Navajo Nation, a federally-recognized Indian tribe, hereby establishes a Navajo Nation Gaming Enterprise as a tribal gaming enterprise of the Navajo Nation (Enterprise).

History

CS-34-06, September 26, 2006.

§ 1702. Status of the Enterprise

A. The Enterprise is a legal entity wholly owned by the Navajo Nation, a federally recognized tribe.

B. The duration of the Enterprise is perpetual.

C. As a legal entity of the Navajo Nation, the Enterprise is entitled to the privileges and immunities of the Navajo Nation. The Enterprise shall possess all of the attributes of Navajo sovereignty, including but not limited to immunity from suit, freedom from levy and execution, and exemption from state and federal taxes, unless, either by contract approved by the Enterprise in conformity with this enabling legislation or by resolution of the Navajo Nation Council, any such attribute of sovereignty is expressly waived or abrogated as to any transaction involving the Enterprise.

D. Neither the Executive Director of the Gaming Regulatory Office nor any other public official or public employee of the Navajo Nation (individually or collectively) shall have any role in the management of the Enterprise or any licensed gaming establishment.

History

CS-34-06, September 26, 2006.

§ 1703. Purpose

A. To be a Tribal Gaming Enterprise to conduct gaming operations within the Navajo Nation under the auspices of the Indian Gaming Regulatory Act of 1988 (Public Law 100-497, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168), Navajo Gaming Ordinance, (5 N.N.C. § 2001 *et seq.*) and the gaming compacts entered into between the Navajo Nation and any State.

B. To generate gaming revenues and provide a fair return to the Navajo Nation in accordance with the Indian Gaming Regulatory Act, Navajo Gaming Ordinance, and other applicable laws of the Navajo Nation.

History

CS-34-06, September 26, 2006.

§ 1704. Place of business

A. The Enterprise's principal place of business shall be Window Rock,

Navajo Nation (Arizona), unless otherwise designated by the Board of Directors.

B. The Enterprise may maintain other business offices within or outside the Navajo Nation, as may be designated from time to time by the Board. The business of the Enterprise may be transacted at such other offices with the same effect as that conducted at the principal place of business.

History

CS-34-06, September 26, 2006.

§ 1705. Powers

Consistent with the purposes for which the Enterprise is created and subject to the limitations in § 1706, the Enterprise shall have the following powers:

A. To engage in related business activities in its own name or under such other names as the Board of Directors may choose either within or outside the Navajo Nation.

B. To maintain bank accounts that are separate from Navajo Nation accounts, such accounts shall be used for the operation of gaming and related business activities.

C. To buy, sell, lease and otherwise acquire and maintain real property, buildings, offices, shops and other appurtenances necessary and proper for the carrying on of gaming and related activities.

D. To acquire by assignment, gift, exchange, purchase or otherwise, to own, hold, operate, use, improve, lease, rent, sell, convey, dispose of, encumber and otherwise deal in real and personal property of any and all kinds, including but not limited to business, securities, goodwill, franchises, patents, trademarks, copyrights and assets of any kind, and in connection therewith undertaking, either wholly in part, liabilities of whatever kind.

E. To enter into, make, assign, and take assignments of any and all forms of contracts, agreements, joint ventures, guarantees, commitments, assurances, and any and all forms of lawful undertaking with any person, partnership, corporation, state government or political subdivision thereof, or any form of legal entity, for any purpose that is reasonably related to the lawful purposes of the Enterprise.

F. To waive the Enterprise's immunity from suit so as to permit suit against the Enterprise in the courts of the Navajo Nation, the courts of the United States or of any state. Such waiver shall be approved by the Board by a duly adopted resolution.

G. To borrow money and to make, accept, endorse, execute and issue bonds, debentures, promissory notes, and other corporate obligations for money borrowed, or in payment for property acquired for any of the purposes of the Enterprise, and to secure payment of any obligation by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by other lien upon,

assignment of, or agreement in regard to all of any part of the property, rights or privileges of the Enterprise.

H. To have a corporate seal at the discretion of the Board of Directors.

History

CS-34-06, September 26, 2006.

§ 1706. Limitation of powers

A. The acts or omissions of the Enterprise (whether pursuant to the powers enumerated in this plan of operation or otherwise) shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation, and only the assets, revenues and income held by or in the name of the Enterprise shall be subject (to the extent otherwise permitted herein or by law) to the debts, obligations or other liabilities created or incurred by the Enterprise.

B. Unless expressly authorized by the Navajo Nation Council and except as to the Enterprise and its property, the Enterprise may not:

1. Enter into any agreement of any kind whatsoever on behalf of or that purports to bind the Navajo Nation;

2. Enter into any agreement of any kind whatsoever on behalf of or that purports to bind the gaming revenues of the Navajo Nation;

3. Pledge the credit of the Navajo Nation;

4. Dispose of, sell, mortgage, pledge, or otherwise encumber any real or personal property of the Navajo Nation;

5. Waive any rights, privileges or immunities of the Navajo Nation, or release any obligations to the Navajo Nation;

6. Sell or otherwise dispose of all or substantially all of the Enterprise's assets; or

7. Engage in any activity that violates any Navajo Nation law.

History

CS-34-06, September 26, 2006.

Note. Reworded at B.2.

§ 1707. Board of directors and officers; number; appointment; composition term, removal and compensation

A. Oversight authority. The business and affairs of the Enterprise shall be overseen exclusively by its Board of Directors. In general, the Board of

Directors shall be responsible for establishing overall policies and objectives for the management of the affairs and assets of the Enterprise and for periodically reviewing and evaluating management results.

B. Number. The Board of Directors shall consist of nine members. The Board shall select from among its membership a Chairperson, Vice Chairperson, and Secretary/Treasurer. The Chairperson shall preside at meetings of the Board and shall act on behalf of its Board with such authority as is conferred by the Board. The Chairperson shall not vote on any matter voted on by the Board of Directors unless there is a tie. The Vice Chairperson shall act in the Chairperson's absence. The Secretary/Treasurer shall arrange the meetings of the Board, keep minutes of the Board meetings, send notices of meetings to the Board members, maintain the record of the Board, and prepare correspondence and documents for the Board and its members.

C. Board of Directors selection. The Navajo Nation's Department of Personnel Management shall receive and assess all applications of potential members. The Department of Personnel Management shall refer all qualified applicants to the President of the Navajo Nation. The President of the Navajo Nation shall select Board members. Such selections are subject to confirmation by the Navajo Nation Council.

D. Composition. At least one director shall be a Certified Public Accountant; at least one member shall possess a Juris Doctorate; at least one member shall have experience in gaming management or gaming operations; and at least five members be enrolled members of the Navajo Nation to represent each of the five agencies.

E. Quorum. The presence of five members of the Board shall constitute a quorum for transacting any business. The act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Board. All actions, with the exception of procedural motions, shall be recorded and documented in written resolutions certified by the presiding Chairperson.

F. Vacancies. In the event a vacancy occurs in the Board of Directors, the vacant position shall be filled in the manner set forth in Subsection (C) of this Section. A director selected to fill a vacancy shall serve the remaining term of his/her predecessor.

G. Qualifications. At all times the nominees and the Directors shall possess the following qualifications:

1. Shall have knowledge of Class II and Class III operations and/or work experience in the gaming industry;
2. Shall be at least 25 years of age;
3. Shall possess a bachelors or graduate degree, preferably in finance, accounting, marketing, economics, management, law or related fields;
4. Shall not be a board member of a Navajo Nation-owned corporation, enterprise or authority; and

5. Shall not be a public official or public employee of the Navajo Nation.

H. Licensure. Each appointee for the position of the Board of Directors of the Enterprise shall obtain a Gaming Facility Operator's License from the Gaming Regulatory Office before submission of the appointment to the Navajo Nation Council for confirmation. The appointee shall obtain a Gaming Facility Operator's License within 90 days of the appointment. Each member of the Board of Directors shall maintain a Gaming Facility Operator's License from the Gaming Regulatory Office.

I. Term of office. Directors shall be appointed for four-year staggered terms and shall hold office until the qualification and selection of their successors. The initial Board of Directors shall be divided into three groups. The first group of three shall serve for two years, the second group of three shall serve for three years, and the third group of three shall serve four years. Thereafter, all terms shall be for four years.

J. Discretionary removal. Any Director may be removed at a duly called meeting of the Board of Directors, by a majority vote of the full membership of the Board of Directors, for just cause. Just cause includes, but is not limited to: failure to attend three consecutive meetings of the Board, or an inability to fulfill the duties of a Director.

K. Automatic removal. Any Director shall be automatically removed for the following: failure to maintain a Gaming Facility Operator's License, death, submission of resignation, or failure to maintain the qualifications of a Board of Director as set forth in Subsection (G) of this Section.

L. Compensation. Directors shall receive a quarterly stipend of \$4,500 plus expenses for travel and training. Directors shall not receive any other type of compensation for their service, except quarterly stipends for attendance at regular and special meetings of the Board of Directors, and for other official business of the Enterprise.

History

CS-34-06, September 26, 2006.

§ 1708. Chief Executive Officer; functions; duties

A. The Navajo Nation's Department of Personnel Management shall receive and assess all applications for the position of Chief Executive Officer. The Department of Personnel Management shall only refer applicants to the Board of Directors who meet the qualifications set forth in Subsection (B) below and whom the Department determines are able to obtain a Navajo gaming license. The Board of Directors may only select a Chief Executive Officer from the pool of qualified applicants referred by the Department of Personnel Management. The Chief Executive Officer of the Enterprise shall be employed under a written employment contract for a four-year term approved by the Board of Directors. The commencement of the employment contract is contingent upon the Chief Executive Officer obtaining a gaming license within 90 days of the execution of

the contract. The Board of Directors shall periodically review the job performance of the Chief Executive Officer. The Chief Executive Officer shall be removed only for breach of contract.

B. The Chief Executive Officer shall possess the following qualifications: a bachelor's degree, and a minimum of ten years of experience in upper management of a hospitality or gaming business.

C. The Chief Executive Officer shall, among other things, execute the general policies formulated by the Board of Directors and organize the operation of the Enterprise into business units (casino facilities, etc.) each with its own specific duties and responsibilities.

D. The Chief Executive Officer shall employ by contract General Managers for each of the Enterprise's business units (casino facilities, etc.).

E. The Chief Executive Officer shall exercise best judgment to determine the manner by which general policies set forth by the Board of Directors are to be effectuated.

F. The Chief Executive Officer shall be the active, operating executive of the Enterprise and shall prepare plans and annual budgets, as well as make suggestions as to policies and any proposals for improvements.

G. The Chief Executive Officer shall have the full authority and control of all employees of the Enterprise and be responsible for all department heads or other executives carrying out their assignments.

H. The Chief Executive Officer shall be responsible for the general supervision of the performance of staff with respect to all matters such as adherence to a corporate vision statement, marketing, conformance to industry standards, department inspection, cost control, employee relations and in-service training.

I. The Chief Executive Officer shall render regular reports to the Board of Directors and perform all other functions and duties specified in this Chapter.

J. The Chief Executive Officer shall have the authority to hire all such employees necessary and proper to carry out the business needs of the Enterprise.

History

CS-34-06, September 26, 2006.

§ 1709. Interim Chief Executive Officer

A. Hiring of Interim Chief Executive Officer. Until a contract is executed between the first Chief Executive Officer and the Board of Directors, the duties of the Chief Executive Officer may be performed by an Interim Chief Executive Officer appointed by the President of the Navajo Nation and confirmed by the Economic Development Committee of the Navajo Nation Council. The

Interim Chief Executive Officer must possess the minimum qualifications for the Chief Executive Officer, and shall have all the powers and responsibilities of that position.

B. Subsequent vacancies in the Chief Executive Officer position. When subsequent vacancies occur in the Chief Executive Officer position, the Board of Directors shall appoint an Interim Chief Executive Officer, who shall serve until a contract is executed between the Chief Executive Officer and Board of Directors. The Chief Financial Officer shall serve as Acting Chief Executive Officer until the Board of Directors appoints an Interim Chief Executive Officer.

History

CS-34-06, September 26, 2006.

§ 1710. Chief Financial Officer; functions; duties

A. The Chief Financial Officer of the Enterprise shall be employed under a written employment contract with the Chief Executive Officer. The job performance of the Chief Financial Officer shall be periodically reviewed by the Chief Executive Officer.

B. The Chief Financial Officer shall oversee the management of the day-to-day operations of the financial and related functions of the Enterprise.

C. The Chief Financial Officer shall be responsible for the overall direction of the financial results of the Enterprise including strategic planning, operations, investment portfolios, cash management, financial reports, financial analysis, and other financial concerns.

D. The Chief Financial Officer shall complete all financial reporting requirements to Navajo Nation, state and federal agencies.

E. The Chief Financial Officer shall ensure compliance and review for internal controls as required by the Navajo Nation, state and federal agencies.

F. The Chief Financial Officer shall assist operational management with financial reports and analysis and make presentations before the Navajo Nation as required.

History

CS-34-06, September 26, 2006.

§ 1711. Indemnification of directors, officers and employees

While acting in their official capacities, the Enterprise shall indemnify any officer, employee or member of the Board of Directors or former officer, employee or member of the Board of Directors, or any person who may have served at its request as an officer, employee or member of another entity, against reasonable expenses incurred by him or her in connection with the defense of

any action, suit or proceeding in which he or she is made a party by reason of being, or having been such officer, employee or member of such entity; except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. The Enterprise shall also reimburse any officer, employee or member of the Board of Directors or such other entity, for reasonable costs of settlement of any such action, suit or proceeding if it shall be found by a majority of the Board of Directors other than directors involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Enterprise and the Navajo Nation that such settlement be made. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such person may be entitled to receive, but shall be subject to any applicable limitation thereon.

History

CS-34-06, September 26, 2006.

§ 1712. Bylaws, meetings

A. The Board of Directors shall adopt bylaws for the Enterprise and such bylaws may be amended or repealed as provided therein. The bylaws of the Enterprise shall provide for the time and place of the annual meeting of the Board of Directors. The Board shall hold four regular meetings per year, one of which shall be the annual meeting, plus any other special meetings as may be called by the Chairperson of the Board of Directors.

B. The bylaws shall further provide for notice of meetings, waiver of notice, fiscal year, and for all other matters necessary for the orderly and efficient operation and management of the Enterprise.

History

CS-34-06, September 26, 2006.

§ 1713. Inspection of books, records and reports

The Enterprise shall open to the inspection of the Navajo Nation Council, the President of the Navajo Nation and the Attorney General of the Navajo Nation or their authorized representatives, the accounts, books and papers of the Enterprise at all reasonable business hours. The accounts and records of the Enterprise shall be maintained in the Navajo Nation and audited at the close of each fiscal year. Copies of the audit report shall be furnished to the President of the Navajo Nation, the Budget and Finance Committee of the Navajo Nation Council and to such other persons or entities as the President of the Navajo Nation or chairperson of the Economic Development Committee of the Navajo Nation Council shall direct.

History

CS-34-06, September 26, 2006.

§ 1714. Distribution of revenue

The gaming revenues of the Enterprise shall be disbursed by the Enterprise to the Navajo Nation in accordance with a Navajo Nation gaming revenue distribution plan, subject to the approval of the Navajo Nation Council.

History

CS-34-06, September 26, 2006.

§ 1715. Insurance

The Enterprise shall carry adequate insurance consistent with applicable laws and gaming compacts.

History

CS-34-06, September 26, 2006.

§ 1716. Sovereign immunity

A. While acting in their official capacities, the Enterprise, its Board of Directors, officers, and employees are immune from suit, and the assets and other property of the Enterprise are exempt from any levy or execution, except as provided:

1. In the Navajo Nation Sovereign Immunity Act (1 N.N.C. § 551 *et seq.*); or

2. When the Enterprise's Board of Directors has, in any particular matter by duly adopted resolution, waived the Enterprise's immunity from suit so as to permit suit against the Enterprise in the courts of the Navajo Nation, the courts of the United States or of any state as may be appropriate and agreed to by the Board of Directors.

B. Any waiver of immunity by the Enterprise shall not be construed to waive any immunity of the Navajo Nation or other person or entity, nor shall the provisions of the Navajo Sovereign Immunity Act, (1 N.N.C. § 551 *et seq.*) be deemed altered or amended.

History

CS-34-06, September 26, 2006.

§ 1717. Compliance with Navajo law

The Enterprise, its Board of Directors, officers, employees, and agents shall conduct the business of the Enterprise in compliance with all applicable laws of the Navajo Nation.

History

CS-34-06, September 26, 2006.

§ 1718. Legislative oversight

The Enterprise shall operate under the legislative oversight of the Navajo Nation Council.

History

CS-34-06, September 26, 2006.

§ 1719. Amendments

This plan of operation may be amended from time to time by the Navajo Nation Council. No amendment to this plan of operation shall be considered by the Navajo Nation Council unless such amendment has been considered by the Enterprise's Board of Directors and the Economic Development Committee.

History

CS-34-06, September 26, 2006.

Subchapter 8. Tribal Gaming Enterprises

§ 1731. Establishment

The Navajo Nation, a federally-recognized Indian tribe, hereby establishes the Tsé Daak'áán Gaming Enterprise as a tribal gaming enterprise of the Navajo Nation ("Enterprise.")

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1732. Status of the Enterprise

A. The Enterprise is a legal entity wholly owned by the Navajo Nation, a federally recognized Indian tribe.

B. The duration of the Enterprise is perpetual.

C. As a legal entity of the Navajo Nation, the Enterprise is entitled to the privileges and immunities of the Navajo Nation. The Enterprise shall possess all of the attributes of Navajo sovereignty, including but not limited

to immunity from suit, freedom from levy and execution, and exemption from state and federal taxes, unless, either by contract approved by the Enterprise in conformity with this enabling legislation or by resolution of the Navajo Nation Council, any such attribute of sovereignty is expressly waived or abrogated as to any transaction involving the Enterprise.

D. Neither the Executive Director of the Gaming Regulatory Office nor any other public official or public employee of the Navajo Nation (individually or collectively) shall have any role in the management of the Enterprise or any licensed gaming establishment.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1733. Purpose

The purpose for which the Enterprise is organized and created is as follows:

A. To be a Tribal Gaming Enterprise to conduct gaming operations within the Navajo Nation under the auspices of the Indian Gaming Regulatory Act of 1988 (Public Law 100-497, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168), Navajo Gaming Ordinance (5 N.N.C. § 2001 *et seq.*), and the gaming compacts entered into between the Navajo Nation and any State.

B. To generate gaming revenues and provide a fair return to the Navajo Nation in accordance with the Indian Gaming Regulatory Act, Navajo Gaming Ordinance, and other applicable laws of the Navajo Nation.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1734. Place of business

A. The Enterprise's principal place of business shall be the Tsé Daak'áán Chapter, Navajo Nation (New Mexico), unless otherwise designated by the Board of Directors.

B. The Enterprise may maintain other offices within or outside the Navajo Nation, as may be designated from time to time by the Board. The business of the Enterprise may be transacted at such other offices with the same effect as that conducted at the principle place of business.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06,

December 22, 2006.

§ 1735. Powers

Consistent with the purposes for which the Enterprise is created and subject to the limitations in § 1736, the Enterprise shall have the following powers:

A. To engage in related business activities in its own name or under such other names as the Board of Directors may choose either within or outside the Navajo Nation.

B. To maintain bank accounts that are separate from Navajo Nation accounts, such accounts shall be used for the operation of gaming and related business activities.

C. To buy, sell, lease and otherwise acquire and maintain real property, buildings, offices, shops and other appurtenances necessary and proper for the carrying on of gaming and related activities.

D. To acquire, by assignment, gift, exchange, purchase or otherwise, to own, hold, operate, use, improve, lease, rent, sell, convey, dispose of, encumber and otherwise deal in real and personal property of any and all kinds, including but not limited to business, securities, goodwill, franchises, patents, trademarks, copyrights and assets of any kind, and in connection therewith undertaking, either wholly or in part, liabilities of whatever kind.

E. To enter into, make, assign, and take assignments of any and all forms of contracts, agreements, joint ventures, guarantees, commitments, assurances, and any and all forms of lawful undertaking with any person, partnership, corporation, state government or political subdivision thereof, or any form of legal entity, for any purpose that is reasonably related to the lawful purposes of the Enterprise.

F. To waive the Enterprise's immunity from suit so as to permit suit against the Enterprise in the courts of the Navajo Nation, the courts of the United States or of any state. Such waiver shall be approved by not less than three-fourths (3/4) vote of the full membership of the Board of Directors by a duly adopted resolution.

G. To borrow money and to make, accept, endorse, execute and issue bonds, debentures, promissory notes, and other corporate obligations for money borrowed, or in payment for property acquired for any of the purposes of the Enterprise, and to secure payment of any obligation by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by other lien upon, assignment of, or agreement in regard to all of any part of the property, rights or privileges of the Enterprise.

H. To have a corporate seal at the discretion of the Board of Directors.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06,

December 22, 2006.

Note. Slightly reworded by adding the word "or" at Subsection D to read "...wholly or in part..."

§ 1736. Limitation of Powers

A. The acts or omissions of the Enterprise (whether pursuant to the powers enumerated in this plan of operation or otherwise) shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation, and only the assets, revenues and income held by or in the name of the Enterprise shall be subject (to the extent otherwise permitted herein or by law) to the debts, obligations or other liabilities created or incurred by the Enterprise.

B. Unless expressly authorized by the Navajo Nation Council and except as to the Enterprise and its property, the Enterprise may not:

1. Enter into any agreement of any kind whatsoever on behalf of or that purports to bind the Navajo Nation;
2. Enter into any agreement of any kind whatsoever on behalf of or that purports to bind the gaming revenues of the Navajo Nation;
3. Pledge the credit of the Navajo Nation;
4. Dispose of, sell, mortgage, pledge, or otherwise encumber any real or personal property of the Navajo Nation;
5. Waive any rights, privileges or immunities of the Navajo Nation, or release any obligations to the Navajo Nation;
6. Sell or otherwise dispose of all or substantially all of the Enterprise's assets; or
7. Engage in any activity that violates any Navajo Nation law.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

Note. Slightly reworded by adding the word "of" to the heading, "Limitation of Powers."

§ 1737. Board of directors and officers; number; appointment; composition, term and removal

A. Oversight Authority. The business and affairs of the Enterprise shall be overseen exclusively by its Board of Directors. In general, the Board of

Directors shall be responsible for establishing overall policies and objectives for the management of the affairs and assets of the Enterprise and for periodically reviewing and evaluating management results.

B. Number. The Board of Directors shall consist of seven members. The Board shall select from among its membership a Chairperson, Vice-Chairperson, and Secretary/Treasurer. The Chairperson shall preside at meetings of the Board and shall act on behalf of its Board with such authority as is conferred by the Board. The Chairperson shall not vote on any matter voted on by the Board of Directors unless there is a tie. The Vice-Chairperson shall act in the Chairperson's absence. The Secretary/Treasurer shall arrange the meetings of the Board, keep minutes of the Board meetings, send notices of meetings to the Board members, maintain the records of the Board, and prepare correspondence and documents for the Board and its members.

C. Board of Directors Selection. The President of the Tsé Daak'áán Chapter shall select Board members. Such selections are subject to confirmation by the Navajo Nation Council.

D. Composition. At least one director shall be a Certified Public Accountant; at least one member shall possess a Juris Doctorate; at least one director shall have experience in gaming management or gaming operations; and at least four members be enrolled members of the Navajo Nation.

E. Quorum. The presence of four members of the Board shall constitute a quorum for transacting any business. The act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Board. All actions, with the exception of procedural motions, shall be recorded and documented in written resolutions certified by the presiding Chairperson.

F. Vacancies. In the event a vacancy occurs in the Board of Directors, the vacant position shall be filled in the same manner set forth in Subsection C of this Section. A director selected to fill a vacancy shall serve the remaining term of his/her predecessor.

G. Qualifications. At all times the nominees and the Directors shall not be a public official or public employee of the Navajo Nation.

H. Licensure. Each appointee for the position of member of the Board of Directors of the Enterprise shall obtain a Gaming Facility Operator's License from the Gaming Regulatory Office before submission of the appointment to the Navajo Nation Council for confirmation. The appointee shall obtain a Gaming Facility Operator's License within 90 days of the appointment. Each member of the Board of Directors shall maintain a Gaming Facility Operator's License from the Gaming Regulatory Office.

I. Term of Office. Directors shall be appointed for four years staggered terms and shall hold office until the qualification and selection of their successors. The initial Board of Directors shall be divided into three groups. The first group of two shall serve for two years, the second group of two shall serve for three years, and the third group of three shall serve four years. Thereafter all terms shall be for four years.

J. Discretionary Removal. Any Director may be removed at a duly called meeting of the Board of Directors, by a majority vote of the full membership of the Board of Directors, for just cause. Just cause includes, but is not limited to: failure to attend three consecutive meetings of the Board, or an inability to fulfill the duties of a Director.

K. Automatic Removal. Any Director shall be automatically removed for the following: failure to maintain a Gaming Facility Operator's License, death, submission of resignation, or failure to maintain the qualifications of a Board of Director as set forth in this Section.

L. Compensation. Directors shall receive a quarterly stipend of \$4,500 plus expenses for travel and training. Directors shall not receive any other type of compensation for their service, except quarterly stipends for attendance at regular and special meetings of the Board of Directors, and for other official business of the Enterprise.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1738. Chief Executive Officer; functions; duties

A. The Chief Executive Officer of the Enterprise shall be employed under a written employment contract for a four-year term approved by the Board of Directors. The commencement of the employment contract is contingent upon the Chief Executive Officer obtaining a Navajo gaming license within 90 days of the execution of the contract. The Board of Directors shall periodically review the job performance of the Chief Executive Officer. The Chief Executive Officer shall be removed only for breach of contract.

B. The Chief Executive Officer shall possess the following qualifications: a bachelor's degree, and a minimum of ten years of experience in upper management of a hospitality or gaming business.

C. The Chief Executive Officer shall, among other things, execute the general policies formulated by the Board of Directors and organize the operation of the Enterprise.

D. The Chief Executive Officer shall exercise best judgment to determine the manner by which general policies set forth by the Board of Directors are to be effectuated.

E. The Chief Executive Officer shall be the active, operating executive of the Enterprise and shall prepare plans and annual budgets, as well as make suggestions as to policies and any proposals for improvements.

F. The Chief Executive Officer shall have full authority and control of all employees of the Enterprise and be responsible for all department heads or other executives carrying out their assignments.

G. The Chief Executive Officer shall be responsible for the general

supervision of the performance of staff with respect to all matters such as adherence to a corporate vision, marketing, conformance to standards, department inspection, cost control, employee relations and in-service training.

H. The Chief Executive Officer shall render regular reports to the Board of Directors and perform all other functions and duties specified in this Chapter.

I. The Chief Executive Officer shall have the authority to hire all such employees necessary and proper to carry out the business needs of the Enterprise.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1739. Interim Chief Executive Officer

A. Hiring of Interim Chief Executive Officer. Until a contract is executed between the first Chief Executive Officer and the Board of Directors, the duties of the Chief Executive Officer may be performed by an Interim Chief Executive Officer appointed by the President of the Tsé Daak'áán Chapter and confirmed by the Tsé Daak'áán Chapter. The Interim Chief Executive Officer must possess the minimum qualifications for the Chief Executive Officer, and shall have all the powers and responsibilities of that position.

B. Subsequent Vacancies in the Chief Executive Officer Position. When subsequent vacancies occur in the Chief Executive Officer position, the Board of Directors shall appoint an Interim Chief Executive Officer, who shall serve until a contract is executed between the Chief Executive Officer and Board of Directors. The Chief Financial Officer shall serve as Acting Chief Executive Officer until the Board of Directors appoints an Interim Chief Executive Officer.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1740. Chief Financial Officer; functions; duties

A. The Chief Financial Officer of the Enterprise shall be employed under a written employment contract with the Chief Executive Officer. The job performance of the Chief Financial Officer shall be periodically reviewed by the Chief Executive Officer.

B. The Chief Financial Officer shall oversee the management of the day-to-day operations of the financial and related functions of the Enterprise.

C. The Chief Financial Officer shall be responsible for the overall direction of the financial results of the Enterprise including strategic planning, operations, investment portfolios, cash management, financial reports, financial analysis, and other financial concerns.

D. The Chief Financial Officer shall complete all financial reporting requirements to Navajo Nation, state, and federal agencies.

E. The Chief Financial Officer shall ensure compliance and review for internal controls as required by the Navajo Nation, state and federal agencies.

F. The Chief Financial Officer shall assist operational management with financial reports and analysis and make presentations before the Navajo Nation Council as required.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1741. Indemnification of directors, officers and employees

While acting in their official capacities, the Enterprise shall indemnify any officer, employee or member of the Board of Directors or former officer, employee or member of the Board of Directors, or any person who may have served at its request as an officer, employee or member of another entity, against reasonable expenses incurred by him or her in connection with the defense of any action, suit or proceeding in which he or she is made a party by reason of being, or having been such officer, employee or member of such entity; except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. The Enterprise shall also reimburse any officer, employee or member of the Board of Directors or such other entity, for reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the Board of Directors, other than directors involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Enterprise and the Navajo Nation that such settlement be made. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such person may be entitled to receive, but shall be subject to any applicable limitation thereon.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1742. Bylaws, meetings

A. The Board of Directors shall adopt bylaws for the Enterprise and such bylaws may be amended or repealed as provided therein. The bylaws of the Enterprise shall provide among other things for the time and place of the annual meeting of the Board of Directors. The Board shall hold four regular

meetings per year, one of which shall be the annual meeting, plus any other special meetings as may be called by the Chairperson of the Board of Directors.

B. The bylaws shall further provide for notice of meetings, waiver of notice, fiscal year, and for all other matters necessary for the orderly and efficient operation and management of the Enterprise.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1743. Inspection of books, records and reports

The Enterprise shall open to the inspection of the President of the Navajo Nation and the Attorney General of the Navajo Nation or their authorized representative, the accounts, books and papers of the Enterprise at all reasonable business hours. The accounts and records of the Enterprise shall be maintained on the Navajo Nation and audited at the close of each fiscal year. Copies of the audit report shall be furnished to the President of the Navajo Nation, the Budget and Finance Committee of the Navajo Nation Council and to such other persons or entities as the President of the Navajo Nation or chairperson of the Economic Development Committee of the Navajo Nation Council shall direct.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1744. Distribution of revenue

The gaming revenues of the Enterprise shall be disbursed by the Enterprise to the Navajo Nation in accordance with the Tsé Daak'áán Chapter gaming revenue distribution plan pursuant to the approved Memorandum of Agreement between the Navajo Nation and Tsé Daak'áán Chapter.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1745. Insurance

The Enterprise shall carry adequate insurance consistent with applicable laws and gaming compacts.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1746. Sovereign Immunity

A. While acting in their official capacities, the Enterprise, its Board of Directors, officers, and employees are immune from suit, and the assets and other property of the Enterprise are exempt from any levy or execution, except as provided:

1. In the Navajo Sovereign Immunity Act (1 N.N.C. § 551 *et seq.*);
or

2. When the Enterprise's Board of Directors has, in any particular matter by duly adopted Resolution, waived the Enterprise's immunity from suit so as to permit suit against the Enterprise in the courts of the Navajo Nation, the courts of the United States or of any state as may be appropriate and agreed to by the Board of Directors.

B. Any waiver of immunity by the Enterprise shall not be construed to waive any immunity of the Navajo Nation or other person or entity, nor shall the provisions of the Navajo Sovereign Immunity Act, (1 N.N.C. § 551 *et seq.*) be deemed altered or amended.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1747. Compliance with Navajo law

The Enterprise, its Board of Directors, officers, employees, and agents shall conduct the business of the Enterprise in compliance with all applicable laws of the Navajo Nation.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1748. Legislative Oversight

The Enterprise shall operate under the legislative oversight Navajo Nation Council.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

§ 1749. Amendments

This plan of operation may be amended from time to time by the Navajo Nation Council. No amendment to this plan of operation shall be considered by the Navajo Nation Council unless such amendment has been approved by Enterprise's Board of Directors and the Economic Development Committee.

History

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

Subchapter 9. Navajo Nation Hospitality Enterprise

§ 1841. Establishment as independent enterprise

A. The Navajo Nation Hospitality Enterprise "NNHE" is hereby continued and established as a Navajo enterprise of the Navajo Nation.

B. NNHE is a constituent part of the Navajo Nation and is and shall be wholly owned by the Navajo Nation.

C. NNHE has and shall possess all of the attributes of Navajo sovereignty, including but not limited to immunity from suit, freedom from levy and execution, and exemption from state, federal and tribal taxes, unless, by either contract approved by NNHE in conformity with its plan of operation or by resolution of the Navajo Nation Council any such attribute of sovereignty is expressly waived or abrogated as to NNHE or to any transaction involving NNHE.

History

CD-79-02, December 30, 2002.

ACAU-157-89, August 3, 1989.

ACJY-127-85, July 10, 1985.

Historical Revision note. ACAP-84-87 amended ACJY-127-85, Exhibit B, § I, July 10, 1985 changing "Window Rock Motor Inn Enterprise" to "Navajo Nation Hospitality Enterprise", and changed the name of the "Window Rock Motor Inn" to "Navajo Nation Inn". Former Plan of Operation of Window Rock Motor Inn, derived from ACO-118-82 codified at §§ 1841-1853, was expressly rescinded by ACJY-127-85, and by which a new Plan of Operation was adopted and codified at §§ 1841-1857.

Cross References

Enterprise reorganization, see 2 N.N.C. § 724(E)(1).

General limitation on compensation of members of boards of enterprises, industries, authorities, colleges, etc., of Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

§ 1842. Purpose

NNHE is organized to:

A. Work in conjunction with government agencies of the Navajo Nation to expand employment training and management opportunities for the Navajo people, and to stimulate economic development throughout Navajo Indian country;

B. Establish and maintain an independent, profitable, growing, financially self-sustaining and successful Navajo Nation-owned business enterprise;

C. Generate revenue for the Navajo Nation; and

D. Provide professional motel and restaurant, retail, wholesale, and recreational (including gaming as authorized by the Navajo Nation in accordance with applicable Navajo and federal law) services and qualify facilities to the public.

History

CD-79-02, December 30, 2002.

ACAU-157-89, August 3, 1989.

ACJY-4-87, January 14, 1986, amending ACJY-127-85, Exhibit B, § III, July 10, 1985.

§ 1843. Organization

A. The business and affairs of NNHE shall be managed by a five-person Board of Directors, the members of which shall meet the qualifications established in NNHE's plan of operation. The Board of Directors shall conduct its business in a similar manner as boards of directors of successful corporations in the hospitality business, to the extent feasible and permitted under NNHE's plan of operation and other applicable Navajo law.

B. The Board of Directors shall set the policies for NNHE and ensure compliance with such policies. The Board of Directors shall hire the Chief Operating Officer of NNHE under a written contract, and shall supervise, adjust the compensation for, and otherwise reward and discipline such Chief Operating Officer consistent with such contract and any applicable Navajo law.

C. The Chief Operating Officer shall manage and administer the day-to-day operations of NNHE. The Chief Operating Officer shall be responsible and accountable to the Board of Directors.

History

CD-79-02, December 30, 2002.

ACAU-157-89, August 3, 1989.

ACJY-127-85, Exhibit B, § IV, July 10, 1985.

§ 1844. Legislative Oversight

NNHE shall operate under the legislative oversight of the Economic Development Committee of the Navajo Nation Council pursuant to 2 N.N.C. § 724(E). NNHE shall operate pursuant to a plan of operation recommended by the NNHE Board of Directors in consultation with the President of the Navajo Nation and the Board of Directors of NNHE.

History

CD-79-02, December 30, 2002.

ACAU-157-89, August 3, 1989.

ACJY-127-85, July 10, 1985.

Cross References

Economic Development Committee confirmation, see 2 N.N.C. § 724(E).

§ 1845. Amendments

The NNHE enabling legislation, 5 N.N.C. §§ 1841-1845, may be amended from time to time by the Navajo Nation Council upon the recommendations of the Economic Development Committee of the Navajo Nation Council, after consultation between such Committee and the President of the Navajo Nation and the Board of Directors of NNHE.

History

CD-79-02, December 30, 2002.

ACAU-157-89, August 3, 1989.

ACJY-127-85, July 10, 1985.

§§ 1846 to 1857. [Reserved]

Note. CD-79-02, December 30, 2002, generally amended §§ 1841-1857

Subchapter 11. [Superseded]

§§ 1901 to 1919. [Superseded]

History

CD-68-89, December 15, 1989.

Authorities of Navajo Housing and Development Enterprises were re delegated in 1989 to various standing committees or to the Navajo Nation Council, including

the Transportation and Community Development Committee, the Human Services Committee, and the Economic Development Committee.

Subchapter 13. Navajo Engineering and Construction Authority

§ 1971. Establishment; place of business; commencement and duration

A. There is established an enterprise of the Navajo Nation known as the Navajo Engineering and Construction Authority (NECA), hereafter called the "Authority."

B. The Authority's main office and principal place of operation shall be in Shiprock, Navajo Nation (New Mexico), but other offices and places for conducting business, both within and without the Navajo Nation, may be established from time to time by the Board of Directors.

C. The time of commencement of this Authority shall be the date on which the Navajo Nation Council passes a resolution to that effect and the duration of the Authority shall be perpetual.

History

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989 amending CJN-56-72, Plan, §§ I, II, IV, June 13, 1972.

CJN-37-75, June 16, 1975.

CAU-80-74, August 1, 1974.

Cross References

General limitation on compensation of board members of enterprise, industries, authorities, colleges, etc., of Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

§ 1972. Purposes and powers

A. The purposes for which the Authority is organized are as follows:

1. To engage in the general engineering and heavy construction industry;

2. To train Navajo people in the engineering and construction industry, including training in the management of the Authority;

3. To provide employment to the Navajo Nation, its enterprises and individual members, in engineering and construction and related businesses;

4. To be the premier heavy construction contractor emphasizing the values of excellence, service and employee development; and

5. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes set forth herein consistent with all applicable laws or regulations, and this plan of operation.

B. Subject to applicable federal and Navajo laws and regulation, the Board of Directors of the Authority shall exercise the following powers and duties:

1. The Board shall have authority and responsibility for the management and operation of the Authority.

2. The Board shall direct the operations of the Authority to accomplish the purposes and to exercise the powers set forth herein without previous authorization or subsequent approval and all parties dealing with the Authority shall have the right to rely upon action taken by the Board pursuant to such authorization.

3. The Board shall exercise full power and shall be ultimately responsible for the custody and management, operation, inventory and maintenance of all property of the Authority; the bidding, planning, design and construction of all projects undertaken by the Authority, and the planning, construction and operation of all new facilities to be acquired by the Authority.

4. The Board shall be responsible for making investment decisions, subject to the limitations contained herein, or limitations as may be included in advance of funds; for the establishment and maintenance of effective operating policies; for the creation of and delegation of Board authority to subcommittees of the Board; for the selection of management personnel; and for continuous supervision of the performance of the Authority.

5. The Board shall exercise its authority in the best interests of the Navajo Nation and within the limits of responsible business judgment, with the limitation that it shall not incur obligations in excess of the ability of the Authority to pay or perform. Nothing herein shall be construed as authorizing the Authority to mortgage or encumber trust or restricted property without the consent of the Navajo Nation Council or the appropriate committee delegated the authority to consent thereto.

6. To elect or appoint or hire by contract as provided in this Section, officers, agents, auditors, attorneys, and such professional consultants as in the opinion of the Board may be needed from time to time. The Board, at Authority expense, shall require the bonding of all officers, agents or employees responsible for the handling or safety of funds, property or other assets of the Authority or the Navajo Nation.

7. To act as agent in any state, territory, districts or possessions of the United States, or in any foreign country on behalf of the Authority, within the scope of duties authorized.

8. To deal in real property. To acquire, hold, own, utilize, improve, manage, operate, exchange, sell, deal in, dispose of, and to

negotiate leases, or mortgages of, either alone or in conjunction with others, real estate of every kind, character and description or any interest therein, necessary or incidental to the purposes set forth herein. The Authority shall comply with all federal and Navajo law governing real property transactions.

9. To deal in personal property. To acquire, hold, own, manage, operate, mortgage, pledge, hypothecate, exchange, sell, deal in and dispose of, either alone or in conjunction with others, personal property, and interest therein and commodities of every kind, character and description necessary or incidental to the purposes set forth herein.

10. To deal in inventories, copyrights and trademarks. To acquire (by application, assignment, purchase, exchange, lease, hire, or otherwise), hold, own, use, license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefor, licenses, formulas, privileges, processes, copyrights and applications therefor, trademarks and applications therefor.

11. To execute guaranties. To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the Authority, to the extent that such guaranty is made pursuant to the purposes set forth herein, provided, that property subject to restrictions on alienation or otherwise held in trust status may not be used as security of any kind without the consent of the Navajo Nation Council or the appropriate committee of the Navajo Nation Council delegated the authority to consent thereto, and the consent of the Secretary of the Interior or his authorized representative.

12. To make contracts. To enter into, make, perform, and carry out, or cancel, or rescind contracts for any lawful purposes set forth in 5 N.N.C. § 1972 including contracting for funds from whatever source without prior or subsequent approval or authorization by the Navajo Nation and to delegate so much of this authority as may be advisable to the General Manager or to the President of the Board of Directors. Any contract hiring or retaining an attorney is subject to applicable federal or Navajo Nation laws, rules and regulations. Nothing in this Section shall be construed as a waiver of the sovereign immunity of the Authority or the Navajo Nation.

13. To borrow money, make and issue bonds and notes. To borrow money, make and issue notes, obligations and bonds of the Authority for any of its purposes, and to secure payment thereof by pledge of, or lien on, all or any of its fixtures, personalty, revenues, income or contracts. With respect to any person, firm or corporation, or any federal, Navajo Nation or state agency subscribing to or acquiring notes or bonds of the Authority issued for the purposes of the Authority, the Navajo Nation shall not limit or alter the rights or powers vested in the Authority until all such notes or bonds at any time issued, together with interest hereon, are fully met, paid and discharged.

14. To the extent necessary to carry out the business of the

Authority, to lend money, to purchase, acquire, own, hold, guarantee, sell, assign, transfer, mortgage, pledge, or otherwise dispose of and deal in shares, bonds, notes, debentures or other securities or evidences of indebtedness of any other person, corporation or association, whether domestic or foreign, and whether now or hereafter organized or existing; and while the holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

15. With the approval of the appropriate oversight committee of the Navajo Nation Council, to enter into management agreements, joint ventures, limited partnerships and/or general partnership agreements with any corporation, association, syndicate, partnership, entity, person or governmental, municipal or public authority, domestic or foreign, in the carrying on of any business which the Authority is authorized to carry on, or any business or transaction deemed necessary, convenient, or incidental to carrying out the purposes of the Authority.

16. To acquire, by purchase or otherwise the goodwill, business, property rights, franchises and assets of every kind, with or without undertaking either wholly or in part the liabilities of any person, firm, association or corporation, and to acquire any related business as a going concern or otherwise by purchase of the assets thereof wholly or in part, or by acquisition of the shares or any part thereof, or in any other manner, and to pay for the same in cash or in the bonds or other evidences or indebtedness of this Authority, or otherwise; to hold, maintain and operate, or in any manner dispose of the whole or any part of the goodwill, business, rights, and property so acquired, and to conduct in any lawful manner the whole or any part of any related business so acquired; and to exercise all the powers necessary or convenient in and about the management of such business.

17. In its sole discretion, to declare a dividend out of the surplus earnings of the Authority to the Navajo Nation. Any such declaration shall require the unanimous vote of the Board.

18. To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes or attainment of any of the objects herein before enumerated, either alone or in association with other authorities, corporations, firms and individuals, as principal, agent, broker, contractor, trustee, partner or otherwise, and in general to engage in any and all lawful business that may be necessary or convenient in carrying on the business of said Authority and for the purposes pertaining thereto, and to do any and every other act or acts, thing or things, incidental to, growing out of, or connected with said business, or any part or parts thereof.

History

CJY-33-08, July 25, 2008.

Note. Slightly reworded at Subsection (B)(8) by adding the word "The" at the beginning of the Subsection.

EDCD-118-92, December 21, 1992.

CN-67-89, November 30, 1989.

CJN-56-72, Plan, § III, June 13, 1972, as amended by ACO-373-72, §§ 1a, 1b, 1c, October 13, 1972.

ACO-373-72, §§ 1a, 1b, 1c, October 13, 1972 amended CJN-56-72, Plan § III, June 13, 1972.

Revision notes. Section 1972(B)(12) includes new language pursuant to Resolution EDCD-118-92. See Navajo Nation Attorney Generals Opinions dated April 26, 1992. (2004).

Previous reference to the "Government Services" at § 1972(B)(15) changed to "appropriate oversight committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004).

Cross References

Government Services Committee authority, see 2 N.N.C. § 343(B)(4).

§ 1973. Board of directors and officers; number, appointment, composition term and removal, employment of general manager

A. The business and affairs of the Authority shall be conducted by a Board of Directors of seven directors. The President of the Navajo Nation or his designee shall serve as a non-voting *ex officio* member.

B. The presence of four directors of the Board shall constitute a quorum for the transaction of any business. The act of the majority of the directors present and voting at a meeting at which a quorum is present, shall be the act of the Board. All actions, with the exception of procedural motions, shall be recorded and documented in written resolutions certified by the presiding officer.

C. The Board of Directors shall be appointed by the President of the Navajo Nation with confirmation by the appropriate oversight committee of the Navajo Nation Council. Any new director shall be appointed to the Board for a four year term, and the terms of his reappointment thereafter, if any, shall be limited to one four year term. Present Board directors shall serve out their present terms before this provision applies to them. Board directors shall serve until their reappointment or their successors are duly qualified and confirmed.

D. At least six directors of the Board shall be enrolled members of the Navajo Nation. Individuals with experience and/or education in the engineering, construction, architectural, legal, accounting, management, or other construction related field shall be given preference for appointment to the Board.

E. Vacancies on the Board of Directors may be filled by the President of the Navajo Nation for the remainder of the term of the vacating director.

F. Any director may be removed at a duly called meeting of the Board of Directors, by a two-thirds vote of the full membership thereof, for just cause only. Just cause shall include, but not be limited to, failure to attend three consecutive meetings of the Board.

G. A President, Vice-President, Secretary and Treasurer of the Board shall be elected at the annual meeting of the Board of Directors. All such officers must be directors of the Board of Directors, and shall hold office until their successors are elected and qualified. Any such Officer may be removed from office by the Board of Directors in the manner provided for in the bylaws of the Authority.

H. A General Manager shall be employed under contract approved by the Board of Directors. The Board of Directors shall have the authority to set salary, benefits, incentives, bonuses, and other provisions of such a contract. The General Manager shall be the Chief Executive Officer of the Authority, and shall direct, supervise and manage all of the operations of the Authority pursuant to the contract. He shall be responsible to the Board of Directors as a Chief Executive Officer of a corporation would be. He shall render reports to the Board and prepare periodical strategic business plans and perform all other functions and duties specified herein and as may be assigned by the Board of Directors.

History

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989.

ACD-256-75, § 1, December 10, 1975. ACD-256-75 added Vice-Chairman of the Navajo Tribal Council to the board in Subsection (A).

CJN-56-72, Plan, § V, June 13, 1972. ACO-373-72, § 1(d), October 13, 1972.

Cross References

Economic Development Committee authority, see 2 N.N.C. § 724(E)(1).

§ 1974. Compliance with Navajo law

The Authority, its Board members, officers, and employees shall conduct the business of the Authority in compliance with the laws of the Navajo Nation, including but not limited to, the Navajo Nation Ethics in Government Law and the Navajo Preference in Employment Act, as may be amended from time to time.

History

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989.

CJN-56-72, Plan, § V, June 13, 1972.

ACO-373-72, § 1(d), October 13, 1972.

§ 1975. Indemnification of directors, officers and employees

Any person made a party to any action, suit or proceedings by reason of the fact that he, his testator or intestate, is or was a director, officer, attorney, auditor or employee of the Authority or of any corporation which he served as such at the request of the Authority, shall be indemnified by the Authority against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such officer, director, attorney, auditor or employee is liable for misconduct in the performance of his duties or was acting outside the scope of his authority and employment by the Authority.

History

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989.

CJN-56-72, Plan, § XIII, June 13, 1972.

§ 1976. Bylaws, meetings, compensation

A. The Board of Directors shall adopt bylaws for the Authority and such bylaws may be amended or repealed as provided therein. The bylaws of the Authority shall provide among other things for the time and place of the annual meeting of the Board of Directors.

B. The Board shall hold four regular meetings per year, one of which shall be the annual meeting, plus such other special meetings as may be called by the Board or by the President of the Board.

C. The bylaws shall further provide for notice of meetings, waiver of notice, the compensation and/or reimbursement of directors of the Board, creation of and delegation of Board authority to subcommittees, and for all other matters necessary for the orderly and efficient operation and management of the affairs and dealings of the Authority.

History

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989.

CJN-56-72, Plan, § XIII, June 13, 1972.

§ 1977. Executive Committee

The officers of the Board of Directors shall serve as an Executive Committee. The Executive Committee may meet, in the intervals between meetings of the Board of Directors and to the extent provided by the bylaws of the Authority, exercise the powers of the Board of Directors in the management of

the affairs and business of the Authority insofar as such powers may lawfully be delegated to a committee. The Executive Committee shall report its actions to the Board of Directors.

History

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989.

CJN-56-72, Plan, § XIII, June 13, 1972.

§ 1978. Inspection of books, records and reports

A. The Authority shall open to the inspection of the President of the Navajo Nation and the Attorney General of the Navajo Nation or their authorized representative, the accounts, books and papers of the Authority at all regular business hours. The accounts and records of the Authority shall be maintained in the Navajo Nation and audited at the close of each fiscal year. Copies of the audit report shall be furnished to the President of the Navajo Nation, the Budget and Finance Committee of the Navajo Nation Council and to such other persons or entities as the President of the Navajo Nation or chairperson of the appropriate oversight committee of the Navajo Nation Council shall direct.

B. The Authority shall prepare and deliver to the Navajo Nation Council, annual financial and progress reports of the Authority and such other reports to the committees of the Navajo Nation Council as may be required by the appropriate oversight committee or by law.

History

CJY-33-08, July 25, 2008.

CJN-56-72, Plan, § VIII, June 13, 1972 as amended by CN-67-89, passed November 30, 1989.

Cross References

Economic Development Committee authority, see 2 N.N.C. § 724(E)(1).

§ 1979. Private property exempt

The private property of each and every officer and director of the Authority, real or personal, tangible, or intangible, now owned or hereafter acquired by any of them, is and shall be forever exempt from all debts and obligations of the Authority of any kind whatsoever.

History

CN-67-89, November 30, 1989.

CJN-56-72, June 13, 1972.

§ 1980. Sovereign Immunity

A. The Authority and its Board of Directors and Officers and employees while acting in their official capacities are immune from suit, and the assets and other property of the Authority are exempt from any levy or execution, except:

1. As provided in the Navajo Sovereign Immunity Act (1 N.N.C. § 551 *et seq.*); or

2. When the Authority's Board of Directors has, in any particular matter by duly adopted Resolution, waived the Authority's immunity from suit so as to permit suit against the Authority in the courts of the Navajo Nation, the courts of the United States or of any state as may be appropriate and agreed to by the Board of Directors.

B. The acts or omissions of the Authority (whether pursuant to the powers enumerated in this plan of operation or otherwise) shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation. Only the assets, revenues and income held by or in the name of the Authority shall be subject (to the extent otherwise permitted herein or by law) to the debts, obligations or other liabilities created or incurred by the Authority.

C. Any waiver of immunity by the Authority shall not be construed to waive any immunity of the Navajo Nation or other person or entity, nor shall the provisions of the Navajo Sovereign Immunity Act, (1 N.N.C. § 551 *et seq.*) be deemed altered or amended.

D. This Section shall not be amended so as to diminish any existing rights of owners, sureties or other person with whom the Authority has a contractual relationship at the time of such amendment, and, to that extent, the authority of the appropriate oversight committee of the Navajo Nation Council to adopt and amend this plan of operation of the Authority is limited.

E. In the event the Authority is sold, dissolved or merged to or into any other entity, the provisions of this Subsection and the rights created hereunder shall survive such sale, dissolution or merger.

History

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989, and CO-46-88, October 28, 1988.

Note (2005). Previous reference to the "Government Services Committee" at § 1980(D) changed to "appropriate oversight committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989.

Cross References

Navajo Nation Sovereign Immunity Act, see 2 N.N.C. § 554(c).

Economic Development Committee powers, see 2 N.N.C. § 724(E)(1).

§ 1981. Amendments

This Plan of Operation may be amended from time to time by the Board of Directors of NECA with the approval by the appropriate oversight committee of the Navajo Nation Council. Provided however, that §§ 1972(B)(17), 1973(F) and 1980 shall not be amended except by the Navajo Nation Council, and to that extent the authority of the appropriate oversight committee of the Navajo Nation Council to adopt and amend this plan of operation is limited.

History

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989.

Note (2005). Previous references to the "Government Services Committee" are changed to "appropriate oversight committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989.

Cross References

Economic Development Committee process, see 2 N.N.C. § 724(E)(1).

Subchapter 15. Board Member Compensation

§ 1991. Board member compensation; conflicts of interest; meetings

A. No enterprise (including the various industries, authorities, colleges, Office of Navajo Economic Opportunity, etc.) shall pay any Board member more than two hundred fifty dollars (\$250) per day/plus actual travel and lodging expense.

B. Without the prior approval of the President of the Navajo Nation, no enterprise shall hold more than one meeting per month nor more than ten per year, provided that two additional sessions shall be allowed on an emergency or special meeting basis.

C. No member of any enterprise management board shall serve as an employee or consultant to that enterprise or as an employee or officer of any entity with a contract with that enterprise.

D. Any member of an enterprise management board who is such an employee or consultant or officer or employee of a contracting entity shall sever such relationship or resign from the enterprise management board within 30 days after approval of this resolution.

History

CN-59-87, November 18, 1987, amended ACMY-35-79, §§ 1-4, May 15, 1979; CN-59-87 amended § 1991(A).

CJN-56-72, Plan, § XI, June 13, 1972.

Revision note. Slightly reworded for purposes of statutory form.

Subchapter 17. DINETECHS Enterprise

History

ACMA-66-89 authorized the creation of Dinetechs Enterprise and approved a Joint Venture agreement with the Navajo Nation. No Navajo Nation Council approved Plan of Operation was adopted.

Chapter 10. Ordinance for the Regulation of Gaming Activities within the Navajo Nation

History

CAP-34-02, April 18, 2002.

CO-75-01, October 16, 2001.

Subchapter 1. Finding and Purposes

§ 2001. Legislative Findings

The Navajo Nation Council of the Navajo Nation hereby finds:

A. That the orderly and honest conduct of gaming activities within the Navajo Nation will be of vital importance to the economy of the Nation, and to the general welfare of its members;

B. That the growth and success of gaming within the Navajo Nation is dependent upon public confidence and trust that such activities are conducted honestly and that they are free from criminal and corrupt elements, and that the facilities in which such activities are conducted are designed and maintained to assure the safety and comfort of patrons of the gaming activities;

C. That such public confidence and trust can only be maintained by the comprehensive regulation of all persons, practices, and activities related to the operation of the Nation's gaming facilities; and

D. All of the Nation's establishments where gaming is conducted, and all persons holding positions of responsibility with respect to any such activity, must therefore be licensed, and their activities monitored to assure that the public health, safety and general welfare of the inhabitants of the Nation and the patrons of its gaming facilities are fully protected, and so as to assure the economic success of gaming activities within the Nation.

History

CO-75-01, October 16, 2001.

§ 2002. Purposes

This Ordinance is enacted, and shall be interpreted, so as to accomplish the following purposes:

A. The maintenance of the highest standards of honesty and integrity in the operation of any and all gaming activities within the Navajo Nation;

B. The maintenance of public confidence and trust in the honesty and integrity of such gaming activities, and in the persons engaged in such activities;

C. The maximum reasonable economic return to the Navajo Nation as the owner of gaming facilities within the Nation consistent with the fair and reasonable expectations of patrons of such activities and the assurance of their safety and comfort in participating in gaming activities; and

D. Compliance with all applicable laws of the Navajo Nation and the United States of America, including but not limited to the Indian Gaming Regulatory Act of 1988.¹

History

CO-75-01, October 16, 2001.

Subchapter 2. Definitions

§ 2003. Definitions

For Purposes of this Ordinance:

A. "Act" means the Indian Gaming Regulatory Act of 1988, Public Law 100-497, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168, and all regulations promulgated pursuant thereto.

B. "Class I Gaming" means all forms of gaming defined as Class I in Section 4(6) of the Act, 25 U.S.C. § 2703(6).

C. "Class II Gaming" means all forms of gaming defined as Class II in Section 4(7) of the Act, 25 U.S.C. § 2703(7).

D. "Class III Gaming" means all forms of gaming as defined in Section 4(8) of the Act, 25 U.S.C. § 2703(8).

E. "Commission" means the National Indian Gaming Commission established pursuant to 25 U.S.C. § 2704.

F. "Compact" means a Tribal-State Compact entered into between the Navajo Nation and a State pursuant to Section 11(d) of the Act, 25 U.S.C. § 2710(d), for purposes of regulating Class III gaming activities conducted within the Nation, and all amendments and modifications thereto.

G. "Distributor" means a person who distributes Class II and Class III Gaming Devices and/or component parts thereof.

H. "Executive Director" means the Executive Director of the Gaming Regulatory Office.

I. "Gaming Activity" means all forms of Class II and Class III Gaming owned and operated by the Nation and conducted within the territorial jurisdiction of the Nation.

J. "Gaming Device" or "Electronic Game of Chance" means a microprocessor-controlled electronic device which allows a player to play games of chance, some of which are affected by skill, which device is activated by the insertion of a coin, currency, tokens or by the use of a credit, and which awards game credits, cash, tokens or replays, or a receipt that can be redeemed by the player for any of the foregoing. Game play may be displayed by:

1. Video facsimile; or

2. Mechanical rotating reels whereby the software of the device predetermines the stop positions and the presence, or lack thereof, of a winning combination and pay out, if any.

K. "Gaming Employee" means any person employed as a Primary Management Official or Key Employee of a Gaming Operation of the Nation and any person employed in the operation or management of a gaming operation, including but not limited to, any person whose employment duties require or authorize access to restricted areas of a Gaming Facility not otherwise open to the public. Gaming Employee does not mean janitors, cooks, waitresses or waiters, and other employees not directly involved in the Gaming Operation within a Gaming Facility.

L. "Gaming Facility" means the buildings or structures licensed and approved by the Nation in which gaming activities are conducted.

M. "Gaming Facility Operator" means the Nation, a wholly owned Tribal Enterprise, or such other entity of the Nation as the Nation may from time to time designate as the wholly-owned tribal entity having full authority and responsibility for the operation and management of Class II or Class III Gaming Activities.

N. "Gaming Operation" means any Gaming Activity conducted within a Gaming Facility.

O. "Gaming Ordinance" means this Ordinance which governs the conduct of Gaming Activities within the Navajo Nation, all amendments thereto, and all regulations promulgated thereunder.

P. "Gaming Services" means the providing of any goods or services, except for legal services, to a Gaming Facility Operation in connection with the operation of Class II or Class III gaming, including but not limited to, equipment, transportation, food, linens, janitorial supplies, maintenance or security services for the Gaming Facility in an amount in excess of ten thousand dollars (\$10,000) in any single month.

Q. "Indian Lands" means land as defined in 25 U.S.C. § 2703(4)(A) and (B), subject to the provisions of 25 U.S.C. § 2719.

R. "Key Employee" means a Gaming Employee who performs one or more of the following functions:

1. Bingo caller;
2. Counting room supervisor;
3. Chief of security;
4. Custodian of gaming supplies; or
5. Floor Manager;
6. Custodian of Gaming Devices including persons with access to cash and accounting records within such devices;
7. Dealer;
8. Pit boss;
9. Croupier;
10. Approval of Credit; or

If not otherwise included, any other person whose total cash compensation from the Gaming Operation is in excess of fifty thousand dollars (\$50,000) per year; or, if not otherwise included, the four most highly compensated persons in the Gaming Operation.

S. "Management Contractor" means a management contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

T. "Management Contractor" means a natural person or entity that has entered into a Management Contract with the Nation or a Gaming Facility Operator which has been approved pursuant to 25 U.S.C. §§ 2710(d)(9) and 2711.

U. "Manufacturer" means a natural person or entity that manufactures Gaming Devices and/or component parts thereof as defined by this Ordinance for use or play in the Gaming Facilities.

V. "Nation" means the Navajo Nation.

W. "Navajo Nation Council" means the Navajo Nation Council of the Navajo Nation.

X. "Net Revenue" means the gross revenues of any gaming activity less amounts paid out as, or paid for, prizes and total gaming related operating expenses, excluding management fees.

Y. "Office of Attorney General" means the Office of the Attorney General of the Navajo Nation.

Z. "Person" includes a corporation, company, partnership, firm,

association or society as well as a natural person. When "person" is used to designate the violator or offender of any law, it includes a corporation, company, partnership, firm, association, or society of persons.

AA. "Primary Management Official" means the person having management responsibility under a Management Contract; or any person who has authority to hire and fire employees or to set up working policy for a Gaming Operation; or the chief financial officer or other person who has financial management responsibility for a gaming operation.

BB. "Principal" means with respect to any entity:

1. Each of its officers and directors;
2. Each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, or general manager;
3. Each of its owners or partners, if an unincorporated business;
4. Each of its shareholders who own more than five percent (5%) of the shares of the corporation; and
5. Each person other than a banking institution who has provided financing for the entity constituting more than five percent (5%) of the entity; and
6. Each of the beneficiaries, and trustee of a trust.

CC. "Privacy Act" means the Privacy Act of 1974, as amended (P.L. 93-579, as amended; 5 U.S.C. § 552(a)), and the obligations and responsibilities placed on the United States government under the Privacy Act as applied to the Commission pursuant to the Indian Gaming Regulatory Act.

DD. "Public Employee" means a public employee within the meaning of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3751, *et seq.*

EE. "Public Official" means a public official within the meaning of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3751 *et seq.*

FF. "State" means the State of Arizona, New Mexico, or Utah and any of their authorized officials, agents and representatives.

GG. "Tribal Gaming Enterprise" means the Nation, an enterprise of the Nation, or such other entity of the Nation designated by the Navajo Nation Council to conduct a Gaming Operation.

History

CAP-34-02, April 18, 2002, amended Subsection (X).

CO-75-01, October 16, 2001.

Subchapter 3. Tribal Ownership and Use of Net Revenues

§ 2004. Tribal Ownership of Gaming Activities

All Gaming Activities within the Nation shall be owned entirely by the Nation and conducted and operated by a Tribal Gaming Enterprise, with the following exceptions:

- A. Class I Gaming; and
- B. Small bingo games and raffles as provide in § 2047 of this Ordinance.

History

CO-75-01, October 16, 2001.

§ 2005. Use of Net Revenues

All net revenues received by the Nation from all Gaming Activities shall be utilized according to applicable Navajo Nation laws and in accordance with the National Indian Gaming Regulatory Act ¹ and CFR 25.

History

CO-75-01, October 16, 2001.

Subchapter 4. Navajo Gaming Regulatory Office

§ 2006. Establishment of the Gaming Regulatory Office

There is hereby established the Navajo Gaming Regulatory Office within the Executive Branch of the Navajo Nation Government, with legislative oversight by the Economic Development Committee of the Navajo Nation Council, and shall have overall civil regulatory authority over Gaming Activities within the Nation as specifically provided herein.

History

CO-75-01, October 16, 2001.

§ 2007. Personnel

A. The Navajo Gaming Regulatory Office (hereinafter "the Gaming Regulatory Office"), shall consist of an Executive Director, Inspectors and such assistants and other staff as the Executive Director shall determine are required from time to time, subject to funding provided by the Navajo Nation Council.

1. No employee of the Gaming Regulatory Office shall:
 - a. be employed by a Gaming Facility Operator.
 - b. have an immediate family member employed by a Gaming

Facility Operator.

2. No former employee of the Gaming Regulatory Office shall be employed by a Gaming Facility Operator within six months of leaving employment of the Gaming Regulatory Office.

3. No employee of the Gaming Regulatory Office shall be employed by or hold, directly or indirectly, a financial interest in an organization or entity which,

a. has entered into a Management Contract with the Nation or a Gaming Facility Operator;

b. is a distributor;

c. provides gaming services; or

d. provides financing to the Nation or a Gaming Facility Operator for purposes of conducting gaming operations within the Nation.

B. The Executive Director of the Gaming Regulatory Office shall be retained by contract by the President of the Navajo Nation, such contract being approved by the Navajo Nation Council for a four year term, and such contract being executed by the President. The job performance of the Executive Director shall be reviewed periodically by the President who shall submit a written report of each such review to the Speaker of the Navajo Nation Council. The Executive Director of the Gaming Regulatory Office shall be removable only for breach of contract.

C. The Executive Director shall be a person of the utmost honesty and integrity, shall not have been convicted of a felony or a misdemeanor involving theft, embezzlement or a crime involving moral turpitude, whose prior activities, reputation, habits and associations shall not pose a threat to the public interest or to the effective regulation of gaming, or create or, enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming.

D. The contract of the Executive Director shall require the Executive Director to be the Nation's designated agent for service of any official determination, order or notice of the Commission. The contract shall further require the Executive Director to have a bachelor's degree in business administration or related field and at least six years of experience in gaming management and/or regulation, or the contract shall require the Executive Director to have a master's degree in business administration or related field and at least four years of experience in gaming management and/or regulation.

E. Inspectors shall act under the authority and supervision of the Executive Director. Inspectors shall have the right to inspect any Gaming Facility at any time and shall have immediate and unrestricted access to any and all areas of a Gaming Facility.

F. The background of every employee, Inspector, and the Executive Director of the Gaming Regulatory Office shall be investigated by the Nation's Personnel Department to ensure qualification for employment in the Gaming

Regulatory Office. Except for the Executive Director, who shall be subject to Section 2007(C), no person shall be employed by the Gaming Regulatory Office if the Nation's Personnel Department determines that such person:

1. Has been convicted of any felony within the past 10 years or any gaming offense;

2. Has knowingly and willfully provided materially important false statements for information on his or her license application; or

3. Has been determined to be a person whose prior activities, criminal record, if any, or reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

History

CO-75-01, October 16, 2001.

§ 2008. Powers and Duties of the Gaming Regulatory Office

Subject to all of the provisions of this Ordinance, the Gaming Regulatory Office shall have the following powers and duties, which it may exercise directly or through such agents or employees as it deems appropriate:

A. To have and to exercise full authority and responsibility for the regulation of Gaming Activities within the Nation, as provided in this Ordinance and the Act.

B. To enter at any time any Gaming Facility within the Nation for the purpose of inspecting the facility, its employees and operations, its equipment and supplies, and its business records, books of account, and any and all other financial records or documents pertaining to the business operations of the facility, and to make such summaries or copies of any and all such documents or other records for the purpose of ensuring compliance with the provisions of this Ordinance or the Act.

C. To issue subpoenas and compel the attendance of witnesses at any place within the Nation, to administer oaths and to require testimony under oath;

D. To seize and remove from any Gaming Facility and impound any equipment, supplies, documents or records for the purpose of examination in connection with an investigation.

E. To review for compliance with all applicable laws and regulations and to make recommendations thereon to the Department of Justice for their approval:

1. the terms of any and all proposed contracts between the Navajo or a Tribal Gaming Enterprise and any person or entity which provide for the management or operation of any Gaming Facility within the Nation;

2. the provisions of any and all Gaming Services; and

3. the terms of any lease of land which is the site or proposed site of such Gaming Facility;

F. To investigate any aspect of Gaming Activities within the Nation in order to protect the public interest in the integrity of such Gaming Activities and to prevent improper or unlawful conduct in the course of such Gaming Activities, and to investigate any report of a failure of any Gaming Operation within the Nation to comply with the provisions of this Ordinance or the Act and to require such Gaming Operation to take any corrective action deemed necessary by the Gaming Regulatory Office upon such terms and conditions as the Gaming Regulatory Office may determine appropriate;

G. To establish a list of persons who, because of their criminal history or association with career offenders or career offender organizations pose a threat to the integrity of the Gaming Activities of the Nation, or are barred from any Gaming Operation within the Nation pursuant to § 2049(F) of this Ordinance;

H. To approve the rules of each game of chance operated by the Nation pursuant to § 2004 of this Ordinance;

I. To require that all contracts for supplies, services, of concessions in an amount in excess of ten thousand dollars (\$10,000) annually (except contracts for professional legal or accounting services) relating to such gaming be subject to annual audits by an independent certified public accountant licensed in a state;

J. To perform background investigations on every applicant for a Gaming Facility Operator's License, a Gaming Manager's License, a Manufacturers/Suppliers License, a Gaming Employee's License and every applicant for a position of Primary Management Official or Key Employee with a Gaming Facility Operator;

K. To approve or deny applications for licenses or to limit, condition, restrict, revoke or suspend any license which it has granted;

L. To issue licenses and employee identification cards on such forms as may be designated by the Gaming Regulatory Office;

M. To issue a notice of violation to, or impose a civil penalty upon, any person or entity for violation(s) of any provision(s) of this Ordinance or the Act;

N. To detain persons who may be involved in illegal activities for purposes of notifying and summoning appropriate law enforcement authorities; and

O. To do all other things reasonably necessary for the proper and efficient fulfillment of the powers and responsibilities of the Gaming Regulatory Office under this Ordinance or the Act.

P. To create and establish a revolving account to deposit the fees collected from the license applicants. The account shall be used to pay for the expenses of operating the Office including, but not limited to the salaries of additional personnel, equipment, vehicles, travel, and other expenses related to the operation of the Office. The Plan of Operation for the revolving account shall be approved by the Economic Development Committee and Budget and Finance Committee of the Navajo Nation Council.

History

CO-75-01, October 15, 2001.

§ 2009. Issuance of Regulation

A. The Gaming Regulatory Official shall from time to time promulgate and issue regulations governing any aspect of its responsibilities under this Ordinance, which so long as they are in furtherance of and not in conflict with any provision of this Ordinance, shall have the force of law. Without limitation, the matters to be addressed by such regulations may include the following:

1. The time and manner for applying for a Gaming Operator's License under this Ordinance, and the specific information to be provided in connection with such application, including information necessary for adequate assessment of the applicant's background, and the manner in which such applications will be processed;

2. The procedure by which applicants for licenses under this Ordinance shall apply for such licenses, including the information to be provided by the applicant necessary for adequate assessment of the applicant's background, and the manner in which such applications will be processed; and

3. The specific types of accounting, security, record keeping and reporting measures required by this Ordinance or the Act to be in place and functioning at any Gaming Facility licensed under this Ordinance.

B. Except in emergency situations addressed in Subsection (C) below, prior to promulgating a final regulation, the Gaming Regulatory Office shall publish the regulation in proposed form. The proposed regulation shall be provided directly to the President of the Nation, the Speaker of the Navajo Nation Council, the Chairperson and each member of the Economic Development Committee of the Navajo Nation Council, the Office of the Attorney General, and to any other interested person or interested office or agency of the Nation. The proposed regulation shall be accompanied by a notice stating that the Gaming Regulatory Office will accept written comments for no less than 30 days following the date of publication. As provided in this Section, "publish" shall mean publication in newspaper(s) of general circulation within the Nation. In the event of significant public interest with respect to any regulation, the Gaming Regulatory Office may hold a public hearing prior to issuing a final regulation. Notice of such hearing shall be given as set forth above, and in addition shall be mailed directly to any person submitting comments on the proposed regulation. Except as provided in Subsection (C) of this Section, no final regulation shall be issued until the Gaming Regulatory

Office has reviewed all comments received by the close of the comment period, as well as all presentations made at any hearing held pursuant to this Subsection.

C. In the event the Gaming Regulatory Office determines that an immediate rule-making is necessary to avoid serious jeopardy to the integrity of any Gaming Activity within the Nation, or otherwise to deal with an emergency situation affecting the responsibilities of the Gaming Regulatory Office, the Gaming Regulatory Office may, upon making an express written finding as to such emergency, issue a final regulation to take effect immediately; provided, that the Gaming Regulatory Office shall publish notice and request comments on such regulation in the same manner as is provided above and upon consideration of any comments received, shall make such amendments to such final regulation as the Gaming Regulatory Office deems appropriate.

D. All final regulations adopted by the Gaming Regulatory Office shall be officially filed with the Reporting Section of the Navajo Nation Council, the Office of the President, the Office of the Attorney General, and Records and Communications.

History

CO-75-01, October 15, 2001.

§ 2010. Petition for Self-Regulation

Upon the Gaming Regulatory Office's determination that the Nation is eligible therefor, the Gaming Regulatory Office may submit to the Commission an application for a certificate of Self-Regulation, under the provisions of 25 U.S.C. § 2710(C)(4). The Gaming Regulatory Office shall do everything necessary and appropriate to obtain such certificate and to maintain the certificate in good standing.

History

CO-75-01, October 15, 2001.

§ 2011. Independence of Gaming Regulatory Office

The Gaming Regulatory Office is constituted as an independent regulatory agency of the Nation. The Gaming Regulatory Office shall not be subject to political direction or influence in the performance of its duties from any public official or public employee of the Nation.

History

CO-75-01, October 15, 2001.

§ 2012. Relation to Gaming Management

Neither the Executive Director of the Gaming Regulatory Office nor any other public official or public employee of the Nation (individually or collectively) shall have any role in the management of any licensed gaming establishment. Aside from the specific duties of the Executive Director, as

defined in this ordinance, all decisions, policies, and actions with regard to the operation of any licensed gaming establishment are the prerogative and responsibility of the gaming management as described in Subchapters 5 and 6 of this Ordinance.

History

CO-75-01, October 15, 2001.

Subchapter 5. Gaming Facility Operator's License

§ 2013. Requirement of License

Each Tribal Gaming Enterprise established by the Navajo Nation Council to conduct a Gaming operation within the territorial jurisdiction of the Nation shall obtain a Gaming Facility operator's License from the Gaming Regulatory Office before the Tribal Gaming Enterprise may commence operation of a Gaming Activity. Each appointee for the position of member of the Board of Directors of such Tribal Gaming Enterprise shall also obtain a Gaming Facility Operator's License from the Gaming Regulatory Office before submission of the appointment to the Navajo Nation Council for approval.

History

CO-75-01, October 15, 2001.

§ 2014. Standards of Suitability

A. Tribal Gaming Enterprise. No Tribal Gaming Enterprise shall be issued a Gaming Facility Operator's License by the Gaming Regulatory Office unless the Gaming Regulatory Office is satisfied that the Tribal Gaming Enterprise is established and organized pursuant to a plan of operation adopted by the Navajo Nation Council.

B. Board of Directors. No member of the Board of Directors of a Tribal Gaming Enterprise established by the Navajo Nation Council to conduct a gaming operation shall be issued a Gaming Facility Operator's License or have his license renewed by the Gaming Regulatory Office if the Gaming Regulatory Office determines that such person:

1. Has been convicted of any felony or gaming offense;
2. Has knowingly and willfully provided materially important false statements or information on his license application;
3. Has been determined to be a person whose prior activities, criminal record, if any, or reputation, habits or associations pose a treat to the public interest or to the effective regulation and control of gaming or creates or enhances the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; or

4. Has a conflict of interest or a potential for a conflict of interest if a member of the Board of Directors. Any Public Official or Public Employee of the Nation shall be deemed to have a conflict of interest.

History

CO-75-01, October 15, 2001.

Subchapter 6. Gaming Manager's License

§ 2015. Requirement of License

No person, corporation, partnership, or other entity shall manage any Gaming Operation as the general manager of a Tribal Gaming Enterprise without first obtaining a Gaming Manager's License from the Gaming Regulatory Office. In the case of a corporation, partnership or other entity, each Principal of the corporation, partnership or other entity must also obtain a Gaming Manager's License from the Gaming Regulatory Office.

History

CO-75-01, October 15, 2001.

§ 2016. Standards of Suitability

A. Individuals. No person shall be issued a Gaming Manager's License or have his license renewed under this Chapter if the Gaming Regulatory Office determines that such person:

1. Has been convicted of any felony or gaming offense;
2. Has knowingly and willfully provided materially important false statements or information on his license application;
3. Has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; or
4. Has a conflict of interest or a potential for a conflict of interest if a gaming manager. Any Public Official or Public Employee of the Nation shall be deemed to have a conflict of interest.

B. Corporations, Partnerships, and other Entities.

1. No corporation, partnership, or other entity shall be issued a Gaming Manager's License or have its License renewed by the Gaming Regulatory Office unless the Gaming Regulatory Office is satisfied that such corporation, partnership or other entity:

a. Is an organization and in good standing under the laws of the jurisdiction where it was established, and is qualified to do business within the Nation and the State;

b. Is in sound financial condition, as shown by a financial status;

c. Is not now and has not been in the past five years the subject of any criminal investigation by any tribal, federal, or state law enforcement authority, as shown by an affidavit of Principals of the organization having personal knowledge thereof;

d. Has established a reputation for financial integrity and sound business practices, or if the organization was recently formed, that all persons having any role in its formation, including persons supplying financing, are persons qualified to be licensed individually under the terms of this Subchapter.

e. Has established that any person having a role in the formation or acting as a Principal of the organization is not a Public Official or Public Employee of the Nation; and

f. In all other respects will be reliable and trustworthy, and whose involvement in Gaming Activities within the Nation will be in the best interests of the Nation.

2. As a condition of any such license, the Gaming Regulatory Office shall require that any licensed corporation, partnership or other entity:

a. Maintain an office within the Nation; and

b. Give notice to the Gaming Regulatory Office within 10 days of any material change in any information disclosed in the application for which prior notice was not feasible, including but not limited to, any change in its Principals.

History

CO-75-01, October 15, 2001.

Note (2003). To correct a typographical error in the first sentence of Subsection (B)(1), "or have its license re-need" was changed to read "or have its license renewed".

Subchapter 7. Manufacturers/Suppliers License

§ 2017. Requirement of License

Each Manufacturer and each Distributor of Gaming Devices, and each supplier of Gaming Services shall be licensed by the Gaming Regulatory Office prior to the sale or lease of any Gaming Devices or Gaming Services to a Gaming Facility Operator licensed under this Ordinance. In addition, any person,

corporation, partnership or other entity extending or guarantying financing for the Gaming Operation or the Gaming Facilities shall be licensed by the Gaming Regulatory Office, unless such person, corporation, partnership or entity is an agency of the United States or a lending institution licensed and regulated by the State or the United States.

History

CO-75-01, October 15, 2001.

§ 2018. Standard of Suitability

A. Individuals. No person shall be issued a license or have his license renewed under this Chapter if the Gaming Regulatory Office determines that such person:

1. Has been convicted of any felony or gaming offense;
2. Has knowingly and willfully provided materially important false statements or information on his license application;
3. Has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulations and control or gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or carrying on of the business and financial arrangements incidental hereto; or
4. Has a conflict of interest or a potential for a conflict of interest. Any Public Official or Public Employee of the Nation shall be deemed to have a conflict of interest.

B. Corporations, Partnerships, and Other Entities

1. No corporation, partnership, or other entity shall be issued a license or have its license renewed under this Subchapter unless the Gaming Regulatory Office is satisfied that such corporation, partnership or other entity:

a. Is organized and in good standing under the laws of the jurisdiction where it was established, and is qualified to do business within the Nation and the State;

b. Is in sound financial condition, as shown by a financial statement certified by a certified public accountant to be a current, complete and accurate depiction of the organization's financial status;

c. Is not now and has not been in the past five years the subject of any criminal investigation by an tribal, federal, or state law enforcement authorities, as shown by an affidavit of principals of the organization having personal knowledge thereof;

d. Has established a reputation for financial integrity and

sound business practices, or, if the organization was recently formed, that all persons having any role in its formation, including persons supplying financing, are persons qualified to be licensed individually under the terms of this Subchapter;

e. Has established that any person having a role in the formation or acting as a Principal of the organization is not a Public Official or Public Employee of the Nation; and

f. Is in all other respects reliable and trustworthy, and whose involvement in Gaming Activities within the Nation will be in the best interests of the Nation as set forth in this Ordinance.

2. As a condition of any such license, the Gaming Regulatory Office shall require that any licensed corporation, partnership or other entity give notice to the Gaming Regulatory Office within 10 days of any material change in any information disclosed in the application for which prior notice was not feasible, including but not limited to, any change in its Principals.

History

CO-75-01, October 15, 2001.

Note (2003). To correct a typographical error in Subsection (A) and Subsection (B)(1), "re-need" was changed to read "renewed".

Subchapter 8. Gaming Employee's License

§ 2019. Requirement of License

Every Gaming Employee of a Gaming Facility Operator shall be licensed by the Gaming Regulatory Office prior to commencement of employment.

History

CO-75-01, October 15, 2001.

§ 2020. Standards of Suitability

No person shall be issued a Gaming Employee's License or have his License renewed under this Subchapter if the Gaming Regulatory Office determines that such person:

A. Has been convicted of any felony within the past 10 years or any gaming offense;

B. Has knowingly and willfully provided materially important false statements or information on his or her license or employment application; or

C. Has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create

or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

D. Has a conflict of interest or a potential for a conflict of interest if a Gaming Employee. Any Public Official or Public Employee of the Nation shall be deemed to have a conflict of interest.

History

CO-75-01, October 15, 2001.

Note (2003). To correct a typographical error in Section 2020, first sentence, "re-need" was changed to "renewed".

Subchapter 9. License Application Procedures

§ 2021. Application Requirements; Processing

A. Each application for a license under Subchapters 5, 6, 7 or 8 of this Ordinance must be submitted to the Gaming Regulatory Office on forms prescribed by the Gaming Regulatory Office, and must be accompanied by the required fee and such supporting information as the Gaming Regulatory Office prescribes by regulation which shall include:

1. In the case of individual persons:

a. Full name, including any aliases by which applicant has ever been known;

b. Social security number;

c. Date and place of birth, gender, current citizenship, and all languages spoken or written;

d. Currently and for the previous five years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

e. The names and current addresses of at least three personal references, including one personal reference who was acquainted with, the applicant during each period of residence listed under Paragraph 1(d) of this Subsection (A);

f. Education history;

g. Current business or employment and residence telephone numbers;

h. A description of any existing and previous business relationships with Indian tribes including ownership interests in those businesses;

i. Description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

j. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

k. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

l. All criminal proceedings, except for minor traffic offenses, to which the applicant has been a party including description of the charge, the name and address of the court involved and the date and disposition;

m. A set of fingerprints;

n. A current photograph; and

o. A complete and current financial disclosure statement.

2. In the case of corporations, partnerships or other entities applying for a license under Subchapters 5, 6, 7 or 8 of this Ordinance:

a. The name, address, and other additional pertinent background information on each of the principals;

b. The name, address, and other additional pertinent background information on each of its related, associated, affiliated, parent or subsidiary corporations, partnerships, entities or individuals;

c. A description of any previous experience that each Principal has had with other Indian tribes involving gaming, any management contract, or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had contact relating to gaming; and

d. A complete financial statement of each Principal.

B. The Gaming Regulatory Office and its staff may assist any applicant in assembling all information required for processing of the application, but no application will be processed until it is complete. The Gaming Regulatory Office staff may at any time after an application is submitted request the applicant in writing to supply additional information to enable the Gaming Regulatory Office to complete the processing of the application, which request must be complied with forthwith.

C. The application forms used by the Gaming Regulatory Office shall contain the Privacy Act notice and the notice regarding false statements, and in the form required by the Commission, pursuant to 25 C.F.R. Part 556, and each applicant shall consent in writing to the release of any information that may be relevant to the Gaming Regulatory Office's inquiry into the applicant's

background from any person or entity. Any and all information obtained by the Gaming Regulatory Office in the course of reviewing an application will remain confidential, and will not be released by the Gaming Regulatory Office to any other person or agency (other than the commission if disclosure is required under the Act) without the applicant's consent, or pursuant to an order of court or other body of competent jurisdiction.

D. The Gaming Regulatory Office shall issue a decision on the application in writing. The written decision of the Gaming Regulatory Office shall constitute final action of the Gaming Regulatory Office on such application. In the event any application for a license is denied, the decision shall specify the reason for such denial.

History

CO-75-01, October 15, 2001.

§ 2022. Fees

The Gaming Regulatory Office shall collect the following fees in connection with the processing of applications and the issuance of licenses:

A. Gaming Facility Operator's License:

1. Initial application fee:

a. Tribal Gaming Enterprise: fifty thousand dollars (\$50,000).

b. Member, Board of Directors: five hundred dollars (\$500.00).

2. Annual renewal fee:

a. Tribal Gaming Enterprise: fifteen thousand dollars (\$15,000).

b. Member, Board of Directors: one hundred dollars (\$100.00).

B. Gaming Manager's License:

1. Initial application fee: one thousand dollars (\$1,000).

2. Annual renewal fee: five hundred dollars (\$500.00).

C. Manufacturers/Suppliers License:

1. Initial application fee:

a. Manufacturer/Distributor of Gaming Devices: one thousand dollars (\$1,000.00).

b. Supplier of Gaming Services: one hundred dollars

(\$100.00).

c. Third Party Financier one thousand dollars (\$1,000).

2. Annual renewal fee:

a. Manufacturer/Distributor of Gaming Devices: five hundred dollars (\$500.00).

b. Supplier of Gaming Services: fifty dollars (\$50.00).

c. Third Party Financier: five hundred dollars (\$500.00).

D. Gaming Employee's License:

1. Initial application fee of twenty-five dollars (\$25.00)

2. Annual renewal fee of ten dollars (\$10.00).

E. Other Fees. The Gaming Regulatory Office may by regulation prescribe such other fees as it deems appropriate.

History

CO-75-01, October 15, 2001.

§ 2023. License Terms: Renewal

A. Each Gaming Facility Operator's License, Gaming Manager's License, Manufacturers/Suppliers License and Gaming Employee's License issued by the Gaming Regulatory Office hereunder shall have a primary term of one year. Such license may be renewed for subsequent one-year periods upon proper application therefor, on forms specified by the Gaming Regulatory Office, but no licensee shall have any vested right to renewal of any license issued hereunder.

B. The Gaming Regulatory Office shall issue a temporary license within 60 days of the receipt of a completed application for licensing pursuant to Subchapters 5, 6, 7 and 8 of this Ordinance unless the background investigation undertaken by the Gaming Regulatory Office discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant pursuant to this Ordinance are apparent on the face of the application. The temporary license shall become void and be of no effect upon either the issuance of a license or upon the issuance of notice of denial of the license in accordance with the provisions of this Ordinance.

History

CO-75-01, October 15, 2001.

§ 2024. [Reserved]

§ 2025. Non-transferability of License

Each Gaming Facility Operator's License, Gaming Manager's License

Manufacturers/Suppliers License, and Gaming Employee's License issued by the Gaming Regulatory Office hereunder is valid only for the person or entity at the place of business shown on the license. The license is not transferable or otherwise assignable without prior approval from the Gaming Regulatory Office.

History

CO-75-01, October 15, 2001.

Subchapter 10. Background Investigations; Notifications

§ 2026. Background Investigations

A. Unless otherwise provided in a tribal-state compact entered into between the Navajo Nation and a state, the Gaming Regulatory Office shall at all times have in place, and shall regularly update and improve, a system for conducting background investigations of every applicant for licensing under the ordinance. Such system shall comply with the requirements of this Ordinance and the Act, and shall include, at a minimum, utilization of records of all available tribal, state and federal law enforcement agencies, resources of the Commission, communications with other Indian tribes engaged in gaming activities, and any and all other sources of information accessible to the Gaming Regulatory Office for this purpose. Such system shall ensure that all applicants are notified of their rights under the Privacy Act as specified in 25 C.F.R. Part 556.

B. Every applicant for licensing under this Ordinance shall be subjected to a thorough background investigation, and such investigations shall be updated upon application for renewal of a license, and at such other times as the Gaming Regulatory Office may determine appropriate.

C. The Gaming Regulatory Office shall prepare a background investigation report on every applicant for licensing under the ordinance which shall include all of the following:

1. Steps taken in conducting a background investigation;
2. Results obtained;
3. Conclusions reached; and
4. The bases for those conclusions.

D. The cost of performing the background investigations on Gaming Employees shall be an expense of the Gaming Facility Operator who has hired or proposes to hire the employee.

E. The Gaming Regulatory Office shall at all times maintain files containing the results of any background investigations conducted by it. Such files shall be retained for no less than three years from the date of termination of employment or expiration of the license. Such files shall contain systems designed to safeguard the identities of confidential informants from inadvertent disclosure.

History

CO-75-01, October 15, 2001.

§ 2027. Criminal History Checks

A. Unless otherwise provided in a tribal-state compact entered into between the Navajo Nation and the State of New Mexico or the State of Arizona, the Navajo Nation Department of Public Safety will take fingerprints when required and send them to the Commission. The Commission will send the fingerprints to the Federal Bureau of Investigation (FBI) which will review them for any federal criminal activity including all felonies and misdemeanors. The FBI will send the fingerprints back to the Commission along with a report stating any recorded federal criminal activity, and the Commission will return the reviewed fingerprints with the FBI report to the Navajo Nation Department of Public Safety.

B. As part of the background investigation, the applicant will be required to disclose whether they have ever been prosecuted or convicted of a felony or a misdemeanor. In addition, unless otherwise provided in a tribal-state compact entered into between the Navajo Nation and the State of New Mexico or the State of Arizona, the Navajo Nation Department of Public Safety will review the records of the Tribal Court and also the statewide district, supreme and superior courts for New Mexico and Arizona for any criminal records as prospective employee may have.

History

CAP-34-02, April 18, 2002, added a new section.

CO-75-01, October 15, 2001.

§ 2028. Notification to the Gaming Commission

A. Within the time requirements established by the Commission the Gaming Regulatory Office shall transmit to the Commission a complete copy of license applications or such other information as may be required by the Commission. After completion of the background check of the applicant, and within the time requirements established by the Commission, the Gaming Regulatory Office shall provide to the Commission a complete report on the results of the background investigation. In the event the Gaming Regulatory Office receives any information from the Commission concerning the applicant, such information shall be taken into account by the Gaming Regulatory Office in its action on the application. The Gaming Regulatory Office shall notify the Commission if the Gaming Regulatory Office does not license an applicant.

B. Upon issuance of a license under this Ordinance, the Gaming Regulatory Office shall give notice thereof to the Commission. Should the Gaming Regulatory Office receive information from the Commission indicating that a Primary Management Official or Key Employee does not meet the standard established in this Ordinance or in the Act for issuance of such a license, the Gaming Regulatory Office shall immediately suspend such license and give written notice thereof to the licensee. The Gaming Regulatory Office shall

also notify the licensee that the licensee has 15 days following receipt of the notice of suspension to request that the Gaming Regulatory Office reconsider the notice of suspension. Upon such request for reconsideration, the Gaming Regulatory Office shall consider such oral statement(s) or written documentation as the licensee may present to the Gaming Regulatory Office at the time and place designated by the Gaming Regulatory Office. Within 15 days of receipt of such statement(s) or documentation, or the licensee's request for reconsideration, whichever is later, the Gaming Regulatory Office shall issue a written decision. The written decision of the Gaming Regulatory Office shall constitute final action of the Gaming Regulatory Office. The Gaming Regulatory Office shall notify the Commission of its decision.

History

CO-75-01, October 15, 2001.

Subchapter 11. Gaming Facility License

§ 2029. Requirement of License

No person or entity may commence any Gaming Activities subject to regulation hereunder at any facility or location within the Nation until such facility or location has received a gaming facility license under the provisions of this Subchapter, nor shall any person or entity offer any new or different Gaming Activities, as defined by regulations to be issued by the Gaming Regulatory Office, at any facility or location that is already licensed, without first obtaining an amended license for, such new and different Gaming Activities from the Gaming Regulatory Office.

History

CO-75-01, October 15, 2001.

§ 2030. Standards for Issuance of License

The Gaming Regulatory Office shall not issue a Gaming Facility License for any facility or location at which Gaming Activities are to be offered within the Nation unless the Gaming Facility meets the following requirements:

A. The physical facility within which the Gaming Activities are to be conducted is constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety;

B. The Gaming Activities to be conducted with the facility will lawfully be carried on by the Nation under the Act, and that the facilities are appropriate to the carrying on of such activities;

C. The Gaming Facility Operator will adequately staff and equip the facility to ensure the safety, comfort and convenience of the patrons thereof, and that the Gaming Facility Operator has taken adequate measures to provide for traffic, emergency service accessibility, food, drink and sanitary needs for patrons and employees, security, law enforcement and other concerns raised by the type of Gaming Activity proposed to be undertaken in compliance with

this Ordinance and the Act;

D. The Nation or Tribal Gaming Enterprise has agreed to a Management Contract or has made provision for management of the facility under terms and provisions that ensure that the activities will be carried out in a manner consistent with the requirements of this Ordinance, that the contracting party or parties have received appropriate licenses issued under the provisions of this Ordinance, and that all employees hold Gaming Employee's Licenses issued under the provisions of this Ordinance; and

E. In all other relevant respects, the facility will be operated in a way that is fully consistent with the provisions of this Ordinance, and that its operation will further the interests of the Nation with respect to its operation of gaming activities.

History

CAP-34-02, April 18, 2002, amended Subsection (A).

CO-75-01, October 15, 2001.

§ 2031. Application for a New or Amended Gaming Facility License Procedure

A. An application for a new or amended Gaming Facility License shall be submitted by the Tribal Gaming Enterprise prior to the commencement of operations at the facility or the commencement of the new activity at the facility for which an amended license is required.

B. The Gaming Regulatory Office shall prescribe the information required to be submitted with such applications, but at a minimum, such application for licensing a new facility shall include the following:

1. The name, specific position and job description of all persons to be employed as Primary Management Officials or Key Employees at the facility;

2. Job descriptions for every other position in which persons will be employed at the facility;

3. A detailed description of each Gaming Activity to be engaged in at the facility, together with expected payouts to winners;

4. A description of the internal controls, plan of organization and all coordination methods and measures for the safeguarding of assets, ensuring the accuracy and reliability of its accounting data, promoting operational efficiency and encouraging adherence to prescribed managerial policies;

5. Detailed plans for the facility, including landscaping, traffic controls, parking, food and drink services, and other physical aspects of the building.

6. A detailed description of how security will be maintained at the facility, identifying the persons, agencies or entities that will provide

such security;

7. A detailed description of how gaming proceeds will be accounted for and disposed of on a daily basis;

8. A copy of any proposed Management Contract or other contractual arrangement by which the activities at the facility are to be managed;

9. A description of provisions for dealing with fire or other potential emergencies at the facility;

10. A detailed description of how sewage and other waste products from the facility will be handled and disposed of; and

11. Any other information relevant to the proposed operation of the facility or requested by the Gaming Regulatory Office as part of the application.

C. An application for an amended license to conduct new or different Gaming Activities at a licensed location or to otherwise alter the terms or conditions of an existing license, shall, at a minimum, include the following information:

1. Any change in information previously provided in the original license application or any previous application for an amended license for the facility;

2. A detailed description of the changes in the facility or in the activities to be carried on therein for which the amended license is required, together with a statement of the reasons for such change;

3. If a proposed change will require any change in the existing Management Contract with respect for the facility, a copy of the proposed amendment to such contract or new contract; and

4. Any other information relevant to the changes or new activities requiring the amendment.

D. In its decision to license any facility, or to amend any existing license to permit the conduct of new or different Gaming Activities at a licensed facility, the Gaming Regulatory office may specify, consistent with the provisions of the Ordinance, terms or conditions it believes necessary or appropriate to ensure the health and safety of patrons and employees of any such facility, the integrity of the Gaming Activities carried on at such facility, and the security of gaming proceeds. If dissatisfied with any such condition, the applicant may request that the Gaming Regulatory Office reconsider its determination. Upon such request for reconsideration, the Gaming Regulatory Office shall issue a written decision within 15 days of its receipt of the request for reconsideration. The written decision of the Gaming Regulatory Office shall constitute final action of the Gaming Regulatory Office.

History

CO-75-01, October 16, 2001.

§ 2032. Fees

The Gaming Regulatory Office shall collect the following fees in connection with the processing of application and the issuance of licenses:

A. Gaming Facility License:

1. Annual fee of thirty thousand dollars (\$30,000).
2. Application for amendment of an existing Gaming Facility License: fifteen thousand dollars (\$15,000).

B. The annual fee shall be payable in equal quarterly installments, the first of which shall be payable within 15 days of receipt of notice of approval of the Gaming Facility License. The remaining installments shall be paid on the first day of each succeeding calendar quarter.

C. The Gaming Regulatory Office may by regulation prescribe such other fees as it deems appropriate.

History

CO-75-01, October 16, 2001.

§ 2033. License Terms; Renewal

Each Gaming Facility License issued by the Gaming Regulatory Office shall be for a term of two years. Such license may be renewed for subsequent three year terms upon proper application on forms specified by the Gaming Regulatory Office.

History

CO-75-01, October 16, 2001.

Subchapter 12. Facility Inspection; Notice of Violation; Complaints; Judicial Review

§ 2034. Facility Inspection

The Gaming Regulatory Office shall, no less than monthly and at such other times as it believes are warranted, cause detailed inspections to be made of each Gaming Facility licensed under the provisions of this Ordinance, to assure that such facility is being operated in accordance with the terms of the license and of the provisions of this Ordinance and the Act.

History

CO-75-01, October 16, 2001.

§ 2035. Notice of Violation

A. The Executive Director of the Gaming Regulatory Office shall issue a notice of violation to any person or entity determined by the Gaming Regulatory Office to be in violation of any provision of this Ordinance or the Act.

B. A notice of violation shall contain:

1. A citation to the ordinance, regulation or federal law that has been or is being violated;

2. A description of the circumstances surrounding the violation, set forth in common and concise language;

3. The action which must be taken to correct the violation;

4. Notice that the violation must be corrected within 15 days from receipt of the notice of violation;

5. Notice of a civil fine or other enforcement action that will or may be imposed if the violation is not corrected;

6. Notice that a written response to the notice of violation must be submitted to, and received by, the Gaming Regulatory Office within 15 days of the receipt of the notice of violation; and

7. Notice that the cited violation shall be the written decision of the Gaming Regulatory Office if no written response to the notice of violation is submitted to the Gaming Regulatory Office within the time prescribed in § 2035(B)(6).

C. In the event the violation is not corrected, or a written response to the notice of violation is not made within 15 days following receipt of the notice of violation, the Gaming Regulatory Office may take one or more of the following actions:

1. Suspend or revoke the license of the person or entity to whom the notice of violation was directed;

2. Assess a civil penalty in accordance with the provisions of this Ordinance;

3. Forcibly eject the violator from the premises of the Gaming Facility;

4. Seize the Gaming Facility and all equipment, records, and proceeds of Gaming Activities located within the Gaming Facility; or

5. Upon consultation with the Nation's Attorney General, initiate in the District Court of the Navajo Nation a civil action or criminal complaint to enforce the Ordinance, regulations of the Gaming Regulatory Office or the Act.

D. Each person or entity to whom a notice of violation is issued shall submit a written response to the Gaming Regulatory Office together with any

additional written information the person believes the Gaming Regulatory Office should consider. Such response and supporting documentation must be received by the Gaming Regulatory Office within 15 days of the receipt of the notice of violation. Upon receipt of the written response, the Gaming Regulatory Office shall issue a written decision within 15 days. Such written decision shall constitute final action of the Gaming Regulatory Office with respect to such notice of violation. No action to enforce the notice of violation shall be taken by the Gaming Regulatory Office until the Gaming Regulatory Office issues its written decision; provided that, the Gaming Regulatory Office may summarily suspend any license issued under this Ordinance or take such other immediate action if the continued licensing of, or conduct by, a person or entity constitutes an immediate threat to the public health, safety or welfare. The notice of violation is the final action of the Gaming Regulatory Office if no written response to the notice of violation is submitted to the Gaming Regulatory Office within the time prescribed in § 2035(B)(6).

E. The Gaming Regulatory Office may employ a Hearing Officer to hear and decide matters to be heard by the Gaming Regulatory Office in accordance with the provisions of this Ordinance; provided, sufficient funds are appropriated or made available for a Hearing Office and appropriate staff.

History

CO-75-01, October 16, 2001.

§ 2036. Investigation of Complaints

A. The Gaming Regulatory Office shall investigate all sworn complaints that are filed with the Gaming Regulatory Office alleging that a licensee is acting in violation of the terms of any license, or a Gaming Facility is not being maintained in accordance with the terms of any license or does not adequately protect the health, safety and welfare of the employees or patrons.

B. The Gaming Regulatory Office shall give written notice of and provide a copy of the sworn complaint to the licensee. The licensee shall file with the Gaming Regulatory Office a written reply to the complaint within 15 days of receipt of the notice and complaint.

C. Following receipt of the licensee's response to the complaint, the Gaming Regulatory Office shall cause a full investigation to be made of the allegations. If the Gaming Regulatory Office determines that a violation of the Ordinance or the Act has occurred or is occurring, the Executive Director shall issue a notice of violation in accordance with the provisions of the Chapter.

History

CO-75-01, October 16, 2001.

§ 2037. Judicial Review

A. Any person or entity who has been issued a notice of violation by the Executive Director of the Gaming Regulatory Office and who has submitted a written response to the Gaming Regulatory Office in compliance with the

provisions of § 2035(D) of this Subchapter, may apply to the District Court of the Navajo Nation for review of such notice of violation. Any applicant for a license under this Ordinance, and any person or entity licensed pursuant to this Ordinance, and any patrol of a gaming operation may apply to this District Court of the Navajo Nation for review of a final action of the Gaming Regulatory Office.

B. Any such application for court review must be made within 15 days of receipt of notice of the final action of the Gaming Regulatory Office. The person or entity requesting judicial review shall be the moving party and shall have the burden of proof by clear and convincing evidence.

C. The reviewing court shall decide all relevant questions of law presented, interpret statutory provisions, and determine the basis for the action of the Gaming Regulatory Office. The reviewing court shall uphold the action of the Gaming Regulatory Office unless the court determines that such action was:

1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
2. Contrary to statutory right, power, privilege, or immunity;
3. In excess of statutory jurisdiction, authority, or limitations, or in violation of statutory right;
4. Without observance of procedure required by law; or
5. Unsupported by substantial evidence.

History

CO-75-01, October 16, 2001.

Subchapter 13. Gaming Operation

§ 2038. Scope of Permissible Gaming

The Gaming Activity permitted to be conducted in a licensed Gaming Facility are those which may lawfully be carried on by the Nation under applicable provisions of federal law including, but not limited to the Act, subject to any limitations which may be imposed by this Ordinance.

History

CO-75-01, October 16, 2001.

§ 2039. Hours, Days, Other Standards

A. For all activities on Indian lands located outside the State of New Mexico the Gaming Regulatory Office may by regulation establish the permissible hours and days of operation of Gaming Activities. The regulations may authorize a licensed gaming facility to remain open and conduct Gaming

Activities 24 hours a day, seven days a week. The Gaming Regulatory Office may also, by regulation, establish other standards of operation for such facilities, as the Gaming Regulatory Office deems appropriate.

B. For all activities on Indian lands located within the State of New Mexico, the following standards shall apply:

1. The Navajo Nation shall take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938,¹ the federal Occupational Safety and Health Act of 1970,² and any other federal laws relating to wages, hours of work and conditions of work, and the regulations issued thereunder;

2. On any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act;³

3. The Navajo Nation, the gaming enterprise and a Management Contractor shall not discriminate in the employment of persons to work for the gaming enterprise or in the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age or handicap. This provision shall not be deemed to prohibit the application of the Navajo Preference in Employment Act;

4. All employees of a gaming establishment shall be provided employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave and medical and dental insurance as well as providing unemployment insurance and workers compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable programs of the State of New Mexico;

5. A grievance process shall be provided for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;

6. New Mexico State Department of Environment inspectors shall be permitted to inspect Gaming Facilities' food service operations during normal Gaming Facility business hours to assure that standards and requirements equivalent to New Mexico' Food Service Sanitation Act⁴ are maintained;

7. Gaming enterprises are prohibited from cashing any paycheck or any type of government assistance check, including Social Security, AFDC, pension and other similar checks, for any patron;

8. Gaming enterprise are prohibited from extending credit by accepting IOUs or markers from its patrons;

9. Odds shall be posted on each electronic and electromechanical gaming device;

10. Automatic teller machines on Gaming Facility premises shall be programmed so that the machines will not accept cards issued by New Mexico to AFDC recipients for access to AFDC benefits;

11. Each electronic or electromechanical Gaming Device in use at the Gaming Facility shall pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%);

12. No later than 90 days after this compact takes effect, all gaming machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the activity of each gaming machine in use at the Gaming Facility, and that such data shall be electronically accessible to New Mexico gaming representative upon entry of appropriate security codes;

13. Employees of a Gaming Facility are prohibited from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the gaming facility;

14. Gaming Facility employees that dispense, sell, serve or deliver alcoholic beverages shall attend alcohol server education classes similar to those classes provided for in the New Mexico Liquor Control Act;

15. Gaming Facility operators shall purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars (\$1,000,000) per incident and two million dollars (\$2,000,000) aggregate per policy year;

16. Alcoholic beverages shall not be sold, served, delivered or consumed in that part of a Gaming Facility where gaming is allowed;

17. The Tribal Gaming Enterprise shall spend an amount that is no less than one-quarter of one percent (.25%) of its net win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gambling;

18. Governing any Management Contract regarding its Class III Gaming Activity such that it conforms to the requirements of tribal law and the IGRA and the regulations issued thereunder;

19. The operation of any Class III Gaming shall be prohibited for at least four consecutive hours daily, Monday through Thursdays (except federal holidays);

20. Gaming Facility operators and the Navajo Nation shall not provide, allow, contract to provide or arrange to provide alcoholic beverages, food or lodging for no charge or at reduced prices at a gaming facility or lodging facility as an incentive or enticement for patrons to game; and

21. The Navajo Nation, the Navajo Gaming Regulatory Office or a

Management Contractor shall be prohibited from contributing directly, or through an agent, representative or employee, revenue for a gaming enterprise owned by the Navajo Nation, or anything of value acquired with that revenue, to a candidate, political committee or person holding an office elected or to be elected at an election covered by New Mexico's Campaign Reporting Act.

History

CO-75-01, October 16, 2001.

§ 2040. Employee and Player Age Limit

No person under 21 year of age shall be permitted to place any wager, directly or indirectly, in any gaming activity. No person under 18 years of age shall be employed by a Gaming Facility Operator or by the Gaming Regulatory Office. The Gaming Regulatory Office shall by regulation establish measures by which licensees shall enforce the provisions of this Section.

History

CO-75-01, October 16, 2001.

§ 2041. Management Security

A. The Gaming Facility Operator shall have the responsibility for the on-site operation, management and security of the Gaming Facility, and shall comply with all requirements of this Ordinance and the Act. The Gaming Facility Operator shall adopt reasonable procedures, consistent with this Ordinance and the Act, designed to provide for the following: the physical safety of its employees; the physical safety of patrons in the Gaming Facility; the physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department; and the protection of the patrons' and the gaming operation's property from illegal activity.

B. The Gaming Facility Operator shall designate an agent for service of any official determination, order or notice of the Commission.

History

CO-75-01, October 16, 2001.

§ 2042. Internal Controls

A. The Gaming Regulatory Office shall by regulation establish and the Gaming Facility Operators shall implement minimum standards of internal controls to be in place at each licensed Gaming Facility, which shall include systems of accounting and administrative controls. Internal controls include the plan of organization and all of the coordinate methods and measures adopted within a Gaming Operation to safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency and encourage adherence to prescribed managerial policies.

B. The system of accounting controls shall provide a plan of organization

and a description of procedures and records that will permit reasonable assurance that the following objectives will be maintained:

1. Safeguarding of assets;
2. Reliability of financial records;
3. Execution of transaction in accordance with management's general or specific authorization;
4. Recording of transactions as necessary to permit recording of gaming revenue and to maintain accountability for assets;
5. Access to assets only in accordance with management's authorization; and
6. Comparison of records of assets with existing assets at reasonable intervals with provision for appropriate action with respect to any differences.

C. The system of administrative controls shall include a complete plan of organization that will provide appropriate segregation of functional responsibilities and sound practices to be followed in the performance of those duties by competent and qualified personnel. The plan of organization shall be diagrammatic and narrative describing the interrelationship of functions and the division of responsibilities upon which the system of internal control relative to gaming operations is based.

D. Upon written application to the Gaming Regulatory Office, the licensee may request any material change in the internal control system it determines appropriate. The Gaming Regulatory Office shall notify the licensee in writing that such application is accepted or rejected, within 30 days of receiving such application. The written decision of the Gaming Regulatory Office shall constitute final action of the Gaming Regulatory Office.

E. The system of accounting controls shall include a detailed system for counting cash receipts at least daily, and shall be appropriate to the types of Gaming Activities carried on at the facility and the physical characteristics of the system utilized for collecting cash.

F. The Gaming Regulatory Office shall require that all bank accounts maintained by the operators of the Gaming Facility shall be identified by bank and account number and that all signatories to such accounts be identified by name.

History

CO-75-01, October 16, 2001.

§ 2043. Annual Independent Audit

A. Each licensed Gaming Facility Operator shall provide at its own expense an audited financial statement for its licensed Gaming Facility to the Gaming Regulatory Office at least annually, on a date to be established by the

Gaming Regulatory Office, and at such other times as the Gaming Regulatory Office may require.

B. The audit shall be conducted by an independent certified public accountant licensed in a state, who shall submit an audit report expressing an unqualified or qualified opinion or if appropriate, disclaim an opinion on the statement taken as a whole in accordance with generally accepted auditing standards of the accounting profession. The examination and audit shall disclose whether the accounts, records, and internal controls and accounting procedures maintained by the licensed Gaming Facility are in compliance with this Ordinance and the Act. To facilitate the completion of such audits, each licensed Gaming Facility Operator shall make and maintain complete, accurate and legible records of all transactions pertaining to any Gaming Activities and any other revenue producing activities conducted by the licensee at or in conjunction with any licensed Gaming Facility. Such records as well as all original entry transaction records shall be maintained for at least five years from the date on which they are made, and during the pendency of any litigation arising thereunder. Such records shall be maintained on the licensed premises or at a location approved by the Gaming Regulatory Office.

C. Each licensed Gaming Facility Operator shall maintain general accounting records on a double entry system of accounting with detailed, supporting subsidiary, records sufficient to furnish the information required for the standard financial reports to adequately reflect gross income and expenses related to gaming and subsidiary operations.

D. The Gaming Regulatory Office shall from time to time prescribe a uniform chart of accounts and accounting classifications in order to assure consistent and effective disclosure of financial information.

E. The Gaming Regulatory Office, when it deems necessary, may request additional information from either the licensee, or its independent accountant through the licensee, regarding either the financial statements, the audit or both. The licensee shall provide to the Gaming Regulatory Office copies of all letters from the independent accountant to the licensee regarding internal control matters within 30 days after receipt by the licensee.

F. The Gaming Regulatory Office shall provide copies of all annual audits of Gaming Activities and licensees to the Commission as required under the Act, within the time requirements established by the Commission, and shall cooperate with the Commission with respect to any additional information required.

History

CO-75-01, October 16, 2001.

§ 2044. Public Disclosure of Payouts

A schedule of payout information as to all Gaming Activities carried on within a licensed Gaming Facility shall be displayed at all times within the facility at a location clearly visible to patrols, and shall be updated regularly.

History

CO-75-01, October 16, 2001.

§ 2045. Patron Disputes

A. Refusal to Pay Winnings. Whenever the Gaming Facility Operator refuses payment of alleged winnings to a patron, and the Gaming Facility Operator and the patron are unable to resolve the dispute to the satisfaction of the patron and if the dispute involves:

1. At least five hundred dollars (\$500.00), the Gaming Facility Operator shall notify the Gaming Regulatory Office as soon as possible; or

2. Less than five hundred dollars (\$500.00), the Gaming Facility Operator shall inform the patron of his or her right to request that the Gaming Regulatory Office conduct an investigation. The Gaming Regulatory Office shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.

B. Notice to Patrons. The Gaming Regulatory Office shall mail written notice by certified mail, return receipt requested, to the Gaming Facility Operator and the patron of its decision resolving the dispute within 30 days after the date that the Gaming Regulatory Office first receives notification from the Gaming Facility Operator or a request to conduct an investigation from the patron.

C. Effective Date of Decision. The decision of the Gaming Regulatory Office is effective on the date it is received by the aggrieved party as reflected on the return receipt.

D. Review of Decision. Within 30 days after the date of receipt of the written decision, the aggrieved party may file a petition with the Gaming Regulatory Office requesting a review of the decision. The Gaming Regulatory Office may set a hearing on the matter or may make a decision based solely upon the prior decision and other documentation provided to it by the patrol and the gaming facility operator. The Gaming Regulatory Office shall then issue a written decision and mail it to the parties pursuant to the procedures set forth in § 2045(B). The written decision of the Gaming Regulatory Office shall be the final decision of the Gaming Regulatory Office.

History

CO-75-01, October 16, 2001.

§ 2046. Play by Employees

No Primary Management Official, Key Employee, member or staff of the board of directors of a Tribal Gaming Enterprise, Management Contractor, employee of a Gaming Facility, and no employee of the Gaming Regulatory Office shall play or be permitted to play either in person or through an agent in any Gaming Activity carried on in any Gaming Facility licensed by the Gaming Regulatory Office pursuant to this Ordinance.

History

CO-75-01, October 16, 2001.

§ 2047. Small Bingo Games and Raffles

Any non-profit organization, upon proper application to the Gaming Regulatory Office, may conduct or operate a small bingo game or raffle within the territorial jurisdiction of the Nation, in accordance with the regulatory provisions of the Indian Gaming Regulatory Act and the regulations issued by the Gaming Regulatory Office specifying the manner in which such games may be conducted.

History

CAP-34-02, April 18, 2002, amended the Section and deleted Subsection (A), (B), (C) and (D).

CO-75-01, October 16, 2001.

§ 2048. Processing of Contracts

The Department of Justice shall review the recommendation of the Gaming Regulatory Office and, if in compliance with applicable law and regulation, approve the terms of any and all proposed contracts between the Nation or a tribal gaming enterprise and any person or entity which provide for the management or operation of any gaming facility within the Nation, the provision of any and all games services, as well as the terms of any lease of land which is the site or proposed site of such gaming facility.

History

CO-75-01, October 16, 2001.

Subchapter 14. Violations and Remedies

§ 2049. Violations.

It shall be a violation of this Ordinance for any person to:

A. Conduct or operate any Gaming Activities within the Nation except as provided in this Ordinance;

B. Receive, distribute, apply or direct any property, funds, proceeds or other asset of any Gaming Activity to the benefit of any individual or other person except as authorized by this Ordinance or by any duly enacted resolution of the Navajo Nation Council;

C. Tamper with any equipment used in the conduct of Gaming Activities with the intent to cause any person to win or lose any wager other than in accordance with the publicly announced rules of such Gaming Activities;

D. Do any other act in connection with the conduct of any Gaming

Activities with the intent to affect the outcome of any wager other than in accordance with the publicly announced rules of such Gaming Activities;

E. Participate as a player in any Gaming Activities if such person is prohibited under § 2046 from participating in such Gaming Activities; or

F. Participate as a player in any Gaming Activities while such person is listed as a person barred from the Nation's Gaming Facilities as provided in § 2008(G).

History

CO-75-02, October 16, 2001.

§ 2050. Civil Penalties

Any person who violates any provision of this Ordinance or the Act shall be subject to civil penalties including exclusion from employment by a Gaming Facility Operator, exclusion from attendance at any Gaming Facility, exclusion from the Nation if the person is a nonmember of the Nation, or a civil fine of not more than ten thousand dollars (\$10,000) for each such violation.

History

CO-75-02, October 16, 2001.

§ 2051. Civil Remedies

The Gaming Regulatory Office may in the name of the Nation bring a civil action in the courts of the Nation to enforce the provisions of this Ordinance or the Act or to enjoin or otherwise prevent any violation of this Ordinance or the Act occurring within the territorial jurisdiction of the Nation.

History

CO-75-02, October 16, 2001.

Subchapter 15. Amendments; Compliance with Applicable Laws; etc.

§ 2052. Amendments

This Ordinance may be amended by action of the Navajo Nation Council.

History

CO-75-02, October 16, 2001.

§ 2053. Compliance with the Act

All Gaming Activities conducted pursuant to this Ordinance shall comply with the terms and conditions of the Act.

History

CO-75-02, October 16, 2001.

§ 2054. Severability

If any Section, provision, or portion of this Ordinance is adjudged to be invalid by a court of competent jurisdiction, the remainder of this Ordinance will remain valid.

History

CO-75-02, October 16, 2001.

§ 2055. Non-liability

The Nation declares that there is no liability on the part of the Nation, its agencies, agents, or employees for any damages which may occur as a result of reliance upon or conformity with the requirements of this Ordinance. The Nation by adoption of this Ordinance does not waive its sovereign immunity in any respect.

History

CO-75-02, October 16, 2001.

§ 2056. Navajo Preference

Preference in employment and contracting at licensed gambling establishments shall be in compliance with the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, and the Navajo Nation Business Preference Law, 5 N.N.C. § 201 *et seq.*

History

CO-75-02, October 16, 2001.

§ 2057. Prior Inconsistent Law

All prior laws inconsistent with this Ordinance are hereby expressly repealed to the extent of their inconsistency.

History

CO-75-02, October 16, 2001.

Chapter 11. Navajo Nation Business Site Leasing Act

Subchapter 1. Generally

History

CJA-12-01, January 26, 2001.

CAU-42-87, August 12, 1987.
CAP-34-71, April 15, 1971.
CMY-43-70, May 19, 1970.
CAU-59-65, August 4, 1965.
CAP-31-65, April 13, 1965.
ACAU-124-65, § 1, August 2, 1962.
ACMA-38-60, § 3, March 9, 1960.
ACF-12-60, § 1, February 9, 1960.
ACAU-58-57, August 23, 1957.
CS-33-54, September 9, 1954.

Cross References

Trading Post site leases, see 2701 *et seq.* of this title.

Annotations

See annotations under Licenses and Permits in digest.

§ 2301. Title; policy

A. This Chapter shall be known and cited as the Navajo Nation Business Site Leasing Act of 2000; 5 N.N.C. §§ 2301-2305.

B. It shall be the policy of the Navajo Nation that its business site leasing system should accomplish the following goals:

1. To establish streamlined process for the Navajo Business Site Leasing;
2. To authorize the Economic Development Committee to promulgate Navajo Business Site Leasing Regulations;
3. To authorize the Economic Development Committee of the Navajo Nation Council to delegate its approval authority to the Division of Economic Development of the Executive Branch, an entity or chapters of the Navajo Nation according to rules and regulations governing such delegations and rescission of such delegations as developed and approved by the Committee;
4. To protect Navajo land and resources by regulating and limiting types of land use and impacts;
5. To protect public health and welfare by establishing terms and conditions for business activities and by prescribing sanctions for

violations of those terms and conditions;

6. To promote self-determination and encourage economic self-sufficiency, including economic development that increases employment, business activities and standard of living for members of the Navajo Nation; and

7. To encourage business development within the Navajo Nation, and in particular, to encourage Navajos to enter and develop successful business ventures by developing streamlined leasing procedures and providing appropriate incentives and opportunities.

History

CJA-12-01, January 26, 2001, amended Subsection A, B, C and D.

CAU-42-87, August 12, 1987.

§ 2302. Navajo Business Site Leasing Regulations of 2000

A. This Act is an enabling legislation that authorizes the Economic Development Committee to promulgate the Navajo Business Site Leasing Regulations; provided, however, that the Business Site Leasing Regulations contain factors that:

1. Protect and preserve Navajo trust assets from loss, damage, unlawful alienation, waste and depletion;

2. Promote the Navajo Nation control, interest of the Navajo Nation and support the use of the trust assets;

3. Provide asset management system that prudently oversees the management, tracking and inventory of tribal assets;

4. Account for and timely identify, collect, deposit and distribute income from the trust assets or reinvest income or monies into economic development activities or projects;

5. Provide for records and recording system for accounts and leases and other operational and information system; and

6. Provide other provisions that promote modern and up-to-date leasing practices.

B. The Act also authorizes the Economic Development Committee to delegate its approval authority to the Division of Economic Development of the Executive Branch, an entity or chapters of the Navajo Nation provided that the boundaries and principles of the delegation of authorities are appropriately created.

C. According to the authority of promulgating Navajo Business Site Leasing Regulations, the Economic Development Committee shall adopt Navajo Business Site Leasing Regulations governing Navajo trust lands, separate and apart, from Navajo Business Site Leasing regulations governing Navajo fee lands or other types of Navajo lands.

D. A copy of the Business Site Leasing Regulations promulgated under this Act shall be filed with the Central Records Office of the Navajo Nation and any amendments thereof.

History

CJA-12-01, January 26, 2001.

CAU-42-87, August 12, 1987.

§ 2303. Definitions

A. "Economic Development Committee" means a standing committee of the Navajo Nation Council established pursuant to Navajo Nation Council Resolution CD-68-89. See 2 N.N.C. § 721 *et seq.*

B. "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

C. "Navajo Nation Land" means land or any interest therein held by the United States in trust for the Navajo Nation and land that is held by the Navajo Nation subject to federal restrictions against alienation or encumbrance, excluding allotment lands. Navajo Nation land also means Navajo fee land.

D. "Business purposes" means any person, partnership, association, cooperative, company, corporation or other legal entity lawfully engaged in employment, occupation, profession, commercial or industrial activity for gain or livelihood.

E. "Regulations" means the rules and regulations duly adopted by the Economic Development Committee to govern the leasing, permitting and licensing of Navajo Nation land for business purposes under the provisions of this Act, and to govern delegation of authority.

F. "Lease" means business site lease, permits and licenses granting land use privileges in Navajo Nation land for business purposes.

G. "Asset management system" means a system that is designed for the purposes of leasing, renting, operating and maintaining the premises, managing the demised premises and structures affixed to the premises, and a system that accounts, provides for inventory of and tracking of income or money, lands and other property.

History

CJA-12-01, January 26, 2001.

CAU-42-87, August 12, 1987.

Note. CD-62-89 inserted for CJA-1-87, see Subsection (A).

§ 2304. Severability

The provisions of this Act are severable and if any provision of this Act, or its application to any person or circumstance is held invalid by a final judgment of the Navajo Nation Court, such decision shall not affect the validity of the remaining portions of this Act.

History

CJA-12-01, January 26, 2001. Previous § 2304 was rescinded and this new § 2304 was previously codified as § 2318 of this Subchapter.

CAU-42-87, August 12, 1987.

§ 2305. Review of authority

The Economic Development Committee and the Chief of the Office of Business and Economic Development or its successor shall, from time to time, review the authority granted to them under this Act and propose amendments and additions thereto to the Navajo Nation Council in order to improve and streamline the business site leasing process.

History

CJA-12-01, January 26, 2001.

CAU-42-87, August 12, 1987.

§ 2306. Prior inconsistent law(s)

Upon the effective date of this Navajo Nation Business Site Leasing Act of 2000, all prior inconsistent laws, rules, policies, ordinances, and regulations of the Navajo Nation branches, divisions, departments, offices and political subdivisions thereof, are hereby superseded and/or amended to comply herewith.

History

CJA-12-01, January 26, 2001.

CAU-42-87, August 12, 1987.

§§ 2310 to 2321. [Rescinded]

History

CJA-12-01, January 26, 2001.

Chapter 12. Administration of Weights and Measures

§ 2401. Administration of Chapter; Director; appointment

A. There is hereby established as a component of the Business Regulatory Department, the Administration of Weights and Measures.

B. The Director of the Business Regulatory Department shall administer the provisions of this Chapter.

C. The Director, with the approval of the Economic Development Committee, shall appoint a Deputy Director of the Department.

D. The Director shall be chosen based on practical experience, training and knowledge in weights and measures practice, procedures, laws and administrative functions.

E. This Chapter shall become effective on January 1, 1993.

History

CN-74-92, November 4, 1992.

§ 2402. Standard weights and measures

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of such systems shall be used for all commercial purposes in the Navajo Nation. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents, as published by the National Institute of Standards and Technology are recognized and shall govern weighing and measuring equipment and transactions in the Navajo Nation.

History

CN-74-92, November 4, 1992.

§ 2403. Physical standards

Weights and measures that are traceable to the United States prototype standards supplied by the Federal government, or approved as being satisfactory by the National Institute of Standards and Technology, shall be the Navajo Nation's primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the National Institute of Standards and Technology. All secondary standards may be prescribed by the Director and shall be certified upon their initial receipt and as often thereafter as deemed necessary by the Director.

History

CN-74-92, November 4, 1992.

§ 2404. Technical requirements for commercial devices

The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 44, "specifications, tolerances, and other technical requirements for commercial weighing and measuring devices" shall apply to

commercial weighing and measuring devices in the Nation. The edition of the National Institute of Standards and Technology Handbook 44 used by the Nation shall be determined by rule.

History

CN-74-92, November 4, 1992.

§ 2405. Powers and duties; definition

A. The Department shall:

1. Maintain custody of the Nation's standards of weights and measures that are traceable to the United States prototype standards and that are supplied to the states by the Federal government or that are otherwise approved as being satisfactory by the National Institute of Standards and Technology.

2. Keep the Nation's primary standards in a safe and suitable place in the Business Regulatory Department and ensure that they shall not be removed from the laboratory except for repairs or for calibration as may be prescribed by the National Institute of Standards and Technology.

3. Keep accurate records of all standards and equipment.

4. Make any rules necessary to carry out the provisions of this Chapter and issue reasonable rules for the enforcement of this Chapter, which rules shall have the force and effect of law. In making such rules, the Director shall consider, so far as is practicable, the requirements established by other states and by authority of the United States, except that no rules shall be made in conflict with the provisions of this Chapter.

5. Publish such rules adopted pursuant to this Chapter and issue copies to all applicants for license and certification. Updated copies of the rules shall be distributed to all current licensees and certification holders when there is a change in the rules.

6. Establish labeling standards, establish standards of weight, measure of count and establish reasonable standards of fill for any packaged commodity, and the Director may establish standards for open dating information.

7. Grant, pursuant to this Chapter, exemptions from the licensing provisions of this Chapter for commercial weighing and measuring instruments when the ownership and use of the instrument or device are limited to federal, state or local government agencies in the performance of official functions.

8. Delegate to appropriate personnel any of the responsibilities of the Director for the proper administration of this Chapter.

9. Test annually the standards of weight and measure used by any city or town within the Navajo Nation and approve the same when found to be correct.

10. Inspect and test weights and measures kept, offered or exposed for sale.

11. Inspect and test, to ascertain if they are correct, weights and measures commercially used either:

a. In determining the weight, measure or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count.

b. In computing the basic charge or payment for services rendered on the basis of weight, measure or count.

12. Test all weights and measures used in checking the receipt or disbursement of supplies in every institution, for the maintenance of which funds are appropriated by the Navajo Nation Council.

13. Test, approve for use and affix a seal of approval for use of all weight, measure, commercial devices and liquid fuel measuring devices manufactured in or brought into the Navajo Nation as it finds to be correct, and shall reject and mark as rejected such weights, measures and devices as it finds to be incorrect. Weights, measures and devices that have been rejected may be seized by the Department if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The Department shall condemn and may seize weights, measures and devices found to be incorrect that are not capable of being made correct.

14. Sample and test gasoline which is stored, sold or exposed or offered for sale or which is stored for use by a fleet owner to determine whether the gasoline meets the standards for gasoline set forth in the regulations and in any rule adopted by the Director pursuant to this Chapter.

15. Inspect facilities at which gasoline or oxygenated fuel is stored, sold or exposed or offered for sale to determine whether dispensing devices are properly labeled.

16. Issue weighing and measuring instructions and rules, in addition to the certificate of approval, for the information of consumers and the operators of such devices.

17. Weigh, measure or inspect packaged commodities kept, offered or exposed for sale, sold or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this Chapter or rules adopted pursuant thereto. In carrying out the provisions of this Section, the Director shall employ recognized sampling procedures, such as are designated in appropriate National Institute of Standards and Technology Handbooks and supplements thereto, except as modified or rejected by

rule.

18. Allow reasonable variations from the stated quantity of contents only after a commodity has entered intrastate commerce. Such variations shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice.

19. Provide for the weights and measures training of inspection personnel and establish minimum training requirements which shall be met by all tribal weights and measures inspection personnel in the Navajo Nation.

20. Prescribe the standards of weight and measure and additional equipment methods of test and inspection to be employed in the enforcement of this Chapter. The Director may prescribe or provide the official test and inspection forms to be used in the enforcement of this Chapter.

21. Apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating any provision of this Chapter.

22. Employ such personnel as needed to assist in administering the provisions of this Chapter.

23. Establish by rule labeling standards for tanks and containers of liquid fuels and used oil.

B. The Director may provide for the periodic examination and inspection of metering devices of utility companies, including but not limited to such devices utilized to measure usage of electricity, natural gas or water by a consumer.

C. The Directory may establish standards for the presentation of cost-per-unit information. Nothing in this Subsection shall be construed to mandate the use of cost-per-unit information in connection with the sale of any standard packed commodity.

D. The Director may, when necessary to carry out the provisions of this Chapter, adopt and enforce rules relating to quality standards for gasoline, motor fuel, kerosene, oil, except used oil fuel, and hazardous waste fuel, lubricating oils, lubricants, antifreeze and other liquid or gaseous fuels. The Director shall adopt rules to ensure that oxygenated fuels, as described in the regulations of this Chapter, stored, sold, or exposed or offered for sale are blended and stored, sold, exposed or offered in such a manner as to assure that the oxygenated fuels are properly blended, that they meet the standards set forth in the regulations, and in rules adopted pursuant to this Chapter, and that dispensers at which the oxygenated fuels and fuels described pursuant to the regulations are dispensed and labeled as defined by rules of the Department in such manner as to notify persons of the type of oxygenated fuel being dispensed and the percentage of oxygenate by volume contained in the oxygenated fuel. The Director of the Department of Weights and Measures shall consult with the Director of the Nation's Environmental Protection Agency in adopting rules

pursuant to this Subsection.

E. All testing and inspection conducted pursuant to this Chapter shall, to the extent practicable, be done without prior notice and by a random or systematic method determined by the Director. The testing and inspection may be done by private persons and firms pursuant to contracts entered into by the Director in accordance with Title Two of the Nation's laws. The Director shall establish, by rule, qualifications of persons and firms for selection for purposes of this Subsection. The persons or firms conducting the testing and inspection shall immediately report to the Department any violations of the provisions of this Chapter and incorrect weights, measures and devices for investigation and enforcement by the Department. A person or firm that tests or inspects a weight, measure or device which is rejected shall not correct that defect causing the rejection.

F. The Director has full enforcement powers prescribed under this Section with respect to used oil.

G. For purposes of the labeling requirements prescribed in this Section, "oxygenated fuel" means a motor fuel blend containing 1.8 percent (1.8%) or more by weight of oxygen.

History

CN-74-92, November 4, 1992.

§ 2406. Enforcement powers of the Director and inspectors

A. When necessary for the enforcement of this Chapter, the Director or his agents and inspectors shall:

1. Enter any commercial, nonprofit business, or governmental premises during normal operating hours, except that if such premises are not open to the public, he shall first present his credentials.

2. In instances in which violations of applicable standards are found, issue stop-use, hold and removal orders with respect to any weights and measures commercially used, stop-sale, hold and removal orders with respect to any packaged commodities or bulk commodities kept, offered or exposed for sale and stop-use, stop-sale, hold and removal orders with respect to any liquid fuel or used oil kept, offered or exposed for sale. The Director of the Department of Weights and Measures shall inform the Director of the Navajo Nation's Environmental Protection Agency of any action taken pursuant to this paragraph which relates to used oil.

3. Seize or use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package or commodity found to be used, retained, offered or exposed for sale or sold in violation of the provisions of this Chapter or rules adopted pursuant thereto.

4. Any evidence seized by the Administration of Weights and Measures may not be sold within the jurisdiction of the Navajo Nation for

a period of 10 days. Any party adversely affected by this seizure may file documents before the Administrative Hearing Officer seeking temporary relief.

5. Stop any commercial vehicle upon reasonable cause to believe that the vehicle contains evidence of a violation of any provision of this Chapter and, after presentment of his credentials, inspect the contents, require that the person in charge of the vehicle produce any documents in his possession concerning the contents and require him to proceed with the vehicle to some specified place for inspection.

6. With respect to the enforcement of this Chapter, the Director or his agents or inspectors may issue a citation to any violator of this Chapter in accordance with rules developed by the Department.

7. The Director, his agents or an inspector may apply for a special inspection warrant of real or personal property for the purpose of enforcement of this Chapter. Such warrant shall be developed by the Director.

History

CN-74-92, November 4, 1992.

§ 2407. Enforcement

Procedure upon allegation of violation.

A. The Administration of Weights and Measures shall have the authority to investigate any violation and/or complaint under this Chapter.

B. Upon finding of good cause for determination of allegations which, if true, would constitute violation of or noncompliance with any provisions of this Chapter or of any rules or regulations lawfully adopted hereunder, the Administration of Weights and Measures shall investigate such allegations, compiling a complete written report of such investigation, including witness statements; and shall first seek to obtain voluntary compliance and remedial action deemed appropriate under the provisions of this Chapter, to obtain voluntary compliance therewith.

C. If the Administration of Weights and Measures finds noncompliance, the Administration of Weights and Measures may file a complaint with the Administrative Hearing Officer.

1. The complaint and hearing shall be carried out pursuant to procedures drafted by the Administrative Hearing Officer. The procedures shall provide due process but shall not be bound by the formal rules of evidence.

2. The Administrative Hearing Officer shall have the authority to conduct hearings on the matter, and shall sit in the capacity of a quasi-judicial body, with authority to administer oaths and to subpoena witnesses and the production of documents and other objects.

History

CN-74-92, November 4, 1992.

§ 2408. Sanctions

Upon opportunity for hearing and determination as provided herein, the Administrative Hearing Officer may impose any and all of the following sanctions for violation of this Chapter or the rules and regulations lawfully promulgated hereunder:

A. Monetary fines not to exceed five hundred dollars (\$500.00) per day, per violation.

B. Suspension or termination of a party's authorization to engage in business activity on the reservation; provided that the party shall be given a reasonable time to remove its equipment and other property it may have on the reservation and to take such measures to facilitate the satisfaction or assumption of any contractual obligations it has, as approved by the Committee.

C. Prohibit the party from engaging in future business activity on the reservation for a specified period or permanently, in accordance with the provisions and procedures of applicable laws of the Navajo Nation.

D. Require the party to make such changes in its performance, procedures or policies as is necessary in order to comply with these requirements.

E. In accordance with all applicable laws of the Navajo Nation, impose such other sanctions as may be appropriate and necessary to ensure compliance and to remedy any harm done through violation of the requirements of this Chapter.

History

CN-74-92, November 4, 1992.

§ 2409. Appeals

Any party complainant or respondent shall have the right to appeal any final adverse decision of the Administrative Hearing Officer to the appropriate Navajo Nation District Court. Such appeal shall be limited to questions of law and whether the decision is supported by substantial evidence.

History

CN-74-92, November 4, 1992.

§ 2410. Severability

If any provision of this Chapter or any rule or regulation adopted

hereunder or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter and of the rules and regulations adopted hereunder or the application of such provision to other persons or circumstances shall not be affected thereby.

History

CN-74-92, November 4, 1992.

Chapter 13. Regulation of Tour and Guide Services

§ 2501. Permits

A. No person, firm, association or corporation shall, either directly or indirectly, furnish, provide or conduct tour and guide services for hire, for the purposes of touring, visiting, sightseeing or like activities within the Navajo Nation, unless said person, firm, association or corporation shall first obtain a permit from the Parks and Recreation Department of the Navajo Nation to perform such activities within the Navajo Nation.

B. Any person, firm, association or corporation desiring to obtain such permit shall deliver to the Parks and Recreation Department of the Navajo Nation a true copy of the articles of association, partnership, incorporation or organization, whichever the case may be, or similar legal instrument, together with a verified statement showing the rates to be charged for the activity involved, and the basis therefor; and a proposed schedule of routes, distances, and times to be covered by such activity and a valid and original certification of insurance in minimum amount required for the service to be provided.

C. At the time of filing an application for a permit under Subsection (B) of this Section, each person, firm, association or corporation shall pay the Parks and Recreation Department of the Navajo Nation a fee in accordance with a schedule approved by the Resources Committee of the Navajo Nation Council:

D. Nothing in this Section shall relieve any applicant from any other requirements of this Chapter.

E. Upon compliance with all the requirements set forth in Subsections B and C of this Section, and upon satisfaction of the Parks and Recreation Department of the quality of the activity, the Parks and Recreation Department shall issue to the applicant a permit to perform such activities or services within the Navajo Nation. Provided, however, no such permit shall be issued unless the applicant shall first undertake in writing to hold the Navajo Nation harmless for any damages occasioned by the activities of such permittee within the Navajo Nation, and to indemnify the Navajo Nation for any liability which might accrue because of the activities or services of such permittee within the Navajo Nation, and to further agree or abide by any and all regulations adopted, published and enforced pursuant to this chapter. Such permit shall expire on the date specified on the permit and may be renewed annually on a calendar year basis in accordance with this chapter.

History

CJA-06-05, January 28, 2005.

CN-82-72, Exhibit A, §§ 1-3, 5, November 2, 1972.

Notes. 1. References to the "Commerce Department" are referred to as the Division of Economic Development for the purposes of this Chapter.

2. "Treasurer's Office" was repealed by CF-5-73, February 1, 1973. References to the "Treasurer's Office" to have been changed to the Office of the Controller. See generally 12 N.N.C. § 201 et seq.

§ 2502. Adoption of regulations

The Parks and Recreation Department is authorized and directed to adopt, publish and enforce such reasonable rules, regulations and directives as are necessary or convenient to implement this Chapter and to ensure that all facilities, services, vehicles and personnel engaged in the described activities conducted within the Navajo Nation are of such quality as will not discredit the Navajo Nation. The Parks and Recreation Department is granted such authority as is necessary to ensure compliance with this Chapter and with the rules, regulations and directives adopted and published pursuant to this Chapter.

History

CJA-06-05, January 28, 2005.

CN-82-72, Exhibit A, § 4, November 2, 1972.

Notes. 1. "Commerce Department" was discontinued by the 1981 Budget and Organization chart. References to the "Commerce Department" are referred to the "Division of Economic Development" for the purposes of this Chapter.

2. "Treasurer's Office" repealed by CF-5-73, February 1, 1973. References to the "Treasurer's Office" have been changed to the "Office of the Controller." See generally 12 N.N.C. § 201 et seq.

§ 2503. Revocation of permit; Denial of application

A. If, during the period of any permit, the Parks and Recreation Department shall determine that any person, firm, association, or corporation holding a permit shall have failed to abide by the reasonable rules, regulations or directives adopted and published by the Parks and Recreation Department, a notification of such violation or non-compliance shall be forwarded by the Parks and Recreation Department to such person, firm, association or corporation, requiring correction of the discrepancy within the 10 days. If such violation or non-compliance is not corrected within 10 days, then, upon adequate notice and fair hearing in accordance with rules of procedures to be established by the Parks and Recreation Department, such permit shall be suspended and the applicable person, firm, association or corporation shall not be permitted to conduct such activities or services within the Navajo Nation until such violation or non-compliance is corrected.

After correction of such violation or non-compliance, the permit to provide or conduct tour and guide activities or services shall be reactivated by written authorization of the Parks and Recreation Department. If the Permittee remains in violation or non-compliance after 30 calendar days from date of suspension and the Permittee is making an effort to correct the violation or non-compliance, the Parks and Recreation Department shall issue a notice in writing to the Permittee that said permit is revoked.

B. Upon denial or revocation of permit, an aggrieved party may appeal such denial or revocation, within 15 days, to the Office of Hearings and Appeals of the Navajo Nation for review, which forum is hereby specifically granted jurisdiction to hear such appeals. Review by the Office of Hearings and Appeals of the Navajo Nation shall be limited to questions of abuse of discretion and lack of reasonable basis for denial or revocation. After hearing the appeal, the Office of Hearings and Appeals of the Navajo Nation may either affirm the denial or revocation or remand for reconsideration by the Parks and Recreation Department in accordance with the findings of the Office of Hearings and Appeals of the Navajo Nation. Evidence or information not presented to the Parks and Recreation Department shall not be admissible before, or considered by the Office of Hearings and Appeals of the Navajo Nation.

History

CJA-06-05, January 28, 2005.

CN-82-72, Exhibit A, §§ 6-8, November 2, 1972.

Notes. 1. Navajo "Court of Appeals" is referred to as the Supreme Court of the Navajo Nation. See generally 7 N.N.C. § 201 *et seq.*

2. Division of Economic Development, see 2 N.N.C, Subchapter 21.

§ 2504. Operation without permit

A. Any person, firm, association or corporation who shall furnish, provide or conduct any of the prescribed activities or services without first obtaining and without having in its possession a valid permit duly issued as provided for in § 2501 is in violation of this Chapter.

B. The Parks and Recreation Department is hereby authorized to initiate an action in the appropriate District Court of the Navajo Nation, at the discretion of the Parks and Recreation Department and when circumstances warrant, to recover on behalf of the Navajo Nation an amount not exceeding five hundred dollars (\$500.00) for each separate occurrence. Jurisdiction over such actions is hereby specifically granted to the District Court of the Navajo Nation.

C. A person, firm, association or corporation not domiciled on the Navajo Nation and who is in violation of this chapter shall be required to terminate the tour or guide service and exist the Navajo Nation by the most direct route. A person, firm, association or corporation domiciled on the Navajo Nation and who is in violation of this chapter shall be required to terminate the tour or guide service immediately and comply with the requirements of this chapter.

History

CJA-06-05, January 28, 2005.

CN-82-72, Exhibit A, §§ 9, 10, November 2, 1972.

Note. References to "Trial Court" have been changed to the appropriate District Court of the Navajo Nation. See generally 7 N.N.C. § 201 *et seq.*

§ 2505. Severability clause

If any provision of this Chapter or the application of such provision to any person, firm, association or corporation or circumstances shall be held invalid, the remainder of the Chapter and the application of such provision to persons, firms, associations or corporations or circumstances other than those as to which it is held invalid shall not be affected thereby.

History

CJA-06-05, January 28, 2005.

CN-82-72, Exhibit A, § 11, November 2, 1972.

Chapter 15. Traders and Trading Posts

United States Code

Traders with Indians, see 25 U.S.C. §§ 261-264.

Code of Federal Regulations

Licensed Indian traders, see 25 CFR §§ 140.1 to 140.26.0136.

Peddler's permits, see 25 CFR § 141.12.

Subchapter 1. Leasing Regulations Generally

§ 2701. Authority of Economic Development Committee—Generally

A. The Economic Development Committee is authorized and empowered by and with the advice of the Navajo Nation Department of Justice to fix and determine the final terms and conditions for settling disputes, terminating leases for any cause, and any and all other matters of whatsoever kind or character in regard to trading-post site leases, and to add any other terms or conditions deemed necessary or advisable to protect the best interest of the Navajo Nation, subject to approval of the Secretary of the Interior or his authorized representative.

B. The Economic Development Committee shall adopt such regulations or procedures as are deemed necessary to expedite the leasing of trading posts on the Navajo Nation.

History

Subsection (A): CJ-38-54, § 3, 1954 Res. p. 143, June 3, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955; Subsection (B): ACN-42-54, § 10, 1954 Res. p. 147, November 17, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

CF-14-54, 1954 Res. p. 139, February 12, 1954, contained substantially the same provisions as CJ-38-54, but it was returned by the Indian Office for reconsideration May 27, 1954.

CO-73-53, 1953 Res. p. 180, October 9, 1953, authorized consideration of proposed Trading Site Lease Regulations.

CJ-7-53, 1953 Res. p. 175, January 14, 1953; CJ-2-52, 1952 Res. p. 92, January 17, 1952; 1922-1951 Res. p. 523, October 19, 1950; 1922-1951 Res. p. 514, December 2, 1949; 1922-1951 Res. p. 513, December 2, 1949; 1922-1951 Res. p. 511, December 2, 1949; 1922-1951 Res. p. 510, December 2, 1949; 1922-1951 Res. p. 508, December 2, 1949; 1922-1951 Res. p. 507, December 2, 1949; 1922-1951 Res. p. 506, December 2, 1949; 1922-1951 Res. p. 505, December 9, 1948; 1922-1951 Res. p. 503, June 28, 1948; 1922-1951 Res. p. 496, March 20, 1948; 1922-1951 Res. p. 494, July 11, 1947; 1922-1951 Res. p. 554, September 15, 1938, authorized various rules and regulations governing licenses or permits to traders.

Revision note. Navajo Nation Business Site Leasing Act of 1987 gave authority to the Economic Development Committee 5 N.N.C. § 2301 *et seq.*; see also, Economic Development Committee powers, 2 N.N.C. § 724(B)(1).

Cross References

Business leases, permits and licenses, see § 2301 *et seq.* of this title.

United States Code

Lease of restricted lands, see 25 U.S.C. § 635 (see Acts of Congress in Appendix of N.N.C.).

Code of Federal Regulations

Leases and permits, see 25 CFR § 162.100 *et seq.*

§§ 2702 to 2704. [Superseded]

History

Superseded. CAU-42-87, codified at 5 N.N.C. § 2301, *et seq.*

ACAU-196-87 established the Division of Economic Development which abolished the Trading Superior's Office.

CD-43-54, § 3, 1954 Res. p. 164, December 9, 1954, app. by Acting General Superintendent, app. by Indian Office January 17, 1955.

1922-1951 Res. p. 507, December 2, 1949, established position of Trading Supervisor, set forth the compensation and duties thereof, and provided for clerical assistance.

Cross References

Changes in location of mission and trading post sites, see note under 16 N.N.C. § 1151.

§ 2705. Multiple ownership

Whenever the Economic Development Committee finds that the ownership of three or more trading posts tends to create monopoly in trading on the Navajo Nation or in any trading area of the Navajo Nation, it may issue a short term lease, or leases, for any such posts in excess of one for not less than three years; subject to the condition that at the expiration of such three-year term the Economic Development Committee may order the disposition of one or more such posts within the ensuing four years.

History

CJ-38-54, § 2, 1954 Res. p. 143, June 3, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

Cross References

Navajo Business Site Leasing Act of 1987, see 5 N.N.C. § 2301 *et seq.*

§ 2706. [Superseded]

History

CAU-42-87, August 12, 1987.

This is governed by 5 N.N.C. § 2301 *et seq.*, the Navajo Nation Business Site Leasing Act.

§ 2707. [Superseded]

History

CAU-42-87, August 12, 1987. See 5 N.N.C. § 2311.

§ 2708. [Superseded]

History

CAU-42-87, August 12, 1987. See 5 N.N.C. § 2317.

§ 2709. [Superseded]

History

CAU-42-87, August 12, 1987. See 22 N.N.C. § 1101 *et seq.*, the Navajo Nation

Water Code.

§ 2710. [Superseded]

History

CAU-42-87, August 12, 1987. See 5 N.N.C. § 2316.

§ 2711. [Superseded]

History

CAU-42-87, August 12, 1987. See 5 N.N.C. § 2317.

§ 2712. Books and records

A. The duly authorized representatives of the Navajo Nation shall have the right to inspect or audit the books and records of each lessee at any reasonable time. Lessees shall keep such records and books of account as are ordinarily kept by operators of similar businesses. In the event of failure or refusal to keep records adequate for the purpose of complying with the lease, the Division of Economic Development may require the keeping of approved records and books of account, and refusal or failure to comply with such requirement shall constitute cause for termination of the lease.

B. Lessees whose books and records are regularly kept and maintained at a place other than the trading site shall notify the Nation's representatives of the place where they may be inspected and audited, provided, however, that such place shall be in a town bordering the Navajo Nation.

History

CJ-38-54, § 1(d), 1954 Res. p. 143, June 3, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

§ 2713. Legal tender

No tin money or other substitutes of any character for the currency of the United States shall be used as legal tender in lieu of money in any trading post leased pursuant to the provisions of this Subchapter.

History

ACN-42-54, § 9, 1954 Res. p. 147, November 17, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

§ 2714. Check cashing

Whenever checks are cashed at trading posts, leased pursuant to the provisions of this Subchapter, the entire proceeds of such checks shall be paid in cash to the payee.

History

ACN-42-54, § 9, 1954 Res. p. 147, November 17, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

§ 2715. Influencing of Navajo Nation elections

A. No non-Navajo lessee shall, directly or indirectly, influence or seek to influence, the action of any Navajo Nation election or the election or defeat of any candidate for office by any method whatsoever.

B. Any such attempt on the part of any employee or agent of the lessee shall be conclusively presumed to be the action of the lessee. Violation of the provisions of this Section shall be deemed cause for termination of lessee's lease, or refusal to grant a lease for more than three years at the discretion of the Economic Development Committee.

History

ACN-42-54, § 8, 1954 Res. p. 147, November 17, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

Cross References

Causes for termination of lease generally, see § 2710 of this title.

Elections generally, see 11 N.N.C. § 1 *et seq.*

Influencing elections, see 11 N.N.C. § 209 and §§ 361-364.

§ 2716. [Deleted and superseded]

History

CO-73-90, see 15 N.N.C. § 601 *et seq.*, Navajo Preference in Employment Act.

Subchapter 3. Fact Finding Board [Superseded]

History

Revision note. Subchapter 3. Fact Finding Board has been superseded by 6 N.N.C. § 2301, Navajo Nation Business Site Leasing Act of 1987.

Chapter 17. Non-Navajo Guides

§ 3001. License requirement

It shall be unlawful and a trespass for any person other than a Navajo Indian to act as a guide for hire or to conduct any tourist upon Navajo Nation lands for a consideration without first obtaining a license for that purpose from the Navajo Parks Commission.

History

CD-74-62, §§ 9 and 10, December 6, 1962 and CF-31-57, § 7, February 16, 1957

amended CM-32-56, § 1, 1956, Res. p. 166, May 22, 1956, app. by General Superintendent, June 1, 1956.

Amendments 1962. CD-74-62, § 9, December 6, 1962, amended this Section and §§ 3002 and 3003 of this Title by substituting "Navajo Parks Commission" for "Chairman of the Navajo Tribal Council", wherever the words appeared. CF-31-57, February 16, 1957, which had amended the Section to substitute "Navajo Park Commission" for "Chairman of the Navajo Tribal Council" was repealed by CD-74-62, § 10.

Amendments 1957. CM-32-56 was amended by CF-31-57, § 7, which substituted words "Navajo Tribal Park Commission" for words "Chairman of the Navajo Tribal Council" wherever they appeared.

Cross References

Navajo Tribal Parks Commission generally, see 19 N.N.C. § 201 *et seq.*

§ 3002. Issuance of license; term; fees

The Navajo Parks Commission may issue a license to any person of good moral character and of adequate finances to act as a guide for tourists on Navajo Nation lands. Such license shall be for a term not to exceed five years and shall provide for the payment to the Navajo Nation of ten percent (10%) of the receipts of such person on account of acting as a guide or conductor of tourists on Navajo Nation lands. A minimum advance fee of one hundred dollars (\$100.00), which shall be credited against the percentage fees, shall be collected before any such license shall be issued.

History

CD-74-62, §§ 9 and 10, December 6, 1962 and CF-31-57, § 7, February 16, 1957 amended CM-32-56, § 1, 1956, Res. p. 166, May 22, 1956, app. by General Superintendent, June 1, 1956.

Amendment 1962. See Note under § 3001 of this title.

Amendment 1957. See Note under § 3001 of this title.

§ 3003. Rules and regulations; authority to adopt

The Navajo Parks Commission is authorized to adopt rules and regulations and do all things necessary to implement or supplement the provisions of this Chapter.

History

CD-74-62, §§ 9 and 10, December 6, 1962 and CF-31-57, § 7, February 16, 1957 amended CM-32-56, § 1, 1956, Res. p. 166, May 22, 1956, app. by General Superintendent, June 1, 1956.

Chapter 19. Navajo Nation Corporation Code

Subchapter 1. General Corporation Law

§ 3100. Policy and purpose

The Navajo Nation Corporation Code is hereby enacted:

A. The purpose of this Code is to permit the formation of various corporate entities and require registration of foreign corporations; and to regulate such entities so as to promote economic growth and further the exercise of tribal sovereignty in the governance of its territory and citizens.

B. This Code is based upon the American Bar Association's Model Business Corporation Act, the Model Close Corporation Act and the Model Code, and the various agricultural cooperative acts of several states. The interpretation of this Code shall be based on Navajo Nation Court interpretation and such interpretation shall give the utmost respect in deciding the meaning and purpose of this Code to the unique traditions and customs of the Navajo people. General decisional law interpreting similar provisions of the above Model Acts and state agricultural cooperative acts may be used as guidance.

C. Unless otherwise expressly provided by law, the sovereign immunity of the Navajo Nation shall not extend to corporate entities organized under this Code, nor shall such entities be considered a subdivision, entity or enterprise of the Navajo Nation, nor shall the Navajo Nation be liable for the debts or obligations of any kind of such entities.

D. The provisions of this Code shall be fully implemented within 180 days of the date of its adoption by the Navajo Nation Council; provided however, the issuance of certificates of incorporation shall be issued on the date of adoption. The Division of Economic Development through its Business Regulatory Department shall administer the provisions of this Code. The Division of Economic Development is directed to prepare an appropriate supplemental budget for carrying out its responsibilities under this Code.

History

CJA-2-86, January 30, 1986.

Annotations

1. Construction and application

"The Navajo Nation Council adopted the concept of corporations from *Bilagáana* law. Like other jurisdictions, the Navajo Nation provides the opportunity to incorporate, that is, to create a legal entity called a corporation. See 5 N.N.C. §§ 3100 *et seq.* (2005)." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 10 (Nav. Sup. Ct. August 7, 2006).

2. Corporation as a person

"The decision to incorporate renders a corporate entity a separate 'person' from its officers and staff for purposes of the unauthorized practice of law. One primary motivation to incorporate is to separate the personal liability of

officers, staff, and shareholders from that of the corporate entity, so that when the entity is sued for actions taken by those natural persons, the judgment is satisfied by the corporation's funds." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 11 (Nav. Sup. Ct. August 7, 2006).

"While the resulting corporation is treated as a 'person' for various purposes, the Court holds it has a separate legal existence from its officers and staff and is therefore a separate 'person' for purposes of the prohibition against the unauthorized practice of law. The choice to incorporate carries benefits but also, importantly, consequences. Among the consequences of incorporation is the inability of its agents to represent the corporate entity 'pro se'." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 11 (Nav. Sup. Ct. August 7, 2006).

Article 1. Title; Definitions; Purposes

§ 3101. Short title

This Chapter shall be known and may be cited as the "Navajo Nation Corporation Act."

History

CJA-2-86, January 30, 1986.

§ 3102. Definitions

A. "Articles of Incorporation" include the original articles of incorporation, articles of merger or consolidation and all amendments thereto.

B. "Attorney General" means the Attorney General of the Navajo Nation.

C. "Authorized shares" means the aggregate number of shares, whether with or without par value, which the corporation is authorized to issue.

D. "Capital surplus" means the entire surplus of a corporation other than its earned surplus.

E. "Corporation" or "domestic corporation" means a for profit or non-profit corporation subject to the provisions of this Chapter, except a foreign corporation.

F. "Court", except where otherwise specified, means the Navajo Nation District Court having jurisdiction over civil actions.

G. "Department" means the Department of Commerce within the Division of Economic Development or its designated successor.

H. "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated

capital, and capital surplus to the extent such distribution and transfers are made out of earned surplus. Earned surplus shall also include any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

I. "Foreign corporation" means a corporation for profit or not for profit organized under laws other than the laws of the Navajo Nation.

J. "Incorporator" means a signer of the original articles of incorporation.

K. "Insolvent" means that the total liabilities of the corporation exceed a fair valuation of its total assets.

L. "Navajo Indian Country" has the same meaning as in 7 N.N.C. § 254.

M. "Non-profit corporation" means a corporation, no part of the income or profit of which is distributable to its members, directors or officers, except this Chapter shall not be construed as prohibiting the payment of reasonable compensation for services rendered or a distribution upon dissolution or liquidation as permitted by Subchapter 2.

N. "Person" means both natural persons, either Navajo or non-Navajo, and foreign and domestic corporations and tribal governments and their political subdivisions.

O. "Registered office" means that office maintained by the corporation within Navajo Indian Country, the address of which is on file with the department.

P. "Shareholder" means one who is a holder of record of shares in a corporation.

Q. "Shares" are the units into which the shareholders' right to participate in the control of the corporation, in its surplus or profits, or in the distribution of its assets, are divided.

R. "Stated capital" means, at any particular time, the sum of:

1. The par value of all shares of the corporation having a par value that have been issued;

2. The amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law; and

3. Such amounts not included in subdivisions 1 and 2 of this Paragraph as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as has been effected in a manner permitted by law.

4. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a for profit foreign corporation shall be determined on the same basis and in the same manner as stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by this Chapter.

S. "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

T. "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been cancelled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares but not "outstanding" shares.

History

CJA-2-86, January 30, 1986.

Annotations

1. Non-profit

"NHA formed Cabinets as a subsidiary of NHA to operate the cabinet business referenced in the lease with the Navajo Nation. Resolution No. NHA-3016-98, Whereas clause nos. 3, 4 (March 5, 1998). Cabinets incorporated as a non-profit entity under the Navajo Nation Non-Profit Corporation Act, 5 N.N.C. § 3301 *et seq.*" *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 5 (Nav. Sup. Ct. February 11, 2004).

§ 3103. Authorized purposes for organization of corporation

Corporations for profit may be organized under this Chapter for any lawful purpose or purposes.

History

CJA-2-86, January 30, 1986.

§ 3104. General powers

A. Each corporation shall have the power:

1. To have perpetual succession of its corporate name unless a limited period of duration is stated in its articles of incorporation;

2. To sue and be sued, complain and defend, in its corporate name;

3. 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 or in any other manner reproduced, provided however corporate seals shall not duplicate or closely resemble the seals of the Navajo Nation or its entities;

4. To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, and to own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, including shares or other interests in, or obligations of, other domestic or foreign corporations, non-profit corporations, associations, partnerships, limited partnerships, or individuals or governmental units or bodies, wherever situated;

5. To redeem, acquire, cancel reacquired shares, reacquire and restore to the status of authorized but unissued, shares of stock issued by the corporation, but subsequently acquired by the corporation;

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

7. To lend money to, and otherwise assist, its employees;

8. To make contracts including contracts of guaranty, suretyship and indemnification and incur liabilities; to borrow money, to issue its notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property or income, except for property or income held in trust subject to legal restrictions on hypothecation;

9. To invest its surplus funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned;

10. To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Chapter outside of Navajo Indian Country and to exercise in any reservation, state, territory, district, or possession of the United States, or in any foreign country the powers granted by this Chapter subject to the laws of such jurisdictions;

11. To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation;

12. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the Nation, for the administration and regulation of the affairs of the corporation;

13. To make contributions to charitable organizations;

14. To cease its corporate activities and surrender its corporate franchise; and

15. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed.

B. Corporations organized under this Chapter shall not have the power to engage in banking business.

History

CJA-2-86, January 30, 1986.

§ 3105. Corporate name

A. The corporate name of a domestic corporation:

1. Shall contain the word "corporation", "company", "incorporated", or "limited", or shall contain an abbreviation of one of such words;

2. Shall not include the words "trust" or "trust company", separately or in combination to indicate or convey the idea that the corporation is engaged in trust business unless such corporation is to be and becomes actively and substantially engaged in trust business or such corporation is a holding company holding substantial interest in companies actively and substantially engaged in trust business;

3. 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;

4. Shall not be the same as, or deceptively similar to, the name of any other entity organized or registered under this Code; and

5. Shall not contain the words "Navajo Nation" or "Navajo Tribe", nor in any way imply that it is associated with the Navajo Nation government or a Navajo Nation entity, unless the Navajo Nation is a majority stockholder.

History

CJA-2-86, January 30, 1986.

Article 2. Organic Documents

§ 3106. Incorporators

One or more persons may act as incorporators of a corporation by signing and filing in duplicate with the department articles of incorporation. Upon filing of the articles of incorporation and compliance with applicable regulations, the Department shall issue a certificate of incorporation.

History

CJA-2-86, January 30, 1986.

Note. The "Department", as referred to in this Subchapter, is the Business Regulatory Department within the Division of Economic Development.

§ 3107. Contents of 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 cooperation is organized;
4. A brief statement of the character of the business which the corporation initially intends to conduct;
5. The class and aggregate number of shares which the corporation shall have the authority to issue and the par value of each of said shares, or a statement that all of said shares are without par value;
6. Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation;
7. The address, including street and number, if any, of its principal office, and the name of its initial registered agent at such address;
8. The number of directors constituting the initial board of directors and the names and addresses, including street and number, if any, of the persons who are to serve as directors until the first annual meeting of shareholders; or until their successors are elected and qualified. The minimum number of directors constituting the initial board shall be one;
9. The name and address, including street and number, if any, of each incorporator; and
10. A provision stating that the corporation will agree to abide by all criminal, civil and regulatory laws of the Navajo Nation.

B. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Chapter. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

C. The articles of incorporation may provide for arbitration of any deadlock or dispute involving the internal affairs of the corporation.

History

CJA-2-86, January 30, 1986.

Annotations

1. Construction and application

"We believe the Navajo Nation possesses the same authority over corporations organized under Navajo law, as such corporations elected to incorporate under Navajo law, and therefore must abide by Navajo law as a condition of their existence. Cf. 5 N.N.C. § 3107(A)(10) (requiring explicit agreement by

for-profit corporations to abide by Navajo law in articles of incorporation)." *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 7 (Nav. Sup. Ct. February 11, 2004).

§ 3108. Effect of issuance of certificate of incorporation

Upon the issuance of the certificate of 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 incorporators have been complied with and that the corporation has been incorporated under this Chapter, except as against the Navajo Nation in a proceeding to cancel or revoke the certificate of incorporation.

History

CJA-2-86, January 30, 1986.

§ 3109. Bylaws

The power to make, alter, amend, or repeal the bylaws of the corporation shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law, or the articles of incorporation.

History

CJA-2-86, January 30, 1986.

Article 3. Stock and Stockholders

§ 3110. Power to issue shares

Each corporation shall have the power to create and issue the number of shares in its articles of incorporation.

History

CJA-2-86, January 30, 1986.

§ 3111. Subscriptions, considerations, payment for shares, and determination of amount of stated capital

Subscriptions, consideration, payment for shares and determination of amount of stated capital, shall be governed consistent with the provisions of the Model Business Corporation Act (as revised and approved as of January 1, 1986, by the American Bar Association Committee on Corporate Laws).

History

CJA-2-86, January 30, 1986.

§ 3112. Transfer of stock

Stock shall be freely alienable except to the extent restricted by the articles of incorporation or bylaws, and except that this Section shall not be construed to restrict the operations of applicable blue sky or securities laws. No public offering of a security may be made without proof to the Department of compliance with such applicable blue sky or securities laws.

History

CJA-2-86, January 30, 1986.

§ 3113. Denial or restriction of voting rights

A corporation may deny or restrict the voting rights of any of its stock, in its articles of incorporation, so long as it does not restrict or deny voting class shareholders' right to cumulative voting and preemptive right to acquire additional shares of the corporation.

History

CJA-2-86, January 30, 1986.

§ 3114. Expenses of organization, reorganization, and financing

The reasonable charges and expenses of organization or reorganization of a corporation may be paid out of the consideration received by the corporation in payment for its shares without thereby rendering such shares not fully paid.

History

CJA-2-86, January 30, 1986.

§ 3115. Stock certificates; representation of shares; signers; restrictions or limitations on transferability; contents

A. The shares of a corporation shall be represented by certificates signed by the president. In case any officer who has signed such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if such officer had not ceased to hold such office at the date of its issue.

B. Every certificate representing shares, the transferability of which is restricted or limited, shall set forth a summary statement of any such restriction or limitation upon the transferability of such shares, on its face, and shall set forth on the back thereof a full statement of any such restriction or limitation upon the transferability of such shares, or shall state that the corporation will furnish to any shareholder upon request and without charge such statement.

C. Each certificate representing shares shall also state:

1. That the corporation is organized under the laws of the Navajo Nation;

2. The name of the person to whom issued;

3. The number and class of shares which such certificate represents; and

4. The par value of each share represented by such certificate, or a statement that the shares are without par value.

D. No certificate shall be issued for any share until such share is fully paid.

History

CJA-2-86, January 30, 1986.

§ 3116. Liability of subscribers and shareholders

A. A holder or a subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which said shares were issued or to be issued, which, as to shares having a par value, shall be not less than the par value thereof, except as set forth in Subsection (C) below. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid, shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

B. No person holding shares as executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall be personally liable as a shareholder, but the shareholder estate and funds in the hands of said executor, administrator, conservator, guardian, trustee, assignee, or receiver shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

C. A holder or subscriber to shares of a corporation is presumed not to be personally liable for the debts of the corporation, but may be personally liable to the corporation in proportion to their ownership interest, after all assets of the corporation have been applied to claims of creditors, and the debts, obligations and liabilities of the corporation are not thereafter paid and discharged, to the extent determined by the court based upon the application of general decisional law relating to the piercing of the corporate veil, pursuant to 7 N.N.C. § 204. The court may consider in making shareholders liable hereunder, whether under the circumstances giving rise to claims of creditors, the acts or omissions by the corporation involved:

1. Fraud;
2. Misrepresentation;
3. Thin-capitalization;
4. Ultra-hazardous activities;

5. Violation of applicable consumer protection laws;
6. Criminal wrong-doing;
7. Failure to maintain a reasonable amount of liability insurance coverage for the acts or omissions of its directors, officers, employees or agents; or
8. Failure to comply with any provision of this Code.

D. No right to contribution shall exist between the shareholders and no liability under this Section shall be asserted more than one year from the later of the time a creditor's claim in tort or contract accrued or the date such claim should have been discovered.

History

CJA-2-86, January 30, 1986.

§ 3117. Voting of shares; exclusion of shares or corporation's own stock; determination of number of outstanding shares

A. Unless otherwise provided in the articles of incorporation, each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders.

B. Shares of treasury stock belonging to a corporation shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time, but shares of its own stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares at any given time.

C. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his/her duly authorized attorney in fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it or his/her personal representatives or assigns; but the parties to a valid pledge or to an executory contract of sale may agree in writing as to which of them shall vote the stock pledged or sold, until the contract of pledge or sale is fully executed.

D. In all elections for directors every shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of shares owned by him/her, for as many persons as there are directors to be elected, or to cumulate said shares, and give one candidate as many votes as the number of such directors multiplied by the number of his/her shares shall equal, or to distribute such votes on the same principle among any number of such candidates.

History

CJA-2-86, January 30, 1986.

§ 3118. Certain holders; proxy presumed valid

A. Shares outstanding in the name of another corporation may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. A proxy purporting to be executed by a corporation shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

B. Shares outstanding in the name of a deceased person may be voted by his/her administrator or executor, either in person or by proxy. Shares outstanding in the name of a guardian, conservator, or trustee may be voted by such fiduciary, either in person or by proxy, but no guardian, conservator, or trustee shall be entitled, as such fiduciary, to vote shares held by him/her without evidence of the guardian, conservator, or trust relationship with the shareholder.

C. Shares outstanding in the name of a receiver or a trustee in bankruptcy may be voted by such a receiver or trustee, and shares held by or under the control of a receiver or a trustee in bankruptcy may be voted by such receiver or trustee without the transfer thereof into his/her name, if authority to do so be contained in an appropriate order of the court, by which such receiver or trustee in bankruptcy was appointed.

D. Shares outstanding in the name of a partnership may be voted by any partner. A proxy purporting to be executed by a partnership shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

E. Shares outstanding in the name of two or more persons as joint tenants, or tenants in common, or tenants by the entirety, may be voted in person or by proxy by any one or more of such persons. If more than one of such tenants shall vote such shares, the vote shall be divided among them in proportion to the number of such tenants voting in person or proxy unless a different apportionment by such tenants is requested in writing prior to the vote.

History

CJA-2-86, January 30, 1986.

§ 3119. Stockholders' meetings

A. The bylaws of a corporation shall provide for an annual meeting of stockholders.

B. Meetings of shareholders may be held at such place within or without the boundaries of Navajo Indian Country as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the principal office of the corporation.

C. Special meetings of the shareholders may be called by the president, the secretary, the board of directors, the holders of not less than one-fifth of all the outstanding shares entitled to vote, or by such other officers or persons as may be provided in the articles of incorporation, or the bylaws.

History

CJA-2-86, January 30, 1986.

§ 3120. Notice

A. Except as provided herein, 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 bylaws specifying a different period of notice, be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting.

B. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his/her address as it appears on the records of the corporation, with postage thereon prepaid.

C. Notice may be waived in writing by any shareholder, and will be deemed to be waived by any shareholder attending the meeting in person.

History

CJA-2-86, January 30, 1986.

§ 3121. Quorum of shareholders required

A. Unless otherwise provided in the articles of incorporation, or bylaws, a majority of the outstanding shares having voting power, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders; provided, that in no event shall a quorum consist of less than one-third of the outstanding shares having voting power.

B. The shareholders present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

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

D. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number is required by this Chapter, or the articles of incorporation; provided however, that in elections of directors, those receiving the greatest number of votes shall be deemed elected even though not receiving a majority.

History

CJA-2-86, January 30, 1986.

§ 3122. Dividends declaration and payment on outstanding shares; restrictions on payment on dividends

The board of directors of a corporation may declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, subject to the following provisions:

A. No dividend shall be declared or paid at a time when the corporation is insolvent or its net assets are less than its stated capital, or when payments thereof would render the corporation insolvent or reduce its net assets below its stated capital;

B. Dividends may be paid out of earned surplus or surplus arising from the surrender to the corporation of any of its shares, provided that the source of such dividends shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof. The limitations of this Paragraph shall not limit nor be deemed to conflict with the provisions of this Chapter in respect of the distribution of assets as a liquidating dividend;

C. If a dividend is declared payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred from earned surplus to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregated par value of the shares to be issued as a dividend;

D. If a dividend is declared payable in its own shares without par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred from earned surplus to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregated value so fixed in respect of such shares. The amount per share transferred to stated capital shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof;

E. A split-up or division of issued shares into a greater number of shares of the same class shall not be construed to be a share dividend within the meaning of this Section;

F. No dividend shall be declared or paid contrary to any restrictions contained in the articles of incorporation; and

G. Subject to any restrictions contained in its articles of incorporation, the directors of any corporation engaged in the exploitation of wasting assets (oil, gas or other minerals) may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such wasting assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation, and may pay dividends from the net profits so determined by the directors.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004)

§ 3123. Stockholders' right on inspection

A stockholder of a corporation or his/her agent may inspect and copy during usual business hours any records or documents of the corporation relevant to its business and affairs, including any:

- A. Bylaws;
- B. Minutes of the proceedings of the stockholders and directors;
- C. Annual statement of affairs;
- D. Stock ledger; and
- E. Books of account.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

§ 3124. Statement of affairs

A. Once during each calendar year, one or more stockholders of a corporation may present to any officer of the corporation a written request for a statement of its affairs.

B. Within 20 days after a request is made for a statement of corporation's affairs, the corporation shall prepare and have available on file at its principle office a statement, verified under oath by its president or treasurer or its Vice-President or assistant treasurer, which sets forth fairly and accurately, in reasonable detail, the corporation's assets and liabilities as of a reasonable current date. This statement once prepared, shall fulfill the request for such a statement made by any shareholder for the following 12 months.

History

CJA-2-86, January 30, 1986.

Article 4. Board of Directors; Officers

§ 3125. Organization meeting of Directors

Unless otherwise provided in the articles of incorporation, 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 United States, at the call of a majority of the directors so named, for the

purpose of adopting bylaws, 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 days notice thereof by mail to each director so elected, 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.

History

CJA-2-86, January 30, 1986.

§ 3126. Board of Directors; powers authorized; qualifications

A. The business and affairs of a corporation shall be managed by a board of directors. Directors need not be shareholders in the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

B. Unless otherwise provided in the articles of incorporation or bylaws, the board of directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any director, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers, or otherwise.

History

CJA-2-86, January 30, 1986.

§ 3127. Number; election

The number of directors shall be fixed by the bylaws, except as to the number constituting 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 bylaws. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of share holders or until their successors shall have been elected and qualified. Each director shall hold office for the term for which he/she is elected or until his/her successor shall have been elected and qualified.

History

CJA-2-86, January 30, 1986.

§ 3128. Classification

The bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. Absent any

such classifications the term of a director shall be for one year. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

History

CJA-2-86, January 30, 1986.

§ 3129. Vacancies

Any directorship to be filled by reason of an increase in the number of directors may be filled by election at an annual meeting or at a special meeting of shareholders entitled to vote called for that purpose. Any vacancy occurring in the board of directors for any cause other than by reason of an increase in the number of directors may be filled by an affirmative vote of a majority of the remaining directors, unless the articles of incorporation otherwise provide. A director elected to fill a vacancy shall be elected for the unexpired term of his/her predecessor in office.

History

CJA-2-86, January 30, 1986.

§ 3130. Quorum

A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw 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 a greater number is required by the articles of incorporation or the bylaws. 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 of a greater number is required by the articles of incorporation or the bylaws.

History

CJA-2-86, January 30, 1986.

§ 3131. Executive committee; powers

If the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors then of the number stated in the articles of incorporation, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution or in the bylaws of the corporation shall have and may exercise all of the authority of the board of directors in the management of the business and affairs of the corporation, but, the designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

History

CJA-2-86, January 30, 1986.

§ 3132. Place of meetings; special meetings

Meetings of the board of directors, regular or special, may be held at such place within or without the boundaries of Navajo Indian Country as may be provided in the bylaws or by resolution adopted by a majority of the board of directors.

History

CJA-2-86, January 30, 1986.

§ 3133. Notice of meetings; waiver of notice

Meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

History

CJA-2-86, January 30, 1986.

§ 3134. Officers; powers authorized

A. The officers of a corporation shall consist of at least a president and secretary, and may additionally consist of one or more vice-presidents and a treasurer, as may be prescribed by the bylaws. Each officer shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. If the bylaws so provide, any two or more offices may be held by the same person.

B. 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 bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

History

CJA-2-86, January 30, 1986.

§ 3135. Removal

Any officer or agent elected or appointed by the board of directors may be removed by a majority vote of the board of directors whenever in its judgment the best interests 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.

History

CJA-2-86, January 30, 1986.

§ 3136. Execution of documents

Notwithstanding any contrary provision of law, an individual who holds more than one office in a corporation may act in more than one capacity to execute, acknowledge, or verify any instrument required to be executed, acknowledged, or verified by more than one officer.

History

CJA-2-86, January 30, 1986.

§ 3137. Books and records; requirements for right to examine and make extracts therefrom

A. Each corporation shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of its shareholders and board of directors, and shall keep at its principal place of business or at the office, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each. Books, records and minutes shall be in written form, or in any other form capable of being converted into written form within a reasonable time.

B. Nothing herein contained shall impair the power of the court upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him/her, to compel by mandamus or otherwise the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders.

History

CJA-2-86, January 30, 1986.

§ 3138. Liability of directors in certain cases

A. In addition to any other liabilities imposed by law upon directors of a corporation:

1. Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this Chapter or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets

which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this Chapter or the restrictions in the articles of incorporation;

2. Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this Chapter or contrary to any restrictions contained in the articles of incorporation shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this Chapter; and

3. The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

B. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter under Subsection (A) is taken shall be presumed to have assented to the action taken unless his/her dissent shall be entered in the minutes of the meeting or unless he/she shall file his/her written dissent to such action with the secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered or certified mail to the secretary of the corporation before five o'clock in the afternoon of the next day which is not a holiday or a Saturday after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

C. A director shall not be liable under Subsection (A) if he/she relied and acted in good faith upon financial statements of the corporation represented to him/her to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he/she be so liable if in good faith in determining the amount available for any such dividend or distribution he/she considered the assets to be fairly valued at their book value.

D. Any director against whom a claim shall be asserted under or pursuant to this Section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing or who should have reasonably known that such dividend or distribution to have been made in violation of this Chapter, in proportion to the amounts received by them.

E. Any director against whom a claim shall be asserted under or pursuant to this Section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

F. No liability under this Section shall be asserted more than one year from the later of the time the claim accrued or the date such claim should have been discovered.

History

CJA-2-86, January 30, 1986.

Article 5. Merger and Dissolution

§ 3139. Voluntary dissolution, consolidation, merger, or transfer of assets

A voluntary dissolution, consolidation, merger or transfer of assets of a corporation shall be made in a manner consistent with the provisions applicable to domestic corporations under the corporation laws in the Model Business Corporation Act and Model Non-profit Corporation Act (as revised and approved as of January 1, 1986, by the American Bar Association Committee on Corporate Laws). However, approval of any proposed voluntary dissolution, consolidation, merger or transfer of assets under this Chapter requires the affirmative vote of at least a majority of stockholders of the corporation.

History

CJA-2-86, January 30, 1986.

§ 3140. Involuntary dissolution by shareholders

Any stockholder of a corporation may petition the court for dissolution of the corporation on the ground that there is such internal dissension among the stockholders of the corporation that the business and affairs of the corporation can no longer be conducted to the advantage of the stockholders generally.

History

CJA-2-86, January 30, 1986.

§ 3141. Involuntary dissolution by Attorney General of the Navajo Nation

A corporation may be dissolved involuntarily by a judgment of the court in an action filed against it by the Attorney General when any one of the following is established:

- A. The corporation has failed to comply with the provisions of this Code or regulations promulgated thereunder;
- B. The corporation procured its formation through fraudulent misrepresentation or concealment of material fact;
- C. The corporation has violated the laws of the Navajo Nation;
- D. The corporation has failed to file the statement of change of

registered agent required by this Chapter within 30 days after such change is duly authorized by the corporation; or

E. The corporation has continued or persisted over a period of time to conduct its business in a fraudulent or otherwise illegal manner.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

§ 3142. Revocation by Department

A. The articles of incorporation of a corporation may be revoked by the Department if the corporation has failed to comply with the provisions of this Code or regulations promulgated thereunder.

B. The articles of incorporation shall not be revoked by the Department unless:

1. It shall have given the corporation not less than 60 days notice thereof by mail addressed to the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business; and

2. Specifies the violation and gives the corporation a reasonable opportunity to comply or cure said violation.

C. Upon such revocation, the Department shall:

1. Issue a certificate of revocation in duplicate;

2. File one such certificate in its office; and

3. Mail to such corporation at the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business a certificate of revocation.

D. Upon the issuance of such certificate of revocation, the existence of such corporation shall terminate, subject to the provisions of Subsection (E) of this Section. If the corporation has not applied for reinstatement within the six month period following the issuance of a certificate of revocation, the Department shall release the corporate name for use by any proposed domestic corporation, any foreign corporation applying for authority to do business within Navajo Indian Country or for use by a person intending to register the name as a trade name.

E. A corporation may apply for reinstatement within six months from the date a certificate of revocation is issued by the Department. If none of the conditions set forth in Subsection (A) of this Section exists at the time of such application of reinstatement and, if such corporation has paid all fees, penalties, and costs incurred by the Department, the Department shall issue a certificate of reinstatement.

F. The Department shall make available to the public a list, compiled annually, of the corporations whose articles of incorporation were revoked during the preceding year.

History

CJA-2-86, January 30, 1986.

§ 3143. Venue and process

Actions by the Attorney General for the involuntary dissolution of a corporation shall be commenced either in the court in which the known place of business or registered agent of the corporation is situated, or if the corporation has failed to maintain a registered agent or known place of business, then in the court of Window Rock. Process shall issue and be served as in other civil actions.

History

CJA-2-86, January 30, 1986.

§ 3144. Jurisdiction of Court to liquidate assets and business of corporation

The Court shall have full power to liquidate the assets and business of a corporation. It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

History

CJA-2-86, January 30, 1986.

§ 3145. Procedure in liquidation of corporation by Court

A. In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or 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 requisite to preserve the corporate assets wherever situated, and carry on the business 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, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. 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 sales. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders

according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

C. 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 proceedings, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

D. 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 have exclusive jurisdiction over the corporation and its property, wherever situated.

History

CJA-2-86, January 30, 1986.

§ 3146. Filing of claims in liquidation proceedings

In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the 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 months from the date of the order, as the last day of 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 filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

History

CJA-2-86, January 30, 1986.

§ 3147. Discontinuance of liquidation proceedings

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established 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.

History

CJA-2-86, January 30, 1986.

§ 3148. Judgment of involuntary dissolution

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses 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 distributed to its shareholders, or in case its 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 to their payment, the court shall enter a judgment dissolving the corporation, whereupon the existence of the corporation shall cease.

History

CJA-2-86, January 30, 1986.

Note. The "Department" as referred to in this Section is the Business Regulatory Department within the Division of Economic Development.

§ 3149. Filing of judgment of dissolution

When the court enters a judgment dissolving a corporation, the clerk of such court shall cause a certified copy of the judgment to be filed with the Department. No filing fee shall be charged by the department.

History

CJA-2-86, January 30, 1986.

Note. The "Department" as referred to in this Section is the Business Regulatory Department within the Division of Economic Development.

§ 3150. Deposit with Division of Finance of amount due certain shareholders

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Division of Finance and shall be paid over to such creditor or shareholder or to his/her legal representative upon proof satisfactory to the Division of Finance of his/her right thereto, and shall escheat to the Navajo Nation if unclaimed for a period of not less than five years.

History

CJA-2-86, January 30, 1986.

§ 3151. Survival of remedy after dissolution

The dissolution of a corporation either by the issuance of a certificate of dissolution or revocation by the Department, or dissolution of a judgment of the court, or by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers or shareholders, for any right to claim existing, or any liability incurred, prior to such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have 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 corporation at any time within five years of the expiration of its period of duration.

History

CJA-2-86, January 30, 1986.

Article 6. Registered Agent

§ 3152. Registered agent required

Each corporation shall have and continuously maintain within Navajo Indian Country a registered agent, which agent may be either an individual resident within Navajo Indian Country or a corporation authorized by its own articles of incorporation to act as such agent and authorized to transact business within Navajo Indian Country.

History

CJA-2-86, January 30, 1986.

§ 3153. Change of registered agent

A. A corporation may change its registered agent by filing with the Department a statement setting forth:

1. The name of the corporation;
2. The name and address of its then-registered agent;
3. The name and address of its successor registered agent;
4. The date upon which such change shall take effect; and

5. That such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

B. Such statement shall be executed in duplicate by the corporation and delivered to the Department. If the Department finds that such statement conforms to the provisions of this Chapter, it shall:

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 its office; and
3. Return the other duplicate original to the corporation or its representative.

C. The change of registered agent shall become effective upon the filing of such statement by the Department.

D. Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Department, which shall forthwith mail one copy thereof to the corporation at its principal office as shown on the records of the Department. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the Department or upon the appointment of a successor agent becoming effective, which ever occurs first. No fee or charge of any kind shall be imposed with respect to a filing under this Subsection.

E. A registered agent may change his/her address by filing with the Department a statement setting forth:

1. The name of the registered agent;
2. The present address, including street and number, if any, of such registered agent;
3. The names of the corporation or corporations represented by such registered agent at such address;
4. The address, including street and number, if any, to which the office of such registered agent is to be changed; and
5. The date upon which such change will take place.

F. Such statement shall be executed in duplicate by such registered agent in his/her individual name, but if such agent is a corporation, domestic or foreign, such statement shall be executed by such corporation by its president or Vice-President and delivered to the Department. However, if the registered agent represents more than one corporation, he/she shall file an additional copy for such additional corporation. If the Department finds that such statement conforms to law, it 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 its office; and
3. Return the other duplicate original to the registered agent.

G. The change of address of such registered agent as to the domestic corporation or corporations named in such statement shall become effective upon the filing of such statement by the Department, or on the date set forth in such statement as the date on which such change of location of such registered office will take place, whichever is later.

History

CJA-2-86, January 30, 1986.

§ 3154. Registered agent as an agent for service; service when no registered agent

A. The registered agent so appointed by a corporation shall be an agent of such corporation upon whom process against the corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be made by delivering a copy of such process, notice, or demand to any officer, director or managing agent of the corporation, in lieu of the registered agent.

B. Whenever a corporation shall fail to appoint or maintain a registered agent within Navajo Indian Country, or whenever any such registered agent cannot with reasonable diligence be found at his/her office within Navajo Indian Country or whenever the articles of incorporation of any domestic corporation shall be revoked, then the Department shall be an agent of such corporation upon whom any process against such corporation may be served and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service upon the Department of any such process, notice, or demand shall be made by delivering to and leaving with the Department, or with any clerk having charge of its office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is so served, the Department shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office.

C. The Department shall keep a permanent record of all processes, notices, and demands served upon it under this Section, and shall record therein the time of such service and its action with respect thereto.

D. Service of process upon the Department as agent, pursuant to this Section shall not constitute an action against or service upon the Navajo Nation.

History

CJA-2-86, January 30, 1986.

§ 3155. Failure to maintain registered agent

Any corporation incorporated or reincorporated under this Code which fails or refuses to maintain a registered agent within Navajo Indian Country, in accordance with the provisions of this Chapter, shall be subject to a civil sanction in the amount of two hundred fifty dollars (\$250.00). The Attorney General upon the recommendation of the Department shall seek the imposition of such in the Window Rock District Court.

History

CJA-2-86, January 30, 1986.

Article 7. Filings; Amendments

§ 3156. Articles of incorporation; procedure for filing

A. Duplicate originals of the articles of incorporation shall be

delivered to the Department. If the Department finds that the articles of incorporation conform to law, it shall, when all fees have been paid as to this Chapter prescribed:

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 its office; and

3. Issue a certificate of incorporation to which it shall affix the other duplicate original. Such certificate of incorporation may be evidenced by the signature of the director of the Department or his/her designee on the duplicate original of the articles of incorporation.

B. The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the Department shall be delivered to the incorporators or their representatives.

History

CJA-2-86, January 30, 1986.

§ 3157. Amendment of articles of incorporation; contents restricted; purposes

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 might be lawfully contained in original articles of incorporation if made at the time of making such amendment, and, if a change in shares or the rights of shareholders, or any exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation are stated.

History

CJA-2-86, January 30, 1986.

§ 3158. Procedures before acceptance of subscription to shares

Amendments to the articles of incorporation before any subscriptions to shares have been accepted by the board of directors shall be made in the following manner:

A. Amended articles of incorporation modifying, changing, or altering the original articles of incorporation shall be signed by all of the living or competent incorporators who signed the original articles of incorporation and filed with the Department. Such amended articles of incorporation shall contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amended articles of incorporation;

B. Such amended articles of incorporation shall be delivered in duplicate original to the Department. If the Department finds that such amended articles of incorporation conform to law, it shall, when all fees

have been paid as in this Chapter prescribed:

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 its office; and

3. Issue an amended certificate of incorporation, to which it shall affix the other duplicate original. Such certificate may be evidence in the same manner as provided in § 3156(A)(3);

C. The amended certificate of incorporation with the duplicate original of the amended articles of incorporation affixed thereto shall be delivered to the corporation or its representative; and

D. Upon the issuance of the amended certificate of incorporation, the amended articles of incorporation shall become effective and shall take the place of the original articles of incorporation.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

§ 3159. Procedures after acceptance of subscription to shares

Amendments to the articles of incorporation after acceptance of any subscriptions to shares shall be made in the following manner:

A. The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

B. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effective thereby shall be given to each shareholder of record 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 shareholders. If the meeting be an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting;

C. At such meeting a vote of the shareholders entitled to vote shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote; and

D. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

§ 3160. Articles of amendment; contents

A. The articles of amendment shall be executed in duplicate by the corporation by its president or a Vice-President and shall be set forth:

1. The name of the corporation;
2. The amendment so adopted;
3. The date of the adoption of the amendment by the shareholders;
4. The number of shares outstanding and the number of shares entitled to vote;
5. The number of shares voted for and against such amendment, respectively;
6. If such amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected; and
7. If such amendment effects a change in the amount of stated capital, or paid-in surplus, or both, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of capital surplus, either stated capital or paid-in surplus, as changed by such amendment.

B. If issued shares without par value are changed into the same or a different number of shares having par value, the aggregate par value of the shares into which the shares without par value are changed shall not exceed the sum of:

1. The amount of stated capital represented by such shares without par value;
2. The amount of surplus, if any, transferred to stated capital on account of such change; and
3. Any additional consideration paid for such shares with par value and allocated to stated capital.

History

CJA-2-86, January 30, 1986.

§ 3161. Procedure for filing

A. Duplicate originals of the articles of amendment shall be delivered to the Department. If it appears to the Department that the articles of amendment conform to law, it shall, when all fees have been paid as in this Chapter

prescribed:

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 its office; and

3. Issue a certificate of amendment to which it shall affix the other duplicate original. Such certificate may be evidenced in the same manner as provided in § 3156(A) (3).

B. The certificate of amendment with the duplicate original of the articles of amendment affixed thereto shall be delivered to the corporation or its representative.

History

CJA-2-86, January 30, 1986.

§ 3162. 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 effect any existing cause of action in favor of or against such corporation, or any pending suit to which the corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

History

CJA-2-86, January 30, 1986.

Article 8. Department; Fees and Charges

§ 3163. Department; duties and functions

A. The Department shall be charged with the administration and enforcement of this Code. Said Department is authorized to employ such personnel as may be necessary for the administration of this Code.

B. Every certificate and other document or paper executed by the Department, in pursuance of any authority conferred upon it by this Chapter, and sealed with the seal of the Navajo Nation, and all copies of such papers as well as of documents and other papers filed in accordance with the provisions of this Chapter, when certified by it and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceedings in any court and before a public officer, or official body.

C. The Department is authorized to promulgate, upon the review and

approval of the Attorney General and the Economic Development Committee of the Navajo Nation Council, regulations to effectuate the policies and purposes of this Code, or to modify or vary any provision of this Code incorporating by reference any Model Corporation Act. Provided, the Department shall set forth in such regulations what specific policy or purpose is purported to be furthered by such regulation.

History

CJA-2-86, January 30, 1986.

§ 3164. Fees and charges

The Department shall impose fees and charges in accordance with schedules promulgated by regulation pursuant to § 3163, provided however, the initial fee for filing of articles of incorporation shall be ten dollars (\$10.00).

History

CJA-2-86, January 30, 1986.

§ 3165. Non-payment of fees; sanctions

A. The Department shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any corporation organized under the provisions of this Chapter until all fees and charges provided to be paid in connection therewith shall have been paid to it or while the corporation is in default in the payment of any fees charges, or sanctions herein provided to be paid by or assessed against it. Nothing in this Section shall prevent the filing, without the payment of all such fees, charges, and sanctions, of a written notice of resignation by a registered agent of a corporation.

B. No corporation required to pay a fee, charge, or sanction under this Chapter shall maintain within Navajo Indian Country any civil action until all such fees, charges, and sanctions have been paid in full.

C. The Navajo Nation shall have the right to offset any amounts due and owing from a corporation under this Code against payments due from the Navajo Nation to such corporation.

History

CJA-2-86, January 30, 1986.

Article 9. Foreign Corporation

§ 3166. Admission of foreign corporation

A. No foreign corporation shall have the right to transact business within Navajo Indian Country until it shall have been authorized to do so as provided in this Chapter. No foreign corporation shall be authorized under this Chapter to transact within Navajo Indian Country any business which a

corporation organized under this Chapter is not permitted to transact. A foreign corporation shall not be denied authority by reason of the fact that the laws under which such corporation is organized governing its organization and internal affairs differ from the laws of this Chapter, and nothing in this Chapter shall be construed to authorize regulation of the organization or the internal affairs of such corporation.

B. Without excluding other activities which may not constitute transacting business within Navajo Indian Country, a foreign corporation shall not be considered to be transacting business within Navajo Indian Country, for the purposes of this Chapter, by reason of carrying on within Navajo Indian Country any one or more of the following activities:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

2. Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

3. Maintaining checking or savings accounts;

4. Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities;

5. Effecting sales through independent contractors;

6. Soliciting or receiving orders outside Navajo Indian Country in pursuance of letters, circulars, catalogs or other forms of advertising or solicitation and accepting such orders outside Navajo Indian Country and filling them with goods shipped into Navajo Indian Country;

7. Creating as borrower or lender, or acquiring indebtedness, mortgages or other security interests in real or personal property; or

8. Securing or collecting debts or enforcing any rights in property securing the same.

C. The provisions of this Section shall not apply to the question of whether any foreign corporation is subject to service of process and suit within Navajo Indian Country.

D. The Department may promulgate regulations governing the registration and regulation of unincorporated associations, consistent with the policies and purposes contained herein.

History

CJA-2-86, January 30, 1986.

§ 3167. Powers of foreign corporation

A foreign corporation authorized to transact business under this Chapter

shall, until withdrawal as provided in this Chapter, enjoy the right to engage in any lawful activities, and shall be subject to the applicable provisions of this Chapter.

History

CJA-2-86, January 30, 1986.

§ 3168. Corporate name of foreign corporation

No authority shall be given a foreign corporation unless the corporate name of such corporation:

A. Shall contain the word "association", or "bank", "corporation", "company", "incorporated", or "limited", or shall contain an abbreviation of one of such words, or such corporation shall, for use within Navajo Indian Country, add at the end of its name one of such words or an abbreviation thereof;

B. Shall not contain any word or phrase likely to mislead the public or which indicates or implies that it is organized for any purpose other than any specific purpose contained in its articles of incorporation;

C. Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of the Navajo Nation, or any foreign corporation authorized to transact business within Navajo Indian Country, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Chapter or any trade name, except that this provision shall not apply if the foreign corporation applying for authority files with the department any one of the following:

1. A resolution of its board of directors adopting a fictitious name for use in transacting business within Navajo Indian Country which fictitious name is not deceptively similar to the name of any domestic corporation or of any foreign corporation authorized to transact business within Navajo Indian Country of any trade name;

2. The written consent of such other corporation or holder of a reserved or trade name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

3. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such foreign corporation to the use of such name within Navajo Indian Country.

D. Notwithstanding the provisions of Subsection (A)(1) of this Section, shall not include the words "bank", "trust", or "trust company" separately or in combination to indicate or convey the idea that the corporation is engaged in banking or trust business unless such corporation is to be and becomes actively and substantially engaged in banking or trust business or such corporation is a holding company holding substantial interest in companies actively and substantially

engaged in banking or trust business; and

E. Shall not contain the words "Navajo Nation" or "Navajo Tribe", nor in any way imply that it is associated with the Navajo Nation government or a Navajo Nation entity.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

§ 3169. Change of name by foreign corporation

Whenever a foreign corporation which is authorized to transact business within Navajo Indian Country shall change its name to one under which authority would not be granted to it on application therefore, it shall not thereafter transact any business within Navajo Indian Country until it has changed its name to a name which is available to it under the laws of the Navajo Nation, or has otherwise complied with the provision of this Chapter.

History

CJA-2-86, January 30, 1986.

§ 3170. Application for authority to transact business

A foreign corporation, in order to procure authority to transact business within Navajo Indian Country, shall make application therefor in accordance with regulations promulgated by the Department.

History

CJA-2-86, January 30, 1986.

§ 3171. Known place of business and registered agent of foreign corporation

Each foreign corporation authorized to transact business within Navajo Indian Country shall have and continuously maintain within Navajo Indian Country:

A. A known place of business which shall be the office of its registered agent, unless otherwise designated in its application for authority; and

B. A registered agent, which agent may be either an individual resident of the Navajo Nation, a domestic corporation, or a foreign corporation authorized to transact business within Navajo Indian Country.

C. Notification of any change of the known place of business or registered agent of a foreign corporation shall be in accordance with regulations promulgated by the Department.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

§ 3172. Service of process on foreign corporation

A. The registered agent so appointed by a foreign corporation authorized to transact business within Navajo Indian Country shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served, and which, when so served, shall be lawful personal service on the corporation. Process, notice or demand may be served upon an officer, director or managing agent of the corporation in lieu of the registered agent.

B. Whenever a foreign corporation authorized to transact business within Navajo Indian Country shall fail to appoint or maintain a registered agent at the address shown on the records of the Department, the Department shall make available to any person the last known address of such corporation, its shareholders and officers upon whom any such process, notice or demand may be served. The litigant instituting an action shall be responsible for serving the corporation with process, in accordance with the Navajo Rules of Civil Procedure.

C. 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 foreign corporation in any other manner now or hereafter permitted by law.

History

CJA-2-86, January 30, 1986.

§ 3173. Revocation of authority

A. The authority of a foreign corporation to transact business within Navajo Indian Country may be revoked by the Department if the corporation fails to comply with the provisions of this Code or regulations promulgated thereunder.

B. The authority of a foreign corporation shall not be revoked by the Department unless:

1. It shall have given the corporation not less than 60 days notice thereof by mail addressed to the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business a certificate of revocation. Upon the issuance of such certification of revocation, the existence of such corporation shall terminate; and

2. It specifies the violation and gives the corporation a reasonable opportunity to comply or cure said violation.

C. Upon such revocation, the department shall:

1. Issue a certificate of revocation in duplicate;
2. File one such certificate in its office; and

3. Mail to such corporation at the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business a certificate of revocation. Upon the issuance of such certification of revocation, the existence of such corporation shall terminate.

D. The Department shall make available to the public a list, compiled annually, of the foreign corporations for which authority to transact business within Navajo Indian Country has been revoked during the preceding year.

History

CJA-2-86, January 30, 1986.

§ 3174. Transacting business without authority

A. No foreign corporation transacting business within Navajo Indian Country without authority shall be permitted to maintain any action, suit or proceeding in any Navajo Nation Court, until such corporation shall have been authorized to transact business. Nor shall any action, suit or proceeding be maintained in any such court by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation within Navajo Indian Country, until authority to transact business has been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

B. The failure of a foreign corporation to obtain authority to transact business within Navajo Indian Country shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any Navajo Nation Court.

C. A foreign corporation which transacts business within Navajo Indian Country without authority shall be liable to the Navajo Nation, for the years or portions thereof during which it transacted business within Navajo Indian Country without authority, in an amount equal to all fees which would have been imposed by this Chapter upon such corporation had it duly applied for, and received authority to transact business within Navajo Indian Country as required by this Chapter and thereafter filed all reports required by this Chapter, plus all penalties imposed by this Chapter for failure to pay such fees. The Attorney General shall have authority to bring proceedings to recover all amounts due the Navajo Nation under the provisions of this Section.

D. The Attorney General or any other person may bring and maintain an action to enjoin any foreign corporation from transacting business within Navajo Indian Country without authority. Upon a foreign corporation obtaining authority such action shall be dismissed but the plaintiff therein shall recover his/her costs and reasonable attorneys' fees. A determination by a court that a party to the action is a foreign corporation which was requested to, but, failed to qualify as a foreign corporation under this Chapter shall be prima facie evidence against such foreign corporation in any other action

brought by or against it by any other person of such requirement to and failure to qualify.

History

CJA-2-86, January 30, 1986.

Article 10. Reports and Filing

§ 3175. Annual report of domestic and foreign corporations

Each domestic corporation, and each foreign corporation authorized to transact business within Navajo Indian Country, shall file with the Department an annual report and accounting in accordance with regulations promulgated by the Department.

History

CJA-2-86, January 30, 1986.

§ 3176. Civil liability for false statements

A. If, as required by regulation, any report, certificate or other statement made, or public notice given by the officers or directors of a corporation is false in a material representation, or if any book, record or account of the corporation is knowingly or wrongfully altered, the officers, directors or agents knowingly or wrongfully authorizing, signing or making the false report, certificate, other statement or notice or authorizing or making the wrongful alteration are in their person jointly and severally liable to a person who has become a creditor or share holder of the corporation upon the faith in the false, material representation or alteration therein for all damages resulting therefrom.

B. An action for the liability imposed by this Section shall be commenced within two years after discovery of the false representation or alteration and within six years after the certificate, report, public notice or other statement or the alteration has been made or given by the officers, directors or agents of the corporation.

History

CJA-2-86, January 30, 1986.

§ 3177. Civil investigatory demand or signature violations; corporate records; classification

A. A person who knowingly fails or refuses within the time prescribed by this Chapter to answer truthfully and fully any civil investigatory demand propounded to him/her by the Department in accordance with this Chapter, or who signs any articles, statement, report, application or other document filed with the Department which is known to the person as false in any material respect, is guilty of a misdemeanor and is subject to a civil sanction of five hundred dollars (\$500.00), or a sentence not to exceed six months in jail, or both,

and, in the case of a non-Indian is subject to such civil sanction and exclusion from Navajo Indian Country.

B. A person who with the intent to defraud or deceive knowingly falsifies, alters, steals, destroys, mutilates, defaces, removes or secretes the books, records or accounts of a corporation is guilty of a misdemeanor and is subject to a civil sanction of five hundred dollars (\$500.00), or a sentence not to exceed six months in jail, or both, and, in the case of a non-Indian is subject to such civil sanction and exclusion from Navajo Indian Country.

History

CJA-2-86, January 30, 1986.

§ 3178. Civil investigative demands by the Department

The Department may propound to any corporation, domestic or foreign, subject to the provisions of this Chapter, and to any director, officer, shareholders or employee thereof, such civil investigative demands as may be reasonably necessary and proper to enable it to ascertain whether such corporation has complied with all the provisions of this Chapter or applicable regulations promulgated thereunder. The Department may also depose directors, officers, shareholders or employees for the same purpose. The Department by regulations shall specify the manner and method of responding to such civil investigative demands.

History

CJA-2-86, January 30, 1986.

§ 3179. Public records; information disclosed by annual reports; certificates of disclosures civil investigative demands

Articles of Incorporation, amendments thereto, dissolution and certificates of incorporation, dissolution, revocation or reinstatement shall be maintained on file by the Department and available for public inspection and copying. Annual reports or information received in response to regulations or civil investigative demands propounded by the Department shall not be open to public inspection, nor shall the Department disclose any facts or information obtained therefrom, except as the same are to be made public or in the event such civil investigative demands or the answers are required for evidence in any court proceeding.

History

CJA-2-86, January 30, 1986.

Article 11. Miscellaneous

§ 3180. Jurisdiction of Navajo Nation Courts

A. The Court shall have original jurisdiction to the extent permitted by due process over any action against, or by, any domestic or foreign

corporation, or for actions arising under this Chapter including actions by an aggrieved party contesting acts or omissions by the Department, under this Chapter. In the case of contests of Department acts or omissions, the Department shall provide for informal hearings within 30 days of a written request. Such written request shall be filed within 10 days of the alleged act or omission giving rise to the contested issue. Timely filing of such shall be jurisdictional to any subsequent court proceeding. A decision by the Department on the contested issue shall be rendered in writing within 30 days from the date of such hearing. Failure to render such decision within 30 days shall constitute denial of the requested relief.

B. Within 30 days of a written decision or a denial of requested relief or a failure to act on a written request after 60 days of receipt of such request an aggrieved party may bring an action *de novo*, either in the court where the principle place of business is located or in the court in Window Rock, to compel, by injunctive or mandamus relief, the Department to discharge its statutory obligations or to refrain from violating such party's legal rights.

C. Nothing in this Section shall be construed as an exception to or repeal of the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, as may be amended from time to time.

History

CJA-2-86, January 30, 1986.

§ 3181. Certified copies to be received in evidence

All copies of documents except for annual reports or responses to civil investigatory demands delivered to and filed by the Department in accordance with the provisions of this Chapter when certified by it, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Department under seal, as to the existence or nonexistence of the facts relating to corporations shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

History

CJA-2-86, January 30, 1986.

§ 3182. Greater voting requirements

Whenever with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation or bylaws require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this Subchapter with respect to such action, the provisions of the articles of incorporation or bylaws shall control.

History

CJA-2-86, January 30, 1986.

§ 3183. Action by shareholders without a meeting

A. Any action required by this Chapter to be taken at a meeting of the shareholders of a corporation or any action which may be taken at a meeting of the shareholders may be taken without a meeting, if a consent in writing setting forth the action so taken, is signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

B. Such consent shall have the same effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the Department under this Chapter.

History

CJA-2-86, January 30, 1986.

§ 3184. Unauthorized assumption of corporate powers

All persons who assume to act as a corporation without authority to do so, or who procured incorporation through fraudulent misstatements or omissions of material fact in documents filed with the Department, shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. Ratification of preincorporation acts constitute authority to act in a corporate capacity as used herein.

History

CJA-2-86, January 30, 1986.

§ 3185. Indemnification of officers, directors, employees and agents

A corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, if he/she acted, or failed to act, in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the corporation, but, with respect to any criminal action or proceeding, the corporation shall not pay criminal fines for which a person is personally liable.

History

CJA-2-86, January 30, 1986.

§ 3186. 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 shareholder 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 unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to a 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 and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage 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 damage sustained;

B. In a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation; or

C. In a proceeding by the Attorney General, as provided in this Chapter, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized business.

History

CJA-2-86, January 30, 1986.

Subchapter 2. Close Corporations

History

[Subchapter 2 redesignated] Common or Contract Carriers previously codified as Chapter 19, §§ 3201-3203 has been redesignated to Title 5, Chapter 3, Subchapter 2, §§ 411-413.

§ 3201. Short title

This Chapter shall be known and may be cited as the "Navajo Nation Close Corporation Act".

History

CJA-2-86, January 30, 1986.

§ 3202. Definitions

A. "Capital units" means the proportions of the proprietary interest in the corporation owned by the investors;

B. "Corporation" or "closed corporation" means a corporation for profit organized pursuant to the provisions of this Chapter;

C. "Good faith" or "in good faith" means an act or thing done when it is

in fact done honestly, whether it be done negligently or not;

D. "Investor" means one who is the owner of capital units in a close corporation; and

E. "Manager" means the person or persons named in the articles of incorporation, either originally or by amendment thereto, in the capacity of manager or assistant manager, and does not include any person who is not so named.

History

CJA-2-86, January 30, 1986.

§ 3203. Mandatory provisions of articles of incorporation

A. The articles of incorporation of a close corporation shall set forth:

1. The name of the corporation which shall contain the words "close corporation" or an abbreviation therefor;

2. The name and address of the manager or managers of the corporation;

3. The names, addresses and amount of initial contribution of capital units of each of the original investors. The number of original investors shall not exceed 30;

4. The aggregate amount in dollars of the initial capital units to be paid to be the corporation; and

5. The name and address of the corporation's initial registered agent.

B. It shall not be necessary to set forth in the articles of incorporation any corporate powers or any corporate purposes.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

§ 3204. Optional provisions of articles of incorporation

The articles of incorporation of a close corporation may set forth any of the following:

A. The period of duration, if less than perpetual;

B. Any restrictions on the authority of the manager or managers of the close corporation;

C. Any reservations of authority to the investors;

D. Any restriction on the power of any investor to sell, transfer or to create a security interest in his/her capital units. No restriction on the power to sell, transfer or create a security interest shall be binding except as to persons who have actual knowledge thereof unless such restriction is set forth in the articles of incorporation;

E. Any restriction on the subsequent issuance of additional capital units;

F. Whether the corporation will have the power to acquire its capital units and if so any restrictions or limitations thereon. If no power to acquire its capital units is set forth in the articles of incorporation, the corporation may not acquire any of its outstanding capital units;

G. Any provisions which provide for arbitration or other non-judicial procedure seeking resolution of any dispute as provided in § 3206;

H. Any provisions for replacement or succession of a manager inconsistent with § 3205(D);

I. Any provision which either relieves the manager entirely of the obligation to make accountings to investors or which modifies the period or form of such accounting in a manner inconsistent with § 3205(E);

J. Any provision for annual or other periodic meetings of investors. If no such provision is set forth in the articles of incorporation, there shall be no requirement for meetings for investors;

K. Any requirement for bond or other security to be given to the corporation by a manager to secure the faithful performance of his/her duties;

L. Any restrictions upon competition by investors directly or indirectly with the business of the corporation;

M. Any provision for delegation of his/her authority by a manager;

N. Any provision for a dissolution option pursuant to § 3207;

O. Any provision for varying relationships among investors as to relative rights in capital units; and

P. Any other provisions consistent with law which the incorporators elect to set forth.

History

CJA-2-86, January 30, 1986.

§ 3205. Managers

A. All managers shall be natural persons. It is the purpose of this Chapter that the corporation be operated on a day-to-day basis by one manager, by managers having divided functions or by assistant managers who can serve

either as alternates to the manager or assume some portion of managerial responsibility. As among the corporation, its investors, and any manager, there shall be no limitations on the authority of a manager unless specifically limited by provisions of the articles of incorporation, the written employment contract of such manager, or the records of the corporation evidencing the acts of the investors. Any person other than manager or investor who deals in good faith with the corporation will not be subject to any limitation on the authority of any manager, even though such manager's authority is expressly limited in the articles of incorporation.

B. No manager may delegate any of his/her authority to any other agent, employee or representative of a corporation unless authority to do so is contained in the articles of incorporation or is granted by act of the investors.

C. Any manager shall have the same rights, duties, obligations and privileges as a person who is both a director and officer of a corporation for profit under the provisions of Subchapter 1, except as specifically modified in this Chapter.

D. Any manager may be replaced or succeeded by a new manager at any time by a majority of the votes of the investors, unless otherwise provide by the articles of incorporation. Such replacement shall be effective when a certificate of change of manager, sworn under oath by an investor is filed with the Department stating the name of the replaced manager and the name and address of the new manager and that such new manager was elected by the required vote.

E. Unless the articles of incorporation or vote of the investors provided otherwise, a manager shall mail to each investor an annual accounting and annual report. Such annual accounting and report shall be mailed or delivered to the investors within 30 days after the date filing is required.

History

CJA-2-86, January 30, 1986.

§ 3206. Settlement of disputes; arbitration

The articles of incorporation may provide for arbitration of any deadlock or dispute involving the internal affairs of the corporation.

History

CJA-2-86, January 30, 1986.

§ 3207. Option to dissolve

A. The articles of incorporation of any corporation may include a provision granting to any investor or investors an option to have the corporation dissolved at will or upon the performance or occurrence of any specified event or contingency. Whenever any such option to dissolve is exercised, the investor or investors exercising such option shall give written notice thereof to all other investors. After the expiration of 30 days

following the mailing of such notice, the dissolution of the corporation shall proceed as if the required vote had consented to the dissolution of the corporation as provided by § 3139.

B. If the articles of incorporation as originally filed do not contain a provision authorized by Subsection (A) of this Section, the articles of incorporation may be amended to include such provision if adopted by the affirmative vote of all investors. If the articles of incorporation as originally filed contain a provision authorized by Subsection (A) of this Section, such provision may be amended only by the affirmative vote of all investors.

History

CJA-2-86, January 30, 1986.

§ 3208. Purposes

Close corporations may be organized under this article for any lawful purpose or purposes.

History

CJA-2-86, January 30, 1986.

§ 3209. Capital units, transfer and encumbrances

A. Until a statement substantially in the form set forth in Subsection (B) of this Section has been filed with the Department, any transfer, hypothecation, other voluntary encumbrance of security interest in, or of any capital unit or units shall be void as to creditors and subsequent purchasers for valuable consideration without notice.

B. The state of transfer, hypothecation or other voluntary encumbrance or security interest in or of any capital unit or units in a close corporation shall be acknowledged and be substantially in one of the following forms:

1. Transfer:

On the ___ day of _____, _____, the undersigned

(name of transferor) transferred to (name of transferee), whose address is (address of transferee) (all or a stated percentage) of the undersigned's interest in the capital units of (name of corporation), a Navajo close corporation.

(Signature of transferor)

acknowledgment

2. Hypothecation, other voluntary encumbrance or security interest:

On the ___ day of _____, _____, the undersigned (name of debtor) hypothecated and voluntarily encumbered to (name of creditor) (all or a stated percentage) of the undersigned's interest in the capital units of (name of corporation), a Navajo close corporation.

(Signature of debtor)

acknowledgment

History

CJA-2-86, January 30, 1986.

§ 3210. Definition of relative rights of capital units

"Relative rights of capital units" means all the rights, privileges, obligations and duties of the capital units and may include, but are not limited to, disproportionate variations of the following:

- A. Participation in dividends or distributions from operating income;
- B. Participation in dividends or distributions from income other than operating income;
- C. Participation in distributions of the proceeds of a sale of all or substantially all of the assets of the corporation with further disproportionate variation depending upon the degree of gain or loss;
- D. Participation in distribution upon liquidation or dissolution;
- E. Voting rights;
- F. Restrictions of limitations on transfer;
- G. The obligation to perform services or provide goods or other property to the corporation;
- H. The obligation to devote time and energies which are collateral to corporate purposes; and
- I. Assessments, if any.

History

CJA-2-86, January 30, 1986.

§ 3211. Changes in investor relationship

Unless otherwise provided by the articles of incorporation, any redemption, termination or cancellation of capital units, acquisition of capital units by the corporation, issuance of additional units or any change in the relative rights of capital units other than transfers or encumbrances

provided for in § 3209, shall be effective only upon an amendment of the articles of incorporation. The unanimous vote of all outstanding capital units shall be required to amend the articles of incorporation to create or to change the relative rights in capital units.

History

CJA-2-86, January 30, 1986.

§ 3212. Variable relative rights

The articles of incorporation may provide for varying relationships among investors as to relative rights in capital units. It is not necessary that each close corporation provide in its articles of incorporation for variable relative rights of capital units as encumbered in this Section. Only those variable relative rights of capital units set forth in the articles of incorporation shall apply to the particular close corporation. When no provision is made in the articles of incorporation concerning a particular relative right of capital units, then that particular relative right of capital units shall be proportionate to the dollar amount of the capital units.

History

CJA-2-86, January 30, 1986.

§ 3213. Limitation of liability

The investor shall not be liable for the debts, obligations or liabilities of the close corporation, except that investors will be held in the same standards as subscribers and shareholders as set forth in § 3116(C).

History

CJA-2-86, January 30, 1986.

§ 3214. Appointment of conservator

A. The court in which the known place of business or registered agent of the corporation is situated, may in an action by an investor, appoint a conservator or interim manager of the corporation if the court finds that a deadlock or dispute involving the internal affairs of the corporation impairs or threatens to impair the value of the assets or the continued conduct of the business of the corporation. Upon or subsequent to appointing such a conservator or interim manager, the court may enter orders, which, despite any contract or provision of the articles of incorporation to the contrary:

1. Suspend, revoke or nullify the authority, in whole or in part, of any existing manager or managers or any conservator or interim manager appointed in any arbitration pursuant to § 3206;
2. Define the authority of such conservator or interim manager;
3. Set the compensation of such conservator or interim manager to be paid by the corporation; and/or

4. Resolve, partially resolve or aid in the resolution of any such deadlock or dispute.

B. When any order or appointment is issued pursuant to Subsection (A) of this Section, the clerk of the court shall immediately supply a copy thereof to the Department.

History

CJA-2-86, January 30, 1986.

§ 3215. Involuntary dissolution or liquidation pursuant to court order

The court shall have full power to liquidate the assets and business of a close corporation.

A. In an action filed by an investor when the court finds:

1. That a deadlock or dispute involving the internal affairs of the corporation, continues to impair or threatens to impair the value of the assets or the continued conduct of the business of the corporation, notwithstanding bona fide attempts to utilize the arbitration provisions in the articles of incorporation if available and the provisions of § 3214;

2. That a deadlock or dispute involving the internal affairs of the corporation, impairs or threatens to impair the value of the assets, or the continued conduct of the business of the corporation, and no provision is contained in the articles of incorporation for arbitration of such disputes and that it would be a useless effort to invoke the provisions of § 3214;

3. That the investors are so divided respecting the manager of the business and affairs of the corporation that either the corporation is suffering or will suffer irreparable injury, or the business and affairs of the corporation can no longer be conducted to the advantage of the investors generally, and the provisions of §§ 3206 and 3214 are inapplicable; or

4. That the corporation has abandoned its business and has failed within a reasonable period of time to take steps to dissolve and liquidate its affairs and distribute its assets.

B. In an action filed by the Attorney General in the manner provided by § 3141.

History

CJA-2-86, January 30, 1986.

§ 3216. Court relief other than dissolution, liquidation or appointment of conservator

A. The court in an action filed by an investor seeking relief under § 3215, shall have full power to make any such order or grant any such relief other than dissolution or liquidation as in its discretion it may deem appropriate including but not limited to:

1. Canceling, altering or amending any provisions contained in the articles of incorporation of such close corporation;

2. Directing, prohibiting or enjoining any act of the corporation or other persons who are parties to the court action; or

3. Providing for the purchase by the corporation or by other investors at their fair market value the capital units of the person bringing such action.

B. Relief under this Section may be granted even though the court does not find any of the elements prescribed for relief under § 3215.

History

CJA-2-86, January 30, 1986.

§ 3217. Merger of close corporations

Any two or more Navajo close corporations may merge as may be provided for pursuant to § 3139.

History

CJA-2-86, January 30, 1986.

§ 3218. Conversion of corporate status

A. A close corporation may convert its status to that of a corporation organized pursuant to Subchapter 1 by amending its articles of incorporation to delete therefrom all reference to the term "close corporation", including its use in the name of the corporation, and to comply with § 3107. Such an amendment shall be adopted by a two-thirds vote of the voting rights of the capital units unless the articles of incorporation require a greater vote to convert. The articles of incorporation as amended shall also provide for the cancellation of capital units and the basis on which shares will be issued in lieu thereof.

B. The conversion of a close corporation is affected if there has been substantial compliance in good faith with the requirements of Subsection (A) of this Section.

C. A corporation organized pursuant to Subchapter 1 having 30 or fewer shareholders may convert its status to that of a close corporation and be subject to the provisions of this article by amending its articles of incorporation to comply with § 3203. A resolution so amending its articles of incorporation shall be adopted by the unanimous vote of all shareholders whether otherwise entitled to vote or not. The resolution amending the articles of incorporation shall provide for the cancellation of all issued

outstanding shares of stock and state the relative rights of capital units.

D. No conversion pursuant to this Section shall be deemed a termination or dissolution of the corporate entity or a sale or exchange of the shares of capital units.

History

CJA-2-86, January 30, 1986.

§ 3219. Application of General Corporation Law

Close corporations organized pursuant to this Subchapter are subject to the provisions of Subchapter 1 except insofar as this Subchapter modifies or differs from such provision, in which case this Chapter prevails. This Chapter shall be applicable to all close corporations except as otherwise provided. This Chapter shall be construed to simplify the management, structure, and operations of close corporations.

History

CJA-2-86, January 30, 1986.

Subchapter 3. Non-Profit Corporations

§ 3301. Short title

This Chapter shall be known and may be cited as the "Navajo Nation Non-Profit Corporation Act".

History

CJA-2-86, January 30, 1986.

§ 3302. Definitions

The definitions of Subchapter 1 are applicable in this Chapter.

History

CJA-2-86, January 30, 1986.

§ 3303. Conversion of corporate status prohibited

No non-profit corporation organized under this Chapter may convert its status to a corporation organized for profit, either foreign or domestic, or merge or consolidate with a domestic corporation or foreign corporation organized for profit, unless the corporation surviving the merger or consolidation is a non-profit corporation.

History

CJA-2-86, January 30, 1986.

§ 3304. Purposes

Corporations may be organized under this Chapter for any lawful purpose or purposes, including without limitation any of the following purposes:

- A. Charitable;
- B. Benevolent;
- C. Eleemosynary,
- D. Educational;
- E. Civic;
- F. Patriotic;
- G. Political;
- H. Religious;
- I. Social;
- J. Fraternal;
- K. Literary;
- L. Cultural;
- M. Athletic;
- N. Scientific;
- O. Agricultural;
- P. Horticultural;
- Q. Animal husbandry; or
- R. Professional, commercial, industrial or trade associations.

History

CJA-2-86, January 30, 1986.

§ 3305. Members

A. A non-profit corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of each class shall be set forth in the articles of incorporation or bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or bylaws. A corporation may issue certificates evidencing membership rights,

voting rights, or ownership rights, as authorized in the articles of incorporation or bylaws.

B. Members are not liable for the debts, obligations or liabilities of the corporation.

C. A corporation formed under this Chapter by a recognized Chapter of the Navajo Nation shall have one class of members, and any Navajo 18 years or older who is entitled to vote within said chapter in Navajo Nation or chapter elections shall be entitled to be a member of said corporation, and shall be entitled to vote on matters on which members are entitled to vote.

History

CJA-2-86, January 30, 1986.

§ 3306. Bylaws

The power to make, alter, amend, or repeal the bylaws of the non-profit corporation shall be vested in the board of directors unless reserved to the members by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law, or the articles of incorporation.

History

CJA-2-86, January 30, 1986.

§ 3307. Meetings of members

A. Meetings of members may be held at such place within or without Navajo Indian Country as stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, meetings shall be held at the known place of business of the non-profit corporation.

B. An annual meeting of the voting members, if any, shall be held at such time as stated in or fixed in accordance with the bylaws. If the annual meeting is not held within any 13 month period the court may, on the application of any voting member, order a meeting to be held. Failure to hold such annual meeting shall not work as a forfeiture of the corporate charter or dissolution of the corporation.

C. Special meetings of the voting members, if any, may be called by the board of directors, the members having at least one-tenth of the votes entitled to be cast at such meeting or any other person as may be authorized in the articles of incorporation or bylaws.

History

CJA-2-86, January 30, 1986.

§ 3308. Notice of members' meetings

Unless otherwise provided in the articles of incorporation or bylaws,

written notice stating the place, day and hour of the meeting, and in case of a special meeting, the purpose for which the meeting is called, shall be mailed or delivered not less than ten nor more than 50 days before the date of the meeting by an officer of the non-profit corporation, at the direction of the person calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be addressed to the member at his/her address as it appears on the records of the corporation. When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given at the adjourned meeting if the time and place of the meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which may have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each member entitled to vote at the meeting.

History

CJA-2-86, January 30, 1986.

§ 3309. Voting

A. Except for a non-profit corporation formed by a chapter of the Navajo Nation, the right of the members or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

B. A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy executed in writing by the member or by his/her duly authorized attorney in fact. No proxy may be valid after 11 months from the date of its execution.

C. If directors or officers are to be elected, the bylaws may provide that the elections be conducted by mail.

D. If a corporation has no members or its members have no right to vote, the directors have the sole voting power, unless otherwise provided in the articles of incorporation or bylaws.

History

CJA-2-86, January 30, 1986.

§ 3310. Quorum

The bylaws may provide the number or percentage of members entitled to vote, present or represented by proxy, or the number or percentage of votes entitled to be cast by members present or represented by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provisions, members present or represented by proxy, holding one-tenth of the votes entitled to be cast shall constitute a quorum.

History

CJA-2-86, January 30, 1986.

§ 3311. Board of directors

A. The affairs of a non-profit corporation shall be managed by a board of directors except as may be otherwise provided in Subsection (B). Directors need not be members of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

B. The articles of incorporation may vest the management of the affairs of the corporation in its members or may limit the authority of the board of directors to whatever extent is set forth in the articles of incorporation or bylaws.

History

CJA-2-86, January 30, 1986.

§ 3312. Number, election and classification and removal of directors

A. Unless the articles of incorporation provide otherwise, a non-profit corporation may have only one director. The number of directors shall be fixed by or in the manner provided in the articles of incorporation or bylaws. The number of directors may be increased or decreased by amendment to, or in the manner provided, in the articles of incorporation or bylaws, but no decrease in number may have the effect of shortening the term of any incumbent director. If the number of directors has not been fixed by, or in the manner provided, in the articles of incorporation or bylaws, the number shall be the same as the number of initial directors.

B. The person(s) constituting the initial board of directors shall be named in the articles of incorporation to hold office until the first annual election of directors, or for any other period as may be specified in the articles of incorporation or bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or bylaws. In the absence of a provision prescribing the manner of election or appointment of directors, the members having voting rights shall elect the directors, or, if a corporation has no members or no members having voting rights, the directors are elected or appointed by the incumbent directors or by the officer, representative body of any organization or society or other person designated in the articles of incorporation or bylaws. In the absence of a provision fixing the term of office, the term of office of a director is one 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 is elected or appointed and qualified, or until his/her earlier death, resignation or removal. Any director may resign at any time upon written notice to the corporation.

D. A director may be removed from office pursuant to any procedure

provided in the articles of incorporation or bylaws.

History

CJA-2-86, January 30, 1986.

§ 3313. Vacancies

Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum, or by a sole remaining director, and any director so chosen shall hold office until the next election of directors when his/her successor is elected and qualified. Any newly created directorship shall be deemed a vacancy. Unless otherwise provided in the articles of incorporation or bylaws, when one or more directors resigns from the board, effective at a future time, a majority of the directors then in office, including those who have so resigned, may fill such vacancy, the vote on the vacancy to take effect when such resignation becomes effective. Each director so chosen shall hold office as provided for the filling of other vacancies. If by reason of death, resignation or otherwise, a non-profit corporation has no directors in office, any officer or members may call a special meeting of members for the purpose of electing the board of directors unless otherwise provided in the articles of incorporation or bylaws.

History

CJA-2-86, January 30, 1986.

§ 3314. Quorum of directors

A majority of the number of directors fixed pursuant to the articles of incorporation or bylaws constitutes a quorum unless otherwise provided in the articles of incorporation or bylaws, but in no event may a quorum consist of less than one-third of the total number of directors.

History

CJA-2-86, January 30, 1986.

§ 3315. Committees of the board of directors

A. A majority of the full board of directors may designate from among the directors one or more committees each of which, to the extent provided in the articles of incorporation or bylaws, may be given all the authority of the board of directors, except no such committee may exercise the authority of the board of directors in reference to the following matters:

1. Submission to the members of any matter that requires an act of the members;
2. Filling vacancies on the board of directors or on any committee of the board of directors;
3. Adoption, amendment or repeal of bylaws; or

4. Fixing compensation of directors.

B. The board of directors, with or without cause, may dissolve any such committee or remove any director from the committee at anytime. The designation of any such committee and the delegation of authority shall not operate to relieve the board of directors or any director of any responsibility imposed by law.

History

CJA-2-86, January 30, 1986.

§ 3316. Place and notice of directors' meeting

A. Meetings of the board of directors, regular or special, shall be held at least annually either within or without Navajo Indian Country, and may be held by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

B. Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at any regular or special meeting of the board of directors need not be specified in the notice or waiver of notice of such meeting unless required by the articles of incorporation or bylaws.

History

CJA-2-86, January 30, 1986.

§ 3317. Officers

A. The officers of a non-profit corporation shall consist of a president, a secretary and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Other officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the one person.

B. 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 corporation as provided in the bylaws or determined by resolution of the board of directors not inconsistent with the bylaws.

C. The articles of incorporation or bylaws may provide that any one or more officers of the corporation shall be *ex officio* members of the board of

directors.

D. The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or bylaws.

History

CJA-2-86, January 30, 1986.

§ 3318. 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 interests of the non-profit corporation will be served by the removal, but such removal shall be without prejudice to the contract rights, if any, of the person removed. Election or appointment of an officer or agent shall not in itself create contract rights.

History

CJA-2-86, January 30, 1986.

§ 3319. Books and records

A. 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 of the board of directors. Each corporation shall keep at its registered agent's office, or its known place of business within Navajo Indian Country, a record of the name and addresses of its members entitled to vote. Books, records and minutes shall be in written form, or in any other form capable of being converted into written form within a reasonable time.

B. Each member entitled to vote, upon written demand stating the purpose of the examination, may examine, in person or by agent or attorney, at any reasonable time for any proper purpose, the corporation's relevant books and records of account, minutes and record of members and may make copies of or extracts from the books, records or minutes.

C. Nothing contained in this Section shall impair the power of any court of competent jurisdiction, upon proof by a member of proper purpose, to compel the production for examination or copying by such member of the books and records of account, minutes and record of members of a corporation.

History

CJA-2-86, January 30, 1986.

§ 3320. Shares of stock and dividends prohibited

A non-profit corporation shall not have or issue shares of stock. No dividend may be paid and no part of the income or profit of such corporation may be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount of 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 distributions to its members as permitted by this Chapter, but no such payment benefit or distribution may be deemed to be a dividend or a distribution of income or profit.

History

CJA-2-86, January 30, 1986.

§ 3321. Loans to directors and officers prohibited

A non-profit corporation shall not lend money to or use its credit to assist its directors, officers or employees. Any director, officer or employee who assents to or participates in the making of any such loan shall be personally liable to the corporation for the amount of such loan together with interest at eighteen percent (18%) per annum until the repayment of the loan.

History

CJA-2-86, January 30, 1986.

§ 3322. Incorporators

One or more persons capable of contracting may act as incorporators of a corporation by signing and delivering to the department an original and one or more copies of articles of incorporation for such corporation.

History

CJA-2-86, January 30, 1986.

§ 3323. Articles of Incorporation

A. The articles of incorporation shall state:

1. The name of the corporation;
2. The period of duration, if less than perpetual;
3. The purpose or purposes for which the corporation is organized, which may be stated to include conducting any or all lawful affairs for which corporations may be incorporated under this Subchapter;
4. A brief statement of the character of affairs which the corporation initially intends to actually conduct in this state. Such statement shall not limit the character of affairs which the corporation ultimately conducts;
5. The name and address of its initial registered agent;
6. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as

directors until the first annual election of directors or until their successors are elected and qualify;

7. The name and address of each incorporator; and

8. Any other provision not inconsistent with law which the incorporators elect to set forth.

B. It is not necessary to state in the articles of incorporation any of the corporate powers enumerated in this Chapter.

History

CJA-2-86, January 30, 1986.

§ 3324. Filing of articles of incorporation

A. When the articles of incorporation have been delivered for filing, the Department shall determine that the articles:

1. Set forth the information required by § 3323; and

2. Do not adopt as the name of the corporation a name which is in violation of § 3105.

B. Upon making such determinations, the Department shall proceed with filing the articles.

History

CJA-2-86, January 30, 1986.

§ 3325. Effect of filing articles of incorporation

Upon the filing of the articles of incorporation, the corporate existence begins, and the filing is conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with, and that the non-profit corporation has been incorporated under this Subchapter, except as against the Navajo Nation in a proceeding for involuntary dissolution of the corporation or revocation of the articles of incorporation.

History

CJA-2-86, January 30, 1986.

§ 3326. Organization meeting

A. After delivery of the articles of incorporation for filing, an organization meeting of the initial board of directors shall be held at the call of a majority of the incorporators for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days notice of the meeting by mail to each director so named, which notice shall state the time and place of the meeting.

B. A first meeting of the members may be held at the call of a majority of the directors upon at least three days notice for those purposes as stated in the notice of the meeting.

History

CJA-2-86, January 30, 1986.

§ 3327. Right to amend articles of incorporation

A corporation may amend its articles of incorporation in any lawful respect.

History

CJA-2-86, January 30, 1986.

§ 3328. Procedures to amend articles of incorporation

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

1. If there are members entitled to vote on the proposed amendment, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of those members, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment or a summary of the changes to be effected shall be given to each member entitled to vote at the meeting within the time and in the manner provided in this Subchapter for the giving of notice of meetings of members. The proposed amendment may be adopted only by act of the members; or

2. If there are no members or no members entitled to vote on the proposed amendment, an amendment may be adopted by act of the board of directors.

B. Any number of amendments may be submitted and voted upon at any one meeting.

History

CJA-2-86, January 30, 1986.

§ 3329. Articles of amendment

The articles of amendment shall be executed by the non-profit corporation in duplicate and shall state:

A. The name of the corporation;

B. The amendments adopted;

C. The date of the adoption of the amendments; and

D. That the amendments were duly adopted by act of the members or of the board of directors.

History

CJA-2-86, January 30, 1986.

§ 3330. Filing of articles of amendment; effect of amendment

A. When the articles of amendment have been delivered for filing, the Department shall determine that the articles set forth the information required by § 3329.

B. Upon making such determination, the Department shall proceed with the filing the articles.

C. Upon the delivery of the articles of amendment to the Department, the amendment shall become effective and the articles of incorporation shall be deemed to be amended, except that, if the determination of the requirements of this Chapter for filing are not satisfied completely, the articles of amendment shall not be filed, the amendment shall not become effective and the articles of incorporation shall not be deemed to have been amended.

D. No amendment may affect any existing claim in favor of or against the non-profit corporation or any pending action or proceeding to which the corporation is a party or the existing rights of persons other than members. If the corporate name is changed by amendment, no action or proceeding brought by or against the corporation under its former name may abate for that reason.

History

CJA-2-86, January 30, 1986.

§ 3331. Sale, lease, exchange, mortgage or pledge of assets

A. A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the assets of a non-profit corporation may be made only upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as are authorized in the following manner:

1. If there are members entitled to vote on the matter, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of those members, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the assets of the corporation shall be given to each member entitled to vote at such meeting within the time and the manner provided by this Subchapter for the giving of notice of meetings, the members may

authorize such sale, lease exchange, mortgage, pledge or other disposition and may fix or may authorize the board of directors to fix, any or all of the terms and conditions and the consideration to be received by the corporation. Such authorization shall require an act of the members; or

2. If there are no members or no members entitled to vote on the matter, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the assets of a corporation may be authorized by act of the board of directors.

B. If the authorization provides, the board of directors may abandon the sale, lease, exchange, mortgage, pledge or other disposition subject to the contractual rights of third parties.

History

CJA-2-86, January 30, 1986.

§ 3332. Application of general corporation law

The provisions of the general corporation laws of the Navajo Nation, and all powers, rights and duties thereunder, where applicable, shall apply to non-profit corporations organized hereunder, except when in conflict with the provisions of this Chapter.

History

CJA-2-86, January 30, 1986.

Subchapter 4. Agricultural Cooperatives

History

[Subchapter 4 redesignated] Signs, Billboards, and Advertising Devices previously codified as Chapter 21, §§ 3401-3412 has been redesignated to Title 5, Chapter 3, Subchapter 3, §§ 421-432.

CJA-2-86, January 30, 1986.

Note. Issuance of Chapter. CMY-38-69, May 22, 1969, Northern Arizona Livestock Association, Inc.

Annotations

See annotations under Licenses and Permits, and under Taxation in digest.

§ 3401. Short title

This Subchapter shall be known and may be cited as the "Navajo Agricultural Cooperative Act".

History

CJA-2-86, January 30, 1986.

§ 3402. Definitions

A. The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bees, and any farm and ranch products;

B. The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock;

C. The term "association" means any corporation organized under this Chapter of any association organized under the cooperative marketing acts of any other tribe or state. Associations organized hereunder shall be deemed non-profit because as they are organized not to make profit for themselves or for their members but only for their members as producers.

History

CJA-2-86, January 30, 1986.

§ 3403. Organizers

A. Five or more persons engaged in the production of agricultural procedures may form an association under this Subchapter.

B. An agricultural cooperative organized under this Chapter by recognized chapters of the Navajo Nation shall permit as members entitled to hold common stock, or if organized without common stock, as members entitled to vote, all Navajos 18 years or older who are entitled to vote within said chapter in Navajo Nation or chapter elections.

History

CJA-2-86, January 30, 1986.

§ 3404. Purpose

An association may be organized to engage in any activity in connection with the production, cultivation, marketing or selling of agricultural products produced by and marketed for its members, or in the harvesting, preserving, drying, processing, canning, storing, handling, shipping or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities. Provided, however, any such activities may extend to nonmembers and to the production, cultivation of lands owned or cultivated by them and their products.

History

CJA-2-86, January 30, 1986.

§ 3405. Powers

Associations organized under this Chapter shall have all of the powers granted to corporations organized under Subchapter 1, and in addition shall specifically have the following powers:

A. To engage in any activity in connection with the production, cultivation of farm products, including the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members, or the production, manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this Subchapter;

B. To borrow money and make advances to members;

C. To act as the agent or representative of any member or members in any of the above-mentioned activities;

D. To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer, or pledge shares of capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association; including the power to subscribe, pay for and own the capital stock of Banks for Cooperatives organized under the "Farm Credit Act of 1933" passed by the Congress of the United States and approved June 16, 1933;

E. To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws;

F. To buy, hold and exercise privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto;

G. To extend its activities to the products and supplies of non-members;

H. To consolidate with the consent of individual permittees land use permits and grazing permits under long-term agricultural business land leases with the Navajo Nation;

I. To enter into leasehold assignments, approved by the Navajo Nation, and the Secretary of the Interior or his/her authorized designee, with suppliers of agricultural production credit; and

J. To enter into management contracts and joint venture agreements for the mutual benefit of its members.

History

CJA-2-86, January 30, 1986.

§ 3406. Members

A. Under the terms and conditions prescribed in its bylaws, an association may admit as members, or issue common stock to only persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

B. If a member of a non-stock association be other than a natural person, such member may be represented by an individual, associate officer or member thereof, duly authorized in writing.

C. Any association as defined in § 3402(C) may become a member or stockholder of any other association or associations organized hereunder.

History

CJA-2-86, January 30, 1986.

§ 3407. Liability for debts

The stockholders or members of an association organized under this Chapter shall not be individually liable for the debts of such association except as they may be held liable under provisions of Subchapter 1.

History

CJA-2-86, January 30, 1986.

§ 3408. Articles of incorporation

Each association formed under this Chapter must prepare and file articles of incorporation, setting forth:

- A. The name of the association;
- B. The purpose for which it is formed;
- C. The place where its principal business will be transacted;
- D. The term for which it is to exist, which may be perpetual;
- E. The number of directors thereof, which must not be less than five and may be any number in excess thereof, and the term of the office of such directors;

F. If organized without capital stock, whether the property rights and interests of each member shall be equal or unequal; and if unequal, the property rights and interests of each member shall be set forth by the general rule or rules applicable to all members by which the property rights and interest, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of

incorporation shall not be altered, amended or repealed except by the written consent or the vote of three-fourths of the members; and

G. If organized with capital stock, the amount of such capital stock and the number of shares into which it is divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the nature and extent of the preferences and privileges granted to each. The incorporators must sign and file in duplicate the articles in accordance with the provisions of the general non-profit corporation law of the Navajo Nation; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in the courts, and other places, as prima facie evidence of the facts contained therein, and of the incorporation of such association. No part of such capital stock shall be required to be subscribed and/or paid in as a prerequisite to the filing of such articles of incorporation; provided further that such association may, from time to time sell and issue to their members or stockholders, shares of capital stock in such manner as provided in the bylaws.

History

CJA-2-86, January 30, 1986.

§ 3409. Amendments to articles of incorporation

The articles of incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two-thirds vote of the directors and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation when so adopted shall be filed in accordance with the provisions of the general non-profit corporation law of the Navajo Nation.

History

CJA-2-86, January 30, 1986.

§ 3410. Bylaws

Each association incorporated under this Chapter must, within 30 days after its incorporation, adopt for its regulation and the management of its affairs, bylaws, not inconsistent with the powers granted by this Chapter. A majority vote of the members or common stockholders is necessary to adopt such bylaws. Each association, under its bylaws, may also provide for any or all of the following matters:

- A. The time, place and manner of calling and conducting its meetings;
- B. The number of stockholders or members constituting a quorum;
- C. The right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner and effects of such vote and the method and manner in which an association which is a member may cast its vote;
- D. The number of directors constituting a quorum;

E. The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof;

F. Penalties for violations of the bylaws;

G. The amount of entrance, organization and membership fees, if any, the manner and method of collection of the same, and the purposes for which they must be used;

H. The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him/her and the time of payment and the manner of collection; the marketing contract between the association to him/her and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;

I. The number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership or common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock, the manner of assignment and transfer of the interest of members and of shares of common stock, and conditions upon which, and time when membership of any member shall cease. The automatic suspension of the rights of a member when he/she ceases to be eligible to membership in the association, and mode, manner and effect of the expulsion of interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his/her membership, or at the option of the association by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his/her property interest in the association and shall fix the amount thereof in money, which shall be paid to him/her within one year after such expulsion or withdrawal; and

J. The distribution of earned surplus to members and nonmembers on the basis of patronage and land contribution.

History

CJA-2-86, January 30, 1986.

§ 3411. Meetings; notice; election of directors and officers

Meetings, notice and election of directors and officers shall be governed by the provisions of Subchapter 3 pertaining to non-profit corporations.

History

CJA-2-86, January 30, 1986.

§ 3412. Stock-membership certificates

A. When a member of an association established without capital stock, has paid his/her membership fee in full, he/she shall receive a certificate of membership. No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the notice, but such retention as security shall not affect the members' right to vote.

B. Except for debts lawfully contracted between him/her and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his/her membership, fee or his/her subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

C. No stockholder or a cooperative association shall own more than one-fifth of the issued common stock of the association; and an association, in its bylaws, may limit the amount of common stock which one member may own to any amount less than one-fifth of the issued common stock.

D. No member or stockholder shall be entitled to more than one vote.

E. Any association organized with stock under this Subchapter may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retrievable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate.

F. The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

G. The association may at any time, except when the debts of the association exceed fifty percent (50%) of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one year thereafter.

History

CJA-2-86, January 30, 1986.

§ 3413. Removal of officer or director

A. Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten percent (10%) of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association; by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy.

B. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall

have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; the person or persons bringing the charges against him/her shall have the same opportunity.

History

CJA-2-86, January 30, 1986.

§ 3414. Referendum

Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership of the stockholders for decision at the next special or regular meeting. A special meeting may be called for that purpose.

History

CJA-2-86, January 30, 1986.

§ 3415. Marketing contract

A. The association and its members may make and execute marketing contracts requiring the members to sell, for a period of time, not over 10 years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, if any, and other proper reserves; and interest not exceeding eight percent (8%) per annum upon common stock.

B. The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him/her of any provisions of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts. In the event of any breach or threatened breach of such marketing contract by the member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof.

C. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

History

CJA-2-86, January 30, 1986.

§ 3416. Patronage distributions including land rentals

The earned surplus of an association organized under this Chapter, including revenues received from land rentals, shall be apportioned, distributed, and paid periodically on the basis of patronage and land use rights contributed to the association as the bylaws shall provide.

History

CJA-2-86, January 30, 1986.

§ 3417. Preferred stock

An association organized hereunder may issue preferred capital stock for any purpose so long as fair value is received therefore.

History

CJA-2-86, January 30, 1986.

§ 3418. Annual reports

Each association formed under this Chapter shall prepare and make out an annual report on forms furnished by the department containing the name of the association, its principal place of business and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of members and amount of membership fees received, if a non-stock association; the total expenses of operation; the amount of its indebtedness, or liability, and its balance sheets.

History

CJA-2-86, January 30, 1986.

§ 3419. Bond

Each and all officers, employees and agents, handling funds, or property of the corporation or funds of any person placed under the control of or in the possession of said corporation, shall be required to execute and deliver to the corporation a bond of indemnity, indemnifying the corporation and members against any fraudulent, dishonest or unlawful act on the part of such officers and employees and other acts as provided in the bylaws of the association. In case the officers and directors of any corporation authorized to be created under the provisions of this Chapter, shall fail to have all officers, employees and agents handling such funds or property execute the bond provided for herein, each and all of said officers and directors shall be personally liable for all losses occasioned by such failure and which might have been recovered on said bond.

History

CJA-2-86, January 30, 1986.

§ 3420. Interest in other corporations or associations

An association may organize, form, operate, own, control, have an

interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engage in preserving, drying, pressing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing or selling of the agricultural products handled by the association, or by the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of the Navajo Nation, its warehouse receipts shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

History

CJA-2-86, January 30, 1986.

§ 3421. Contracts and agreement with other associations

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative corporation, association or associations, formed in the Navajo Nation or other tribal government or any other state for the cooperative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means and agencies for carrying on and conducting their respective businesses.

History

CJA-2-86, January 30, 1986.

§ 3422. Association heretofore organized

Any corporation association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this Chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the Department, to the effect that the corporation or association has, by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this Subchapter. Articles of incorporation shall be filed as required in § 3407 of this Chapter except that they shall be signed by the members of the board of directors.

History

CJA-2-86, January 30, 1986.

§ 3423. Breach of contract or false reports

Any person or person or any corporation whose officers or employees knowingly induce or attempt to induce any member or stockholder of an

association, or who maliciously and knowingly spreads false reports about the finances or management thereof shall be liable to the association aggrieved thereby in a civil suit for damages suffered in three times the amount of actual damage proven for each offense.

History

CJA-2-86, January 30, 1986.

§ 3424. Associations not in restraint of trade

No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily; nor shall the marketing contracts or agreements between the association and its members nor any agreements authorized in this Subchapter, be considered illegal or in restraint of trade.

History

CJA-2-86, January 30, 1986.

§ 3425. Application of general corporation law

The provision of the general corporation laws of the Navajo Nation, and all powers, rights and duties thereunder shall apply to associations organized hereunder except when in conflict with the provisions of this Subchapter. Provided, however, that any cooperative marketing association incorporated under the laws of the Navajo Nation may apply for and be granted a permit to do business as a foreign corporation under laws organized for a similar purpose. Provided further, that such foreign cooperative marketing associations shall not be required to have a paid-up capital or any portion of the capital paid-up in order to be entitled to such permit.

History

CJA-2-86, January 30, 1986.

Chapter 21. Navajo Nation Limited Liability Company Act

Article 1. General Provisions

§ 3600. Policy and purpose

The Navajo Nation Limited Liability Company Act is hereby enacted:

A. The purpose of this Act is to permit the formation of various limited liability entities and require registration of foreign limited liabilities; and to regulate such entities so as to promote economic growth and further exercise Navajo Nation sovereignty in the governance of its territory, and citizens.

B. This Act is based upon general principles of limited liability companies. The interpretation of this Act shall be based on Navajo Nation court interpretation and such interpretation that shall give the utmost respect in

deciding the meaning and purpose of this Act to the unique traditions and customs of the Navajo People. General decisional law interpreting similar provisions of other limited liability company laws in other jurisdictions may be used as guidance.

C. Unless as otherwise expressly stated by law, the sovereign immunity of the Navajo Nation shall not extend to corporate entities organized under this Act, nor shall such entities be considered a subdivision, entity, or enterprises of the Navajo Nation, nor shall the Navajo Nation be liable for the debts or obligations of any kind of such entities.

D. The Division of Economic Development through its Business Regulatory Department shall administer the provisions of the Act. The Business Regulatory Department shall promulgate rules and regulations to implement this Act. All proposed rules and regulations shall be published for public comments at least 90 days prior to submission to the Economic Development Committee of the Navajo Nation Council for final review and approval. The Division of Economic Development is directed to prepare an appropriate supplemental budget for carrying out its responsibilities under this Act.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection C corrected to replace "or any kind" with "of any kind".

§ 3601. Definitions

In this Chapter, unless the context otherwise requires:

A. "Articles of organization" means initial, amended, and restated articles of organization and articles of merger. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed in the Department or other official having custody of company records in the State, Indian Nation or country under whose law it is organized.

B. "At-will company" means a limited liability company other than a term company.

C. "Business" includes every trade, occupation, profession, and other lawful purpose, whether or not carried on for profit.

D. "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application or a comparable order under federal, state, or foreign law governing insolvency.

E. "Department" means the Business Regulatory Department within the Division of Economic Development or its designate successor.

F. "Distribution" means a transfer of money, property, or other benefit from a limited liability company to a member in the member's capacity as a

member or to a transferee of the member's distributional interest.

G. Distributional Interest means all of a member's interest in distributions by the limited liability company.

H. "Entity" means a person other than an individual.

I. "Foreign limited liability company" means an unincorporated entity organized under laws other than the laws of the Navajo Nation which afford limited liability to its owners comparable to the liability under Section 3642 and is not required to obtain a certificate of authority to transact business under any law of the Navajo Nation other than this Act.

J. "Limited liability company" means a limited liability company organized and existing under this Act.

K. "Manager" means a person, whether or not a member of a manager-managed company, who is vested with authority under Section 3640.

L. "Manager-managed company" means a limited liability company which is so designated in its articles of organization.

M. "Member-managed company" means a limited liability company other than a manager-managed company.

N. "Navajo Nation" means:

1. When referring to the body politic, the Navajo Nation government, including its Council and applicable standing committees and boards;

2. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:

- a. All land within the exterior boundaries of the Navajo Indian Reservation, including the Navajo Partitioned Land, or of the Eastern Navajo portion of the Navajo Nation, including Alamo, Canoncito, and Ramah, or of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments;

- b. All lands held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for, the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indian as such; and

- c. All other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

O. "Operating agreement" means any written under Section 3603 concerning the relations among the members, managers, and limited liability company. The term includes amendments to the agreement.

P. "Person" includes any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, government subdivision, government agency, or instrumentality, or any other legal or commercial entity.

Q. "Principal office" means the office, whether or not in the Navajo Nation, where the principal executive office of a domestic or foreign limited liability company is located.

R. "Record" means information that is inscribed on a tangible medium or that it stored in an electronic or other medium and is retrievable in perceived form.

S. "Sign" means to identify a record by means of a signature, mark, or other symbol, with intent to authenticate it.

T. "State" means a state of the United States, a federally-recognized Indian Tribe, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

U. "Term company" means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of incorporation.

V. "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, and gift.

History

CJY-17-08, July 22, 2008.

Note. For purposes of statutory consistency, the term "agreement" inserted after the term "written" within Subsection O.

§ 3602. Knowledge and notice

A. A person knows a fact if the person has actual knowledge of it.

B. A person has notice if the person:

1. Knows the fact;

2. Has received a notification of the fact; or

3. Has reason to know the fact exists from all of the facts known to the person at the time in question.

C. A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

D. A person receives a notification when the notification:

1. Comes to the person's attention; or
2. Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communication.

E. An entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention had the entity exercised reasonable diligence. 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 routine. 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 that the transaction would be materially affected by the information.

History

CJY-17-08, July 22, 2008.

§ 3603. Effect of operating agreement; nonwaivable provisions

A. Except as otherwise provided in Subsection (B), all members of a limited liability company may enter into an operating agreement, which shall 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 the operating agreement does not otherwise provide, this Act governs relations among the members, managers, and company.

B. The operating agreement may not:

1. Unreasonably restrict a right to information or access to records under Section 3657.

2. Eliminate the duty of loyalty under Section 3658(B) or 3682(B) (3), but the agreement may:

- a. Identity specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

- b. 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;

3. Unreasonably reduce the duty of care under Section 3658(C) or 3682(B) (3);

4. Eliminate the obligation of good faith and fair dealing under Section 3658(D), 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;

5. Vary the right to expel a member in an event specified in Section 3680(6);

6. Vary the requirement to wind up the limited liability company's business in a case specified in Section 3700(A)(3) or (A)(4); or

7. Restrict rights of a person, other than a manager, member, and transferee of a member's distributional interest, under this Act.

History

CJY-17-08, July 22, 2008.

Note. Typographical errors at Subsection B(1) corrected to change the word "restricts" to "restrict"; and at Subsection B(2) to correct the citation from section 3683(B)(3) to 3682(B)(2).

§ 3604. Supplemental principles of law

A. Unless displaced by particular provisions of this Act, the principles of law and equity supplement this Act.

B. If an obligation to pay interest arises under this Act and the rate is not specified, the rate that is specified is ten percent (10%) per annum, unless a different rate is contracted for in writing, in which event any rate of interest may be agreed to.

History

CJY-17-08, July 22, 2008.

Note. Inserted the numeric form of "10%" following the words "ten percent" for codification.

§ 3605. Name

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

A. Contain the words "limited liability company" or "limited company" or the abbreviations "L.L.C.," "LLC," "L.C.," or "LC". Limited may be abbreviated as "Ltd.," and "company" may be abbreviated as "Co.".

B. Not contain the words "association," "corporation" or "incorporated" or an abbreviation of these words.

C. Not be the same as, or deceptively similar to, the name of a limited liability company, limited partnership or corporation existing under the laws of the Navajo Nation or a foreign limited liability company, limited partnership or corporation authorized to transact business in the Navajo Nation, or a name the exclusive right to which is, at the time, reserved in the manner provided under the laws of the Navajo Nation or a registered trade name.

This paragraph does not apply if the applicant files with the Department one of the following:

1. The written consent of the holder of the name to use the same or a deceptively similar name and one or more words are added or deleted to make the name distinguishable from the other name;

2. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to use the name in the Navajo Nation; or

3. Documents showing the other company is organized or authorized to transact business in the Navajo Nation and the company proposing to use the name has:

a. Merged with the other company;

b. Been formed by reorganization with the other company; or

c. Acquired substantially all of the assets, including the name, of the other company.

D. Not contain the words "Navajo Nation" or "Navajo Tribe," nor in anyway imply that it is associated with the Navajo Nation government or a Navajo Nation entity, unless the Navajo Nation government or a Navajo Nation entity is the manager of a manager-managed company.

History

CJY-17-08, July 22, 2008.

§ 3606. Reserved name

A. A person may reserve the exclusive use of the name of a limited liability company, including a fictitious name for a foreign company whose name is not available, by delivering an application to the Department for filing. The application must set forth the name and street and mailing address of the applicant and the name proposed to be reserved. If the Department finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a nonrenewable 120-day period.

B. The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the Department a signed notice of the transfer which states the name and street and mailing address of the transferee.

History

CJY-17-08, July 22, 2008.

§ 3607. Registered name

A. A foreign limited liability company may register its name subject to the requirements of Section 3734, if the name is distinguishable upon the

records of the Department from names that are not available under Section 3606(B).

B. A foreign limited liability company registers its name, or its name with any additions required by Section 3734, by delivering to the Department for filing an application:

1. Setting forth its name, or its name with any addition required by Section 3734, the State or country and date of its organization, and a brief description of the nature of the business in which it is engaged; and

2. Accompanied by a certificate of existence, or record of similar import, from the State, Indian Nation or country of organization.

C. A foreign limited liability company whose registration is effective may renew it for successive years by delivering for filing in Department a renewal application complying with Subsection (B) between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

D. A foreign limited liability company whose registration is effective may qualify as a foreign company under its name or consent in writing to the use of its name by a limited liability company later organized under this Act or by another foreign company later authorized to transact business in the Navajo Nation. The registered name terminates when the limited liability company is organized or the foreign company qualifies or consent to the qualification of another foreign company under the registered name.

History

CJY-17-08, July 22, 2008.

§ 3608. Designated office and agent for service of process

A. A limited liability company and a foreign limited liability company authorized to do business in the Navajo Nation shall designate and continuously maintain in the Navajo Nation:

1. An office, which need not be a place of its business in the Navajo Nation; and

2. An agent, street and mailing address, phone number of the agent for service of process on the company.

B. An agent must be an individual resident of the Navajo Nation, a domestic corporation, another limited liability company, or a foreign corporation or foreign company authorized to do business in the Navajo Nation.

History

CJY-17-08, July 22, 2008.

§ 3609. Change of registered office, statutory agent or statutory agent's

contact information

A limited liability company may change its designated office or agent for service of process by delivering to the Department for filing a statement of change which sets forth:

1. The name of the company;
2. The street and mailing address of its current designated office;
3. The current phone number to its principle office;
4. If the current designated office is to be changed, the street and mailing address of the new designated office;
5. The name and street and mailing address of its current agent for service of process; and
6. If the current agent for service of process or street and mailing address of that agent is to be changed, the new street and mailing address or the name and street and mailing address of the new agent for service of process.

History

CJY-17-08, July 22, 2008.

§ 3610. Resignation of agent for service of process

A. An agent for service of process of a limited liability company may resign by delivering to the Department for filing a record of the statement of resignation.

B. After filing a statement of resignation, the Department shall mail a copy to the designated office and another copy to the limited liability company at its principal office.

C. An agent is terminated on the 31st day after the statement is filed in the Department.

History

CJY-17-08, July 22, 2008.

§ 3611. Service of process

A. 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.

B. If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in the Navajo Nation or the agent for service of process cannot with reasonable diligence be

found at the agent's street and mailing address, the Department is an agent of the company upon whom process, notice, or demand may be served.

C. Service of any process, notice, or demand on the Department may be made by delivering to and leaving with the Department, duplicate copies of the process, notice, or demand. If the process, notice, or demand is served on the Department, the Department shall forward one of the copies by registered or certified mail, return receipt requested, to the company at its designated office. Service is effected under this Subsection at the earliest of:

1. The date the company receives the process, notice, or demand;
2. The date shown on the return receipt, if signed on behalf of the company; or
3. Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

D. The Department 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.

E. This Section does not affect the right to serve process, notice, or demand in any manner otherwise provided by law.

History

CJY-17-08, July 22, 2008.

§ 3612. Nature of business and powers

A. A limited liability company may be organized under this chapter and may conduct or promote business and other activities for any lawful purpose, subject to any law of the Navajo Nation governing or regulating businesses.

B. Unless its articles of organization provide otherwise, a limited liability company has the same power as an individual to do all things necessary or convenient to carry on its business or affairs, including the power to:

1. Sue and be sued, and defend in its name;
2. Purchase, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real property or personal property, or any legal or equitable interest in property, wherever located;
3. Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
4. Purchase, receive, subscribe for or otherwise acquire, own, hold, vote, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in

or obligations of any other entity;

5. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;

6. Lend money, invest and reinvest its funds, and receive and hold real property and personal property as security for repayment;

7. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

8. Conduct its business, locate offices, and exercise the powers granted by this Act within or without the Navajo Nation;

9. Elect managers or appoint officers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit;

10. Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefits or incentive plans for any or all of its current or former members, managers, employees, officers, employees and agents;

11. Make donations for the public welfare or for charitable, scientific or educational purposes;

12. Indemnify a member, manager, employee, officer or agent or any other person; and

13. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the limited liability company.

History

CJY-17-08, July 22, 2008.

Article 2. Organization

§ 3620. Limited liability company as legal entity

A limited liability company is a legal entity distinct from its members.

History

CJY-17-08, July 22, 2008.

§ 3621. Organization

A. One or more persons may organize a limited liability company,

consisting of one or more members, by delivering articles of organization to the Department for filing.

B. Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.

C. The filing of the articles of organization by the Department is conclusive proof that the organizers satisfied all conditions precedent to the creation of a limited liability company.

History

CJY-17-08, July 22, 2008.

§ 3622. Articles of organization

A. Articles of organization of a limited liability company shall set forth:

1. The name of the limited liability company;
2. The street and mailing address and phone number of the initial designated office;
3. The name and street and mailing address of the initial agent for service of process;
4. The name and street and mailing address of each organizer;
5. Whether the company is to be a term company and, if so, the term specified;
6. Whether the company is to be manager-managed and, if so, the name, street and mailing address and phone number of each initial manager;
7. Whether one or more of the members of the company are to be liable for its debts and obligations under Section 3642(C).
8. A provision stating that the company will agree to abide by all applicable criminal, civil and regulatory laws of the Navajo Nation.

B. The articles of organization may set forth:

1. Provisions permitted to be set forth in an operating agreement;
or
2. Other matters not inconsistent with law.

C. Articles of organization of a limited liability company may not vary the nonwaivable provision of Section 3603(B). As to all other matters, if any provision of an operating agreement is inconsistent with articles of organization:

1. The operating agreement controls as to managers, members, and members' transferees; and

2. The articles of organization controls as to persons, other than managers, members and their transferees, who reasonably rely on the articles to their detriment.

History

CJY-17-08, July 22, 2008.

§ 3623. Amendment or restatement of articles of organization

A. Articles of organization of a limited liability company may be amended at any time by delivering articles of amendment to the Department for filing. The articles of amendment must set forth the:

1. Name of the limited liability company;
2. Date of filing of articles of organization; and
3. Amendment to the articles.

B. A limited liability company may restate its articles of organization at any time. Restated articles of organization must be signed and filed in the same manner as articles of amendment. Restated articles of organization must be designated as such in the heading and state 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 initial articles of organization.

History

CJY-17-08, July 22, 2008.

§ 3624. Signing of records

A. Except as otherwise provided in this Act, a record to be filed by or on behalf of a limited liability company in the Department shall be signed in the name of the company by a:

1. Manager of a manager-managed company;
2. Member of a member-managed company;
3. Person organizing the company, if the company has not been formed; or
4. Fiduciary, if the company is in the hands of a receiver, trustee, or other court-appointed fiduciary.

B. A record signed under Subsection (A) must state adjacent to the signature the name and capacity of the signer.

C. Any person may sign a record to be filed under Subsection (A) by an attorney-in-fact. Powers of attorney relating to the signing of records to be filed under Subsection (A) by an attorney-in-fact need not be filed in the office of the Department as evidence of authority by the person filing but must be retained by the company.

History

CJY-17-08, July 22, 2008.

§ 3625. Filing with the Department

A. Articles of organization or any other record authorized to be filed under this Act must be in a medium permitted by the Department and must be delivered to the Department. Unless the Department determines that a record fails to comply as to form with filing requirements of this Act, and if all filing fees have been paid, the Department shall file the record and send a receipt for the record and the fees to the limited liability company or its representative.

B. Upon request and payment of a fee, the Department shall send to the requester a certified copy of the requested record.

C. Except as otherwise provided in Subsection (D) and Section 3626(C), a record accepted for filing by the Department is effective:

1. At the time of filing on the date it is filed, as evidenced by the Department's date and time endorsement on the original record; or

2. At the time specified in the record as its effective time on the date it is filed.

D. A record may specify a delayed effective time and date, and if it does so the record becomes effective at the time and date specified. If a delayed effective date but no time is specified, the record is effective at the close of the business on that date. If a delayed effective date is later than the 90th day after the record is filed, the record is effective on the 90th day.

History

CJY-17-08, July 22, 2008.

§ 3626. Correcting filed record

A. A limited liability company or foreign limited liability company may correct a record filed by the Department if the record contains a false or erroneous statement or was defectively signed.

B. A record is corrected:

1. By preparing articles of correction that:

a. Describe the record, including its filing date, or attach a copy of it to the articles of correction;

b. Specify the incorrect statement and the reason it is incorrect or the manner in which the signing was defective; and

c. Correct the incorrect statement or defective signing; and

2. By delivering the corrected record to the Department for filing.

C. Articles of correction are effective retroactively on the effective date of the record they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

History

CJY-17-08, July 22, 2008.

§ 3627. Certificate of existence or authorization

A. A person may request the Department to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.

B. A certificate of existence for a limited liability company must set forth:

1. The company's name;

2. That it is duly organized under the laws of the Navajo Nation, the date of organization, whether its duration is at-will or for a specified term, and, if the latter, the period specified;

3. If payment is reflected in the records of the Department and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to the Navajo Nation have been paid;

4. Whether its most recent annual report required by Section 3630 has been filed with the Department;

5. That articles of termination have not been filed; and

6. Other facts of record in the Department which may be requested by the applicant.

C. A certificate of authorization for a foreign limited liability company must set forth:

1. The company's name used in the Navajo Nation;

2. That it is authorized to transact business in the Navajo Nation;

3. If payment is reflected in the records of the Department and if nonpayment affects the authorization of the company, that all fees, taxes, and penalties owed to the Navajo Nation have been paid;

4. Whether its most recent annual report required by Section 3630 has been filed with the Department;

5. That a certificate of cancellation has not been filed; and

6. Other facts of record in the Department which may be requested by the applicant.

D. Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Department may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in the Navajo Nation.

History

CJY-17-08, July 22, 2008.

§ 3628. Liability for false statement in filed record

If a record authorized or required to be filed under this Act contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from a person who signed the record or caused another to sign it on the person's behalf and knew the statement to be false at the time the record was signed.

History

CJY-17-08, July 22, 2008.

§ 3629. Filing by judicial act

If a person required by Section 3624 to sign any record fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Navajo Nation District Court to direct the signing of the record. If the court finds that it is proper for the record to be signed and that a person so designated has failed or refused to sign the record, it shall order the Department to sign and file an appropriate record.

History

CJY-17-08, July 22, 2008.

§ 3630. Annual report for Department

A. A limited liability company, and a foreign limited liability company authorized to transact business in the Navajo Nation, shall deliver to the Department for filing an annual report that sets forth:

1. The name of the company and the state or country under whose law it is organized;

2. The street and mailing address and phone number of its designated office and the name, street and mailing address, and phone

numbers of its agent for service of process in the Navajo Nation;

3. The street and mailing address and phone number of its principal office; and

4. The names, business addresses and phone numbers of any managers.

B. Information in an annual report must be current as of the date the annual report is signed on behalf of the limited liability company.

C. The first annual report must be delivered to the Department after the first year of the company's operating year in which a limited liability company was organized or a foreign company was authorized to transact business. Subsequent annual reports must be delivered to the Department on every anniversary year in which a limited liability company was organized or a foreign company was authorized to transact business.

D. If an annual report does not contain the information required in Subsection (A), the Department shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in Subsection (A) and delivered to the Department within 90 days after the effective date of the notice, it is timely filed.

History

CJY-17-08, July 22, 2008.

Article 3. Relations of Members and Managers to Persons Dealing with Limited Liability Company

§ 3640. Agency of members and managers

A. Subject to Subsections (B) and (C), in a member-managed company:

1. Each member is an agent of the limited liability company for the purpose of its business, and an act of a member, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.

2. An act of a member which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized by the other members.

B. Subject to Subsection (C), in a manager-managed company:

1. A member is not an agent of the company for the purpose of its business solely by reason of being a member. Each manager is an agent of the company for the purpose of its business, and an act of a manager,

including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the manager had no authority to act for the company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority.

2. An act of a manager which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized under Section 3653.

C. Unless the articles of organization limit their authority, any member of a member-managed company or manager of a manager-managed company may sign and deliver any instrument transferring or affecting the company's interest in real property. The instrument is conclusive in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Article 3 heading corrected to insert the word "of" between "Relations" and "Members".

§ 3641. Limited liability company liable for member's or manager's actionable conduct

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 authority of the company.

History

CJY-17-08, July 22, 2008.

§ 3642. Liability of members and managers

A. Except as otherwise provided in Subsection (C), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

B. The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

C. All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or

liabilities of the company if.

1. A provision to that effect is contained in the articles of organization; and

2. A member so liable has consented in writing to the adoption of the provision or to be bound by the provision.

History

CJY-17-08, July 22, 2008.

Article 4. Relations of Members to Each Other and to Limited Liability Company

§ 3650. Form of contribution

A contribution of a member of a limited liability company may consist of 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.

History

CJY-17-08, July 22, 2008.

§ 3651. Member's liability for contributions

A. A member's obligation to contribute money, property, or other benefit to, or to perform services for, a limited liability company is not excused by the member's death, disability, or other inability to perform personally. If a member does not make the required contribution of property or services, the member is obligated at the option of the company to contribute money equal to the value of that portion of the stated contribution which has not been made.

B. A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in Subsection (A), and without notice of any compromise under Section 3653(C)(5), may enforce the original obligation.

History

CJY-17-08, July 22, 2008.

§ 3652. Member's and manager's rights to payment and reimbursement

A. 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 its business or property.

B. A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution the member agreed to make.

C. A payment or advance made by a member which gives rise to an obligation of a limited liability company under Subsection (A) or (B) constitutes a loan to the company upon which interest accrues from the date of the payment or advance.

D. 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.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection C corrected to replace reference to "Subsection (C) or (B)" with "Subsection (A) or (B)".

§ 3653. Management of limited liability company

A. In a member-managed company:

1. Each member has equal rights in the management and conduct of the company's business; and

2. Except as otherwise provided in Subsection (C), any matter relating to the business of the company may be decided by a majority of the members.

B. In a manager-managed company:

1. Each manager has equal rights in the management and conduct of the company's business;

2. Except as otherwise provided in Subsection (C), 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

3. A manager:

a. Must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

b. Holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

C. The only matters of a member or manager-managed company's business requiring the consent of all of the members are:

1. The amendment of the operating agreement under Section 3603;

2. The authorization or ratification of acts or transactions under Section 3603(B) (2) (b) which would otherwise violate the duty of loyalty;

3. An amendment to the articles of organization under Section 3623;
4. The compromise of an obligation to make a contribution under Section 3651(B);
5. The compromise, as among members, of an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this Act;
6. The making of interim distributions under Section 3654(A), including the redemption of an interest;
7. The admissions of a new member;
8. The use of the company's property to redeem an interest subject to a charging order;
9. The consent to dissolve the company under Section 3700(A)(2);
10. A waiver of the rights to have the company's business wound up and the company terminated under Section 3701(B);
11. The consent of members to merge with another entity under Section 3723(C)(1); and
12. The sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with or without goodwill.

D. Action requiring the consent of members or managers under this Act may be taken without a meeting.

E. 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.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection C(9) corrected to replace citation to Section 3700(B)(2) with 3700(A)(2).

§ 3654. Sharing of and rights to distributions

A. Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares.

B. A member has no right to receive, and may not be required to accept, a distribution in kind.

C. If 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.

History

CJY-17-08, July 22, 2008.

§ 3655. Limitations on distributions

A. A distribution may not be made if:

1. The limited liability company would not be able to pay its debts as they become due in the ordinary course of business; or

2. The company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those receiving the distribution.

B. A limited liability company may base a determination that a distribution is not prohibited under Subsection (A) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

C. Except as otherwise provided in Subsection (E), the effect of a distribution under Subsection (A) is measured:

1. In the case of distribution by purchase, redemption, or other acquisition of a distributional interest in a limited liability company, as of the date money or other property is transferred or debt incurred by the company; and

2. In all other cases, as of the date the:

a. Distribution is authorized if the payment occurs within 120 days after the date of authorization; or

b. Payment is made if it occurs more than 120 days after the date of authorization.

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

E. Indebtedness of a limited liability company, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of determinations under Subsection (A) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to members could then be made under this Section. 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 made.

History

CJY-17-08, July 22, 2008.

§ 3656. Liability for unlawful distributions

A. A member of a member-managed company or a member or manager of a manager-managed company who votes for or assents to a distribution made in violation of Section 3655, the articles of organization, or the operating agreement is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without violating Section 3655, 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 3658.

B. A member of a manager-managed company who knew a distribution was made in violation of Section 3655, the articles of organization, or the operating agreement is personally liable to the company, but only to the extent that the distribution received by the member exceeded the amount that could have been properly paid under Section 3655.

C. A member or manager against whom an action is brought under this Section may implead in the action all:

1. Other members or managers who voted for or assented to the distribution in violation of Subsection (A) and may compel contribution from them; and

2. Members who received a distribution in violation of Subsection (B) and may compel contribution from the member in the amount received in violation of Subsection (B).

D. A proceeding under this Section is barred unless it is commenced within two years after the distribution.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection A corrected to replace "of it is established" with "if it is established".

§ 3657. Member's right to information

A. A limited liability company shall provide members and their agents and attorneys access to its records, if any, at the company's principal office or other reasonable locations specified in the operating agreement. The company shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

B. A limited liability company shall furnish to a member, and to the

legal representative of a deceased member or member under legal disability:

1. Without demand, information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement or this Act; and

2. On demand, other information concerning the company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

C. A member has the right upon written demand given to the limited liability company to obtain at the company's expense a copy of any written operating agreement.

History

CJY-17-08, July 22, 2008.

§ 3658. General standards of member's and manager's conduct

A. The only fiduciary duties a member owes to a member-managed company and its other members are the duty of loyalty and the duty of care imposed by Subsections (B) and (C).

B. A member's duty of loyalty to a member-managed company and its other members is limited to the following:

1. 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;

2. To refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

3. To refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

C. A member's duty of care to a member-managed company and its 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.

D. A member shall discharge the duties to a member-managed company and its other members under this Act or under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

E. A member of a member-managed company does not violate a duty or obligation under this Act or under the operating agreement merely because the member's conduct furthers the member's own interest.

F. 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.

G. 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.

H. In a manager-managed company:

1. 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;

2. A manager is held to the same standards of conduct prescribed for members in Subsections (B) through (F).

3. 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 in Subsections (B) through (F) to the extent that the member exercises the managerial authority vested in a manager by this Act; and

4. A manager is relieved of liability imposed by law for violation of the standards prescribed by Subsections (B) through (F) to the extent of the managerial authority delegated to the members by the operating agreement.

History

CJY-17-08, July 22, 2008.

§ 3659. Actions by members

A. 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:

1. The member's rights under the operating agreement;

2. The member's rights under this Act; and

3. The rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

B. The accrual, and any time limited for the assertion, of a right of action for a remedy under this Section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

History

CJY-17-08, July 22, 2008.

§ 3660. Continuation of term company after expiration of specified term

A. If a 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.

B. If the members in a member-managed company or the managers in a manager-managed company continue the business without any winding up of the business of the company, it continues as an at-will company.

History

CJY-17-08, July 22, 2008.

Article 5. Transferees and Creditors of Members

§ 3670. Member's distributional interest

A. A member is not a co-owner of, and has no transferable interest in, property of a limited liability company.

B. A distributional interest in a limited liability company is personal property and, subject to Sections 3671 and 3672, may be transferred in whole or in part.

C. An operating agreement may provide that a distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to Section 3672, may also provide for the transfer of any interest represented by the certificate.

History

CJY-17-08, July 22, 2008.

§ 3671. Transfer of distributional interest

A transfer of a distributional interest does not entitle the transferee to become 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.

History

CJY-17-08, July 22, 2008.

§ 3672. Rights of transferee

A. 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 the operating agreement or all other members consent.

B. 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 this Act. A transferee who becomes a member also is liable for the transferor member's obligations to make contributions under Section 3651 and for obligations under Section 3656 to return unlawful distributions, but the transferee is not obligated for the transferor member's liabilities unknown to the transferee at the time the transferee becomes a member.

C. Whether or not a transferee of a distributional interest becomes a member under Subsection (A), the transferor is not released from liability to the limited liability company under the operating agreement or this Act.

D. 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, require access to information concerning the company's transactions, or inspect or copy any of the company's records.

E. A transferee who does not become a member is entitled to:

1. Receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

2. Receive, upon dissolution and winding up of the limited liability company's business:

- a. In accordance with the transfer, the net amount otherwise distributable to the transferor;

- b. A statement of account only from the date of the latest statement of account agreed to by all the members;

3. Seek under Section 3700(A)(5) a judicial determination that it is equitable to dissolve and wind up the company's business.

F. A limited liability company need not give effect to a transfer until it has notice of the transfer.

History

CJY-17-08, July 22, 2008.

§ 3673. Rights of creditor

A. On application by a judgment creditor of a member of a limited liability company or of a member's transferee, a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the charging order.

B. A charging order constitutes a lien on the judgment debtor's

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 at the foreclosure sale has the rights of a transferee.

C. At any time before foreclosure, a distributional interest in a limited liability company which is charged may be redeemed:

1. By the judgment debtor;
2. With property other than the company's property, by one or more of the other members; or
3. With the company's property, but only if permitted by the operating agreement.

D. This Act does not affect a member's right under exemption laws with respect to the member's distributional interest in a limited liability company.

E. 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.

History

CJY-17-08, July 22, 2008.

Article 6. Member's Dissociation

§ 3680. 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 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 a court order charging the member's distributional interest which 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 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 3658; or

c. Engaged in conduct relating to the company's business which 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 the member or 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 a 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, but not merely by reason of 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.

History

CJY-17-08, July 22, 2008.

§ 3681. Member's power to dissociate; wrongful dissociation

A. 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, by express will pursuant to Section 3680.

B. 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:

1. It is in breach of an express provision of the agreement; or
2. Before the expiration of the specified term of a term company:
 - a. The member withdraws by express will;
 - b. The member is expelled by judicial determination under Section 3680(6);
 - c. The member is dissociated by becoming a debtor in bankruptcy; or
 - d. In the case of a member who 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.

C. A member who 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.

D. If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under Subsection (B),

damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation.

History

CJY-17-08, July 22, 2008.

§ 3682. Effect of member's dissociation

A. Upon a member's dissociation:

1. In an at-will company, the company must cause the dissociated member's distributional interest to be purchased under Article 7; and

2. In a term company:

a. If the company dissolves and winds up its business on or before the expiration of its specified term, Article 8 applies to determine the dissociated member's rights to distributions; and

b. If the company does not dissolve and wind up its business on or before the expiration of its specified term, the company must cause the dissociated member's distributional interest to be purchased under Article 7 on the date of the expiration of the term specified at the time of the member's dissociation.

B. Upon a member's dissociation from a limited liability company:

1. The member's right to participate in the management and conduct of the company's business terminates, except as otherwise provided in Section 3702, and the member ceases to be a member and is treated the same as a transferee of a member;

2. The member's duty of loyalty under Section 3658(B)(3) terminates; and

3. The member's duty of loyalty under Section 3658(B)(1) and (2) and duty of care under Section 3658(C) 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 3702.

History

CJY-17-08, July 22, 2008.

Article 7. Member's Dissociation When Business Not Wound Up

§ 3690. Company purchase of distributional interest

A. A limited liability company shall purchase a distributional interest of a:

1. 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 3700; or

2. 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 3700.

B. A limited liability company must 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 (A). The purchase offer must be accompanied by:

1. A statement of the company's assets and liabilities as of the date determined under Subsection (A);

2. The latest available balance sheet and income statement, if any; and

3. An explanation of how the estimated amount of the payment was calculated.

C. 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 3700(A)(4)(d).

D. If an agreement to purchase the distributional interest is not made within 120 days after the date determined under Subsection (A), 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 the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this Subsection is plenary and exclusive.

E. The court shall determine the fair value of the distributional interest in accordance with the standards set forth in Section 3691 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.

F. Damages for wrongful dissociation under Section 3681(B), 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.

History

CJY-17-08, July 22, 2008.

§ 3691. Court action to determine fair value of distributional interest

A. In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

1. 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;

2. 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

3. 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.

B. 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 and a claim under any agreement with the company or the remaining members that is not terminated by the court.

C. If the purchase is not completed in accordance with the specified terms, the company is to be dissolved upon application under Section 3700(A)(4)(d). 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 had not been ordered.

D. 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 their reasonable expenses, including attorney's 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 3690(B).

E. Interest must be paid on the amount awarded from the date determined under Section 3690(A) to the date of payment.

History

CJY-17-08, July 22, 2008.

Note. Typographical errors at Subsection C corrected to replace citation to Section 3700(B)(5)(d) with Section 3700(A)(4)(d); and Subsection E corrected to replace citation to Section 701(A) with Section 3690(A).

§ 3692. Dissociated member's power to bind limited liability company

For two years after a member dissociates without the dissociation

resulting in a dissolution and winding up of a limited liability company's business, the company, including a surviving company under Article 9, is bound by an act of the dissociated member which would have bound the company under Section 3640 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 deemed to have had notice under Section 3693.

History

CJY-17-08, July 22, 2008.

§ 3693. Statement of dissociation

A. A dissociated member or a limited liability company may file in the Department a statement of dissociation stating the name of the company and that the member is dissociated from the company.

B. For the purposes of Sections 3690 and 3692, a person not a member is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection B corrected to replace citation to Sections 3640 and 3692 with Sections 3690 and 3692.

Article 8. Winding Up Company's Business

§ 3700. Events causing dissolution and winding up of company's business

A. A limited liability company is dissolved, and its business must be wound up, upon the occurrence of any of the following events:

1. An event specified in the operating agreement;
2. Consent of the number or percentage of members specified in the operating agreement;
3. 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;
4. On application by a member or a dissociated member, upon entry of a judicial decree that:

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;

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 3690;

e. The managers or members 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; or

5. On application by a transferee of a member's interest, a judicial determination 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 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 the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer.

B. A limited liability company may be dissolved involuntarily by a judgment of a Navajo Nation Court in an action filed against it by the Attorney General of the Navajo Nation, and the company's business must be wound up, when any of the following is established:

1. The company has failed to comply with the provisions of this Act or regulations promulgated thereunder;

2. The company procured its formation through fraudulent misrepresentation or concealment of material facts;

3. The company violated the laws of the Navajo Nation; or

4. The company has continued to persist over a period of time to conduct its business in a fraudulent or otherwise illegal manner.

History

CJY-17-08, July 22, 2008.

Note. Typographical errors at Subsection (A) (3) corrected to replace "In event" with "An event"; and Subsection (B) (2) corrected to replace "misrepresentative" with "misrepresentation".

§ 3701. Limited liability company continues after dissolution

A. Subject to Subsection (B), a limited liability company continues after dissolution only for the purpose of winding up its business.

B. 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:

1. 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

2. The rights of a third party accruing under Section 3703(A) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

History

CJY-17-08, July 22, 2008.

§ 3702. Right to wind up limited liability company's business

A. After dissolution, a member who has not wrongfully dissociated may participate in winding up a limited liability company's business, but on application of any member, member's legal representative, or transferee, the Navajo Nation Courts, for good cause shown, may order judicial supervision of the winding up.

B. A legal representative of the last surviving member may wind up a limited liability company's business.

C. A person winding up a limited liability company's business may preserve the company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the company's business, dispose of and transfer the company's property, discharge the company's liabilities, distribute the assets of the company pursuant to Section 3705, settle disputes by mediation or arbitration, and perform other necessary acts.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection C corrected to replace citation to Section 806 with Section 3705.

§ 3703. Member's or manager's power and liability as agent after dissolution

A. A limited liability company is bound by a member's or manager's act after dissolution that:

1. Is appropriate for winding up the company's business; or

2. Would have bound the company under Section 3640 before dissolution, if the other party to the transaction did not have notice of the dissolution.

B. 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 winding up the company's business is liable to the company for any damage caused to the company arising from the liability.

History

CJY-17-08, July 22, 2008.

§ 3704. Articles of termination

A. At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the Department articles of termination stating:

1. The name of the company;

2. The date of the dissolution; and

3. That the company's business has been wound up and the legal existence of the company has been terminated.

B. 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.

History

CJY-17-08, July 22, 2008.

§ 3705. Distribution of assets in winding up limited liability company's business

A. In winding up a limited liability company's business, the assets of the company must be applied to discharge its obligations to creditors, including members who are creditors. Any surplus must be applied to pay in money the net amount distributable to members in accordance with their right to distributions under Subsection (B).

B. Each member is entitled to a distribution upon the winding up of the limited liability company's business consisting of a return of all contributions which have not previously been returned and a distribution of any remainder in equal shares.

History

CJY-17-08, July 22, 2008.

§ 3706. Known claims against dissolved limited liability company

A. A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

B. A dissolved limited liability company shall notify its known claimants in writing of the dissolution. The notice must:

1. Specify the information required to be included in a claim;
2. Provide a street and mailing address where the claim is to be sent;
3. State the deadline for receipt of the claim, which may not be less than 120 days after the date the written notice is received by the claimant; and
4. State that the claim will be barred if not received by the deadline.

C. A claim against a dissolved limited liability company is barred if the requirements of Subsection (B) are met, and:

1. The claim is not received by the specified deadline; or
2. In the case of a claim that is timely received but rejected by the dissolved company, the claimant does not commence a proceeding to enforce the claim within 90 days after the receipt of the notice of the rejection.

D. 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 dissolution.

History

CJY-17-08, July 22, 2008.

§ 3707. Other claims against dissolved limited liability company

A. A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

B. The notice must:

1. Be published at least once in a newspaper of general circulation in the area in which the dissolved limited liability company's principal office is located or, if none in the Navajo Nation, in which its designated office is or was last located;

2. Describe the information required to be contained in a claim and provide a street and mailing address where the claim is to be sent; and

3. State that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

C. If a dissolved limited liability company publishes a notice in accordance with Subsection (B), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved company within five years after the publication date of the notice:

1. A claimant who did not receive written notice under Section 3706;

2. A claimant whose claim was timely sent to the dissolved company but not acted on; and

3. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

D. A claim not barred under this Section may be enforced:

1. Against the dissolved limited liability company, to the extent of its undistributed assets; or

2. If the assets have been distributed in liquidation, against a member of the dissolved 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.

History

CJY-17-08, July 22, 2008.

§ 3708. Grounds for administrative dissolution

The Department may commence a proceeding to dissolve a limited liability company administratively if the company does not:

1. Pay any fees, taxes, or penalties imposed by this Act or other law within 60 days after they are due; or

2. Deliver its annual report to the Department within 90 days after it is due.

History

CJY-17-08, July 22, 2008.

§ 3709. Procedure for and effect of administrative dissolution

A. If the Department determines that a ground exists for administratively dissolving a limited liability company, the Department shall enter a record of the determination and serve the company with a copy of the record.

B. If the company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Department that each ground determined by the Department does not exist within 60 days after service of the notice, the Department shall administratively dissolve the company by signing a certification of the dissolution that recites the ground for dissolution and its effective date. The Department shall file the original of the certificate and serve the company with a copy of the certificate.

C. A company administratively dissolved continues its existence but may carry on only business necessary to wind up and liquidate its business and affairs under Section 3701 and to notify claimants under Sections 3706 and 3707.

D. The administrative dissolution of a company does not terminate the authority of its agent for service of process.

History

CJY-17-08, July 22, 2008.

§ 3710. Reinstatement following administrative dissolution

A. A limited liability company administratively dissolved may apply to the Department for reinstatement within two years after the effective date of dissolution. The application must:

1. Recite the name of the company and the effective date of its administrative dissolution;
2. State that the ground for dissolution either did not exist or have been eliminated;
3. State that the company's name satisfies the requirements of Section 3605; and
4. Contain a certificate from the Office of Navajo Tax Commission reciting that all taxes owed by the company have been paid.

B. If the Department determines that the application contains the information required by Subsection (A) and that the information is correct, the Department shall cancel the certificate of dissolution and 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.

C. 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 never occurred.

History

CJY-17-08, July 22, 2008.

§ 3711. Appeal from denial of reinstatement

A. If the Department denies a limited liability company's application for reinstatement following administrative dissolution, the Department shall serve the company with a record that explains the reason or reasons for denial.

B. The company may appeal the denial of reinstatement to the Department by filing a notice of appeal within thirty (30) days after service of the notice of denial is perfected.

C. The notice of appeal shall be in writing and shall:

1. Identify the company being denied reinstatement, and contain a short statement of facts indicating the nature and circumstances of the denial;

2. Specify the legal basis for the appeal; and

3. Contain a statement of facts upon which the company relies in support of the appeal and such argument as the company may care to make in support of the appeal.

D. Within five (5) days after receiving a notice of appeal, the Department shall refer the appeal to the Navajo Office of Hearing and Appeals for assignment to a qualified and impartial hearing officer.

E. The hearing officer shall hear the appeal within thirty (30) days of receipt of the notice of appeal by the Department. Upon request or agreement of the company, a delay of not more than fifteen (15) days may be granted.

F. Notice shall be afforded to the parties at least ten (10) days in advance of the date set for hearing. Each party at the hearing may be represented by counsel and shall have the opportunity to subpoena witnesses, present evidence, and examine witnesses.

G. After the hearing, each party shall have ten (10) days to submit in writing proposed findings of fact and conclusions of law. The hearing officer may uphold or reverse the decision of the Department or any part thereof, but may not grant any other relief.

H. The hearing officer shall issue written findings of fact and conclusions of law that shall state the decision and grounds thereof.

I. The decision of the hearing officer shall be final and may be appealed by any party to the Navajo Nation Supreme Court in accordance with the Navajo Nation Rules of Civil Appellate Procedure. The court shall review the decision of the hearing officer of the administrative record only. The decision shall not be subject to de novo review on appeal. The court may substitute its judgment on those questions of law within its special competence but shall otherwise uphold the decision of the hearing officer where reasonable.

History

CJY-17-08, July 22, 2008.

Article 9. Conversions and Mergers

§ 3720. Definitions

In this Article:

1. "Corporation" means a corporation under Navajo Nation Corporation Code, a predecessor law, or comparable law of another jurisdiction.

2. "General partner" means a partner in a partnership and a general partner in a limited partnership.

3. "Limited partner" means a limited partner in a limited partnership.

4. "Limited partnership" means a limited partnership created under Navajo Nation Limited Partnership Act, a predecessor law, or comparable law of another jurisdiction.

5. "Partner" includes a general partner and a limited partner.

6. "Partnership" means a general partnership under the Navajo Nation Uniform Partnership Act, a predecessor law, or comparable law of another jurisdiction.

7. "Partnership agreement" means an agreement among the partners concerning the partnership or limited partnership.

8. "Shareholder" means a shareholder in a corporation.

History

CJY-17-08, July 22, 2008.

§ 3721. Conversion of partnership or limited partnership to limited liability company

A. A partnership or limited partnership may be converted to a limited liability company pursuant to this section.

B. The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.

C. An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited

partnership, as the case may be, into interests in the converted limited liability company or the cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or a combination thereof.

D. After a conversion is approved under Subsection (B), the partnership or limited partnership shall file articles of organization in the Department which satisfy the requirements of Section 3622 and contain:

1. A statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership, as the case may be;

2. Its former name;

3. A statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under Subsection (B); and

4. In the case of a limited partnership, a statement that the certificate of limited partnership is to be canceled as of the date the conversion took effect.

E. In the case of a limited partnership, the filing of articles of organization under Subsection (D) cancels its certificate of limited partnership as of the date the conversion took effect.

F. A conversion takes effect when the articles of organization are filed in the Department or at any later date specified in the articles of organization.

G. A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

H. A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company. A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

History

CJY-17-08, July 22, 2008.

Note. Typographical error corrected to delete Subsection I, without any text.

§ 3722. Effect of conversion; entity unchanged

A. A partnership or limited partnership that has been converted pursuant to this Article is for all purposes the same entity that existed before the

conversion.

B. When a conversion takes effect:

1. All property owned by the converting partnership or limited partnership vests in the limited liability company;

2. All debts, liabilities, and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

3. An action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

4. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting partnership or limited partnership vest in the limited liability company; and

5. Except as otherwise provided in the agreement of conversion under Section 3721(C), all of the partners of the converting partnership continue as members of the limited liability company.

History

CJY-17-08, July 22, 2008.

§ 3723. Merger of entities

A. Pursuant to a plan of merger approved under Subsection (C), a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic or foreign entities.

B. A plan of merger must set forth:

1. The name of each entity that is a party to the merger;

2. The name of the surviving entity into which the other entities will merge;

3. The type of organization of the surviving entity;

4. The terms and conditions of the merger;

5. The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or in part; and

6. The street and mailing address of the surviving entity's principal place of business.

C. A plan of merger must be approved:

1. In the case of a limited liability company that is a party to the merger, by all of the members or by a number or percentage of members specified in the operating agreement;

2. In the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the State or foreign jurisdiction in which the foreign limited liability company is organized;

3. In the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under Section 3721(B); and

4. In the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of the Navajo Nation or of the state or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.

D. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

E. The merger is effective upon the filing of the articles of merger with the Department, or at such later date as the articles may provide.

History

CJY-17-08, July 22, 2008.

§ 3724. Articles of merger

A. After approval of the plan of merger under Section 3723(C), unless the merger is abandoned under Section 3723(D), articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the Department for filing. The articles must set forth:

1. The name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

2. For each limited liability company that is to merge, the date its articles of organization were filed with the Department;

3. That a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

4. The name, street and mailing address, and phone numbers of the surviving limited liability company or other surviving entity;

5. The effective date of the merger;

6. If a limited liability company is the surviving entity, such changes in its articles of organization as are necessary by reason of the merger;

7. If a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the Department or, if an application has not been filed, a statement to that effect; and

8. If the surviving entity is not a limited liability company, an agreement that the surviving entity may be served with process in the Navajo Nation and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in the Navajo Nation which is to merge, and for the enforcement, as provided in this Act, of the right of members of any limited liability company to receive payment for their interest against the surviving entity.

B. If a foreign limited liability company is the surviving entity of a merger, it may not do business in the Navajo Nation until an application for that authority is filed with the Department.

C. The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is to merge.

D. Articles of merger operate as an amendment to the limited liability company's articles of organization.

History

CJY-17-08, July 22, 2008.

§ 3725. Effect of merger

A. When a merger takes effect:

1. The separate existence of each limited liability company and other entity that is a party to the merger, other than the surviving entity, terminates;

2. All property owned by each of the limited liability companies and other entities that are party to the merger vests in the surviving entity;

3. All debts, liabilities, and other obligations of each limited liability company and other entity that is party to the merger become the obligations of the surviving entity;

4. An action or proceeding pending by or against a limited liability company or other party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a

party to the action or proceeding; and

5. Except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every limited liability company and other entity that is a party to a merger vest in the surviving entity.

B. The Department is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in the Navajo Nation or the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the Department shall send a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the street and mailing address set forth in the articles of merger. Service is effected under this Subsection at the earliest of:

1. The date the company receives the process, notice, or demand;
2. The date shown on the return receipt, if signed on behalf of the company; or
3. Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

C. A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

D. Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this Act or pay its liabilities and distribute its assets pursuant to this Act.

E. Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

History

CJY-17-08, July 22, 2008.

§ 3726. Article not exclusive

This Article does not preclude an entity from being converted or merged under other law.

History

CJY-17-08, July 22, 2008.

Article 10. Foreign Limited Liability Companies

§ 3730. Law governing foreign limited liability companies

A. The laws of the Navajo Nation or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its managers, members, and their transferees.

B. A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the laws of another jurisdiction under which the foreign company is organized and the laws of the Navajo Nation.

C. A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in the Navajo Nation.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection C corrected to replace "authorized" with "authorize".

§ 3731. Application for certification of authority

A. A foreign limited liability company may apply for a certificate of authority to transact business in the Navajo Nation by delivering an application to the Department for filing. The application must set forth:

1. The name of the foreign company or, if its name is unavailable for use in the Navajo Nation, a name that satisfies the requirements of Section 3734;

2. The name of the state or country under whose law it is organized;

3. The street and mailing address and phone number of its principal office;

4. The street and mailing address and phone number of its initial designated office in the Navajo Nation;

5. The name, street and mailing address and phone number of its initial agent for service of process in the Navajo Nation;

6. Whether the duration of the company is for a specified term and, if so, the period specified;

7. Whether the company is manager-managed, and, if so, the name, street and mailing address and phone number of each initial manager; and

8. Whether the members of the company are to be liable for its debts and obligations under a provision similar to Section 3642(C).

B. A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the secretary of state or other official having custody of

company records in the State or country under whose law it is organized.

History

CJY-17-08, July 22, 2008.

§ 3732. Activities not constituting transacting business

A. Activities of a foreign limited liability company that do not constitute transacting business in the Navajo Nation within the meaning of this Article include:

1. Maintaining, defending, or settling an action or proceeding;
2. Holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;
3. Maintaining bank accounts;
4. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign company's own securities or maintaining trustees or depositories with respect to those securities;
5. Selling through independent contractors;
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the Navajo Nation before they become contracts;
7. Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
8. Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
9. Conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of a like manner; and
10. Transacting business in interstate commerce.

B. For purposes of this Article, the ownership in the Navajo Nation of income-producing real property or tangible personal property, other than property excluded under Subsection (A), constitutes transacting business in the Navajo Nation.

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

History

CJY-17-08, July 22, 2008.

§ 3733. Issuance of certificate of authority

Unless the Department determines that an application for a certificate of authority fails to comply as to form with the filing requirements of this Act, the Department, upon payment of all filing fees, shall file the application and send a receipt for it and the fees to the limited liability company or its representative.

History

CJY-17-08, July 22, 2008.

§ 3734. Name of foreign limited liability company

A. If the name of a foreign limited liability company does not satisfy the requirements of Section 3605, the company, to obtain or maintain a certificate of authority to transact business in the Navajo Nation, must use a fictitious name to transact business in the Navajo Nation if its real name is unavailable and it delivers to the Department for filing a copy of the resolution of its managers, in the case of a manager-managed company, adopting the fictitious name.

B. Except as authorized by Subsections (C) and (D), the name, including a fictitious name to be used to transact business in the Navajo Nation, of a foreign limited liability company must be distinguishable upon the records of the Department from:

1. The name of any corporation, limited partnership, or company incorporated, organized, or authorized to transact business in the Navajo Nation;
2. A name reserved or registered under Section 3606 or 3607; and
3. The fictitious name of another foreign limited liability company authorized to transact business in the Navajo Nation.

C. A foreign limited liability company may apply to the Navajo Nation for authority to use in the Navajo Nation a name that is not distinguishable upon the records of the Department from a name described in Subsection (B). The Department shall authorize use of the name applied for if:

1. The present user, registrant, or owner of a reserved name consents to the use in a record and submits an undertaking in form satisfactory to the Department to change its name to a name that is distinguishable upon the records of the Department from the name of the foreign applying limited liability company; or
2. The applicant delivers to the Navajo Nation a certified copy of a final judgment of a court establishing the applicant's right to use the name applied for in the Navajo Nation.

D. A foreign limited liability company may use in the Navajo Nation the name, including the fictitious name, of another domestic or foreign entity that

is used in the Navajo Nation if the other entity is incorporated, organized, or authorized to transact business in the Navajo Nation and the foreign limited liability company:

1. Has merged with the other entity;
2. Has been formed by reorganization of the other entity; or
3. Has acquired all or substantially all of the assets, including the name, of the other entity.

E. If a foreign limited liability company authorized to transact business in the Navajo Nation changes its name to one that does not satisfy the requirements of Section 3605, it may not transact business in the Navajo Nation under the name as changed until it adopts a name satisfying the requirements of Section 3605 and obtains an amended certificate of authority.

History

CJY-17-08, July 22, 2008.

§ 3735. Revocation of certificate of authority

A. A certificate of authority of a foreign limited liability company to transact business in the Navajo Nation may be revoked by the Department in the manner provided in Subsection (B) if;

1. The company fails to:
 - a. Pay any fees, taxes, and penalties owed to the Navajo Nation;
 - b. Deliver its annual report required under Section 3630 to the Department within 90 days after it is due;
 - c. Appoint and maintain an agent for service of process as required by this Article; or
 - d. File a statement of a change in the name or business address of the agent as required by this Article; or
2. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company pursuant to this Article.

B. The Department may not revoke a certificate of authority of a foreign limited liability company unless the Department sends the company notice of the revocation, at least 60 days before its effective date, by a record addressed to its agent for service of process in the Navajo Nation, or if the company fails to appoint and maintain a proper agent in the Navajo Nation, addressed to the office required to be maintained by Section 3608. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in the Navajo Nation ceases on the effective date of the revocation unless the foreign limited liability company cures the

failure before that date.

History

CJY-17-08, July 22, 2008.

§ 3736. Cancellation of authority

A foreign limited liability company may cancel its authority to transact business in the Navajo Nation by filing in the Department a certificate of cancellation. Cancellation does not terminate the authority of the Department to accept service of process on the company for claims for relief arising out of the transactions of business in the Navajo Nation.

History

CJY-17-08, July 22, 2008.

§ 3737. Effect of failure to obtain certificate of authority

A. A foreign limited liability company transacting business in the Navajo Nation may not maintain an action or proceeding in the Navajo Nation unless it has a certificate of authority to transact business in the Navajo Nation.

B. The failure of a foreign limited liability company to have a certificate of authority to transact business in the Navajo Nation does not impair the validity of a contract or act of the company or prevent the foreign limited liability company from defending an action or proceeding in the Navajo Nation.

C. Limitations on personal liability of managers, members, and their transferees are not waived solely by transacting business in the Navajo Nation without a certificate of authority.

D. If a foreign limited liability company transacts business in the Navajo Nation without a certificate of authority, it appoints the Department as its agent for service of process for claims for relief arising out of the transaction of business in the Navajo Nation.

History

CJY-17-08, July 22, 2008.

§ 3738. Action by Attorney General

The Attorney General of the Navajo Nation may maintain an action to restrain a foreign limited liability company from transacting business in the Navajo Nation in violation of this Article.

History

CJY-17-08, July 22, 2008.

Article 11. Derivative Actions

§ 3740. Right of action

A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to do so have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

History

CJY-17-08, July 22, 2008.

Note. Typographical error corrected to change third use of the word "actions" to "action".

§ 3741. Proper plaintiff

In a derivative action for a limited liability company, the plaintiff must be member of the company when the action is commenced; and

1. Must have been a member at the time of the transaction of which the plaintiff complains; or
2. 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.

History

CJY-17-08, July 22, 2008.

§ 3742. Pleading

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.

History

CJY-17-08, July 22, 2008.

§ 3743. Expenses

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's fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

History

CJY-17-08, July 22, 2008.

Article 12. Miscellaneous Provisions

§ 3750. Uniformity of application and construction

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among the governments enacting it.

History

CJY-17-08, July 22, 2008.

Note. Typographical error corrected to replace "effectuate it" with "effectuate its".

§ 3751. Short title

This Act may be cited as the Navajo Nation Limited Liability Company Act.

History

CJY-17-08, July 22, 2008.

§ 3752. Severability clause

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

History

CJY-17-08, July 22, 2008.

Note. Typographical error corrected to replace "to end" with "to this end".

§ 3753. Effective date

This Act shall become effective 30 days after approval by the Navajo Nation Council.

History

CJY-17-08, July 22, 2008. Approved by the Navajo Nation Council on July 22, 2008. Signed into law by the Navajo Nation President on August 8, 2008.

§ 3754. Saving clause

Notwithstanding Section 3755, this Act does not affect an action or proceeding commenced or right accrued before the effective date of this Act.

History

CJY-17-08, July 22, 2008.

§ 3755. Jurisdiction of Navajo Nation courts

The Navajo Nation District Court shall have original jurisdiction over any action against, or by, any domestic or foreign limited liability company, or for actions arising under this Act including actions by an aggrieved party contesting acts or omissions by the Department, under this Act.

History

CJY-17-08, July 22, 2008.

§ 3756. Consent to the jurisdiction of Navajo Nation

A. Any limited liability company created pursuant to this Act or any member or other parties mentioned therein or thereafter its formation shall be deemed to have consented to legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the company within the Navajo Nation.

B. The Navajo Nation courts shall have original jurisdiction over any action against, or by, any domestic or foreign limited liability company, or for actions arising under this Act including actions by an aggrieved party contesting acts or omissions by the Department, under this Act.

C. Nothing contained in the articles of organization and other applicable organizational documents shall be construed to reduce or impair this section.

D. Nothing in this Section shall be construed as an exception to or repeal of the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, as may be amended from time to time.

History

CJY-17-08, July 22, 2008.

§ 3757. Taxation

A limited liability company established under this Act or a foreign limited liability company transacting business in the Navajo Nation pursuant to this Act shall pay applicable taxes that are imposed by the laws of the Navajo Nation on domestic and foreign limited liability companies on an identical basis.

History

CJY-17-08, July 22, 2008.

§ 3758. Department; duties and functions; rules and regulations

A. The Department shall be charged with the administration and enforcement of this Act. The Department is authorized to employ such personnel as maybe necessary for the administration of this Act.

B. The Department is authorized to promulgate rules and regulations from time to time as may be necessary to carry out the provisions and policies of this Act. Such rules and regulations shall include:

1. Regulations governing the determination of fees and charges for the proper and efficient administration of this Act.

2. Regulations governing administration of this Act by the Department.

C. The effectiveness and enforceability of the provisions of the Act shall not be dependent upon the adoption of regulations pursuant to Subsection (B) of this Section.

History

CJY-17-08, July 22, 2008.

§ 3759. Non-payment of fees; sanctions

A. The Department shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any limited liability company organized under the provisions of this Act until all fees and charges provided to be paid in connection therewith shall have been paid to it or while the corporation is in default in the payment of any fees, charges, or sanctions herein provided to be paid by or assessed against it. Nothing in this Section shall prevent the filing, without the payment of all such fees, charges, and sanctions, of a written notice of resignation by a registered agent of a corporation.

B. No limited liability company required to pay a fee, charge, or sanction under this Act shall maintain within the Navajo Nation any civil action until all such fees, charges, and sanctions have been paid in full.

C. The Navajo Nation shall have the right to offset any amounts due and owing from a limited liability company under this Act against any payment due from the Navajo Nation to such limited liability company.

History

CJY-17-08, July 22, 2008.

Note. Slightly reworded at Subsection A.

Chapter 23. Navajo Nation Uniform Partnership Act

Article 1. General Provisions

§ 3800. Policy and purpose

The Navajo Nation Uniform Partnership Act is hereby enacted:

A. The purpose of this Act is to permit the formation of various partnership entities and require registration of foreign partnerships; and to regulate such entities so as to promote economic growth and further exercise Navajo Nation sovereignty in the governance of its territory, and citizens.

B. This Act is based upon the model Uniform Partnership Act (1993) general principles of general partnerships. The interpretation of this Act shall be based on Navajo Nation court interpretation and such interpretation shall give the utmost respect in deciding the meaning and purpose of this Act to the unique traditions and customs of the Navajo People. General decisional law interpreting similar provisions of other general partnership laws in other jurisdictions may be used as guidance.

C. Unless otherwise expressly stated by law, the sovereign immunity of the Navajo Nation shall not extend to partnership entities organized under this Act, nor shall such entities be considered a subdivision, entity, or enterprise of the Navajo Nation, nor shall the Navajo Nation be liable for the debts or obligations of any such entities established as set herein.

D. The Division of Economic Development through its Business Regulatory Department shall administer the provisions of the Act. The Business Regulatory Department shall promulgate rules and regulations to implement this Act. All proposed rules and regulations shall be published for public comments at least 90 days prior to submission to the Economic Development Committee of the Navajo Nation Council for final review and approval. The Division of Economic Development is directed to prepare an appropriate supplemental budget for carrying out its responsibilities under this Act.

History

CJY-17-08, July 22, 2008.

§ 3801. Definitions

In this Act, unless the context otherwise requires:

A. "Business" includes every trade, occupation and profession.

B. "Debtor in bankruptcy" means a person who is the subject of either:

1. An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

2. A comparable order under federal, state or foreign law governing insolvency.

C. "Department" means the Business Regulatory Department within the Division of Economic Development or its designee successor.

D. "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the

partner's transferee.

E. Limited liability partnership means a partnership that has filed a statement of qualification under Section 3890.

F. "Navajo Nation" means:

1. When referring to the body politic, the Navajo Nation government, including its Council and applicable standing committees and boards;

2. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:

a. All land within the exterior boundaries of the Navajo Indian Reservation, including the Navajo Partitioned Land, or of the Eastern Navajo portion of the Navajo Nation, including Alamo, Tóhajiilee, and Ramah, or of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments;

b. All lands held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for, the use or benefit of the Navajo Nation, the Navajo Nation, any Band of Navajo Indians, or any individual Navajo Indian as such; and

c. All other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

G. "Partnership" means an association of two or more persons to carry on as co-owners of a business for profit created under Section 3811, predecessor law or comparable law of another jurisdiction.

H. "Partnership agreement" means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

I. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

J. "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

K. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

L. "Property" means all property, real, personal or mixed, tangible or intangible, or any interest therein.

M. "State" means a state of the United States, a federally-recognized

Indian nation, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

N. "Statement" means a statement of partnership authority under Section 3822, a statement of denial under Section 3823, a statement of dissociation under Section 3863, a statement of dissolution under Section 3874, a statement of merger under Section 3886, or an amendment or cancellation of any of the foregoing.

O. "Transfer" includes an assignment, conveyance, lease, mortgage, deed and encumbrance.

History

CJY-17-08, July 22, 2008.

§ 3802. Knowledge and notice

A. A person knows a fact if the person has actual knowledge of it.

B. A person has notice of a fact if the person:

1. Knows of it;

2. Has received a notification of it; or

3. Has reason to know it exists from all of the facts known to the person at the time in question.

C. A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

D. A person receives a notification when it:

1. Comes to the person's attention; or

2. Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

E. Except as provided in Subsection (F), a person other than an individual knows, has notice or receives a notification of a fact for purposes of a particular transaction when the individual acting for the person and conducting the transaction knows, has notice or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person 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 that the

transaction would be materially affected by the information.

F. A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of fraud on the partnership committed by or with the consent of that partner.

History

CJY-17-08, July 22, 2008.

§ 3803. Effect of partnership agreement; nonwaivable provisions

A. Except as otherwise provided in Subsection (B), a partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this Act governs relations among the partners and between the partners and the partnership.

B. The partnership agreement may not:

1. Vary the rights and duties under Section 3805 except to eliminate the duty to provide copies of statements to all of the partners;

2. Unreasonably restrict the right of access to books and records under Section 3832(B);

3. Eliminate the duty of loyalty under Section 3833(B) or Section 3852(B) (3):

a. The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

b. All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

4. Unreasonably reduce the duty of care under Section 3833(C), or 3852(B) (3);

5. Eliminate the obligation of good faith and fair dealing under Section 3833(D), but the partnership by agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

6. Vary the power to dissociate as a partner under Section 3851(A), except to require the notice under Section 3850(1) to be in writing;

7. Vary the rights of a court to expel a partner in the events specified in Section 3850(5);

8. Vary the requirement to wind up the partnership business in cases specified in Section 3870(4), (5), or (6); or

9. Restrict rights of third parties under the Act.

History

CJY-17-08, July 22, 2008.

Note. Typographical errors at Subsection B(2) corrected to replace the citation to Section 3831(B) with Section 3832(B); Subsection B(3) corrected to replace the citation to Section 3832(B) with Section 3833(B); Subsection B(3)(a) corrected by replacing "do no violate" with "do not violate"; Subsection B(4) corrected to replace the citation to Section 3832(C) with Section 3833(C); and Subsection B(5) corrected to replace the citation to Section 3832(D) with Section 3833(D).

§ 3804. Supplemental principles of law

Unless displaced by particular provisions of this Act, the principles of law and equity supplement this Act.

History

CJY-17-08, July 22, 2008.

§ 3805. Execution, filing and recording of statements

A. A statement may be filed in the Department. A certified copy of a statement that is filed in an office in another state may be filed in the Department. Either filing has the effect provided in this Act with respect to partnership property located in or transactions that occur in the Navajo Nation.

B. A certified copy of a statement that has been filed in the Department and recorded in an applicable office for recording transfers of real property has the effect provided for recorded statements in this Act. A recorded statement that is not a certified copy of a statement filed in the Department does not have the effect provided for recorded statements in this Act.

C. A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or any other person authorized by this Act. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statements are accurate.

D. A person authorized by this Act to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement and states the substance of the amendment or cancellation.

F. A person who files a statement pursuant to this Section shall promptly send a copy of the statement to every non-filing partner and to any other

person named as a partner in the statement. Failure to send a copy of a statement to a partner or any other person does not limit the effectiveness of the statement as to a person who is not a partner.

G. The Department may collect a fee for filing or providing a certified copy of a statement.

History

CJY-17-08, July 22, 2008.

§ 3806. Law governing internal affairs

A. Except as otherwise provided in Subsection (B). The law of a jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

B. The law of the Navajo Nation governs relations among the partner and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

History

CJY-17-08, July 22, 2008.

§ 3807. Partnership subject to amendment or repeal

A partnership governed by this Act is subject to any amendment to or repeal of this Act.

History

CJY-17-08, July 22, 2008.

Article 2. Nature of Partnership

§ 3810. Partnership as entity

A. A partnership is an entity distinct from its partners.

B. A limited liability partnership continues to be the same entity that existed before the filing of the statement of qualification under Section 3890.

History

CJY-17-08, July 22, 2008.

§ 3811. Formation of partnership

A. Except as otherwise provided in Subsection (B), the association of two or more persons to carry on as co-owners of a business for profit forms a partnership, whether or not the persons intend to create a partnership.

B. An association created under a statute other than this Act, a

predecessor statute, or a comparable statute of another jurisdiction is not a partnership.

C. In determining whether a partnership is created, the following rules apply:

1. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

2. The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

3. A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

a. Of a debt by installments or otherwise;

b. For services as an independent contractor or of wages or other compensation to an employee;

c. Of rent;

d. Of an annuity or any other retirement benefit to a beneficiary, representative or designee of a deceased or retired partner;

e. Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds or increase in value derived from the collateral;

f. For the sale of the goodwill of any business or other property by installments or otherwise.

History

CJY-17-08, July 22, 2008.

§ 3812. Partnership property

Property acquired by a partnership is property of the partnership and not of the partners individually.

History

CJY-17-08, July 22, 2008.

§ 3813. When property is partnership property

A. Property is partnership property if acquired in the name of:

1. The partnership; or

2. One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

B. Property is acquired in the name of the partnership by a transfer to:

1. The partnership in its name; or

2. One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

C. Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

D. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purpose.

History

CJY-17-08, July 22, 2008.

Article 3. Relations of Partners to Persons Dealing With Partnership

§ 3820. Partner agent of partnership

Subject to the effect of a statement of partnership authority under Section 3822:

1. Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

2. An act of a partner that is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

History

CJY-17-08, July 22, 2008.

§ 3821. Transfer of partnership property

A. Partnership property may be transferred as follows:

1. Subject to the effect of a statement of partnership authority under Section 3822, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

2. Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

3. Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

B. A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under Section 3820 and:

1. As to a subsequent transferee who gave value for property transferred under Subsection (A)(1) or (2), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

2. As to a transferee who gave value for property transferred under Subsection (A)(3), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

C. A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under Subsection B, from any earlier transferee of the property.

D. If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

History

CJY-17-08, July 22, 2008.

§ 3822. Statement of partnership authority

A. A partnership may file a statement of partnership authority that:

1. Must include:

a. The name of the partnership;

b. The street and mailing address and phone number of its chief executive office and of one office in the Navajo Nation, if there is one;

c. The names, street and mailing addresses and phone numbers of all of the partners or of an agent appointed and maintained by the partnership for the purpose of Subsection (B); and

d. The names of the partners authorized to execute an instrument transferring real property interest held in the name of the partnership.

2. May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

B. If a statement of partnership authority names an agent, the agent shall maintain a list of the names, street and mailing addresses and phone numbers of all of the partners and make it available to any person on request for good cause shown.

C. If a filed statement of partnership authority is executed pursuant to Section 3805(C) and states the name of the partnership but does not contain all of the other information required by Subsection (A), the statement nevertheless operates with respect to a person who is not a partner as provided in Subsections (D) and (E).

D. Except as otherwise provided in Subsection (G), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

1. Except for transfers of real property interest, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, as long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

2. A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property interest is conclusive in favor of a person who gives value without knowledge to the contrary, as long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording

transfers of that real property interest. The recording in the office for recording transfers of that real property interest of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

E. A person who is not a partner is deemed to know of a limitation on the authority of a partner to transfer real property interest held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property interest.

F. Except as otherwise provided in Subsections (D) and (E) and Sections 3863 and 3874, a person who is not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

G. Unless earlier cancelled, a filed statement of partnership authority is cancelled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the Department.

History

CJY-17-08, July 22, 2008.

§ 3823. Statement of denial

A partner or any other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to Section 3822(B) may file a statement of denial stating the name of the partnership and the fact that is being denied, including denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in Section 3822 (D) and (E).

History

CJY-17-08, July 22, 2008.

§ 3824. Partnership liable for partner's actionable conduct

A. A partnership 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 partner acting in the ordinary course of business of the partnership or with authority of the partnership.

B. If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person who is not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

History

CJY-17-08, July 22, 2008.

§ 3825. Partner's liability

A. Except as otherwise provided in Subsection (B), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

B. A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

C. An obligation of the partnership incurred while the partnership is a limited liability partnership whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation by reason of being or so acting as a partner. This Subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under Section 3890(B).

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection C corrected to replace "A partners" with "A partner".

§ 3826. Actions by and against partnership and partners

A. A partnership may sue and be sued in the name of the partnership.

B. Except as otherwise provided in Subsection (F), action may be brought against the partnership and any or all of the partners in the same action or in separate actions.

C. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

D. A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under Section 3825 and:

1. A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part; or

2. The partnership is a debtor in bankruptcy;

3. The partner has agreed that the creditor need not exhaust partnership assets;

4. A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to

satisfy the judgment, that exhaustion of partnership assets is excessively burdensome or that the grant of permission is an appropriate exercise of the court's equitable powers; or

5. Liability is imposed on the partner by law or contract independent of the existence of the partnership.

E. This Section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 3827.

F. A partner is not a proper party to an action against a partnership if that partner is not personally liable for the claim under Section 3825.

History

CJY-17-08, July 22, 2008.

§ 3827. Liability of purported partner

A. If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons who are not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies on the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

B. If a person pursuant to Subsection (A) is represented to be a partner in an existing partnership, or with one or more persons who are not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance on the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or partnership obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

C. A person is not a partner in a partnership merely because the person is named by another in a statement of partnership authority.

D. A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

E. Except as otherwise provided in Subsections (A) and (B), persons who are not partners as to each other are not liable as partners to other persons.

History

CJY-17-08, July 22, 2008.

Article 4. Relations of Partners to Each Other and to Partnership

§ 3830. Partner's rights and duties

A. Each partner is deemed to have an account that is:

1. Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

2. Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

B. Each partner is entitled to an equal share of the partnership profits and chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

C. A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

D. A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

E. A payment or advance made by a partner which gives rise to a partnership obligation under Subsection (C) or (D) constitutes a loan to the partnership that accrues interest from the date of the payment or advance.

F. Each partner has equal rights in the management and conduct of the partnership business.

G. A partner may use or possess partnership property only on behalf of the partnership.

H. A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

I. A person may become a partner only with the consent of all of the partners.

J. A difference arising as to a matter in the ordinary course of business

of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

K. This Section does not affect the obligations of a partnership to other persons under Section 3820.

History

CJY-17-08, July 22, 2008.

§ 3831. Distributions in kind

A partner has no right to receive, and may not be required to accept, a distribution in kind.

History

CJY-17-08, July 22, 2008.

§ 3832. Partner's rights to information

A. A partnership shall keep its books and records, if any, at its chief executive office.

B. A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

C. Each partner and the partnership shall furnish to a partner, and the legal representative of a deceased partner or partner under legal disability, to the extent just and reasonable, complete and accurate information concerning the partnership.

1. Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this Act; and

2. On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

History

CJY-17-08, July 22, 2008.

§ 3833. General standards of partner's conduct

A. The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in Subsections (B) and (C).

B. A partner's duty of loyalty to the partnership and the other partners is limited to the following:

1. To account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

2. To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

3. To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

C. A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

D. A partner shall discharge the duties to the partnership and the other partners under this Act or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

E. A partner does not violate a duty or obligation under this Act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

F. A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

G. This Section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

History

CJY-17-08, July 22, 2008.

§ 3834. Actions by partnership and partners

A. A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

B. A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to

partnership business, to:

1. Enforce the partner's rights under the partnership agreement;
2. Enforce the partner's rights under this Act, including:
 - a. The partner's rights under Section 3830, 3832 or 3833;
 - b. The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to Section 3860 or enforce any other right under Articles 6 or 7; or
 - c. The partner's right to compel a dissolution and winding up of the partnership business under Section 3870 or enforce any other right under Article 8; or
3. Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

C. The accrual of, and any time limitation on, a right of action for a remedy under this Section is governed by other law. A right to an accounting on a dissolution and winding up does not revive a claim barred by law.

History

CJY-17-08, July 22, 2008.

§ 3835. Continuation of partnership beyond definite term or particular undertaking

A. If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, as far as is consistent with a partnership at will.

B. If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

History

CJY-17-08, July 22, 2008.

Article 5. Transferees and Creditors of Partner

§ 3840. Partner not co-owner of partnership property

A partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred, either voluntarily or involuntarily.

History

CJY-17-08, July 22, 2008.

§ 3841. Partner's transferable interest in partnership

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

History

CJY-17-08, July 22, 2008.

§ 3842. Transfer of partner's transferable interest

A. A transfer, in whole or in part, of a partner's transferable interest in the partnership:

1. Is permissible;

2. Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

3. Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions or to inspect or copy the partnership books or records.

B. A transferee of a partner's transferable interest in the partnership has a right:

1. To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

2. To receive on the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

3. Seek under Section 3870(6) a judicial determination that it is equitable to wind up the partnership business.

C. In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

D. On transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

E. A partnership need not give effect to a transferee's rights under this Section until it has notice of the transfer.

F. A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

History

CJY-17-08, July 22, 2008.

§ 3843. Partner's transferable interest subject to charging order

A. On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and may make all other orders, directions, accounts and inquiries the judgment debtor might have made or that the circumstances of the case may require.

B. A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

C. At any time before foreclosure, an interest charged may be redeemed:

1. By the judgment debtor; or
2. With property other than partnership property, by one or more of the other partners; or
3. With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

D. This Act does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

E. This Section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

History

CJY-17-08, July 22, 2008.

Article 6. Partner's Dissociation

§ 3850. Events causing partner's dissociation

A partner is dissociated from a partnership on the occurrence of any of the following events:

1. The partnership's having notice of the partner's express will to

withdraw as a partner or on a later date specified by the partner;

2. An event agreed to in the partnership agreement as causing the partner's dissociation;

3. The partner's expulsion pursuant to the partnership agreement;

4. The partner's expulsion by the unanimous vote of the other partners if:

a. It is unlawful to carry on the partnership business with that partner;

b. There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, that has not been foreclosed;

c. Within 90 days after the partnership notifies a corporate partner 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, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

d. A partnership or limited partnership that is a partner has been dissolved and its business is being wound up;

5. On application by the partnership or another partner, the partner's expulsion by judicial determination because:

a. The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

b. The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 3833; or

c. The partner engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with the partner;

6. The partner'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 that partner or of all or substantially all of that partner'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 partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or fails within 90 days after the expiration of a stay to have the appointment vacated;

7. In the case of a partner who is an individual:

a. The partner's death;

b. The appointment of a guardian or general conservator for the partner; or

c. A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

8. In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

9. In the case of a partner that is an estate or that is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

10. Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection 5(b) corrected to replace citation to Section 3832 with Section 3833.

§ 3851. Partner's power to dissociate; wrongful dissociation

A. A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to Section 3850(1).

B. A partner's dissociation is wrongful only if:

1. It is in breach of an express provision of the partnership agreement; or

2. In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

a. The partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under Section 3850(6) through (10) or wrongful dissociation under this Subsection;

b. The partner is expelled by judicial determination under Section 3850(5); or

c. In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

C. A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

History

CJY-17-08, July 22, 2008.

§ 3852. Effect of partner's dissociation

A. If a partner's dissociation results in a dissolution and winding up of the partnership business, Article 8 applies; otherwise, Article 7 applies.

B. Upon a partner's dissociation:

1. The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in Section 3872;

2. The partner's duty of loyalty under Section 3833(B)(3) terminates; and

3. The partner's duty of loyalty under Section 3833(B)(1) and (2) and duty of care under Section 3833(C) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to Section 3872.

History

CJY-17-08, July 22, 2008.

Note. Typographical errors at Subsection B(2) corrected to replace citation to Section 3832(B)(3) with Section 3833(B)(3); Subsection B(3) corrected to replace citation to Section 3832(B)(1) with Section 3833(B)(1); and Subsection B(3) corrected to replace citation to Section 3832(C) with Section 3833(C).

Article 7. Partner's Dissociation When Business Not Wound Up

§ 3860. Purchase of dissociated partner's interest

A. If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under Section 3870, the partnership shall cause the dissociated partner's interest in the partnership

to be purchased for a buyout price determined pursuant to Subsection (B).

B. The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under Section 3876(B) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the continuing services of any of the partners and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

C. Damages for wrongful dissociation under Section 3851(B), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

D. A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 3861.

E. If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under Subsection (C).

F. If a deferred payment is authorized under Subsection (H), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under Subsection (C), stating the time of payment, the amount and type of security for payment and the other terms and conditions of the obligation.

G. The payment or tender required by Subsection (E) or (F) must be accompanied by the following:

1. A statement of partnership assets and liabilities as of the date of dissociation;

2. The latest available partnership balance sheet and income statement, if any;

3. An explanation of how the estimated amount of the payment was calculated; and

4. Written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under Subsection (C), or other terms of the obligation to purchase.

H. A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or

completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause material hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

I. A dissociated partner may maintain an action against the partnership, pursuant to Section 3834(B)(2)(b), to determine the buyout price of that partner's interest, any offsets under Subsection (C), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership tenders payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under Subsection (C), and accrued interest and enter judgment for any additional payment or refund. If deferred payment is authorized under Subsection (H), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with Subsection (G).

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection I corrected to replace citation to Section 3833(B)(2)(b) with Section 3834(B)(2)(b).

§ 3861. Dissociated partner's power to bind and liability to partnership

A. For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Article 9, is bound by an act of the dissociated partner that would have bound the partnership under Section 3820 before dissociation only if at the time of entering into the transaction the other party:

1. Reasonably believed that the dissociated partner was then a partner;
2. Did not have notice of the partner's dissociation; and
3. Is not deemed to have had knowledge under Section 3822(E) or notice under Section 3863(C).

B. A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under Subsection (A).

History

CJY-17-08, July 22, 2008.

§ 3862. Dissociated partner's liability to other persons

A. A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in Subsection (B).

B. A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Article 9, within two years after the partner's dissociation, only if at the time of entering into the transaction the other party:

1. Reasonably believes that the dissociated partner was then a partner;
2. Did not have notice of the partner's dissociation; and
3. Is not deemed to have had knowledge under Section 3822(E) or notice under Section 3863(C).

C. By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

D. A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

History

CJY-17-08, July 22, 2008.

§ 3863. Statement of dissociation

A. A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

B. A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of Section 3822(D) and (E).

C. For the purposes of Section 3861(A) (3) and 3862(B) (3), a person who is not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

History

CJY-17-08, July 22, 2008.

§ 3864. Continued use of partnership name

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

History

CJY-17-08, July 22, 2008.

Article 8. Winding Up Partnership Business

§ 3870. Events causing dissolution and winding up of partnership business

A partnership is dissolved, and its business must be wound up, upon the occurrence of any of the following events:

1. In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under Section 3850(2) through (10), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

2. In a partnership for a definite term or particular undertaking:

a. Within 90 days after a partners disassociation by death or other wise under Section 3850(6) through (10) or wrongful dissociation under 3851(B), the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful disassociation pursuant to Section 3851(B)(2)(a) constitutes the expression of that partner's will to wind up business:

(1). The express will of all of the partners to wind up the partnership business; or

(2). The expiration of the term or the completion of the undertaking;

3. An event agreed to in the partnership agreement resulting in the winding up of the partnership business;

4. An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this Section;

5. On application by a partner, a judicial determination that:

a. The economic purpose of the partnership is likely to be unreasonably frustrated;

b. Another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

c. It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

6. On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

a. After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

b. At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

History

CJY-17-08, July 22, 2008.

§ 3871. Partnership continues after dissolution

A. Subject to Subsection (B), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

B. At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

1. The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

2. The rights of a third party accruing under Section 3873(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

History

CJY-17-08, July 22, 2008.

§ 3872. Right to wind up partnership business

A. After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative or transferee, the Navajo district court, for good cause shown, may order judicial supervision of the winding up.

B. The legal representative of the last surviving partner may wind up a

partnership's business.

C. A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to Section 3876, settle disputes by mediation, arbitration or otherwise and perform other necessary acts.

History

CJY-17-08, July 22, 2008.

§ 3873. Partner's power to bind partnership after dissolution

Subject to Section 3874, a partnership is bound by a partner's act after dissolution that:

1. Is appropriate for winding up the partnership business; or
2. Would have bound the partnership under Section 3820 before dissolution, if the other party to the transaction did not have notice of the dissolution.

History

CJY-17-08, July 22, 2008.

§ 3874. Statement of dissolution

A. After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

B. A statement of dissolution cancels a filed statement of partnership authority for the purposes of Section 3822(D) and is a limitation on authority for the purposes of Section 3822(E).

C. For the purposes of Sections 3820 and 3872, a person who is not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

D. After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority that operates with respect to a person who is not a partner as provided in Section 3822(D) and (E) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

History

CJY-17-08, July 22, 2008.

§ 3875. Partner's liability to other partners after dissolution

A. Except as otherwise provided in Subsection (B) and Section 3825, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under Section 3873.

B. A partner who, with knowledge of the dissolution, incurs a partnership liability under Section 3873(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

History

CJY-17-08, July 22, 2008.

§ 3876. Settlement of accounts and contributions among partners

A. In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under Subsection (B).

B. Each partner is entitled to a settlement of all partnership accounts on winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership must make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under Section 3825.

C. If a partner fails to contribute, all of the other partners shall contribute, in the proportion in which those partners share partnership losses, the additional amount necessary to satisfy any partnership obligations. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under Section 3825.

D. After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations or the amounts of obligations that were not known at the time of the settlement and for which the partner is personally liable under Section 3825.

E. The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

F. An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection B corrected to replace citation to Section 3835 with Section 3825.

Article 9. Conversions and Mergers

§ 3880. Definitions

In this Article:

A. "General partner" means a partner in a partnership and a general partnership in a limited partnership.

B. "Limited partner" means a limited partner in a limited partnership.

C. "Limited partnership" means a limited partnership created under the Navajo Nation Limited Partnership Act, predecessor law, or comparable law of another jurisdiction.

D. "Partner" includes both a general partner and a limited partner.

History

CJY-17-08, July 22, 2008.

§ 3881. Conversion of partnership to limited partnership

A. A partnership may be converted to a limited partnership pursuant to this Section.

B. The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

C. After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

1. A statement that the partnership was converted to a limited partnership from a partnership;

2. Its former name; and

3. A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the

number or percentage required to approve the conversion under the partnership agreement.

D. The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

E. A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Navajo Nation Limited Partnership Act.

History

CJY-17-08, July 22, 2008.

§ 3882. Conversion of limited partnership to partnership

A. A limited partnership may be converted to a partnership pursuant to this Section.

B. Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

C. After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

D. The conversion takes effect when the certificate of limited partnership is canceled.

E. A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect. Except as otherwise provided in Section 3825, the partner is liable as a general for an obligation of the partnership incurred after the conversion takes effect.

History

CJY-17-08, July 22, 2008.

§ 3883. Effect of conversion; entity unchanged

A. A partnership or limited partnership that has been converted pursuant to this Article is for all purposes the same entity that existed before the conversion.

B. When a conversion takes effect:

1. All property owned by the converting partnership or limited partnership remains vested in the converted entity;

2. All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

3. An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

History

CJY-17-08, July 22, 2008.

§ 3884. Merger of partnerships

A. Pursuant to a plan of merger approved as provided in Subsection (C), a partnership may be merged with one or more partnerships, or limited partnerships.

B. The plan of merger must set forth:

1. The name of each partnership or limited partnership that is a party to the merger;

2. The name of the surviving entity into which the other partnerships or limited partnerships will merge;

3. Whether the surviving entity is a partnership, or a limited partnership and the status of each partner;

4. The terms and conditions of the merger;

5. The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

6. The street and mailing address and phone number of the surviving entity's chief executive office.

C. The plan of merger must be approved:

1. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

2. In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the Navajo Nation or foreign jurisdiction under which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, in the partnership agreement.

D. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

E. The merger takes effect on the later of:

1. The approval of the plan of merger by all parties to the merger, as provided in Subsection (C).

2. The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

3. Any effective date specified in the plan of merger.

History

CJY-17-08, July 22, 2008.

§ 3885. Effect of merger

A. When a merger takes effect:

1. The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

2. All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

3. All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

4. An action or proceeding pending against a partnership or a limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

B. The Department is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the Department of the street and mailing address and phone number of its chief executive office and of any change of address. Upon receipt of process, the Department shall mail a copy of the process to the surviving foreign partnership or limited partnership.

C. A partner of the surviving partnership or limited partnership is liable for:

1. All obligations of a party to the merger for which the partner was personally liable before the merger;

2. All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be

satisfied only out of property of the entity; and

3. All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

D. If the obligations incurred before the merger by a party to the merger are not to be satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in Section 3876 or in the Limited Partnership Act of the jurisdiction in which the party was formed, as if the merged party were dissolved.

E. A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under Section 3860 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under Section 3861 by an act of a general partner dissociated under this Subsection, and the partner is liable under Section 3862 for transactions entered into by the surviving entity after the merger takes effect.

History

CJY-17-08, July 22, 2008.

§ 3886. Statement of merger

A. After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

B. A statement of merger must contain:

1. The name of each partnership or limited partnership that is a party to the merger;

2. The name of the surviving entity into which the other partnerships or limited partnerships were merged;

3. The street and mailing address and phone number of the surviving entity's chief executive office and of an office in the Navajo Nation, if any; and

4. Whether the surviving entity is a partnership or limited partnership.

C. Except as otherwise provided in Subsection (D), for the purposes of Section 3821, property of a surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

D. For the purposes of Section 3821, real property interest of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity on recording a certified copy of the statement of merger in the applicable recording government agency, department, or office in which the real property interest should be recorded.

E. A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to Section 3805(C), stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by Subsection (B), operates with respect to the partnerships or limited partnerships named to the extent provided in Subsections (C) and (D).

History

CJY-17-08, July 22, 2008.

§ 3887. Nonexclusive

This Article is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

History

CJY-17-08, July 22, 2008.

Article 10. Limited Liability Partnership

§ 3890. Statement of qualification

A. A partnership may become a limited partnership pursuant to this Section.

B. The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

C. After the approval required by the Subsection (B), a partnership may become a limited liability partnership by filing the statement of qualification. The statement must contain:

1. The name of the partnership;
2. The street and mailing address and phone number of its chief executive office and of one office in the Navajo Nation, if there is one;
3. If the partnership does not have an office in the Navajo Nation, the name, street and mailing address and phone number of the

partnership's agent for service of process;

4. A statement that the partnership elects to be a limited liability partnership; and a deferred effective date, if any.

D. The agent of a limited liability partnership for service of process must be an individual who is a resident of the Navajo Nation or other person authorized to do business in the Navajo Nation.

E. The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is cancelled pursuant to Section 3805(D) or revoked pursuant to Section 3892.

F. The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under Subsection (C).

G. The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

H. An amendment or cancellation of a statement of qualification is effective when filed or on a deferred effective date specified in the amendment or cancellation.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection E corrected to replace citation to Section 3803(D) with Section 3805(D).

§ 3891. Name

The name of a limited liability partnership must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP".

History

CJY-17-08, July 22, 2008.

§ 3892. Annual report

A. A limited liability partnership and a foreign limited liability partnership authorized to transact business in the Navajo Nation, shall file an annual report in the Department which contains:

1. The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

2. The street and mailing address and phone number of its chief executive office and of an office in the Navajo Nation, if there is one;

3. If the partnership does not have an office in the Navajo Nation, the name, street and mailing address and phone number of the partnership's agent for service of process.

B. An annual report must be filed after the first year of the partnership's operating year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in the Navajo Nation.

C. The Department may administratively revoke the statement of qualification of a partnership that fails to file an annual report when due or pay the required filing fee. The Department shall provide the partnership with at least 90 written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

D. The revocation under Subsection (C) only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

E. A partnership whose statement of qualification has been revoked may apply to the Department for reinstatement within two years after the effective date of the revocation. The application must state:

1. The name of the partnership and the effective date of the revocation, and:

2. That the ground for revocation either did not exist or has been corrected.

3. A reinstatement under Subsection (E) relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

History

CJY-17-08, July 22, 2008.

Article 11. Foreign Limited Liability Partnership

§ 3900. Law governing foreign limited liability partnership

A. The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the

partnership and the liability of the partners for obligations of the partnership.

B. A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the laws under which the partnership was formed and the laws of the Navajo Nation.

C. A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in the Navajo Nation as a limited liability partnership.

History

CJY-17-08, July 22, 2008.

§ 3901. Statement of foreign qualification

A. Before transacting business in the Navajo Nation, a foreign limited liability partnership must file a statement of foreign qualification. The statement must include:

1. The name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP";
2. The street and mailing address and phone number of its chief executive office and of an office in the Navajo Nation, if there is one;
3. If the partnership does not have an office in the Navajo Nation, the name, street and mailing address and phone number of the partnership's agent for service of process;
4. The deferred effective date, if any.

B. The agent of a foreign limited liability partnership for service of process must be an individual who is a resident of the Navajo Nation or other person authorized to do business in the Navajo Nation.

C. The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is cancelled pursuant to Section 3805(D) or revoked pursuant to Section 3892.

D. An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection C corrected to replace citation to Section 3803(D) with Section 3805(D).

§ 3902. Effect of failure to qualify

A. A foreign limited liability partnership transacting business in the Navajo Nation may not maintain an action or proceeding in the Navajo Nation unless it has in effect a statement of foreign qualification.

B. The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in the Navajo Nation.

C. A limitation on personal liability of a partner is not waived solely by transacting business in the Navajo Nation without a statement of foreign qualification.

D. If a foreign limited liability partnership transacts business in the Navajo Nation without a statement of foreign qualification, the Department is its agent for service of process with respect to a right of action arising out of the transaction of business in the Navajo Nation.

History

CJY-17-08, July 22, 2008.

§ 3903. Activities not constituting transacting business

A. Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this Article include:

1. Maintaining, defending or settling an action or proceeding;
2. Holding a meeting of its partners or carrying on any other activity concerning its internal affairs;
3. Maintaining bank accounts;
4. Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;
5. Selling through independent contractors;
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the Navajo Nation before they become contracts
7. Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
8. Collecting debts or foreclosing mortgages or other security

interests in property securing debts, and holding, protecting and maintaining property so acquired;

9. Conducting an isolated transaction that is completed within 30 days and is not in the course of similar transactions; and

10. Transacting business in interstate commerce.

B. For purposes of this Article, the ownership in the Navajo Nation of income-producing real property or tangible personal property other than the property excluded under Subsection (A). constitutes transacting business in the Navajo Nation.

C. This Section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of the Navajo Nation.

History

CJY-17-08, July 22, 2008.

§ 3904. Action by the Attorney General

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in the Navajo Nation in violation of this Article.

History

CJY-17-08, July 22, 2008.

Article 12. Miscellaneous Provisions

§ 3910. Jurisdiction of Navajo Nation court

The Navajo Nation courts shall have original jurisdiction over any action against, or by, any partnership, partner, or other parties mentioned in this Act, for actions arising under this Act including actions by an aggrieved party contesting acts or omissions by the Department, under this Act.

History

CJY-17-08, July 22, 2008.

§ 3911. Consent to jurisdiction

A. Any partnership created pursuant to this Act or any partner or other parties mentioned therein or thereafter its formation shall be deemed to have consented to legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the partnership within the Navajo Nation.

B. Nothing contained in the partnership agreement and other applicable

partnership documents shall be construed to reduce or impair this Section.

History

CJY-17-08, July 22, 2008.

§ 3912. Sovereign immunity

Nothing in this Act shall be construed as an exception to or repeal of the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, as may be amended from time to time.

History

CJY-17-08, July 22, 2008.

§ 3913. Uniformity of application and construction

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among governments enacting it.

History

CJY-17-08, July 22, 2008.

§ 3914. Name of Act

This Act shall be cited as the "Navajo Nation Uniform Partnership Act."

History

CJY-17-08, July 22, 2008.

§ 3915. Severability

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

History

CJY-17-08, July 22, 2008.

§ 3916. Effective date

This Act takes effect 30 days after approval by the Navajo Nation Council.

History

CJY-17-08, July 22, 2008. Approved by the Navajo Nation Council on July 22,

2008. Signed into law by the Navajo Nation President on August 8, 2008.

§ 3917. Application to existing relationships

A. Except as provided in Subsection (B), this Act applies to all partnerships in existence on its effective date that were formed prior to its enactment or any predecessor law providing for the formation, operation, and liquidation of partnership.

B. A judgment against a partnership or a partner in an action commenced before the effective date of this Act may be enforced in the same manner as a judgment rendered before the effective date of this Act.

History

CJY-17-08, July 22, 2008.

§ 3918. Saving clause

The repeal of any statutory provision by this Act does not impair or otherwise affect the organization or continued existence of a partnership existing on the effective date of this Act or any contract existing or rights accrued before the effective date of this Act.

History

CJY-17-08, July 22, 2008.

Chapter 25. Navajo Nation Limited Partnership Act

Article 1. General Provisions

§ 4100. Policy and purpose

The Navajo Nation Limited Partnership Act is hereby enacted:

A. The purpose of this Act is to permit the formation of various limited partnership entities and require registration of foreign limited partnerships; and to regulate such entities so as to promote economic growth and further exercise Navajo Nation sovereignty in the governance of its territory, and citizens.

B. This Act is based upon the revised Uniform Limited Partnership (1985) and general principles of limited partnerships. The interpretation of this Act shall be based on Navajo Nation court interpretation and such interpretation that shall give the utmost respect in deciding the meaning and purpose of this Act to the unique traditions and customs of the Navajo People. General decisional law interpreting similar provisions of other limited partnership laws in other jurisdictions may be used as guidance.

C. Unless as otherwise expressly stated by law, the sovereign immunity of the Navajo Nation shall not extend to partnership entities organized under this Act, nor shall such entities be considered a subdivision, entity, or

enterprises of the Navajo Nation, nor shall the Navajo Nation be liable for the debts or obligations or any kind of such entities.

D. The Division of Economic Development through its Business Regulatory Department shall administer the provisions of the Act. The Business Regulatory Department shall promulgate rules and regulations to implement this Act. All proposed rules and regulations shall be published for public comments at least 90 days prior to submission to the Economic Development Committee of the Navajo Nation Council for final review and approval. The Division of Economic Development is directed to prepare an appropriate supplemental budget for carrying out its responsibilities under this Act.

History

CJY-17-08, July 22, 2008.

§ 4101. Definitions

In this Chapter, unless the context otherwise requires:

A. "Certificate of limited partnership" means the certificate referred to in Section 4108, and the certificate as amended or restated.

B. "Department" means the Business Regulatory Department within the Division of Economic Development or its designate successor.

C. "Contribution" means any cash, property, services rendered, or promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

D. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 4123.

E. "Foreign limited partnership" means a partnership formed under the laws of any state or another jurisdiction other than the Navajo Nation and having as partners one or more general partners and one or more limited partners.

F. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

G. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

H. "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of the Navajo Nation and having one or more general partners and one or more limited partners.

I. "Navajo Nation" means:

1. When referring to the body politic, the Navajo Nation government, including its Council and applicable standing committees and

boards;

2. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:

a. All land within the exterior boundaries of the Navajo Indian Reservation, including the Navajo Partitioned Land, or of the Eastern Navajo portion of the Navajo Nation, including Alamo, Tóhajiilee, and Ramah, or of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments;

b. All lands held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for, the use or benefit of the Navajo Nation, the Navajo Nation, any Band of Navajo Indians, or any individual Navajo Indian as such; and

c. All other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

J. "Partner" means a limited or general partner.

K. "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

L. "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

M. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal commercial entity.

N. "State" means a state of the United States, a federally-recognized Indian tribe, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession of the United States subject to the jurisdiction of the United States.

History

CJY-17-08, July 22, 2008.

Note. Reorganized Subsection I for consistency.

§ 4102. Name

The name of each limited partnership as set forth in its certificate of limited partnership:

1. Shall contain the words "limited partnership" or the initials "L.P." or "LP", in upper or lower case;

2. May not contain the name of a limited partner unless:

a. It is also the name of a general partner or the corporate name of a corporate general partner; or

b. The business of the limited partnership had been carried on under that name before the admission of that limited partner;

3. May not be the same as, or deceptively similar to, the name of any corporation or limited partnership organized under the laws of the Navajo Nation or licensed or registered as a foreign corporation or limited partnership in the Navajo Nation.

4. Shall not contain the words "Navajo Nation" or "Navajo Tribe," nor in anyway imply that it is associated with the Navajo Nation government or a Navajo Nation entity, unless the Navajo Nation government or a Navajo Nation entity is the general partner.

History

CJY-17-08, July 22, 2008.

§ 4103. Reservation of name

A. The exclusive right to the use of a name may be reserved by:

1. Any person intending to organize a limited partnership under this Act and to adopt that name;

2. Any domestic limited partnership or any foreign limited partnership registered in the Navajo Nation which, in either case, intends to adopt that name;

3. Any foreign limited partnership intending to register in the Navajo Nation and adopt that name; and

4. Any person intending to organize a foreign limited partnership and intending to have it registered in the Navajo Nation and adopt that name.

B. The reservation shall be made by filing with the Department an application, executed by the applicant, to reserve a specified name. If the Department finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may not again reserve the same name until more than 60 days after the expiration of the last 120 day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the Department a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name, street and mailing address and phone number of the transferee.

History

CJY-17-08, July 22, 2008.

§ 4104. Specified office and agent

A. Each limited partnership shall continuously maintain in the Navajo Nation:

1. An office, which may but need not be a place of its business in the Navajo Nation, at which shall be kept the records required by Section 4105 to be maintained; and

2. An agent for service of process on the limited partnership.

B. An agent for service of process must be an individual whose residence is in the Navajo Nation, a domestic corporation, or a foreign corporation authorized to do business in the Navajo Nation.

C. If a limited partnership fails to appoint or maintain an agent for service of process in the Navajo Nation or the agent for service of process cannot with reasonable diligence be found at the agent's street and mailing address, the Department is an agent of the limited partnership on whom process, notice or demand may be served.

D. If the Department accepts service of process, notice or demand pursuant to Subsection (C), the Department shall forward by certified mail, the summons and the complaint to the limited partnership at the street and mailing address on file with the Department at the time of service.

E. The Navajo Nation is not liable for any damages incurred by the limited partnership if the limited partnership does not receive the summons and complaint.

History

CJY-17-08, July 22, 2008.

§ 4105. Records to be kept

A. Each limited partnership shall keep at the office referred to in Section 4104, the following:

1. A current list of the full name and last known business address of each partner, separately identifying in alphabetical order the general partners and the limited partners;

2. A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

3. Copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the three most recent years;

4. Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most

recent years; and

5. Unless contained in a written partnership agreement, a writing setting out:

a. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and that each partner has agreed to contribute;

b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

c. Any right of a partner to receive, or of a general partner to make, distributions to a partner that include a return of all or any of the partner's contribution; and

d. Any events on the happening of which the limited partnership is to be dissolved and its affairs wound up.

B. Records kept under this Section are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

History

CJY-17-08, July 22, 2008.

§ 4106. Nature of business

A limited partnership may carry on any business that a partnership without limited partners may carry on except banking and insurance.

History

CJY-17-08, July 22, 2008.

§ 4107. Business transactions of partner with partnership

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

History

CJY-17-08, July 22, 2008.

Article 2. Formation: Certificate of Limited Partnership

§ 4110. Certificate of limited partnership

A. In order to form a limited partnership, a certificate of limited

partnership shall be executed and filed in the Department. The certificate shall set forth:

1. The name of the limited partnership;
2. The street and mailing address of the office and the name, street and mailing address, and phone number of the agent for service of process required to be maintained by Section 4104;
3. The name, business address and phone number of each general partner;
4. The latest date on which the limited partnership is to dissolve; and
5. Any other matters the general partners determine to include therein.

B. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the Department or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

History

CJY-17-08, July 22, 2008.

§ 4111. Amendment to certificate; restatement

A. A certificate of limited partnership is amended by filing a certificate of amendment thereto in the Department. The certificate shall set forth:

1. The name of the limited partnership;
2. The date of filing the certificate of limited partnership; and
3. The amendment to the certificate of limited partnership.

B. Within 30 days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

1. The admission of a new general partner;
2. The withdrawal of a general partner; or
3. The continuation of the business under Section 4170 after an event of withdrawal of a general partner.

C. A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

D. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

E. If an amendment to a certificate of limited partnership is filed in compliance with Subsection (B), no person is subject to liability because the amendment was not filed earlier.

F. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection B(3) corrected to replace citation to Section 4144 with Section 4170.

§ 4112. Cancellation of certificate

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or when there are no limited partners. A certificate of cancellation shall be filed in the Department and set forth:

1. The name of the limited partnership;
2. The date of filing of its certificate of limited partnership;
3. The reason for filing the certificate of cancellation;
4. The effective date of cancellation, which shall be a date certain unless it is effective upon the filing of the certificate; and
5. Any other information the general partners filing the certificate determine.

History

CJY-17-08, July 22, 2008.

§ 4113. Execution of certificates

A. Each certificate required by this Article to be filed in the Department shall be executed in the following manner:

1. An original certificate of limited partnership shall be signed by all general partners;
2. A certificate of amendment shall be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner; and
3. A certificate of cancellation shall be signed by all general

partners.

B. Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner shall specifically describe the admission.

C. The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

History

CJY-17-08, July 22, 2008.

§ 4114. Execution by judicial act

If a person required by Section 4113 to execute a certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Navajo Nation courts to direct the execution of the certificate. If the Court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the Department to record an appropriate certificate.

History

CJY-17-08, July 22, 2008.

§ 4115. Filing in department

A. Two signed copies with original signatures of the certificate of limited partnership and of any certificates of amendment or cancellation or of any judicial decree of amendment or cancellation shall be delivered to the Department. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Department finds that any certificate does not conform to law, upon receipt of all filing fees required by law, he shall:

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

B. Upon the filing of a certificate of amendment or judicial decree of amendment or restated certificate of limited partnership containing an amendment in the Department, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation or a judicial decree thereof, the certificate of limited partnership is canceled.

History

CJY-17-08, July 22, 2008.

§ 4116. Liability for false statement in certificate

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

1. Any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

2. Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for execution of certificate under Section 4114.

History

CJY-17-08, July 22, 2008.

§ 4117. Scope of notice

The fact that a certificate of limited partnership is on file in the Department is notice that the partnership is a limited partnership and the persons designated therein as general partners are general partners, but it is not notice of any other fact.

History

CJY-17-08, July 22, 2008.

§ 4118. Delivery of certificates to limited partners

Upon the return by the Department pursuant to Section 4115 of a certificate marked "Filed", the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

History

CJY-17-08, July 22, 2008.

Note. Typographical error corrected to replace citation to Section 4113 with Section 4115.

Article 3. Limited Partners

§ 4120. Admission of limited partners

A. A person becomes a limited partner on the later of:

1. The date the original certificate of limited partnership is filed; or
2. The date stated in the records of the limited partnership as the date that person becomes a limited partner.

B. After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

1. In the case of a person acquiring a partnership interest directly from the limited partnership, upon the compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and
2. In the case of an assignee of a partnership interest of a partner who has the power, as provided in Section 4142, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

History

CJY-17-08, July 22, 2008.

§ 4121. Voting

Subject to Section 4122, the partnership agreement may grant to all or a specified group of the limited partners the right to vote upon any matter on a per capita or other basis.

History

CJY-17-08, July 22, 2008.

§ 4122. Liability to third parties

A. Except as provided in Subsection (D), a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business. However, if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

B. A limited partner does not participate in the control of the business within the meaning of Subsection (A) of this Section solely by doing one or more of the following:

1. Being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation or other business entity;

2. Consulting with and advising a general partner with respect to the business of the limited partnership;

3. Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

4. Taking any action required or permitted by law to bring or pursue a derivative action in the right of a limited partnership;

5. Requesting or attending a meeting of partners;

6. Proposing, approving or disapproving, by voting or otherwise, one or more of the following matters:

a. The dissolution and winding up of the limited partnership;

b. The sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited partnership;

c. The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

d. A change in the nature of the business;

e. The admission or removal of a general partner;

f. The admission or removal of a limited partner;

g. A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

h. An amendment to the partnership agreement or certificate of limited partnership; or

i. Matters related to the business of the limited partnership not otherwise enumerated in this Subsection, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

7. Winding up the limited partnership pursuant to Section 4172; or

8. Exercising any right or power permitted to limited partners under this Act and not specifically enumerated in this Subsection.

C. The enumeration in Subsection (B) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

D. A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by Section 4102(2) is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

History

CJY-17-08, July 22, 2008.

§ 4123. Person erroneously believing himself limited partner

A. Except as provided in Subsection (B), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise or exercising any rights of a limited partner if, on ascertaining the mistake, he:

1. Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or
2. Withdraws from future equity participation in the enterprise by executing and filing in the Department a certificate declaring withdrawal under this Section.

B. A person who makes a contribution of the kind described in Subsection (A) is liable as a general partner to any third party who transacts business with the enterprise:

1. Before the person withdraws and an appropriate certificate is filed to show withdrawal; or
2. Before an appropriate certificate is filed to show that he is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

History

CJY-17-08, July 22, 2008.

§ 4124. Information

A limited partner may:

1. Inspect and copy any of the partnership records required to be maintained by Section 4105; and
2. Obtain from the general partners from time to time upon reasonable demand:
 - a. True and full information regarding the state of the

business and financial condition of the limited partnership;

b. Promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year; and

c. Other information regarding the affairs of the limited partnership as is just and reasonable.

History

CJY-17-08, July 22, 2008.

Article 4. General Partners

§ 4130. Admission of additional general partners

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners.

History

CJY-17-08, July 22, 2008.

§ 4131. Events of withdrawal

Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

1. The general partner withdraws from the limited partnership as provided in Section 4151;

2. The general partner ceases to be a member of the limited partnership as provided in Section 4161;

3. The general partner is removed as a general partner in accordance with the partnership agreement;

4. Unless otherwise provided in writing in the partnership agreement, the general partner:

a. Makes an assignment for the benefit of creditors;

b. Files a voluntary petition in bankruptcy;

c. Is adjudicated bankrupt or insolvent;

d. Files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation,

dissolution or similar relief under any statute, law or regulation;

e. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

f. Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties;

5. Unless otherwise provided in writing in the partnership agreement, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within 90 days after the expiration of any such stay, the appointment is not vacated;

6. In the case of a general partner who is a natural person;

a. His death; or

b. The entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

7. In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust but not merely the substitution of a new trustee;

8. In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

9. In the case of a general partner that is a corporation, the filing of articles of dissolution for the corporation or the revocation of its charter; or

10. In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

History

CJY-17-08, July 22, 2008.

Note. Typographical errors at Subsection 1 corrected to replace citation to Section 4152 with Section 4151; and Subsection 4(c) corrected to delete the word "a" previously placed between the words "adjudicated" and "bankrupt".

§ 4132. General powers and liabilities

A. Except as provided in this Act or in the partnership agreement, a

general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

B. Except as provided in this Act, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this Act or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

History

CJY-17-08, July 22, 2008.

§ 4133. Contributions by general partner

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the partnership as a limited partner.

History

CJY-17-08, July 22, 2008.

§ 4134. Voting

The partnership agreement may grant to all or certain identified general partners the right to vote on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter.

History

CJY-17-08, July 22, 2008.

Article 5. Finance

§ 4140. Form of contribution

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

History

CJY-17-08, July 22, 2008.

§ 4141. Liability for contribution

A. A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing and signed by the limited partner.

B. Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value as stated in the partnership records required to be kept pursuant to Section 4105 of the stated contribution that has not been made.

C. Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this Chapter may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation and before the amendment or cancellation thereof to reflect the compromise may enforce the original obligation.

History

CJY-17-08, July 22, 2008.

§ 4142. Sharing of profits and losses

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value as stated in the partnership records required to be kept pursuant to Section 4105 of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

History

CJY-17-08, July 22, 2008.

§ 4143. Sharing of distributions

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value as stated in the partnership records required to be kept pursuant to Section 4105 of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

History

CJY-17-08, July 22, 2008.

Article 6. Distributions and Withdrawal

§ 4150. Interim distributions

Except as provided in this Article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

History

CJY-17-08, July 22, 2008.

§ 4151. Withdrawal of general partner

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

History

CJY-17-08, July 22, 2008.

§ 4152. Withdrawal of limited partner

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months prior written notice to each general partner at his street and mailing address on the books of the limited partnership at its office in the Navajo Nation.

History

CJY-17-08, July 22, 2008.

§ 4153. Distribution upon withdrawal

Except as provided in this Article and in Subsection (B) of this Section, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

History

CJY-17-08, July 22, 2008.

§ 4154. Distribution in-kind

Except as provided in writing in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

History

CJY-17-08, July 22, 2008.

§ 4155. Right to distribution

At the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

History

CJY-17-08, July 22, 2008.

§ 4156. Limitations on distribution

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

History

CJY-17-08, July 22, 2008.

§ 4157. Liability on return of contribution

A. If a partner has received the return of any part of his contribution without violation of the partnership agreement or this Act, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

B. If a partner has received the return of any part of his contribution in violation of the partnership agreement or this Chapter, he is liable to the limited partnership for a period of five years thereafter for the amount of the contribution wrongfully returned.

C. A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value as set forth in the partnership records required to be kept pursuant to Section 4105 of his contribution which has not been distributed to him.

History

CJY-17-08, July 22, 2008.

Article 7. Assignment of Partnership Interests

§ 4160. Nature of partnership interest

A partnership interest is personal property.

History

CJY-17-08, July 22, 2008.

§ 4161. Assignment of partnership interest

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

History

CJY-17-08, July 22, 2008.

§ 4162. Rights of creditor

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This Chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

History

CJY-17-08, July 22, 2008.

§ 4163. Right of assignee to become limited partner

A. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

1. The assignor gives the assignee that right in accordance with authority described in the partnership agreement; or

2. All other partners consent.

B. An assignee who has become a limited partner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a limited partner under the partnership agreement and this Act. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in Articles 5 and 6 of this Chapter. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner.

C. If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under Sections 4116 and 4141.

History

CJY-17-08, July 22, 2008.

§ 4164. Power of estate of deceased or incompetent partner

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property the partner's executor, administrator guardian, conservator or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

History

CJY-17-08, July 22, 2008.

Article 8. Dissolution

§ 4170. Nonjudicial dissolution

A limited partnership is dissolved and its affairs shall be wound up upon the first of the following to occur:

1. At the time specified in the certificate of limited partnership;
2. Upon the occurrence of events specified in writing in the partnership agreement;
3. Written consent of all partners;
4. An event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of

the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partnership and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or

5. Entry of a decree of judicial dissolution under Section 4171.

History

CJY-17-08, July 22, 2008.

§ 4171. Judicial dissolution

On application by or for a partner or assignee or any other successor in interest of a partner, the Navajo Nation District Courts may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

History

CJY-17-08, July 22, 2008.

§ 4172. Winding up

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners may wind up the limited partnership's affairs, but the Navajo Nation District Courts may wind up the limited partnership's affairs upon application of any partner, his legal representative or assignee.

History

CJY-17-08, July 22, 2008.

§ 4173. Distribution of assets

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

1. To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under Section 4150 or Section 4153;

2. Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 4150 or Section 4153; and

3. Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in

distributions.

History

CJY-17-08, July 22, 2008.

Article 9. Foreign Limited Partnerships

§ 4180. Law governing

Subject to the laws of the Navajo Nation:

1. The laws of the foreign jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and

2. A foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of the Navajo Nation.

History

CJY-17-08, July 22, 2008.

§ 4181. Registration

Before transacting business in the Navajo Nation, a foreign limited partnership shall register with the Department. In order to register, a foreign limited partnership shall submit to the Department, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

1. The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in the Navajo Nation;

2. The state and date of its formation;

3. The name, street and mailing address and phone number of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint. The agent shall be an individual resident of the Navajo Nation, a domestic corporation or a foreign corporation having a place of business in, and authorized to do business in the Navajo Nation;

4. A statement that the Department is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under paragraph 3 or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;

5. The street and mailing address of the office required to be maintained in the Navajo Nation of its organization by the laws of that

state or, if not so required, of the principal office of the foreign limited partnership;

6. The name, business address and phone number of each general partner; and

7. The street and mailing address of the office at which is kept a list of the names, street and mailing addresses and phone numbers of the limited partners and their capital contributions and an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in the Navajo Nation is canceled or withdrawn.

History

CJY-17-08, July 22, 2008.

§ 4182. Issuance of registration

A. If the Department finds that an application for registration conforms to law and all requisite fees have been paid, it shall:

1. Endorse on the application the word "Filed", and the month, day and year of the filing thereof;

2. File in his office a duplicate original of the application; and

3. Issue a certificate of registration to transact business in the Navajo Nation.

B. The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his representative.

History

CJY-17-08, July 22, 2008.

Note. Typographical error at Subsection A corrected to replace "he shall" with "it shall".

§ 4183. Name

A foreign limited partnership may register with the Department under any name, whether or not it is the name under which it is registered in its state of organization, that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

History

CJY-17-08, July 22, 2008.

§ 4184. Changes and amendments

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the Department a certificate, signed and sworn to by a general partner, correcting such statement.

History

CJY-17-08, July 22, 2008.

§ 4185. Cancellation of registration

A foreign limited partnership may cancel its registration by filing with the Department a certificate of cancellation signed and sworn by a general partner. A cancellation does not terminate the authority of the Department to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in the Navajo Nation.

History

CJY-17-08, July 22, 2008.

§ 4186. Transaction of business without registration

A. A foreign limited partnership transacting business in the Navajo Nation may not maintain any action, suit or proceeding in any Navajo Nation court until it has registered in the Navajo Nation.

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

C. A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in the Navajo Nation without registration.

D. By transacting business in the Navajo Nation without registration, a foreign limited partnership appoints the Department as its agent for service of process with respect to causes of action arising out of the transaction of business in the Navajo Nation.

History

CJY-17-08, July 22, 2008.

§ 4187. Action by Attorney General

The Attorney General of the Navajo Nation may bring an action to restrain a foreign limited partnership from transacting business in the Navajo Nation in violation of this Act.

History

CJY-17-08, July 22, 2008.

Article 10. Derivative Actions

§ 4190. Right of action

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

History

CJY-17-08, July 22, 2008.

§ 4191. Proper plaintiff

In a derivative action, the plaintiff shall be a partner at the time of bringing the action and:

1. Shall have been a partner at the time of the transaction of which he complains; or

2. His status as a partner shall have devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

History

CJY-17-08, July 22, 2008.

§ 4192. Pleading

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

History

CJY-17-08, July 22, 2008.

§ 4193. Expenses

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

History

CJY-17-08, July 22, 2008.

Article 11. Miscellaneous

§ 4200. Application to existing limited partnership

This Act shall be so applied and construed to effectuate its general purpose to make uniform law with respect to the subject of this Act among governments enacting it.

History

CJY-17-08, July 22, 2008.

§ 4201. Short title

This Act may be cited as the Navajo Nation Uniform Limited Partnership Act.

History

CJY-17-08, July 22, 2008.

§ 4202. Severability

If any provision of this Chapter, or its application to any person or class of person, or to any lands or to any circumstances, is held invalid for any reason by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby and shall remain in full force and effect.

History

CJY-17-08, July 22, 2008.

§ 4203. Effective date

The effective date of this Act shall be 30 days after approval by the Navajo Nation Council.

History

CJY-17-08, July 22, 2008. Approved by the Navajo Nation Council on July 22, 2008. Signed into law by the Navajo Nation President on August 8, 2008.

§ 4204. Saving clause

The repeal of any statutory provision by this Act does not impair, or otherwise affect, the organization or the continued existence of a limited partnership existing at the effective date of this Act, nor does the repeal of any existing statutory provision by this Act impair any contract or affect any right accrued before the effective date of this Act.

History

CJY-17-08, July 22, 2008.

§ 4205. Jurisdiction of Navajo Nation courts

The Navajo Nation courts shall have original jurisdiction over any action against, or by, any domestic or foreign limited partnership, or for actions arising under this Act including actions by an aggrieved party contesting acts or omissions by the Department, under this Act.

History

CJY-17-08, July 22, 2008.

§ 4206. Consent to jurisdiction

A. Any partnership created pursuant to this Act or any partner or other parties mentioned therein or thereafter its formation shall be deemed to have consented to legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the partnership within the Navajo Nation.

B. Nothing contained in the partnership agreement and other applicable partnership documents shall be construed to reduce or impair this Section.

C. Nothing in this Section shall be construed as an exception to or repeal of the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, as may be amended from time to time.

History

CJY-17-08, July 22, 2008.

§ 4207. Rules for cases not provided for in this Act

In any case not provided for in this Act the provisions of the Model Uniform Limited Partnership Act (1985) govern.

History

CJY-17-08, July 22, 2008.