

Chapter 7-4

Colville Limited Liability Company Act

GENERAL PROVISIONS

7-4-1 Definitions

As used in this Ordinance, unless the context otherwise requires:

- (a) "Certificate of formation" means the certificate referred to in 7-4-20, and the certificate as amended.
- (b) "Event of dissociation" means an event that causes a person to cease to be a member as provided in 7-4-33.
- (c) "Foreign limited liability company" means an entity that is formed under the law of another jurisdiction.
- (d) "Limited liability company" and "domestic limited liability company" means a limited liability company having one or more members that is organized and existing under this chapter.
- (e) "Limited liability company agreement" means any written agreement of the members, or any written statement of the sole member, as to the affairs of a limited liability company and the conduct of its business which is binding upon the member or members.
- (f) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.
- (g) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its certificate of formation that it is to be managed by managers, the person, or persons designated in accordance with 7-4-40(b).
- (h) "Member" means a person who has been admitted to a limited liability company as a member as provided in 7-4-30 and who has not been dissociated from the limited liability company.
- (i) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (j) "State" means the District of Columbia, the Commonwealth of Puerto Rico, any Indian tribal government, state, territory, possession, or other jurisdiction of the United States.

7-4-2 Standards for electronic filing--Rules

The secretary of the Colville Business Council may adopt rules to facilitate electronic filing. The rules will detail the circumstances under which the electronic filing of documents will be permitted, how the documents will be filed, and how the secretary of the Colville Business Council will return filed documents. The rules may also impose additional requirements related to implementation of electronic filing processes, including but not limited to file formats, signature technologies, delivery, and the types of entities, records, or documents permitted.

7-4-3 Name set forth in certificate of formation

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

- (1) Must contain the words "Limited Liability Company," the words "Limited Liability" and abbreviation "Co.," or the abbreviation "L.L.C." or "LLC";

(2) Except as provided in subsection (a)(4) of this section, may contain the name of a member or manager;

(3) Must not contain language stating or implying that the limited liability company is organized for a purpose other than those permitted by 7-4-7;

(4) Must not contain any of the words or phrases: "Bank," "banking," "banker," "trust," "cooperative," "partnership," "corporation," "incorporated," or the abbreviations "corp.," "Ltd.," or "inc.," or "LP," "L.P.," "LLP," "L.L.P.," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this Tribe.

7-4-4 Reserved name--Registered name

(a) Reserved Name.

(1) A person may reserve the exclusive use of a limited liability company name by delivering an application to the secretary of the Colville Business Council for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the limited liability company name applied for is available, the secretary of the Colville Business Council shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred eighty-day period.

(2) The owner of a reserved limited liability company name may transfer the reservation to another person by delivering to the secretary of the Colville Business Council a signed notice of the transfer that states the name and address of the transferee.

(b) Registered Name.

(1) A foreign limited liability company may register its name if the name is distinguishable upon the records of the secretary of the Colville Business Council from the names specified in 7-4-3.

(2) A foreign limited liability company registers its name by delivering to the secretary of the Colville Business Council for filing an application that:

(A) Sets forth its name and the Indian tribal government, state or country and date of its organization; and

(B) Is accompanied by a certificate of existence, or a document of similar import, from the Indian tribal government, state or country of organization.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application and until the close of the calendar year in which the application for registration is filed.

(d) A foreign limited liability company whose registration is effective may renew it for successive years by delivering to the secretary of the Colville Business Council for filing a renewal application, which complies with the requirements of 7-4-4 (b)(2), between October 1st and December 31st of the preceding year. The renewal application when filed renews the registration for the following calendar year.

7-4-5 Registered office--Registered agent

(a) Each limited liability company shall continuously maintain on the Colville Reservation:

(1) A registered office, which may but need not be a place of its business on the Colville Reservation. The registered office shall be at a specific geographic location in this reservation, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other non-geographic address. For purposes of communicating by mail, the secretary of the Colville Business Council may permit

the use of a post office address in conjunction with the registered office address if the limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(2) A registered agent for service of process on the limited liability company, which agent may be either an individual resident of this reservation whose business office is identical with the limited liability company's registered office, or a domestic corporation, limited partnership, or limited liability company, or a foreign corporation, limited partnership, or limited liability company authorized to do business in this state having a business office identical with such registered office; and

(3) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of the Colville Business Council in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent.

(b) A limited liability company may change its registered office or registered agent by delivering to the secretary of the Colville Business Council for filing a statement of change that sets forth:

(1) The name of the limited liability company;

(2) If the current registered office is to be changed, the street address of the new registered office in accord with subsection (a) of this section;

(A) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(B) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(c) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any limited liability company for which the agent is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of Colville Business Council for filing a statement that complies with the requirements of subsection (b) of this section and recites that the limited liability company has been notified of the change.

(d) A registered agent may resign as agent by signing and delivering to the secretary of the Colville Business Council for filing a statement that the registered office is also discontinued. After filing the statement the secretary of the Colville Business Council shall mail a copy of the statement to the limited liability company at its principal office. The agency appointment is terminated, and the registered office discontinued is so provided, on the thirty-first day after the date on which the statement was filed.

7-4-6 Service of process on domestic limited liability companies

(a) A limited liability company's registered agent is its agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.

(b) The secretary of the Colville Business Council shall be an agent of a limited liability company upon whom any such process, notice, or demand may be served if:

(1) The limited liability company fails to appoint or maintain a registered agent in this reservation; or

(2) The registered agent cannot with reasonable diligence be found at the registered office.

(c) Service on the secretary of the Colville Business Council of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of the Colville Business Council, or with any duly

authorized clerk of the secretary of the Colville Business Council' office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of the Colville Business Council, the secretary of the Colville Business Council shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the limited liability company at its principal place of business as it appears on the records of the secretary of the Colville Business Council. Any service so had on the secretary of the Colville Business Council shall be returnable in not less than thirty days.

(d) The secretary of the Colville Business Council shall keep a record of all processes, notices, and demands served upon the secretary of the Colville Business Council under this section, and shall record therein the time of such service and the secretary of the Colville Board of Director's action with reference thereto.

(e) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.

7-4-7 Nature of business permitted--Powers

(a) Every limited liability company formed under this chapter may carry on any lawful business or activity unless a more limited purpose is set forth in the certificate of formation. A limited liability company may not be formed under this chapter for the purposes of banking or engaging in business as an insurer.

(b) Unless this chapter, its certificate of formation, or its limited liability company agreement provides otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs.

7-4-8 Business transactions of member or manager with the limited liability company

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

7-4-9 Limitation of liability and indemnification

(a) The limited liability company agreement may contain provisions not inconsistent with law that:

(1) Eliminate or limit the personal liability of a member or manager to the limited liability company or its members for monetary damages for conduct as a member or manager, provided that such provisions shall not eliminate or limit the liability of a member or manager for acts or omissions that involve intentional misconduct or a knowing violation of law by a member or manager, for conduct of the member or manager, violating 7-4-64, or for any transaction from which the member or manager will personally receive a benefit in money, property, or services to which the member or manager is not legally entitled; or

(2) Indemnify any member or manager from and against any judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which an individual is a party because he or she is, or was, a member or a manager, provided that no such indemnity shall indemnify a member or a manager from or on account of acts or omissions of the member or manager finally adjudged to be intentional misconduct or a knowing violation of law by the member or manager, conduct of the member or manager adjudged to be in violation of 7-4-64, or any transaction with respect to which it was finally adjudged that such member or manager received a benefit in money, property, or services to which such member or manager was not legally entitled.

(b) To the extent that, at law or in equity, a member or manager has duties (including fiduciary duties) and liabilities relating thereto to a limited liability company or to another member or manager (a) any such member or manager acting under a limited liability company agreement shall not be liable to the limited

liability company or to any such other member or manager for the member's or manager's good faith reliance on the provisions of the limited liability company agreement, and (b) the member's or manager's duties and liabilities may be expanded or restricted by provisions in a limited liability company agreement.

7-4-10 Member agreements

In addition to agreeing among themselves with respect to the provisions of this chapter, the members of a limited liability company or professional limited liability company may agree among themselves to any otherwise lawful provision governing the company which is not in conflict with this chapter. Such agreements include, but are not limited to, buy-sell agreements among the members and agreements relating to expulsion of members.

7-4-11 Membership residency

Nothing in this chapter requires a limited liability company or a professional limited liability company to restrict membership to persons residing in or engaging in business on the Colville Reservation.

7-4-12 Piercing the veil

Members of a limited liability company shall be personally liable for any act, debt, obligation, or liability of the limited liability company to the extent that shareholders of a Colville business corporation would be liable in analogous circumstances. In this regard, the court may consider the factors and policies set forth in established case law with regard to piercing the corporate veil, except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that the members have personal liability for any act, debt, obligation, or liability of the limited liability company if the certificate of formation and limited liability company agreement do not expressly require the holding of meetings of members or managers.

FORMATION: CERTIFICATE OF FORMATION, AMENDMENT, FILING AND EXECUTION

7-4-20 Certificate of formation

(a) In order to form a limited liability company, one or more persons must execute a certificate of formation. The certificate of formation shall be filed in the office of the secretary of the Colville Business Council and set forth:

- (1) The name of the limited liability company;
- (2) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by 7-4-5;
- (3) The address of the principal place of business of the limited liability company;
- (4) If the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve;
- (5) If management of the limited liability company is vested in a manager or managers, a statement to that effect;
- (6) Any other matters the members decide to include therein; and
- (7) The name and address of each person executing the certificate of formation.

(b) Effect of filing:

- (1) Unless a delayed effective date is specified, a limited liability company is formed when its certificate of formation is filed with the secretary of the Colville Business Council. A delayed effective date for a certificate of formation may be no later than the ninetieth day after the date it is filed.

(2) The secretary of the Colville Business Council's filing of the certificate of formation is conclusive proof that the persons executing the certificate satisfied all conditions precedent to the formation except in a proceeding by the Tribes to cancel the certificate.

(3) A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation.

7-4-21 Amendment to certificate of formation

(a) A certificate of formation is amended by filing a certificate of amendment thereto with the secretary of the Colville Business Council. The certificate of amendment shall set forth:

- (1) The name of the limited liability company; and
- (2) The amendment to the certificate of formation.

(b) A manager or, if there is no manager, then any member who becomes aware that any statement in a certificate of formation was false when made, or that any matter described has changed making the certificate of formation false in any material respect, shall promptly amend the certificate of formation.

(c) A certificate of formation may be amended at any time for any proper purpose.

(d) Unless otherwise provided in this chapter or unless a later effective date (which shall be a date not later than the ninetieth day after the date it is filed) is provided for in the certificate of amendment, a certificate of amendment shall be effective when filed with the secretary of the Colville Business Council.

7-4-22 Cancellation of certificate

A certificate of formation shall be canceled upon the effective date of the certificate of cancellation, or as provided in 7-4-84, or upon the filing of articles of merger if the limited liability company is not the surviving or resulting entity in a merger. A certificate of cancellation shall be filed with the office of the secretary of the Colville Business Council to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company and shall set forth:

- (a) The name of the limited liability company;
- (b) The date of filing of its certificate of formation;
- (c) The reason for filing the certificate of cancellation;
- (d) The future effective date (which shall be a date not later than the ninetieth day after the date it is filed) of cancellation if it is not to be effective upon the filing of the certificate; and
- (e) Any other information the person filing the certificate of cancellation determines.

7-4-23 Execution

(a) Each document required by this chapter to be filed with the office of the secretary of the Colville Business Council shall be executed in the following manner, or in compliance with the rules established to facilitate electronic filing under 7-4-2, except as set forth in 7-4-27(d)(1):

- (1) Each original certificate of formation must be signed by the person or persons forming the limited liability company;
- (2) A reservation of name may be signed by any person;
- (3) A transfer of reservation of name must be signed by, or on behalf of, the applicant for the reserved name;

- (4) A registration of name must be signed by any member or manager of the foreign limited liability company;
- (5) A certificate of amendment or restatement must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members;
- (6) A certificate of cancellation must be signed by the person or persons authorized to wind up the limited liability company's affairs pursuant to 7-4-85(a);
- (7) If a surviving domestic limited liability company is filing articles of merger, the articles of merger must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members, or if the articles of merger are being filed by a surviving foreign limited liability company, limited partnership, or corporation, the articles of merger must be signed by a person authorized by such foreign limited liability company, limited partnership, or corporation; and
- (8) A foreign limited liability company's application for registration as a foreign limited liability company doing business within the Colville Reservation must be signed by any member or manager of the foreign limited liability company.

(b) Any person may sign a certificate, articles of merger, limited liability company agreement, or other document by an attorney-in-fact or other person acting in a valid representative capacity, so long as each document signed in such manner identifies the capacity in which the signator signed.

(c) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and capacity in which the person signs. The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of the Colville Business Council.

(d) The execution of a certificate or articles of merger by any person constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

7-4-24 Execution, amendment, or cancellation by judicial order

(a) If a person required to execute a certificate required by this chapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Tribal Court to direct the execution of the certificate. If the court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of the Colville Business Council to record an appropriate certificate.

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

7-4-25 Filing

(a) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, of the certificate of formation or any other document required to be filed pursuant to this chapter, except as set forth under 7-4-27 or unless a duplicate is not required under rules adopted under 7-4-2, shall be delivered to the secretary of the Colville Business Council. If the secretary of the Colville Business Council determines that the documents conform to the filing provisions of this chapter, he or she shall, when all required filing fees have been paid:

(1) Endorse on each signed original and duplicate copy the word "filed" and the date of its acceptance for filing;

(2) Retain the signed original in the secretary of the Colville Business Council files; and

(3) Return the duplicate copy to the person who filed it or the person's representative.

(b) If the secretary of the Colville Business Council is unable to make the determination required for filing by subsection (a) of this section at the time any documents are delivered for filing, the documents are deemed to have been filed at the time of delivery if the secretary of the Colville Business Council subsequently determines that:

(1) The documents as delivered conform to the filing provisions of this chapter; or

(2) Within twenty days after notification of nonconformance is given by the secretary of state to the person who delivered the documents for filing or the person's representative, the documents are brought into conformance.

(c) If the filing and determination requirements of this chapter are not satisfied completely within the time prescribed in subsection (b)(2) of this section, the documents shall not be filed.

(d) Upon the filing of a certificate of amendment (or judicial decree of amendment) or restated certificate in the office of the secretary of Colville Business Council, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation shall be amended or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), or articles of merger which act as a certificate of cancellation, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof) or of articles of merger which act as a certificate of cancellation, as provided for therein, or as specified in 7-4-84, the certificate of formation is canceled.

7-4-26 Restated certificate

(a) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of there having theretofore been filed with the secretary of the Colville Business Council one or more certificates or other instruments pursuant to any of the sections referred to in this chapter and it may at the same time also further amend its certificate of formation by adopting a restated certificate of formation.

(b) If a restated certificate of formation merely restates and integrates but does not amend the initial certificate of formation, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this chapter, it shall be specifically designated in its heading as a "Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one manager, or by a member if management of the limited liability company is reserved to its members, and filed as provided in 7-4-25 in the office of the secretary of the Colville Business Council. If a restated certificate restates and integrates and also amends in any respect the certificate of formation, as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one manager, or by a member if management of the limited liability company is reserved to its members, and filed as provided in 7-4-25 in the office of the secretary of the Colville Business Council.

(c) A restated certificate of formation shall state, either in its heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original certificate of formation with the secretary of the Colville Business Council, and the future effective date (which shall be a date not later than the ninetieth day after the date it is filed) of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in

accordance with this section. If a restated certificate only restates and integrates and does not further amend a limited liability company's certificate of formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(d) Upon the filing of a restated certificate of formation with the secretary of the Colville Business Council, or upon the future effective date or time of a restated certificate of formation as provided for therein, the initial certificate of formation, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.

(e) Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

7-4-27 Initial and annual reports

(a) Each domestic limited liability company, and each foreign limited liability company authorized to transact business on this Reservation, shall deliver to the secretary of the Colville Business Council for filing, both initial and annual reports that set forth:

- (1) The name of the company and the tribal government or country under whose law it is organized;
- (2) The street address of its registered office and the name of its registered agent at that office on this Reservation;
- (3) In the case of a foreign company, the address of its principal office in the Reservation, state or country under the laws of which it is organized;
- (4) The address of the principal place of business of the company in this Reservation;
- (5) The names and addresses of the company's members, or if the management of the company is vested in a manager or managers, then the name and address of its manager or managers; and
- (6) A brief description of the nature of its business.

(b) Information in an initial report or an annual report must be current as of the date the report is executed on behalf of the company.

(c) A company's initial report must be delivered to the secretary of the Colville Business Council within one hundred twenty days of the date on which a domestic company's certificate of formation was filed, or on which a foreign company's application for registration was submitted. Subsequent annual reports must be delivered to the secretary of the Colville Business Council on a date determined by the secretary of the Colville Business Council, and at such additional times as the company elects.

(d) The secretary of the Colville Business Council may allow a company to file an annual report through electronic means. If allowed, the secretary of the Colville Business Council shall adopt rules detailing the circumstances under which the electronic filing of such reports shall be permitted and how such reports may be filed.

- (1) For purposes of this section only, a person executing an electronically filed annual report may deliver the report to the office of the secretary of the Colville Business Council without a signature and without an exact or conformed copy, but the person's name must appear in the electronic filing as the person executing the filing, and the filing must state the capacity in which the person is executing the filing.

MEMBERS

7-4-30 Admission of members

(a) In connection with the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:

- (1) The formation of the limited liability company; or
- (2) The time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when the person's admission is reflected in the records of the limited liability company.

(b) After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

- (1) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company; or
- (2) In the case of an assignee of a limited liability company interest who meets the conditions for membership set forth in 7-4-73(a), at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when any such assignee's admission as a member is reflected in the records of the limited liability company.

7-4-31 Voting and classes of membership

(a) Except as provided in this ordinance, or in the limited liability company agreement, and subject to subsection (b) of this section, the affirmative vote, approval, or consent of members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to 7-4-34) of the contributions made, or required to be made, by all members shall be necessary for actions requiring member approval.

(b) Except as provided in the limited liability company agreement, the affirmative vote, approval, or consent of all members shall be required to:

- (1) Amend the limited liability company agreement; or
- (2) Authorize a manager, member, or other person to do any act on behalf of the limited liability company that contravenes the limited liability company agreement, including any provision thereof which expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof.

(c) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(d) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. If the limited liability company agreement so provides, voting by members may be on a per capita, number, profit share, class, group, or any other basis.

(e) A limited liability company agreement which contains provisions related to voting rights of members may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

7-4-32 Liability of members and managers to third parties

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

(b) A member or manager of a limited liability company is personally liable for his or her own torts.

7-4-33 Events of dissociation

(a) A person ceases to be a member of a limited liability company, and the person or its successor in interest attains the status of an assignee as set forth in 7-4-71(b), upon the occurrence of one or more of the following events:

(1) The member dies or withdraws by voluntary act from the limited liability company as provided in subsection (3) of this section;

(2) The member ceases to be a member as provided in 7-4-71(b)(2) following an assignment of all the member's limited liability company interest;

(3) The member is removed as a member in accordance with the limited liability company agreement;

(4) Unless otherwise provided in the limited liability company agreement, or with the written consent of all other members at the time, the member (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes the subject of an order for relief in bankruptcy proceedings; (iv) files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding of the nature described in (4) (i) through (iv) of this subsection; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(5) Unless otherwise provided in the limited liability company agreement, or with the consent of all other members at the time, one hundred twenty days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within ninety days after the expiration of any stay, the appointment is not vacated;

(6) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member who is an individual, the entry of an

order by a court of competent jurisdiction adjudicating the member incapacitated, as used and defined under the laws of the state of Washington, RCW 11.88, as to his or her estate;

(7) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is another limited liability company, the dissolution and commencement of winding up of such limited liability company;

(8) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the administrative dissolution of the corporation and the lapse of any period authorized for application for reinstatement; or

(9) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a limited partnership, the dissolution and commencement of winding up of such limited partnership.

(b) The limited liability company agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

(1) A member may withdraw from a limited liability company at the time or upon the happening of events specified in and in accordance with the limited liability company agreement. If the limited liability company agreement does not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw prior to the time for the dissolution and commencement of winding up of the limited liability company, without the written consent of all other members at the time.

7-4-34 Records and information

(a) A limited liability company shall keep at its principal place of business the following:

(1) A current and a past list, setting forth the full name and last known mailing address of each member and manager, if any;

(2) A copy of its certificate of formation and all amendments thereto;

(3) A copy of its current limited liability company agreement and all amendments thereto, and a copy of any prior agreements no longer in effect;

(4) Unless contained in its certificate of formation or limited liability company agreement, a written statement of:

(A) The amount of cash and a description of the agreed value of the other property or services contributed by each member (including that member's predecessors in interest), and which each member 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 member are to be made; and

(C) Any right of any member to receive distributions which include a return of all or any part of the member's contribution.

(5) A copy of the limited liability company's tribal, federal, state, and local tax returns and reports, if any, for the three most recent years; and

(6) A copy of any financial statements of the limited liability company for the three most recent years.

(b) The records required by subsection (a) of this section to be kept by a limited liability company are subject to inspection and copying at the reasonable request, and at the expense, of any member during ordinary business hours. A member's agent or attorney has the same inspection and copying rights as the member.

(c) Each manager shall have the right to examine all of the information described in subsection (a) of this section for a purpose reasonably related to his or her position as a manager.

(d) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(e) Any action to enforce any right arising under this section shall be brought in the tribal court.

7-4-35 Remedies for breach of limited liability company agreement by member

(a) A limited liability company agreement may provide that:

(1) a member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to penalties or specified consequences specified in the limited liability company agreement; and

(2) at the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences.

MANAGEMENT AND MANAGERS

7-4-40 Management

(a) Unless the certificate of formation vests management of the limited liability company in a manager or managers:

(1) Management of the business or affairs of the limited liability company shall be vested in the members; and

(2) each member is an agent of the limited liability company for the purpose of its business and the act of any member for apparently carrying on in the usual way the business of the limited liability company binds the limited liability company unless the member so acting has in fact no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority. Subject to any provisions in the limited liability company agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto.

(b) If the certificate of formation vests management of the limited liability company in one or more managers, then such persons shall have such power to manage the business or affairs of the limited liability company as is provided in the limited liability company agreement. Unless otherwise provided in the limited liability company agreement, such persons:

(1) Shall be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to 7-4-34) of the contributions made, or required to be made, by all members at the time of such action;

(2) Need not be members of the limited liability company or natural persons; and

(3) Unless they have been earlier removed or have earlier resigned, shall hold office until their successors shall have been elected and qualified.

(c) If the certificate of formation vests management of the limited liability company in a manager or managers, no member, acting solely in the capacity as a member, is an agent of the limited liability company.

7-4-41 Liability of managers and members

Unless otherwise provided in the limited liability company agreement:

(a) A member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless such act or omission constitutes gross negligence, intentional misconduct, or a knowing violation of law.

(b) Every member and manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by him or her without the consent of a majority of the disinterested managers or members, or other persons participating in the management of the business or affairs of the limited liability company from:

(1) any transaction connected with the conduct or winding up of the limited liability company; or

(2) any use by him or her of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to him or her as a result of his or her status as manager or member.

7-4-42 Manager--Members' rights and duties

A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of his or her participation in the limited liability company as a member.

7-4-43 Voting and classes of managers

(a) Unless the limited liability company agreement provides otherwise, the affirmative vote, approval, or consent of more than one-half by number of the managers shall be required to decide any matter connected with the business and affairs of the limited liability company.

(b) A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of managers. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(c) A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. If the limited liability company agreement so provides, voting by managers may be on a financial interest, class, group, or any other basis.

(d) A limited liability company agreement which contains provisions related to voting rights of managers may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

7-4-44 Remedies for breach of limited liability company agreement by manager

(a) A limited liability company agreement may provide that:

(1) a manager who fails to perform in accordance with, or to comply with the terms and conditions of the limited liability company agreement shall be subject to any specified penalties or specified consequences in the agreement; and

(2) at the time or upon the happening of events specified in the limited liability company agreement, a manager shall be subject to any specified penalties or specified consequences in the agreement.

7-4-45 Reliance on reports and information by member or manager

In discharging the duties of a manager or a member, a member or manager of a limited liability company is entitled to rely in good faith upon the records of the limited liability company and upon such information, opinions, reports, or statements presented to the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, or by any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

7-4-46 Resignation of manager

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

7-4-47 Loss of sole remaining manager

In the event of the death, resignation, or removal of the sole remaining manager, or if one of the events described in 7-4-33(a) (4) through (9) occurs with regard to the sole remaining manager, and unless the limited liability company agreement provides otherwise, the limited liability company shall become member-managed unless one or more managers are appointed by majority vote of the members within ninety days after the occurrence of such an event.

FINANCE

7-4-50 Form of contribution

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

7-4-51 Liability for contribution

(a) Except as provided in a limited liability company agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value as stated in the records of the limited liability company required to be kept pursuant to 7-4-34 of the contribution that has not been made. This option shall be in addition to, and not in lieu of, any other rights, including the right to specific

performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.

(b) Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after either the certificate of formation, limited liability company agreement or an amendment thereto, or records required to be kept under 7-4-34 reflect the obligation, and before the amendment of any thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

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

7-4-52 Allocation of profits and losses

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated in proportion to the agreed value as stated in the records of the limited liability company required to be kept pursuant to 7-4-34 of the contributions made, or required to be made, by each member.

7-4-53 Allocation of distributions

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made in proportion to the agreed value as stated in the records of the limited liability company required to be kept pursuant to 7-4-34 of the contributions made, or required to be made, by each member.

DISTRIBUTIONS AND RESIGNATION

7-4-60 Interim distributions

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

7-4-61 Distribution on event of dissociation

Unless otherwise provided in the limited liability company agreement, upon the occurrence of an event of dissociation under 7-4-33 which does not cause dissolution (other than an event of dissociation specified in 7-4-33(a)(2) where the dissociating member's assignee is admitted as a member), a dissociating member (or the member's assignee) is entitled to receive any distribution to which an assignee would be entitled.

7-4-62 Distribution in-kind

Except as provided in a limited liability company agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in a limited liability company agreement, a member may not be compelled to accept a distribution of any asset in-kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset which is equal to the percentage in which he or she shares in distributions from the limited liability company.

7-4-63 Right to distribution

Subject to 7-4-64 and 7-4-86, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, he or she has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

7-4-64 Limitations on distribution

(a) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution:

(1) the limited liability company would not be able to pay its debts as they became due in the usual course of business; or

(2) all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

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

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

ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

7-4-70 Nature of limited liability company interest--Certificate of interest

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

(b) A limited liability company agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company.

7-4-71 Assignment of limited liability company interest

(a) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except:

(1) Upon the approval of all of the members of the limited liability company other than the member assigning his or her limited liability company interest; or

(2) As provided in a limited liability company agreement.

(b) Unless otherwise provided in a limited liability company agreement:

(1) An assignment entitles the assignee to share in such profits and losses, to receive such distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(2) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his or her limited liability company interest.

(c) For the purposes of this chapter, unless otherwise provided in a limited liability company agreement:

(1) The pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the limited liability company interest of a member shall not be deemed to be an assignment of the member's limited liability company interest, but a foreclosure or execution sale or exercise of similar rights with respect to all of a member's limited liability company interest shall be deemed to be an assignment of the member's limited liability company interest to the transferee pursuant to such foreclosure or execution sale or exercise of similar rights;

(2) Where a limited liability company interest is held in a trust or estate, or is held by a trustee, personal representative, or other fiduciary, the transfer of the limited liability company interest, whether to a beneficiary of the trust or estate or otherwise, shall be deemed to be an assignment of such limited liability company interest, but the mere substitution or replacement of the trustee, personal representative, or other fiduciary shall not constitute an assignment of any portion of such limited liability company interest.

(d) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

7-4-72 Rights of judgment creditor

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member 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 limited liability company interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest.

7-4-73 Right of assignee to become member

(a) An assignee of a limited liability company interest may become a member upon:

(1) The approval of all of the members of the limited liability company other than the member assigning his or her limited liability company interest; or

(2) Compliance with any procedure provided for in the limited liability company agreement.

(b) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this chapter. An assignee who becomes a member is liable for the obligations of his or her assignor to make

contributions as provided in 7-4-51, and for the obligations of his or her assignor under this ordinance.

(c) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his or her liability to a limited liability company under this ordinance.

DISSOLUTION

7-7-80 Dissolution

A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

- (a) The dissolution date, if any, specified in the certificate of formation. If a dissolution date is not specified in the certificate of formation, the limited liability company's existence will continue until the first to occur of the events described in subsections (b) through (f) of this section. If a dissolution date is specified in the certificate of formation, the certificate of formation may be amended and the existence of the limited liability company may be extended by vote of all the members;
- (b) The happening of events specified in a limited liability company agreement;
- (c) The written consent of all members;
- (d) Unless the limited liability company agreement provides otherwise, ninety days following an event of dissociation of the last remaining member, unless those having the rights of assignees in the limited liability company under 7-4-33(a) have, by the ninetieth day, voted to admit one or more members, voting as though they were members, and in the manner set forth in 7-4-31(a);
- (e) The entry of a decree of judicial dissolution under 7-4-81; or
- (f) The expiration of two years after the effective date of dissolution under 7-4-83 without the reinstatement of the limited liability company.

7-4-81 Judicial dissolution

- (a) On application by or for a member or manager the tribal courts may decree dissolution of a limited liability company whenever:
 - (1) It is not reasonably practicable to carry on the business in conformity with a limited liability company agreement; or
 - (2) other circumstances render dissolution equitable.

7-4-82 Administrative dissolution--Commencement of proceeding

- (a) The secretary of the Colville Business Council may commence a proceeding under 7-4-83 to administratively dissolve a limited liability company if:
 - (1) The limited liability company does not pay any license fees or penalties, imposed by this ordinance, when they become due;
 - (2) The limited liability company does not deliver its completed initial report or annual report to the secretary of the Colville Business Council when it is due;
 - (3) The limited liability company is without a registered agent or registered office on this reservation for sixty days or more; or
 - (4) The limited liability company does not notify the secretary of the Colville Business Council within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

7-4-83 Administrative dissolution--Notice--Opportunity to correct deficiencies

(a) If the secretary of the Colville Business Council determines that one or more grounds exist under 7-4-82 for dissolving a limited liability company, the secretary of the Colville Business Council shall give the limited liability company written notice of the determination by first class mail, postage prepaid, reciting the grounds therefore. Notice shall be sent to the address of the principal place of business of the limited liability company as it appears in the records of the secretary of the Colville Business Council.

(b) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of the Colville Business Council that each ground determined by the secretary of the Colville Business Council does not exist within sixty days after notice is sent, the limited liability company is thereupon dissolved. The secretary of the Colville Business Council shall give the limited liability company written notice of the dissolution that recites the ground or grounds therefore and its effective date.

(c) A limited liability company administratively dissolved continues its existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs.

(d) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

7-4-84 Administrative dissolution--Reinstatement--Application--When effective

(a) A limited liability company administratively dissolved under 7-4-83 may apply to the secretary of Colville Business Council for reinstatement within two years after the effective date of dissolution. The application must:

(1) Recite the name of the limited liability company and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State that the limited liability company's name satisfies the requirements of 7-4-3.

(b) If the secretary of Colville Tribal Council determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of the Colville Business Council shall reinstate the limited liability company and give the limited liability company written notice, as provided in 7-4-82(a), of the reinstatement that recites the effective date of reinstatement. If the name is not available, the limited liability company must file with its application for reinstatement an amendment to its certificate of formation reflecting a change of name.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume carrying on its business as if the administrative dissolution had never occurred.

(d) If an application for reinstatement is not made within the two-year period set forth in subsection (a) of this section, or if the application made within this period is not granted, the secretary of the Colville Business Council shall cancel the limited liability company's certificate of formation.

7-4-85 Winding up

(a) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to 7-4-34) of the contributions made, or required to be made, by all members, or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs. The Colville Tribal Court, upon cause shown, may

wind up the limited liability company's affairs upon application of any member or manager, his or her legal representative or assignee, and in connection therewith, may appoint a receiver.

(b) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in 7-4-22, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal, or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company.

7-4-86 Distribution of assets

(a) Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(1) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under 7-4-60 or 7-4-63;

(2) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under 7-4-60 or 7-4-63; and

(3) Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

(b) A limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited liability company and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available there for. Unless otherwise provided in a limited liability company agreement, any remaining assets shall be distributed as provided in this chapter. Any person winding up a limited liability company's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

FOREIGN LIMITED LIABILITY COMPANIES

7-4-90 Law governing

(a) Subject to the Constitution and Bylaws of the Colville Tribes:

(1) The laws of the tribal government, state, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers; and

(2) A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of the Colville Tribes.

(b) A foreign limited liability company is subject to 7-4-6 and, notwithstanding subsection (a)(1) of this section, a foreign limited liability company rendering professional services on this Reservation is also subject to RCW 127.15.045(2).

(c) A foreign limited liability company and its members and managers doing business on this Reservation thereby submit to personal jurisdiction of the courts of the Colville Tribes and are subject to 7-4-32.

7-4-91 Registration required—Application

(a) Before doing business on this Reservation, a foreign limited liability company shall register with the secretary of the Colville Business Council. In order to register, a foreign limited liability company shall submit to the secretary of Colville Business Council, an application for registration as a foreign limited liability company executed by any member or manager of the foreign limited liability company, setting forth:

- (1) The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business on this Reservation;
- (2) The tribal government, state, territory, possession, or other jurisdiction or country where formed, the date of its formation and a duly authenticated statement from the official having custody of limited liability company records in the jurisdiction under whose law it was formed, that as of the date of filing the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;
- (3) The nature of the business or purposes to be conducted or promoted on this Reservation;
- (4) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by 7-4-93;
- (5) The address of the principal place of business of the foreign limited liability company;
- (6) A statement that the secretary of the Colville Business Council is appointed the agent of the foreign limited liability company for service of process under the circumstances set forth in 7-4-99(b); and
- (7) The date on which the foreign limited liability company first did, or intends to do, business in this reservation.

7-4-92 Issuance of registration

(a) If the secretary of the Colville Business Council finds that an application for registration conforms to law and all requisite fees have been paid, the secretary shall:

- (1) Certify that the application has been filed in his or her office by endorsing upon the original application the word "Filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud;
- (2) File the endorsed application.

(c) The duplicate of the application, similarly endorsed, shall be returned to the person who filed the application or that person's representative.

7-4-93 Name—Registered office—Registered agent

(a) A foreign limited liability company may register with the secretary of the Colville Business Council under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company," the words "Limited Liability" and the abbreviation "Co.," or the abbreviation "L.L.C." or "LLC" and that could be registered by a domestic limited liability company. A foreign limited liability company may apply to the secretary of the Colville Business Council for authorization to use a name which is not distinguishable upon the records of the office of the secretary of the Colville Business Council from the names described in RCW 23B.04.010 and 127.10.020, and the names of any domestic or foreign limited liability company reserved, registered, or formed under the laws of this state. The secretary of the Colville Business Council shall authorize use of the name applied for if the other corporation, limited liability company, limited liability partnership, or limited partnership consents in writing to the use and files with the

secretary of the Colville Business Council documents necessary to change its name, or the name reserved or registered to a name that is distinguishable upon the records of the secretary of the Colville Business Council from the name of the applying foreign limited liability company.

(b) Each foreign limited liability company shall continuously maintain on this Reservation:

(1) A registered office, which may but need not be a place of its business in this state. The registered office shall be at a specific geographic location on this reservation, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of Colville Business Council may permit the use of a post office address in conjunction with the registered office address if the foreign limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(2) A registered agent for service of process on the foreign limited liability company, which agent may be either an individual resident of this Reservation whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, a limited partnership or limited liability company, or a foreign corporation authorized to do business on this reservation having a business office identical with such registered office; and

(3) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of the Colville Business Council in such form as the secretary may prescribe. The written consent shall be filled with or as a part of the document first appointing a registered agent. In the event any individual, limited liability company, limited partnership, or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of the Colville Business Council.

(c) A foreign limited liability company may change its registered office or registered agent by delivering to the secretary of the Colville Business Council for filing a statement of change that sets forth:

(1) The name of the foreign limited liability company;

(2) If the current registered office is to be changed, the street address of the new registered office in accord with subsection (b)(1) of this section;

(3) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(4) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(d) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (c) of this section and recites that the foreign limited liability company has been notified of the change.

(e) A registered agent of any foreign limited liability company may resign as agent by signing and delivering to the secretary of the Colville Business Council for filing a statement that the registered office is also discontinued. After filing the statement the secretary of the Colville Business Council shall mail a

copy of the statement to the foreign limited liability company at its principal place of business shown in its application for certificate of registration if no annual report has been filed. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

7-4-94 Amendments to application

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign limited liability company shall promptly file in the office of the secretary of the Colville Business Council a certificate, executed by any member or manager, correcting such statement.

7-4-95 Cancellation of registration

(a) A foreign limited liability company may cancel its registration by filing with the secretary of Colville Business Council a certificate of cancellation, executed by any member or manager. A cancellation does not terminate the authority of the secretary of Colville Business Council to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business on this Reservation.

(b) The certificate of cancellation shall set forth:

- (1) The name of the foreign limited liability company;
- (2) The date of filing of its certificate of registration;
- (3) The reason for filing the certificate of cancellation;
- (4) The future effective date (not later than the ninetieth day after the date it is filed) of cancellation if it is not to be effective upon filing of the certificate;
- (5) The address to which service of process may be forwarded; and
- (6) Any other information the person filing the certificate of cancellation desires.

7-4-96 Doing business without registration

(a) A foreign limited liability company doing business on this Reservation may not maintain any action, suit, or proceeding on this Reservation until it has registered on this Reservation, and has paid to the Colville Tribes all fees and penalties for the years or parts thereof, during which it did business on this Reservation without having registered.

(b) The failure of a foreign limited liability company to register on this Reservation does not impair:

- (1) The validity of any contract or act of the foreign limited liability company;
- (2) The right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or
- (3) Prevent the foreign limited liability company from defending any action, suit, or proceeding in Colville Tribal Court.

(b) A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business on this Reservation without registration.

7-4-97 Foreign limited liability companies doing business without having qualified—Injunctions

The tribal court shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business on this reservation if such foreign limited liability company has failed to register

under this article or if such foreign limited liability company has secured a certificate of registration from the secretary of Colville Business Council under 7-4-92 on the basis of false or misleading representations. The secretary of the Colville Business Council shall, upon the secretary's own motion or upon the relation of proper parties, proceed for this purpose by complaint in the Tribal Court.

7-4-98 Transactions not constituting transacting business

(a) The following activities, among others, do not constitute transacting business within the meaning of this article:

- (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 the members, or managers if any, or carrying on other activities concerning internal limited liability company affairs;
- (3) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or interests or maintaining trustees or depositaries with respect to those securities or interests;
- (5) Selling through independent contractors;
- (6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this Reservation before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;
- (7) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;
- (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (9) Owning, without more, real or personal property;
- (10) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
- (11) Transacting business in interstate commerce;
- (12) Owning a controlling interest in a corporation or a foreign corporation that transacts business within this state;
- (13) Participating as a limited partner of a domestic or foreign limited partnership that transacts business within this Reservation; or
- (14) Participating as a member or a manager of a domestic or foreign limited liability company that transacts business within this Reservation.

(b) The list of activities in subsection (a) of this section is not exhaustive.

7-4-99 Service of process on registered foreign limited liability companies

(a) A foreign limited liability company's registered agent is its agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability company.

(b) The secretary of the Colville Business Council shall be an agent of a foreign limited liability company upon whom any such process, notice, or demand may be served if:

(1) The foreign limited liability company fails to appoint or maintain a registered agent on this Reservation; or

(2) The registered agent cannot with reasonable diligence be found at the registered office.

(c) Service on the secretary of the Colville Business Council of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of the Colville Business Council, or with any duly authorized clerk of the secretary of the Colville Business Council' office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of the Colville Business Council, the secretary of the Colville Business Council shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the foreign limited liability company at the address of its principal place of business as it appears on the records of the secretary of the Colville Business Council. Any service so had on the secretary of the Colville Business Council shall be returnable in not less than thirty days.

(d) The secretary of the Colville Business Council shall keep a record of all processes, notices, and demands served upon the secretary of the Colville Business Council under this section, and shall record therein the time of such service and the secretary of the Colville Business Council' action with reference thereto.

(e) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign limited liability company in any other manner now or hereafter permitted by law.

7-4-100 Service of process on unregistered foreign limited liability companies

(a) Any foreign limited liability company which shall do business on this Reservation without having registered under 7-4-91 shall be deemed to have thereby appointed and constituted the secretary of the Colville Business Council its agent for the acceptance of legal process in any civil action, suit, or proceeding against it in any Colville Tribal Court arising or growing out of any business done by it within this Reservation. The doing of business on this Reservation by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon a registered agent personally within this Reservation.

(b) In the event of service upon the secretary of the Colville Business Council in accordance with subsection (a) of this section, the secretary of the Colville Business Council shall forthwith notify the foreign limited liability company thereof by letter, certified mail, return receipt requested, directed to the foreign limited liability company at the address furnished to the secretary of the Colville Business Council by the plaintiff in such action, suit, or proceeding. Such letter shall enclose a copy of the process and any other papers served upon the secretary of the Colville Business Council. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the secretary of the Colville Business Council that service is being made pursuant to this subsection.

7-4-101 Revocation of registration—Requirements for commencement

(a) The secretary of the Colville Business Council may commence a proceeding under Miscellaneous section of this act to revoke registration of a foreign limited liability company authorized to transact business on this Reservation if:

(1) The foreign limited liability company is without a registered agent or registered office on this Reservation for sixty days or more;

(2) The foreign limited liability company does not inform the secretary of the Colville Business Council under 7-4-94 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the

change, resignation, or discontinuance;

(3) A manager or other agent of the foreign limited liability company signed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of the Colville Business Council for filing; or

(4) The secretary of the Colville Business Council receives a duly authenticated certificate from the secretary of the Colville Business Council or other official having custody of limited liability company records in the jurisdiction under which the foreign limited liability company was organized stating that the foreign limited liability company has been dissolved or its certificate or articles of formation canceled.

7-4-102 Revocation of registration—Procedure—Notice—Correction of grounds—Certificate of revocation—Authority of agent

(a) If the secretary of the Colville Business Council determines that one or more grounds exist under Derivative Actions of this Chapter for revocation of a foreign limited liability company's registration, the secretary of the Colville Business Council shall give the foreign limited liability company written notice of the determination by first class mail, postage prepaid, stating in the notice the ground or grounds for and effective date of the secretary of the Colville Business Council's determination, which date shall not be earlier than the date on which the notice is mailed.

(b) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of the Colville Business Council that each ground determined by the secretary of the Colville Business Council does not exist within sixty days after notice is effective, the secretary of the Colville Business Council shall revoke the foreign limited liability company's registration by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of the Colville Business Council shall file the original of the certificate and mail a copy to the foreign limited liability company.

(c) Documents to be mailed by the secretary of the Colville Business Council to a foreign limited liability company for which provision is made in this section shall be sent to the foreign limited liability company at the address of the agent for service of process contained in the application or certificate of this limited liability company which is most recently filed with the secretary of the Colville Business Council.

(d) The authority of a foreign limited liability company to transact business on this Reservation ceases on the date shown on the certificate revoking its registration.

(e) The secretary of the Colville Business Council's revocation of a foreign limited liability company's registration appoints the secretary of the Colville Business Council the foreign limited liability company's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited liability company was authorized to transact business on this Reservation.

(f) Revocation of a foreign limited liability company's registration does not terminate the authority of the registered agent of the foreign limited liability company.

DERIVATIVE ACTIONS

7-4-120 Right to bring action

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

7-4-121 Proper plaintiff

(a) In a derivative action, the plaintiff must be a member at the time of bringing the action and:

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

7-4-122 Complaint

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

7-4-123 Expenses

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

MISCELLANEOUS

7-4-130 Construction and application of Ordinance and limited liability company agreement

(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(b) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(c) Unless the context otherwise requires, as used in this chapter, the singular shall include the plural and the plural may refer to only the singular. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this ordinance and do not constitute part of the law.

7-4-131 Establishment of filing fees and miscellaneous charges

(a) The secretary of the Colville Business Council shall adopt rules establishing fees which shall be charged and collected for:

- (1) Filing of a certificate of formation for a domestic limited liability company or an application for registration of a foreign limited liability company;
- (2) Filing of a certificate of cancellation for a domestic or foreign limited liability company;
- (3) Filing of a certificate of amendment or restatement for a domestic or foreign limited liability company;
- (4) Filing an application to reserve, register, or transfer a limited liability company name;
- (5) Filing any other certificate, statement, or report authorized or permitted to be filed;
- (6) Copies, certified copies, certificates, service of process filings, and expedited filings or other special services.

(b) In the establishment of a fee schedule, the secretary of the Colville Business Council shall, insofar as is possible and reasonable, be guided by the fee schedule provided for corporations governed by Tribal law.

(c) All fees collected by the secretary of the Colville Business Council shall be deposited with the tribal treasurer pursuant to law.

7-4-132 Authority to adopt rules

The secretary of the Colville Business Council shall adopt such rules as are necessary to implement the transfer of duties and records required by this chapter.

7-4-133 Effective date

This act shall take effect upon final passage by the Colville Business Council.

7-4-134 Short title

This Chapter may be cited as the "Colville Limited Liability Company Act."

7-4-135 Severability

If any provision of this Act or its application to any person or circumstance is held invalid, the remainder of the Act or the application of the provision to other persons or circumstances is not affected.

(Adopted 8/6/09, Resolution 2009-591)